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

Arizona, Y.

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8

Conclusion: Rethinking legal recognition of adat communities and customary forest rights

8.1. Introduction: The root cause of forest tenure conflicts

As many studies have demonstrated, in Indonesia, forest tenure conflicts between local land users and corporations, or the government, have existed since the colonial period. Forest tenure conflicts occurred due to the colonial government policy of territorialising the customary land of native populations (Vandergeest and Peluso 1995). Through territorialisation, the Dutch colonial authority claimed that the forest area was state property, divided it into forest types and functions that distinguished it from non-forest area, and excluded the local populations living near forest area. Forest management practices from the colonial period still form the foundation of the national forestry system. As a result, land conflicts in the forestry sector – forest tenure conflicts – have expanded, along with the current government expansion to control land and resources as state forest area.

The Government of Indonesia has continued the forest management policy of the Dutch colonial government, by controlling forest areas as state property. From the 1960s onwards, state control has expanded into frontier areas, mostly forest areas outside Java. The Ministry of Forestry continues to divide forest areas into various categories for nature conservation, forest production and extractive activities. Meanwhile, forestry regulation facilitates concessions for corporations, but limits local community access and their rights to benefit from forest land and resources. The government has claimed exclusive control over forest areas by declaring them state property, separate from individual and collective private property. Local communities' activities in forest areas are criminalised by various forest regulations. The denial of rights and access for local communities living around forest areas has triggered many conflicts.

When local land users feel their tenure security decreasing, whilst their vulnerability to criminalisation increases, a basis for land conflicts is established. Conflicts arose when government authorities and companies holding forest concession permits claimed the boundaries of forest areas for conservation purposes and for the exploitation of natural resources. Such conflicts were proliferating, but the government was

unwilling to make any concessions, especially during the colonial period and under the New Order regime.

In the late 1970s, the Food and Agriculture Organisation of the United Nations (FAO) began to stress the importance of local community involvement in forest management, in terms of overcoming the timber crisis that occurred after World War II. In Indonesia, a network of NGOs and academic scholars began to grow, and this network encouraged the government to make room for community involvement in forest management. NGO and academic networks promoted community-based forest management, based on the argument that engaging local communities in forest management would provide opportunities to overcome the root causes of forest tenure conflict. In response, the government began to develop schemes to resolve forest tenure conflicts between local land users and the government (or companies). Various terms, such as 'social forestry', 'community forestry', and 'community-based forest management' appeared during this period.

After the fall of Suharto's authoritarian regime, in 1998, initiatives to create a proper mechanism to address forest tenure conflict were expanded. This was supported by a democratic environment, in which more NGOs were being established, and local communities were becoming more courageous about championing their rights, in order to obtain a solution to their conflicts with companies and government agencies.

With the support of NGOs, academics, and international funding agencies, the government of Indonesia incrementally created policies and programmes to address forest tenure conflicts by engaging local communities in forest management. The Ministry of Forestry created various schemes to increase local communities' legal access to state forests, through licensing (village forests, community forests, people's plantation forests), and through cooperation agreements between communities and companies or state conservation agencies. However, the schemes did not address the root cause of the problem, where land ownership status was concerned. The schemes legitimised state control over forest areas, and legalised only temporary community access to manage state forest during a certain period. Nonetheless, these social forestry schemes helped to prevent conflict, and contributed to increasing the income of people living near forest areas.

By contrast, customary forest recognition (in theory) addresses the root cause of forest tenure conflicts. This option gained momentum in

2013, when the Constitutional Court affirmed the legal status of customary forests and urged the government to recognise customary forests legally. Adat community rights advocates considered the court decision a significant victory, and expected it to create breakthroughs in resolving forestry conflicts. Their expectation was based on the fact that recognition of customary forests could be implemented for various categories of state forest area. In addition, the recognition of customary forests can be a solution to various interests that community members have in forest tenure conflicts; for example, to secure tenure or resources for their livelihood, to protect the environment, or to obtain compensation and other benefits from companies or government agencies operating in their territories. In response to the court ruling, and in order to solve forest tenure conflicts, several ministries have created operational regulations which allow the recognition of customary forests.

However, until now, only a few adat communities have obtained customary forest recognition. The combination of a promising option for a legal solution and the meagre results in practice led to my opening question: Why has state legal recognition of adat communities and customary land rights in Indonesia not been effective in reducing land dispossession in situations of land conflict?

My research has shown that legal recognition of customary forest has become a real option for settling tenure conflicts in various types of state forest. My research has also shown that legal recognition of customary forest has many limitations. I will discuss the limitations in this concluding chapter, starting with issues related to legal requirements, following with the processes involved, and ending with the results of legal recognition. Despite the meagre results so far, I do not want to rule out the possibility of change in the legal recognition procedure in future. Therefore, the final section of this chapter will propose some insights into resolving forestry tenure conflicts, such as adapted social forestry schemes, and legal reform to simplify legal procedures and enable local community access to forest areas and resources.

8.2. There are no simple land conflicts

The Constitutional Court's 2013 ruling, affirming the legal status of customary forests, offered new hope for the resolution of land conflicts. In 2016, for the first time, the Minister of Environment and Forestry

recognised nine customary forests. Supporters of adat community rights hoped that these successful cases could be used as models, which could be replicated to resolve forestry tenure conflicts in various places in Indonesia. This has turned out to be difficult, mainly because each case is so different, and even the success cases are complex. Investigating the characteristics of each forest tenure conflict is therefore essential to understanding the nature of forest tenure conflicts, generally.

Defining the main problem in a land conflict is the necessary first step towards solving it. Often, NGO activists simplify a land conflict by framing it as a two-sided adversarial relationship between a local community and a company, or a government agency. Government agencies and NGOs have standardised the cases into quantifiable units of land conflict, without paying attention to the variety of conflict types and causes. Subsequently, land conflict cases have been counted annually and aggregated into national figures, which give the impression that land conflicts are escalating and occurring everywhere. By contrast, my research has shown that cases of forest tenure conflict are much more complex. Local community members, government agencies, and corporation units are not monolithic units (Welker 2014). Within each category of actors there are sub-groups, each with different positions and interests. The different actors (with their different interests) determine the strategies, objectives, and indicators by which the success of a strategy is measured.

This point is particularly relevant where communities are concerned. NGO activists and researchers usually define a community as a group of people who have the same interests, strategies and objectives. In land conflicts, activists and researchers usually perceive an adat community as an homogeneous group, which is isolated, reliant on subsistence agriculture, and has social, economic, and political autonomy. By contrast, my in-depth ethnographic research found a variety of factions within all the communities. I looked at the differences referring to status and interests; for example, between men and women, old and young, educated and ordinary people, natives and immigrants, farmers and traders. Each combination of status and interest corresponds with specific objectives and strategies in the face of conflict.

I found that, in every forest tenure conflict, community members have at least four different objectives, including: securing their source of livelihood; protecting the environment; obtaining benefits from natural resource extraction companies in their region (such as joint management arrangements, business contacts, and CSR programmes); and obtaining

compensation payment. These objectives may be aligned, but they may also conflict. The various groups in a community (with their own aspirations) can act as a coalition, but they often compete. An agreement amongst different groups about the common objectives and expectations of the whole community is crucial, in order to build group solidarity and form a strong party in negotiations with government institutions and corporations. Only when there is consensus about problem definition, objectives and expectations, will it be clear which conflict resolution measures are suitable. Hence, achieving a conflict resolution agreement based on customary forest recognition does not always end a land conflict.

8.3. A process approach for studying land conflicts

Every land conflict involves an interplay between actors with their own interests, over a long period of time. Therefore, it is impossible to get a better understanding of a particular case by capturing only a specific moment in the course of the conflict. In this thesis I have used a process approach to analysing the course of land conflicts. Specifically, I analyse the legal recognition of customary forests as a process in which local communities involved in land conflicts with government agencies and corporations seek solutions by following legal procedures. The process approach is constructed to analyse every step of legal recognition, from the identification of land tenure problems, through the categorisation of conflict as customary land conflict, and the identification of enabling and constraining factors in achieving legal recognition, to the implementation and impact of legal recognition.

From the case studies discussed in this thesis, I found that agreement between community members on the problem behind the land conflicts they are experiencing is an essential step towards obtaining legal recognition of their local community customary land rights. Such agreement is important to reducing friction in the community, and to being a unified actor in the campaign for recognition. Given that the process for obtaining legal recognition is long and complicated, community solidarity is essential for keeping spirits up. The next step is categorising a conflict as an adat land conflict. Local communities underpin their land claims and strategies with arguments about the position of adat in the history of a specific community. Often, the communities show or revitalise adat institutions, in order to make the adat nature of a community visible to policymakers. Other actors

relevant in the preparatory steps of the legal recognition process are the intermediary actors, especially NGO activists and academics, who can transmit the interests of adat communities to policymakers at regional and national levels.

Support within the national and local political context is a key factor in legal recognition. At the local and regional levels, adat communities use general elections for village heads, district and provincial heads, and parliament members in the region to negotiate their demand for legal recognition. Adat communities promise to secure votes for the candidates and, in return, they ask that candidates put the legal recognition of adat communities and their customary land rights at the top of their political agenda. Political democracy, after the demise of the New Order regime, has provided the opportunity for such communication between adat communities and policymakers. However, even if adat communities can influence regional policymakers via general elections, this does not offer any guarantee that the process of legal recognition will run smoothly. Adat communities, with the support of NGOs, cannot fully control decision making in the legal recognition process. Actors in government have the power to slow down the legal process, divert local community demands, or even reject claims made by adat communities. Aside from the government, other actors, such as companies and competing adat communities within the region, also often challenge customary land claims (see Chapter 4).

If a community has succeeded in obtaining legal recognition as an adat community with its customary forest rights, the process has not ended, because the existing conflict still has to be solved. That is why my research included the implementation and impact of legal recognition at the local level. From the case study in Chapter 7, I observed that full legal recognition of customary forests does not always provide tenure security for individual land users, especially for inhabitants who are not members of the adat community concerned. In that case, the village government can establish an informal land registration system to ensure individual tenurial security for recognised customary forest land users. However, such a registration system opens up opportunities for an informal land market, which may in turn lead to the alienation of customary community land.

The process approach in this study helps to analyse the complexity of the legal recognition of adat communities and customary forests. It enables a sophisticated analysis, which connects problems experienced

by local communities to solutions that will address the root causes of these problems.

8.4. Adat community is a political concept

During my research, I found that what constitutes an adat community is not as self-evident as it sounds. As a legal problem, the question is how to assess a community's identity by criteria for who belongs to the community and who is excluded from it, as defined by law. Compliance with such criteria is decisive in determining which communities are eligible for state recognition.

I found that the legal definition of adat communities is inadequate for recognising communities as such, and thus for supporting the realisation of adat community rights. Scholars have proposed alternative ways to define adat communities, particularly in international discussion about the definition of indigenous peoples. Miller (2003) defined four dominant academic approaches to indigenous groups, based on historical, substantial, prototype, and relational criteria. The historical approach identifies an indigenous community based on its local history, primarily to underpin that the community was living in a particular area before the arrival of other dominant groups, including colonial rulers. The working definition of indigenous communities by Jose Martinez Cobo, a former UN special rapporteur, is the most widely referred to definition in the discussion of indigenous peoples at the international level, and it emphasises the historical process as a critical element for determining the identity of an indigenous group. This element is particularly relevant in the context of settler colonialism, such as in Canada, the Americas, New Zealand, and Australia. However, it is less relevant to many countries in Asia and Africa, where native communities have established new nation states and passed through a period of post-colonisation (by Europeans). This historical approach is not only relevant to understanding the relationship between the local population and European colonials, but also to understanding the competition between different claims from the local population itself. In Indonesia, this approach is relevant to cases of competition between adat groups that are arguing about the prior occupation of a particular area of land, or about prior rule – as per the situation which occurred between the Sultanate and the Berco community in the Sumbawa case discussed in Chapter 4.

The substantive approach emphasises cultural differences between the adat community and dominant groups in rural communities. This approach depicts an indigenous community as unique, homogeneous, isolated, prioritising harmony over conflict, and practising subsistence agriculture rather than supplying products for the global market. NGOs and representatives of adat communities often use this approach in advocacy campaigns and political debates, to underscore the importance of their cultural rights. The revitalisation of adat institutions and rituals follows this approach. However, this perspective ignores the fact that, at present, adat communities are well-connected to the rest of the world, including the government, companies, NGOs, and academics. Claiming to be a distinct cultural group serves arguments for recognition, when encountering external forces or land dispossession.

The prototype approach perceives indigenous groups as a fixed category that can be distinguished from other categories. Customary law studies during the colonial period in the Dutch East Indies divided native communities in the colony into several types of social group. The division of native communities was based on genealogy, territory, or a combination of the two (Haar 1962). The Constitutional Court ruling Number 35/PUU-X/2012 added another category of adat community, based on how a community functions. This category defines the status of an adat community, with reference to its roles within the government structure and society. Similar to the substantive approach, this approach tends to see all adat communities as a fixed and static group. This approach is also supported by the notion of community held by internal adat community members. Adat community members identify themselves as a community, based on ethnicity, kinship, forefathers, and a 'myth of origin'. Their identity markers are essential for internal use within the clan (inheritance, land use, sharing common resources), and for relations with other clans under the same, but larger, adat community society (marriage, exchange of goods). The prototype approach is adopted in legislation, because it provides a standard for policymakers to identify adat communities. This approach assesses indigenous communities as a formalistic legal concept. Therefore, if a community has met all the criteria, then it can be recognised as an adat community.

My conclusion, derived from the previous chapters, is that: (1) the first three approaches are essential for constructing the criteria and arguments for legal recognition; but (2) the decision about what constitutes an adat community is ultimately political. This means that

the definition of adat communities relies on the power relations between various parties involved in the legal recognition of adat communities and customary land rights. This relational approach considers the position of an adat community to be the result of negotiations between various actors in the process of legal recognition. Following this argument, a local community that meets the legal criteria to become an adat community will not always obtain legal recognition. On the other hand, a community which does not fulfil all the criteria for an adat community can obtain legal recognition if the community members, supported by intermediary actors, can convince policymakers to grant legal recognition (see Chapter 5). In this concept, membership of adat communities relies on the active participation of local community members in presenting adat as a tool for self-identification. Additionally, legal recognition depends on competing interests and the interpretation of legal procedures by different actors involved in the legal recognition process, which is why I conclude that adat community is a political concept.

8.5. State recognition is conditional

A central theme in the debate about adat community rights in Indonesia concerns the conditions that a community has to fulfil for legal recognition. In this thesis, I have argued that conditional legal recognition of adat community rights was first applied in the colonial period. In the Dutch East Indies, the colonial government introduced the repugnancy principle, to ease the distinction between customary law and the newly introduced European law. It made the implementation of customary law dependent on a sense of justice according to European law. The repugnancy principle was introduced in the field of criminal law, in order to avoid the inhuman punishment of Dutch colonial officials. It was quite concerned with perceived lack of 'civilisation' in criminal punishment, generally. When the Republic of Indonesia was established in 1945, a similar principle was used as a strategy to ease tensions between customary law and state law, including in land law. At the time, lawmakers were concerned with creating legislation to support national development. The Basic Agrarian Law of 1960 recognises the rights of adat communities to land, with several conditions, such as that customary land tenure management exists and is actually practiced, and that customary land rights do not contradict national and government interests. They do not conflict with the state laws and regulations. This

conditional recognition clause was followed by many laws regarding adat communities in Indonesia, and was adopted into the constitutional norm during constitutional amendments in 1999-2002.

Conditional recognition is a structural problem, and it is embedded in Indonesian land law for realising adat community rights to land. This conditional recognition clause is limiting rather than empowering adat communities. On the one hand, this clause provides specific standards for adat communities to obtain legal recognition. On the other, it provides legitimacy for the government to not recognise customary land tenure if it is not in line with government interpretations and interests. For many decades, the government of Indonesia was reluctant to recognise customary land rights. However, the rise of an adat community movement in Indonesia and the widespread use of adat claims in land conflicts have both led to a new interpretation of adat in Indonesia. This new interpretation of adat community rights is connected with the global discourse and movement on human rights and environmental protection. By referring to international instruments on environmental law, the Constitutional Court ruling in 2013 affirmed the status of customary forests, but it did not correct the conditional recognition model (see Chapter 3). This is because conditional recognition has become an integral part of the Indonesian constitution (Article 18B [2]), adopted in the constitutional amendment in 2000. Therefore, any attempt to assert the existence of adat community rights is subject to these legal restrictions. Consequently, this condition makes an effort to obtain the legal recognition of adat communities and customary land rights the subject of negotiations about and interpretations of laws and regulations, in practice.

8.6. Legal recognition is the result of negotiation

In my initial understanding, legal recognition was a process by which a government institution would provide a document determining the legal status of adat communities, with regard to their rights to land and resources. In short, a local community can automatically become an adat community when it fulfils all the formal requirements to get legal recognition from government agencies. In this sense, legal recognition confirms the status, land rights, and natural resource management practices of adat communities. My initial views have changed during the writing of this thesis. I found that legal recognition is a process of political negotiation. Therefore, the capacity of actors, networks,

strategies, and opportunities needs to be analysed, in order to understand the legal recognition process.

Legal recognition, understood as a negotiation process, will only succeed if two main conditions are met. The first is that local communities, supported by NGOs, have the ability to exert political pressure on state agencies, in order to ensure that they will put legal recognition on their agenda. The second is the willingness of key government agencies, and any corporations involved, to negotiate. If the parties involved in the conflict are reluctant to cooperate, the legal recognition process will be long and complicated. Chapter 5 shows the complexity of legal recognition amid ongoing land conflict between local communities and forestry companies. In that recognition process, adat communities (supported by NGOs) had to ensure that government agencies would not slow down the process or divert the community's demands. In the continuing negotiation process, the moment when legal recognition is obtained is not the end of the land conflict, but rather a step towards raising the position of local communities, after which negotiations can continue to meet the initial demands of local community members.

8.7. The chances of legal recognition are limited

In theory, legal recognition of customary land rights is more likely than other social forestry schemes to resolve different types of forest conflict, and to accommodate the diverse interests of the local communities involved. However, this research shows that legal recognition is not always an ideal solution. The legal recognition process for customary forests is even more complex than those for other schemes to settle forestry tenure conflicts. In the customary forest recognition process, many actors are involved at the village, district, provincial, and national levels. The legal procedure is long and layered, because local communities must first obtain legal recognition as an adat community group, before applying to gain legal recognition of their customary forest. The legal recognition process also involves a technical process, supported by academic scientific research, and an administrative process concerning the fulfilment of requirements. Finally, there is the political process of decision making by local governments and the minister of forestry.

Until 2021, there had only been a few successful cases of legal recognition of customary forest as a solution to forest tenure conflict. My

conclusion is that most of the legal recognition of customary forests is conducted by the Ministry of Forestry, in order to turn non-forest areas into the customary forests of adat communities. I found that 62 of the 75 customary forest recognitions involved the transformation of non-forest area to being under the jurisdiction of the Ministry of Forestry.⁵⁹ Following this pattern, customary forest recognition strengthens the authority of the Ministry of Forestry both to expand the forest area and to impose restrictions on how local communities manage their land.

My research also indicates that if the disputed location is a forest concession area for forestry or mining operation companies, legal recognition of the customary forest is difficult to obtain (see chapters 4 and 5). The situation is different if the prospective customary forest is in a location directly under the control of the forestry agencies; for example, conservation forests managed by national parks, and production forests managed by forest units under the Ministry of Forestry (see chapters 6 and 7). In short, legal recognition is more likely if the land use of conflicting parties can actually be combined – as in cases of nature conservation plus the gathering of non-timber forest products or the cultivation of small gardens.

Recognition of customary forest could become easier for local communities in forestry tenure conflicts, if the legal recognition procedures and processes are simplified. Adat communities are often trapped in a complex process of adat identification, as a precondition to resolving their actual land conflicts. Chapter 5 illustrated this through the case of local land users, who initially only wanted to defend their land against dispossession, but then became entangled in the procedure for obtaining legal identity as an adat community group. The process diverted the efforts of community representatives away from their initial interests to end land dispossession. Therefore, the simplification of legal procedures is an elementary factor in speeding up the legal recognition process.

8.8. Conclusion: Land conflicts require tailor-made solutions

No one procedure is the most effective for resolving forestry tenure conflicts. This is because each forestry tenure conflict has different characteristics; different actors, interests, objectives, and strategies, and

⁵⁹ Personal communication with Kasmita Widodo, the head of Badan Registrasi Wilayah Adat (BRWA), a non-government organisation dedicated to gathering all the maps of customary territories in Indonesia (December 20, 2021).

different categories of forest allocation by government agencies. There is no single mechanism that can resolve all kinds of forestry tenure conflict. Therefore, the effectiveness of a particular mechanism should not be measured by its ability to resolve all types of land conflict, but instead by its precision in solving specific cases simply and quickly. In addition, the success of a conflict resolution mechanism must be measured by referring to the expectations and objectives of the parties involved, especially the land users, when they first categorise the problems they face as forest tenure conflict problems. In short, the effectiveness of land conflict resolutions should be measured by their ability to provide a remedy, by comparing the outcome with the initial expectations of the groups involved in the conflict.

Under certain conditions, legal recognition as customary forest is the ideal solution for resolving forestry tenure conflicts. This thesis shows several conditions, as prerequisites for legal recognition as a solution to land conflicts. The first is that the dominant group in a local community has succeeded in formulating their common problems as problems related to customary land conflict. This will be supported by the creation of internal solidity in the community, to maintain the land as a source of livelihood and commitment to protect the environment for future generations. The second is the support of intermediary institutions, such as NGOs and academic scholars, who can bridge community interests and the interests of the government. In addition, intermediary actors can help the community fulfil the requirements stipulated in regulations, regarding the legal recognition of customary land rights. The third factor is the government's openness to cooperation. This is strongly encouraged by the common interests of the government and local community, which might converge; for instance, interest in protecting the environment, or increasing local community production in agroforest activities. Nevertheless, not all of these conditions arise in land conflicts where local communities are using adat land claims as their argument to defend their rights and interests. Therefore, customary land claims are often ineffective in the resolution of land conflicts.

Assessing the effectiveness of conflict resolution mechanisms also requires analysis over a more extended period, considering that conflict resolution models are not static, but are developed based on the successes and failures in their implementation over time. For example, in Indonesia, social forestry programmes as a mechanism to resolve forestry tenure conflicts began in 1980, with the intercropping scheme.

After more than three decades, social forestry schemes are developing which provide a solution to addressing many types of land conflicts. Such schemes include the simplification of procedures for local communities to engage with social forestry programmes, and extensive support from NGOs in implementing the programmes. As a result, the number of social forestry permits is rapidly increasing. In short, procedures for the resolution of forestry tenure conflicts are very dynamic, and their response to practical problems are encountered by local communities in land conflicts. Likewise, the current procedure for legal recognition of customary forests has many limitations. This legal recognition process can be developed and made more effective, if some obstacles in its implementation can be eliminated.

In order to make the legal recognition mechanism an effective solution for resolving forestry tenure conflicts, several things need to be considered. On a technical level, the procedure for customary forest recognition should be more straightforward. The current procedure for legal recognition is long and complex. It does not focus on resolving land conflict, but gets distracted by identifying the adat community's legal personality. In addition, the government also needs to provide more flexible options for local communities addressing land conflicts. The current regulation on forest tenure conflicts is complicated. It is impossible for the local community who have gained access to social forestry to change their territory's status as customary forest. Therefore, the government needs to create a transitional regulation, from various social forestry schemes into legal recognition of customary forest. The choice of conflict resolution options should not be a fixed and final decision, but rather an attempt to eliminate the root cause of land conflict and obtain a remedy. A flexible mechanism will significantly help local land users in resolving land conflicts to obtain remedy.

Although this study concludes that legal recognition of adat communities and customary forest has not had much impact on the resolution of forestry tenure conflicts in Indonesia, it does not recommend that adat strategies should be discarded altogether in land conflicts. Adat will continue as an alternative narrative for local communities in response to land conflicts, since adat is the basis of entitlement that connects people, land and history. Local communities will continue to use what they have, including adat, as an argument to support their interests in land conflicts, especially if there is no other effective land conflict mechanism to uphold their demands.

Summary

Rethinking adat strategies: The politics of state recognition of customary land rights in Indonesia

In Indonesia, rural communities use state legal recognition of customary land rights as a strategy to protect and reclaim their land against dispossession by companies and government agencies. This has been the prominent strategy after the demise of the-Suharto regime, in line with the democratisation process, decentralisation policies, and support from international funding agencies for environmental protection and indigenous people's rights. This book discusses recent developments in the use of customary land rights strategies in which the main assumptions are that state legal recognition will provide adat communities legal certainty and will lead to solving land conflicts.

This thesis questions these assumptions. It is based on socio-legal research, combining legal and empirical research. For this purpose, I have created a specific analytical framework, to understand the legal recognition of customary land rights as a policy-making process that involves many actors, at various levels. My empirical research focused on cases in the three provinces North Sumatra, Banten, and West Nusa Tenggara. These cases were selected based on an inventory of current initiatives for gaining legal recognition of adat communities and customary land rights. On the one hand, the case studies selected have in common that the local communities involved were supported by local and national NGOs, and received extensive media coverage, making them showcase examples of state legal recognition of adat rights. On the other hand, they vary in terms of geographical location, the extent of NGO support, their stage in the legal recognition process, types of land tenure conflict, the characteristics of the opponents in the conflict, and finally the extent to which dispossession of adat land threatens the adat community's members' economy. With this diversity, I was able to analyse which factors enable or constrain the legal recognition of adat communities and their customary land rights..

This book is divided into eight chapters. Chapter 1 is an introduction, in which I describe the background and purpose of my

research, as well as the academic debates to which this study contributes. After having discussed international advocacy on indigenous identity and land rights, I zoom in on how in Indonesia the international concept of indigeneity has become intertwined with the concept of adat. Backed up by this international support, claiming legal identity and adat land rights has become an important strategy for local communities involved in land conflicts. However, according to the Indonesian legal framework, local communities must first obtain state-legal recognition before they can claim their land rights when their land is being dispossessed by companies and state institutions. The big question is therefore whether state legal recognition of adat communities and customary land rights in Indonesia has brought solutions to land dispossession in land conflict situations. This central question is elaborated in each of the following chapters.

Chapter 2 analyses the characteristics of forest tenure conflicts and the existing options for resolution. The first part describes the social, political, and historical context of forest tenure conflicts in Indonesia, from the colonial period up until the present. The colonial government legally established 'forest areas', which covered a large part of the country, and this designation has been continued by successive Indonesian governments up until the present. This policy is the main cause of forest tenure conflicts because it ignores the customary rights of local communities. The policy that makes forests into state property is backed up by the idea that government agencies are best equipped to maintain and manage the forests properly. National forest regulations criminalise people who claim customary rights, which ignites land tenure conflicts between local communities and government agencies or companies. These conflicts occur when a government agency or company expands its operational activities into an area that overlaps with land used by local communities. The second part of the chapter discusses different types of forest tenure conflict, the variety of actors and interests involved in them the strategies they pursue, and the different options for resolving conflicts. Since the 1990s, the Indonesian government has opened up several opportunities for this purpose such as community forests, customary forests, village forests, peoples' forest plantations, and co-management with government agencies and companies. Most of these options only provide temporary access for local communities to manage forest areas and resources. Only the customary forest recognition scheme changes the legal status of forest land and transfers ownership from the state to adat communities.

Therefore, theoretically, recognition of customary forests is the only solution that goes to the root cause of forest land conflicts.

In Chapter 3, I analyse the national legal framework regarding the recognition of adat communities and customary land rights, before I discuss in the following chapters how that legal recognition works out in practice. In this chapter, I also analyse the laws and law-making process related to land rights. Although many studies have discussed the legal framework regarding the rights of adat communities in Indonesia, there are no studies scrutinising the teleological dimension of the debate over customary land rights by analysing the minutes of meetings in parliament. I trace the origin of the present conditional recognition of adat communities and customary land rights from findings in colonial legal history. Furthermore, I highlight several key concepts regarding customary land rights, as they are found in colonial and contemporary national law.

After Indonesia's independence, the key debate on the recognition of adat communities, customary law, and customary land rights took place during the preparation of the Agrarian Law (No. 5/1960). The government and the legislature faced the dilemma of either preserving the legal pluralism of land governance inherited from the colonial government, or establishing a new unified national land law. In formulating the Agrarian Law, the majority of MPs in the National Parliament supported the formation of new national land law. However, the experts involved in the legal drafting had mixed attitudes towards the position of customary law and customary land rights. On the one hand, they labelled customary law officially as the basis of national land law. On the other, they subjugated customary law and customary land rights to national law by some conditionalities incorporated into the law, stating that a customary land right should not contradict national interests, Indonesian socialism, religious values, and any higher regulations. As a result, the Agrarian Law led to the emasculation of customary land rights at the discretion of state officials. Subsequent legislation and amendments to the Indonesian Constitution have reinforced the conditional recognition model for legalising customary land rights, which has resulted in a complicated procedure. The following chapters discuss why in one case the local community succeeded to gain legal recognition, while in other cases the strategy failed. Together, the case study chapters (4 to 7) aim to identify the enabling and constraining factors in realising state legal recognition of customary land rights.

When local communities want to use the legal recognition strategy their first step is to phrase solid arguments for their customary rights claims. Which conditions need to be fulfilled in order to make adat claims so strong that they will convince government institutions and parliament to provide legal recognition? Chapter 4 addresses this question, by analysing a case in which a local community failed to obtain state-legal recognition of their customary land rights. The case concerns the Cek Bocek community in Sumbawa (West Nusa Tenggara), which was involved in a land conflict with PT Newmont Nusa Tenggara, a big mining company operating on the community's ancestral land to develop the second largest gold mine in Indonesia. The chapter shows how local community members have various interests and corresponding strategies to respond to mining operations. Their strategies vary from rejecting the company's operations and demanding compensation payments, through pursuing contracts from the mining company for small business or service projects, to trying to get a job at the company or trying to obtain a share of the company's social development funds. In this specific case, the villagers used customary claims primarily to obtain compensation payments from the mining company. Initially, the village head set up an informal land documentation system, providing letters of possession as proof of individual land claims within the ancestral domain, to be used as a basis for requesting compensation payments. Only after this strategy failed did local communities revitalise their adat institutions and shift their strategy towards gaining legal recognition of their customary forests. However, this second strategy also failed, because the local parliament refused to legally recognize the local community as an adat community. Instead, the Sumbawa district parliament recognised the Sumbawa Sultanate as the official representative of local customary communities. This case indicates that legal recognition of customary rights is hard to obtain if various actors in the field contest crucial adat claims.

Chapter 5 addresses some other difficulties which occur when local communities pursue legal recognition to resolve land conflicts. This chapter analyses a case of a land conflict between local communities and PT Toba Pulp Lestari in North Sumatra, which has continued for more than three decades. Over the years, local community members have applied various strategies against the company activities, including actions against land dispossession, campaigns to protect the environment from pollution caused by the company's operations, and efforts at empowering women, as the latter are the ones who have

suffered most from land dispossession. In the last decade, customary land claims have become the dominant strategy used by local communities against the company. In this chapter, I focus on the Pandumaan-Sipituhuta community, analysing why and how communities engage in the use of adat strategies to oppose the company's operations in their benzoin tree adat forests, which yield valuable resin. In 2016, the Ministry of Environment and Forestry reallocated 5,172 hectares of the company's concession area to the Pandumaan-Sipituhuta community as customary forest. However, the precondition for legal recognition of this customary forest was that the community should first gain recognition of their status as an adat community from the district government. The legal recognition process became complicated because it involved many political actors at both district and national levels. In 2021, under political pressure, the Ministry of Environment and Forestry finally recognised the Pandumaan-Sipituhuta community customary forests. However, this did not resolve the conflict. While the government recognised particular areas of customary forest, it also designated some other customary forest areas for national food estate projects, without asking for the consent of Pandumaan-Sipituhuta community members.

Chapters 4 and 5 show that adat communities face many obstacles in the process of obtaining legal recognition of customary forests in conflicts with large corporations and how much they depend on the government when pursuing such recognition.

In Chapter 6 I discuss two cases of communities that have been more successful in obtaining legal recognition to resolve their land conflicts. The cases in this chapter concern the Kasepuhan Karang community (Banten Province) and the Marena community (Central Sulawesi). Both communities were involved in conflicts with national parks whose forest conservation areas overlapped with the territories of these communities. With the support of NGOs at various levels, these two communities managed to complete all procedures for legal recognition. By focussing the analysis on steps in the legal recognition process, from articulating community problems to finally solving them, this chapter shows how NGOs played a dominant role in directing the legal recognition process. These NGOs are specialized in indigenous rights advocacy and have been supporting local communities both at the national and the regional level. A crucial lesson from the two cases here is that the chances for obtaining legal recognition are larger for adat communities involved in a land conflict with government agencies engaged in nature

conservation than they are for those facing mining or plantation companies. In conservation forest areas, the goals of adat communities and government agencies sometimes converge, as in the specific cases of chapter 6 where the shared objective was to preserve nature in the forest area.. This contrasts with the case studies in the previous two chapters, where the companies and adat communities had interests which were diametrically opposed. However, although the two adat communities discussed here have gained customary forest recognition, their success ultimately depends on what happens in the years after the recognition.

This is discussed in chapter 7, which looks at what happens after legal recognition, and how this legal decision is being implemented. The chapter continues with the case in chapter 6, concerning the Kasepuhan Karang community, and demonstrates how in this case recognition of customary forests led to new tensions. New social distinctions became relevant. Many villagers from outside the Kasepuhan Karang community had been cultivating fields in the customary forest for decades and started to feel unsafe after the customary forests were recognised. They feared that the recognition of Kasepuhan Karang customary forest would reduce their own access to it. In response, the village head created an informal land registration system and provided land-use certificates to each land user. The informal land registration records show that 40% of the land users in the Kasepuhan Karang customary forest are not members of the Kasepuhan Karang community. This case study illustrates the critical role of village heads and customary leaders in the implementation of legal recognition, which may produce serious disputes within a community. It also shows that customary land rights do not always provide tenure security for land users, especially users who are not members of a particular adat community.

Chapter 8 is the concluding chapter, in which I reflect on the main lessons learned from the previous chapters. I revisit the roots of forestry tenure conflicts and how the legal recognition strategies of adat communities and customary forests play a role in conflict resolution. It is clear that resolving forest tenure conflicts is not a simple matter. The case studies in this thesis show the complexity of each forest tenure conflict. The variety of actors, interests, and strategies used by local communities depends largely on the context, the network, and the opponents who are in conflict. The process approach that I have used in this research enabled me to systematically analyse such complex cases. It helped me to carefully examine each stage of a conflict, starting with preparation, continuing with the legal process, and ending with post-

recognition of the customary forest. This approach can also help to evaluate the effectiveness of a conflict management strategy.

The chapter further invites readers to think of “adat communities” as a political concept. Many scholars perceive adat communities or indigenous communities as a legal concept or as an anthropological reality. Using adat communities as a political concept indicates that their existence is greatly dependent on political relations. Thus, there may be situations where a community does not meet all the requirements for an adat community, but it can nevertheless get legal recognition from the state. On the other hand, some communities satisfy all the requirements but do not obtain recognition. It is important to realise that state recognition is always conditional. This implies that the government holds the power to grant legal recognition and can apply this power at its discretion. Hence, the legal recognition of local community rights is a political process involving various actors at both the district and the national level. With my overview of the many restrictions, and how difficult it is to comply with all of them, I recommend adat community rights supporters to rethink the legal recognition strategy for solving adat communities’ land dispossession problems. Pursuing legal recognition has increasingly made adat communities subordinate to the legal system. Thus, instead of gaining autonomy, adat communities risk subjugation via the legal recognition process, and in most cases, recognition does not solve their land conflicts.

