Rethinking Adat strategies: the politics of state recognition of customary land rights in Indonesia

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1 Introduction

Figure 1. President Joko Widodo symbolically handed over the legal recognition decree of the Pandumaan-Sipituhuta community customary forest © The president office, the president palace, December 30, 2016

On December 30th 2016, representatives of the Pandumaan-Sipituhuta community, from North Sumatra, came to the President's Palace to meet with President Joko Widodo (See Figure 1). Together with eight other adat communities from different regions, the Pandumaan-Sipituhuta representatives received a Ministry of Environment and Forestry decree from the President, recognising their benzoin customary forest. For the Pandumaan-Sipituhuta community members, this event was a milestone in solving a decade of land conflict with a pulpwood company. For President Joko Widodo, it was the fulfilment of his political campaign to recognise adat communities' rights. In a similar vein, this event was a historical moment for NGOs, as well as adat community organisations and supporters, providing new hope that pervasive forest tenure conflicts across Indonesia might be resolved. However, my field research in the Pandumaan-Sipituhuta community, in 2019, indicated that the story did not actually end there, and that the recognition celebrated in the palace had not yet helped resolve the land

conflict with the company.[1] My research findings question the strategy of countering land dispossession by seeking legal recognition of an adat community with customary land rights as solution to land conflicts.[2]

Before starting my PhD studies, I had been active in NGOs promoting customary land rights as a solution for solving land conflicts. In Indonesia, land conflicts are omnipresent, and no effective mechanism has been created to eliminate such conflicts. The NGO Agrarian Reform Consortium (*Konsorsium Pembaruan Agraria*/*KPA*) recorded 2,047 cases of land conflict occurring from 2015 to 2019. In 2019 alone, 279 land conflicts appear to be located within 734,239 hectares. Around 109,042 of the households involved resided in 420 villages across Indonesia (Diantoro 2020:245-6). In 2021, the Ministry of Environment and Forestry (MoEF)[3] has already received 500 reports on land conflicts in the forestry sector, and only 54 of these have reached a solution between the parties in conflict.[4] Land conflict in the forestry sector has detrimental effects on environmental sustainability and on the prosperity of the local community. As an NGO activist, I was interested in promoting a proper mechanism for solving land conflict. One possible solution was the legal recognition of customary land rights.

I contributed to expanding the legal framework at the national and regional levels, to accommodate the legal recognition of customary land rights. In the past decade, some positive outcomes have been institutionalised as pre-conditions for the legal recognition of adat communities' rights. For instance, parliament discussed the need for a special law concerning adat communities' rights, the Constitutional Court upheld the legal position of adat communities' customary forests, and many provincial and district governments enacted regulations and decisions recognising the legal personality of adat communities as a right-bearing subject. However, there have so far only been a few successful recognitions of adat communities' rights appearing as

1 This case is described and analyzed in Chapter 4.

2 In Indonesia, an 'adat community' is a group with specific rights, based on their ties to customary rules and living within a specific territory. NGOs and adat community organisations use the term 'adat communities' (*masyarakat adat*) as a translation of 'indigenous peoples', in the Indonesian context. Meanwhile, Indonesian legislation uses the term 'adat law communities' (*masyarakat hukum adat*). I will explain the variety of terms and their respective definitions in Chapter 3.

3 In this thesis, I use the terms 'the Ministry of Forestry' (MoF) and 'the Ministry of Environment and Forestry' (MoEF) interchangeably.

4 http://pskl.menlhk.go.id/pktha/pengaduan/frontend/web/index.php?r=site%2Fjumlah-penanganan-pengaduan (accessed on 30 November 2021)

solutions for actual land conflict between communities and state agencies or corporations. Even the cases considered to be successes are more complex than how they are presented in the reports and news of advocacy organisations. Up until April 2021, the MoEF has recognized 75 customary forests, covering 56,903 hectares. This number is far from the estimation of customary land rights promoters, who claim that the rough size of customary forest covers 40 million hectares, or 33% of the total forest area in Indonesia (120 million hectares). Wondering about the reasons for such limited success, my PhD research has gradually turned into a critical reflection on this question: Why has there been such limited legal recognition of adat communities and their customary land rights in Indonesia, despite all the enabling factors present, particularly the legislation enacted since 1998?

In the course of my research, I found that this question cannot be answered by only legal research focussing on the legal arrangements for state recognition of customary land rights, nor by only social science research on the actual struggles of specific adat communities. All the cases I studied during my field research, which will be presented in this thesis, turned out to be very complicated. There are many more stakeholders involved in land conflicts than just the adat communities and the natural resource companies. There are historical arguments for land rights, and competing arguments based on present-day law. There are competing authorities among state agencies, and complex procedures for the legal recognition of customary land rights. There are culturally homogeneous adat communities, but more often communities consist of mixed populations including migrants. The struggle for the recognition of customary land rights is part of competing local and national political agendas. Throughout, and in every case, the government - consisting of many different (and often competing) institutions - is a very dominant actor.

To deal with this complexity, I have used four foci to look at specific case studies: procedures, processes, participants, and politics (P4). The first focus is 'procedures', referring to my analysis of the historical development of regulations on adat communities and customary land rights, but also to the currently valid legal procedures for recognition. The second focus is the principle of analysing the legal recognition of customary land rights as a 'process', instead of an outcome or status (static). This implies that the analysis of every case of legal recognition struggle starts with figuring out the land tenure conflict problems that local communities have initially experienced, continues with

investigating several distinct phases of the process leading to formal recognition, and ends with the phase after recognition. The third focus, on 'participants', means that I examine the interests and strategies of various stakeholders in the land conflict, not just the community members. I also distinguish between different dispossessing actors, depending on whether land dispossession has been caused by conservation projects, or by mining and logging companies. Finally, the 'politics' focus highlights how local communities navigate the pursuit of legal recognition under their own complex circumstances. Politics also includes an analysis of how local, national, and global actors use narratives on the legal recognition of indigeneity for their own agendas, as well as to resolve actual land conflicts.

1.1. General themes: Indigenous identity and customary land rights in land conflicts

The general theme of this thesis is indigenous identity as an argument for claiming land rights in situations of land conflict, particularly in forest areas. This theme is widely discussed in international academic literature. In this section, I will explore the main background for the emergence of a movement for the recognition of adat communities and their land rights in Indonesia. It covers both the influence of international indigenous peoples' movements and the reinterpretation of adat from historical origins specific to Indonesia. The two conditions - the global indigenous peoples' agenda, and historical ties to adat - provide an essential foundation for the revival of an adat community movement in contemporary Indonesia.

1.1.1. International advocacy for indigenous identity and land rights

In the past few decades, a global movement of NGOs has promoted indigeneity as a countervailing argument against the land dispossession of local communities worldwide (Moniaga 2007; Merlan 2009; Li 2010; Postero and Fabricant 2019). NGOs, together with anthropologists and international law scholars, have mobilised the international discourse about indigeneity and have sought to transform it into a new global political identity (Niezen 2003:3; Birrell 2016). International institutions, such as the International Labor Organization, the United Nations, the World Bank, and the Asian Development Bank have established conventions, declarations, standards, and safeguarding policies to accommodate indigenous peoples' rights (Gover and Kingsbury 2004; Anaya 2004; Thornberry 2013). At the national level, local communities

and NGOs have used indigenous identity and customary land rights discourses to frame land conflicts with state agencies and corporations (Vel and Makambombu 2019). The main assumption of indigenous rights supporters is that state legal recognition of customary land could prevent and resolve the land conflicts experienced by local community members against the state agencies and corporations that have caused land dispossession. Studies in several countries show that indigeneity was a dominant narrative for local land users encountering land conflicts, including in Indonesia (Persoon 1998; Simarmata 2006; Tsing 2010), Taiwan (Sung 2004), Japan (Kawasima 2004), Bolivia (Postero 2006), Nicaragua (Halle 2005), Canada (Niezen 2010), Malaysia (Idrus 2010), Bangladesh (Udin 2019), Botswana, Mozambique, and Tanzania (Knight 2010).

Although the indigeneity discourse has been prevalent in framing many land conflicts across the world, the effectiveness of this strategy is questionable. The main problem is that many countries have rejected the applicability of indigeneity in their respective countries. The international legal framework, notably the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, has not provided a precise definition of indigenous peoples and customary land rights. Most studies on indigenous peoples refer to Jose Martinez Cobo's (1982) working definition in his report about the situation concerning the indigenous population:

> "Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural, social institutions, and legal systems."

The main element of Cobo's definition is historical continuity with pre-invasion and pre-colonial societies. This definition of indigenous peoples or communities might well apply in countries in Latin America, the USA, Canada, and Australia, all of which have a clear pre-invasion past, but it is less appropriate in the context of most countries in Asia and Africa, where native leaders have established post-colonial nation

states (Kingsbury 1998; Niezen 2010). Many national governments in Asian countries refuse to accept the concept of indigenous peoples in their respective countries, stating that all citizens are indigenous (Persoon 1998; Gover and Kingsbury 2004:1; Bedner and van Huis 2008; Erni 2008). This is called 'the salt-water theory', where the government argues that if all citizens in respective countries are indigenous, then it is superfluous to designate a particular group in a country as an indigenous group (Erni 2008; Baird 2016). The Government of Indonesia's denial of the applicability of the concept 'indigenous peoples' appeared in its ambiguous response to the United Nations in 2012, stating that:

> "The Government of Indonesia supports the promotion and protection of indigenous people worldwide. Given its demographic composition, Indonesia, however, does not recognise the application of the indigenous people concept as defined in the UN Declaration on the Rights of Indigenous Peoples in the country."[5]

The main reason for the Indonesian government's rejection of the definition of indigenous peoples is that the term can be used by separatist movements to call for independence through self-determination, which would undermine national integrity. That reference to international support for indigenous peoples was indeed a realistic option for separatists became clear to me in 2014, when I attended the United Nations Permanent Forum on Indigenous Issues (UNPFII), at the UN headquarters in New York. At that time, representatives of Papuan independence organizations delivered a statement urging the Indonesian government to hold a referendum as a way of exercising self-determination for Papuan independence.

Moreover, I found that the representative of indigenous communities and NGOs present at the UNPFII meeting all raised different objectives, related to their own specific interpretation of indigenous peoples' rights. The representative of the Chittagong Hill Tracts of Bangladesh used the international forum to urge the Bangladesh government to implement the 1997 Peace Accord between the Bangladeshi Government and the Parbatya Chattagram Jana Sanghati Samiti (PCJSS), a political party formed to represent the people and indigenous tribes of the Chittagong Hill Tracts in Bangladesh. In

5 Source: http://redd-monitor.org/wp-content/uploads/2012/10/indonesias-response-to-unpr.pdf (Accessed on March 7, 2021).

Taiwan, indigenous peoples' representatives have been concerned with press and media freedom to enable the expression of indigenous culture in public spheres. The different levels of interest in using the international forum on indigenous peoples has made the concept of indigeneity multi-interpretative. The meaning attributed to indigeneity depends on the contentious situation in which it is used.

My research has concentrated on the contentious situation in which Indonesian NGOs and indigenous peoples' organisations have been using indigeneity claims as legitimate bases for local communities against land dispossession by state agencies and corporations. In the Indonesian situation, the reference to international indigeneity discourses is used as a source of mobilisation to resolve land conflicts.

1.1.2. Adat and indigeneity as an alternative narrative against land dispossession in Indonesia

In the 1990s, the Government of Indonesia actively participated in international meetings concerning sustainable development and environmental protection. The government's involvement in this issue opened up an opportunity for NGOs in Indonesia to develop programmes concerning environmental protection and empowering forest dwellers. In 1992, the Rio Declaration on Environment and Development (the result of a multilateral summit) emphasised the importance of local and indigenous communities' contribution to sustainable development and environmental protection (Principle 22). During the 1990s, local communities in some countries – such as Brazil, Canada, Mexico, the Philippines, and Malaysia – referred to international legal instruments on the environment and indigenous peoples as arguments against large scale government-sponsored programmes, such as dam projects and forestry logging activities (Tsing 2007). In Indonesia, environmental activists and legal aid workers found that using the term *masyarakat adat* ('adat communities') as a translation of 'indigenous peoples' provided new arguments for reclaiming land against dispossessions sponsored by Suharto's New Order regime (Moniaga 2007:281-3). At the same time, the adat movement became a safe alternative for the earlier peasant movement, with its class-based land claim that collapsed after the dissolution of the Communist Party in the 1960s (Bedner and Arizona 2019:420). Consequently, since the 1990s, some peasant organisations have transformed their strategy, and have articulated adat claims to deal with land conflicts (Afiff & Lowe 2007:87-9).

For the purpose of using indigeneity as an argument against land dispossession, the English word 'indigeneity' is often translated into Indonesian as the concept of *adat*. However, these terms are not completely similar. In Indonesia, *adat* is translated as 'custom' or 'tradition'. In contrast, 'indigenous' emerged from old Latin words, consisting of *indu* (meaning 'in' or 'within') and the verb, *gignere* (meaning 'to beget') (Manser and Turton 1998:356). Sixteenth-century Spanish conquests in the Americas offered Europeans the term 'indigena' as a template with which to classify natives of the places they hoped to settle and civilise (Tsing 2009). Although the concepts 'adat' and 'indigeneity' have different roots, they tend to coalesce in the Indonesian context as bases for claiming rights. Adat communities in Indonesia often claim their rights by asserting prior occupation of the land – via their own histories/myths of how they settled in an area first. More prominently, they claim indigeneity because they still preserve customary traditions (Muur, Vel, Fisher and Robinson 2019:384; Hauser-Schaublin 2013).

Although the adat strategy began as an argument during the Suharto's New Order regime (1965-1998), local communities have continued to employ this strategy, because land conflicts persist. The number of conflicts has even been increasing, because of large-scale land acquisition by corporations for oil palm plantations, forestry concessions, protected areas, tourism, and infrastructure projects (Komnas HAM and KPA 2014). Worldwide, natural resource-based conflicts activate the articulation of indigenous identity, because a uniting identity as 'stakeholder' becomes relevant in resource competition with other stakeholders, such as government agencies or corporations (Kardashevskaya 2020:106). The presence of 'high-value resources' within the territory of a local community therefore contributes to the strategic mobilisation of ethnic identity (Mahler and Pierskalla 2015). In Indonesia, the adat movement found support for their arguments against land dispossession by referring to the internationally recognised indigenous peoples' rights (Davidson and Henley 2007:5-9). Linking the Indonesian discussion to the international debate stimulated the call for formal state recognition of adat communities. National NGOs promoted legal recognition by advocating for legal reform and by creating legal awareness among adat communities about the options that this legal strategy could bring for ending their land conflicts. Support from educated activists in urban

areas was also a significant factor in the emerging articulation of adat identity by local communities living in remote areas (Li 2000:174).

After the initial enthusiasm around adat movements as a political phenomenon in the 1990s, criticism gradually followed. Several studies have shown the dilemmas and limitations of prioritising adat rights, especially for the part of the population that does not fit within the category of an 'adat community' (Acciaioli 2007:301-2). Some argued that adat rules could also be a source of exclusion for powerless groups within adat communities (Sangadji, 2007:321; Hall, Hirsch, and Li 2011). Other anthropological studies focused on the role of adat, regarding rural justice for migrants (Acciaioli 2007), tourism projects (Warren 2007), and support for local elites (Klinken 2007; Bakker 2009). Adat became a source of mobilisation for adat elites running as candidates in district and parliamentary elections (Fisher and Muur 2020; Arizona, Wicaksono and Vel 2019). The studies called for a critical approach, questioning the deployment of adat in Indonesia (Li 2007).

Despite its importance as a source of present-day contentious politics at global, national and local levels, indigeneity is not a recent concept in anthropology. Adam Kuper (2013) identified the notion of indigeneity as a euphemism for race in the anthropology discipline. Shah (2007:1806) warns a 'dark side of indigeneity' which might maintain a class system that further marginalises the poorest. While Tania Li (2010) argued that the current revival of indigeneity should be regarded as a recall of the politics of difference by colonial rulers, as reflected in most post-colonial states in Asia and Africa. In Indonesia, contemporary discussion about adat communities and customary land rights have their historical roots in the colonial setting. I will briefly explain the colonial legacies of adat in the next section. Detailed analyses can be found in Chapters 2 and 3 of this thesis.

1.1.3. The colonial concepts of adat community and customary land rights in Indonesia

The term adat has been used in the Malay archipelago since the Dutch colonial period. Originally, adat emerged from the Arabic term *ada*, which refers to ordinary practices or habits, and was commonly translated as 'custom' or 'tradition' (Tsing 2009). This term had been used by many local populations in Indonesia, for many purposes, including customary rules for: arranged marriages, traditional festivities, traditional arts and architecture, the lineage system and inheritance, and informal dispute settlement. The term adat appeared in

some writings in the early 19th century by Muntinghe, Raffles, and Marsden (Ball 1986; Benda-Beckmann 2019). Furthermore, Snouck Hurgronje (1893), a Dutch scholar and advisor on Dutch colonial native affairs, discussed the concept of adat in his book, *De Atjehers*, distinguishing it from Islamic norms (Snouck Hurgronje 1893 cited in Holleman 1981:5). Subsequently, his colleague at Leiden University, Cornelis van Vollenhoven, expanded the use of the adat concept in his work regarding the 'law of the native' in the Dutch East Indies. Van Vollenhoven elaborated on the general term of adat, describing it using more specific concepts: *adatrecht* ('customary law'), *adatrechtsgemeenschap* ('adat law community/jural community'), *adatrechtskringen* ('adat law areas'), and *adat* delicts. This elaboration of legal concepts was initially relevant to situations in which the colonial government governed by indirect rule, leaving internal affairs to the adat communities. In this sense, the colonial government respected native communities, in practice allowing them to exercise their customary law. Defining and describing adat communities and their rights was also a way to protect those rights from dispossession by the colonial government.

Two central adat concepts are dominant in contemporary debate amongst scholars, activists and policymakers: adat law community, and rights of avail (Benda-Beckmann 2019:401-5). The debate on these concepts and their adoption in Indonesian legislation in the post-colonial period occasionally refers to Van Vollenhoven's writings. The first debate is concerned with the importance of autonomous communities within native society, because of their potential as self-governing communities. Van Vollenhoven called them 'indigenous jural communities' (*inheemsche rechtsgemeenschappen*) or 'autonomous indigenous jural communities' (*zelfstandige inlandsche rechtsgemeenschappen*). Later, these would be known as *masyarakat hukum adat* ('adat law communities') in the post-colonial Indonesian legislation (Benda-Beckmann 2019). Adat law communities are the smaller constituent corporate units of an organised indigenous society. They derive their distinct legal autonomy in domestic affairs from the fact that each has: a) its own discrete representative authority; and, b) its own discrete communal property, especially land, over which it exercises control (Van Vollenhoven 1901 cited in Holleman 1981:43). Van Vollenhoven described four broad types of adat law communities: genealogical groupings, territorial and genealogical groupings, territorial groupings without genealogical communities, and voluntary

organisations (Holleman 1981:41-53). Van Vollenhoven warns that these groups cannot always be distinguished, as there is much local variation. He states that it is important to be aware that such communities are neither static nor exclusive, but dynamic and inclusive (Van Vollenhoven 1901 cited in Holleman 1981:53).

The second concept pertains to customary land rights. In adat law studies, land property and land tenure are conceptualised as a native right to possession (*inlands bezitrecht*) and the right of avail *(beschikkingsrecht*). Van Vollenhoven underscored that most adat systems distinguished neither possession from ownership, nor absolute rights from the relative rights characteristic of Western legal systems (Benda-Beckmann 2019:402). The introduction of a western type of land property through the *Agrarische Wet* 1870, following application of the principle of Domain Declaration, would disrupt the autonomy of local native populations in terms of land tenure arrangements (see Chapter 3). During the colonial period, the sharp separation between private and public property increasingly led to the colonial government's interpretation of 'wasteland' dominating the control of forested village areas (see Chapter 2).

Two key concepts inherited from the colonial period, adat law communities and the rights of avail, have been adopted in post-colonial legislation (See Chapter 3). NGOs and adat community organisations use these concepts as the legal bases for their land claims. Whilst continuing the argument that the rights of the local population should be protected against the expansion of modern capitalism in rural areas, the contemporary Indonesian adat movement uses a different vocabulary, reframing adat rights to fit with the global discourse on indigenous peoples' movements. For example, AMAN,[6] the biggest adat community organisation in Indonesia, uses the term 'adat communities' (*masyarakat adat*), instead of 'adat law communities' (*masyarakat hukum adat*) - the translation of *adat rechtgemeenschappen* from the colonial studies and legislation. The term 'adat communities' is considered to be broader and more flexible, because it not only accommodates the legal dimension, but also the spiritual, social, economic, and political dimensions of a group. In addition, AMAN also promotes recognition of 'customary territory' (*wilayah adat*), rather than the rights of avail

6 AMAN (Aliansi Masyarakat Adat Nusantara) is the biggest adat community organisation in Indonesia. National NGOs and adat community representatives formed AMAN in 1999 as an umbrella organisation for local communities struggling against land dispossession and cultural misapprehension.

(*beschikkingsrecht/hak ulayat*), as a general term to describe the relationship between adat communities and their natural resources. Despite NGOs and adat community organisations trying to provide new vocabularies for and interpretations of adat, official adat law tuition at universities continues to refer to the original concepts produced by adat law studies during the colonial period. This conservatism in teaching adat at universities not only 'freezes' the concept, it also becomes a burden when making creative interpretations of adat in the context of contemporary contentions with respect to land conflicts (Simarmata 2018). Policy makers at national and district levels often invite adat law scholars with conservative views of adat to supply information for the process of lawmaking.

1.1.4. Legal recognition of adat communities and customary land rights

The central issue for indigenous peoples' movements is the struggle for recognition, including political, social, and legal recognition. In this thesis, I focus on the legal recognition process for obtaining customary land rights. The legal recognition process is defined here as a process by which the state grants formal legal status to a specific community as an adat community, along with its customary land rights. A main driving factor in this process is that communities expect that state recognition will lead to autonomy and self-determination.

In recent decades, recognition has become a main focus in debate about identity and subject formation for different groups in society - for example, debate about women, transgender people, gay people, refugees, and indigenous peoples. Generally, there are two types of legal recognition: notably constitutive recognition, and declaratory recognition. In the first case, recognition is *status-creating*; in the latter, it is merely *status-confirming* (Talmon 2004:101). In the constitutive theory, an adat community exists exclusively via recognition by another group within society and state agencies. In contrast, in the declaratory theory, an adat community becomes a legal entity when it meets the minimum criteria for recognition of an adat community.

However, the process of legal recognition is in practice more complex than this dichotomy suggests. In the process of legal recognition, both the fulfilment of criteria and the recognition of the other parties are essential components. This is because legal recognition is a relational process, involving negotiations on terms and interests amongst the actors involved. The politics of recognition refers to the interaction between claims made by adat communities, and the response

to those claims by formal authorities (Gover and Kingsbury 2004:2). In short, recognition is the interface between rights and authority (Lund 2016). In pursuing legal recognition, an adat community becomes involved in double moves. Firstly, to discipline itself to meet the criteria for adat communities set up by the state (Ivison 2002), and secondly to convince the state to grant its recognition. If granted, legal recognition situates an adat community as a legal person within the state legal framework.

In Indonesia, obtaining recognition is the prominent objective of the adat community movement (Li 2001:645-6). At AMAN's inaugural congress in 1999, the motto was: *If the state does not recognise us (the adat communities), then we will not recognise the state.* At that time, the preliminary purpose of recognition was to be freed from the labels of 'isolated community' (*masyarakat terasing*), 'shifting cultivator', and 'forest encroachers' (Li 2001:655). Gradually, the purpose of recognition has shifted to gaining autonomy as well as self-determination, especially in relation to land rights and the management of natural resources (ICRAF, AMAN, and FPP 2003).

Legal recognition implies the formalisation of customary land rights. The demand to formalise customary land rights is not unique to the Indonesian context; it has become a global trend. Reviewing land legislation in 100 countries, Wily (2018) found that 73 out of 100 states had formulated legislation concerning customary land rights. Nevertheless, most of the legal recognition of communal property has taken place since 1990. Nearly 50% of first-time provision has occurred since 2000, and 25% has occurred over the past decade. Most of this legislation distinguishes communal land from state and individual land property. Communal land tenure refers to situations where groups, communities, or one or more villages have well defined, exclusive rights to jointly own and/or manage particular areas with natural resources, such as land and forest (Colchester 2006; Andersen 2011).

The main characteristics associated with the term customary land rights are that: the land belongs to all community members; informal public authorities regulate land use and ownership within the community; all community members utilize the land and nature in sustainable ways; and the land plots are not a reason for alienation (Hall, Hirsch and Li 2011). Based on these assumptions, adat community members and their supporters perceive the formalisation of customary land rights by government agencies as a confirmation of local and indigenous community authority to exercise customary land tenure

arrangements (Li 2000). Pressure from outsiders, such as the government's interest in using the land for infrastructure projects and business interests for large-scale land acquisition, is considered a disruption to indigenous communities' autonomy to manage their communal land (Colchester 2006). In this sense, adat communities expect that legal recognition can be used to prevent and resolve actual land conflicts.

Legal recognition is not only accomplished by passing new legislation; it can also be accomplished as a result of a court decision. From the Mabo case in the Australian High Court (1992), the Awas Tigni case in the Inter-American Court of Human Rights (2001), and the Sagong Tasi case in the Malaysian High Court (2002), to the recent Ogiek Case in the African Court of Human and Peoples' Rights (2017), the courts have played an important role in advancing legal recognition of indigenous communities and their land rights. In Indonesia, the Constitutional Court ruling Number 35/PUU-X/2012 was a milestone for realising legal recognition of the customary land rights of adat communities. The Constitutional Court Ruling granted adat community land the status of 'customary forest' (see Chapters 2 and 3). National and district government institutions responded to this ruling by creating regulations for realising customary forests. The Epistema Institute (Arizona et al 2017) indicated that there had been 69 district regulations established on adat-related issues over the three years of implementing the court ruling. However, the following questions remain: Has this legal success changed the situation in the field? In Indonesia, what has been the role of the legal recognition of customary land rights in solving land conflicts?

1.2. Research questions

The central question of this dissertation is the following: Has state legal recognition of adat communities and customary land rights in Indonesia brought solutions for land dispossession in land conflict situations? How can we explain the role of legal recognition in addressing the initial demands of local communities in land conflicts? To answer the central questions, this research examines the development of a legal framework regarding the recognition of customary land rights, and how different actors at local and national levels are dealing with different sets of rules in land conflict situations. In this thesis, I discuss several case studies in which local communities have engaged in the struggle to obtain state legal recognition of adat communities and customary land rights in the

forestry sector, as a way to end land dispossession, with differing results. But before analysing case studies, Chapters 2 and 3 will provide a background for land conflict in the forestry sector and discuss the legal framework available for solving land conflicts by answering:

- What are the main causes and characteristics of land conflict in the forestry sector? What procedure is available for local communities to resolve forest tenure conflicts, and is the legal recognition of customary land rights an alternative solution for solving forest tenure conflicts? (*Chapter 2, on characteristics of forest tenure conflicts and emerging options for resolution*).
- Has the Indonesian national legislation provided an accessible procedure for the legal recognition of customary land rights? How have different narratives about customary land rights from colonial legacy, the pursuit of national identity, and the global discourse on indigenous peoples shaped the construction of customary land rights in Indonesian legislation over time? (*Chapter 3, on the genealogy of state recognition concerning customary land rights*).

Chapters 4 to 7 are case study chapters, organised by following the stages in the legal recognition process for customary land rights. Each chapter addresses the following questions:

- Why have some local communities been unsuccessful in obtaining customary land rights recognition to end their land conflict? What are the necessary requirements for legal recognition of customary land rights? What are the constraining factors and main obstacles for beginning the process of state legal recognition of customary land rights? (*Chapter 4, on claiming adat community rights against a mining company*).
- Why is the procedure for obtaining state/legal recognition of customary land rights as a solution to resolve land conflict with corporations so long and complicated? How do power imbalances between local communities and opposing parties in land conflicts influence the outcome of the procedure for legal recognition? (*Chapter 5, on the labyrinth of legal recognition: complexity in obtaining customary forest recognition*)
- Why have some local communities succeeded in obtaining state recognition of customary land rights? What are the enabling factors, and who are the most determinant actors in obtaining state legal recognition of customary land rights? (*Chapter 6, on getting legal recognition for customary forests*).

- What is the impact of state recognition of customary land rights for local community members? Who is benefitting the most? Has customary land rights recognition provided tenure security for land users? (*Chapter 7, on the implementation of legal recognition and land tenure security*).

The final question is concerned with the future of adat strategies in land conflicts: What can we learn about use of the legal recognition strategy by local communities against land dispossession by state agencies and corporations, from experience? (*Chapter 8, on rethinking legal recognition of adat communities and customary land rights*).

1.3. Research design: Procedures, processes, participants and politics of legal recognition

As explained in the introduction of this chapter, I have chosen four foci for analysing my research findings: procedures, processes, participants, and politics (P4). In this section, I will elaborate on these elements and explain their applicability to my research. The main object of my research is the legal recognition process. Legal recognition is defined here as the government act of granting formal legal status in the case of adat communities and customary land rights. Legal recognition is a political process that involves interaction with and interpretation of rules and practices by local community leaders and members, private corporations, academic researchers, and government officials. The difference between the interests of all the stakeholders is central to the politics of recognition which this research aims to explain.

1.3.1. Procedures: The legal framework for customary land rights

Institutionalisation of customary land rights into the state legal framework requires a solid procedure to secure collective identity-based land rights in land laws. The first part of my research therefore concerns the question of how the national legal framework in Indonesia accommodates legal recognition of adat communities and their land and forest rights. My analysis concentrates first on the legislation, from the constitution up to specific legislation on land, forestry and mining. Furthermore, the legal framework is elaborated on, moving along the administrative scale from the national to the district level. Therefore, the second part of my legal analysis explains which state institutions play a role in legal recognition, and what their authorities are. The third part elaborates on which legal procedures need to be successfully passed, and

which resulting documents need to be available, before legal recognition can be granted.

The legal arrangements for adat communities and customary land rights in Indonesia have historical roots in the Dutch colonial period. In the colonial context, the Dutch colonial government recognised the customary land rights of native communities as part of the indirect rules strategy, to support the effectiveness of the colonial government administration. Although the colonial rulers recognised customary land rights at the time, no land registration procedure was created to formalise customary land rights. The post-colonial government no longer relied on the politics of legal dualism inherited from colonial rulers, so the dichotomy between adat and the state was considered irrelevant. Nevertheless, post-colonial land law does recognise customary land rights, with some conditions. Conditional recognition is the element used in the current legal framework for customary land rights in Indonesia. This is discussed further in Chapter 3.

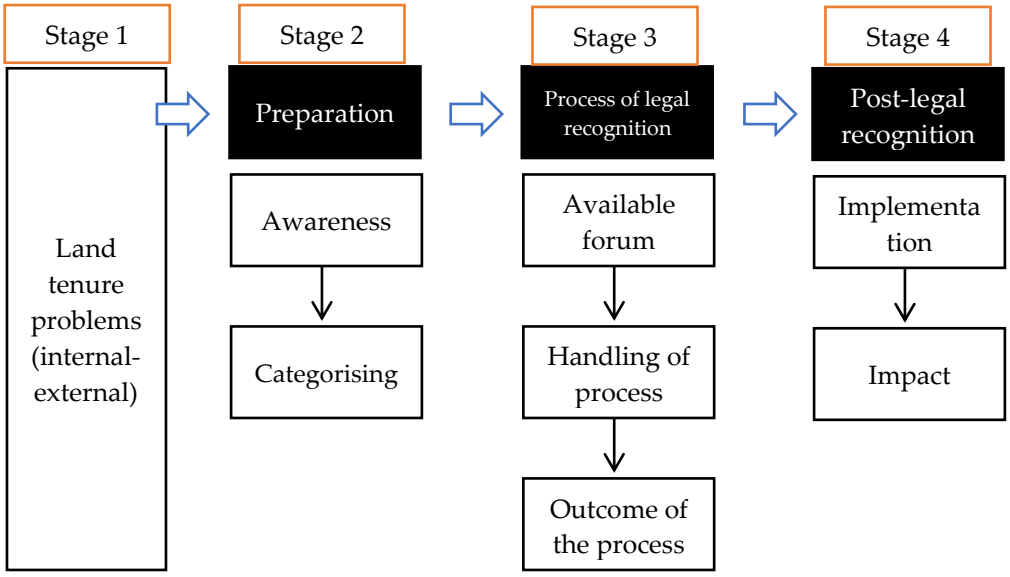
The legal framework for the recognition of customary land rights is evolving. In the past decade, the government of Indonesia made several implementing regulations to realise adat communities' rights. The current legal framework regulates the rights of adat communities in various sectors, arranging these rights across various sets of rules and various state agencies. The implication of this is that adat communities have to deal with different government agencies when negotiating their customary land rights. Therefore, the implementing regulations remain a complex procedure for adat communities to gain full recognition of their customary land rights. In this study, I will use the case study chapters (Chapters 4 to 7) to explain the complex procedure, and how local communities try to navigate it at district and national levels. Local communities have to deal with a complex procedure and they cannot fully control the outcome. As a result, instead of gaining autonomy, local communities can get caught up in an imbalanced relationship with the state, and (following legal recognition procedures) with the NGOs supporting them.

1.3.2. Processes: An analytical framework for the legal recognition process

I have developed a specific analytical framework for understanding the legal recognition of customary land rights as a process from the perspective of communities seeking legal recognition. This framework builds on methods for empirically analysing the process of seeking

access to justice (Bedner and Vel 2010). It has developed further into an *Analytical framework for legal recognition of customary land rights* (Arizona, Wicaksono, and Vel 2019).[7] The analytical framework consists of four stages, beginning with the identification of land tenure problems, then moving on to preparation, the process of creating legal recognition documents, and (finally) post-legal recognition.

Figure 2. An analytical framework for legal recognition of customary land rights



The first step in this analysis explores the land tenure problems of a local community, the internal land tenure arrangements, and the social formation on which land access and ownership are based. The perception of problems may differ between elites, common members, and vulnerable groups within a local community. Furthermore, I analyse land tenure conflicts between local communities and outsiders, especially with state government agencies and corporations.

7 This analytical framework was first used in my article, published in the Asia Pacific Journal of Anthropology: Yance Arizona, Muki Trenggono Wicaksono & Jacqueline Vel (2019) 'The Role of Indigeneity NGOs in the Legal Recognition of Adat Communities and Customary Forests in Indonesia', *The Asia Pacific Journal of Anthropology*, 20:5, 487-506 DOI: 10.1080/14442213.2019.1670241. In this thesis, I use the analytical framework to analyse case studies in Chapters 4 to 7.

Understanding the characteristics of the land problem generating injustice, as perceived by local communities, is essential to explaining the success and impact of specific legal strategies. In this first stage, I do not categorise local communities as adat communities. Whether they can be categorised as adat communities or not is a question that can be answered by navigating the legal recognition process. Local communities who experience land conflicts have a variety of objectives and strategies for resolving the conflict. One option for solving land conflicts is to engage with adat identity claims and to seek the legal recognition of customary land rights.

The second step in the analysis concentrates on preparations for entering the legal process. For land conflicts with forestry agencies, problems occur because the government restricts local communities' access to land and resources in forest areas. Moreover, most of the land has already been designated by the Ministry of Forestry as state land, free of private rights. Meanwhile, communities may have developed land tenure arrangements in the forest dating back to periods before state enclosure (see Chapter 2). NGOs enter the scene as these opposing viewpoints come to a head, often providing local communities with a new perspective on legal interpretations of land control. They translate community problems into grievances concerning the violation of laws and rights. NGOs typically assist local communities in strengthening their adat claims, by revitalising adat institutions, rules and ceremonies, and via participatory mapping. These activities adjust adat for the purpose of categorising and defining land problems, as required for legal recognition.

The third step of the analysis concentrates on the actual legal process for obtaining a government decree on the recognition of customary land rights. Here, local communities need specialist legal assistance to find the most promising strategy in each case. After choosing a strategy, the next activity involves drafting a proposal for state-legal recognition. Recognition at the district level requires scientific research, conducted by academic researchers. Local parliaments hire academic researchers (in some cases, NGO staff) to produce the required academic review (*naskah akademik*). Local parliament considers the report's findings and decides whether the proposal for legal recognition of adat communities and customary land rights will be admitted for further legal processing. Next, there are political negotiations between parliament members and the local government, to ascertain the content of the draft district regulation. Either full parliament finally decides on enacting the district

regulation, or the district head issues a decree. At least one of these district recognitions is required to apply for national-level recognition via a decree from the Ministry of Environment and Forestry (see Chapter 3 for a detailed description of the procedure for the legal recognition of customary forests).

The fourth step in my analysis concentrates on the post-legal recognition phase. The process does not end when the government has granted legally recognised status to the adat community, as well as their land or forest rights. Instead, the process will only end when the initial problems the community members experienced (as in step 1) are solved. This final step is rarely included in research about the recognition of adat communities. If it is omitted, cases easily provide success stories (like the short story at the start of this chapter), but there is actually a much more complex impact of recognition. Therefore, I will pay attention to questions about what happens afterwards: Who is taking care of the implementation of legal recognition? How has legal recognition affected life in the adat communities, and which members have benefitted the most? Assessing whether or not recognition has solved the initial problems of the communities is the final part of my analysis. In this thesis, the four chapters containing case studies (Chapters 4 to 7) will each highlight one step in this process.

1.3.3. Participants: Actors and interests

Researching the legal recognition of customary land rights in land conflict situations does not only involve investigating the roles and interests of one local community and one natural resource company as two adversarial parties, because a wide array of actors is involved in the legal recognition process. The additional actors include government agencies, NGOs, donor agencies, and academic researchers. I analyse the objectives and strategies of these categories of actors, in order to understand the contestations that occur. Moreover, I also pay attention to internal differences within the categories of actors.

a. Local communities and adat communities

When doing research about the legal recognition of adat communities and their customary forest rights, it is clear that adat communities are the main actors in the process that I have been studying. Commonly, legal recognition cases are indicated by the name of a specific adat community, like the Kasepuhan Karang community. But how is the adat community defined in these cases, and which categories of people also

living within the land conflict area are excluded? Zooming in on the actors in land conflicts, it is clear that 'a local community' is not a homogeneous entity (White 2017). Therefore, when speaking about the people who live in the land conflict area, I use the term 'local community' as a geographic distinction, instead of 'adat community' as an ethnic distinction with reference to historical ties to the land (Davidson and Henley 2007). A local community can be an adat community with specific characteristics. Local community members include customary leaders, the village heads, original inhabitants, clans, migrants, women, elders, and youth. Interests and strategies in land conflicts often differ between these categories of community members, as will become clear from the case studies discussed in the chapters of this thesis.

As a further differentiation, local community members can be distinguished based on their position inside or outside of the community, which is highly relevant for understanding issues concerning land tenure and property relationships. In local communities with strict customary rules, internal land tenure arrangements are more complex, because their position within the kinship system of the adat community defines people's access and rights to land. For example, the difference between patriarchal and matriarchal lineages determines gender differences in terms of rights to land and inheritance. There is also differentiation in rights to access land based on criteria of inclusion in the adat community, which implies that immigrants have only temporary use rights, or no rights at all, according to the adat rules. As a consequence, these community-internal distinctions have repercussions on the strategy of each category within the local community, when encountering land conflicts with government agencies and corporations.

The next categorisation of local community members that is relevant to understanding their position as stakeholders in land conflicts is based on their economic activities. The majority of the local community members discussed in this thesis are farmers who cultivate rice, collect benzoin from the forest, or grow coffee and fruit trees. Amongst the farmers, there are differences between small and large farms, based on the amount of land they cultivate. There are also local community members who earn their living working as traders, company staff, laborers, and government employees. Those occupied in non-farming types of work are less dependent on access to land and natural resources, and this difference determines their respective strategies regarding land

conflict. They often welcome the opportunity to get benefit from company operations by obtaining jobs, compensation payments for the use of their land, and business contracts provided by the company (see Chapter 2). For my research, I have selected well-known legal recognition cases, but I did not determine beforehand who the members of the local communities would be, or what the most relevant distinctions between them would be, in terms of understanding their positions as stakeholders in land conflicts.

Another central category in this thesis is adat communities. Some local communities identify themselves as adat communities. The main characteristics they convey usually relate to their collective relationship to a particular place and their adherence to customary rules and practices.[8] The category of adat community determines membership, distinguishing between insiders and outsiders with different rights and responsibilities. In many ways, local community members use the identity of an adat community strategically, depending on the interests they can obtain with such a category. In this study, I did not always rely on the self-identification of local communities to define adat communities. Since this study scrutinises the legal recognition of adat communities, I perceive the status of adat communities to be a result of the negotiation process. Consequently, I will observe legal recognition of adat communities as a relational concept, relying on power relations amongst many different actors. I employ the non-essentialist approach to analyse legal recognition of adat communities and customary land rights. This approach helps me understand adat communities as a socio-political construction through legal processes. In addition, this approach helps me understand how the strategies of various groups in the community have shifted over time, and at particular moments, how local communities have engaged with the strategy of pursuing legal recognition of customary land rights.

b. Natural resource companies involved in land conflicts

Natural resource companies are frequently the opponents of local communities in land conflicts. The companies obtain a land use concession from the government for their large-scale operations.

[8] According to Law Number 32/2009 on Environmental Protection and Management, an 'adat law community' is defined as a group of people who have been living in certain geographic areas for generations, due to their ties to ancestral origins, and who have a strong relationship with the local environment and the existence of a system of norms which determines their economic, political, social and legal institutions.

Companies that extract natural resources can be divided into large-scale companies and small-scale local companies, depending on the size of their yearly turnover and the size of their operational areas. In Indonesia, the common situation in the natural resource exploitation industry is that large companies or business conglomerates operate through many smaller subsidiary companies. The subsidiaries operate locally on just some of the activities in the value chain covered by the business conglomerate. For example, Chapter 5 of this thesis discusses PT. Toba Pulp Lestari (PT. TPL) in North Sumatra. PT. TPL is part of Royal Golden Eagle/Asia Pacific Resources International (RGE/APRIL), which manages over 1.2 million hectares of land, accounting for 26% of all pulpwood concessions in Sumatra. The TPL's concession itself covers 185,016 hectares, dispersed throughout certain districts in North Sumatra.

After obtaining business permits from the government, the conglomerate's subsidiary companies hire small-scale local contractors to conduct specific tasks - for example, logging trees, planting seeds, maintaining plantations, harvesting, and transporting timber. With this mutual cooperation scheme, the subsidiary companies are connected with local companies that are usually founded by local businessmen and politicians. In addition, the subsidiary companies also recruit employees, prioritising local community members. The preferential policy stimulates social legitimacy, because it shows that the company creates employment for local community members. In Indonesia, based on the Company Law (Number 40 of 2007), every company engaged in the natural resources industry is obliged to conduct Corporate Social Responsibility (CSR) programmes. The companies allocate CSR funds to support community empowerment activities, such as providing seeds and other agricultural inputs for local farmers, donations for church construction, and other activities, to create an impression that the company is realising its social and environmental responsibilities. Often, local community members seek opportunities to benefit from the CSR programmes. The company uses CSR programmes to obtain social acceptance from local communities. However, the company can also use CSR programmes to divide local communities, by accommodating the interests of a particular group within the community, whilst excluding other groups who oppose the company's operations. Usually, the CSR programmes are carried out directly by the company, but in other cases the company staff cooperate with local NGOs and youth organisations, as well as with district and provincial governments. The CSR

programmes create economic opportunities for local community members, thereby increasing acceptance of company operations within the community area.

c. The multitude of government institutions

The government is not a single entity; it consists of many institutions with their own roles, duties, and authorities, which often compete with each other. In land conflicts, the government plays multiple roles. In some cases, the government plays the role of opponent of the conflicted communities - for instance, in a conflict between local communities and national park agencies (Chapters 6 and 7). In another type of land conflict between local communities and companies, the government's position became increasingly complicated. On the one hand, the government contributed to causing the land conflict, because the Minister of Forestry gave concessions to companies without the consent of the affected communities. On the other hand, the community asked government institutions, either national or district government, to play an active role as mediator, in order to facilitate land conflict resolution with the company (Chapters 4 and 5).

The government institutions that play a role in land conflict situations can be distinguished as vertical and horizontal. Vertical differences concern the administrative scale that distinguishes the national from the provincial, district and village government institutions. Each level has a specific authority with regard to land conflict and the legal recognition of customary land rights. Horizontal differentiation implies authorities competing across different parts of the government institutions at the same level. For example, there is contestation of the authority over certain land between the Ministry of Environment and Forestry (MoEF) and the Ministry of Agrarian Affairs and Spatial Planning (MAASP). The two ministries have a different legal basis, in Forestry Law and in Basic Agrarian Law, respectively. MoEF and MAASP control different type of land, which creates dual land administration in Indonesia (Safitri 2015). In terms of areas, the MoEF controls 64% of the Indonesian land surface, which is state forest area, whilst the MAASP controls the remaining 36%. The two ministries cover separate territories. For instance, if land has been determined as state forest area, the MAASP cannot issue individual and communal land certificates.

Furthermore, within a single ministry there may be fragmentation and contestation between different directorates. One concrete example,

that will be discussed in more detail in Chapters 5 and 6, can be drawn from MoEF. The MoEF consists of several directorates, with specific authorities. For example, the Directorate of Forestry Business Development aims to increase state revenue from forestry by issuing concessions to companies for natural resource exploitation. Meanwhile, the Directorate of Social Forestry and Environmental Partnership has the task of expanding local community access to forest areas, through social forestry schemes and customary forest recognition. In addition to the above two agencies, there is the Directorate of Conservation of Nature and Ecosystems, which includes national park agencies in charge of biodiversity conservation in forest areas. The three directorates reflect the competition within forest resource management between economy, ecology, and society. The complexity of relations between government agencies is a prominent issue in the analysis of land conflicts and legal recognition in this thesis. The implication of this multitude of government institutions is that local communities have to deal with the complexity of the government structure, at both district and national levels. With limited capacity for dealing with bureaucracy, local communities need support from experts or mediators when communicating with the government, in particular when it comes to complicated matters such as trying to obtain legal recognition. In situations of land conflict, NGOs usually adopt the role of intermediary between local communities and the government.

d. NGOs involved in the legal recognition process

NGOs have been growing in Indonesia since the 1980s, with various agendas to address problems faced by communities at the local level, including land conflicts (Antlov 2006). Adat advocacy strategy is one of the options for NGOs to support local communities suffering from land dispossession. Local NGOs translate and sort the problems into grievances that fit with legal procedure, which is a common role for legal aid workers in providing access to justice (Bedner and Vel 2010:15-6). Currently, with the emerging option to resolve land conflict through legal recognition of customary land rights, NGOs assist local communities in navigating this procedure.

Analysis of the steps in the legal recognition process involves various types of NGO activities. In the case studies discussed in this thesis, there are four categories of active NGOs. The first category of organisations involved in the legal recognition process consists of local or regional NGOs, with programmes to empower local people, capacity

building, and material projects like building village facilities. In general, these NGOs aim to increase local prosperity. Since the 1980s, NGOs have expanded and increased, receiving financial support from private organisations, foreign development funding organisations, and churches (Antlov et al. 2006). Due to long-term relations with local communities, local NGOs have acted as natural advocates of common interests amongst villagers. However, in general, this category of development NGOs has also been criticised, because of its apolitical attitude that ignores the root causes of poverty and land dispossession (Ferguson 1994; Hickey 2009; Li 2007:238). When freedom of speech and political liberty increased, after the Suharto regime ended in 1998, many local NGOs gradually changed their focus towards advocacy as well.[9] Local NGOs typically discuss villagers' problems and translate them into grievances that could be addressed through NGO development intervention, government programmes, or access to justice.

The second category of NGO that is important to the legal recognition process consists of national advocacy NGOs, which emerged in the early 1990s. They started using the term 'adat communities' as an alternative to the class-based concept of 'peasants', in their advocacy campaigns against land dispossession (Moniaga 2007; Afiff and Lowe, 2007; Bedner and Arizona 2019). A prominent example of this kind of NGO is AMAN, an umbrella organisation for adat communities across Indonesia. AMAN's main objective is to put an end to the state territorialisation inherited from the colonial and New Order periods, especially in the forestry sector.[10] As a way of reaching that objective, and as an end in itself, AMAN promotes the legal recognition of adat community rights (Li 2001, Moniaga 2007, Rachman and Masalam 2017). AMAN challenged state legislation that hinders the recognition of adat communities' rights, and encouraged the government to enact a special law on adat communities (see Chapter 3 of this thesis). Since the third congress, in 2007, AMAN has opened up a path to collaboration with the government. AMAN encouraged its community members to put themselves forward as candidates for local and national elections. AMAN also created political agreements with the president and district head candidates, by providing political support for them. In return, the candidates ensured that legal recognition of adat communities and

[9] Interview with RMI staff (Nia Ramdhaniaty and Mardatilla) in December 2018, and a senior NGO activist, Jhonny Nelson Sumanjuntak, in January 2019.
[10] http://www.aman.or.id/ (accessed on March 3, 2019)

customary land rights was stated as their top priority for law-making at the national, provincial, and district levels.

A third category of NGO involved in the legal recognition process has emerged, between the large national NGOs and the smaller local development NGOs. These organisations consist of professionals and specialist volunteers responding to the increasingly complex requirements of donor-funded development work (Banks et al. 2015) and the need to speak the same 'language' as government policymakers (Peluso 2005). For example, the specialist organisations, HuMa and the Epistema Institute both engaged with legal empowerment for adat communities and legal advice to district government agencies (see Chapter 6).[11] Other organisations in this category specialise in technical activities that provide important input into the recognition process, such as participatory mapping of community territories and informal land administration (see Chapter 4 to 7).

The fourth category is international NGOs and donor agencies. International NGOs provide financial support to local and national NGOs to implement programmes related to indigenous peoples and environmental protection. Additionally, this kind of international NGO also engages national NGOs and local community members representing indigenous peoples from different countries in international meetings. International NGOs and donor agencies utilise various international forums to encourage governments and companies to create a responsible sustainable development agenda. In doing so, this organisation lobbies and supports the establishment of international instruments and certification mechanisms, promoting indigenous peoples' rights and environmental protection. Generally, this type of NGO provides financial support to local and national NGOs, as well as running international campaigns to raise international funds to implement their programmes.

Together, the four types of NGO compose a network for cooperation and representation, as well as for the distribution of donor funds. In Indonesia, national NGOs have successfully influenced policy reform in the forestry sector, resulting in several schemes to improve land access for local and adat communities in forestry areas, such as customary forests and other social forestry schemes (Safitri 2010a) (see Chapter 2).

[11] I am grateful to have extensive experience in providing legal assistance to local communities, district government and parliament members, as well as to ministry officials when I worked at HuMa (2007-2010) and the Epistema Institute (2010-2016).

However, in order to implement national policies and create a constituency for national advocacy, these achievements require links with grassroots organisations. Increasingly, the four categories of NGO described above have developed cooperation in promoting the legal recognition of adat communities and their land rights as a model for securing land tenure and access for community members. For local NGOs, stopping land dispossession remains a prime objective, which often converges with the national NGO struggle against longstanding state territorialisation in the forestry sector, favouring community-based forest management.

e. Academic researchers

Academic researchers play an important role in the legal recognition process of customary land rights. In general, academic researchers are lecturers in universities, but sometimes they are researchers based in NGOs. Academic researchers, in this case, are experts in legal requirements for the recognition of adat law communities, and anthropologists who are able to observe and describe the living customs of the communities concerned.

In the process of legal recognition, the role of academic researchers is twofold. Firstly, the lawmaking process in Indonesia – whether for an act of parliament or for a district regulation - formally requires an 'academic review' (*naskah akademik*), with scientific argumentation on whether a certain community fulfils all the requirements of the law to be able to apply for legal recognition. District government and parliament hire academic researchers, because the recognition of adat communities must be done via a district regulation, created jointly by the district parliament and the district head.

The second role of academic researchers relates to fulfilling the requirement for a local community to be recognised as an adat community. An adat community has to demonstrate that adat rules exist, and that community members still have a traditional relationship to the land and other resources. To perform this role, NGOs and the adat community hire or request academic researchers to support them in making customary practices visible before government agencies and members of district parliaments. On the other hand, district government, parliament, and ministry staff also hire other academic researchers to verify claims submitted by adat communities. In this situation, academic researchers become intermediary actors in the legal recognition process.

In addition to their role in the legal recognition process, academic researchers also play a role in the direction of land conflicts between adat communities, companies and government agencies. Many researchers also conduct 'project research', which is commissioned by research institutions, universities, government agencies, international funding agencies, national NGOs, and corporations. For instance, research about actor mapping in a land conflict, the legality of a company's operations, or research to provide policy recommendations. Local community members undergoing land conflicts often perceive academic researchers as their helpers, while companies expect research results to show them in a good light whilst they are dealing with a land conflict against a community. The various agendas and interests of the actors involved in land conflicts make it challenging for academic researchers to produce objective research which does not favour their research sponsors.

1.3.4. Politics of legal recognition

The politics of legal recognition refers here to various actors' negotiation of their own interests within the process of obtaining legal recognition. A classic definition of politics is: Who gets what, in what way? (Lasswell 1936). Bernstein (2017:8) elaborated on this definition for agrarian change studies by posing four questions: Who owns what? Who does what? Who gets what? What do they do with it? These simple questions draw attention to the variety of actors, interests, goals, and strategies. In the politics of legal recognition, local community members, state agencies, and business corporations compete with each other over the ownership and use rights of land and forest.

The attention given to the politics of recognition inspired me to regard legal recognition as a relational concept, involving an interface and mutual relationship between the rights of citizens and state authorities (Lund 2016). In other words, the politics of recognition concerns the interaction between a claim and self-identification by adat communities on the one hand, and responses to the claim by state agencies on the other. In claiming land rights, adat communities have to make their claim visible within the legal framework. In the process of presenting their land claim, adat communities are occasionally supported by intermediary actors, such as NGOs and academic researchers. To obtain legal recognition, adat communities should organise themselves to fit into certain regulative norms enforceable by the state (Ivison 2002), but they should also learn to persuade the state to expand the regulatory framework to accommodate customary land

recognition. Customary land claims require the repositioning of adat communities within the state legal framework. Hence, the struggle for legal recognition of customary land rights can be considered a mutual interaction, reformulating the relationship between state and citizen (Idrus 2010).

In some specific cases, the politics of recognition is also practical and visible in election politics. As district parliament and the district head both have the authority to decide on the status of adat communities, these communities are eager to create alliances with local politicians, in order to gain support for the recognition of customary land rights (Muur 2018). Adat communities either delegate one of their members as a candidate for local election, or they support a candidate outside their own community who has a clear agenda to push the legal recognition of customary land rights. All the case studies in this thesis show how local communities negotiate with local politicians in this way. Similarly, adat community organisations at the national level have been using presidential and parliamentary elections as an arena to create political awareness, and to lobby for a bill on adat communities' rights (Chapter 3).

1.4. Case study selection

Selecting proper case studies for this research was a challenging task. My past work experience in promoting customary land rights for ten years in Indonesia had provided me with a substantial amount of information about cases regarding adat communities who struggle to obtain state recognition of customary land rights. As a PhD student, I realised that the information collected by the adat movement was meant for advocacy purposes and might not be sufficient for rigorous academic research. However, the information I had was very suitable for making a list of cases in which communities tried to obtain legal recognition from the government. My subsequent research of the selected cases would then provide more objective information and correct the advocacy movement's bias.

Therefore, I used a set of explicit criteria to help me select case studies that provide data on the whole process of legal recognition. This means that I have used purposive case selection, relying on my own assessment capacity as an expert in the field of adat studies. Purposive (or deliberate) sampling is disadvantageous compared to random sampling, in that it introduces a bias that hinders generalisation of the research findings (Palinkas et al. 2015). However, this method does

allow patterns, and particular mechanisms that occur in the situation as defined by the selection criteria, to be identified. In this thesis, I use the case studies to illustrate factors at play in the legal recognition process, and to generate knowledge about these processes in more abstract terms (Lund 2014).

First, I made an inventory of customary land recognition initiatives in several locations, for which information was available from academic articles or books, NGO reports, and studies by government institutions. In 2017, during the preparation of my research proposal, the Van Vollenhoven Institute organised the conference, *Adat law 100 years on: Toward a new interpretation*. To find suitable cases for my research, I read the 90 abstracts that participants had submitted to the organising committee. I also gathered data from the Epistema Institute, AMAN, and the National Commission on Human Rights of the Republic of Indonesia, for inclusion in the inventory. On December 30th 2016 the government of Indonesia recognised the customary forests of nine adat communities, for the first time. This successful recognition also provided me with new options for case studies for this research. Based on various sources above, I collected 34 cases where local communities have been using the legal recognition strategy of customary land rights as an argument against land dispossession.

Next, I used the following criteria to select case studies for my research from the 34 legal recognition struggle cases. The first criterion was that land conflict between local communities occurred within state forest areas, so that all the cases would legally concern forest areas, rather than agricultural land or urban areas. In Indonesia, the (legal category of) state forest areas covers 120 million hectares, around 64% of the Indonesian land surface (SOIFO 2020). A detailed discussion of the background for forest tenure conflicts is given in Chapter 2. Many local communities have employed customary land claims against land dispossession in forest areas, confronting state agencies and corporations in the forestry sector. In addition, the Constitutional Court ruling number 35/PUU-X/2012 in 2013, concerning customary forests, provided a new opportunity to institutionalise the legal recognition procedure for customary forest (see Chapter 3).

The second criterion was that my research should cover the main types of forest land tenure conflicts in which adat communities are involved. I have distinguished the conflicts, based on the main reasons for land dispossession in forest areas: conservation projects, forestry

concessions, and mining operations. Therefore, I have selected case studies that together cover these three situations.

The third criterion relates to the stages in the legal recognition process, as explained above in section 1.2.2. Through purposive selecting, I intended to present a series of cases that differ in how far they have come in the legal recognition process. In the first case, the struggles for recognition had already got stuck in the preparation phase. The second is about two communities that reached partial recognition. In the third case, the community obtained full recognition, which allowed me to investigate the impact of this achievement. This selection procedure led to study of the following cases:

a. Local communities versus a mining corporation in Sumbawa

The first case study is a land conflict between local communities and the mining corporation, Newmont Nusa Tenggara (PT. NNT), in Sumbawa District, West Nusa Tenggara Province. I focus on the Cek Bocek community, who demanded compensation from the mining company that operates in their customary land. The colonial government displaced the Cek Bocek communities in the 1930s. Subsequently, the post-colonial government designated their former villages as 'state forest area'. The Cek Bocek community, with the support of AMAN Sumbawa, has been trying to pursue legal recognition of adat communities by the district government. However, the district government refused to recognise the Cek Bocek community as an adat community with customary land rights. This case study represents a situation where local communities fail to even enter the process of legal recognition, which in the process approach means that they do not get further than stage 1. This case is elaborated on in Chapter 4 of this thesis.

b. Local communities versus a forestry corporation in North Sumatra

The second case study was already mentioned in the opening story of this chapter. It concerns the land conflict between local communities and a forestry corporation in North Sumatra Province, PT. Toba Pulp Lestari (PT. TPL), which has been operating since the 1980s. Under its previous name, PT. Inti Indorayon Utama, the company obtained concessions of hundreds of thousands of hectares of forest land, to operate in several districts in the North Sumatra Province. The conflict between this company and local communities has continued since the 1980s, because the company's concession areas have always overlapped with farmland and forest area belonging to local communities. In the Humbang and

Hasundutan districts in particular, the Batak ethnic groups have been cultivating benzoin forests for hundreds of years. This case specifically focusses on one of these communities: the Pandumaan-Sipituhuta community. In 2016 the Ministry of Environment and Forestry allocated 5,172 hectares of the company's concession area to be designated as Pandumaan-Sipituhuta customary forest. The President of the Republic of Indonesia symbolically gave the Minister decree to representatives of the Pandumaan-Sipituhuta community at the Presidential Palace. However, legal recognition of customary forests as the final process of conflict resolution can only be accomplished if, first, the Pandumaan-Sipituhuta community has been recognised as an adat community by the district government. In the end, the Pandumaan-Sipituhuta only obtained partial recognition of their customary land rights. This case study shows how complex the legal procedures are, which must be followed by the community when pursuing legal recognition of customary forest as a solution to land conflicts with business enterprises – stage 3 of the analytical framework. This case is explained in Chapter 5 of this thesis.

c. Local communities versus national park agencies in Banten and Central Sulawesi

The third case study is a land conflict around two forest conservation projects. I compare the land conflict between Kasepuhan communities versus the Mount Halimun Salak National Park (TNGHS), in Banten, with the case of Marena communities versus Lore Lindu National Park (TNLL), in Central Sulawesi. Land conflicts between local communities and national park agencies have some similar characteristics, especially since national park officers restrict local communities' access to forest products, for commercial purposes. The community tried to confront the claims of conservation forest areas, arguing that the forest areas were their customary land, because they had lived in the forest area before the government designated it as a forest conservation area and established the national parks. Both the Kasepuhan Karang and Marena communities obtained customary forest recognition by the Ministry of Environment and Forestry, in 2016 and 2017 respectively. Although both communities gained legal recognition, the process for obtaining customary forest status was not simple. The legal recognition process involved many actors and political decision-making moments, at both the local and national levels – stage 3 of the analytical framework. The two successful cases provide an illustrative example, which can be used

to learn how the implementation and impact of the legal recognition of customary forests affects local community members, and tenure security for land users – stage 4 of the analytical framework (Chapters 6 and 7 of this thesis).

Table 1. Characteristics of the four communities selected for the case studies

	Cek Bocek	**Pandumaan-Sipituhuta**	**Marena**	**Kasepuhan Karang**
Location	Sumbawa District, West Nusa Tenggara Province	Humbang Hasundutan District, North Sumatra Province	Sigi District, Central Sulawesi Province	Lebak District, Banten Province
Land conflict area	Forest area and mining concession area	Forest production area	Forest conservation area (Lore Lindu National Park)	Forest conservation area (Mount Halimun Salak National Park)
Community's main opponent in land conflict	Mining company, PT. Newmont Nusa Tenggara (PT. NNT)/(PT. AMNT)	Forestry company (wood pulp production), PT. Toba Pulp Lestari	Authorities of the Lore Lindu National Park	Authorities of the Mount Halimun-Salak National Park
Stage in the legal recognition process	Stages 1 and 2, concerning the identification of a land tenure problem, and preparation (awareness and categorising)	Stage 3, concerning the process and outcome of legal recognition	Stage 3, concerning the process and outcome of legal recognition	Stage 4. Post-legal recognition, concerning implementation and impact
Form of legal recognition	The local parliament refused the community's proposal to obtain legal recognition	Partial legal recognition of customary forest by the MoEF	The MoEF diverted customary forest recognition to the preserved forest area, whilst the community demanded a forest conservation area.	The MoEF decree on customary forest recognition

1.5. Research method

1.5.1. Multi-sited fieldwork

Legal recognition of adat communities and customary land rights is not something that just takes place in areas where the communities live. Instead, as explained above, it involves a chain of activities conducted by a range of actors who work in other areas, such as in the district capital town or neighbouring villages, in the national capital, Jakarta, and in the offices of government institutions and NGOs involved in the process. Therefore, I have conducted my fieldwork for this research at all these various administrative levels, as well as within the wider geographical area around the community territory.

In my field research at the community level, undertaken from 2017 to 2019, I spent six months in three locations: Pandumaan-Sipituhuta community (North Sumatra), Kasepuhan Karang community (Banten), and Cek Bocek community (Sumbawa). In each of these community areas, I conducted interviews with the neighbours of the communities, in order to capture the broader picture of land conflicts and to observe their (often competing) interests. In addition to the three selected communities, I also included a community from Central Sulawesi, which is involved in the case of the Marena community versus the Lore Lindu National Park. I use the Marena community case in Chapter 5, together with the Kasepuhan Karang community case, because both cases have similar conflict patterns. During my fieldwork from 2017 to 2019, I did not visit the Marena community. This is because before I started my PhD research in January 2017, I had already visited the community (in November 2016) to gather updated information about legal recognition, as preparation for my PhD research. Additionally, I used the information I had obtained from previous research amongst the Marena in 2010 and 2013.

Figure 3. Locations of fieldwork

1.5.2. Data collection method

To help me enter the sites for my field research, I used my previous engagement with national and local NGOs to contact relevant informants. Aware of the bias that this would potentially create, I maintained distance from the NGO workers and explained clearly to all my informants that I was not there as an NGO activist, but as a researcher writing a university thesis. By conducting interviews with all the different actors engaged in land conflicts, I was able to gather information about the activities, narratives, interests and strategies of the various parties in each land conflict that I studied. This method was crucial to avoiding bias, when gathering and analysing data for this research.

From 2017 to 2019, I interviewed more than 200 informants, consisting of adat community members and leaders, village government officials, NGO activists at the local and national levels, members of national and district parliaments, forestry officials, and company managers. As an observer during my fieldwork, I attended more than ten meetings and events at government offices, where district government officials discussed the legal recognition of adat community rights with community members. I collected NGO reports on the selected case studies, as well as local newspaper reports documented by the local NGOs. These documents are crucial for tracing land conflicts between local communities and state agencies or corporations, and for understanding how the frames for and narratives of land conflict have changed over time.

Doing research on land conflicts engaged me in an adversarial relationship between the conflicted parties. Every party, whether a local community, or a corporation or government agency, had their own story about the land claims, and they tried to reject their opponent's claims. Moreover, the parties also tended to hinder researchers when they wanted to meet with their opponents. If I met with the opposing party, in particular with the company staff, I was considered to be disloyal, and it would affect my relationship with local community members. I encountered this dilemma when doing fieldwork in three different locations. I entered the community via local NGO workers, who had assisted the community in dealing with land conflict. This strategy had advantages and disadvantages. The NGO provided me with a large amount of data concerning their activities with the local communities. However, I was also looking for an opportunity to meet with officials of the companies involved and national park managers. In North Sumatra, I had the opportunity to stay one night in the guesthouse of the PT TPL, where I interviewed the company's commissioner. On another occasion, I also interviewed the director of PT. TPL, and several top managers of the company. The company director also invited me to attend a meeting between the company and a local community whose members had agreed to sign a cooperation agreement with the company. The company's top managers attempted to show a positive image of the company when I conducted the interview. Through the company staff, I was also able to enter the location of the disputed land, and to get in touch with other communities who had set up collaborative forest management with the company.

In Sumbawa, I interviewed the public relations department staff of PT. AMNT. In a group interview, the head of the public relations department was very reserved and provided just a glimpse of the information regarding the ongoing land conflict. I also conducted a group interview with the field officers of the company, in order to collect more information and hear their perspectives on the land conflicts with the community. In Banten, I interviewed national park officials in their offices.

1.5.3. Reflexivity

Before I started my PhD research in 2017, I had been working for ten years for NGOs promoting adat community rights in Indonesia. Bias therefore seemed inevitable in this study. However, since beginning this research I have stepped back from policy advocacy and have used PhD

research as a means for reflexivity. Reflexivity is a researcher's ongoing critique and critical reflection on his or her own biases and assumptions, and how these have influenced all stages of the research process (Begoray and Banister 2010). To employ reflexivity, I have changed my initial intention - to conduct research from an advocacy perspective – to an intention to place the experiences of the local community at the centre of my research. When I started writing my research proposal, I was most interested in studying the subject formation of indigenous identity, and in linking it to the discussion on cultural and collective citizenship. This topic arose from my experience as an NGO activist and my master thesis at the Onati International Institute for the Sociology of Law, in Spain (2016). However, my interest gradually changed after my literature review on access to justice. The literature review led me to focus more on the actual problems encountered by local communities in land conflict situations. With this new perspective, I positioned indigeneity mobilisation and customary land recognition as options for local communities, amongst the various other advocacy strategies available. By doing so, I started to see adat or indigeneity as a source of local struggles, instead of as an imperative concept to be applied in reality (Groose 1995, Mende 2015). My field research changed my initial view on the adat community as a stable entity into a perspective that acknowledges the members of local communities as individuals without specific attributions. In diverting my perspective away from an essentialist view of adat communities, I could understand how identities, interests and power differences play a role within the community, and how indigeneity is being translated, articulated and constructed within the community.

However, this transformation did not turn me into an outsider smoothly, because the local community members and NGO activists in places where I did my previous research still remembered my former role as an NGO activist. They observed me with mixed feelings. During my field research, I always introduced myself as a PhD candidate from Leiden University, who was doing research on the legal recognition of adat communities. However, some of the local community members and local NGO activists still expected that my visit would help them strengthen their position in solving their land conflicts. Once, when I was doing fieldwork in North Sumatra, a local NGO organised a press conference to put pressure on the district government to enact the district regulation on legal recognition of adat communities. I was not planning to give a talk at the press conference. However, after an

introductory speech by one of the local NGO leaders, she suddenly invited me on stage as a speaker. I accepted, because I thought that refusing her request would spoil our good relationship. But, instead of lobbying for the district regulation, I presented information on the process of legal recognition of adat communities in more general terms, without touching upon specific details regarding the local communities, which were the main subject of my research.

One critical question was repeatedly addressed to me, regarding my engagement with adat advocacy in the past and in future. When I attended a conference in Canberra (Australia) in 2019, to present one of my articles that is quite critical of the role of NGOs in the legal recognition of adat community rights in Indonesia, a participant asked me: "What will you tell your fellow NGO activists about your critical examination of adat mobilisation, after you complete your PhD?" I responded by positioning my research as a critical reflection on the strategy of adat mobilisation for land claims in contemporary Indonesia. This thesis intends, theoretically, to generate a new understanding of the use and limitation of adat in contemporary resource politics. At a more practical level, the thesis intends to provide lessons-learned in order to support (but also to warn) local communities, when they try to obtain access to justice in land conflict situations.

1.6. Overview of chapters

This thesis is divided into eight chapters. After the introduction in Chapter 1, Chapter 2 explains the main causes and characteristics of forest tenure conflict, compared to other types of land conflict. Chapter 2 also serves as background for the case study chapters (Chapters 4 to 7). I found that land conflict in the forestry sector has its historical roots in colonial policy, which controls forest areas and restricts local communities' access to forest land and resources. Since the 1990s, several initiatives have been constructed to provide legal procedure to mitigate forest tenure conflict, such as social forestry and agrarian reform programmes. I discovered that these programmes have structural limitations when addressing a variety of forest tenure conflicts, and it is crucial that another mechanism is explored. As an emerging option, the legal recognition of customary land in forest tenure conflicts provides a new mechanism for resolving land conflicts.

Chapter 3 explains the legal framework for customary land rights in Indonesia. I analyse the construction of customary land rights by lawmakers in parliament, judicial authorities, and government offices

throughout Indonesian history. By analysing the lawmaking process, constitutional court rulings, and the implementation of regulations over time, this chapter discusses the genealogy of legal recognition of customary land rights in the Indonesian legal system. The main finding is that legal recognition of customary land rights is conditional. This model of conditional recognition has resulted in complicated circumstances for the realisation of customary land rights.

The following chapters discuss the interpretation of customary land rights in practice, by zooming in on three selected case studies that differ in the extent of their success in obtaining state-legal recognition of customary land rights. I have sorted Chapters 4 to 7 based on two criteria, which are: the type of land conflict, and the stage the land conflict has reached in the legal recognition process.

Chapter 4 discusses a land conflict between local communities and a mining corporation in Sumbawa (West Nusa Tenggara). I focus on the case of the Cek Bocek community. This chapter analyses the prerequisites for starting the process of legal recognition of customary land rights (Stages 1 and 2 of the analytical framework). The most crucial aspect is the consensus amongst community members about the actual problems, strategies and goals in the land conflict situation.

Chapter 5 shows how complicated it is to obtain legal recognition from the district government and the MoEF. This chapter analyses an ongoing case of a local community pursuing legal recognition of customary land rights as a solution to end their land conflict with a forestry company. The central case study in this chapter is a land conflict between the Pandumaan-Sipituhuta community and a logging company, PT. Toba Pulp Lestari, in North Sumatra. In analysing the complicated procedures for recognition, this chapter zooms in on stage 3 of the analytical framework.

Chapter 6 discusses the more successful recognition cases of the Kasepuhan Karang community (Banten) and the Marena community (Central Sulawesi). With the support of NGOs, the two communities have completed the full procedure and have obtained their legal recognition. The cases put emphasis on the capacity of local communities, and the important role of NGOs in assisting them in finding the right political and legal opportunities. This chapter identifies crucial success factors in obtaining legal recognition.

Chapter 7 analyses what happens after adat communities have obtained customary land rights (stage 4 of the analytical framework). Again, I discuss the Kasepuhan Karang community case, in which newly

obtained communal land rights were divided between individual land users via an informal land registration system providing land-use certificates for every land user. Moreover, the registration administration showed that around 40% of land users in the Kasepuhan Karang customary forest are not members of the Kasepuhan Karang community. This case study illustrates the significant role of community leaders in the implementation of legal recognition. This case also shows that state-recognised customary land rights do not always provide tenure security for all land users.

Chapter 8 is the concluding chapter, where I reflect on the main lessons learned from previous chapters. Chapter 8 returns to the broader discussion on indigeneity, land dispossession, customary land rights, and the politics of recognition, in order to reframe the state and society relationship. This study warns local communities, NGO activists, and policymakers that legal recognition is not the end result in securing customary land rights. At both national and local levels in Indonesia, the politics of recognition in the global discourse of indigenous peoples has been translated in a problematic way. Advocacy to secure customary land rights has shifted to a complicated process of defining the legal personality of indigenous communities. The current parliamentary bill on adat communities' rights also contains a serious problem, in that it cites legal recognition as the key concept for the realisation of customary land rights. This thesis concludes that institutionalising legal recognition of customary land rights risks trapping local communities in complicated procedures to define indigenous identity, instead of directly securing their land rights. Therefore, instead of focusing on legal recognition, customary land rights supporters would do better to concentrate on protecting the land rights of the people who depend on the land or forest for their livelihoods.