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SUMMARY

LAND RIGHTS AND THE FORCES OF ADAT IN DEMOCRATIZING INDONESIA CONTINUOUS CONFLICT BETWEEN PLANTATIONS, FARMERS, AND FORESTS IN SOUTH SULAWESI

Land conflicts between citizens on one side and the government or plantation companies on the other are widespread in Indonesia. This study looks at such conflicts and focuses on how local land users invoke indigeneity to claim land rights. Its purpose is to analyze whether since the fall of the Suharto regime such claims have been recognized by the government or the judiciary, to what extent this recognition has contributed to resolving land conflicts, and whether it has strengthened legal certainty of land users.

The dissertation combines literature research with legal analysis and fieldwork at various locations in Indonesia, in particular the districts of Bulukumba and Sinjai in South Sulawesi province. The study approaches the subject from different theoretical and conceptual perspectives. The first is the social movement literature, which offers important concepts to analyze the specific nature of claims based on indigeneity, particularly the *collective action frame* concept. Also relevant is the literature on citizenship in the context of postcolonial settings. This literature emphasizes that such settings are characterized by a pluriformity of state and non-state institutions and that citizens are to a large extent dependent on informal relations to actually realize rights that exist on paper.

Chapter 2 gives an overview of the historical developments of land law in Indonesia. The colonial period was marked by dualism: the Dutch colonial government subjected the Western population to Western law and the indigenous people to their own unwritten rules and customs, the so-called adat law. After Indonesian independence, the Indonesian government ended this dualism, which it associated with colonialism and divide and rule politics. For the sake of legal certainty and national unification, the government made attempts to unify the law. New legislation no longer distinguished between different population groups but only made a distinction on the basis of citizens and non-citizens. The Basic Agrarian Law of 1960 (Law nr. 5/1960) was the first major step towards the unification of land law. This law introduced a system of individual land rights while adat rights were subordinated to national law and were only recognized in a symbolic way. Since the 1990s, however, there has been renewed attention in Indonesia to adat law and adat communities (see below).

The root cause of today's conflicts between local land users and state and corporate actors is the state's designation of large tracts of land as state land and state forest without considering the rights of local land users. Two laws have been at the basis of this claim by the state. The first is the above mentioned Basic Agrarian Law of 1960. The second law is the Basic Forestry Law of 1967 (Law no. 5/1967), which designated virtually all forests in Indonesia as state forests.

The formalization of land rights has created major problems for most of the rural population in Indonesia. Rights under customary arrangements are seldom recognized by the state and the judiciary generally does not consider tax payments as valid proof of land ownership. Obtaining a land ownership certificate is complex and above all expensive. Overlapping land claims from competing government agencies, particularly from the National Land Agency and the Ministry of Forestry (now Ministry of Environment and Forestry), have further complicated the situation. As of yet there is no coordinating body that regulates these different systems of land administration.

The marginal legal position of farmers during the New Order period (1966-1998) was also due to strong repression by the army, which often provided support to state-owned and private companies to secure their plantations and forest concessions. Expropriation of land occurred on a large scale and opposition against dispossession was suppressed by the security apparatus. The judiciary rarely ruled in favor of farmers in cases where they opposed the government.

Chapter 3 provides a case study of an ongoing land conflict in Bulukumba district (South Sulawesi) between a group of local land users and a rubber plantation company named PT. Lonsum. In 1982, a group of 172 farmers from sub-district Kajang sued the plantation company before the Bulukumba District Court, claiming that the company had unlawfully taken 350 hectares of customary land. The case eventually went up to the Indonesian Supreme Court (*Mahkamah Agung*), which ruled in favor of the farmers in 1990. However, at the request of the company and the Bulukumba district government the Supreme Court subsequently postponed the execution of the ruling. The case study shows that under the New Order, even winning a legal case at the highest Indonesian court could not guarantee that the farmers would get their land back. This caused a strong feeling of injustice among the rural population.

An important turning point was the fall of the Suharto regime in May 1998 and the subsequent *Reformasi* period, in which an unprecedented transformation took place towards a decentralized democracy. Under severe pressure of civil society, the government implemented legal and institutional changes. In the domain of land rights, a new forestry law was enacted (Law no. 41/1999). However, despite the new legislation, government claims on agricultural and forest areas remained largely unchanged.

The change of power nevertheless created new civil liberties. Political reforms and the withdrawal of the army from civil affairs led to a new situation where the balance of power had not yet been clearly defined. In many rural areas, organized groups of farmers mobilized and engaged in collective actions to claim back their land taken by the state or plantation companies. Chapter 3 shows how such groups tested the boundaries of how far they could go with their collective actions. In many cases however, they only had limited success. Although some temporarily managed to secure physical control over plots of land, collective actions rarely led to formally recognized land rights and land tenure security often remained weak.

In Bulukumba, the execution of the Supreme Court ruling had finally been carried out in 1999 and the group of 172 litigants received the land adjudicated by the court. Soon after, additional claims followed from local farmers who did not belong to the group of

the original litigants (*penggugat asli*) but also lost their land during the New Order period. Local activists began to frequently organize demonstrations and protest actions. Several influential local activists managed to mobilize thousands of land claimants in the early 2000s.

The movement was eventually crushed after a large-scale occupation of the rubber plantation in July 2003. A violent clash between the police and occupants left several farmers dead. Many occupants were arrested and the protest movement dissolved. In the aftermath of the tragic events, the South Sulawesi provincial government launched a mediation process but it stubbornly clung to the 1990 Supreme Court ruling as the only legitimate claim to any land. Moreover, conflicting decisions of various legal institutions and government agencies made the conflict more difficult to resolve. All of this indicates how after the New Order, law remained a means of control of powerholders, rather than an empowering tool for the rural poor. In a place like Bulukumba, the strong sense of injustice therefore prevails until now and the conflict is yet to be settled.

Chapter 4 moves from Bulukumba to the national level and discusses the rise of the Indonesian indigenous movement, which promotes and advocates for the recognition of adat community rights. Beginning in the 1990s, this movement slowly developed into a powerful force, especially after the fall of the New Order. This revival of adat was a reaction to the oppressive policies of the New Order and must be seen within the political context of the *Reformasi* period, when a renewed focus on regionalization and ethnic identity ensued.

The chapter discusses a number of additional historical, political and legal factors behind the rise of the indigenous movement and the specific character of the collective action frames it adopts. Influenced by both the global indigenous peoples discourse that emerged in the 1980s and 1990s, as well as the colonial legal history of Indonesia, the movement adopted the term adat community (*masyarakat adat*). At its core is a non-governmental network organization named AMAN, which was established in 1999. In a broader sense, the adat community concept was coined as an alternative to other, less accepted forms of criticism towards the state by leftist circles. This has to do with the elimination of the communist movement in the 1960s, which continues to have an impact in Indonesia.

Civil society organizations frame adat communities as the Indonesian version of indigenous peoples. AMAN defines them as communities with a traditional legal system and a communal territory that has been passed on for generations. Their implicit assumption is that adat communities live in harmony with the environment and govern their collective natural resources responsibly. Throughout Indonesia, rural collectives have claimed land rights on the basis of their alleged status as adat community. Such groups have often received support from activists and NGOs. Organizations such as AMAN have acquired an influential position in the NGO domain, not in the least because of the substantial funding of donors and development banks. This support is partly the result of the evoked image of adat communities as protectors of the environment.

The indigenous movement in Indonesia has achieved a number of successes in recent years, mostly through their advocacy for legal recognition of adat communities.

Indonesian law uses a slightly different term, adat law community (*masyarakat hukum adat*), but the definition of the term, as stipulated in the 1999 Forestry Law, is largely similar to the concept adat community as used by AMAN. Adat law communities gained explicit recognition in the amended constitution of 2002. The most important achievement of recent years however is the renowned judgment no. 35/2012 of the Constitutional Court, which ruled in 2013 that forests owned by adat law communities are not state forests. The ruling thus amended Article 67 of the 1999 Forestry Law. It sparked much excitement from civil society, as it brought about new opportunities for legal recognition of adat communities.

In the years after the ruling, the government enacted a number of ministerial regulations that further outlined the procedures for legal recognition of adat land rights (chapter 2). However, the two main formal requirements for recognition remained unchanged. First, only traditional adat communities are eligible to obtain such rights. Second, regional governments (at the district and provincial level) need to recognize such communities first through a regional regulation or decision of governor or district head, before the Minister of Environment and Forestry can release adat forests from the state forest.

Chapter 5 and 6 explore the appropriation of the adat community discourse at the local level, how it is adopted by rural communities or individuals, and which actors and contextual factors play a role here. They show that framing adat communities as egalitarian and harmonious collectives is not always warranted by local realities.

Chapter 5 provides a historical overview of local power relations and transitions of political authority in South Sulawesi. It shows that for centuries, the adat based on a traditional belief system legitimized the absolute power of the local aristocracy. Even the most egalitarian communities, such as the Ammatoa Kajang community from Bulukumba, abided by a strict social hierarchy. Generally, the level of a person's noble blood determined his or her position in society. In the twentieth century, state formation processes and the rise of modern Islamic movements weakened the position of the old aristocracy. However, many noblemen have remained influential, holding high positions in the regional state apparatus.

Chapter 6 once again looks at the trajectory of the Bulukumba plantation conflict, now focusing on the use of adat community claims in the period between 2006 and 2017. This started in the aftermath of the violence of July 2003, when the conflict temporarily became the center of attention of NGOs and human rights organizations. It was the National Human Rights Commission (Komnas-HAM) which began to frame the land claims of local farmers in terms of adat community rights. Commissioners contended that the land taken by PT. Lonsum belonged to the Ammatoa Kajang community. This community hails from sub-district Kajang where many of the land claimants live. The community has a spiritual leader named Amma Toa and adheres to traditional rules that prescribe a modest lifestyle. In recent years, activists and land claimants have used the name of the Amma Toa and the traditional community to claim land taken by PT. Lonsum.

However, chapter 6 shows that at the same time local noblemen (mostly political elites) in Kajang use adat to legitimize their powerful position. These elites do not see adat

as a means of resistance for marginalized groups, but rather as a means of justifying and maintaining traditional power relations between aristocrats and ordinary villagers. An important conclusion therefore is that the image of adat communities as evoked by NGOs and activists does not always correspond well with the actual socio-political organization of village communities. This discrepancy has become a source of tension between adat leaders and activists. In Bulukumba, adat leaders of the Ammatoa Kajang community opposed activists who claimed that the Ammatoa Kajang community was as a whole involved in the conflict with the plantation company. Many of these traditional leaders were local government officials. They criticized the invoking of adat in protests and rallies, for this caused turmoil, could damage the reputation of the community, and could eventually threaten their own position.

Chapter 6 furthermore explains that the recently made adat land claims have not yet led to success for farmers whose land was taken by PT. Lonsum. In 2011, the Bulukumba District Head initially acted as a mediator between the land claimants and the plantation company. However, later he announced that he did not have the authority to deal with the conflict and suggested the land claimants to go to court.

Chapter 7 analyzes the extent to which communities have been able to realize adat forest rights since Constitutional Court ruling no. 35/2012. Indonesian law appoints regional authorities - the provincial and district governments - to formally recognize adat communities and their adat forest. Subsequently, the Minister of Environment and Forestry can change the status of the forest from state forest to adat forest by means of a ministerial decree. Since the ruling of the Constitutional Court on the separation of adat forest from the state forest, only few adat forests have been recognized by the government. Chapter 7 compares the attempts of two communities to secure adat forest rights by analyzing what factors determined the outcome of such claims.

The first case focuses on Bulukumba district and again involves the Ammatoa Kajang community from sub-district Kajang. In 2015, the district government of Bulukumba recognized the Ammatoa Kajang as an adat law community through a district regulation. In 2016, this community was also one of the nine first adat communities whose adat forest was formally recognized by the Minister of Environment and Forestry. This study provides evidence that the successful formal recognition of the Ammatoa Kajang community materialized under special circumstances that are not easily found elsewhere in Indonesia. First, the Ammatoa Kajang community meets all the requirements that the narrow legal definition ascribes to an adat law community. Secondly, the Ammatoa Kajang community is not involved in a conflict over the territory claimed as adat forest, as the district government has *de facto* recognized the adat forest for decades. Thirdly, a number of important adat leaders in Kajang also hold influential local government offices such as village head and sub-district head and thus they were able to influence the process of recognition.

These special circumstances moved the district government to recognizing the Ammatoa Kajang community. An additional reason is that the traditional adat territory has the potential to become a tourist destination. For the NGOs involved in the process, formal recognition constituted a successfully completed project that emphasized the

importance of their advocacy. It is worth noting that the claim to adat community rights recognition in this case did not so much come from the community itself, but mainly was the initiative of a number of civil society organizations.

The case study also considered the actual implications of legal recognition. Apart from the release of the adat forest from the state forest, legal recognition had no further impact on local land relations as it did not involve any physical transfer of land to the community. Although the district regulation designated PT. Lonsum's plantation inside the community's adat territory, it also stated that the existing rights of third parties would remain valid. Hence, legal recognition did not benefit the many Kajang farmers in need of more agricultural land.

The second case is that of the Turungan Soppeng community from sub-district West-Sinjai in Sinjai district, north of Bulukumba. In Sinjai there have long been conflicts between local farmers and the District Forestry and Plantations Department. This has resulted in several criminal convictions of local farmers who received jail sentences for illegal logging in state forest areas. One local land user from Turungan Baji village, supported by the regional branch of AMAN, tried to claim adat community rights as a defense strategy in court in 2014. However, villagers affiliated with the government, such as the hamlet head, denied the existence of an adat community in Turungan Baji. The district government in Sinjai followed suit and was not prepared to honor the claims of the farmer. This case suggests that adat community claims have little chance of success in situations of conflict with government agencies or plantation companies.

In addition, it appears that the narrow definition of adat community used in practice has complicated obtaining legal recognition. There are few communities in Indonesia that can actually meet the strict requirements of the definition. In Sinjai, the district court did not recognize the claims of the self-proclaimed adat community because its local rituals were not sufficiently unique to be distinct from the rest of the South Sulawesi.

Chapter 8 provides the conclusions of this research. The indigenous movement in Indonesia champions the cause of marginalized rural communities that are involved in land conflicts. The movement frames such groups as traditional collectives that have retained their autonomous legal structure and communal territory. This framing has the function of reinforcing the legitimacy of land claims of local communities. However, this study has pointed out that the most traditional adat communities in Indonesia are not necessarily the most marginalized and that the most vulnerable people may be overlooked by development programs and NGO projects that promote indigenous peoples' rights. In the case studies of this research, government actors could dismiss claims from local land users with the argument that they were not sufficiently unique and traditional. Chapter 8 concludes that in the cases studied, the equation of marginalized people and traditional communities did not contribute to resolving the land conflicts. The government has the discretion to exclude groups that do not meet the narrow definition of adat community. In this way, the state maintains its powerful position in land and natural resource governance.

If more communities are to qualify for formal recognition as adat community, a broader interpretation of the concept is needed. The author argues in the conclusion for a discourse on land rights that does not make collectivity and continuity a prerequisite for rights and that is more flexible and inclusive than the current framework of recognition of customary land rights.