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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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8 CONCLUSIONS

8.1 INTRODUCTION

Two decades have passed since Indonesia turned from an authoritarian into a democratic state. This process has established and promoted civil liberties, but simultaneously, many predatory government practices common under the authoritarian New Order regime continued (Hadiz, 2007; Schulte-Nordholt and van Klinken 2011; Bakker 2009). It is in this context that this study has looked at land conflicts, the changing nature of claims to land rights by local land users, and the role of the indigenous movement herein. It examined how and why this movement emerged, how its discourse has translated into law, and how these legal reforms have actually helped local land users to secure land rights in South Sulawesi.

Key players in the indigenous movement are the NGO activists and local land users who use the 'adat community' frame to claim rural land rights. At the outset of the *Reformasi* era, Indonesia observers noticed the rise of the indigenous movement with both surprise and excitement. The 'indigenous turn' was also reason for concern among scholars, particularly in relation to the increased space it provided for local identity politics. Some worried that advocacy for indigenous rights would legitimize traditional power structures that are highly hierarchical and patronizing in nature. Li for example expressed the concern that 'for all the failure of the Indonesian state to deliver the promises of liberal citizenship, I worry too about a differentiated legal system in which recognition of customary law would subject people to local despotisms and the whims of "traditional" leaders who could monopolize or sell collective resources, or pass unreasonable judgments, substituting one tyranny for another' (Li, 2001: 648).

Since Li expressed these concerns in 2001, Indonesia has made steps to establish a legal framework on indigenous land rights. During the 1990s and early 2000s, local land users often invoked adat land claims to resist intrusive state policies pertaining to land rights and natural resource management, even though Indonesian law did not yet provide a concrete basis for such counter claims. Over the years however, the state has given into some demands of the indigenous movement, albeit partially and in a gradual way. As a result, the legal system that Li feared has partly come into place. Although the Law on Indigenous Peoples is yet to see the light of day, the scope of indigenous rights widened through an alteration of the 1999 BFL by the Constitutional Court in May 2013. Several ministerial regulations followed and helped to create a legal framework that regulates the procedure for the recognition of adat communities and their land. In short, since the revival of adat following the fall of the New Order, the status of indigeneity in Indonesia has slowly developed from being a tool of resistance into becoming a basis of collective land rights.

The most pertinent question this study tried to answer is to what extent local land users have actually secured adat land rights. I have shown that by imposing strict conditions on legal recognition, the state continues to have a large degree of control in

land governance. At least in part, these strict conditions ensued as a result of the narrow frame adopted by the indigenous movement itself. This frame is built on the notion that customary rights are exclusively held by traditional and communitarian adat communities. The conditions in the law reflect this frame and hence, greatly limit the scope of who can qualify for such rights. When government agencies do recognize collective adat land rights, there are no guarantees to prevent that only traditional elites will benefit.

An important conclusion is that the local appropriation of the indigeneity discourse has hardly empowered local land users involved in land conflicts. In this concluding chapter, I will summarize the main findings that underpin this argument. I start with an explanation of why many land conflicts in Indonesia continued. Next, I will explain why the indigenous movement found the narrow frame of adat communities useful to support farmers involved in such conflicts. This is followed by an evaluation of the changing scope of adat community rights under Indonesian law. I will then look at the way adat community rights are claimed at the local level and how these claiming strategies impact local struggles over land. Finally, I will briefly look at the prospects of customary land rights in Indonesia for the future.

8.2 THE CONTINUITY OF LAND CONFLICTS: GOVERNMENT INTERVENTIONS AND THE ROLE OF LAW

In essence, the claims to recognize the rights of adat communities are a call to reduce the role of the state in land governance. The underlying assumption of the indigenous movement is that the 'predatory state' is incapable of realizing rural justice for its citizens. Through the BAL, the state promised to secure land rights of the population on the premises of citizenship. Individual land rights were to be realized by an active government that registers and creates such rights. However, these aspirations were never realized. The government never fully carried out the planned land reform program. Under the New Order, the implementation of the BAL was arbitrary and the state often interpreted the rules in ways that served the interests of the regime. The majority of people in rural areas did not manage to register their land rights. Unregistered community-based land rights were highly insecure when such communities were faced with claims from companies supported by the government.

The demise of the New Order created a new sense of empowerment among rural populations. Local officials such as sub-district and village heads sometimes sympathized with local movements, whereas previously they were loyal to the state. Local land users could address their grievances more freely. However, although the shift towards regional autonomy in the early 2000s conferred more powers to regional governments it tended to reinforce the power of local elites, rather than empowering the unheard voices of ordinary citizens (Hadiz, 2003; Schulte-Nordholt, 2007). Therefore, democratization and decentralization did not lead to significantly more inclusion of 'common people' in decision-making processes on land governance and natural resource management.

This study has looked at the broader trajectory of land conflicts in Indonesia and has also examined a number of land conflicts in an in-depth way, including a longstanding,

ongoing agrarian conflict in Bulukmba that has been lingering on for almost 40 years. The root cause of most conflicts between local land users and state and corporate actors is well-known: the designation by the state of large tracts of land as state land and state forest without considering the customary rights of local land users. The in-depth study of land conflicts of this research has provided new insights as to why certain land conflicts have dragged on for so long.

A previous study of the Bulukumba plantation conflict attributed the continuation of the conflict in the early 2000s mainly to the role of local activists, who stirred up the rural masses and obstructed the reach of a settlement (Tyson, 2010). However, my findings from long periods of fieldwork in Bulukumba and a precise reconstruction of the events since the late 1970s suggest otherwise. In Chapter 3 and Chapter 6, I showed that despite numerous government attempts to settle the conflict, the state never took the grievances of the numerous groups of claimants seriously into account. Various government agencies were only prepared to consider the legal aspects of the conflict, interpreted in a narrow, pro-company way. This static approach to resolve conflicts was ineffective. Due to mutually non-aligning decisions of various legal institutions - for example about the appropriate size of land adjudicated by the Supreme Court - the conflict became more layered and impossible to resolve if state institutions were not to look beyond the legal aspects of the conflict.

In the era of regional democracy, elected officials used the conflict to prove their political performativity. In Chapter 6 I explained how an elected district head initially presented himself as a capable conflict mediator who was willing to look into the claims of local land users with an open mind. Eventually however, after being confronted by counter claims from the company, he withdrew his involvement and asked the land claimants to instead take their claims to a court.

In the forest conflicts in Sinjai, discussed in Chapter 7, state institutions approached the claims of local land users in an equally narrow way. In the eyes of district government officials and judges of the Sinjai District Court, the boundaries of the Forest Areas were legitimate for they were legal, despite that the government never consulted villagers about the borders of these areas. Like in the Bululukmba plantation conflict after the fall of Suharto, law was primarily a means of control of powerholders, rather than a protective tool of the rural poor. It is against this backdrop that the continuation of land conflicts has convinced activists and local land users that the state should abstain from interfering in land governance and natural resource management. This distrust has been a fertile soil for the growth of the indigenous movement.

8.3 THE POWER AND LIMITS OF THE ADAT COMMUNITY DISCOURSE

8.3.1 The legitimacy of adat

In the introduction of this book I referred to studies that attribute the expansion of indigenous rights to neoliberal government policies in developing countries. This literature notes that democratization and decentralization offered a basis for a new

discourse on citizenship. The neoliberal rationale that communities were better off to govern themselves were supported by civil society organizations, as these were greatly disappointed by the land rights policies of centralist states during the preceding decades. The shift towards neoliberalism alone however does not fully explain the particular character of the indigeneity discourse in Indonesia. It does not completely clarify the puzzling fact that in Indonesia, civil society's advocacy for legal recognition of customary land rights is almost exclusively framed in terms of the rights of traditional, egalitarian adat communities, while more inclusive repertoires have thus far remained largely absent. Why is it that the resistance against state policies on land and natural resources took the form of adat community claims? In search of an answer to this question, this study has taken an in-depth look at the emergence of the indigenous movement in Indonesia.

A key insight of this study is that rise of the indigenous movement and the dissemination of adat land claims can be explained by the legitimacy of the adat discourse in Indonesia, as well as the lack of legitimacy of other discourses. The indigenous movement has adopted the adat community concept as a collective action frame, as it resonates with the ideology of the Indonesian state. Agrarian reform and redistribution of land remain controversial and sensitive ideas in Indonesia, as calls for agrarian reform are still being associated with the banned PKI. The adat community frame on the other hand is grounded in a more accepted discourse of authentic and harmonious rural societies. Ideas of adat have continued to be symbolically important in national ideas of Indonesian culture, as well as in the law. Legislation enacted under Sukarno and Suharto aimed to create a unified legal system on the basis of citizenship, but laws also made symbolic reference to adat.

In addition, the equation of adat communities with indigenous peoples has prompted external support from transnational organizations that support the rights of indigenous peoples. Multilateral development banks support the idea of dismantling the developmentalist state while granting communities the autonomy to collectively govern their lands and natural resources. Furthermore, by imagining adat communities as practitioners of sustainable community-based resource management, the indigenous movement addressed a connection between social justice and environmental degradation. Doing so helped to secure support of donors and aid organizations with an environmental agenda.

8.3.2 Limitations of the discourse: the niche of continuity and collectivity

During the late New Order period, adat community claims were sometimes an effective expression of local resistance for land users. In 1998 for example, local communities from Krui (Lampung) managed to reclaim control of their farming gardens designated as Forest Area (Djalins, 2011). Since *Reformasi*, the legal scope of adat community rights has slowly expanded, most notably through the 1999 BFL, the amended 1945 Constitution, and Constitutional Court ruling no. 35/2012 which identified such communities as the legal owners of adat forests.

Ultimately however, the ability of the indigenous movement to realize recognition of collective land rights has been limited by its own discourse. While the movement aims to defend and protect the rights of marginalized people in rural areas, it does not consider marginality a defining feature of adat communities. The most important characteristics attributed to adat communities are adherence to traditional rules and norms, a traditional socio-political organization and control over a collective territory that goes back many generations. In other words, the indigenous movement situates adat communities in a niche of continuity and collectivity (see also Benda-Beckmann, forthcoming).

AMAN claims that there are 70 million members of adat communities in Indonesia and the organization presents itself as fighting for the cause of the rural masses. However, the niche of continuity and collectivity is so narrow that most of these 70 million Indonesians will face difficulties in actually matching the idealtypical image of an adat community. Because the continuity of traditions is a defining feature of the adat law community concept under Indonesian law, the state has easily dismissed the claims of those it considered not sufficiently 'traditional'. Equally problematic is that those who did happen to fit the niche of continuity and collectivity - and hence obtained legal recognition - were not necessarily the most marginal and vulnerable groups. Both points will be further explained below.

8.4 LEGAL REFORMS AND THE CONTROL OF THE STATE

The recognition of adat community rights has to be realized through decisions of government agencies. This is a complicated matter because, as explained above, it is the distrust towards the state that has led to the demands for adat community rights in the first place. In many conflicts that involve adat community claims, government agencies are the main adversary of local land users. Since the outset of *Reformasi*, the central government has been reluctant to expand the scope of adat community rights, because this would imply a loss of control over land claimed as indigenous territory. Newly adopted legislation on adat law community rights was very limited in its scope. However, by turning to the judiciary, the indigenous movement effectively pushed for further reform. Following Constitutional Court ruling no. 35/2012, government agencies could not evade adopting implementing legislation to the ruling. Chapter 2 discussed the current legal framework on the procedures of adat community recognition, which is fragmented over a number of ministerial regulations.

Is the widening scope of adat community rights in Indonesia an empowering tool for local land users, as Rachman and Siscawati (2016) have argued, or is it merely a form of managed multiculturalism imposed by the state, as Hale (2002, 2004) has asserted in the context of Latin American countries? According to him, allowing limited space for indigenous rights constitutes 'a strategy of governance' rather than a form of relinquishing state authority (2002: 507). In order to assess this, this study has looked at the legal framework on indigenous rights that has come in place in Indonesia. An important conclusion is that the widened scope of adat community rights has not decreased the authority of the government. On the contrary, the law appoints regional

governments the authority to determine who qualifies as adat law community. Indigenous rights are conditional rights given that only communities that match a number of legal criteria can obtain them.

As discussed above, the current legal framework is based on the notion that adat law communities are those who have managed to keep their traditions. The elucidation of Article 67 of the 1999 BFL states that adat law communities are groups that *still* have a system of customary law and *still* use their communal territory for their daily subsistence. This interpretation of the concept deviates from how Van Vollenhoven originally used it. Van Vollenhoven coined the term adat law community in an attempt to protect local communities from intrusive and exploitative policies of the colonial government. Ancient tradition was not the defining feature of such communities. Instead, he stressed that these communities were subjected to constant change. Keebet von Benda-Beckmann recently addressed how Van Vollenhoven would have responded to the current legal definition of adat law community: 'He would have been especially critical of the static interpretation of the character of local communities and their law. Not only would he qualify this to be incorrect, because in his perspective all legal orders can and do change. He would have pointed at the problematic policy implications of such interpretation, forcing communities to stress continuity and downplay change' (Benda-Beckmann: forthcoming). This research has shown that the focus on continuity and collectivity hampers the realization of land rights. In order to qualify for adat land rights, communities are expected to prove to their district governments that they have managed to keep their unique traditions. But this expectation is based on an unrealistic representation of social reality. Rural societies in Indonesia have changed significantly since Indonesian independence, not in the least as a result of state policies that tried to harmonize government administration and erase traditional institutions, as shown in Chapter 5.

Chapter 7 looked at how a local land user suspected of illegal logging used the adat community claim as a legal defense in court. With the support of AMAN, the farmer tried to convince the judges that his village still had traditional leadership functions and a communal forest territory. The court rejected these claims by noting that traditions in the village were not unique and sufficiently distinct from other areas in South Sulawesi. This example shows how the state disqualifies claims when people do not fit the narrow niche. The indigeneity discourse and its legal translation make the recognition of land rights dependent on the extent to which local land users can prove they still are traditional. This greatly distracts the attention from the real issue at hand, which is the state's disregard of unregistered though locally acknowledged land rights.

By making the realization of customary land rights contingent on the decisions of government agencies, the state 'remains the ultimate mediator, adjudicator, and power holder' (Ribot and Peluso, 2001: 163). Despite the widening scope of adat community rights, the state has not risked losing its firm, dominant position in land governance. It has given just enough space to temporarily please activists, but not to bring about significant change. More inclusive legislation that allows for the recognition of customary land rights of groups other than adat law communities has not yet been implemented. By sticking to

the adat law community legislation, the state continues to determine who qualifies for land rights.

8.5 ADAT COMMUNITY POLITICS AT THE REGIONAL AND LOCAL LEVEL

8.5.1 Adat land claims in South Sulawesi

It was headline news when nine adat communities received their adat forest decrees from President Joko Widodo in a ceremony at the Presidential Palace. One news report labeled this event as a ‘sweet end of the year gift’ (*kado manis akhir tahun*) of the government.²²⁷ This reveals the implicit supposition that adat community rights are not genuine rights, but require the willingness of the government to be provided. This willingness should commence at the regional level. The enactment of a regional (district or provincial) regulation or a decree by a governor or district head is a mandatory step before national level recognition can materialize. This requires local land claimants and their NGO supporters to engage with regional government officials and regional parliament members, who need to be convinced to adopt legislation on the recognition of adat community rights. It usually involves a long process of lobbying and requires claimants to invest in relations with their regional governments.

In South Sulawesi, national groups like AMAN are very active and so are regional and locally based activist organizations. So far, regional governments in South Sulawesi have granted twelve communities a measure of formal recognition and hence the province has the highest number of recognized adat communities of all Indonesian provinces. However, my ethnographic study in the districts of Bulukumba and Sinjai showed that the outcomes of adat rights claims have been paradoxical. I will now further explain this.

8.5.2 The opposing forces of adat at the local level in South Sulawesi

Local communities are usually more layered than the indigenous movement portrays them. Henley and Davidson have argued that the failure to tackle the issue of customary inequality is the ‘Achilles’ heel’ of the indigenous movement in Indonesia (Henley and Davidson, 2007: 27). We have seen that in South Sulawesi, adat is not only deployed as an emancipatory force vis-à-vis the state and corporations, but often also as a vehicle to legitimize the authority of the traditional nobility. Chapter 5 has given a historical account of traditional rule in South Sulawesi, explaining that for centuries, a traditional belief system helped to consolidate the power of a landed aristocracy. Even iconic adat communities hailed for their egalitarian lifestyle, like the Ammatoa Kajang community, in fact abide by a strict socio-political hierarchy that distinguishes noblemen from commoners. Despite resistance from modern Islamic movements and attempts of the

²²⁷ See: <http://www.mongabay.co.id/2016/12/29/kado-manis-akhir-tahun-kali-pertama-pemerintah-tetapkan-hutan-adat/>, last accessed 26 June 2018.

Indonesian government to modernize local authority, the nobility continues to hold a privileged position in South Sulawesi today, not in the least because of their prominent position in the local and regional state.

How do the opposing forces of adat impact struggles over adat community rights? My findings demonstrate that while adat is an important asset of local elites to consolidate their position, it has not been in their interest to invoke adat as a form of resistance against the state. In the Bulukumba plantation conflict, the average land claimant is an ordinary farmer that has little to no land. The only land claimants of noble descent were those who lost their position as government officials long ago. Many other noblemen were on the other hand local elites holding traditional adat offices, while having formal or informal ties to the state. In Kajang, some of them acted as patrons of small farmers. Some had sided with PT. Lonsum during the New Order, when many local aristocrats were loyal to the regime. An early grassroots movement in Bulukumba not only targeted its actions against the company, but also against local noble elites. It was not until national NGO's became involved that indigeneity - in the form of adat community claims - became part of a collective framing strategy.

The deployment of adat to claim land rights can instigate contention at the local level. In the Bulukumba plantation conflict, this contention did not revolve around whether indigeneity was articulated or not. The Ammatoa Kajang community is an exemplary adat community and has become an icon of the indigenous movement. Contentious was who could legitimately deploy adat for a political purpose. Local activists and land claimants used the cultural image of the Ammatoa Kajang community to strengthen their land claims, but many adat leaders were against politicizing adat in this way. Most of these simultaneously held positions as local or regional government officials. For them, adat was important as a symbol of the traditional socio-political order. They disagreed with invoking adat in protests and rallies, as it would cause turmoil, could damage the reputation of the community, and eventually could threaten their own position.

These observations are illustrative of how the different meanings of adat can clash at the local level. They also show that communities are internally divided and marked by different interests. They are made up of different social strata, varying from poor local land users to elites tied to the state for whom maintaining order is more important than challenging state policies. Thus, to imagine adat communities as being marginalized in their entirety risks misrepresentation, as it negates internal power relations, as well as the interwovenness of adat and government authority.

8.5.3 The recognition of adat communities and connections to the state

The Ammatoa Kajang community was among the first groups to obtain adat forest rights at the national level. A photograph of the *Karaeng Labiria* receiving the Ministerial Decree from President Widodo went viral on social media, as it symbolized the important victory of the indigenous movement. However, what few seemed to realize was that the *Karaeng Labiria* as the Kajang Sub-District Head was in fact a representative of the district

government. That it was a government official that received the Ministerial Decree exemplifies that connections to power holders have just been as important as laws and regulations in shaping the outcomes of attempts to realize adat community rights.

The articulation of indigenous identity is not fixed, but contingent on many socio-historical factors. In Chapter 7 I have compared the attempts to secure adat forest rights by two communities that historically shared a similar traditional belief system. This comparison revealed the paradoxical result of making indigeneity a prerequisite for rights: the group that qualified best for recognition was the one with good connections to its district government. The Ammatoa Kajang community fitted the niche of continuity and collectivity better than the Turungan Soppeng community from West Sinjai. However, the Ammatoa Kajang community has not remained traditional by isolating itself, but by attaching government positions to traditional adat offices. In West Sinjai meanwhile, the significance of adat had decreased ever since the Darul Islam rebellion. In Turungan Baji village, adat is only relevant in the sphere of customary rituals and no longer plays a role in the appointment of local officials.

Hence, although it is presented in the law as a process of verifying a number of observable community characteristics, decisions on recognition are highly political. They are contingent on the good will between communities and their governments, as well as the personal benefits that government officials can acquire from making such decisions. While indigenous status is presented as a right of communities that meet a number of formal criteria, it is rather a privilege within reach only by communities that have cultivated relationships with regional and local authorities. The dependency on connections to realize rights is illustrative of the informal and mediated character of citizenship in post-colonial states like Indonesia. Well-connected groups can secure land rights, while marginalized and politically non-dominant ones face rejection of their claims.

8.5.4 After the 'victory'

This study has also looked into what happened when recognition of adat community rights did materialize. Did legal recognition indeed help the indigenous movement with achieving its main objective, securing land rights for local land users? Since national level recognition of adat forests has only materialized for the first time in December 2016, more research needs to be conducted on this issue. However, my study on the recognition of the Ammatoa Kajang community provides insights on an iconic case widely hailed by government officials and NGO's as a model for the rest of Indonesia. The Ministerial Decree only recognizes the small sacred forest as adat territory. As a result, a previously well working co-management system of forest preservation between the community and the district government was abolished. Forest management is now solely in the hands of the community. This new situation makes it easier for adat leaders to disregard forest preservation rules if doing so serves their interests, given the lack of upward accountability that is in place.

Apart from the release of the sacred forest from the state forest, legal recognition has had no further impact on local land relations, as it did not involve any physical transfer of land to the community. Most land in the adat territory is individually owned or rotates among family members; only the sacred forest is owned and managed collectively in accordance to the customary *pasang* norms. That this small forest is now recognized as adat forest means little to the average Kajang farmer in need of land. Unlike the Ministerial Decree, the preceding District Regulation did designate PT. Lonsum's rubber plantation as part of the community's adat territory, but this did not affect the rights of the company to exploit the land. In the future, legal recognition might provide land claimants with a stronger bargaining position to demand that the HGU will not be extended, but the political constellation on the ground will very likely be of greater importance for the outcome of such demands than the legal status of the land.

All taken together, recognition did little to improve the lives of the average community member. For the NGO's, government officials, and adat leaders involved in the process, the enactment of the District Regulation hardly seemed motivated by the desire to address real-life problems of the vulnerable and poor members of the community. Instead, legal recognition was above all a means of the indigenous movement to legitimize its existence to the outside world, even if such recognition bore little relevance to the actual situation on the ground.

8.6 LOOKING AHEAD: TOWARDS A NEW INTERPRETATION?

The indigenous movement in Indonesia tries to address a serious problem – the widespread continuous land conflicts - and deserves credit for that. The current discourse propagated by this movement as well as the legal framework based on it nevertheless fall short of resolving the problems of land conflicts in Indonesia. The biggest problem of the indigenous movement is that there is no correlation between tradition and marginality. The adat community claim can be an important bargaining tool for local land users involved in conflict. Yet, the transition from indigeneity as a means of resistance to indigeneity as a rights discourse can only succeed if the rights that are advocated for become of an inclusive nature.

It is urgent that the indigenous movement starts reflecting on the limits of its own terminology, not in the least because these limits will ultimately turn against the movement. If advocacy for collective land rights through a narrow lens in the long run does not yield significant results for its beneficiaries, its local support base is eventually bound to weaken. A Law on the Rights of Indigenous Peoples is unlikely to deliver if it does not offer a new perspective on the niche of continuity and collectivity and if the realization of rights continues to depend on the decisions of government agencies. The way forward should constitute adopting a wider interpretation of who can qualify for customary land rights. Not only traditional communities, but also migrants and communities that have changed should be included into the discourse. If we envision an Indonesia where citizens hold equal rights both before the law and in practice, the current

discourse and praxis of adat community rights will not be tenable. A new interpretation is urgent.