Universiteit
Leiden
The Netherlands

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

Arizona, Y.

Citation
Arizona, Y. (2022, June 14). *Rethinking Adat strategies: the politics of state recognition of customary land rights in Indonesia*. Retrieved from https://hdl.handle.net/1887/3309795

Version:	Publisher's Version
License:	Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden
Downloaded from:	https://hdl.handle.net/1887/3309795

Note: To cite this publication please use the final published version (if applicable).

4 Claiming adat community rights against a mining company

4.1. Introduction

Chapters 4 to 7 are case study chapters which follow the analytical framework to discuss the process of legal recognition of customary land rights. In Chapter 1 I explained that the analytical framework for understanding the legal recognition process consists of four stages. The first stage shows how local community members identify land tenure problems, because of the overlapping claims of local communities and government agencies or corporations. The second stage is preparation, in which local community members become more aware of land conflict and then categorise it as customary land problems. The third stage is the legal recognition process, which includes a discussion of the available forums, handling of the legal recognition process, and the outcome of legal recognition. The final stage scrutinises the situation after legal recognition, in order to understand the implementation and impact of legal recognition. Each case study focuses on a different stage of the recognition process.

This chapter analyses the pre-legal recognition process (stages 1 and 2), to understand why and how local communities engage in adat advocacy as a strategy to pursue their objectives in land conflict situations. The main questions in this chapter are as follows: What are the real life problems of the people who (eventually) apply for recognition as an adat community and the pertaining land rights? Moreover, how did the process of categorising these problems develop from framing them as customary land problems? The reason for asking such questions is that the problem that community members want to solve by obtaining legal recognition is not always clear, especially regarding how and why their problem has been categorised as a customary land rights problem.

In this chapter, I discuss a land conflict between a local community and a mining corporation in Sumbawa. I focus on the case of the Cek Bocek community in Sumbawa, which claimed historical ties to ancestral land as preparation for embarking on the legal recognition process. I selected this case from a total of 40 cases investigated by the National Commission on Human Rights, following the 2013 Constitutional Court

Ruling concerning the human rights of adat communities in forest areas (see Chapter 1).

The Cek Bocek community members identify themselves as a minority ethnic group living in the southern part of Sumbawa Island. During the colonial period, they were displaced from Elang Dodo forest to new settlement areas, by the colonial government and Sumbawa Sultanate. The main reason for the displacement was that the Dutch colonial government had imposed a new village government and tax reform, requiring that local communities reside in controllable areas. The community members lived in poverty, with a lack of public facilities, for decades. They had difficulty finding income-generating opportunities in their localities.

In 1986, a large-scale gold mining company, PT Newmont Nusa Tenggara (PT. NNT), started investigating the potential of mining deposits in the former Cek Bocek village areas in the Elang Dodo forest. The company has offered some benefits for the local population, but many locals – including the community in this case study – cannot access these benefits. To counter these problems, the community members have tried several strategies, with the ultimate aim of receiving compensation payments, or other benefits, from the gold mining company. The most recent strategy the community used was to frame their claims as 'reclaiming dispossessed adat forest land'. In order to validate their adat land right claims, they had to reinterpret (and sometimes reconstruct) the history of prior occupation of the land, and the links that present-day community members have with its original occupants.

The campaign to validate their rights has been directed at the government, it being the authority that can provide legal recognition. If it would grant recognition, the community will have a stronger position in negotiations about compensation vis-à-vis the mining company. However, the local political situation has not been conducive for the community campaign. For several decades, the shared interest of the government and the mining company has been to secure land that could be used for gold mining as state property; the economic interests in this are huge. Moreover, there is resistance to the community's claims and campaign from the Sumbawa Sultanate, which lately has been revived with the help of the government and mining company. The Sultan serves as a competing adat institution in the district, helping the government and mining company to arrange constituency consent for the company to use the land.

This case will show how local communities using legal recognition strategies have trouble proving the validity of their customary land claims in a local political context full of competing claims. If the community members do not have a shared analysis of the main land-related problem they want to solve by using the adat strategy to claim land rights, they will not be able to obtain legal recognition of their customary land rights.

4.2. The Cek Bocek community case in context

This section describes the local political landscape and competition for resources in Sumbawa. This description is crucial to analysing how present politics is strongly related to history, and how the struggle over the meaning of adat in local society has evolved. I argue that understanding the present-day strategies of adat communities starts with analysing the differentiation between the actors involved and their interests. Moreover, in order to validate claims to land and authority, various parties in adat politics refer back to local political history.

4.2.1. The Cek Bocek community's relation to the Elang Dodo forest

The Cek Bocek community case started in the colonial period, when the name Cek Bocek was not yet in use. The community resided in the middle of the forest located in the southern part of Sumbawa Island. The community members are descendants of the Kedatuan Dewa Mas Kuning, one amongst several small autonomous polities in the region. The descendants of Kedatuan Dewa Mas Kuning use the Berco language, which differs from the language spoken by the majority population in Sumbawa. Therefore, during the colonial period they named themselves the Berco community, referring to their unique language.[31]

In the 1930s, under colonial rule, the government resettled the Berco community members to an area 20 kilometres north of their original villages in Elang Dodo forest. The government moved them to new residential areas, close to other settlements in the villages of Lawin, Lebangkar, and Aek Ketapang. The purpose of the colonial resettlement

[31] I use the term 'Berco community' to refer to all the descendants of the Kedatuan Dewa Mas Kuning, who moved from their original villages in Elang Dodo forest to the villages of Lawin, Lebangkar, and Aek Ketapang. Meanwhile, I use the term 'Cek Bocek community' to refer to the Berco community group who tried to strengthen their historical connection to Elang Dodo forest, in order to provide a legitimate basis for claiming compensation from the mining company.

policy was to facilitate control over the population and to involve local communities in rice cultivation. For some community members, this move was an opportunity to improve their living standards. Nevertheless, other members, especially the traditional leaders, regarded the resettlement as a forced eviction, which was detaching them from their cultural roots. The feeling of repression at that time was captured in a short vernacular rhyme that lives on in the heads of many of the community leaders:

> *"Dapit padado lodana, uleng pamojang makura. Kacendeng enteng ramodeng, pararen tukanga jangi."* [English: We arrived at a shelter, but we did not know where to go. It was our fate to leave our ancestral land.]

After the resettlement programme, the colonial government designated Elang Dodo a state forest area and restricted the activities of local communities in that area. The Dutch colonial officers started to search Elang Dodo forest for potential gold deposits. One of the elder community members told me that, once, a colonial government officer came to take a bag of soil, to investigate the gold deposit potential of Elang Dodo forest. Rumour spread throughout the region that the Elang Dodo forest contained significant mining resources. Even the 'local kingdom' in this area used to be called Kedatuan Dewa Mas Kuning, which literally means 'The God of Yellow Gold', indicating that the area has always had gold resources.

The colonial period resettlement did not much change the living standards for Berco community members, neither did they change much after Indonesia became independent. Even into the 2000s, community members still lived in poverty and lacked public service facilities. For many decades, villagers could only reach the capital of Sumbawa on horseback. A new asphalt road to the capital only opened a few years ago.

The majority of the Berco community population are farmers. They raise horses and cattle, and cultivate rice, nutmeg and coconut gardens, but these economic activities do not yield enough to provide a good income. Many young people migrate to the city for work, whilst others stay in the village to work in agriculture, or as traditional gold miners. Many 'illegal mining pits' are located near the villages. The Berco's former villages at Elang Dodo forest also contained large gold mining deposits. Local community members do not have the advanced

technology to dig for gold deposits. Moreover, they do not have secure access to the mining deposits in their area.

Initially, I found that the Berco community profile fitted the common understanding of indigenous peoples in international law, especially when referring to the working definition of indigenous peoples by Jose Martinez Cobo (1982).[32] The first reason for this is that the Berco community experienced land dispossession in the colonial period, under pressure from the Sultan of Sumbawa and Dutch colonial officers. The colonial government reformed the village government, increased local communities' participation in rice cultivation, and implemented a new tax system. The second factor is that the Berco community is a minority ethnic group, and they consider that they have a different history and culture to the majority population in Sumbawa. The main difference is their local language. The third is that the Berco community is a non-dominant group. The Berco have been marginalised in the local political context, because they have lacked access to public facilities and political decision making. The fourth factor is that they preserve their cultural identity, although the role of customary institutions has been weakened because of the prevalent role of formal village government in the rural area.

Although the Berco ethnic community profile fits with the main characteristics of indigenous peoples in international discourse, this does not mean that the community can automatically be regarded as an adat community in the Indonesian legal context. The following sections will elaborate on preparations for the legal recognition process to acquire this status. But first, the next section will discuss the local political context and conflict over resources in Sumbawa.

4.2.2. The main parties in Sumbawa's political context

Sumbawa Island is one of the islands located in West Nusa Tenggara Province. The island covers 15,414 km² and has a population of 4.2 million people. Mount Tambora, which two centuries ago was a huge volcano, lies in the northern part of the island. The Tambora volcano eruption in 1815 covered half of the Earth's atmosphere with dark clouds. The haze was even signaled as one of the factors in Napoleon's defeat in the Battle of Waterloo, which halted Napoleon's expansion in Europe (Brogan 2018). In Sumbawa island, the eruption also scorched

32 See the working definition of indigenous peoples according to Joseph Martinez Cobo (1982) in Chapter 1.

one of the four local kingdoms, the Tambora Kingdom. The three local kingdoms that survived the eruption were the Sumbawa Sultanate in the western part of the island, the Bima Sultanate, and the Dompu kingdom in the eastern part of Sumbawa.

The Sumbawa Sultanate was the largest kingdom on the island, having been established in 1674, after the Kingdom of Gowa (from Sulawesi) expanded its political influence into the area and spread Islam throughout Sumbawa. The Sultan of Sumbawa was a descendant of the Banjar Sultanate, from Kalimantan. Before the Sumbawa Sultanate was established, local communities in Sumbawa were ruled by 12 small local polities, including the Kedatuan of Dewa Mas Kuning of Selesek, located in the southern part of Sumbawa island (Mantja 2011:9). Political power centred around the northern coast of the island, where the Sultanate was established. In comparison, the southern part of the island was remote forest. The Sumbawa Sultanate was the centre of business for traders from Java, Sulawesi, and Maluku. When the VOC expanded its business in the eastern archipelago, and the Sumbawa Sultanate first refused to collaborate, several wars occurred between the Sumbawa Sultanate and the VOC, in the northern coastal region. Later on, the Sultan of Sumbawa made political agreements with the Dutch colonial government, and the first political contract was made in 1875 (Noorduyn 2007). In 1885, the Dutch colonial government enacted a decree (*besluit*) to recognise the position of the Sultan. Finally, in 1938, the Sumbawa Sultanate was incorporated into the system of indirect rule (Swapradja government/*zelf-besturende landschap*), under the Dutch colonial authority. Consequently, the Sultan of Sumbawa acted as the head of the swapradja government in Sumbawa.

Furthermore, in 1938, the Dutch colonial government created the *Inlandsche Gemeente Ordonnantie voor de Buitengewesten (IGOB)*, forming a new model for village government and expanding its control over the entire population outside Java. For this purpose, the Sumbawa Sultanate and Dutch colonial officials displaced local communities living in forest areas, most of which were located in the southern part of Sumbawa, where descendants of the Kedatuan Dewa Mas Kuning lived. They were forced to move out of the Elang Dodo forest and merge with several nearby villages. This showed that the descendants of Kedatuan Dewa Mas Kuning did not have significant power within the local political setting.

In 1942, the Dutch colonial government was defeated by the Japanese army, which took over the government of Indonesia. The

Republic of Indonesia was established in 1945, as the Dutch sent troops to Indonesia to restore their power. The Sumbawa Sultanate tried to organise its position within the new political structure. In 1946, political elites from 13 areas including Bali, Lombok, Maluku, Sulawesi, and Sumbawa created the State of Eastern Indonesia *(Negara Indonesia Timur*), supported by the Lieutenant-General of the Dutch East Indies, Hubertus Johannes van Mook, who tried to promote the establishment of a federal system for Indonesia (Matanasi 2016). The Sultan of Sumbawa, Sultan Kaharudin III, acted as Chairman of the Parliament of the State of Eastern Indonesia. In 1950, the State of Eastern Indonesia, based on the federal system, was dissolved, and Indonesia was transformed into a unitary state (Schiller 1955).

At the beginning of the post-colonial period, the national government of the Republic of Indonesia continued using 'the *swapraja* system' of government based on local kingdom during the colonial period. However, in 1959, the government adopted a new system of provincial and district government units. The national government created the Sumbawa District and appointed Sultan Kaharudin III as interim head of the district, from 1959 to 1960. Subsequently, the president appointed a new definitive head of the district, removing the sultan from his political position and depriving him of formal political power, albeit not his title. In 1975, Sultan Kaharudin III passed away and the position of sultan stood vacant, which also had the effect of dissolving the sultanate as a cultural entity in local society. However, although the sultanate has not been a dominant actor in local politics since 1959, local politicians from the northern part of the island have remained in power. They have channeled government-sponsored economic development projects towards their own localities, leaving residents of the southern part of the island in poverty.

After 33 years of centralistic governance under the New Order regime (1965-1998), the new democratic government of Indonesia opted for decentralisation from 1999 onwards. This policy stimulated the desire of local political elites to revitalise traditional local identity (Klinken 2007). In Sumbawa, this aspiration was apparent in the revitalisation of the Sumbawa Sultanate. After a 35-year vacuum, a new sultan was coronated in 2011. The district government, and some local political elites in Sumbawa, supported the revitalisation of the sultanate. The largest mining company on the island, PT. NNT, was also in favour of 'the return of the Sultan'. The government and the mining company had a shared interest in securing land that could be used for gold mining

as state property. The sultanate could ensure consent on behalf of local communities for such land dispossession. The cooperation between the government, the sultanate, and the mining company becomes more apparent when we zoom in on the case study below.

4.2.3. State forest area and mining concessions

The government of Indonesia continued colonial forest policies in Sumbawa, with the implication that the Elang Dodo forest should remain a state forest area. The Ministry of Forestry designated some parts of the Elang Dodo as protected forest, and some parts as production forest. Consequently, the Ministry of Forestry had the authority to grant permits for the extraction of natural resources in Elang Dodo forest, whilst simultaneously restricting Berco community members' access to the forest.

However, although Berco community members had moved and established settlements in new villages, they kept visiting their original villages in the Elang Dodo forest. For many decades, they regularly returned to the Elang Dodo forest to hunt, harvest coconut and rattan, and establish lodges for the production of palm sugar. They also made pilgrimages to the 1,525 ancestral graves in Elang Dodo. Those activities continued after the government granted concession to a mining company.

In 1986, Suharto's New Order regime granted a mining concession in Sumbawa Island to PT. Newmont Nusa Tenggara (PT. NNT), for an area covering 66,422 hectares. This company is part of Newmont Mining Corporation, based in Denver, Colorado. The PT. NNT mining concession area was located in forest areas, including the Elang Dodo forest and the Batu Hijau mining sites. In 2000, the company started open-pit mining activities at the Batu Hijau site, currently in the West Sumbawa District. PT. NNT invested US$ 1.8 billion in the Batu Hijau mining site, and since 2000 it has produced approximately 3.6 million tons of copper and 8 million ounces of gold - up until 2019.[33] The ongoing PT. NNT operation at the Batu Hijau mining site is the second-largest gold mining operation in Indonesia.

In 2016, PT. NNT sold the company to new shareholders, who changed the company name to PT. Amman Mineral Nusa Tenggara (PT. AMNT), but maintained similar mining locations and plans. Imminent closure was planned for open-pit mining in Batu Hijau, but the company

[33] http://www.amnt.co.id/tentang-kami (accessed on March 5, 2019)

started developing a new mining site, with significant potential, in the Elang Dodo forest. This led to conflict with local communities.[34] However, local communities responded variously to expanding the company's operations at the Elang Dodo mining site. Some perceived the new situation as a land conflict, because the company was operating in Elang Dodo forest without the consent of the Berco community. Some local community members warned about potential environmental destruction from the mining activities, whereas others preferred to focus on new opportunities offered by the mining.

4.3. Shifting strategy from individual to communal land claims

4.3.1. A variety of responses to mining expansion

Although the PT. NNT has had a mining concession since 1986, its actual extractive activity began in 2000, when the company started an open-pit mining site in Batu Hijau. Thenceforth, the communities around the new mining site started to become aware of the company's presence in their areas. These local communities were not only the Berco community. For some local community members, the mining company operation provided opportunities to find jobs, as well as other benefits. Meanwhile, others responded against the mining operation, and began formulating their own strategy and arguments against the company, until it fulfilled their demands (Welker 2014:159-63).

An environmental protection campaign against the extractive mining industry was the first narrative that local communities used to protest against the company's mining activities (Welker 2014:6). Open-pit mining inevitably destroys the landscape, leading to environmental degradation around the mining concession area. Accordingly, environmental activists from the district city encouraged local communities to protest against the mining operation. They argued that the open-pit mining activities by the PT. NNT had a devastating impact on the environment at the Batu Hijau mining site. In 2004, a local NGO, concerned about the environmental impact of the mining activities, conducted an investigation and published a report claiming that residents around Senunu Bay, where the company released its waste, had experienced severe health problems, such as itching, rashes, and skin problems (Putro and Tolomundu 2006). In the same year, PT.

[34] In 2016, the PT. NNT divested its share to local government and to national private companies. The current majority shareholder is PT. Amman Mineral International Tbk (PT. AMI). Subsequently, the company's name has changed from PT. NNT to PT Amman Mineral Nusa Tenggara (PT. AMNT).

Newmont Minahasa Raya (PT. MNR), another subsidiary company of Newmont Mining Corporation in Indonesia, was under government investigation, because local communities in Buyat Bay, North Sulawesi, were experiencing the symptoms of Minamata disease; symptoms such as numbness in the hands and feet, general muscle weakness, and damage to their hearing and speech (Walhi 2004).

In response to the NGO's investigation in Senunu Bay, PT. NNT reported the NGO's director to the police. The district court sentenced the NGO activist, because the judges considered that the activist had defamed the company.[35] Since then, the narrative that gold mining creates environmental pollution has never been used again by local community members as an argument to stop mining operations. Arguments concerning environmental protection have never been used in the land conflict about the Elang Dodo forest, partly because the company has not yet started open-pit activities there, but also because the mine is sited far away from the current community settlements, so it does not affect people's daily activities and health. Indeed, local community members have never seen environmental issues as their main problem. Instead, their main problems are poverty and the lack of public facilities in their villages.

The most popular objective amongst local community members, regarding the mining concession area, was to benefit from the mining company's operations in their area. Some local community members hoped that the mining operation would create jobs to help them escape from poverty. They imagined that the company would hire them as contractors in construction activities, or to cater food for the company staff. They also saw potential opportunities arising from the company's corporate social responsibility funds, to develop supporting public facilities in their villages. There was no strong motivation in the local community to preserve the Elang Dodo forest area as the main source of their livelihood. A few years ago, local community members stopped their small palm sugar activities in the Elang Dodo forest, because the activities were located a long way from their settlements and they had obtained other sources of income closer to their village - mainly working at new and illegal gold mining pits near the village. Since the company started operating in the forest, many rumours have circulated amongst community members that the company intimidated villagers who entered the Elang Dodo forest, which appeared to be an effective

[35] The Sumbawa Besar District Court Decision Number 12/Pid.B/2005.

deterring strategy. Local communities realise that the actual intention of the company is to begin gold mining exploitation in the Elang Dodo forest, and they do not want mining operations to take place without benefitting them.

Amongst the Berco, objectives varied even more. They felt that they had a legitimate claim to obtain more benefit from mining operations in their former villages. They aimed to get compensation payments for use of their former village for mining activities. They argued that they would lose their historical connection to the Elang Dodo forest, if the company created an open pit, as it would demolish their ancestral graveyards. They offered proof that ancestral graves and the former traditional houses of their ancestors still existed in Elang Dodo forest. However, such a claim was not enough to get compensation, as that would need formal government recognition. Moreover, the Berco community's arguments challenged the government, because it had already designated the Elang Dodo forest as a state forest area. According to state regulation, the state forest is state property and is free from individual and communal land rights. If the Berco community members still wanted to receive compensation, they would need to seriously underpin their property relations to the Elang Dodo forest, either individually or collectively.

4.3.2. Strengthening individual land claims

In 2004, activities to strengthen the community's legal claims followed a meeting organised by the Sumbawa district government, between company representatives and local communities, to provide information about the company's plan to start mining exploration in the Elang Dodo forest area. The meeting was conducted at Lawin Village, where most of the Berco live. The Indonesian Mining Law requires that mining companies organise an information meeting for local communities around a mining site, in order to inform them about mining activities and operation schedules.[36] Moreover, the Indonesian Company Law (Number 40/2007) also requires that every company engaged in natural resource extractions implements corporate social responsibility (CSR) programmes. Local community members who attended the afore-mentioned meeting thought that the company would describe actual benefits, which would help to lift them out of poverty. However, the meeting did not have a constructive effect. Instead, it led to a deadlock,

[36] In the Indonesian context, this type of meeting is called *sosialisasi.*

because the participating community members were not satisfied with company staff responses to their demands.

After the meeting, some Berco community leaders established the Elang Penaru Foundation (*Yayasan Elang Penaru/YEP*), as a forum for organising protests against the company. On behalf of affected community members, the leaders visited the Sumbawa district parliament office to report their grievances. They proposed that the district government and district parliament should act as mediators in their conflict with the company, which is a common procedure in land conflicts. Another suggestion was that the government could revoke the company's permits. During the meeting, the district government officials suggested that the community create 'Letters of Land Possession' (*Surat Keterangan Pemilikan Tanah*/SKPT), to serve as the legal basis for their Elang Dodo forest land claims.[37] Some Elang Penaru Foundation leaders convinced the heads of Lawin and Lebangkar villages to create SKPT. The head of Lawin village created an SKPT for every two hectares of land plot in the Elang Dodo forest. He did not conduct actual delineation in the forest, but he divided the land plots on a map. The village heads expected that such letters would be sufficient evidence of land ownership in the Elang Dodo forest, and that they could subsequently be used to get compensation from the mining company. However, according to the Basic Agrarian Law, SKPT lacks the basis of land right evidence. In fact, it can only be used as a basis of information about land use.

Interestingly, the head of Lawin village not only created SKPT for the Berco community members who had a historical claim to the Elang Dodo forest, he also sold the letters to outsiders. The SKPT stated that the document holder had a land plot in the Elang Dodo forest area, covering two hectares, and provided information about name of other document holders in all directions. The SKPT was signed by the village head and the head of the sub-district (*camat*). However, the SKPT did not mention anything about the forest land being customary land (*tanah adat*). The head of the village released SKPT for Berco community members, but also for outsiders. Outsiders had to pay around USD 35 (or more) to obtain the document from the head of the village. Many outsiders bought SKPT with the expectation that the company would

[37] In Indonesian land law, this kind of letter is commonly used by villagers as preliminary evidence for land registration, land sales, land mortgages, and for requesting compensation for land acquisition projects.

pay compensation to SKPT holders. SKPT were sold to district parliament members, government officials, police officers, traders, and other people who wanted to claim land in the Elang Dodo forest. Furthermore, some recipients of SKPT also sold them on to others. Despite SKPT lacking legality, an informal land market was established amongst villagers and SKPT recipients.

Nevertheless, the company refused to pay compensation to SKPT holders. Company officials argued that SKPT were illegal. The company justified the legality of its operations, pointing at the mining concession from the government. Moreover, the company argued that any individual or collective land claim in the state forest area was unlawful, according to Indonesian legislation. As a result, the villagers' strategy to obtain compensation payment by creating SKPT had failed. The SKPT holders did not have their money reimbursed by the head of the village, despite SKPT not being a valid basis for claims to compensation from the company.

4.3.3. Switching to collective adat claims

After the failure of the SKPT strategy, the village leaders tried to think of something else that would strengthen their bargaining position vis-à-vis the company. Alwi, one of the Berco community members holding a large number of SKPT, came to the AMAN office in Jakarta to ask for assistance. Simultaneously, several traditional leaders of the Berco community living in Lawin village revitalised their customary institutions. This group proclaimed itself the Cek Bocek Selesek Ren Sury (hereafter, the Cek Bocek community), led by Datu Sukanda. Datu Sukanda is the legitimate heir of Kedatuan Dewa Mas Kuning. At the moment of the proclamation, the Cek Bocek community members consisted of 339 households in Lawin village. Through the customary rights strategy, the aspirations of local community members to obtain compensation from the company regained strength. This time, the compensation seekers were no longer using SKPT to claim individual land ownership in the Elang Dodo forest. Instead, they claimed that the Elang Dodo forest was part of the Cek Bocek community's customary land. From this moment onwards, local communities who demanded compensation payment shifted the basis for their land claims from SKPT to communal customary land rights. For this purpose, SKPT recipients from non-Berco communities also supported customary land claims; they expected that, if the customary land argument became a successful way to obtain compensation payments from the company, the

customary community leaders would be in charge of distributing any compensation paid to all SKPT holders. The SKPT holders acted as '*tim sukses*' (support teams), providing moral and financial support to the Cek Bocek community leaders in developing their customary land claim strategy.

Following its general and well-developed customary land strategy, AMAN helped the Cek Bocek community report the case to the National Commission of Human Rights (NCHR). In 2012, the NCHR organised a meeting in Jakarta between the representatives of the Cek Bocek community, the mining company managers, Sumbawa district government officials, and academic researchers, in which the NCHR acted as mediator. The Cek Bocek community representatives hoped that the company would recognise their customary land rights and begin to talk about compensation payment. However, in the meeting, the mining company argued – based on a study conducted by an academic researcher from the University of Indonesia – that the Cek Bocek's claim to customary land rights in Elang Dodo forest should be rejected. This research concluded that the Cek Bocek community did not qualify as an adat community under Indonesian legislation. According to Indonesian law, an adat community should be recognised by a district regulation, created by the district government and district parliament together (see Chapter 3). As a consequence, the company also rejected the Cek Bocek community's claim for compensation payments.

Although the meeting organised by the NCHR did not achieve the results that the Cek Bocek community members had expected, they insisted on the customary land claims. They could prove their historical relationship to the Elang Dodo forest, and the ancestral graves that remained there. As the traditional leader of the Cek Bocek community, Datu Sukanda actively engaged in national meetings organised by AMAN, in order to increase political support for the customary land rights strategy. The goal of the Cek Bocek community remained not to stop the mining company's operation, but rather to obtain compensation via negotiation with the company. This resonates with AMAN's strategy to encourage the Cek Bocek community case as an example of exercising free, prior and informed consent (FPIC) for an adat community to get compensation payment from a company.[38] Concretely, Sukanda's offer

38 Free, Prior and Informed Consent (FPIC) is a specific right that pertains to indigenous peoples, and it is recognised in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). It allows indigenous peoples to give or withhold consent to a project

in the negotiations was to relocate the ancestral graveyard; in return, the community would obtain compensation from the mining company. However, this demand did not receive a positive response from the company.

In 2013 a new opportunity arose after the Constitutional Court granted AMAN's petition regarding the status of customary forests (see Chapter 3). The court reaffirmed the legal status of the customary forests of adat communities. Moreover, the court held that the government of Indonesia had to recognise the customary forest and redistribute state forest area to adat communities. Responding to the court ruling, Cek Bocek community members came to the Dodo Forest mining campsite. They posted a sign stating that: "According to the Constitutional Court of the Republic of Indonesia number 35/2012, this forest is no longer state forest, but the customary forest of the Cek Bocek community". This intervention almost resulted in a physical conflict between Cek Bocek community members and the security guards of the company. A few days later, local police officers summoned several members of the Cek Bocek community for interrogation.

Figure 8. Cek Bocek community putting up a signpost stating their customary forest is no state property, while armed police are watching ©: Suhardin- Elang Dodo forest, September 8, 2013

that may affect them or their territories. FAO 2016 (https://www.fao.org/3/i6190e/i6190e.pdf) (Accessed on December 20, 2021).

At the national level, the NCHR responded to the court ruling by conducting a national inquiry to investigate violations of the human rights of adat and local communities in forest areas. The NCHR selected 40 cases for investigation and the land conflict between the Cek Bocek community and PT. NNT was one of them. During the national inquiry session, both local government and company representatives were invited to public hearings. The Cek Bocek community representatives expressed their problems, and the company responded to the Bocek community's arguments. The hearings were more about fact-finding, rather than being negotiations to achieve mutual conclusions. Therefore, the meetings did not result in the resolution of the land conflict. Nevertheless, the national inquiry reinforced local government and parliament awareness of the customary land rights of the Cek Bocek community. In response, the Sumbawa district government and the district parliament started to consider the importance of a district regulation to determine the Sumbawa district adat communities.

4.4. Elevating the Cek Bocek community to a regional politics case

The Constitutional Court ruling and the national inquiry conducted by the NCHR convinced the Sumbawa district government and the district parliament to begin the process of creating a district regulation recognising adat communities. From this moment onwards, the compensation seekers felt more optimistic, having shifted their strategy from individual land claims to customary land rights. Nevertheless, the success of this strategy relied on the question of whether the Cek Bocek community would be recognised as an adat community by the district government. The Cek Bocek community had to make its historical connection to the Elang Dodo forest visible, and fulfil the requirements for embarking on the legal recognition process. In this matter, AMAN Sumbawa began supporting the Cek Bocek community, by offering its expertise in the legal recognition process.

4.4.1. Competition over adat representation

AMAN Sumbawa expanded the basis of its campaign for legal recognition by including more adat communities under AMAN's flag, putting pressure on the district parliament to prepare a district regulation on the legal recognition of adat communities in Sumbawa. The district regulation AMAN has proposed would concern not only the recognition of the Cek Bocek community, but also that of other adat communities in the district. Most AMAN Sumbawa community

members were involved in land conflicts with the forest agencies, but only the Cek Bocek community encountered the mining company operating in forest areas. With this broadened constituency, AMAN Sumbawa hoped that the district parliament and the Sumbawa district government would give the district regulation process high priority in their legislative agendas.

To strengthen the Cek Bocek community's claim to customary land rights, AMAN (together with adat community members) conducted participatory mapping to define the boundaries of customary territories. The result indicated that the Cek Bocek community claimed customary land rights covering 28,975.74 hectares, of which around 16,000 hectares overlapped with the mining concession area. The map was a useful preparatory step towards embarking on the legal recognition process. The district parliament also had to prepare, by conducting research, before creating a district regulation. The Sumbawa district parliament hired academic researchers from a local university, to produce an academic review (*naskah akademik*) and to draft the district regulation on legal recognition of adat community rights in Sumbawa. Separately, AMAN Sumbawa also conducted research and held discussions to support the process of creating an academic review and a draft of the district regulation. This research resulted in a book, which provided academic legitimacy for the Cek Bocek community claim to the Elang Dodo forest. In 2015, AMAN Sumbawa held a large mass demonstration, attended by hundreds of adat community members. They pushed the district parliament members to speed up the process of creating the district regulation.

During the preparation of the district regulation, district parliament members started to wonder about the definition of customary law, and who the adat communities in Sumbawa were. This is because the Sumbawa district parliament had just enacted a District Regulation on Tana Samawa Customary Council (*Lembaga Adat Tana Samawa*/LATS). The Sumbawa District Regulations on LATS (Number 10/2015) granted the newly coronated Sultan of Sumbawa the position of supervisor of the adat council in Sumbawa. Furthermore, the district regulation on LATS also gave the Sultan of Sumbawa the authority to act as a formal representative of adat communities in the Sumbawa District, especially on matters relating to traditional ceremonies. This development was part of a general trend in Indonesia, after the government started its decentralisation policy in 1999, when every region was trying to present its local identity, including by revitalising customary institutions (van

Klinken 2007). However, the District Regulation on LATS effectively created legality and legitimacy for the Sultan of Sumbawa, presenting him as a customary institution at the district level. Therefore, AMAN's initiative to promote the creation of a district regulation on adat communities was perceived by the sultanate's promotors as a subversion of the authority that had just been granted to it in Sumbawa.

The revival of the Sumbawa sultanate, after several decades of vacuum, thus became a major challenge to the articulation of customary land claims by the Cek Bocek community. In many parts of Indonesia, the return of the Sultan made customary identities more contested, a trend recorded by Laurens Bakker (2009), in his research in Paser, East Kalimantan, and by Gerry van Klinken (2004) in West Kalimantan. The Sumbawa district government and PT. NNT fully supported the coronation festival for the new Sultan in 2011. The district government also subsidised the renovation of the Sultan's palace, setting him up as the trustee of customary institutions in the district. Adat-based activities, like cultural festivals and traditional clothing competitions, flourished. In addition, the Sumbawa sultanate became a symbol of Sumbawan adat, with the *Keraton Nusantara Festival* - an annual festival of sultanates and local kingdoms across Indonesia, organised by the kings and sultanates associations in Indonesia (Tufail 2013). I interviewed the Sultan of Sumbawa at his home in Jakarta, where he spent most of his time after having retired from his job as a banker. The return of the sultanate made the Sultan and his supporters the authoritative actors representing adat in the district.

The contention between the sultanate and the AMAN-led advocacy movement brings the complexity of identifying adat communities to the surface. Local communities have to identify themselves, in order to comply with indigenous slots and to meet the statutory requirements for being legally designated an adat community (Li 2001; Muur 2019). The case in Sumbawa shows that indigenous slots are not singular, but that there can be competition between local groups regarding the validity of the claims on their adat identities. Both the Sumbawa sultanate and the Cek Bocek community took advantage of adat revivalism in the post-New Order period. However, their objectives for and interpretation of what constitutes an adat community were different. Subsequently, these different aspirations inflated political discussions throughout the district parliament process of creating a district regulation. In such cases, the government decision to recognise adat communities had become more political than legal.

4.4.2. Under the wings of AMAN

When the academic review and the draft of the district regulation were ready, the Sumbawa district parliament held public consultations to gather public opinion on the draft district regulation. The draft of the district regulation contained a definition and a detailed procedure for the legal recognition of adat communities. The Sumbawa district parliament conducted three public meetings in different sub-districts. There were not many participants from AMAN and its allied member communities, because the public consultation meetings were held outside AMAN's member community areas. During the public consultation meetings, many participants – especially the sultanate's supporters – strategically changed the subject of discussion and argued that the proposed regulation on recognising adat communities was problematic. Participants in the public consultation meeting compared the legitimacy of the Cek Bocek community and the Sumbawa sultanate, in terms of representing adat in the district. For them, especially those favouring the Sultan, the Sumbawa sultanate had a more obvious written history, and occupied a more legitimate position for the preservation of adat. Other adat communities assisted by AMAN Sumbawa, including the Cek Bocek community, were not well known by the local population as adat communities, because of a lack of information about their origin and role in local histories. Therefore, the Sultan's proponents argued that the adat communities supported by AMAN were inventions.

Following subsequent public consultation meetings, the Sumbawa district parliament wondered whether deliberation over the district regulation draft should be continued or terminated. In the following district parliament session, all political party representatives in the district parliament refused to continue the discussion about district regulation. The main reason for their refusal was the Sultan of Sumbawa's royal decree (*titah Sultan*), stating that no adat communities exist in Sumbawa, except the Sumbawa sultanate. What happened in parliament shows that, in general, local communities will not be able to obtain legal recognition as adat communities when their adat claim in the district is contested by other, more powerful, traditional leaders.

For AMAN Sumbawa and the Cek Bocek community, the failure to push the district parliament to enact a district regulation on the legal recognition of adat communities in the Sumbawa district was a decisive defeat in adat advocacy. Nevertheless, the Cek Bocek community

continued to believe that the adat strategy could be used to achieve their goals in its conflict with the mining company. Moreover, the Cek Bocek community is involved in broader adat advocacy with AMAN, to find an alternative way to achieve their goals. Through AMAN, they still received support, good media coverage, and access to the national network of adat advocacy. AMAN involved Datu Sukanda, the top leader of the Cek Bocek community, as a witness, when it filed a petition to the Constitutional Court challenging criminal provisions in the Law on the Prevention and Eradication of Forest Destruction (Number 18/2013). In the court session, Datu Sukanda testified to the Cek Bocek community members' experience of repression by local police and company guards, in their land conflict with the mining company. However, Datu Sukanda's involvement in the court process had no effect whatsoever on the community's land conflict with the company.

When I did my first fieldwork in 2018, the Cek Bocek community managed to expand their supportive network even further. AMAN, together with the Asia Indigenous Peoples Pact (AIPP), ran a learning exchange activity on Cek Bocek community territory for a week. Participants in this activity came from various countries, including Cambodia, the Philippines, Malaysia, India, Bangladesh, Nepal, Thailand, Vietnam, and Denmark. At the end of the training activity, participants made a solidarity statement addressed to the President of the Republic of Indonesia, the Head of Sumbawa District, and the mining company, with the aim of gaining recognition of Cek Bocek community customary land rights and halting mining expansion until the company has engaged in meaningful consultations with the Cek Bocek community, and a consensus has been reached.[39]

After the week of training ended and participants from different countries returned to their home countries, I extended my stay to live in the village for a few weeks. I met with several villagers to ask their opinions on the Cek Bocek community and training activity. My interviewees told me that they were delighted that many people from different countries had visited their village. Adat leaders hoped that the solidarity statement issued after the training would be heard by the United Nations, international institutions, and top managers from the mining company. I realised, informed by my previous engagement with

[39] The full version of the Solidarity Statement can be reached using this link: https://iphrdefenders.net/indonesia-article-18b-2-indonesian-constitution-1945-constitutional-court-decision-no35-2012-recognise-cek-bocek-community-indigenous-peoples-masyarakat-adat/ (Accessed on September 9, 2020).

advocacy, that the statement would not help much in reaching the desired solution for the land. However, the Cek Bocek community members really believed that such solidarity statements would provide a positive influence. This also illustrates how heavily the Cek Bocek community's adat strategy was relying on the support of outsiders, especially AMAN.

During my fieldwork, I also found that social solidarity among the Cek Bocek community members was fragile. There were different interests and strategies present amongst the elite of the Cek Bocek community. Even in Lawin village, where most of the population are Berco, not all the villagers fully supported the customary land rights claim invoked by the Cek Bocek community. Some local community members do not support the demand for compensation from the company. For them, obtaining a business contract and employment provided by the company would be a more realistic proposal, whereas for the elite of the Cek Bocek community, working for the company is considered a betrayal of the customary land struggle.

Another precondition for strengthening customary land claims is the support of the village government. During my interview with him in 2018, the village head adopted a passive position concerning the adat land claim strategy. He was not as interested as his predecessor (who had created SKPT) had been in supporting the compensation payment strategy. During my next fieldwork period, in 2019, the Cek Bocek community leaders supported a candidate in the village head elections who had challenged the incumbent head. The community leaders hoped that the new village head would issue a village regulation incorporating the Cek Bocek community leader as the formal customary institution at village level. In 2020, the newly elected village head – supported by the Cek Bocek community – indeed passed such a regulation. The Cek Bocek community perceived the village regulation as a gradual process of recognition. By obtaining legal recognition from below (at village level), they expect the next level (district government and the company) to recognise their customary rights as well. However, the existing village regulation did not provide a legal basis for recognising customary land rights, and it was therefore also an invalid argument for the Cek Bocek community in seeking compensation from the mining company.

4.4.3. The mining company's response

Whilst the Cek Bocek community is busy convincing the district government to ask for legal recognition, the company is moving away

from the land conflict. It seems that the opponent is now the district government, rather than the company. The company is not involved in the legal recognition process in the district parliament. Shifting away from discussions about the land conflict has helped the company secure its interest to continue mining operations in Elang Dodo forest. Moreover, the company's experience at the Batu Hijau mining site provides lessons for the company in how to deal with social protest and attract local community acceptance of the company's activities continuing. At the Batu Hijau mining site, PT. NNT developed CSR programmes and created a positive image of the company caring for the environment (Welker 2014:158-9). The company developed extensive social and sustainability programmes to counter criticism from environmental NGOs, who depicted PT. Newmont Nusa Tenggara as 'Newmonster', which was destroying the environment. The company management developed a counter-narrative, by promoting 'Goodmont'. The company expanded its CSR programmes and conducted activities to benefit local communities and the environment, such as employing workers, and building mosques, schools, and clinics (Welker 2014: 1). PT. NNT also hired researchers from the local university to conduct actor mapping, regarding conflicts between local communities and the mining company. Subsequently, the company used the study result to undermine local communities' protests. The company's main approach was to recruit key actors who had previously rejected the company operations, employing them as company officers for community relations (Comrel). With such co-optation, the company could use local community members to secure the company interest. In addition, local police protected company property, using the argument that mining resources are national strategic assets.

The collaboration of the police and Comrel to protect the company interest became clear when I did my field research in Lawin village. When I attended the training workshop held by AMAN and AIPP in the Cek Bocek community area, in 2018, which I mentioned above, some local police and Comrel were surveying the training activities. During seven days of training, the police and Comrel were on standby outside the meeting place, and they scrutinised what was being discussed in the meeting.

The company continued to refuse the compensation claims by the Cek Bocek community for using their former village for mining activities. Company officials argue that the Cek Bocek community's claim is illegal, because there is no district regulation determining that

the Cek Bocek community is an adat community. In my interview with company staff members, they admitted that the Cek Bocek community indeed had a graveyard in the mining site, but they added that there were only a few graves. Furthermore, one of them said that it is common in Sumbawa to find an ancestral graveyard in the middle of the forest, because in the past local communities lived in the forest. The company relied on the mining concession from the government as the legal basis for its operation, and it left the Cek Bocek community land claim to be handled by the government. In this way, the company removed itself from the contention between the Cek Bocek community, the sultanate, and the district government, regarding the legal recognition of the adat community's rights.

4.5. Analysis and conclusion

4.5.1. An inadequate basis for customary land rights recognition

The Cek Bocek community case indicates one of the main obstacles for local communities in Indonesia when they use the adat strategy to claim land: they have an inadequate basis for embarking on the process for legal recognition of land rights, because the district government must first recognise them as adat communities before they can claim customary land rights.

In this case, the customary land right claim was an alternative strategy, after the initial strategy to obtain compensation from the company based on individual land claims had failed. The shift in strategy had the disadvantage that it was too obviously an opportunistic move. Many parties, including the head of the district, the district parliament members, and supporters of the sultanate, claimed that the Cek Bocek community is an invention, and that local elites created the community just to seek financial benefit. Therefore, for such parties, the Cek Bocek community was not naturally representing a genuine adat community. The fact that the Cek Bocek customary movement was created to strengthen demands for compensation from the mining company contradicted the broadly advocated idea that adat communities are the guardians of the environment, and that they would therefore be more likely to campaign for environmental rather than economic objectives.

Adat revivalism as an environmental movement is the dominant image presented by the indigenous peoples' movement in Asia, distinguishing it from the agenda for sovereignty in anglophone countries, and the pursuit of local autonomy in Latin America (Tsing

2007; Inguanzo 2016). With her research in Central Sulawesi, Tania Li (2001) has warned that identifying indigenous communities as environmental saviours burdens the local community itself. This is clearly the case in Sumbawa, where the demand to obtain compensation payments was considered to be irreconcilable with recognition as an indigenous community. A similar condition also appears in the case of orang asli Sorowako againts a mining company in South Sulawesi (Robinson 2019:475-7). In addition, the basis of the Cek Bocek community's land claim was weak, because they were no longer reliant on the Elang Dodo forest for their livelihoods.

The absence of effective control over customary land is the factor that has often weakened adat-based claims over land, also in this case. Although Datu Sukanda is genealogically a legitimate leader of the Cek Bocek community, he no longer lives permanently in the village. He occasionally visits the village for private matters, or is involved in activities related to adat advocacy. When the Cek Bocek community members have social problems – for instance, disputes amongst community members – they prefer to consult the village head instead of the customary leaders. Currently, the village government is more effective in organising local community members, coupled with support from the district government in terms of budgets and administrative authorities. The village government's support for articulating indigenous identity is crucial, but in the Cek Bocek community case, such support is unstable.

As an intermediary actor, AMAN Sumbawa has played an important role in the articulation of customary land claims by the Cek Bocek community. However, AMAN Sumbawa's political connections at district level were insufficient to strengthen the Cek Bocek community's position in the legal recognition process. AMAN Sumbawa's staff members have good relationships with local academics, because some of them are lecturers at local universities. Those contacts were essential for strong academic support when proving evidence for the Cek Bocek community's land claims. One AMAN Sumbawa staff member owned a law firm, which strengthened the quality of the legal assistance that AMAN provided for adat communities involved in land conflicts with government agencies and corporations. However, for legal recognition to be successful a strong relationship with policymakers is required, both with members of the district parliament and with the District Head (van der Muur 2019; Arizona et al. 2019). A positive relationship between local community members and local politicians at

district level depends on the community's potential as a constituency of voters in district elections. Because the Cek Bocek community consisted of only 339 households, its size is insignificant to local politicians, which does not help to establish strong relationships.

AMAN Sumbawa staff were undoubtedly aware of this problem, which is why it tried to capitalise on its relationship with the many adat communities by assembling them into a political constituency for district elections. The chairman of AMAN Sumbawa has twice run for a seat in the district parliament, but he failed both times. In the 2014 elections, he ran as a candidate for district parliament from the Ropang sub-district election area, where the Cek Bocek community lives. Even then, he was not elected as a district parliament member, neither did he get a significant number of votes from Cek Bocek community members. The result indicated that not all villagers in Lawin perceived AMAN Sumbawa as their best representative and intermediary for channelling their complaints in the face of conflict with the mining company. On the other hand, the lack of support for AMAN's representation also indicates that the leaders of the Cek Bocek community had not been effective in translating AMAN's agenda to all the members of their community, thus failing to convey the message that having a representative in the district parliament was essential to reaching their common objectives.

4.5.2. Conclusion

What does this case teach us about the process of categorising community members' problems through to framing them as customary land problems? I found that using the customary land rights strategy to solve community members' issues is problematic, for several reasons. The first concerns identifying land tenure problems and the objectives of local community members encountering land conflicts (Step 1 of the analytical framework). The interests of local community members are diverse. However, in this case, all the community members had in common that they would like to obtain benefits from the mining operation - in particular, compensation. However, this objective of obtaining compensation from the company does not fit the general image of adat revivalism in Indonesia. In Indonesia, the adat community movement is associated with environmental objectives, by presenting an image that adat communities are environmental stewards. Therefore, the community objective of pursuing compensation – instead of opposing mining operations to protect the environment – is perceived

by the district government and company staff as a non-genuine adat claim.

The second problem is the complexity of categorising local community grievances, in order to obtain the formal requirements for customary forest recognition (Step 2 of the analytical framework). Customary land rights advocacy requires a legal basis where the local community must first be recognised by a district regulation created between the head of the district and district parliament. Therefore, the customary land claim strategy requires policy advocacy at district level. NGO activists helped the local community to prepare its formal requirements for legal recognition, including the revitalisation of customary institutions, by documenting the history of the community and creating maps of customary land territory. These documents, showing how the community meets the formal requirements, must be conveyed to district government decision makers, which implies that the community needs good connections with local policymakers, including the district head and members of district parliament. Having political ties with district parliament members is crucial in the legal recognition process. Such ties are conducive, if the number of adat community members is significant enough to form a constituency for winning local elections. Therefore, the effectiveness of adat strategies relies on, and changes with, political opportunities and to what extent the community can present its strategic position in the local political context.

The third problem is related to contestation of the legitimacy of adat claims at district level. The competing claims between several adat groups generate a debate about the meaning of adat representation in the local political context. When adat claims are contested amongst different adat communities living in the same area, it will be impossible to obtain legal recognition as an adat community. An easy strategy for mining (or plantation) companies is therefore to support one of the competitors, thereby inflating contestation within the local adat community at large.

Ultimately, the Cek Bocek community failed to obtain legal recognition of customary land rights. The question is: Will all cases where adat strategies are used in conflicts between adat communities and companies face similar constraints? The following chapters of this book discuss cases in which local communities have succeeded in reaching the next levels of the legal recognition process.