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

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## 6 Getting legal recognition for customary forests

### 6.1. Introduction

Following my analysis of two complex cases of uncompleted legal recognition of customary land rights, in the previous two chapters, it might seem that full legal recognition of customary land rights is impossible in Indonesia. However, that is not true. This chapter shows that some adat communities have indeed been successful in their struggles to obtain legal recognition of their customary land rights. These communities have not only successfully identified their land tenure problem in land conflicts with external actors (stage 1) and categorised their problems as customary land tenure issues (stage 2), they have also successfully followed legal procedures to obtain legal recognition of their customary land tenure from the state (stage 3). The central questions in this chapter concern the explanation of success. Why and how did these local communities succeed in obtaining state recognition of their customary land rights? What were the enabling factors, and who were the most determinant actors in the state legal process for the recognition of customary land rights?

In this chapter,<sup>52</sup> I analyse the course of events in the two successful cases by systematically following the legal recognition process steps described in chapter 1. This chapter focuses on two communities: the Kasepuhan Karang community (Banten Province) and the Marena community (Central Sulawesi). Both communities obtained legal recognition of their customary forests, in order to end their land conflicts with forestry agencies. The cause of the land conflict in these cases was similar, in that national park agencies were restricting local community use of the forest areas and resources near their settlements.

When the national parks were established, in the 1980s and 1990s, local community members did not consider the overlapping land claims between themselves and the national parks to be a violation of their customary land rights. They began to articulate their land claim using

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52 This chapter is based on the article : 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

an adat narrative after they started receiving assistance from local NGOs. Local NGOs helped local community members to revitalise customary law and institutions and supported the mapping of customary territories as a basis for land claims against the national parks. Furthermore, local NGOs and their national networks became intermediary actors, urging district governments and the Ministry of Environment and Forestry (MoEF) to recognise customary forests, as a solution to forest tenure conflicts. This strategy gained momentum when the constitutional court released a ruling that affirmed the legal status of customary forests as separate from that of state forests. Subsequently, the MoEF started to develop regulation and pilot projects to recognise customary forests, in order to implement the court ruling. NGOs which specialised in promoting the legal recognition of customary land rights promoted some communities – the Kasepuhan Karang and Marena communities, amongst others – as pilot projects. Furthermore, local community and NGO networks engaged in local and national political processes, to ensure that government agencies at different levels included the agenda of legal recognition in their policy programmes. In the end, with significant support from the NGOs, the Kasepuhan Karang and Marena communities managed to gain legal recognition of their customary forests.

The analysis of the Kasepuhan Karang and Marena community cases results in the preliminary conclusion that successful cases of legal recognition of customary land rights always concern land conflicts between communities and the government agencies in charge of conservation forest areas. For the national adat movement, such successes have become showcases of state commitment to fulfilling adat community rights. Both cases discussed in this chapter indeed concern adat communities that have been involved in land conflicts with the national park authorities. Instead of reproducing the superficial conclusions found in adat movement reports about these cases, this chapter goes deeper, answering the question regarding the character of success and the reasons for it, with an in-depth analysis of the process of recognition - from the initial problems, to full and final recognition.

Before analysing the case studies, this chapter will first describe the context of land conflicts in forest conservation areas. This description is needed in order to understand the nature of forest conservation conflict compared to forest tenure conflict with mining or forest production/logging companies. I will then explain and analyse the two case studies in Banten and Central Sulawesi. The case studies discuss the

actual legal processes and results regarding customary forest recognition, and how local communities can navigate the complex procedure and obtain legal recognition.

My analysis of the case studies focuses on two specific aspects. The first is concerned with the identification factors which enable local communities to obtain legal recognition. I also distinguish between internal and external enabling factors for the legal recognition of customary forests. The second is analysis of the roles of the most prominent actors in the legal recognition process. I found that NGOs are the most significant actors at every step of the legal recognition process. I classify the NGOs involved in the legal recognition process, and explain their roles at each stage of legal recognition.

## 6.2. Land dispossession for forest conservation projects

Literature on land grabbing shows that large-scale land dispossession occurs because governments and business enterprises claim large areas of land for extractive industries, but also for nature conservation purposes. This ‘green grabbing’ – the appropriation of land and resources for environmental ends – is an emerging land dispossession process, with specific characteristics (Fairhead, Leach and Scoones 2012). In Indonesia, from colonial times onwards, the government has claimed large-scale forest areas in order to establish forest conservation areas. In some cases, the government has involved the private sector in managing its conservation projects. To the present day, the government of Indonesia has designated 554 conservation areas, spread throughout all provinces of the country and covering a total area of 27.4 million hectares, or 23% of the total forest area (SOIFO 2020).<sup>53</sup> To give a sense of size: the total conservation area in Indonesia is larger than the United Kingdom.

The government created national park agencies to manage forest conservation areas. The management of forest areas by government agencies is supported by two main assumptions. The first assumption is that the government is the most appropriate manager of conservation areas. The second assumption is that conservation areas must be under the direct control of state agencies, and a boundary must be created which indicates that the forest conservation area is state property. Thus, the government determines what kind of human activities can be

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<sup>53</sup> Conservation areas in Indonesia consist of forest conservation areas (22.1 million hectares) and marine conservation areas (5.3 million hectares). (SOIFO 2020)

preserved and what types of plants can be cultivated in conservation areas.

From this government policy perspective, local communities are considered to be a threat to the preservation of nature. Because of productive activities being limited in conservation areas, most regions with large conservation areas, such as in the Banten and Central Sulawesi Provinces, are those with low gross regional domestic product. Usually, people who live close to conservation areas are poor subsistence farmers. Access to the forest, to gather non-timber forest products or to grow crops beneath or between trees, are sources of livelihood on which these farmers depend for their daily needs. Therefore, when conservation areas are expanded and the restrictions imposed by national park agencies on local community access to the forest become more severe, there will be conflicts between the government and local communities.

The legal options for solving forest tenure conflicts in forest conservation areas are limited. As I explained in Chapter 2, there are two options. The first option is to create a conservation partnership, where local communities agree to create joint activities with national parks, in order to preserve state forest conservation areas. The second option is customary forest recognition, in which the MoEF recognises the customary land rights of adat communities, and leaves the management of conservation areas to adat community organisations. In this chapter I focus on the second option, in order to understand how the adat communities in Banten and Central Sulawesi follow the legal recognition strategy to end their land conflicts with national park agencies.

### 6.3. Two successful cases: Kasepuhan Karang community and Marena community

The following case studies present the results of field research that I conducted in 2010-2019. Research on the Kasepuhan Karang community was partly conducted by Muki Wicaksono, then completed by my own recent fieldwork, in 2018-2019. Research on the Marena community derived from my previous research and engagement in customary land rights advocacy, in 2010, 2013, and 2016. Information was gathered through interviews, with villagers, adat elders, NGO activists, donors, and government officials at the national, district and local levels. Additionally, I gathered data while engaging in legal empowerment activities in the Lebak and Sigi districts. Four reports by NGO activists

(Wiratraman 2010; Sutrisno 2015; Vitasari and Ramdhaniaty 2015; Nurhawan and Ramdhaniaty 2015), about the two case studies in this chapter, provided secondary data.

### 6.3.1. Kasepuhan Karang community v. Mount Halimun-Salak National Park in Banten

The Kasepuhan Karang community is one of many Kasepuhan communities in the Lebak district. According to oral history, this community first settled in the Kasepuhan Karang area during the colonial period. The majority of community members are farmers who cultivate vegetables, rice, and fruits, such as banana, durian, and mangosteen. Fruit production has become the leading cash earning activity, with constant demand from the urban markets of Jakarta and Bogor, nearby. Membership of the Kasepuhan community is determined by kinship, respect for the elders, and obedience to customary laws. Currently, the Kasepuhan Karang settlement is part of the administrative village, Jagaraksa, where three other Kasepuhan communities also reside.

Land conflicts with Kasepuhan Karang began in 1924-1936, when Dutch colonial rule determined that the Halimun Mountains should be preserved as forest areas. The colonial government considered the area to be unoccupied land, and thus state property. Using the forest area without government permission was not allowed. This rule continued during the transition to national independence in 1963, when the Forestry Agency changed the Halimun forest's status to 'nature reserve'. In 1975, the Forestry Agency changed the forest's status to 'forest production area', under the control of Perhutani, a state-owned forestry enterprise. Perhutani allowed villagers to cultivate forest areas, whilst levying "informal taxes" for their use, and this became a common practice in the Halimun Mountains (Cahyono et al. 2016:168-9). In 1992, a part of the Perhutani area, which the Kasepuhan Karang also had claim to, was reincorporated into the Gunung Halimun Salak National Park. Furthermore, in 2003, the Ministry of Forestry expanded the national park area to include the former Perhutani areas located in the Kasepuhan Karang area. In practice, this did not change the villagers' access to the forest, but the status of the national park included restrictions on the kinds of trees that villagers could cultivate, and fruit trees were prohibited. Following the sequence of land dispossession, only 29% of the land remained under community authority (Ramdhaniaty 2018).

Due to these state enclosures to local community members, and their precarious legal position, the community members started to protest. They demanded legal access to the forest, for their agricultural activities and to collect non-timber forest products. They also demanded an end to extortion by forestry officials and the lifting of restrictions on fruit tree cultivation.

### 6.3.2. Marena community v. Lore Lindu National Park in Central Sulawesi

The second case study is the Marena community, in Central Sulawesi. The area now called Marena was first inhabited by members of the Kulawi ethnic group from Bolapapu village, who settled in the area in the 1930s. Gradually, a few other migrants followed from various districts and provinces in Sulawesi, as well as from Java. They created livelihoods as farmers, cultivating cacao, rice and vegetables. Despite the diversity of its origin, Marena's population gradually became a community with its own internal rules.

The first land conflict between Marena community members and state agencies began in the 1970s, when the Provincial Forestry Bureau initiated a programme to rehabilitate degraded land. In reality, the bureau aimed to establish a clove plantation, by dispossessing Marena community members of their land (Sutrisno 2015). When the clove price dropped, the Provincial Forestry Bureau transferred the land to a local government enterprise, PD Sulteng. This local enterprise continued clove and cinnamon cultivation, but the plantation was not well maintained and was finally abandoned in 1986. However, the land kept its status of 'state land', and local community members could not cultivate the land legally and physically.

The second land conflict arose when the government established the Lore Lindu National Park in 1982, covering 231,000 hectares. The national park claimed the western part of Marena's territory, without consulting with and obtaining consent from Marena community members. The third conflict concerned the eastern side of the Marena's territory, where the government had established a protected forest area. As a result of this, Marena community members were squeezed between the two state territorialisation projects, and were left with insufficient land for expanding their settlement areas or agricultural activities. After the three waves of dispossession, only 24% of the land remained under community authority (Sutrisno 2015). The Marena villagers wanted to

retain access to the national park area, to continue their customary forest practices, and to preserve their agricultural land for future generations.

It is important to note that the Marena community is not the only local community involved in land conflicts with the national park in Central Sulawesi. The land conflicts between local communities and forestry agencies, including the national parks, is pervasive because the government designated nearly 70% of the total provincial area as state forest, overlapping with many local community settlements (Sangadji 2007).

### 6.3.3. Framing and claiming identity

Local communities engaged in land conflicts regarding conservation forest areas often face restrictions and intimidation by national park rangers. Generally, local community members follow the restrictions imposed on them, because they cannot resist park rangers' demands. Usually, local community members simply avoid confrontation with park rangers, which is a common strategy for weak peasants in land conflicts (Scott 1985). The power imbalance between local community members and national park rangers is ubiquitous, especially in conservation areas located in frontier areas. Therefore, local community members seek support from outsiders. This offers an opportunity for local NGOs to support local communities involved in land conflicts. NGOs act as intermediaries between local communities and state agencies, when discussing solutions to land conflicts. Local community members expect NGOs to help leverage their community bargaining positions in land conflicts. From their side, NGOs support local communities in expanding their constituencies to legitimise their agendas. Initiatives to build relationships between local communities and NGOs vary, depending on specific conditions in the field, as we can see in the Kasepuhan Karang and Marena community cases.

In the case of the Kasepuhan Karang community, Wahid, the newly elected head of Jagaraksa village, tried to find a local NGO that could help them. In 2011, he visited the Rimbawan Muda Indonesia (RMI) office, a local NGO based in Bogor. Founded in 1992, RMI has been working with Kasepuhan communities since 2001. RMI has experience assisting Kasepuhan communities who have overlapping land claims with forestry agencies in Banten province, mainly those from Halimun Salak National Park. Wahid expected that RMI would help them counter repression by national park rangers, following the intimidation of a Jagaraksa villager, whilst he was making charcoal, by a national park

ranger. In the beginning, Wahid did not think about adat as a basis for countering the national park agency. He was just concerned with the restrictions and repression imposed by the national park agency on his community members.

By contrast, the Marena community members first tried to file a complaint to the district government in the 1990s about their land conflict with the national park, but there was no response. New momentum emerged after the fall of the Suharto regime. In 2000, a local NGO, Lembaga Pencinta Alam Awam Green (LPAAG), visited Marena community members. LPAAG was a provincial NGO, established in 1995 by students based in the provincial capital, Palu. Originally, LPAAG was a nature loving student organisation, which cared about environmental issues. However, after seeing the structural problems experienced by local communities in Central Sulawesi, due to restrictions from national parks, they began to pay attention to advocacy. LPPAG has a strategic partner, the NGO YBH Bantaya, also based in Palu.<sup>54</sup> YBH Bantaya in Central Sulawesi and RMI in Banten are also strategic regional partners of the national legal advocacy NGO, HuMa, based in Jakarta (Vitasari and Ramdhaniaty, 2015:23). Together, they started to support Marena community members intensively. How their coalition operates will become clear at the next stage of the legal recognition process.

When the Kasepuhan Karang and Marena community members spoke with NGOs, NGO staff framed their land problems as the consequence of state territorialisation in frontier areas. A popular strategy amongst national advocacy NGOs such as HuMa and AMAN, and their partners at the local level, is to use customary land claims to argue against state territorialisation. Implementing this strategy in Banten and Central Sulawesi resonated with other cases that had been successful in articulating adat as an argument for securing land tenure for local communities in other provinces. In 2001, the Lebak District Parliament (Banten) enacted the first district regulation to recognise customary land rights in Indonesia, for the Baduy community (Toha 2007).<sup>55</sup>

Since 2005, inspired by the legal recognition of Baduy customary land rights, RMI has engaged in promoting district regulations for the

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<sup>54</sup> Interview with the first author and the Head of Marena village, in November 2016.

<sup>55</sup> The Baduy community is a famous exclusive traditional community that rejects any modern influences, including electricity, formal education, and formal religion.

legal recognition of the Kasepuhan as adat communities, as well as supporting them in claiming rights to their customary land. In the beginning, the district government did not acknowledge the Kasepuhan's adat claims, arguing that Kasepuhan communities did not fulfil the required criteria to be defined as adat communities. The majority of Kasepuhan community members had converted to Islam, had received a formal education, and had not maintained adat practices to the same extent as the Baduy, all of which weakened their claim to be a distinct adat community (Vitasari and Ramdhaniaty 2015:27-8).

Similarly, LPAAG and YBH Bantaya, in Central Sulawesi, learned the use of adat strategy from another NGO, Yayasan Tanah Merdeka (YTM), which had successfully assisted the Lindu people in their struggle against land dispossession for a mega-dam project (Sangadji 1994; Sangadji 2007:327). Another strategic case prevented the displacement of the Katu people from a national park area (D'Andrea 2013; Rachman and Masalam 2017). In these cases, using adat as the basis for (re-)claiming land from state authorities was a new strategy that had emerged after rural communities contacted urban activists (Li 2000; Sangadji 2007).

Thereafter, NGOs supported the revival of adat in the Kasepuhan Karang and Marena communities, by promoting the revitalisation of traditional ceremonies, training the villagers to revive customary rules and institutions, and conducting participatory mapping (Nurhawan and Ramdhaniaty 2015; Wiratraman et al., 2010:118-9). The NGOs' intervention can be regarded as a remoulding of existing traditions into a format that is legally acceptable regarding the procedures for customary forest recognition. Customary elders supported these activities, because they strengthened their traditional roles. The NGOs also worked with young community members, to engage them in the adat cause whilst training them in new skills to produce participatory mapping and conflict documentation. The idea was that, as a result of this work, the younger generation would have the ability to transfer the NGOs' agenda to the respective community members (Sangadji 2007:330). In this way, NGOs offered a new way to frame the land struggle regarding adat and indigeneity.

In Kasepuhan Karang, local community members were worried about continuing their agroforestry activities in areas that the government has designated national park. This is coupled with concern caused by the repression they faced when one of their community members was interrogated by the police for making charcoal. Unlike

Kasepuhan Karang, the Marena community have taken active action to counter land dispossession. In 2001, the Marena community took control of 125 hectares of former PD Sulteng plantation land. The community members used the land to establish public facilities and a hamlet. They divided the reclaimed area up into plots of 225 m<sup>2</sup>, one for each family involved in the reclaiming process. When I visited Marena village in 2016, the village head informed me that the National Land Agency had delineated land plots in the area, and Marena community members would receive an individual land certificate for the former PD Sulteng plantation land.

After the successful land claims regarding the PD Sulteng area, the Marena community continued their struggle to obtain better access to the national park area. In negotiations with forestry officials, and with the support of NGOs, the Marena community relied on adat as the basis of their claim. In 2006, NGOs facilitated a meeting with national park officers, aiming to solve the problem of overlapping areas through dialogue, but the National Park officers refused Marena's community land claim. In 2007, adopting an alternative strategy, Marena community elders held an adat tribunal to indict a ranger who had entered the Marena territory without permission, and had then fired his gun into the air for no reason. Instead of accusing the ranger as an individual, the elders adjudicated on the national park as an institutional perpetrator. The head of the national park at the time accepted the adat tribunal's decision, and agreed with the Marena's proposal to establish co-management responsibilities for managing the areas overlapping the Marena community and the national park. This was the first legal recognition to be obtained by the Marena community from a state institution. Unfortunately, it was never implemented, because the head of the national park was replaced, and his successor refuted the previous agreement.

#### 6.3.4. Political opportunities and the legal recognition strategy

With the support of local and national NGOs, the Kasepuhan Karang and Marena communities engaged in various activities to strengthen the basis of their customary land claims. NGOs helped them to revitalise customary values and institutions, and supported the creation of customary land maps. Strengthening their adat identity is a prerequisite to a community obtaining customary land rights recognition. However, national park officers, in both Banten and Central Sulawesi, rejected the Kasepuhan Karang and Marena communities' customary land claims.

This was linked with neglecting to implement regulations to recognise the customary forest of adat communities. At this point, there were no promising solutions available to resolve the conflicts.

In 2013, a new opportunity to solve land conflicts emerged, when the constitutional court granted AMAN's petition for the legal recognition of customary forest. National NGOs pushed the government agencies to create implementation regulations, in order to realise customary forest recognition (see Chapter 3). The MoEF created ministerial regulations on customary forest recognition procedures, and established a working group to select pilot projects. In order to follow-up on this, the national NGO, HuMa, and its local partners, including RMI and YBH Bantaya, conducted a study for a pilot project to implement the court ruling. With financial support from the Rainforest Foundation Norway (RFN), NGO researchers conducted research and proposed that 13 customary forests be granted legal recognition by the government, including Kasepuhan Karang and Marena. The National Commission on Human Rights of the Republic of Indonesia (NCHR) also conducted a national inquiry on violating adat communities' rights in forest areas (see Chapter 3). Both communities were also included as selected case studies by NGOs and NCHR (Cahyono et al., 2016). Therefore, the Kasepuhan Karang and Marena cases became national pilot projects to implement the court ruling.

The legal work turned out to be complicated, because the legal recognition of customary forest required local communities to have the appropriate legal standing as adat communities. This meant that the Kasepuhan and Marena communities first had to be recognised by district governments as adat communities, before the MoEF could designate customary forest recognition. For RMI and its partners, Constitutional Court ruling Number 35/2012 propelled their plan to encourage the local government to create a district regulation on the legal recognition of adat communities in the Lebak district. One of the petitioners for the case in the constitutional court was another Kasepuhan community, the Cisit, which made the ruling even more symbolically relevant for all Kasepuhan communities. Advocates used the court ruling to convince Lebak's district government that every Kasepuhan community should be recognised as an adat community.

In early 2014, RMI and some national NGOs organised a meeting with Lebak's district parliament, which resulted in the parliament agreeing to prepare a district regulation for the legal recognition of

Kasepuhan communities. The leaders of SABAKI,<sup>56</sup> a membership-based organisation of Kasepuhan communities, requested that the district parliament involve specialist NGOs in producing an academic review (*naskah akademik*) and draft regulation. The district parliament agreed and asked Epistema Institute and RMI staff to do the job, the financial support for which was received by the NGOs from the Toyota Foundation. At the time, I was working for the Epistema Institute and was one of the authors of the academic review. Moreover, with the support of Prorep-USAID, an American donor agency, the Epistema Institute organised a knowledge exchange programme for parliament members from various districts, about the law-making process for legal recognition of adat communities and their customary rights (Vitasari and Ramdhaniaty 2015:37). Another national institution, Kemitraan, a semi-NGO donor agency, provided financial support to local NGOs, so that they could explain and discuss the draft district regulation at village level (Vitasari and Ramdhaniaty 2015:38). With considerable support from donor agencies, local NGOs included more adat communities in their constituency, in order to increase political pressure on district government and parliaments.

Meanwhile, in Lebak, the political situation changed in favour of the Kasepuhan communities. A political deal between the incumbent district head and the Kasepuhan communities worked out well, when votes for the district head's daughter as candidate in the district head elections in 2013 were offered in return for his support to recognise adat communities. The district head issued a decree that recognised 17 Kasepuhan communities, and pledged to create a district regulation accommodating more Kasepuhan communities. This strategy led to election victory for his daughter, who was on a ticket together with a Kasepuhan member as deputy district head candidate. Furthermore, the local parliament elections in 2014 resulted in an increase in local parliament members with a Kasepuhan community background. The chairman of Lebak's district parliament, who is also a member of a Kasepuhan community, actively promoted the legal recognition of Kasepuhan communities. Finally, in November 2015, the Lebak district parliament passed a district regulation that recognised 522 Kasepuhan

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<sup>56</sup> *Satuan Adat Banten Kidul (SABAKI)* is an adat organisation that consists of 66 Kasepuhan communities from the Lebak, Bogor and Sukabumi districts. The organization was established in 1968, and it later became a regional branch of AMAN in Banten Province (Mahmud et al., 2015).

community groups and designated 116,789 hectares of land (equal to one-third of the total area of Lebak district) as Kasepuhan territories.

A similar strategy was also carried out by NGOs and local communities in Sigi district, Central Sulawesi. Anticipating trouble in getting a district regulation through parliament, YBH Bantaya, HuMa, and some Marena community members negotiated with the Sigi district government to obtain a district head decree concerning the recognition of the Marena community. Besides a district regulation, a district head can also create a decree to recognise adat communities (see chapter 3). In 2015, the Head of Sigi district issued the desired decree, which had been drafted by YBH Bantaya staff, with substantial input from Marena community members. In the same year, the Central Sulawesi AMAN branch, with support from the Epistema Institute, tried to convince the Sigi district head to issue recognition decrees for the To Kulawi and To Kaili communities, as well. The district head was susceptible to the adat campaign, because he saw the opportunity to barter for political support from local NGOs and adat communities for his wife, who was running as a candidate in the upcoming district head elections.

On the basis of the legal recognition by district governments and parliaments, national NGOs went on to propose that the Kasepuhan Karang and Marena customary forests should receive legal recognition by the MoEF. The NGO specialists assessed their chances of success as favourable because their colleagues, whom the ministry had invited to join a team accelerating the legal recognition of customary forests, could support their case. The next step was the validation and verification of the proposed customary forests by ministry officials. In the case of the Kasepuhan Karang, MoEF officials were hesitant – during the verification and validation process – because the area overlapping with the Mount Halimun-Salak National Park was occupied by thousands of local land users performing agroforestry activities. They assumed that, if legal recognition of customary forest were to be granted to the Kasepuhan Karang community, individual land users might sell the land, because the land plots had been individualised as agroforest gardens. The process was delayed for nearly one year, because a high-level official at the ministry obstructed customary forest designation. National political realities eventually forced the ministry to grant recognition, because part of President Joko Widodo's election campaign was to promise to include the legal recognition of adat community rights in the national development programme. The ceremony in December 2016, at the Presidential Palace, where President Joko Widodo handed

over the legal recognition decree for customary forests, was the final fulfilment of the president's pledge to adat communities.

In Marena, the verification and validation of customary forests at ground level generated problems. When Marena community members found out that MoEF officials had not included the national park area that overlaps with Marena customary territory, they objected to the area that was ear-marked for recognition. Their objection caused a delay.<sup>57</sup> Finally, in 2017, while attending the AMAN Congress in North Sumatra, the Minister of Environment and Forestry announced that the government would grant legal recognition of the Marena customary forest. However, that too did not resolve the forest tenure conflict between the Marena community and the Lore Lindu National Park, because that recognition also excluded the national park area.

#### 6.3.5. Outcomes of legal recognition

These two case studies show that it is possible for local communities to obtain legal recognition of their customary forests in Indonesia. The Kasepuhan Karang community gained customary forest recognition for the first time in 2016, along with other adat communities invited by the president to receive a legal recognition decree at the presidential palace. In the customary forest recognition decree, the MoEF released some national park areas, redesignating them as customary forest areas of the Kasepuhan Karang community. In addition, the MoEF also redesignated some non-forest areas – originally outside of the MoEF jurisdiction – located in Kasepuhan Karang territory as customary forest areas, because the geographical conditions of the land need to be protected as forest. Ironically, customary forest recognition expanded the MoEF authority to implement forestry regulation into Kasepuhan Karang community territory. On the other hand, the legal recognition of the Kasepuhan Karang customary forest ended repression by national park rangers. Therefore, adat communities are not completely free of the Ministry of Forestry's control.

Although the MoEF had recognised the customary forest, other problems emerged in the follow-up. Many local land users had cultivated land plots in the customary forest for a long time, but most of them were not members of the Kasepuhan Karang community. A detailed analysis of this, and other 'after the victory' problems, will be discussed in chapter 7.

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<sup>57</sup> Interview with the Executive Director of HuMa, in June 2018.

In contrast to the Kasepuhan Karang community, which gained full recognition of its customary territory, the Marena community only received partial legal recognition. From the start of the conflict, Marena Community members had been complaining that their land overlapped with the national park. During the verification process for their application to get customary forest recognition, MoEF officials refused to include any part of the national park in the area to be recognised as Marena customary forest. This led to protests from Marena community members. As an alternative to the community's land claims, MoEF officials had shifted the location of the application to include 405 hectares of protected forest outside of the national park. The ministry had also added 756 hectares of Marena territory non-forest area to the customary forest application. Nonetheless, the Marena customary forest application now covered a smaller area - around three quarters of what they originally claimed. The area was also different in quality, because the Ministry of Forestry had excluded the national park area, and had compensated for it by providing a portion of protected forest area as Marena community customary forest.

Similarly to the Kasepuhan Karang case, the MoEF expanded its authority by designating non-Marena community territory forest as customary forest areas under MoEF supervision. Consequently, the legal recognition process of customary forests expanded MoEF control over customary territories. Moreover, the MoEF restricted adat community members from maintaining the forest according to its natural condition and forest function, as determined by the MoEF. Land transactions are not legally allowed, because the MoEF stated in its recognition decree that adat community members are prohibited from selling land in the customary forest. This means that legal recognition of customary forests does not guarantee adat communities full autonomy in exercising their authority over customary forests.

#### 6.4. Enabling factors for legal recognition of customary forests

The success of customary forest rights recognition not only relies on the fulfilment of legal requirements stipulated in regulations, it also depends on other enabling and constraining factors. Identifying enabling factors helps to understand why adat communities, in some cases, have succeeded in getting legal recognition, whilst others have failed. From my analysis of the two case studies of the communities in Kasepuhan Karang and Marena, I have identified internal factors related to characteristics or conditions within the communities, and external

factors referring to supporting circumstances created by actors outside the communities.

#### 6.4.1. Internal factors supporting recognition

Reflecting on the process in the two cases, I found at least five internal enabling factors for the legal recognition of customary forest. The first factor is consensus amongst the community members regarding their land tenure problems, their objectives, and their strategies for obtaining legal recognition to resolve forestry tenure conflicts. This seems to be a very obvious factor, but as the previous chapters have shown, it is not self-evident at all in practice.

The second factor is continuous support from the most powerful groups in the community. It is commonly known that a local community is not a single entity, but that it consists of different social groups. A local community is divided by clan, ethnicity, and occupation. Another crucial factor is the support of village heads. Both the case studies in this chapter show how important strong support from the village head is to the legal recognition agenda. In Indonesia, the village head is elected through direct elections by all villagers; therefore, the village head has political legitimacy at the local level. In addition, the village head is also representative of the state government, because they implement government programmes and obtain financial support from the government.

The third factor is the presence of community members capable of acting as intermediaries between all stakeholders. These key actors hold doubly strategic positions. On the one hand, they hold the position of representing local community interests when dealing with government officials. On the other hand, they have the ability to translate, for most community members, the advocacy agendas led by NGOs. This key actor is not always a formal or traditional leader in a local community. Sometimes, the actor comes from an educated group in society, because of his/her formal education. Or it is someone who masters playing the double role, because they are experienced in interacting with outsiders - for instance, because they have worked in a city.

The fourth factor concerns the ability of local community members to put political pressure on policymakers. Local communities can pressure policymakers at the national and district levels through demonstrations and other forms of social protest. Another way to put pressure on policymakers is through national and local elections. Local communities with a significant number of voters can encourage

candidates for the head of district elections, and district parliament members, to make legal recognition a priority in their campaign agendas. The Kasepuhan Karang and Marena community cases both show how significant numbers of local community members can support other community members in getting elected to district parliament. They can also convince candidates for district head elections to make a political contract to support the legal recognition agenda.

The last enabling factor concerns the potential transformation of adat from a set of social rules into a tool for exclusion in land conflicts. Many local communities still practice traditions inherited from their ancestors, for various purposes. The main role of adat can be found in many ceremonies regarding the life cycle - for example, those celebrating birth, marriage, and death. Most local communities also preserve traditional practices in land and natural resource management, for instance, by conducting post-harvest festivals. Both case studies show how local community members apply customary rules in everyday life, but using adat as the basis for collective land claims, and excluding outsiders (in these cases, the national park agencies), is a relatively new strategy for the communities.

#### 6.4.2. External factors supporting recognition

External factors refer to the supporting circumstances created by actors outside of adat communities. The first external factor is the intensive support of NGOs in promoting legal recognition. In Chapter 1, I identified four types of NGOs in adat advocacy: local NGOs, national advocacy NGOs, specialised NGOs, and international NGOs. The diverse support of various categories of NGO is the most important element for legal recognition. Local NGOs intensively assist adat communities and connect with other categories of NGO at the national and international levels. Support from specialised NGOs makes the articulation of adat as a basis for land claims clearer, because NGOs can help adat communities to deliver their messages using policy language. For instance, NGOs can create customary land maps that clearly define the boundaries of customary territories, which is essential for making policymakers aware of such territories. Another important activity is transforming the demands of adat communities, via specialised legal NGOs, into draft regulations on the legal recognition of adat communities and customary forests.

The second external factor is a supportive national political and legal climate. A legal-political opportunity was created by the Constitutional

Court's ruling number 35/PUU-X/2012, affirming the status of customary forests as being separate from state forests. The ruling provided momentum for national NGOs to urge the national government to create procedural regulations on the legal recognition of adat communities and customary forests. National NGOs were involved in preparation of the regulation, and became members of a team created by the government to prepare pilot projects for customary forest recognition.

Another factor related to opportunity is supportive political momentum, particularly in terms of general elections – including those for president, district head, and district parliament. This opportunity is created because candidates need voters to obtain political positions at the national and district levels. Adat communities with a significant number of voters attract the attention of candidates. At the national level, AMAN played a role in encouraging presidential candidate, Joko Widodo, to incorporate the agenda of legal recognition into his political programmes. In return, AMAN conducted a campaign for the election of Joko Widodo. After Joko Widodo was elected as president, AMAN and other NGOs worked to ensure Joko Widodo realised his political promise. Similar negotiations were conducted by adat communities in Banten and Central Sulawesi. They made political contracts with district head candidates to include an agenda of legal recognition in their political programmes.

The third factor is the character of the opponent in forest tenure conflicts. The two case studies in this chapter discuss land conflicts between adat communities and national park agencies. The national park agency is a unit under the Ministry of Environment and Forestry; therefore, it is a government agency. In this kind of conflict, actors involve adat communities versus state agencies. I acknowledge that state agencies are not a single entity, consisting instead of various branches, with various authorities and operating regulations. In the context of legal recognition, if the top policymakers in government agencies (for example, the president and ministers) have recognised adat communities and customary forests, then subordinate agencies will follow the legal recognition. This is different in the context of conflict between adat communities and companies, as I discussed in chapters 4 and 5. In such conflicts, the characteristics of conflict are more complex, because they involve three groups of actors: adat communities, business companies, and state agencies. In this kind of conflict, legal recognition is an intermediary step for adat communities in solving their land

conflicts with business companies. I argue that the more direct conflict is, with legal recognition actors in government agencies, the more likely it is that adat communities will obtain legal recognition.

The fifth factor relates to the legal status of forests in land conflicts. Forest areas can be designated as production, protected, and conservation forest. A detailed explanation of the differences between the three functions is discussed in Chapter 2. The Kasepuhan Karang and Marena communities face land conflicts in conservation and protected forest areas. In these areas, no natural resource extractive businesses were in operation, as in the case of the Cek Bocek community (in Chapter 4) and the Pandumaan-Sipithutan community (in Chapter 5). In Kasepuhan Karang and Marena, land conflicts occurred between adat communities and national park agencies. The national park agency manages conservation forests, aiming to protect the forests from degradation. This aim aligns with the argument in the legal recognition of customary forests that adat communities are also guardians of the forest. Therefore, in land conflicts related to conservation areas, government agencies and adat communities share, at least in name, a similar value: to protect the environment and apply sustainable forest management. This idea of adat communities as guardians of the environment is an essential element of the emerging indigenous peoples' movement in Asia (Li 2001; Tsing 2007; Inguanzo 2018). The idea is supported by current customary forest recognition statistics. As of 2021, the government designated 75 customary forest sites throughout Indonesia. Of these 75 cases, 70 customary forest recognitions are designated from forest conservation and protected areas, and forest areas where the government has granted no land concessions to business enterprises. It shows that legal recognition hardly applies as a solution to land conflicts between adat communities and business enterprises.

The sixth factor is the support of government agencies with interests that converge with community interests. Both cases in this chapter reflect adat community interests in gaining legal access to agroforestry land, and adat communities can apply conservation-based customary rules in their territories. Other claims that often arise amongst local communities in land conflicts, such as demands for compensation or employment (as reflected in Chapter 4), did not appear in these cases. The community demands, in both cases, aligned with district government and MoEF interests. District governments support income generation for local communities from what used to be conservation

areas. In addition, the MoEF can expand its territory, because it also designates non-forest areas to be included in customary forest areas.

### 6.5. Conclusion

The case studies in this article provide two examples of how a local community manages to obtain legal recognition of their customary forest in a situation of land conflict with a national park agency. One community obtained full recognition, whilst another was partly successful. With the help of local development NGOs, the local communities translated their land problems into grievances that can be solved via legal recognition of their customary forests. Local NGOs trained local community members in presenting their grievances to policymakers, following the criteria for recognition, (for example) by using participatory mapping and by reviving expressions of traditional culture. After decentralisation moved recognition authority to the district level, specialised NGOs used their legal expertise to draft district regulations recognising specific adat communities. They worked as consultants for various parties involved in negotiations about customary land and forests. Local communities also started to engage in district politics, bartering constituency votes for political support for legal recognition. The consequence of this narrow focus on legal recognition is that recognition itself has become the end result of both projects.

This chapter also shows that successful case studies are not only determined by fulfilment of the formal requirements for legal recognition, as required in the regulations. Notably, encountering internal and enabling factors is crucial to being successful in the legal recognition process. Full combination of these factors is a rare coincidence. Internal and external enabling factors for the legal recognition process are complementary. However, this chapter shows that NGOs providing support, and the ability of adat communities to push government agencies to create legal recognition decrees, are the most determinant factors in the legal recognition process.

Successful legal recognition cases can inspire other local communities to follow a legal recognition strategy as an option for solving their own land conflicts. However, the effectiveness of customary forest recognition in addressing the main causes of land conflicts has not often been researched. The questions remain: Does legal recognition resolve the initial complaint by local community members, concerning land dispossession? Does legal recognition guarantee tenure security for individual land users? These questions will be explored in

the following chapter, where I discuss the impact of legal recognition on customary forests.

