

Göttingen Studies in  
Cultural Property, Volume 7

*Adat* and Indigeneity in Indonesia

Culture and Entitlements between  
Heteronomy and Self-Ascription

Brigitta Hauser-Schäublin (ed.)



Universitätsverlag Göttingen

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**Brigitta Hauser-Schäublin (dir.)**

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### *Address of the Editor*

Prof. Dr. Brigitta Hauser-Schäublin  
Institute for Cultural and Social Anthropology  
University of Göttingen  
Theaterplatz 15  
D-37073 Göttingen

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## Preface

*Brigitta Hauser-Schäublin*

This volume presents the results of five years' research on the processes of the propertisation of culture that have been carried out by the Research Unit 772 on The Constitution of Cultural Property (speaker: Regina Bendix), sponsored by the German Research Council (Deutsche Forschungsgemeinschaft).<sup>1</sup> Our research focused on the certification and heritisation of culture (nominations and listing of tangible and intangible UNESCO World Heritages) during the first three years. Since 2011, we have been investigating how “culture”, or more specifically *adat* (concepts of traditional ways of life and values), is shaped and deployed by various actors in Indonesia to define their identities, reclaim rights and property, and reposition themselves in the multi-ethnic state of Indonesia since the fall of the Suharto regime (1998).

A workshop entitled “*Adat* between state governance and self-determined indigeneity in Indonesia” was held at Göttingen University in October 2011. The preliminary results of the most recent anthropological research on *adat* or rather on “indigeneity” in Indonesia were presented by scholars at this workshop, including our much-valued research fellow from Jakarta, Fadjar Ibnu Thufail, from the Göttingen projects, and also by a scholar from Bonn University. Since the struggles for recognition of a special *adat* particularly of “indigenous groups” in Indonesia can only be understood against

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<sup>1</sup> The research on which the chapter by Steinebach is based was carried out during a project within the Collaborative Research Centre 990, “Ecological and Socioeconomic Functions of Tropical Lowland Rainforest Transformation Systems (Sumatra, Indonesia)”, also based at Göttingen University.



the background of international conventions and aid programmes for the promotion of indigenous peoples, two scholars from the International Law Department of Göttingen University (Katja Göcke and Maria Victoria Cabrera Ormaza) were invited, as well as the well-known Indonesian lawyer and indigenous peoples activist, Sandra Moniaga, to present their perspective on the issue of indigeneity.

The present volume mirrors this anthropological-international law co-operation and exchange of views on indigeneity. We are grateful that two lawyers from Indonesia, Yance Arizona and Erasmus Cahyadi, wrote an insightful paper on the current state of affairs on a special law on indigenous peoples in Indonesia.

Francesca Merlan, the renowned anthropologist from the National University in Canberra and an expert on “indigeneity”, spent a month as a Fellow of the Research Unit at Göttingen in June 2013. We all benefitted tremendously from her lectures, the comments she gave on earlier versions of several chapters and her insights. She has written an Epilogue to the volume from an encompassing, comparative perspective. I would like to thank her for writing this important chapter, for her commitment and the fruitful discussions we had in a very friendly and relaxed atmosphere.

This research only took place with the great help of our research partners in Indonesia: the Indonesian Institute of Sciences (LIPI) in Jakarta as a counterpart, and especially the Alliance of Indigenous Peoples (AMAN) and its General Secretary, Abdon Nababan, the non-governmental organisations (NGOs), particularly the Samdhana Institute and several other NGOs and their representatives, as well as the many *adat* communities in different provinces in Indonesia. All of these allowed and helped the anthropologists to carry out their research. We would like to express our gratitude to all of them. Terima kasih banyak!

All this work would not have been possible without the sponsors. I would like to thank first and foremost the German Research Council for generously sponsoring all the research projects mentioned, the Volkswagen Foundation (Volkswagen Stiftung), Hannover, for supporting the workshop in 2012, and also the Volkswagen Stiftung and the Ministry for Science and Culture of the Federal State of Lower Saxony and Göttingen University for the research professorship (Niedersachsenprofessur) they granted me. It is thanks to this professorship and its endowment that many complementary journeys, additional research, meetings, the temporary employment of additional research staff and assistants, as well as this publication became possible.

Brigitta Hauser-Schäublin, July 2013

# **Introduction.**

## **The Power of Indigeneity: Reparation, Readjustments and Repositioning**

*Brigitta Hauser-Schäublin*

This volume analyses the way in which the legal category of “indigenous peoples” and, consequently, the notion of indigeneity as propagated by international conventions are understood, deployed and implemented by different actors – national as well as regional and local – in Indonesia. The first two chapters, therefore, discuss the formation of the several different conventions dealing with “indigenous” or “tribal” peoples and the recognition of their legal status as “peoples”, with its inherent right to self-determination, from the perspective of international law. The third chapter, also written from a legal and activist perspective, examines how Indonesia has classified its citizens into different categories; among them, what could be translated as “indigenous” too, but with a derogatory connotation, subsumed as communities which were considered primitive and resistant to development. Only recently has this situation changed, and a new bill on the recognition and protection of the rights of indigenous peoples is now being passed through parliament. The following chapters present case-studies from different parts of Indonesia. They show how international discourses, often transmitted through NGOs or the Indigenous Peoples’ Alliance of

the Archipelago (AMAN), a nationwide organisation with more than 2,000 member communities, have been adapted and implemented. The communities benefitting from the recognition of being or becoming “indigenous” or, at least, “having” a special *adat* (traditions, customs, regulations, and values) ranges from marginalised peoples who fight for the restitution of their rights, especially control over natural resources from which they had been expropriated, to stratified societies and even noble houses, who claim the restitution of their rights and recognition. By deploying indigeneity, each of these actor groups attempts to reposition itself within their particular historical, social and political setting in the multi-ethnic state and to achieve recognition.

In this introduction, I would like to highlight a couple of encompassing issues which arise in several of the subsequent case-studies; I consider them as fundamental for the understanding of how “indigeneity” has been conceived and is nowadays deployed by a wide range of actors in Indonesia. All of the chapters presenting case-studies are written by “Indonesianists”. However, this book also aims at a readership that is interested in Indonesian indigeneity issues from a comparative viewpoint; it is, therefore, initially necessary to provide some basic information. The last chapter of the book, the Epilogue, written by Francesca Merlan, then takes up some of the topics briefly presented here. She elaborates on them from a higher, more comprehensive anthropological perspective by both characterizing the particular “Indonesian” quality of the cases presented, as well as linking them to general questions and concerns expressed in other indigeneity discussions and movements in other regions of the world.

The introduction, therefore, outlines firstly the historical background of the category of indigeneity in Indonesia and the way in which international conventions have interacted with nationwide movements fighting for recognition and the restitution of rights. It is against this background that the translation of the Indonesian term *adat* as “indigenous” has to be understood. In a further paragraph, the question is raised to what extent the interactions between international conventions and the way in which they are implemented through aid programmes also serve the (often hidden) goals of the donors. In most discussions on “indigenous peoples” in Indonesia, and even in the chapters of this book, the oppression or marginalisation of *adat* communities is traced back to colonial and post-colonial regimes of domination. In the last paragraph, I want to complement these explanations by showing that these more or less recent processes of marginalisation and exclusion were, at least in some parts of Indonesia, preceded by pre-colonial social and political conditions that were just as little free from power relations as those during the 20<sup>th</sup> and 21<sup>st</sup> centuries. However, these relations were not based on principles of worldwide capitalistic exploitation.

## Historical Retrospective

AMAN (Aliansi Masyarakat Adat Nusantara), adopted the militant slogan, “If the state does not recognise us, we will not recognise the state” at its first congress in Jakarta in 1999 (Moniaga 2004, 2007). This highlights the political situation of what, according to

internationalist definitions, are called indigenous peoples in Indonesia at the end of the New Order regime:

They had suffered marginalisation, discrimination and dispossession over decades and were classified as inferior to “mainstream” Indonesians, who were following the nationalistic path to progress and development as decreed by the government. Their systematic discrimination, dispossession and displacement were not an invention of the New Order regime (1965-1998); their genealogy can be traced back to the Dutch colonial policy, as many publications and several chapters of this volume document. The fall of the Suharto regime in 1998 and the subsequent onset of the reform era (*reformasi*), which promoted decentralisation and aimed at democratisation, have offered the opportunity to the indigenous peoples (*masyarakat adat*) and to the government to recover the injustices and dispossessions which these people had suffered.

*Reformasi*, whose major pillars are regional autonomy and democratisation, has opened up the chance of negotiations for many indigenous peoples to recapture what they have lost: dignity, recognition, rights, and possessions, namely land. However, the decades in which several laws, especially those concerning agriculture (Basic Agrarian Law, BAL, No. 5/1960), forestry (Forestry Law, BFL, no.5/1967) and mining (Mining Law no. 11/1967), had been enacted have left their enduring traces which are difficult to eliminate (Bakker and Moniaga 2010; Moniaga 2007; see the chapter by Arizona and Cahyadi in this volume). These laws formed the basis for the expropriation of indigenous peoples and the exploitation of natural resources to the profit only of the central state.

These laws are one aspect of the repressive government’s legacy; the administrative structure, for example the division of land management – land is the most hotly disputed issue between the indigenous peoples and the government – into two ministries, the Ministry of Agriculture and the Ministry of Forestry, each of them with its own tasks and goals, is another. A third legacy of the decades of the New Order regime is the bureaucratic authoritarianism (Bakker and Moniaga 2010:200) and the corresponding habitus of many civil servants that has not (yet) really changed. Since these reformation processes started in Indonesia after 1998, the *masyarakat adat* in almost all provinces, the Alliance of the Indigenous Peoples of the Archipelago, which in 2013 noted about 2,000 member communities, national and transnational NGOs and, of course, the administration and the government on all its levels (local, regional, provincial, and national) have been engaged in negotiations and even battles over these issues.

A first milestone in the fight of indigenous communities to get back their rights and especially their *adat* land (see chapters by Steinebach and Grumbles in this volume), seems to have been set with the Constitutional Court’s decision in May 2013. It decreed the elimination of

“the word ‘state’ from Article 1(f) of the 1999 Law on Forestry, which previously declared that ‘customary forests are state forests located in the areas of custom-based communities’. Also revised was Article 5 of the law, which stated that state forests include customary forests”.

(Jakarta Globe 18.05.2013)

With this decision, the state formally loses millions of hectares of forest land, most of them granted as concessions to natural resource industries (private as well as state-owned companies), especially mining, logging and agriculture. The concession holders will be obliged in the future to directly negotiate with the local communities and no longer only with representatives of the national government. The impact of this change and to what extent the state is forced to return all this land (which, by no means, is still all covered with what is usually understood by “forests”) or how this will be implemented in practice is difficult to anticipate. This case illustrates that the indigenous communities and the state not “only” negotiate about ancestral forests, but about fundamental means of production with considerable yields that have, so far, officially gone into the treasury and contributed substantially to the national budget.

## Interaction with the International Moves

The developments in Indonesia and the increasing voicing of indigenous peoples’ claims for recognition and rights since the early 1990s and the international support they receive, cannot be considered independently from the international stage and its worldwide campaigns and organisations, such as the United Nations (UN), the International Labour Organisation (ILO) and UNESCO. The first “International Decade of the World’s Indigenous Peoples”, launched by the UN General Assembly, lasted from 1995 to 2004, and the second Indigenous Peoples’ Decade lasts from 2005 to 2014. These decades have drawn worldwide attention to the issue of marginalised and oppressed peoples and made these peoples also aware that the time was ripe for their requests to be heard and enforced.

In the aftermath of the World War II and in wake of decolonization, a few conventions and declarations were issued that all display similar ideas about society and humanity. They anticipated universal values, such as the separation of powers, rule of law, social justice, equality of the citizens before the law, and freedom of the individual. Such values are embodied in the UN Human Rights Convention (1948), the ILO 169 Indigenous and Tribal Peoples Convention (1989, entry into force 1991; not ratified by Indonesia) and the UN Declaration on the Rights of Indigenous Peoples (2007; adopted by Indonesia in 2007, but characteristically not by the four settler states U.S.A., Canada, Australia, and New Zealand). These conventions and declarations (for a detailed discussion, see the chapter by Göcke in this volume) all emphasise the importance of “tribal” or “indigenous people” and the recognition and restitution of the rights they deserve after decades of dispossession and oppression. All of these international regulations, however, bear the mark of the problems settler states had



(the relationship between the “white” or in any case dominant settlers and the indigenous peoples) (see Merlan 2009). These regulations, therefore, seem to aim at recognising the original inhabitants and at least partly restoring their rights in the states established by the former colonizers. The special rights the decrees endow indigenous peoples with, however, apply to the indigenous communities in all states, at least to those who have signed these agreements. However, the formulation of special rights for indigenous peoples in these agreements only marginally reflects the situation in countries such as Indonesia with thousands of self-identified indigenous communities.

UNESCO complemented these UN human rights regulations with conventions that have their focus somewhere else, but can clearly be identified as accompanying measures to the UN decrees: The Convention for the Safeguarding of the Intangible Cultural Heritage (2003) and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005, in force since 2007; accession by Indonesia in 2012). These conventions focus on “culture”, and underline that “culture” can be protected and promoted only if human rights and fundamental freedoms are guaranteed. They also emphasise the role “culture” plays as a vehicle of identity and how, in particular, indigenous peoples have acted as preservers and safeguards of cultural heritage. Here, apart from the characterisation of indigenous peoples as social groups that have suffered historical injustices in many ways, cultural values and practices are in the foreground. In fact, “culture” lies at the core of what in Indonesia is called *adat*.<sup>1</sup> Indigenous peoples in Indonesia, apart from their history of oppression and dispossession, ultimately argue with their particular localized “culture” that distinguishes them from others; a specific definition of their cultural particularity is, therefore, required to fill the “tribal slot” (Li 2000; and see below). Undoubtedly, the way in which “culture” as a distinctive mark of indigenous peoples that others do not possess is used in international and national or local discourses implies a “politicization of culture and its treatment as property” (Greene 2004:212).

## From *Adat* to “Indigenous”

The Declaration on the Rights of Indigenous Peoples, for example, illustrates that indigenous peoples are described as a distinct socio-cultural category and deserve special promotion, protection – and rights. As the chapters by Göcke, Cabrera and Arizona/Cahyadi (in this volume) explain, the category of “indigenous peoples” is only loosely defined in the international decrees; no definite criteria are given that would allow their unequivocal identification. An emphasis lies on the self-identification of being “indigenous”. The self-identification as “indigenous” opens up a wide range of possibilities for communities for a repositioning vis-à-vis the state. Tyson emphasised that *adat* can be portrayed “as imaginative and adaptive, serving as a living and evolving

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<sup>1</sup> *Adat*, though a complex concept, can be briefly described as customary localised ways of life, regulations and beliefs (for a detailed discussion of *adat*, its significance and use in present-day Indonesia, see Davidson and Henley 2007). “Culture” is usually translated with *budaya* in Indonesia. However, *budaya* refers to specific cultural expressions and arts rather than describing encompassing ways of life and world-views.

body of agreements, rights and rules” (2011:655). The translation AMAN made of *masyarakat adat*, which literally means “customary communities”<sup>2</sup>, as “indigenous peoples” has to be understood as a possibility to interlink with the transnational indigeneity movements, as one of my interlocutors in Bali pointed out (see the chapter by Hauser-Schäublin in this volume).<sup>3</sup> In short, the translation as “indigenous peoples” is also a strategic positioning within the globe. The networking with transnational indigeneity movements and with sponsor organisations is crucial for the funding of AMAN and its projects, as well as for negotiations with the government. Without this international ideational and financial support, AMAN would not be such a strong and influential organisation as it is at present (see the chapter by Sanmukri in this volume).

In any case, “indigenous peoples” is a relational term in several ways (see also Merlan 2009). In a socio-political respect, this term refers to the relationship of a smaller, less powerful society to a more powerful majority or dominant society or nation-state, and implies the marginalisation and discrimination they experienced due to their culture. Thus, what was once the reason for the suffering of all the injustices, their culture in the widest sense, has become an asset in the meantime.

According to the new law on indigenous peoples<sup>4</sup> that is currently (2013) being discussed in parliament in Indonesia, *masyarakat adat* needs to display five features for official recognition as *masyarakat hukum adat*, customary law community: to have a shared history, to own customary land, to have *adat* law, to possess specific property relations and inheritance/or *adat* artefacts, and to have a customary governance system (see the chapter by Arizona and Cahyadi in this volume).<sup>5</sup> Indigenous peoples or rather customary law communities are to be granted a special status and corresponding rights and entitlements.<sup>6</sup> The international conventions, especially those from the UN Permanent Forum on Indigenous Issues, emphasise that self-identification is the major factor of determining which community is “indigenous” or not (Gausset, Kenrick and Gibb 2011:137). In the Draft Law on the Recognition and the Protection of the Indigenous Peoples (RUU PPHMHA) in Indonesia, self-identification is a key criterion for the communities’ self-determination. However, this is only a first, though significant, step in the process of full official recognition and acceptance. The

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<sup>2</sup> During the New Order, one derogatory term to denote indigenous peoples was *komunitas adat terpencil*, literally remote *adat* communities. This expression was derogatory in meaning in a similar way that the colonial terms “the native”, as well as “indigenous”, “primitive” or “tribal people”, had in anthropology before the transnational indigeneity movement gave “indigenous peoples” a positive connotation (see Kuper 2003).

<sup>3</sup> Merlan calls “indigeneity” an “internationalist category”, which is associated with some universalist moral frames, and presupposes that relationships between peoples and their “Others” can be generalised (2009:306).

<sup>4</sup> The Draft Law on the Recognition and the Protection of the Rights of Indigenous Peoples (RUU PPHMHA); see the chapter by Arizona and Cahyadi in this volume.

<sup>5</sup> These criteria are more or less identical with those established by AMAN (see also Tyson 2011).

<sup>6</sup> This special status is anchored in *adat* and legitimizes claims based on descent, or *jus sanguinis*, which other citizens of the nation state whose equal rights are based only on *jus solis* do not enjoy; in fact, they are excluded (see Tyson 2011).

acknowledging of this status needs to be carried out in further steps by political bodies (see the chapter by Arizona and Cahyadi in this volume).

## Indigenous Peoples and their Missions

Since the international community has put the “indigenous peoples” on their agenda, a number of inter- and transnational organisations, such as the World Bank, and also state-funded development organisations and a large number of NGOs have put up special education and “capacity building” programmes and funds for indigenous peoples in all parts of the world, Indonesia included (see the chapter by Sanmukri in this volume). Among the special education programmes are also those which teach people about Human Rights and the Rights of Indigenous Peoples (Rights! Training Manual 2010; ILO 2009). Here, (“community training”) processes with multiple translations (with continuous reinterpretations) in both directions between international and national organisations and the local people take place; they influence the way in which these rights are finally understood and adopted by local communities. As Merry has pointed out, intermediaries or facilitators play a crucial role in the way they translate up and down (2013:214; see also Rottenburg 2002). The individual cultural systems of particular values, rules and practices of this multitude of these customary communities (“diversity” in its literal sense as spelled out by the national motto<sup>7</sup>) are only marginally taken into account by the agents of inter- and transnational organisations when they transfer such universally conceived rights from the international through the national and, finally, to the regional and local level. Nor do they seem to bother how the relationship between a (historically and culturally shaped) nation state and – in the case of Indonesia – its thousands of indigenous communities can be configured in a fair way for all parties. Thus, the situation of legal pluralism, with all its inherent contradictions and competing goals, that arises from this situation is a challenge to all stakeholders (see Benda-Beckmann 2010), especially policy-makers. Moreover, in practice, national law and indigenous regulations are not separate domains with regard to the actors: There are no clear-cut boundaries between the state administration and its staff, as well as local deputies and political office holders, on the one side, and actors who argue and act on behalf of *adat* on the other (see the chapter by Müller in this volume). This creates a broad grey area for ambitious actors to make use of both domains and their powers and combine them to reach their own goals or those of their parties, depending on the particular circumstances and goals (see the chapters by Grumbliès and Müller in this volume).

The engagement of inter- and transnational institutions, that often hire NGOs to transmit and implement programmes and money from industrialized nations to countries of the south, often have a specific goal in mind that encompasses the endeavour to assist indigenous peoples to achieve equality and a full enjoyment of citizens’ rights (see the chapter by Sanmukri). Environmental issues are fundamental in indigenous peoples’ claims for the restitution of their ancestral land. Yet,

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<sup>7</sup> The motto of Indonesia is “Unity in diversity” (*Bhinneka Tunggal Ika*).

environmental issues – the topic of forest conservation – are also dominant in many international programmes destined for indigenous peoples. These programmes (and the organisations) often have a particular concept of the “indigenous” that is reminiscent of the noble savage of earlier times (see Greene 2004). Indigenous peoples are assumed to be more or less the timeless guardians of the forest who have been living in balance and harmony with nature for centuries at least. They are imagined by experts as holders of communal land rights and, therefore, ascribed as the ideal performers of “community-based forest management” (Li 2010:388). They are considered to be destined to be the promoters and preservers of the forests and biodiversity. At the same time, they are seen as those actors who, through their way and life and world-view, will be able to counterbalance the CO<sub>2</sub> emissions. They should perform the role of the saviours from global warming (see also Benda-Beckmann 1997).

As Li (2010) has already mentioned and as the chapters by Steinebach and Grumbli (in this volume) show, “the indigenous peoples” or *masyarakat adat* cover a wider range of peoples with different livelihood systems. Most of them are no longer nomads roaming through the forests and living only from what nature offers them as the term in its original and romanticizing sense suggests. Most of them today lead a sedentary life as small-scale farmers and practice cultivation; they also engage in cash crop production, such as coffee, cocoa, rubber, or even palm oil. There is a gap between the local practices of indigenous peoples and the assessment by and the expectations of outsiders.

Li has convincingly shown that the earlier practices of dispossession by the (colonial) government of indigenous peoples from their land and natural resources are now followed by procedures, implemented by transnational organisations (including the World Bank), to fix indigenous peoples in place by conferring on them the task and responsibility of safeguarding the forests – for global benefits. Li relates the seemingly opposed mechanisms of dispossession which the indigenous peoples suffered to the procedures of the “communal fix” (by advocating communal land rights and, consequently, the community-based forest management they should carry out) they are now supposed to undergo. She explains this as the dynamics of capitalism, which she understands as “an assemblage of disparate elements, practices, and processes each with its own history of violence, law, hope, and struggle” (2010:400). Both the mechanism of dispossession and possession are, as Rata comments, in the “interest of capitalism’s market forces”. Indigeneity is used as an ideology of management of people to land (2010:406).

## “Indigenous Peoples” and Earlier Systems of Domination

Nevertheless, it would be wrong to assume that before capitalism entered countries like Indonesia, relationships existed based on equality between complex societies and the smaller rather dispersed communities in forested or mountainous areas. Neither were (and are) societies which nowadays claim to be indigenous or *masyarakat adat*

egalitarian, such as the Toraja (see the chapter by Klenke in this volume) or Bali (see the chapter by Hauser-Schäublin in this volume). Kingdoms and sultanates with a ruling elite and subjects of different types, many of whom were slaves, existed in many parts of the archipelago. In brief, social order in Indonesia was seldom egalitarian, either within society or between societies (Henley and Davidson 2007:4-5). The relationship between the dominant, mostly stratified, agrarian or trading societies (such as the early kingdoms and later, the sultanates) and communities living away from the centre and practicing a different form of livelihood was multi-faceted. Apart from different forms of exchange and patron-client relationships, many of these communities were regarded as inferior and treated in a derogatory way. They were also the subject of encroachments by the dominant lowland societies or states which also partly resulted in colonization, in human trafficking (as slaves, such as the Papuans sent to the Chinese court; Papuan people had been raided and brought as slaves to Java already since the 10<sup>th</sup> century, see Penders 2002:116) and even extinction (see, for example, Hauser-Schäublin and Ardika 2008).

There is, however, a substantial difference between the pre-colonial and the colonial and post-colonial, mainly the New Order era, which I can only briefly outline here: The idea (and practice) of a territorial state, the nation-state, was imported and implemented with colonialism. As is well known, the early Southeast Asian states were not territorial states but geographically shifting polities lacking strict borders, especially the idea of definite geographic borders. They have been characterised as *mandala*, galactic or segmentary states (for an overview, see Day 2002), and the rulers' power was indicated by the number of his people rather than the extent of the territory. Accordingly, expansionist attacks on neighbouring regions were not carried out to gain land but rather manpower or goods (such as commodities brought by foreign merchants or sacred regalia). The dominant societies, therefore, were not aiming at evicting the communities living in fringe areas from their land. Exchange and trading relations constituted a kind of division of labour and both parties needed and relied on the knowledge and goods, the other was able to provide. Thus, there was no reason to expel those who provided the dominant society with goods it otherwise, without the knowledge of the providers, would not have received. The people had to remain in place if their partners wanted to benefit from them.

Here, a fundamental difference from the system that started in Indonesia with colonization becomes apparent: The different mode of production, capitalism, and the role land plays as a means of production in this system. The production did not aim at providing, first and foremost, the colonizers with what they needed for their daily living. Instead, it was the production of commodities (or the raw material needed for their manufacturing) for an international or global market. For this purpose, land was the major resource and labourers (not peasants) could be transferred from any other part of the colony to the location of production to carry out the work required. The



local people were an obstacle rather than an important partner with unique knowledge. The processes of dispossession and marginalisation and expulsion started.<sup>8</sup>

Li has impressively shown (2010) how these processes of dispossession were indeed linked to capitalism and its need and use of land as a means of production to launch plantations, systematic logging, selling concessions to companies for various purposes, and establishing mines or settlements. The dispossessed became characterised against the backdrop of this “modern” and modernising capitalistic ideology: the backward, the animistic, those who practiced a kind of primitive communism (communally owned land) and had not yet completed the evolutionary step to a civilised way of life, open to development. They were the “indigenous”, or as they were called under the New Order, “*suku terasing*” (isolated tribes), *komunitas adat terpencil* (remote *adat* communities) and the like. It was, therefore, the land on which these people were living that the colonisers wanted to get hold of for their own commercial goals. It was primarily for these reasons that they had to be evicted, dispossessed and resettled.

As Li suggested (2010), today’s self-identification as indigenous peoples (and even the concept as such) may be understood as a defensive response to the dispossession that has been taking place in the many guises of capitalism, through ascribing the role to them as forest preservers or through indebtedness (mortgages, especially of small-scale farmers). The use of *adat* – and along with it the revival of *adat* (or perhaps also the other way round) – is also a means of achieving a reconfiguration of power relationships which has become a potent instrument in Indonesia (Tyson 2011, 2010). *Adat* as a general term is not only restricted to “indigenous peoples”, but also refers to traditions and inherited values in a general way (see Davidson and Henley 2007). In *masyarakat adat*, the meaning of “indigenous” overlaps and merges with “autochthonous”. Gausset et al. state that “indigenous” implies people who have already been marginalised, while autochthonous may be “reserved for people who are dominant in a given area but fear future marginalisation” (2011:139) or, one could add, as in the case of Bali (see the chapter by Hauser-Schäublin in this volume), who had formerly suffered marginalisation which, however, has come to an end.

The indigenous peoples are not the only ones who were deprived of their rights and possessions, land and power during colonisation. They do not claim to be “tribes” or specific ethnic groups, but the former traditional elite, the nobility, the kings and sultans, has its particular *adat* as well (Klinken 2007). It comes, therefore, as no surprise that these people also refer to their particular *adat* (the courtly culture with its refined arts) and reclaim recognition, rights and especially land. They have formed associations as well and enter into networks with royal families elsewhere. Since many of these aristocratic families were able to keep their symbolic capital (leading roles in rituals, entitlement to awarding noble titles, etc.) or also managed to make accommodations

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<sup>8</sup> Despite all the flaws anthropological and legal studies carried out under colonialism might have, such as the Adatrechtsbundels of the van Vollenhoven school, these and other publications are important documents for many of today’s *masyarakat adat*, since they provide evidence of ancestral rights and properties, especially land.

with the ruling party during the New Order regime, several of them gained recognition in the field of politics (see the chapter by Thufail in this volume).

## Conclusion

All these manifold issues which are linked-up in the notion and use of *adat*, which means so many different things to each of the actors, reveal the heterogeneity of stakeholders and goals. As several chapters of this volume show, “the indigenous” as imagined by international conventions and transnational organisations rarely exists. There is a wider range of different actors who identify themselves as *masyarakat adat*. Grown out of particular historical circumstances of oppression – colonial as well as post-colonial – all these actors hope to (re-)gain dignity, recognition, rights, and property. They share the effort to achieve a repositioning vis-à-vis the state, which implies, though indirectly, also a repositioning vis-à-vis their “mainstream” Indonesian co-citizens. They all aim at accomplishing a social, political and economic reconfiguration – an advantage, so to say, without spelling out or considering at whose expense. The strategy and power of these movements draw largely on international conventions, all of them inspired by particular humanistic idealistic concepts of society, social equality and participation. The implementation of these idealistic concepts through the funding of international agencies, as well as national, regional and local actors, however, are more pragmatically oriented and often have their own goals in mind rather than those of particular *masyarakat adat*.



# Indigenous Peoples in International Law

*Katja Göcke*

## Introduction<sup>1</sup>

The subject of indigenous peoples in international law is an area of continuous development with many new and decisive developments having taken place over the past 30-40 years. One of the most prominent of these developments is the recognition of indigenous peoples as “peoples” and – as a result – the recognition of their inherent right to self-determination. The nature, scope and content of this right, however, remain highly disputed.

The aim of this paper is to provide an overview and analysis of the current and historic legal status of indigenous peoples in international law. To this end, the paper will be structured as follows: Firstly, the issue of a definition of the term “indigenous peoples” in international law will be discussed. Subsequently, an overview of the historical development of the rights and status of indigenous peoples and the current legal situation will be given. Ultimately, an appraisal of the position of indigenous peoples in international law will be offered.

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<sup>1</sup> This publication expands upon the author’s previous work (Göcke 2010).

## Definition

There is no universally accepted definition of the term “indigenous peoples”. Since several international rights and corresponding duties of states are directly linked to the status of indigeneity, the definition of the term is highly contentious, and international legal instruments concerning indigenous peoples generally do not define the term. The most widely accepted definition seems to be the one by UN Special Rapporteur on Discrimination against Indigenous Populations, Martínez Cobo, from 1983, who defines indigenous peoples as follows:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.<sup>2</sup>

(Martínez Cobo 1986:para. 379)

Although Cobo mentions several objective criteria, he stresses that, ultimately, self-identification is the key criteria (Cobo 1986:para. 369). The importance of self-identification has also been stressed in several subsequent international legal instruments regarding indigenous peoples and has been advocated by indigenous peoples themselves, who fear that a definition of the term would be used by states to exclude certain groups (Simpson 1997:22-23). Accordingly, the International Labour Organisation (ILO) in Art. 1 (2) of its Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention 169) mentions that “[s]elf-identification as indigenous or tribal shall be regarded as fundamental criterion for determining the groups to which the provisions of this Convention apply”.<sup>3</sup> Similarly, the World Bank recognises in its Operational Policy 4.10 that one universal definition of the term “indigenous peoples” could not grasp the diversity of indigenous peoples (World Bank 2005:para. 3).<sup>4</sup> The statement made by Chairperson-Rapporteur of the UN Working Group on Indigenous Populations, Erica-Irene A. Daes, points in the same direction. She stated that “the concept of ‘indigenous’ is not capable of a precise,

<sup>2</sup> The United Nations Economic and Social Council mandated the Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1971 to prepare a study on the discrimination of indigenous groups and appropriate measures to remedy this discrimination (UN Economic and Social Council Res. 1589 (L), May 21, 1971). The study was published in 1986 (Martínez Cobo 1986).

<sup>3</sup> Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries (adopted June 27, 1989, entered into force September 5, 1991) 1650 UNTS 383.

<sup>4</sup> “Because of the varied and changing contexts in which Indigenous Peoples live and because there is no universally accepted definition of ‘Indigenous Peoples’.”

inclusive definition which can be applied in the same manner to all regions of the world” (Daes 1996:para. 34). The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)<sup>5</sup> of 2007 also refrains from defining “indigenous peoples”, but instead places emphasis on the criterion of self-identification (see also Cole 2009:201-205).

To counter absurd claims by groups for indigenous status, international instruments generally list certain objective criteria which indigenous peoples typically possess, in addition to the subjective criterion of self-identification (Cobo 1986:paras. 379-380; Daes 1996; World Bank 2005:para. 4; International Law Association 2005:2-3; see also Kingsbury 1998:453-455). However, there is only one objective criterion which has repeatedly been mentioned to be essential in order for a group to be regarded as indigenous: the special and spiritual connection to ancestral lands (International Law Association 2005:3;<sup>6</sup> ACommHPR<sup>7</sup> 2005:89<sup>8</sup>). This connection, which is also reflected etymologically in the original Latin word *indigena* – a fusion of the words *indu* (in, within) and the root of *gignere* (to beget) (Barnhart 2003:521) – is what defines indigenous peoples and distinguishes them from minorities.

Whereas in Europe, the Americas, Australia, and New Zealand the question of who is indigenous is largely resolved, the situation is different in Asia and Africa, where several states claim that the entire population has to be regarded as indigenous since they were all already there at the time of colonisation (World Bank 1999:49; Kingsbury 1998:416-418; Sanders 1999:8-10). Colonisation, however, is not an essential prerequisite for a people to be regarded as indigenous. Hence, there can also be indigenous peoples in Africa and Asia, and several states in these regions which have in the past repeatedly denied the existence of indigenous peoples within their borders now begin to recognise their existence, such as, for example, Japan in respect of the Ainu.

According to estimations there are about 300-500 million individuals of indigenous origin living in approximately 3,000-5,000 different indigenous communities in more than 70 states. Hence, indigenous peoples represent approximately 5% of the world population (Cole 2009:194; Koivurova 2008:21; European Commission 1998; European Parliament 1994:A).<sup>9</sup>

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<sup>5</sup> UNGA Res. 61/295 (September 13, 2007).

<sup>6</sup> “Only two of the listed criteria are to be considered as essential for a community to be considered as an indigenous people; these two criteria are self-identification – which should also be regarded as an essential element of the right to self-determination of indigenous peoples – and its special relationship with its ancestral lands.”

<sup>7</sup> African Commission on Human and Peoples’ Rights.

<sup>8</sup> “A key characteristic for most of them is that the survival of their particular way of life depends on access and rights to their traditional land and the natural resources thereon.”

<sup>9</sup> However, the numbers vary; for instance, Alfredsson (1995:946) estimates the number of indigenous persons at 100-200 million, and Broms (1992:304) speaks of 250 million indigenous individuals.

## Historic Overview and Current Legal Status

For many indigenous peoples, the preservation of their identity and culture is at stake, and indigenous peoples all over the world have to fight for their physical and cultural survival. Indigenous communities generally belong to the poorest and most marginalised groups in the world and generally have the least income, education, health, and life expectancy and the highest rate of infant mortality, alcoholism and crime within a society. Therefore, indigenous communities have been labelled “The Fourth World”<sup>10</sup> or “The Third World in the First” (Young 1995).<sup>11</sup>

### History of the Indigenous Peoples’ Rights Movement

The cause of the indigenous peoples’ desolate situation is that for centuries, indigenous peoples have been dispossessed, disenfranchised and marginalised. Indigenous peoples were not only robbed of their ancestral lands but they were also regarded as backward societies, which for their own good, had to be assimilated into the mainstream society, hence cultural, linguistic, religious and ethnic particularities of indigenous groups were suppressed. This process, which started during colonisation in the 16<sup>th</sup> century, lasted well into the 20<sup>th</sup> century. Indigenous peoples were prohibited from speaking their own language, holding their rituals or wearing their traditional clothing.<sup>12</sup> Up until the 1970s, indigenous children were taken out of their communities against their parents’ will and put into institutions far away to prevent the transmission of traditions to the next generation.<sup>13</sup> Accordingly, the ILO Convention 107 concerning Indigenous and Tribal Populations of 1957 (ILO Convention 107),<sup>14</sup> the first international instrument for the protection of indigenous peoples, still aims at protection and development of indigenous peoples through assimilation and integration into mainstream society.<sup>15</sup>

<sup>10</sup> The term “Fourth World” was coined by George Manuel and Michael Posluns (Manuel and Posluns 1974) and has increasingly been used since then to describe the situation of indigenous peoples; see also Iorns 1992:201-202.

<sup>11</sup> See also with regard to the Inuit in Canada, Légaré 2008:350-361, and with regard to the Aboriginal Australians, Hocking/Hocking 1999:210-213.

<sup>12</sup> See e.g. with regard to Canada, An Act Further to Amend “The Indian Act, 1880” S.C. 1884 (47 Vict.), c. 27, sec. 3, which banned the *potlatch*, a ritual festival practiced by Indian tribes of the Pacific Northwest Coast.

<sup>13</sup> With regard to Australia, see Human Rights and Equal Opportunity Commission 1997, and with regard to Canada, see Milloy 2004; see also Buti 1999.

<sup>14</sup> Convention 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (adopted June 26, 1957, entered into force June 2, 1959) 328 UNTS 247.

<sup>15</sup> See, in particular, Arts. 2 and 3 ILO Convention 1957.

Art. 2

(1) Governments shall have the primary responsibility for developing co-ordinated and systematic action for the protection of the populations concerned and their progressive integration into the life of their respective countries.

(2) [...]

(3) The primary objective of all such action shall be the fostering of individual dignity, and the advancement of individual usefulness and initiative.

Art. 3

Indigenous peoples have resisted this integration for centuries and have tried to draw attention to their desperate situation and to establish a fair cooperation between the indigenous and non-indigenous population. However, their rights and interests were ignored for a very long time – not only on the national but also on the international level. Since the treatment of indigenous peoples was regarded as an internal affair (*domaine réservé*) of the respective state, and indigenous peoples were not regarded as sovereign, the international community was of the opinion that, due to state sovereignty, no interference was allowed.<sup>16</sup>

Nevertheless, this began to change in the 1960s. In the course of decolonisation, the civil rights movement and the growing importance of human rights, a new generation of indigenous men and women, educated according to Western standards, began to use the mechanisms of the system forced upon them, and several national indigenous organisations were formed, particularly in Australia, Canada and the US (Anaya 2004a:56; Thornberry 2002:21).

A starting point of the international mobilisation of indigenous peoples was the 1977 UN Conference concerning the Discrimination of Indigenous Communities held in Geneva,<sup>17</sup> which took place under the auspices of the UN Economic and Social Council and attracted more than 150 representatives of indigenous groups. This conference not only helped to form a common indigenous identity, but also laid the foundations for future close cooperation between indigenous peoples as regards the stipulation and claiming of their rights (Anaya 2004a:57). Through the establishment of contacts with indigenous communities and organisations in other countries, a worldwide network was established which allowed indigenous peoples to present their demands to a broad and international public, to lobby internationally for their rights, and to put pressure on their respective home states. As a result, their demands were increasingly taken up by the international community, and several international organisations began to advocate indigenous interests.

In this context, ILO Convention 169 of 1989 needs to be mentioned as the first international convention which abandoned the assimilation approach and, instead, established the protection of indigenous cultures as its objective (see e.g. Art. 5 ILO Convention 169; see also Anaya 2004a:58-59, with further references; Xanthaki

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(1) So long as the social, economic and cultural conditions of the populations concerned prevent them from enjoying the benefits of the general laws of the country to which they belong, special measures shall be adopted for the protection of the institutions, persons, property and labour of these populations.

(2) Care shall be taken to ensure that such special measures of protection

(a) are not used as a means of creating or prolonging a state of segregation; and

(b) will be continued only so long as there is need for special protection and only to the extent that such protection is necessary.

See also Anaya 2004a:55-56.

<sup>16</sup> For example, Chief Deskaheh, spokesman of the Iroquois Confederacy, failed in his attempt to persuade the League of Nations regarding the matter of Iroquois independence and sovereignty in 1923 (Anaya 2004a:57, with further references; Garrow 2008:341-342; Niezen 2003:31-36; Sanders 1998:73-74).

<sup>17</sup> International NGO Conference on Discrimination against Indigenous Populations – 1977 – in the Americas: Proposals Made by the Indigenous Participants, printed in Cobo 1981:Annex 4.



2007:67-70). ILO Convention 169 was meant to replace ILO Convention 107. Although ILO Convention 107 remains in force for the time being for those 17 states which have ratified it, it has been closed for ratification since the adoption of ILO Convention 169.<sup>18</sup> Besides the outdated ILO Convention 107, ILO Convention 169 remains the only binding international instrument regarding indigenous peoples to the present day.

However, only 22 states have ratified it so far; hence, it is directly binding only for these 22 states.<sup>19</sup> Yet, its relevance goes beyond the mere number of ratifications. It is a strong statement of international law since it was adopted without a dissentient vote,<sup>20</sup> and many national and international organisations and courts refer to the Convention when interpreting duties of states towards indigenous peoples, even if the respective state has not ratified the Convention (Anaya 2004b:40). This indicates that at least its central provisions nowadays constitute customary international law and are, therefore, binding even for those states that have not ratified the Convention (Anaya 2004a:61; Anaya 2004b:40).

ILO Convention 169 lays down several important rights of indigenous peoples, such as the right to culture (Arts. 4 and 23), preservation of language (Art. 28) and the right to ancestral lands and resources (Arts. 13-19). It also refers to indigenous peoples as “peoples” whereas before, indigenous peoples were referred to as “indigenous populations”. States generally refrain from labelling a group of individuals as “people” because – as a general principle of international law – all peoples have the right to self-determination. This is firmly entrenched in the UN Charter<sup>21</sup> and in the two International Covenants on Human Rights,<sup>22</sup> which together form the International Bill of Human Rights. Hence, out of fear for their territorial integrity, states have always been very reluctant to refer to indigenous peoples as “peoples”. Therefore changing “populations” to “peoples” seems like a big step. However, Art. 1 (3) of the ILO Conventions expressly states that “[t]he use of the term peoples in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law”, which was meant to deny indigenous peoples their right to self-determination (Iorns 1992:263-264). This and the fact that indigenous peoples had not been invited to participate in the elaboration of the Convention has been heavily criticised by indigenous representatives (Anaya 2004a:59, 64; Xanthaki 2007:68).

<sup>18</sup> In the case where a state has ratified ILO Convention 107 as well as ILO Convention 169, ILO Convention 107 is completely replaced by ILO Convention 169.

<sup>19</sup> The list of member states is available on <http://www.ilo.org/ilolex/cgi-lex/ratific.pl?C169> <December 15, 2012>. Indonesia has not yet signed the Convention.

<sup>20</sup> State representatives of 92 states have voted in favour of the adoption of the Convention with 20 abstentions (Anaya 2004a:64).

<sup>21</sup> See Arts. 1 (2) and 55 UN Charter (adopted June 26, 1945, entered into force October 24, 1945) 1 UNTS 16.

<sup>22</sup> See Art. 1 (1) International Covenant on Civil and Political Rights (adopted December 16, 1966, entered into force March 23, 1976) 999 UNTS 171; Art. 1 (1) International Covenant on Economic, Social and Cultural Rights (adopted December 16, 1966, entered into force January 3, 1976) 993 UNTS 3.

Therefore, indigenous peoples pressed for the elaboration of another international legal instrument – this time in collaboration with indigenous peoples – and they insisted on the inclusion of the express recognition of their inherent right to self-determination.

### States' Attitude towards Indigenous Peoples' Sovereignty and Self-Determination during the Age of Colonisation

In this context, it needs to be mentioned that the idea that indigenous peoples are not “peoples” and, therefore, do not have a right to self-determination is a relatively recent one. For centuries, indigenous peoples had been regarded as subjects of international law and holders of sovereignty. In the early days of colonisation, there was a general consensus that indigenous peoples had sovereignty over their territories since, from the point of view of the colonial powers, indigenous peoples fulfilled all aspects necessary for the recognition of sovereignty: some form of political organisation, a certain territory and independence (McNeil 2000:11). Hence, according to state practice, indigenous peoples' territories could only be placed under one's own sovereignty through conquest or voluntary subjection – not, however, via mere discovery and occupation (Lindley 1926:43-44). This is proven by the existence of countless “treaties” – defined as international agreements between two or more sovereigns – that were concluded between the colonial powers and indigenous peoples in the 16<sup>th</sup>-20<sup>th</sup> centuries. The US alone concluded more than 800 treaties with Indian tribes between 1776 and 1871 (Wiessner 1995:575, note 39). Contents of these treaties were the cession of territorial sovereignty and the transfer of ownership of land, extradition agreements, pledges of peace and amity, and agreements relating to the crossing of Indian lands. The ratification of these treaties was carried out in the same manner as the ratification of treaties with other states (Goldberg 2008:14). There were also more than 80 such treaties concluded with Indian tribes within Canada (Reiter 1996:Chapter V). The recognition of indigenous peoples' sovereignty as regards the Maori of New Zealand is particularly evident. The British Colonial Secretary stated in a letter to the Governor of New Zealand in 1839 that the British Crown “acknowledge[s] New Zealand as a sovereign and independent state”,<sup>23</sup> and in 1840, the British Crown concluded a treaty with more than 540 Maori chiefs – the Treaty of Waitangi – in which the Maori expressly ceded sovereignty over New Zealand to the Crown.

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<sup>23</sup> From the Marquis of Normanby to Captain Hobson (August 14, 1839) British Parliamentary Papers 1840 [238] vol. XXXIII, 37, pp. 38-39.

The respective article in the English version reads:

The Chiefs [...] cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which [they] exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole sovereigns thereof.<sup>24</sup>

(Art. 1 Treaty of Waitangi, 1840)

At the beginning of the 18<sup>th</sup> century, however, the attitude of the colonial powers began to change. They then increasingly took the view that indigenous peoples were too primitive to hold sovereignty. In addition, since the number of indigenous inhabitants had steadily decreased due to diseases being introduced, whereas the number of settlers had steadily grown, and since the territorial claims between the colonial powers had largely been settled, indigenous peoples were not considered serious military opponents or useful allies any more. Instead, they were increasingly regarded as obstacles to the modernisation and prosperity of the country. Consequently, especially with many indigenous peoples that were colonised later, no treaties were concluded and no acts of conquest took place. Instead, the existence of indigenous peoples was utterly ignored and their lands taken according to the so-called *terra nullius* doctrine. This was the case, for example, in Australia, the Northwest coast of North America, Alaska, the northern regions of Canada, and in Greenland. Furthermore, existing treaties were also no longer regarded as binding, on the grounds that indigenous peoples had never been subjects of international law and, therefore, had not had the legal capacity to conclude treaties (Gilbert 2006:47-48, with further references).<sup>25</sup>

The concept that lands inhabited by indigenous peoples were *terrae nullius* – i.e. no man's land – was approved by the Permanent Court of International Justice in 1933 in its decision regarding Eastern Greenland.<sup>26</sup> The case was brought before the Court by Denmark and Norway, who had a dispute over the question which of these two states held territorial sovereignty over Greenland. The Court decided that Denmark held sovereignty because it had peacefully and continuously exercised public authority

<sup>24</sup> The Treaty of Waitangi was drafted in English and Maori. However, the English and Maori versions differ significantly. The Maori version of the Treaty translated the term “sovereignty” as *kāwanatanga*. The exact translation of this term is disputed (Tiemann 1999:26-27). It seems to be predominantly translated as “governorship” or “government” (Kawharu 1989:319-321; Walker 1989:263). Yet, the vast majority of scholars agree that *kāwanatanga* means less than full sovereignty (Tiemann 1999:26-27). See also Waitangi Tribunal 1985:111: “In the Maori text the chiefs ceded to the Queen ‘kāwanatanga’. We think this is something less than the sovereignty (or absolute authority) ceded in the English text”; Waitangi Tribunal 1987:para. 11.11.4 (a): “In the Maori text the chiefs ceded to the Queen ‘kāwanatanga’. This is less than the sovereignty ceded in the English text, and means the authority to make laws for the good order and security of the country but subject to the protection of Maori interests.”

<sup>25</sup> See also *Wi Parata v. The Bishop of Wellington* (1877) 3 N.Z.Jur. (N.S.) 72, in which Chief Justice Prendergast refers to the Treaty of Waitangi as “a simple nullity” (78).

<sup>26</sup> *Legal Status of Eastern Greenland* (1933) P.C.I.J. (Ser. A/B) No. 53:22.

during the last years by undertaking explorations, mapping the region and formulating fishing laws.<sup>27</sup> That the Inuit had in fact lived in Greenland for thousands of years and had their own traditional hunting and fishing laws was not taken into consideration by the Court, which thus impliedly stated that indigenous peoples were not subjects of international law and could not hold territorial sovereignty. So, whereas indigenous peoples' sovereignty was taken for granted in the early days of colonisation, it was not until quite recently that their status as subjects of international law has been disregarded.

### Recognition of Indigenous Peoples' Right to Self-Determination under the Current International Legal Regime

This attitude began to change once again in the 1970s in the course of the indigenous peoples' international mobilisation. In 1975, the International Court of Justice expressly rejected the decision of its predecessor in the *Eastern Greenland Case* when it decided that the region of the Western Sahara, which at the time of colonisation was inhabited by nomadic people, could not be regarded as *terra nullius* because, despite their nomadic lifestyle, the tribes were socially and politically organised and thus held sovereignty over their lands.<sup>28</sup>

The *terra nullius* doctrine was also rejected by more and more national courts. The decision of the High Court of Australia in the *Mabo Case* in 1992, in which the Court decided that the idea that Australia at the time of colonisation was no man's land and open to occupation, was "false in fact and unacceptable in [the Australian] society"<sup>29</sup> is generally regarded as the fall of the last fortress of the *terra nullius* doctrine (Gilbert 2006:29).

However, these decisions only recognised that indigenous peoples once held sovereignty and thus legal personality. They did not, however, state that they still held sovereignty as a people, and thus, had an inherent right to self-determination. Instead, many states continued to deny the existence of indigenous peoples' parallel sovereignty within the state's territory, and thus, of an inherent right to self-determination.

Despite the fierce opposition by many states, indigenous peoples celebrated their biggest success so far in the protection and enforcement of their rights when the UN General Assembly on September 13, 2007, after more than 20 years of preparatory work, adopted the Declaration on the Rights of Indigenous Peoples with only four dissenting votes.<sup>30</sup> All of the objectors have in the meanwhile reversed their decision and declared their support for the UNDRIP (UN News Centre 2010). Indigenous peoples were able to decisively participate in the elaboration of this Declaration (Barelli 2009:970; Charters 2007:122) and, after years of negotiations, they ultimately managed

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<sup>27</sup> *Ibid.*:62-64.

<sup>28</sup> *Western Sahara Advisory Opinion* (1975) I.C.J. Reports 1975 12:paras 80-82.

<sup>29</sup> High Court of Australia, *Mabo v. Queensland (No. 2)* (1992) 175 C.L.R. 1:para. 39.

<sup>30</sup> In the General Assembly, 143 states voted in favour and four against the UNDRIP and 11 states abstained. Thirty-four states did not participate in the vote. The four states voting against were Australia, Canada, New Zealand, and the USA.

to have the one provision included in the document which they regarded as its key provision – Art. 3, which states:

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

(Art. 3 UNDRIP)

As a General Assembly resolution, the Declaration is not *per se* binding but merely constitutes “soft law” (Arts. 10 and 11 UN Charter). The adoption of a General Assembly resolution is neither evidence of existing legal rules, nor does it immediately create new customary international law (Voyiakis 2011:209-223). However, the fact that the Declaration is one of the most discussed texts in the history of the UN (Barelli 2009:969-970) and has been supported by a broad majority of states indicates that many of the aspects laid down in the Declaration have now to be considered as customary international law (Barelli 2009:966-967; Charters 2007:123).

The assumption that indigenous peoples have an inherent right to self-determination under international law is supported by the fact that several UN institutions, such as the Human Rights Committee<sup>31</sup> and the Committee on Economic, Social and Cultural Rights<sup>32</sup> – the treaty monitoring bodies of the International Covenants on Human Rights – as well as regional human rights courts, such as the African Court of Human and Peoples’ Rights,<sup>33</sup> have, in the meantime, also expressly recognised indigenous peoples’ inherent right to self-determination as a peremptory norm of customary international law.

Based on this inherent right to self-determination, indigenous peoples can claim many other rights as inherent to their status as peoples, e.g. the rights to own and live on their ancestral lands, to use their own language and to live according to their own traditions. States are no longer regarded as rights-granting entities that transfer

<sup>31</sup> See e.g. Concluding Observations on Canada (1999) UN Doc. CCPR/C/79/Add.105:para. 8; Concluding Observations on Mexico (1999) UN Doc. CCPR/C/79/Add.109:para. 19; Concluding Observations on Norway (1999) UN Doc. CCPR/C/79/Add.112:para. 17; Concluding Observations on Australia (2000) UN Doc. CCPR/CO/69/AUS:para. 10; Concluding Observations on Denmark (2000) UN Doc. CCPR/CO/70/DNK:para. 11; Concluding Observations on Sweden (2002) UN Doc. CCPR/CO/74/SWE:para. 15; Concluding Observations on Canada (2006) UN Doc. CCPR/C/CAN/CO/5:paras. 8-9; Concluding Observations on Chile (2009) UN Doc. CCPR/C/CHL/CO/5/Add.1:para. 19; Concluding Observations on Sweden (2009) UN Doc. CCPR/C/SWE/CO/6:para. 21.

<sup>32</sup> See e.g. Concluding Observations on the Russian Federation (2003) UN Doc. E/C.12/1/Add.94:para. 11; Concluding Observations on Argentina (2011) UN Doc. E/C.12/ARG/CO/3:para. 10.

<sup>33</sup> See *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria (Ogoni Case)* (2001) Comm. No. 155 /1996:para. 58; *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on Behalf of Endorois Welfare Council v. Kenya* (2010) Comm. No. 276/2003:paras. 252-298.

derivative rights to indigenous peoples out of goodwill, but are now viewed as being obliged to recognise and protect the inherent rights of indigenous peoples.

States have tried to install a safeguard to protect their territorial integrity by insisting on the inclusion of Art. 46, which states:

Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

(Art. 46 UNDRIP)

However, since the right to self-determination is an inherent right that belongs to indigenous peoples in their capacity as peoples, states cannot restrict it. The UNDRIP does not create the right, but merely recognises its existence. Hence, under the same condition as other peoples may claim a right to secession, indigenous peoples also have a right to external self-determination. Nevertheless, only on very rare occasions does the right to self-determination encompass a right to secession, since secession runs counter to the principle of territorial integrity – a fundamental principle of the international legal regime (see Art. 2 No. 4 UN Charter). Therefore, although the right to self-determination generally consists of an internal/defensive and an external/offensive element, its entire range is not applicable in every situation (Cole 2009:347-349). Instead, in most cases, the right to self-determination will be limited to a right to internal self-determination. A right to external self-determination is only permissible in absolutely exceptional cases, in particular when there are widespread and systematic human rights violations or a total exclusion of a certain group from the decision-making process (Cole 2009:125, with further references; Tomuschat 1993:9).<sup>34</sup>

The treatment of indigenous peoples from the 16<sup>th</sup> to the mid-20<sup>th</sup> centuries would – without any doubt – have exceeded this threshold. Indigenous peoples were disenfranchised; they were without justification killed by soldiers in great numbers or not protected against violent attacks by third parties; they were denied essential basic services, such as sufficient food, health services and education; indigenous children were taken away from their communities without their parents' consent; indigenous persons were barred from exercising their culture; and they were completely excluded from the political decision-making process. Since the states' actions back then would have constituted genocide according to Art. II of the Genocide Convention,<sup>35</sup> such actions would – if they took place today – give indigenous peoples a right to secede.

<sup>34</sup> See also Supreme Court of Canada, *Case concerning Certain Questions relating to Secession of Quebec from Canada* (1998) 2 S.C.R. 217; paras. 111-139.

<sup>35</sup> Convention on the Prevention and Punishment of the Crime of Genocide (adopted December 9, 1948, entered into force January 12, 1951) 78 UNTS 277.

However, in recent years, states have increasingly tried to improve the situation of indigenous peoples and to reconcile past injustices. Assimilation of indigenous peoples into the majority society no longer constitutes a goal of government actions. Instead, states recognise that indigenous cultures should be preserved for their own sake. Land restitutions also constitute decisive concessions from states towards indigenous peoples. Furthermore, indigenous peoples have access to national and international courts and tribunals to enforce their rights against the respective governments. It is true that many of the concessions continue to be insufficient, and indigenous peoples are still discriminated against. Nevertheless, positive trends are clearly discernible. Since, in practice, secession is only accepted as *ultima ratio*, i.e. after all available national and international mechanisms have been exhausted, and usually only following long and violent conflicts (Titanji 2009:63; Skaale 2004:161), it must be assumed that indigenous peoples do not generally have a right to external self-determination.

However, there are hardly any indigenous peoples that want external self-determination in the form of secession. What most indigenous peoples want is internal self-determination, i.e. the right to determine their own political status and their economic, social and cultural development within existing state borders.<sup>36</sup>

In recent years, such a right to inherent self-determination has been increasingly recognised and implemented by several states. Canada, for example, adopted an Inherent Right of Self-Government Policy in 1995 and created the Inuit-governed Nunavut Territory, which came into being in 1999 with the splitting of the Northwest Territories into two separate units. In the US, under the heading of “tribal sovereignty”, Indian tribes may – to a certain degree – formulate their own civil and criminal laws, establish their own courts and government institutions, and enjoy special rights on reservations (e.g. tax benefits and exemptions or the right to run casinos). In Greenland, which forms an integral part of the Danish Realm but has enjoyed home rule since 1979,<sup>37</sup> a successful referendum was held in November 2008, which led to the enactment of the Act on Greenland Self-Government in 2009<sup>38</sup> establishing a new form of self-government. Under the new legal regime, the Inuit may expand their competences to almost all areas that are usually under state jurisdiction.<sup>39</sup> Furthermore, the Act on Greenland Self-Government expressly recognises the people of Greenland as a people<sup>40</sup> and even stipulates their right to secede from Denmark and form an independent state.<sup>41</sup>

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<sup>36</sup> Secession was, however, the goal of the indigenous peoples of East Timor and is strived for by the indigenous people of Western Sahara.

<sup>37</sup> See Greenland Home Rule Act, Act No. 577 (enacted November 29, 1978, entered into force May 1, 1979).

<sup>38</sup> Act on Greenland Self-Government, Act No. 473 (enacted June 12, 2009, entered into force June 21, 2009).

<sup>39</sup> See Arts. 2-4 Act on Greenland Self-Government. Only the areas constitution, Supreme Court, defence and security policy, nationality, monetary policy and exchange rates, as well as foreign affairs, remain within the competence of the Danish government, with Greenland having a say in certain areas of foreign affairs (Greenland-Danish Self-Government Commission 2008:5).

<sup>40</sup> Preamble to the Act on Greenland Self-Government.

<sup>41</sup> Art. 21 Act on Greenland Self-Government.

## Appraisal

The new developments in international law and state practice show that states are becoming increasingly aware of their historic responsibilities towards indigenous peoples. The current state practice, along with international court decisions and statements by the UN and other international organisations, indicate that the right of indigenous peoples to self-determination and – attached to this right, their rights to land, resources and the maintenance of their culture – are, nowadays, widely recognised on the national and international level, and can be classified as customary international law. This recognition of indigenous peoples' right to self-determination, and thus, the recognition of their – partial – sovereignty and international legal subjectivity constitutes, however, not a new development in international law, but a return to a previous state of affairs. The recognition of indigenous peoples' right to self-determination has to be regarded as the reinstatement of a status of which indigenous peoples have unlawfully been deprived of a long time ago and denied for centuries.<sup>42</sup> Therefore, the indigenous peoples' right to self-determination cannot be classified as derivative right given to them by states out of goodwill, but it constitutes an inherent right held by them in their capacity as peoples. Under the international law doctrine of reversion, the indigenous peoples' right to self-determination has never been extinguished, but has only lain dormant awaiting restoration (Cassidy 1998:69). Hence, the right to self-determination, which cannot be restricted or interfered with by states, enables indigenous peoples, who have always regarded themselves as sovereign nations and holders of a right to self-determination, to recapture their previous position within the international community (Dahm et al. 2002:294).

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<sup>42</sup> Regarding the illegality of the disenfranchisement of indigenous peoples under international law at that time, see e.g. Gilbert 2006:15-20; Cassidy 1998:88-99; Oppenheim 1992:para. 253.





# **From Protection to Participation? Shifting Perceptions towards Indigenous Peoples under International Law**

*Maria Victoria Cabrera Ormaza*

## **Introduction**

“Indigenous Peoples”, as a legal category (Kingsbury 2001:189, 244), has both human rights and functional considerations. The two international conventions on indigenous peoples’ rights (ILO Convention No. 107 and ILO Convention No. 169) depict indigenous peoples as vulnerable societal groups to whom special protection must be afforded. In legal literature, in addition, the definition of indigenous peoples heightens indigenous peoples’ past and on-going situation of oppression, disenfranchisement and exploitation (cf., for example, Daes 1996:22 or Kingsbury 1998:414, 455). Based on this conception, the focus of the initial work of international organisations with regard to indigenous issues was placed on the protection of indigenous peoples against cultural assimilation and dislocation (Oguamanam 2004:348, 362). However, some international organisations are progressively leaving this human rights-based approach aside and are favouring a “functional approach” based on the contribution of indigenous peoples to the realisation of a certain set of common aims (Cabrera 2012:263, 281-289). Under this “functional approach”, indigenous peoples are regarded as equal partners in international governance with special participatory rights.

Some indigenous representatives have already subscribed to this new legal discourse in order to advance their claims for their own legal status and self-determination both at the national and international level. Against this backdrop, this paper analyses the implications of both the human rights-based and the “functional approach” on the understanding of indigenous peoples by international law. In doing so, this paper argues that the use of a “functional approach” implies the recognition of indigenous peoples as emerging subjects of international law with special participatory rights. Furthermore, this approach calls for a re-examination of the – for a long time paternalistic – relationship between indigenous peoples and states.<sup>1</sup>

This paper has been divided into three parts. The first part explains the traditional human rights-based approach to indigenous peoples under international law and some of its limitations. The second part elaborates on the “functional approach” to indigenous peoples. It analyses the different ways in which indigenous peoples are expected to contribute to the achievement of certain aims. The third part examines the manner in which the “functional approach” is reflected in the work of international organisations concerning indigenous issues and the legal implications involved.

## Human Rights-Based Approach

From a human rights point of view, indigenous peoples are represented as a historically disenfranchised and vulnerable group, which is in need of special protection (Cabrera 2012:266). This portrayal was incorporated into the first international convention concerning indigenous peoples, namely ILO Convention No. 107. This document situates indigenous peoples in a “less advanced stage” of development and promotes their integration into non-indigenous society (Preamble, Para. 2; Art. 1, Para. 1 (a), Art. 2, Para. 1).<sup>2</sup> This perspective was criticised by some indigenous peoples’ advocates to be “assimilationist” as it threatens the preservation of the indigenous identity (Barsh 1987:756; Anaya 2004a:55). This emphasis on indigenous peoples’ integration and development was abandoned in the late-1980s.

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<sup>1</sup> In May 2012, the UN Deputy Secretary General opened the 11<sup>th</sup> session of the Permanent Forum on Indigenous Issues inspiring indigenous delegates converged at the meeting to move towards the day when indigenous peoples are heard, listened to and empowered (UN News Service 2012). Similar wording was used some years ago by the Executive Director of the International Fund on Agricultural Development, who pointed out that that the empowerment of indigenous peoples mattered deeply to the organisation she represented (IFAD 2008).

<sup>2</sup> This understanding has its roots in the Berlin Conference of 1885 (also called the *Kongokonferenz*). This conference established the duty of some European countries exercising, at that time, colonial domination or other forms of political control in Africa to “civilise” and protect the Aborigines. Article 6 of the General Act of the Berlin Conference reads, “All the Powers exercising sovereign rights or influence in the aforesaid territories bind themselves to watch over the preservation of the native tribes, and to care for the improvement of the conditions of their moral and material well-being, and to help in suppressing slavery, and especially the slave trade. They shall, without distinction of creed or nation, protect and favour all religious, scientific or charitable institutions and undertakings created and organized for the above ends, or which aim at instructing the natives and bringing home to them the blessings of civilization.”

Instead, respect for indigenous peoples' own way of living became the central focus of the second international convention on indigenous peoples' rights (ILO Convention No. 169, Preamble, Para. 4 and Art. 5 (b)) and other non-binding human rights instruments addressing indigenous peoples' rights (e.g. Human Rights Committee, General Comment No. 23 1994; Committee on the Elimination of Racial Discrimination, General Recommendation No. 23 1997). The need to repair the vulnerable situation of indigenous peoples still remains in the current human rights discourse, but the means of achieving this aim shall be respectful of indigenous peoples' cultural integrity. This implies an understanding of the human right to culture as a right with a collective dimension.

This human rights-based understanding is also reflected in the classical definitions of indigenous peoples in international law, as the one elaborated by UN Special Rapporteur José Martínez Cobo in 1982. The definition reads:

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

(Martínez Cobo 1983:Paras. 379, 380)

Some of the criteria laid down in this definition have human rights implications. The criterion of historical precedence, for example, advocates the acknowledgment of indigenous peoples as first nations entitled with self-determination (Engle 2010:96). The non-dominant situation of indigenous peoples speaks for an obligation of the international community to protect indigenous peoples against racial or legal discrimination (Committee on the Elimination of Racial Discrimination, General Recommendation No. 23, Para. 4 (b)). The criterion of cultural distinctiveness is associated with the obligation to respect indigenous peoples' traditional lifestyles (Human Rights Committee, General Comment No. 23, Para. 7).

The human rights-based approach to indigenous peoples has some limitations. One of these limitations lies in the use of historical arguments to justify the recognition of indigenous peoples' right to self-determination.<sup>3</sup> Originally, the term "indigenous" was shaped within the context of colonialism in America and Australasia. It was used to define those who inhabited the country before colonialism (de Vitoria 1917:116). Today, there is an increasing number of ethnic groups from Asia, Africa and even from Europe who do not fit within this classical understanding of "indigenous", but

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<sup>3</sup> This has been the position of North American indigenous groups to claim both internal and external forms of self-determination (Engle 2010:77).

seem to face similar cultural or racial discrimination within their countries.<sup>4</sup> Accordingly, the scope of application of this seemingly human rights-based definition of indigenous peoples is temporally and geographically limited.

A second limitation of the human rights-based approach is its foundation on an absolute understanding of indigenous peoples as a non-dominant sector of the society. There are, however, several situations in which indigenous peoples, in fact, represent the majority of the population and have greater access to power than other non-indigenous groups (see the chapter by Hauser-Schäublin).<sup>5</sup> Within the indigenous sector itself, politically powerful indigenous organisations appear to be privileged over minority indigenous associations (see the chapter by Müller).<sup>6</sup> For this reason, it is essential to critique the label “indigenous” and, thus, its connotation of “repression”.

Despite its aforementioned limitations, the human rights-based approach to indigenous peoples is reflected in some provisions of the UN Declaration on the Rights of Indigenous Peoples. The preamble of the Declaration recalls the “historical injustices”, “colonization” and the on-going situation of dispossession suffered by indigenous peoples (Paras. 5, 6 and 9).

## Functional Approach

While indigenous peoples are subjects of special protection in the human rights discourse, in other fields of international law (international environmental law, international law of culture, law of development cooperation, etc.) indigenous peoples play a more active role. This approach, which is understood as a “functional approach”, centres upon the potential contribution of indigenous peoples to the attainment of certain international goals. These include, among others, environmental protection, food security, human health, economic development cooperation, and promotion of cultural diversity. The following paragraphs provide an examination of these different contributions of indigenous peoples through a “functional” perspective.

### Indigenous Peoples and Environmental Protection

The first contribution of indigenous peoples relates to environmental protection. Indigenous peoples have often been regarded as good role models of environmentally sustainable living, particularly due to their close attachment to the land (Richardson 2009:338, 340; Tenant 1994:20). The Rio Declaration on Environment and

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<sup>4</sup> Critical perspectives on the use of historical arguments as the justification for indigenous peoples’ rights can be found in Aukerman (2000:1011); see also Cabrera (2012:273-278). Self-identified African indigenous communities have argued that they have felt “invisible” to the United Nations (Permanent Forum on Indigenous Issues 2006).

<sup>5</sup> This is, for example, the case of some indigenous peoples in Fiji (Minority Rights Groups International 2012:169).

<sup>6</sup> A political and sociological analysis on the division within the indigenous sector in Bolivia, as well as on the differential treatment given by the government of Evo Morales (who is well-known as the first indigenous president in Bolivia) to different indigenous organisations can be found in Schilling-Vacaflor (2010).

Development (principle 22) proclaims indigenous peoples as vital actors in the achievement of sustainable development (see chapters by Sanmukri and Steinebach). Similarly, the Convention on Biological Diversity underscores the important role of indigenous peoples in the use and conservation of biological and genetic resources (Art. 8(j)). This understanding is also reflected in the “Report of the World Commission on Environment and Development: Our Common Future” (World Commission on Environment and Development 1987). It states that indigenous and tribal peoples are,

repositories of vast accumulation of traditional knowledge and experience that links humanity with its ancient origin. Their disappearance is a loss for their larger society, which could learn a great deal from their traditional skills in sustainably managing very complex ecological systems.

(World Commission on Environment and Development 1987:114, 115)

Some scholars criticise the way indigenous peoples have been included in the ecological discourse. Arturo Escobar, for example, notes:

ethnic and peasant communities living in tropical rain-forest areas of the world are finally being recognized as owners of their territories (...), but only to the extent they accept to treat it – and themselves – as reservoirs of capital.

(Escobar 2012:203)

In fact, in many instances, it is indigenous peoples themselves who use this environmental discourse as a means to bolster their classical claims for self-determination, participation and autonomy (Morgan 2004:481-491). The UN Permanent Forum on Indigenous Issues<sup>7</sup> now supports the engagement of indigenous peoples in the achievement of environmental objectives of the United Nations (UN Permanent Forum on Indigenous Issues 2008, Para. 4). Furthermore, it has called upon the United Nations (UN) to create mechanisms for indigenous peoples’ participation in relevant negotiations concerning climate change (UN Permanent Forum on Indigenous Issues 2008, Para.30).

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<sup>7</sup> The UN Permanent Forum on Indigenous Issues was created in 2000 by the UN Economic and Social Council as one of its advisory bodies on indigenous issues. It is composed of indigenous representatives of different regions of the world. For more information on the role and competences of the UN Permanent Forum on Indigenous Issues, see ECOSOC Res. 2000/22.

## Indigenous Peoples and Traditional Knowledge

The second contribution of indigenous peoples lies in the use of their traditional knowledge. From a legal perspective, traditional knowledge encompasses all individual or collective innovations and practices for the conservation of biodiversity, traditional medicine and expressions of folklore, among others, developed by indigenous peoples and carrying a socio-economic value.<sup>8</sup> It has been internationally recognised that the traditional knowledge of indigenous peoples is of enormous significance in the conservation, use and evolution of biodiversity, as well as in the management of climate change (Convention on Biological Diversity, Preamble, Para. 12; The Nagoya Protocol, Preamble, Para. 20; Andean Community of Nations, Decision 391, Preamble, Para. 5; Ottawa Declaration, Preamble, Para. 6) (see Groth 2007). The Arctic Council,<sup>9</sup> for instance, has underscored the importance of the use of Arctic indigenous peoples' traditional knowledge in the planning and implementation of climate change adaptation measures (Nuuk Declaration 2011:6).

The use of traditional knowledge is also considered as fundamental in meeting the demands of food security and human health. The International Treaty on Plant Genetic Resources for Food and Agriculture underlines the major role of indigenous farmer communities in assuring food and agriculture production through their use of traditional practices (Art. 9, Para. 1). Similarly, the World Health Organisation stresses the importance of facilitating access to traditional medicines of indigenous and local communities on behalf of the global population (2002). This explains the scientific community's push towards the creation of an international legal regime for access to genetic resources and traditional knowledge involving indigenous communities (Chege Kamau et al. 2010:246, 254).

In light of this, indigenous peoples' traditional knowledge has become a cross-cutting issue. This has motivated the international community, in general, and international organisations, in particular, to invest time and resources towards the establishment of partnerships with indigenous communities, both at the local and international level (see Sanmukri in this volume).<sup>10</sup> In fact, as will later be explained, traditional knowledge has been, in many cases, the springboard used by indigenous peoples to gain access to international forums (UN Permanent Forum on Indigenous Issues 2008, Para. 30).

## Indigenous Peoples and Cultural Diversity

Another functionality of indigenous peoples is the promotion of cultural diversity. The international community affirmed in the Convention on the Protection and Promotion

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<sup>8</sup> Further elaboration on the concept of traditional knowledge can be found in WIPO (2002).

<sup>9</sup> The Arctic Council is an intergovernmental forum composed of eight countries located in the northern hemisphere. It has the aim of protecting the Arctic environment (Ottawa Declaration, Preamble, Paras. 1 and 4).

<sup>10</sup> Evidence of this is the framing of the so-called "UN-REDD" (UN Collaborative Initiative on Reducing Emissions from Deforestation and Forest Degradation), which attempts to create collaborative partnerships between states and indigenous communities to reduce CO<sub>2</sub> emissions. More information on this programme can be found in: UN REDD Programme Strategy (2011-2015).

of the Diversity of Cultural Expressions that “the protection and promotion of the diversity of cultural expressions presuppose the recognition of equal dignity of and respect of all cultures, including the culture of persons belonging to minorities and indigenous peoples” (Art. 2, Para. 3). This has also been reflected in the UN Declaration on the Rights of Indigenous Peoples (Preamble, Para. 3), the Vienna Declaration and Programme of Action (Preamble, Para. 13; see also General Assembly Resolution 1993, Para. 6), the UNESCO Declaration on Cultural Diversity (Art. 4), among many others.

Indigenous peoples have been very often portrayed as groups existing outside modernity (Allen 2006:315, 318). They have been depicted either as “pre-modern societies” in need of civilisation (Rajapogal 2003:29) (as was in the case in ILO Convention No. 107) or as the “victims of progress” (Tenant 1994:1, 17) (as occurred in ILO Convention No. 169). Whether from one perspective or the other, recognition of “indigenous peoples” as subjects of special rights appears to depend on the maintenance of a particular distinct culture or orientation towards the world and nature (Borrows 2009:408). Such an understanding would play against those indigenous individuals or communities which have progressively started to integrate into mainstream society. On the other hand, representation of indigenous peoples as “backward societies” could also lead one to the problematic conclusion that certain indigenous groups or individuals might still be regarded as “incapable” of representing themselves before states and the international community, but could do so only through NGOs.<sup>11</sup> At this point, one should take into consideration that even long-standing indigenous groups are undergoing a voluntary or probably inevitable process of integration with the so-called “modern world”.<sup>12</sup> This raises the question, what will the future of this culturally-based construction of “indigenous peoples” be?

### Indigenous Peoples and Economic Development Cooperation

Finally, the last contribution of indigenous peoples refers to the fundamental role they play in ensuring successful economic development cooperation. A number of international financial institutions, including regional development banks, have designed operational policies on indigenous peoples to assure their participation in the preparation and implementation of development programmes and projects. This is, for example, the case with the World Bank (2005), the Inter-American Development Bank (2006), the Asian Development Bank (1998), and the European Bank for Reconstruction and Development (2008). Although one could, at first sight, argue that these policies are to a large extent based on a human rights-based approach, there is, nevertheless, an implication of a new function of indigenous peoples, that is, their

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<sup>11</sup> One of Survival International’s general aims is to “support legal work to ensure that tribes are expertly represented” (<http://www.survivalinternational.org/info>).

<sup>12</sup> An example of the integration of certain indigenous groups with the “modern world” is the case of the Native American groups in Nevada (Ahmad 2006).



collaboration in the successful implementation of economic development projects within their territories.<sup>13</sup>

In the case of the World Bank, indigenous peoples seem to be regarded as potential backers of World Bank-financed projects (Cabrera 2012:289). The World Bank's latest operational policy on indigenous peoples attempts to

make the development process more inclusive of indigenous peoples by incorporating their perspectives in the design of development programmes and poverty reduction strategies, and providing them with opportunities to benefit more fully from development programs.

(World Bank 2005:Para. 22(b))

Furthermore, one of the objectives of this policy is to enhance the capacity of the said communities in implementing, monitoring and evaluating development programmes (World Bank 2005, Para. 22(f)). This may have a historical explanation behind it. During the 1980s, the World Bank was harshly criticised for the negative consequences of its development projects in territories occupied by indigenous peoples (Kingsbury 1999:323, 324). It, thus, became clear that these projects would only be successful if supported by such affected populations (Cabrera 2012:288).<sup>14</sup>

## Functional Approach Entwined with Participation

The functional approach to indigenous peoples has been captured by the preamble of the UN Declaration on the Rights of Indigenous Peoples (Preamble, Paras. 3 and 11). Based on this approach, the Declaration (Preamble, Para. 15) and other UN documents have made use of words such as "cooperation" or "partnership" to describe how the relationship between states and indigenous peoples should be. Even before the adoption of the Declaration, the UN and other intergovernmental bodies started to create special mechanisms to enhance the participation of indigenous peoples in international negotiations concerning the environment, culture and development. The UN Permanent Forum on Indigenous Issues is a good example in this regard.<sup>15</sup> Furthermore, voluntary funding mechanisms have been established to

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<sup>13</sup> For further analysis on the functional approach to indigenous peoples in the context of international development cooperation, see Cabrera (2012:281-289).

<sup>14</sup> The apparently human rights-based approach of the World Bank policy on indigenous peoples is obscured by the long-standing refusal of the Bank to recognise the right of indigenous peoples to free, prior and informed consent in relation to the implementation of economic development projects (Mackay 2010:316).

<sup>15</sup> The Permanent Forum aims to enhance cooperation among states, the UN and indigenous organisations in issues of mutual interest (ECOSOC Res. 2000/22).

facilitate participation of indigenous and local communities in international debates concerning indigenous issues.<sup>16</sup>

Indigenous peoples have been granted special participatory rights particularly in international environmental forums. The Agenda 21<sup>17</sup> requires states to include indigenous peoples in the decision-making, planning and implementation of sustainable development strategies (Section III, Para. 26). Based on this, indigenous peoples are, today, one of the nine major groups participating in negotiations within the UN Sustainable Development Division (UN Sustainable Development Platform Knowledge). In a similar manner, the Arctic Council has conferred the status of permanent participants upon indigenous arctic organisations (Declaration on the Establishment of the Arctic Council, Para. 2).

Indigenous peoples are also taking part in international negotiations concerning traditional knowledge. Indigenous delegates participate in the meetings of the “Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore” in the World Intellectual Property Organisation (Secretariat of WIPO 2011). In addition, the Conference of the Parties to the Convention on Biological Diversity has involved indigenous organisations in negotiations related to traditional knowledge (COP Decision VII/16, section G, Para. 10).

The remainder of this section identifies some complexities and challenges ahead in the recognition of indigenous peoples’ legal status and participation in the international realm.

### Emergence of new “Indigenous Peoples”

Since the idea of partnership between international organisations and indigenous peoples sounds compelling, more and more indigenous organisations are coming into existence in order to catch the attention of international organisations. For many years, the international indigenous peoples’ movement comprised basically organisations from North-America, Latin-America and Australasia which resorted to the “first-people argument” to assert their claims for self-determination (Engle 2010:46-66). However, as early as when the United Nations decided to include indigenous organisations in the drafting process of the Declaration on the Rights of Indigenous Peoples (ECOSOC Res. 1982/34), emerging Asian and African indigenous groups began to appear on the international scene. To justify their “indigeneity”, these organisations have resorted to both human rights and functional arguments (Erueti 2011:93, 115). This is, for example, the case of the Indonesian indigenous alliance Aliansi Masyarakat Adat Nusantara (AMAN), which highlights the “capacity of Indigenous Peoples to maintain and expand their traditional wisdom in protecting the earth, water, and all natural wealth contained within nature” (see the chapters by Arizona/Cahyadi, Müller, Steinebach, Grumbles, Klenke, and Hauser-Schäublin in

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<sup>16</sup> One of these mechanisms is the UN Voluntary Fund for Indigenous Peoples (GA Res. 40/131, December 13, 1985).

<sup>17</sup> Agenda 21 is a voluntarily implemented action plan with regard to sustainable development which resulted from the UN Conference on Environment and Development of 1992.

this volume).<sup>18</sup> Since there is no universal definition of indigenous peoples under international law, one could argue that none of these groups should be denied the right to label themselves as “indigenous”. Thus, today, new indigenous organisations have emerged, such as the Asia Indigenous Peoples’ Pact, comprising indigenous groups from India, Pakistan, Bangladesh, Thailand, and Indonesia, among others (AIPP 2012). Yet, at the national level, some of these self-identified indigenous communities from Asia and Africa are regarded by their national governments merely as minorities or tribal populations (Cabrera 2012:276).

Some other culturally distinct groups such as Afro-descendant communities – not considered as “indigenous” in the classical sense – are searching for recognition of their own collective rights (Cabrera 2012:280). In doing so, they have already initiated a campaign for the recognition of their own identity and own collective rights as independent from the indigenous identity (Marchesi 2011). Others have rather preferred to construct their own indigenous identity (Cabrera 2012:280). This second option has prevailed in some Latin-American countries where indigenous peoples have achieved political recognition and have been assured access to governmental structures (Cabrera 2012:278-281).

### Problems concerning Participation

It is important to reflect more on the ways and means through which indigenous organisations are meant to exercise participation in international forums. Some indigenous organisations contend that their participation in international negotiations is ineffective and limited (Joint Statement of the Grand Council of the Crees (Eeyou Istchee) et al. 2011, Para. 7; Grand Council of the Crees (Eeyou Istchee) 2011, Para. 74). Moreover, they claim that participation of indigenous peoples in global governmental structures should be full and effective based on their recognition as self-determined groups under international law in accordance with the UN Declaration on the Rights of Indigenous Peoples (Joint Statement of the Grand Council of the Crees (Eeyou Istchee) et al. 2011, Para. 9).

In fact, in many cases, indigenous groups which are afforded the opportunity to participate in international law and decision-making processes only hold “observer status” (Conference of the Parties to the CBD, Decision IV/9, Para. 2; Secretariat of WIPO 2011:2). Moreover, indigenous organisations are often assimilated into non-governmental organisations (NGOs) (Human Rights Council 2012, Para. 10-12). However, this paper submits that more participation necessarily depends on the answer to the following long-standing controversial question: Who has the right to represent the interests of indigenous peoples at the international level? Due to the

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<sup>18</sup> See statement of the Aliansi Masyarakat Adat Nusantara (AMAN) on the official website of the Asia Indigenous Peoples’ Pact (AIPP),

[http://cmin.aippnet.org/index.php?option=com\\_content&view=article&id=5&Itemid=8](http://cmin.aippnet.org/index.php?option=com_content&view=article&id=5&Itemid=8).

However, the creation of new targeted categories for the identification of certain vulnerable groups in the international realm has been regarded by some as unsustainable (Kymlicka 2007:8).

complexity of this issue, possible answers to this question have to be left for further research.

## Conclusions

International Law has looked at indigenous peoples through two different lenses: a “human rights-based approach” and a “functional approach”. The first approach emphasises “protection”, whereas the other centres upon “participation”. A human rights-based approach falls short of capturing the current dynamics of some indigenous groups. On the contrary, from a purely “functional perspective”, it would not make any difference whether a group is indigenous in its classical sense or not. What matters in this case is how a particular community can contribute to the achievement of environmental protection, sustainable land-use and cultural diversity, among others.

It has been demonstrated throughout this paper that the functional approach is intrinsically entwined with the recognition of indigenous peoples’ participatory rights in international law and policy-making. This has been specially boosted by international organisations. In this context, participation of indigenous peoples in international negotiations emerges as a practical necessity, rather than as a legal duty.

The number of policies and mechanisms enhancing participation of indigenous peoples at the international level has increased significantly within the last two decades. This seems to be parallel to the emergence of new indigenous peoples in the international arena seeking international legal recognition. Nevertheless, the participation recognised to indigenous peoples in international forums seems to be limited.

This paper argued that the use of a functional approach has benefited indigenous peoples in the sense that they have started to be regarded as actors of international governance, rather than mere recipients of norms and policies affecting them. At the same time, the paper recognised the danger of absolutism in the use of a functional approach. There is a possibility, within this approach, of ignoring the indigenous groups which do not subscribe to the roles that international law has defined for them.



# **The Revival of Indigenous Peoples: Contestations over a Special Legislation on *Masyarakat Adat***

*Yance Arizona and Erasmus Cahyadi*

## **Introduction**

“If the state does not recognise us, we will not recognise the state.” This statement is the outcome of the First Congress of the Indigenous Peoples of the Archipelago that was held in 1999. This motto challenges the contemporary state of Indonesia. It also repositions the relationship between the indigenous peoples and the state. The Indigenous Peoples’ Alliance of the Archipelago (Aliansi Masyarakat Adat Nusantara, AMAN) was formed in 1999 as a result of numerous meetings that helped to crystallize the ideas of the movement, eventually leading to the emergence of the indigenous peoples’ movement. AMAN is the biggest organisation that represents *masyarakat adat* in today’s Indonesia.

The first seeds of the indigenous peoples’ movement were sown in the 1980s. Early discussions were initiated by the environmental activists from the Indonesian Forum for Environment – Friends of the Earth Indonesia (Wahana Lingkungan Hidup Indonesia, WALHI) and by the legal aid activists from the Legal Aid Foundation of Indonesia (Yayasan Lembaga Bantuan Hukum Indonesia, YLBHI). At the time, these organisations had already started working on the protection of the indigenous peoples whose ancestral lands were being expropriated by the government

and turned into mining and forestry concessions under the developmentalist policies of the New Order regime.

In 1993, a number of organisations working on the protection of the indigenous peoples' rights organised a meeting that led to the formation of the Indigenous Peoples Rights' Advocacy Network (Jaringan Pembelaan Hak-Hak Masyarakat Adat, JAPHAMA). Subsequently, a number of similar networks have been established in various regions, such as Jaringan Penggerak Masyarakat Adat Nusa Tenggara Tengah (Jagat NTT) and Aliansi Masyarakat Adat Kalimantan Barat (AMA Kalbar). The youths in Mentawai created Yayasan Citra Mandiri, while the youths in West Kalimantan formed an organisation called Lembaga Bela Banua Talino (LBBT) (Moniaga 2010:311). Furthermore, JAPHAMA, in collaboration with other organisations, gathered hundreds of indigenous peoples' representatives from around the Indonesian archipelago on March 17, 1999, for the First Congress of the Indigenous Peoples of the Archipelago (KMAN I). This Congress resulted in the creation of an organisation called the Indigenous Peoples' Alliance of the Archipelago (Aliansi Masyarakat Adat Nusantara, AMAN). Since then, March 17 is remembered by all the indigenous peoples in Indonesia as the day of the emergence of the indigenous peoples' movement.

One needs to recognise that the emergence of the indigenous peoples' movement in Indonesia was influenced by the international indigenous peoples' movement. The United Nations, for example, announced in 1993 that this was to be the Year of the Indigenous Peoples. The period from 1995 to 2004 was announced as the First Indigenous Peoples' Decade, followed by the Second Indigenous Peoples' Decade from 2005 to 2014. This UN initiative brought about the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007. The intense exchanges between the local Indonesian indigenous peoples' activists and the advocates at the international level were facilitated by attendance at the international meetings, as well as through hosting international activists in Indonesia. Due to these exchanges, the two movements are closely connected.

Despite the fact that the indigenous peoples' movement is becoming stronger, the communities still have to struggle for their rights. In 2011 alone, AMAN registered around forty-eight conflicts that involved the indigenous peoples, consisting of a total of 947 families. These conflicts cover an area of 690,558 hectares<sup>1</sup> and are caused by the lack of tenurial rights over the contested customary territories. Criminalisation of indigenous peoples is still recurrent. According to AMAN's data, 224 members of indigenous communities were arrested and detained between October 2012 and March 2013; five of them were found guilty in court and two of them filed cassation appeals.

The existing legal regulations do not favour indigenous peoples. This is a reason for the frequent repression and criminalisation. Law enforcement is not a legitimate mechanism for achieving justice in these cases. On the contrary, it is seen as a system that sustains injustices towards indigenous peoples. Forestry Law is one of the

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<sup>1</sup> Compare with the data from the Consortium for Agrarian Reform (KPA) from 2012, that registered at least 198 conflicts; the majority of conflicts (45%) occurred in the plantation sector; the smallest number of conflicts (2%) occurred in the coastal areas (Konsorsium 2012).

examples of an unjust law that is imposed upon indigenous peoples. At the present, the most recent data suggests that 16.62% of 129 million hectares, 67% of the land mass of Indonesia, had been determined as “forest area” (*kawasan hutan*) (Dirjen Planologi Kehutanan 2012). The government has already granted a lot of concessions to companies for the exploitation of forest resources. This, in turn, causes conflicts between the indigenous peoples and the companies operating in the forest areas that, in fact, have only an ambiguous legal status.<sup>2</sup>

Some examples of such conflicts over forest use may illustrate these conflicts (see also AMAN 2013). In mid-2012, the local government of the Sumbawa Regency (*kabupaten*), West Nusa Tenggara, set at least fifty housing units of the indigenous community of Pekasa on fire to evict the community from their customary land. These houses represented the old village the community had rebuilt in the area that was designated by the government as the protected forest area. However, the local government had issued a license to a forestry company and a mining company to operate in the customary lands of the Pekasa community. The Datuk (traditional chief) of Pekasa, Edi Kuswanto, was arrested by the police and taken to court but no evidence could be adduced that the disputed land was part of the forest area. Nevertheless, the Sumbawa District Court Judge sentenced the Datuk Pekasa to 18 months imprisonment with a fine of 100 million rupiah. At the appeal, the Supreme Court of West Nusa Tenggara upheld the verdict of the Sumbawa District Court. In June 2013, this case was filed for another appeal to the Supreme Court.

A similar type of conflict occurred over the customary territory of the indigenous community of Pandumaan Sipituhuta in North Sumatra. In 2012, the police arrested and intimidated the indigenous peoples of Pandumaan Sipituhuta because they stopped the operation of PT Toba Pulp Lestari (PT. TPL) on their territory of 6,000 hectares. The expropriation of the *adat* land had started in 2009 when the local government of the Humbang Hasundutan Regency issued a license to a pulp and paper company, PT. TPL. As part of its operation, the company had been felling the traditional benzoin forest that belongs to this community and started planting trees used for the production of pulp and paper. On September 18, 2012 a clash occurred between the community and the company’s security staff which was assisted by police officers from the Mobile Brigade (Brimob). Outnumbered, the security staff and police officers fled the area. In the aftermath, however, the Humbang Hasundutan police (*polres*) sent summons several times to some of the community members who were considered to be the clash coordinators. This case demonstrates that repression and criminalisation of *masyarakat adat* who defend their customary lands still occur and the

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<sup>2</sup> Several regents from the province of Central Kalimantan submitted a Judicial Review of the Forestry Law to the Supreme Court of the Republic of Indonesia in 2011. The decision of the Supreme Court corrected the legality of the state forest area. In brief, the decision of the Supreme Court suggested that a forest area can be said to be a legal forest area (not in conflict with the 1945 Constitution) if the area has been already determined as a forest area, meaning that the area had already gone through the process of designation, defining borders, mapping and gazettelement. This means that a forest area that is not supported by all these processes and is only pointed at by the Ministry of Forestry cannot be legally seen as a forest area.



legal regulations do not yet fully acknowledge the existence and the rights of *masyarakat adat*.

The Forestry Law that does not favour the interests of the indigenous peoples means, in fact, that the rule of law in the field of forestry supports the expropriation of the customary land of the indigenous peoples. It also means agreeing with the acts of violence against the indigenous peoples. Therefore, a law reform and creation of new laws are needed to respond to the plight of *masyarakat adat* and to defend their rights against the expropriation of their customary land.

## The Colonial *Adat* Studies and their Implications

The key concepts in the study of *adat* and *adat* law were developed by several Dutch legal scholars, such as Cornelis van Vollenhoven, Barend ter Haar Bzn and their colleagues. Vollenhoven analysed the data he gathered from the reports about the lifestyles of the Netherlands East Indies' residents compiled both by the researchers and the colonial officials. He systematised the data about the customary laws in volumes called *Adatrechtbundels* (*Adat Law Tomes*).<sup>3</sup>

Vollenhoven and his colleagues were sympathetic and highly interested in unveiling the lives of the indigenous peoples. They discovered communities with distinct legal systems that are different from those found in Europe. They tried to discover and understand the rule of law that the communities applied. Vollenhoven's findings were published in a book entitled "The Discovery of *Adat* Law" (*De ontdekking van het adatrecht*, 1928).

The Dutch colonial government had started to implement the so-called "ethical policy", which was centred on the issues of education, emigration and irrigation.<sup>4</sup> The legal scholars, influenced by liberalist ideas, struggled to advocate on behalf of *masyarakat adat*. They wanted them to benefit from the "ethical policy" of the Dutch colonial government. The recognition of the existence of the *adat* law communities also became a means to administer the colonies by indirect rule, that is, through the local elites and in the absence of the colonial authorities.

Several key concepts that are still being used today within the customary law research are *adat* law (*hukum adat* or *adat recht*), *adat* law circles (*lingkaran hukum adat* or *adat rechtskringen*), communal rights over land or "right to avail" (*hak ulayat* or *beschikingsrecht*), and the *adat* law communities (*masyarakat hukum adat* or *adat rechtsgemeenschappen*). *Adat* law (*adatrecht*) is a term that was systematically used for the first time by Christiaan Snouck Hurgronje and, subsequently, by Vollenhoven (Snouck Hurgronje 1893:16; Vollenhoven 1933:3; Benda-Beckmann F. and K. v. 2011:170-171). They realised that the term *adat* was used in many places to describe an entity united by

<sup>3</sup> Cornelis van Vollenhoven wrote several series of *Adatrechtbundels* to describe the situation of laws and native customs in Indonesia in the early-20<sup>th</sup> century.

<sup>4</sup> The three major programmes are called Trias Van Deventer, because they were being promoted by the Dutch liberal named Conrad Theodor van Deventer. The three programmes are: (1) irrigation, build and improve irrigation and dam systems for farming needs; (2) emigration, i.e. encourage transmigration; and (3) education, i.e. promotion of education.

morality, customs, traditions, and legal institutions, even though the concept was not found on all the islands of Indonesia (Benda-Beckmann, F. and K. v. 2011:170-171).<sup>5</sup> Furthermore, the concept of *adat* law circles (*adat rechtseringen*) was, in fact, created by these legal researchers in order to identify the common features and the culture-specific forms of intrinsic logic of these communities in Indonesia. Their observations were systematised into 19 *adat* law circles (compiled between 1906 and 1918) reflecting the state of knowledge at a time when knowledge and resources were limited (Benda-Beckmann F. and K.v., 2011:174).

The term *beschikkingsrecht* refers to the concept of *bak ulayat* and describes a land management system of *adat* communities that regulates and allocates land among the community members holding cultivation rights. Vollenhoven names six characteristics of *beschikkingsrecht*<sup>6</sup> in his book *Miskenningen van het Adatrecht* (1909).

It is important to note that what is referred to as *adat* law communities or *masyarakat hukum adat* is a literal translation of *adat rechtsgemeenschap*. *Adat* law communities are local communities and live according to *adat*. Barend ter Haar Bzn suggests that a common origin (genealogy) and a shared territory are the key aspects that unite and characterize an *adat* community. Ter Haar Bzn maps 13 types of *masyarakat hukum* communities, such as *nagari*, *marga*, *negeri*, *ohoi*, *buta*, *kuria*, *binua*, *gampong*, and others. These types vary according to the way they combine the genealogical and territorial aspects mentioned above (ter Haar Bzn 1962:65-81).

## Independence, the New Order Regime and the Expropriation of the Indigenous Lands

The founding fathers of Indonesia intended to keep the existing governing structures of traditional village units within the new government system in the formation of the new independent state. Soepomo and Muhammad Yamin were the two influential lawyers who developed the first Constitution of Indonesia. In their design, they envisioned a hierarchical, tiered system that consisted of several governance structures. The lowest tier of the governance system is a territory-based *adat* law which communities organised in traditional villages and which is seen as a basic foundation for nation-building. In the middle, there is a regional government that consists of the provincial and regional (regency/city, *kabupaten/kota besar*) government. The national government represents the top of the governance pyramid.

<sup>5</sup> Vollenhoven stated that *adat* law is “all the regulations that become behavioral guidelines for the native communities and foreign orientals (*timur asing*) which, on the one hand, consist of control sanctions (this is why it is called law) and, on the other, is not codified (this is why it is *adat*)” (Vollenhoven 1933:3; Holleman 1981:23; Benda-Beckmann, F. v. and K., 2011:170-1).

<sup>6</sup> The six characteristics of *beschikkingsrecht* are: 1) a community’s authority over uncultivated land; 2) the use of land by outsiders can only exist through the agreement of the community; 3) payment for the land use as a form of recognition; 4) there is still a community authority over the land that is being cultivated; 5) collective responsibility over the territory; and 6) eternal land rights, which means the community possesses the unconditional right to relinquish (Vollenhoven 1909, 1919). Burns, however, contends that there is nowhere in Indonesia which fulfils all the six characteristics outlined by Vollenhoven (Burns 1989).

This governmental system can still be seen in the Law on Local Governance (UU No. 22/1948) that states that “Regions of the Republic of Indonesia are divided into three tiers, that is: province, regency (big city) and village (small town), *negeri*, *marga*, and others, which carry a right to regulate and manage their own households.” Thus, *adat* law communities, entitled differently in each area and often referred to as village (*desa*) or some other name, are the foundation of the state governance system. However, the existence of the *adat* law communities gradually disintegrated later, and its existence as a lower-tier governance structure was no longer recognised within the subsequent legal regulations.

Furthermore, the Basic Agrarian Law (BAL, No. 5/1960) also contributed to the marginalisation of the *adat* law communities by imposing a number of restrictions. This law recognises the land rights of *adat* communities under the term *bak ulayat* with the following conditions: (1) as long as such communities still exist, (2) it may not conflict with the national interest and the State’s interest, and (3) shall not contradict the laws and regulations of higher levels. This type of conditional recognition with strictly set requirements eventually led to the disappearance of the indigenous peoples’ land rights. What happened is, in fact, the state-isation (*negaraisasi*) of the indigenous territories (Rachman 2012).<sup>7</sup>

This subjection of the *adat* land to the central state continued the colonial model of *Domein Verklaring* (Domain Declarations) despite the fact that the enactment of the Basic Agrarian Law (BAL) initially intended to eliminate this practice (Simarmata 2006; Termorshuizen-Arts 2010). The early nationalists had tried to surpass both *adat* law and the colonial governance system (Fitzpatrick 2008). However, the regulatory practice framework that was enacted during the formation of the new republic extinguished the traditional governance system and expropriated the indigenous peoples’ customary territories.

During Suharto’s repressive New Order regime (1966-1998), the indigenous peoples were expropriated of their land, often without proper compensation, in the name of development of infrastructure, for mining and timber concessions. The communities that refused were put under extreme pressure, experienced violence and were labelled as the followers of the Communist Party of Indonesia (PKI), conceived as the deadly enemy of the state.<sup>8</sup> This, in turn, legitimised the silencing of the indigenous peoples. The case that is most often mentioned is that of the Amungme and the Komoro peoples in Papua Province, whose customary lands were handed over to PT. Freeport, a giant gold-mining company (Bachriadi 1998).

<sup>7</sup> Operational regulations about *bak ulayat* (communal land rights, right to avail) in the BAL were developed by the government in 1999 through the Agrarian Ministerial Regulation No 5, 1999 about the Guidelines for Communal Land Dispute Settlement, that is, 39 years after the ratification of the BAL.

<sup>8</sup> This party was accused of masterminding the G30S incident, the coup, in 1965. The parties that were close to farmers at the time were considered to be the members of this banned party. Many party leaders and cadres were imprisoned and killed by the military and the paramilitary. Farmers’ movements that demanded land rights were often associated with members of PKI, thus, justifying their extermination.

Customary land grabbing in the name of development resulted in protests from the indigenous peoples and their supporters, who were environmental and legal aid activists. In 1988, for example, hundreds of Batak Toba people of North Sumatra resisted the pulp and paper industry of PT. Inti Indorayon Utama (now called PT. Toba Pulp Lestari; Moniaga 2010:309). Men and women of this indigenous community protested because their signatures had been forged and the land taken over by the company. Similar types of protests against the developmentalist policies that overreached local communities also occurred in Kalimantan and various other places.

Not only were their lands stolen, but the indigenous peoples also experienced discrimination. They were referred to by the government as “forest encroachers”, “uncivilised” and “isolated peoples”, and were treated as a “social illness”. On the basis of these assumptions, the Department of Social Affairs (now the Ministry of Social Affairs) developed a programme that aimed to empower the “isolated peoples” (*masyarakat terasing*). Under this programme, the indigenous communities experienced forced relocation. One example is the case of the upland Orang Tompi of Central Sulawesi, whose connection to their ancestral lands was cut off due to forced relocation, and they were forced to adapt to a new lifestyle and a new farming system that often failed (Li 2012:147; see also the chapter by Grumbly in this volume).

Various land expropriation cases and the discrimination that these communities faced led to the emergence of various organisations that aimed to defend the rights of the indigenous peoples. These initiatives led to the establishment of AMAN, that has until now acted as the indigenous peoples’ organisation (see above). Therefore, one can say that the indigenous peoples’ movement emerged as a victims’ movement of Suharto’s developmentalist policies.

### Arena of Legislative Contestations

The Reformation Period (*reformasi*) started in 1998 and led to the change of regime. This moment in Indonesian history presented an opportunity for rearranging the relationships between the state and the indigenous communities. If the indigenous peoples (*masyarakat adat*) and their supporters previously preferred informal protests, now was the time to try to push forward the agenda of the indigenous peoples at the formal, policy level.

During the First Congress of the Indigenous Peoples of the Archipelago (KMAN I) in Jakarta in 1999, the Minister of Agrarian Affairs/Head of the National Land Agency who attended the congress was pushed to recognise the land rights of the indigenous peoples. The participants, taking advantage of the opportunity, filed several complaints concerning cases of land expropriations that they had experienced. The Minister of Agrarian Affairs responded with a Ministerial Regulation on The Guidelines for Communal Land Dispute Settlement (No. 5, 1999).

This ministerial regulation, furthermore, pushed forward the numerous initiatives that led to a number of regional regulations (Perda) on the recognition of the existence of indigenous peoples and their rights, including both land and local governance rights (such as in West Sumatra, Lebak, Jambi, Malinau, Morowali, Papua, Aceh, and many other places). At the same time, the initiatives of the regulatory legislations, such as the

Law on Local Governance, Law on the System of National Education, Law on Water Resources, Law on Forestry, Law on Plantations, and Law on the Management of Coastal Areas and Small Islands indicate that there is a legislative trend towards acknowledging the existence and the rights of indigenous peoples (Arizona 2010a).

Despite the fact that many laws were initiated, these laws do not solve the existing problems. On the contrary, they make the situation even more complex, and are often not implemented. There are at least four major criticisms of these laws. Firstly, the conditional recognition of the indigenous peoples and *bak ulayat*, as formulated in the BAL No. 5/1960 (see above), is still in place. Noer Fauzi Rachman argues, “On the one hand, the state is willing to recognise; on the other hand, the state suspects the indigenous rights will interfere with what is referred to as ‘the national interest’, which, in turn, often implies the opening of large-scale commercial timber and other plantations” (2000; translation by the authors). Even worse, this model of recognition is the one that was also introduced in the Article 18B Paragraph (2) of the 1945 Constitution, thus, making these requirements crucial in defining the existence and the rights of the indigenous peoples.<sup>9</sup> This, in fact, happened during the process of the faulty formulation of the Constitutional amendment (Arizona 2012).

Secondly, there is an erroneous understanding about the indigenous peoples and their rights to their lands and the natural resources. The lawmakers still consider the land rights of the indigenous peoples to be the rights granted by the state. However, the indigenous peoples themselves consider that their claim is older than the Indonesian state itself, which was only formed in 1945, since their ancestors have been living on their territories for many centuries. The indigenous peoples argue strongly that they are the original right-holders over land and natural resources. In addition, this claim also reflects the shock that the indigenous peoples experienced as a result of the expropriation of their ancestral territories through legal regulations. Due to this, this argument is an important one for the indigenous peoples. It demonstrates to the general public that the indigenous peoples matter.

Thirdly, the laws still promote a standardised, identical governance system, as introduced by the New Order, in order to control the communities and the natural resources for economic development and political stability. The New Order government had issued the Village Law (or Desa) Governance (No 5/1979) which introduced a standardised *desa* (village) model throughout Indonesia; it replaced and destroyed the different traditional village organisations that managed the indigenous communities’ lives across Indonesia. Thus, the villages were made identical in relation to structure, decision-making process and political authority. This also caused a huge number of internal conflicts. Later, the post-Suharto government acknowledged that the Village Law was a failure because it was not in accordance with the 1945 Constitution. Therefore, this Village Law of 1979 was replaced with the Village Governance Law (No. 22/1999). Today, there is an effort to revive a more

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<sup>9</sup> Article 18B, paragraph (2) of the Constitution reads: the State recognises and respects the unity of *masyarakat hukum adat* as well as their traditional rights as long as they are still alive and are in accordance with societal development and the principles of the unitary state of Indonesia regulated by laws.

autonomous governance system based on *adat*. However, the lawmakers do not yet fully support this idea.

Fourthly, there is a sectoralism of legislations concerning the indigenous peoples. In reality, the Indonesian legislations are still based on sectoral interests. The forestry problems, for example, are managed by the Ministry of Forestry that applies the Forestry Law without attending to any of the other existing interests. The same goes for the problems related to mining that are solely managed by the Ministry of Energy and Mineral Resources that also only applies the Law on Minerals and Coal rather parochially. Inter-institutional conflicts within the government also have an impact on the protection of the rights of the indigenous peoples. At one point, the territory of the indigenous peoples would be appointed as a protected area, but at another point, one of the Ministries would put it under a mining licence. Meanwhile, there is no organisation that coordinates all the programmes of all the ministries and state institutions in relation to the indigenous peoples. Therefore, the laws that are being enacted for the recognition and protection of the indigenous peoples are becoming more and more problematic because they are being developed within an ambiguous legal development paradigm.

## **The Bill on the Recognition and the Protection of the Rights of Indigenous Peoples (RUU PPHMHA)**

Efforts to renegotiate the status of the indigenous peoples in relation to the nation-state are clearly reflected in the motto (rendered in the first sentence of this chapter) that was issued when AMAN was established in 1999. It was only at the Second Congress, KMAN II (2003), in Lombok that the demands for a special law on the indigenous peoples were made for the first time. Two important decisions from this congress in relation to the legislative process were: Firstly, to push both the government and parliament to implement the People's Consultative Assembly Decree TAP MPR IX/2001 on Agrarian Reform and Natural Resource Management to examine and revoke all the sectoral laws, among them are Forestry Law No. 41/1999 and Mining Law No. 11/1967, that do not recognise and even harass the rights of the indigenous peoples and to replace these laws with a new, comprehensive, cross-sectoral Natural Resource Management Law that also protects the indigenous peoples' rights. Secondly, demand that the government and parliament of Indonesia make a special law that recognises and protects the rights of the indigenous peoples, as already stated in Article 18B Paragraph 2 in the second amendment of the 1945 Constitution. A meeting was organised at Wisma Margaguna, Jakarta in 2005 to map out ways to identify the indigenous peoples, drawing from local and international experiences. On the International Day of the Indigenous Peoples, August 9, 2006, the President of Indonesia, Susilo Bambang Yudhoyono, gave a speech at Taman Mini Indonesia Indah in Jakarta. In his speech, he expressed respect and support for the recognition of the indigenous peoples and their rights, and acknowledged the importance of the nation's diversity. The President said:

Recognition and respect, it seems, also need to be assessed according to the development of our society, the principles of the unitary state of the Republic of Indonesia and our laws, so that things become clearer. It is the laws that can regulate the traditional rights of the *adat* law communities. As far as we understand, up to today, there is no law that regulates this. I hope that we can prepare a draft law in the near future.<sup>10</sup>

(President Susilo Bambang Yudhoyono, April 9, 2006;  
translation by the authors)

The Third Congress, KMAN III (2007), was held in Pontianak, West Kalimantan. This congress also suggested that the indigenous peoples should be able to influence the drafting of the Village Law that was being initiated by several actors, including the Ministry of Internal Affairs and several national NGOs. The congress also recommended that a Commission on the Indigenous Peoples be formed that would aim to coordinate cross-sectorally and become a mediator in the resolution of conflicts between the indigenous peoples and other parties. These suggestions were strengthened at the AMAN Working Group meeting in Sinar Resmi, West Java, in 2009. This working group meeting stated that one of the reasons behind the oppression of the indigenous peoples is the absence of the comprehensive umbrella law that gives recognition, protection and respect to the indigenous peoples and their rights. That same year, a workshop was organised at Wisma YTKI in Jakarta. The workshop involved a number of NGOs that work on the issues of indigenous peoples. They expressed their commitment to the recognition and protection of the indigenous peoples by promoting a special law on indigenous peoples. A meeting at the Learning Centre of HuMa<sup>11</sup> (now called the Epistema Institute) resulted in the formation of a team that would work on the advocacy of the Draft Law on the Recognition and the Protection of the Rights of Indigenous Peoples (RUU PPHMHA). The team consisted of a campaign team, a fundraising team, a lobbying team, and a research team to prepare a research paper and the draft law.

Research consultations with AMAN members took place in seven regions in 2010. Public consultations were held in co-operation with the institutions of higher education, including those in Jember (East Java), Medan (North Sumatra), Palangkaraya (Central Kalimantan), Ambon (Maluku), Makassar (South Sulawesi), Papua, and Bali. In addition, a national public consultation was held in co-operation with the Indonesian Academy of Sciences (Lembaga Ilmu Pengetahuan Indonesia, LIPI) in Jakarta. On the basis of these meetings, the internal AMAN team worked on

<sup>10</sup> <http://www.kemsos.go.id/modules.php?name=News&file=article&sid=241> <July 08, 2013>.

<sup>11</sup> HuMa is the Association for Community and Ecologically Based Law Reform. HuMa is an NGO working to promote peoples' law and natural resources law reform (<http://www.huma.or.id>).

preparing the draft of the RUU PPHMHA and lobbied its inclusion into the National Legislative Programme (Prolegnas) in 2012.<sup>12</sup>

A positive response from the National Parliament (DPR RI) could be seen at KMAN IV (2012), organised in Tobelo. At this congress, AMAN symbolically handed over the RUU PPHMHA to the chair of DPR RI. The chair responded that he would support the passing of the law and promote the draft law and that it would be approved at the plenary session of the same year, in 2012. However, up to the end of 2012, the draft law had not been approved. The congress also recommended that a state ministry be formed that specifically works on indigenous peoples' issues.

Sometime later, the Epistema Institute, in co-operation with HuMa, organised a Symposium on Indigenous Peoples at Gallery 678 in Kemang, Jakarta that discussed the foundations of the indigenous peoples as the subject of a law that is going to be regulated under the RUU PPHMHA. In addition, the potential clash between the RUU PPHMHA and the RUU Desa (Draft Village Law) was mentioned. The meeting recommended that further research needs to be conducted to synchronise the two initiatives that are being discussed simultaneously in parliament.

At the same time, AMAN once again organised a number of public consultations with their members in twenty different regions. The outcome of these public consultations was a proposal to incorporate several changes into the RUU PPHMHA. At the time, it was already scheduled at the Legislative Body for the beginning of September, 2012. At each meeting, the members of AMAN in the areas where public consultations were held put on pressure to speed up the ratification of the RUU PPHMHA. This is why the AMAN working meeting held in Palangkaraya in March, 2013, agreed to accelerate the process of the RUU PPHMHA enactment. AMAN issued a statement that they would boycott the political parties that impeded or obstructed the discussion and legalisation of the RUU PPHMHA.

On May 16, 2013, the Constitutional Court of the Republic of Indonesia accepted the petition from AMAN and two communities from Kenegerian Kuntu (Riau Province) and Kasepuhan Cisitu (Banten Province). The decision of the Constitutional Court revised a provision regarding the customary forest in Forestry Law. In this decision, the Constitutional Court emphasised that a special law is needed to follow up the provision of Article 18B section 2 of the Indonesian Constitution regarding protection and promotion the rights of indigenous peoples (Constitutional Court Decision No. 35/PUU-X 2012:184).

## Scope and Criticism of the RUU PPHMHA

Responding to the growing strength of the indigenous peoples' movement in Indonesia, the government passed a number of legal regulations both at the local and national levels (see Arizona 2010b).<sup>13</sup> The RUU PPHMHA was agreed at the

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<sup>12</sup> Prolegnas is a step in the preparation of legislation in parliament, where a variety of the proposed draft legislations are considered and which is going to be discussed in a given year is decided upon.

<sup>13</sup> For more information regarding the trend of policy regulations on indigenous peoples in post-Reformation Indonesia, see Yance Arizona 2010a.



parliamentary plenary session on April 11, 2013. The term that was used to define the indigenous peoples was *masyarakat hukum adat*, not *masyarakat adat*.<sup>14</sup> Even though the difference between the two terms lies only in one additional word, *hukum* (law), the observers of the indigenous peoples have been debating the two terms for a long time. Some of them argue that the two terms refer to two different subjects of law, while others believe that both terms allude to the same subject of law.

The term *masyarakat hukum adat* or *adat* law communities is often used by the policymakers, because this term appears recurrently in the legal regulations. The academics also use the same term, because it is a literal translation from *Adat Rechtsgemeenschappen* (see above). The *masyarakat hukum adat* are defined in the RUU PPHMHA as

a group of people who have been living in a certain geographical area for generations in the territory of the Republic of Indonesia because of the ancestral connection and a special relationship with the land, territory and natural resources, who own a customary governance system and a *adat* law order on their territory.<sup>15</sup>

At the same time, the term *masyarakat adat* is used by the NGOs and the indigenous peoples' activists. This term was coined only at the beginning of 1993 to refer to the rural people who became the victims of the New Order developmentalist policies. This term is used in a smaller number of legal regulations that are still in force, such as the Law on the Management of Coastal Areas and Small Islands (No. 27/2007). The deep fear of the indigenous peoples towards the use of the term *masyarakat hukum adat* is because the term risks suggesting that the indigenous peoples are only those who own a systematised, measurable law practice.<sup>16</sup> This may overlook other realities of indigenous peoples, such as their belief systems, cultures, political systems, and other elements that define the identity of *masyarakat adat*.

<sup>14</sup> Meanwhile, Article 18B, Paragraph (2), of the 1945 Constitution uses the term *Kesatuan Masyarakat Hukum Adat* (unity of customary law communities).

<sup>15</sup> This definition was agreed upon at the JAPHAMA meeting in 1993 at Tana Toraja, South Sulawesi. This definition became the working definition of AMAN. On the basis of this definition, the RUU PPHMHA proposed the six characteristics of the indigenous peoples mentioned.

<sup>16</sup> Soetandyo Wignjosebroto, an expert on the legal history of Indonesia, states that there are two ways of understanding *masyarakat hukum adat* – the first one is as *masyarakat-hukum adat* and the second is as *masyarakat hukum-adat*. The first reading implies that this entity is a subject of law called *masyarakat hukum*. The second reading suggests that *adat law* is the main element of this legal entity. In his opinion, the term *adat rechtsgemeenschappen* that was translated as *masyarakat hukum adat* should be interpreted according to the first reading (Wignjosebroto 2012).

Comparison between *Masyarakat Hukum Adat* and *Masyarakat Adat*

Elements	<i>Masyarakat hukum adat</i> / Customary law communities	<i>Masyarakat adat</i> / Indigenous peoples
Usage	Used by the colonial government to refer to a subject of law formed by the “native” ( <i>pribumi</i> ) peoples.	Refers to a movement of the rural peoples who still hold onto their traditions and were the victims of the developmentalist policy of the New Order regime.
When did it emerge?	Developed as a result of the colonial experiences at the end of the 19 <sup>th</sup> and the beginning of the 20 <sup>th</sup> century.	Developed as a result of the New Order developmentalist policy in the period 1980-1990.
Initial objective	Indirect rule by the colonial government. Demonstrates the uniqueness of the “native” peoples.	Movement for land restitution. Expresses resistance to discrimination.
Creators and supporters	Formulated by the Dutch legal experts and developed through research, teaching and state policy.	Formulated by the social movements and scholarly activists and developed by the resistance movement.
Dominant forming factor	Formed by anthropological research during the colonial times	Inspired by the international indigenous peoples’ movement.

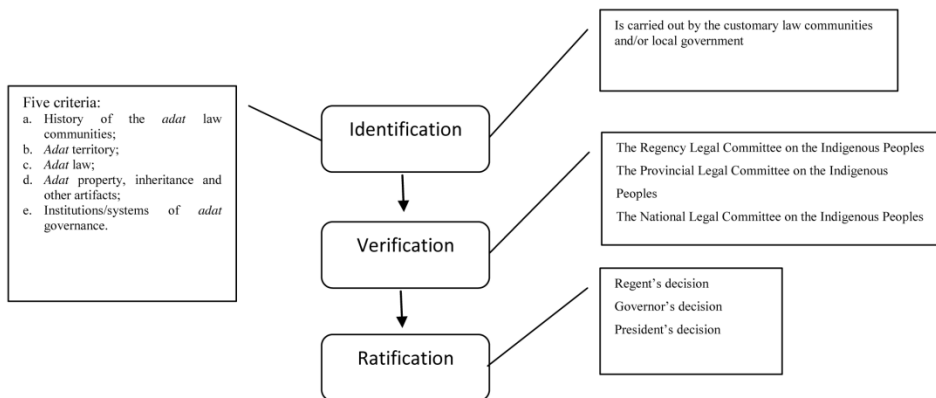
The usage of the term *masyarakat hukum adat* is a compromise that allows the legislative process to continue. A similar situation happened with the Law on Environmental Protection and Management (No. 32/2009). This law uses the term *masyarakat hukum adat*, but gives the same definition that was applied for *masyarakat adat*, that is: “a group of people who have been living in a certain geographical area for generations because of the ancestral connection, strong relationships with the environment, and with a value system that defines the economic, political, social, and legal norms”.

The usage of the term *masyarakat hukum adat* in the RUU PPHMHA also indicates that the policy-makers are still co-opted by the concepts that were inherited from the

colonial era and taken over by many legislations after independence, including the constitution, without deep and holistic analysis of the present realities.

### Stages of Legal Recognition

One of the difficult questions is how to recognise indigenous peoples. What are the stages of recognition and decision-making that need to be formulated within a legal document? This question was discussed by the indigenous peoples' movement at a workshop in Wisma Margaguna, Jakarta in 2005. The greatest challenge here is to find the most appropriate way to regulate the insertion of the practice of self-determination into the RUU PPHMHA.



The RUU PPHMHA suggests three stages in the recognition process of the *masyarakat adat*: identification, verification and ratification. The identification is carried out by the indigenous peoples, the local government, or both together. The five indicators are: (a) history of the *adat* law communities; (b) *adat* territory; (c) *adat* law; (d) *adat* property relations, inheritance and *adat* artefacts; and (e) customary governance system. The results of the identification are handed over to the Committee on the Indigenous Peoples at the regency, provincial or state levels. These indicators of *masyarakat adat* are different, with six elements of *beschikkingrecht* that were promoted by Cornelis van Vollenhoven.<sup>17</sup> Five indicators are used by the RUU PPHMHA to identify the subjectivity of *masyarakat adat*, and the sixth indicator was promoted by van Vollenhoven to show customary land management by native peoples.

Verification, the second stage of the recognition, comprises checking back on the identification process. Results of the verification are handed over to the regent, governor or the president so that an approval can be issued. At the third stage, the decision is ratified. If the existence of the indigenous peoples is to be decided within one regency (*kabupaten*), the regent has the authority of ratification; if several regencies

<sup>17</sup> See footnote 7 in this chapter.

are involved, it is the governor; if several provinces are concerned, it is the president who ratifies the final decision. The communities have a right to challenge the decision.

This model of recognition is complex (multiple parties) and problematic, since the principle of self-determination of the indigenous peoples is ultimately determined by the political decision-making of a regent, a governor or the president. In reality, it is not easy to translate self-determination into a policy framework. This is why the model elaborated in the RUU PPHMHA needs to be debated so that a fair, accessible mechanism can be developed.

### Administration and Conflict Resolution

The RUU PPHMHA regulates the rights and the responsibilities of the *masyarakat adat*. The types of rights that are regulated within the draft law are the following: (1) rights to land, ancestral territory and natural resources; (2) rights to self-determined development, which includes the rights of the indigenous peoples to accept or refuse development agendas planned by other parties on the ancestral territories, and the rights of the indigenous peoples to determine their own development; (3) rights to spirituality and culture that include rights to profess and practice their own systems of traditional beliefs, rights to preserve and develop their own traditions and cultures, and rights to receive protection and promotion of their intellectual properties; (4) rights to their environment; and (5) rights to practice customary law and customary judicature.

The regulation of various types of rights within the draft law adopts the stipulations from other laws and also translates the rights of the indigenous peoples that were outlined in UNDRIP. However, the rights to self-governance were not included in this draft law. The Legislative Body of the Parliament that prepared the RUU PPHMHA and the Parliamentary Commission II that discussed the RUU Desa reached the agreement that the rights of the indigenous peoples to self-governance would be included within the RUU Desa. Here, the right to self-governance is, in reality, the realisation of the indigenous peoples' right to self-determination, which, in fact, is the condition for the indigenous peoples' realisation of all the other rights.

The RUU PPHMHA does not regulate the administration of the *masyarakat adat* rights in any concrete way and may hamper the fulfilment of their rights in the future. Even more so, in a situation where the majority of the administration of the *masyarakat adat* is connected to other governmental structures, such as the Ministry of Forestry in relation to *adat* forest or the National Land Agency in relation to the land rights, and so on.

The RUU PPHMHA authorises the local *adat* organisations to resolve conflicts that arise among members within their own group. However, this authority is restricted to conflicts that are classified as civil offences and minor criminal offences. Major criminal offences and special criminal offences are resolved by the state judicature. A major criminal act within the draft law is referred to as a crime that is regulated via Book II of the Criminal Code. A "special criminal act" is defined as a criminal act that is outside the Criminal Code and is regulated through special legal regulations, such as acts concerning corruption, terrorism, drugs, and others.

At the same time, concerning conflicts that arise between two different indigenous communities, the RUU PPHMHA regulates that these conflicts need to be resolved via a consensus-oriented process of *musyawarah* (deliberation) between the local *adat* institutions. If this process does not succeed, the disputing members need to go through the *adat* judicature. If the parties disagree with the decision of the *adat* judicature, then the case goes to the state judicature, i.e. it is submitted to the Supreme Court.

The draft of the RUU PPHMHA does not fully acknowledge the *adat* justice system. Firstly, the indigenous peoples do not strictly differentiate between a civil and a criminal offence, as these are recognised within the state law. Therefore, the difference as stipulated by the RUU PPHMHA is not accurate. Secondly, *adat* judicature is not an *adat* court. *Adat* judicature works as a local institution and is one of the functions of the *adat* council.<sup>18</sup> However, it is not hierarchically organised in a similar way to the contemporary state administration. Thirdly, the draft law does not talk about ways to regulate conflicts that arise between the indigenous communities and external parties, such as companies that are operating on the customary territories. The RUU PPHMHA authorised the *adat* judicature. However, if there is a party that does not recognise the decision of *adat* judicature, the conflict goes to the Supreme Court.

### Institutional Limitations

As briefly mentioned, there is no state ministry or committee that specifically promotes the rights of the indigenous peoples. Even the RUU PPHMHA has not yet pushed for the birth of such an institution. The draft law mentions a special committee for *masyarakat adat* that is organised hierarchically at the regency, provincial and national levels. This is a temporary committee because its objective is only related to the verification stage of the recognition of the indigenous peoples. After the process of verification, the committee is supposed to be dissolved.

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<sup>18</sup> Article 44, paragraph (4), in the RUU PPHMHA states: *Adat* Judicature is formed by an *adat* organisation starting from a regency/city level and going to the provincial level.

The RUU PPHMHA regulates a number of tasks and competences of the government to promote the rights of the indigenous peoples. The following table explains the tasks and competences within the RUU PPHMHA:

Government tasks	Government authority
<ul style="list-style-type: none"> <li>a. To develop and implement a programme for the empowerment of <i>adat</i> law communities by reconsidering the local wisdom/knowledge;</li> <li>b. To provide the necessary means and infrastructure needed by <i>adat</i> law communities;</li> <li>c. To socialise and inform the development programmes planned to <i>adat</i> law communities;</li> <li>d. To supervise or give guidance to the <i>adat</i> law communities</li> </ul>	<ul style="list-style-type: none"> <li>a. To ratify the existence of the customary law communities;</li> <li>b. To approve policy on the empowerment programme of <i>adat</i> law communities by reconsidering the local wisdom/knowledge;</li> <li>c. To approve policies of the necessary tools and infrastructure;</li> <li>d. To approve policy for the protection of artefacts, culture and language of <i>adat</i> law communities;</li> <li>e. To approve policy of socialisation and information dissemination informing <i>adat</i> law communities about the development programmes;</li> <li>f. To approve a policy about the supervision or guidance of the customary law communities.</li> </ul>

Even though the draft law regulates the tasks and authorities of the government, it does not specifically mention the institutions that are responsible for executing these tasks. Several suggestions were made by KMAN IV in Tobelo in 2012. This congress gave a mandate for forming a State Ministry on the Indigenous Peoples and the public consultations suggested an independent Commission on Indigenous Peoples as an independent governmental institution. Nevertheless, these ideas were not accommodated within the RUU PPHMHA that is currently (May 2013) being prepared by the parliament.

## Challenges of the RUU PPHMHA and the Threat of Traditional Elites

It was agreed that the RUU PPHMHA would be a parliamentary initiative. This means that this draft law will be discussed between the parliament and the government. Every law has to pass through two stages: firstly, the parliamentary commissions and,

secondly, the parliamentary plenary session.<sup>19</sup> Each reading is carried out together with the government to achieve an agreement.

In the first stage, the decision is taken as to which commission is going to consider the RUU PPHMHA. If it is in the Commission 2 that is also discussing the RUU Desa, then the opportunity for synchronisation between the RUU PPHMHA and the RUU Desa is greater. However, the risk here is that the RUU PPHMHA might lose its zeal to recognise the rights of the indigenous peoples on the basis of their ancestral traditions, because the RUU Desa focuses on structural government perspective.

The government representatives, especially the ministries that also deal with the indigenous peoples such as the Ministry of Social Affairs, Ministry of Education and Culture, Ministry of Internal Affairs, Ministry of Marine and Fishing Affairs, Ministry of Environmental Affairs, and others, will be involved in the discussion of the RUU PPHMHA and will, therefore, be able to determine the content of the draft law. The challenge here, therefore, is overcoming the persisting sectoralism and promoting the understanding of the indigenous peoples' concerns.

The emergence of the indigenous peoples' movement in Indonesia has also been followed by the rise of the group of noble elites that represent kingdoms and sultanates, which existed before the establishment of Indonesia. Gerry van Klinken (2007) and, more recently, Fadjar Thufail (this volume) analyse the re-emergence of the groups of kings and sultans and their impact. There are at least three associations with different leaders, such as the Association of Kingdoms and Sultanates of Indonesia (Asosiasi Kerajaan dan Kesultanan Indonesia; AKKI), led by Raja Samu-Samu from Moluccas; the Friendship Forum of the Sultanates of the Archipelago (Forum Silaturahmi Kesultanan Nusantara; FSKN) led by Sultan Banten; and the Forum of Information and Communication of the Sultanates of the Archipelago (Forum Informasi dan Komunikasi Kesultanan Nusantara; FKIKN) led by Puro Mangkunegoro.

These groups constitute the traditional elites that are economically capable and have better political relations with the formal institutions. However, it seems that these groups are not well organised due to internal competition. As Klinken (2007) has shown, several of the individuals are district heads or/and parliamentarians at the national or regional levels. They can lobby and communicate with the chairs of the national and regional parliaments responding to this law initiative that can potentially be used to strengthen their traditional status. They do not oppose the indigenous peoples' movement and they even voice the interests of the indigenous peoples. They aim to reclaim the lands of the kingdoms and sultanates that also applied the *adat* system, even though what they mean by *adat* is different from the *adat* of the local village people. The size of the difference between the *adat* of the kings and the *adat* of the common villagers shows that the claim on the basis of *adat* and tradition stretches over a wide scope and can be used for various interests (see the chapter by Thufail in this volume). The Sultan of the Melayu Sulatanate of Jambi, Raden Abdurrahman Thaha Syaifudin, for example, reported a case of indigenous land expropriation by a

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<sup>19</sup> Article 20, Paragraph (2), of the 1945 Constitution says that all draft laws must be discussed by the Parliament and the President to achieve a common agreement.

company with a timber licence from the Ministry of Forestry to the United Nations on the basis of the claim that the customary territory had been expropriated.

This danger, the use of *adat* for different purposes, also became apparent in the public consultations with kings and sultans in several regions that were conducted by the parliament in May, 2012. If left unguarded, there is a possibility that this draft law could be usurped by these feudal groups.

### Potential Frictions and Legacies

The decentralisation process in the post-New Order era strengthened the neo-traditionalism, the *adat* institution and the village organisation that previously constituted the political units of *adat* law communities. In West Sumatra, the local government played a role in issuing a regulation to return the original village governance system that is called *nagari*. The same applies to several other places, such as Aceh, South Sumatra, Maluku, and others (see Benda-Beckmann F. and K. v. 2010).

The consequence is that the role of *adat* leaders becomes stronger in controlling the national resources by negotiating with the companies in their customary territories. This may also cause conflicts between the *adat* leaders and the administrative village leaders that can often explode in the power struggles over a village's natural resources (see the chapter by Steinebach in this volume). This happened in West Sumatra between the *wali nagari* and the *ninik mamak*, and also in Bali between the *desa dinas* and *desa adat* (see the chapter by Hauser-Schäublin in this volume). This constitutes one of the conflictual points between the indigenous peoples and the village (*desa*). In several places, such as West Sumatra and Aceh, the whole village governance unit, called *nagari* in West Sumatra and *gampong/mukim* in Aceh, is referred to as *masyarakat adat*. In the local regulation of West Sumatra Province on the Nagari Governance (No. 2/2007), *nagari* is defined as the unity of *masyarakat hukum adat* that owns a certain territory, performs self-governance and acts in the interests of the local communities based on the customary philosophy of the Minangkabau that custom law based on sharia law, as well as sharia based on the holy Qur'an (*adat basandi syarak, syarak basandi kitabullah*) and/or on the basis of the origins and local customs of the Province of West Sumatra. Thus, the definition of *nagari* in West Sumatra is the same as the one of *desa* and of the *masyarakat adat*. At this moment (May 2013), the discussion of the RUU Desa is ongoing in the parliament. Harmonisation of the RUU Desa and the RUU PPHMHA is needed in order to avoid a negative impact and a clash that the communities might experience in the future because of the application of both laws.

Another challenge within the discussion of the RUU PPHMHA is the colonial legacy that is hampering the renewal of the political concepts related to *adat* and is obstructing the fulfilment of the demands of the indigenous peoples. We can see this, for example, in the decision to use the term *masyarakat hukum adat* rather than *masyarakat adat* within the draft law of the RUU PPHMHA. There are also differences between the concepts of the colonial studies of *adat* and *adat* law communities and the contemporary discourses of *adat*, as well as between *beschikingsrecht* and *adat* land (*tanah adat*) or *adat* territory (*wilayah adat*), or between an *adat* law as *adat* that possesses sanctions and an *adat* as a general guiding principle of life that emerged and developed



among the people. Therefore, it would be necessary to break out from conceptual imprisonment of the past and to take a chance to make laws that advance the rights of the indigenous peoples.

The concepts developed by the Leiden Adat Law School need to be straightened out not only because of numerous translation mistakes from Dutch into Indonesian, but also because there was a misinterpretation of the findings of the Leiden Adat Law School researchers (Soesangobeng 2012a).<sup>20</sup> Soesangobeng proposes that Pancasila as the national ideology of Indonesia might serve as a guideline for correcting those concepts; unfortunately, he does not propose to conduct empirical studies that test the relevance of the concepts and terms that are used in the contemporary *adat* studies.

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<sup>20</sup> For a critical evaluation of the uses and (mis-)interpretations of *adat* see “Myths and stereotypes about adat law: a reassessment of Vollenhoven in the light of current struggles over adat law in Indonesia,” by Franz and Keebet von Benda-Beckmann (2011).

# **“Today we Occupy the Plantation – Tomorrow Jakarta”: Indigeneity, Land and Oil Palm Plantations in Jambi**

*Stefanie Steinebach*

## **Introduction**

Indigeneity has become a category of agency and empowerment. This became evident in the adoption of the UN Declaration of the Rights of Indigenous Peoples (UNDRIP) in 2007 – not only transforming indigenous peoples from marginalised “victims” to “actors”, but also reframing the debate over indigeneity as one of “rights” rather than “claims” (Gilbert 2006; Merlan 2009).

The debate over “indigenous rights” in Indonesia is nearly always one over access to natural resources and especially rights over land. Conflicts over land between communities and other stakeholders have become virulent in Indonesia<sup>1</sup> as agricultural land becomes less and less accessible for the rural local population due to various economic and political developments. At the same time, competing rights over resources and land between “indigenous” groups and other stakeholders always refer

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<sup>1</sup> In 2010, 46 conflicts in the plantation sector, 31 conflicts between communities and companies, and 30 forest conflicts were reported by official institutions in Jambi, the province in Sumatra with which this article mainly deals (Zazali 2012).

to *adat* (customs, traditions and traditional regulations) and, therefore, to questions of plural legal orders. The founding of Aliansi Masyarakat Adat Nusantara (AMAN; The Alliance of Indigenous Peoples of the Archipelago) in 1999 was a new development which mobilised and raised *adat* interests to the national level in many regions of Indonesia. This movement attempts to draw its legitimacy mainly from an analogy with the notion of indigenous peoples identified by the International Labour Organization (ILO) convention 169 from 1989 (Benda-Beckmann 2011:185). It links the local concepts of traditional communities to the global discourse of indigeneity and indigenous rights. In identifying who is and who is not “indigenous” and, therefore, rightfully entitled to articulate *adat*-based rights over land, a group’s self-identification is acknowledged as a crucial criteria in the global context of UNDRIP and Human Rights declarations.

I introduce a case-study from Jambi province (Sumatra) where violent conflicts over land have occurred between different local communities and a palm oil company. My focus is on the “SAD 113 – tiga dusun” (“Suku Anak Dalam 113 – three villages”, a heterogeneous group of activists and their strategic positioning (Li 2000) as “indigenous” at the intersection between the new agrarian movement and the indigenous rights movement.<sup>2</sup>

I will investigate how global categories and discourses of indigeneity related to rights and territory are adopted at the local level to realign the ways how marginalised minorities and agrarian movement activists connect to the nation, the government and the “non-indigenous” population. I will not go into detail of these movements, their histories, connections and differences, contradictions and inconsistencies, but explore how the fight for access to farmland and to ethnic homeland (Hall et al. 2011) is combined. In doing so, I picture the way indigeneity is strategically performed, also contradicting global discourses and resulting in a unique local indigenous identity at the new frontier of land control where authorities, sovereignties and hegemonies of the recent past have been or are currently being challenged by new enclosures, territorialisations and property regimes (Peluso and Lund 2011:668).

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<sup>2</sup> The SAD 113 group was also supported by different NGOs, but in 2012, their activities were marginal compared to the agrarian movement’s activities. In this article, I will not further discuss the NGOs arguments and discourses in relation to indigenous struggles for land.

## The Conflict between Suku Anak Dalam and an Oil Palm Plantation

“Today we occupy the plantation – Tomorrow Jakarta!” This pugnacious statement was made by a group of land-rights activists calling themselves “SAD 113 – tiga dusun” (Suku Anak Dalam – three villages – SAD 113) in the summer of 2012. The group was occupying land developed and managed as an oil palm plantation by the company PT Asiatic Persada (PT AP), but claimed as *tanah adat ulayat* (customary land) by the activists.<sup>3</sup>

The land under discussion is located in the southern part of Jambi, close to the borders of the neighbouring province Palembang. The region falls administratively within the jurisdiction of two regencies, Muara Jambi and Batanghari. The natural region is structured by the Bahar River and its tributaries, which are closely tied to the history of the local “indigenous” population, Batin Sembilan, mostly referred to as “Suku Anak Dalam” (SAD; “Tribe of the Children of the Interior”). Therefore, I will refer to this area as Bahar region. The Bahar region used to be scarcely populated and densely forested until the 1980s. Since then, intensive logging, the establishment of acacia and large-scale oil palm plantations created by state and private corporations, as well as the implementation of transmigration projects, have changed the natural and social structure in the region dramatically. The area under concession for agricultural use (including forest conservation areas) by several companies now covers a range of more than 200,000 ha.

Additionally more than 45,000 people, mainly from Java, were moved into the Bahar area under the transmigration programme, which seeks to reduce overpopulation and poverty on the Inner Islands. Each family was given roughly 2.5 ha of land for subsistence needs which was accompanied by a land certificate as proof of ownership. Most of the autochthonous local Batin Sembilan groups, who hold no official land title from the Indonesian government, were alienated from their ancestral territories and either retreated into still forested areas where concession holders had not yet started planting agricultural crops or were resettled in housing estates provided by the social department. In 2012, several hundred Batin Sembilan people, some of whom still practiced a semi-nomadic life and shifting cultivation, lived on land already given to a forest conservation concession. The majority of the Batin Sembilan failed to adapt to the rapidly changing social, political and economic conditions. Others succeeded in catching up with these rapid changes, mostly by marrying non-Batin Sembilan partners who were already familiar with the system of a market economy.

I will now focus on the case of PT AP to illustrate the development of the agribusiness in Jambi.

In 1986, the company PT Bangun Desa Utama (PT BDU), with questionable legality, was given a 20,000 ha licence by the Minister of the Interior to develop a cocoa and oil palm plantation in the Decree No. SK 46/HGU/DA/86, the Ministry stated that the area was still occupied by residents who settled prior to the issuance of the utilisation

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<sup>3</sup> The Indonesian term *tanah adat*, customary land, is usually applied as a synonym to *ulayat* (see v. Benda-Beckmann and v. Benda-Beckmann 2011. Here, the SAD have combined the two expressions.

permit; PT BDU was obliged to deal with this issue. A forest department inventory in 1987 showed, however, that more than 2,000 Batin Sembilan families were living and practiced shifting cultivation on 4,000 ha within the concession area (Colchester et al. 2011:11). As some of these families refused to leave their territory, they were evicted by military force under the repressive New Order regime; they finally withdrew from the concession area. The company was renamed PT Asiatic Persada (PT AP) in 1992. Subsequently, ownership changed several times until it was bought by the Singapore-based international agribusiness group Wilmar in 2006 (Colchester et al. 2011; Setara 2012; TÜV Rheinland 2011).



Guarded official entrance of the PT AP concession area. Photo: B. Hauser-Schäublin 2012

The Wilmar group received funding from the World Bank Group's development institution International Finance Corporation (IFC) and is, therefore, committed to the eight IFC Performance Standards on Social and Environmental Sustainability. It is also obliged to fulfil the criteria of the Round Table on Sustainable Palm Oil (RSPO),<sup>4</sup> which pay special attention to international human rights laws and the UNDRIP. The latter recognises indigenous peoples' right to own, use, develop, and control the lands, territories and resources they have traditionally occupied or used. It suggests that states, by legally recognising these lands, territories and resources owned by indigenous

<sup>4</sup> Criterion 2.2. The right to use the land can be demonstrated, and is not legitimately contested by local communities with demonstrable rights.

Criterion 2.3. Use of the land for oil palm does not diminish the legal rights, or customary rights, of other users, without their free, prior and informed consent.

peoples, should take into account their customs, traditions and land tenure systems. Moreover, article 28 of UNDRIP affirms that indigenous peoples have the right to redress for the traditional lands, territories and resources which have been confiscated, taken, occupied, used, or damaged without their free, prior and informed consent.

The conflict between Batin Sembilan and the company has been smouldering since 2000, and several locations inside the concession area are partly occupied and managed by a heterogeneous community of Batin Sembilan, political activists and farmers from all over Indonesia. PT AP accused the people living inside the concession area of illegally harvesting PT AP’s oil palm fruit and of selling them to processing industries outside the plantation area. The company, fearing a substantial loss of their fruit, called in the mobile auxiliary police brigade (Brimob) in July 2011. The conflict between PT AP and the local population peaked in August 2011 when the lorry of an entrepreneur living in one of the occupiers’ settlements inside the concession area was confiscated by a Brimob patrol. During the dispute between Brimob and the lorry owner, police weapons were stolen. This incident led to Brimob brigades raiding the entrepreneur’s village and destroying at least 80 houses and leaving several people injured by gunfire (Colchester et al. 2011; Setara 2012). The escalation was followed by a spiral of more or less violent actions where houses, guard posts and equipment were burnt down and people were forcefully evicted from the plantation area.

An investigation of the conflict was carried out by TÜV Rheinland<sup>5</sup> on behalf of Wilmar, and additionally, by an independent team in 2011 to encourage a resolution of the conflicts in the PT AP concession in line with the principles and criteria of the RSPO, the Performance Standards of the IFC, national law, and international human rights standards.<sup>6</sup> In the evaluation of the situation, TÜV Rheinland (2011:9) states that “the RSPO Certification of PT Asiatic Persada will not be approved until the dispute is resolved”. The report of the independent commission states that:

It is clear that the way that PT AP has acquired lands in Batanghari is in violation of the rights of indigenous peoples as set out in international treaties ratified by Indonesia and summarised in the UN Declaration on the Rights of Indigenous Peoples, which Indonesia has endorsed. Most evidently, PT AP has violated the right of the Batin Sembilan communities in the concession area to the ownership and control of the lands and natural resources they have traditionally owned, occupied or otherwise used. The company has failed to respect the people’s right to give or withhold their Free, Prior and Informed Consent. In depriving the people of their lands, the company has violated their other rights including their rights to subsistence and a decent livelihood.

(Colchester et al. 2011:54)

<sup>5</sup> PT TÜV Rheinland is a RSPO-accredited assessor which evaluates the implementation of RSPO criteria.

<sup>6</sup> For a detailed report on the conflicts between PT AP and local communities, see Colchester et al. (2011), Setara (2012), and TÜV Rheinland (2011).

By 2012, nearly 70% or 17,937 ha from the 20,000 ha managed by PT AP was claimed to be *tanah adat ulayat* (Setara 2012:13) by Batin Sembilan and their allies who organised themselves into seven different groups pursuing varying or overlapping goals and strategies.



Inside the PT AP concession area: Orange banner stating “Welcome to the tanah adat of Suku Anak Dalam” installed by SAD 113. In the foreground is a green sign of the PT AP stating: “Area of PT Asiatic Persada due to land use permit for agricultural commercial lease (HGU) from 1986. Any kind of activity is forbidden in the HGU area.” A number of relevant decrees and paragraphs are displayed as well.

Photo: B. Hauser-Schäublin 2012

As in many similar cases all over Indonesia, the conflict is based on ambiguities and competition between codified state laws and customary laws (*bukum adat*) creating a situation of plural legal orders which have existed since the Dutch colonisation. The origin of the land conflict can be traced to back to the period of Suharto’s New Order regime (1965-1998) with its repudiation of local land rights and resource claims. The exploitation of forests and other natural resources on Indonesia’s Outer Islands were part of the government’s agenda of economic development and nation-building. All land, especially if communally owned, and all natural resources of economic interest were formally conceptualized as the property of the Indonesian state (see chapter by Arizona and Cahyadi in this volume).<sup>7</sup>

<sup>7</sup> Access to land in Indonesia is still regulated mainly by the 1960 Basic Agrarian Law (BAL) which is based on the Dutch Agrarian Law from 1870, the 1967 Forestry Law and the latter’s replacement law of 1999. Next to the National Land Agency, control over areas that are classified as forest lies with

Similar to the PT AP case, most conflicts over land and other resources between local communities and private or state-owned companies erupted after the downfall of Suharto in 1998 and with the beginning of political decentralisation, regionalisation and democratization. These processes also created a more NGO-friendly climate when freedom of speech allowed the questioning of political decisions and the articulation of local (indigenous) identities and rights. It was the official line of Suharto’s regime that Indonesia is a nation which has no indigenous peoples, since all Indonesians are equally indigenous. Therefore, the internationally recognised category “indigenous and tribal peoples” (as defined by the ILO Convention) has, so far, no direct equivalent in Indonesia’s legal system (Li 2000:149; but see the chapter by Arizona and Cahyadi in this volume). The convention takes a practical approach and only provides criteria for describing the peoples it aims to protect. Self-identification is considered as a fundamental criterion for the identification of indigenous and tribal peoples, along with the criteria outlined below in article 1(1) (see also chapters by Göcke and Cabrera in this volume):

- a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
- b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

(ILO 1989)

These definitions entail the relation between “indigenous” and the “others” (conceived as mainstream society), as well as universal criteria or conditions which should facilitate the identification of indigenous peoples.

## **The Batin Sembilan in a Historical Perspective**

The Batin Sembilan as indigenous people experienced different relationships with the pre-colonial, colonial and postcolonial states, during which they were categorised as “Kubu”, “Isolated Tribe” or “Children of the Interior” by governmental discourses and the sedentary population. In the following section, I will outline how being indigenous in Jambi has changed from a negative derogatory category towards a category of empowerment that is strategically employed by various actors.

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the Department of Forestry. The revised 1999 Forestry Law decrees that all forest, and the natural richness within it, is under the control of the state (article four), and instructs the central government to regulate its management and exploitation (Bakker and Moniaga 2010).



The Batin Sembilan (*sembilan* = nine) themselves trace their origin back to nine brothers who ruled along nine rivers in the border region between Jambi and Palembang. The nine brothers are said to be the offspring of Raden Ontar, a local ruler who is believed to be a descendant of Maruhum Sungsang Romo. According to the Batin Sembilan, he was one of the former rulers of Jambi before it became an Islamic sultanate in the 15<sup>th</sup> century. This sultanate is known as Jambi Melayu II. The Melayu inhabitants of the sultanate were linguistically and culturally heterogeneous, organised through the concept of lineage groups (*suku*) and associated with a particular territory which formed small chiefdoms ruled by local elites (Andaya 1993:16). The political structure of the sultanate was rather one of concentric circles of power than hierarchically vertically structured. Guillaud (1994) describes the representation and governing of space in the sultanate of Jambi as appanages or fiefs, a spatial projection of both the royal genealogy and the organisation of the court. Accordingly, all land was owned by the sultan, who also held rights over mineral and forest produce. The rights of usage were granted or withdrawn by the sultan and a proportion of the yield from all cultivated lands held in usufruct had to be delivered to him (Kathirithamby-Wells 1993). Land was also granted to the *suku* as communities, but not as individual property. Land could be distributed and inherited within these communities, according to their *adat*. Land could neither be sold nor bought.

Reconstructing the Batin Sembilan's history that is rooted in those days is rather difficult as written sources only start in 1615 when the Dutch and English East India Companies arrived in southeast Sumatra (Andaya 1993). These sources present the European perspective on local history, whereas local oral traditions were not recorded in writing until recently; they certainly shifted over time. Therefore, much of the Batin Sembilan's origin, as well as their status and relation to other ethnic groups and ruling elites, are difficult to disentangle. However, the oldest settled communities in Jambi are commonly termed as "*batin*" groups, *batin* being a title associated with the leaders of non-Muslim jungle and sea peoples. The character of these *batin* groups was considerably modified by the penetration of Minangkabau influence (Andaya 1993:14).

### Batin Sembilan as Kubu Bahar

By the 17<sup>th</sup> century, territorial lineages still formed the basis of the social organisation of the moving clans (*suku pindah*) scattered over a wide area on the Jambi-Palembang border. The names attached to such lineages vary: An 18<sup>th</sup> century inscription refers to them as *marga*, the term commonly employed in much of the Palembang-Jambi region (Andaya 1993:17). This region was registered by the Dutch as Marga Kubustrecken ("Koeboestrecken") or Kubu-margas ("Koeboe-marga's"), which was originally inhabited by *suku* Kubu (van Dongen 1910). "Kubu" was a collective name used by the sedentary population to refer to non-Muslim hunter-gatherer bands or shifting cultivators who led a more or less nomadic life in the vast forests. The name "Kubu", derived from the Malay word (*kubu*, *mengkuburkan diri*) for "hiding" or "retreat", referred to the groups dependent on the forest. Claims by *suku* to specific stretches of territory were often traced back to ancestors in distant times, also by the Kubu:

By reliving the peregrinations of their ancestors a kinship group reiterated its rights to fish in certain rivers, to hunt the animals and collect forest products in a particular area, and to clear the jungle for swidden agriculture. It was in these terms in the early twentieth century that the orang kubu, the jungle dwellers of the Jambi-Palembang border, traced the origins of their possession of large tracts of land in the Lalang district. Kubu in adjoining domains could then see themselves as linked through the kinship of their ancestors, who had also laid down the territorial boundaries within each group could freely move.

(Andaya 1993:9)

Forbes (1885) states that nomadic Kubu were roaming in the forests at the borders of the Jambi sultanate and Palembang regency, as well as along the banks and tributaries of the great rivers Musi and Batang Hari. Kubu groups were named according to the main rivers which delineated their territories: Kubu Bulian, Kubu Bahar, Kubu Lalang, and Ridan Kubu (Hagen 1908). The Kubu marked their boundaries by planting fruit trees (durian, rambutan, etc.). Land was not considered as property, but certain trees, especially fruit trees or those used for honey extraction, were (Forbes 1885).

The sedentary population treated the Kubu, with their nomadic and non-Muslim lifestyle, only with contempt. Forbes in the 1880s described the first attempts by the Dutch to settle the Kubu in villages and introduce to them a sedentary lifestyle and agricultural practice (1885:121, 123). As long as they were not settled, they were regarded to be in their “wild” stage (Forbes 1885:121; Hagen 1908:11), and were characterised as “overgrown children of the woods” by Forbes (1885:123).<sup>8</sup>

The Malay consider the Kubus far their inferiors, a position which the latter seem to accept with very marked submissiveness. ‘You Kubu!’ is a term of opprobrium which I have often heard applied by one native to another with whom he had quarrelled. The village people consider them littler other than beasts.

(Forbes 1885:124)

From the historical sources and the Batin Sembilan’s orally transmitted history, we can assume that the Batin Sembilan is one of those groups formerly referred to as Kubu Bahar and Kubu Lalang. Today’s plantation occupiers themselves trace back their origins to the Kubu Bahar and Kubu Lalang groups. They connect their territorial claims to the activities of some heroic ancestor.

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<sup>8</sup> Colonial administrators and anthropologists were already debating in the late-19<sup>th</sup> and early-20<sup>th</sup> centuries whether the Kubu were original polytheist proto-Malay people or a degenerated group of people who had fled into the forest during wars between different rulers of Jambi and adjacent kingdoms.

## Dutch Rule

Jambi was finally subjugated by the Dutch in 1906 after several years of guerrilla warfare. After the sultan's death, the colonial administration replaced the former political structure of the sultanate. Local *adat* defining rights and access to land were acknowledged only as long the land and other resources were not destined for colonial exploitation. Otherwise, such land was categorised as “*woeste grond*”, that is, not productively used land or waste ground, and declared as the property and domain of the state (Benda-Beckmann 2005:7). This procedure elided the former *adat*-based land rights and people's classification of the forests according to the way they were used. Instead, “*woeste grond*” created a no-man's land, an undifferentiated wilderness that should be cultivated and civilised by industrialised plantation agriculture with cash crops, such as cacao, coffee, tobacco, and especially rubber. Thus, local concepts of an encompassing *Lebenswelt* were ignored and the western concept of ownership and property imposed, which allowed the exploitation of what became categorised as “natural resources”.

In line with the conceptual division of wilderness and civilised cultivation, the colonial government continued their efforts to tame and govern the margins and the marginalised by settling the “wild Kubu” and tying them to a place in order to govern them. In 1905, the village of Muara Bahar at the mouth of the Bahar River was the first Kubu settlement in the region, which was established with military force to safeguard the borders to Palembang. According to Dutch records, settling of the Kubu proceeded as described by Loeb:

The Kubu live in the partly swampy stretch between the Musi, the Rawas, the Tembesi and the Batang Hari. At this date [1935] practically all the Kubu, willingly or unwillingly, are united and registered in villages (*dusun*'s). In 1907 there were 7,590 Kubu distributed in five sibs (*marga*'s). [...]. While most of them have been converted to Islam, this conversion has been in name only. They have not been willing to give up their former food habits.

(Loeb 1935:281)

The Dutch rule has served the Kubu ethos, so that voluntarily or by force, they settled down in villages. How this kind of life is contrary to the Kubu, I heard from several people. Moreover, the Kubu have found a clever escape, satisfying both the officials and the Kubu individually. Under pressure of officials the Kubu built pretty villages, neat huts, in which they live, as was the custom of their ancestors, and here they cultivate the crops in their fields. They went to the villages as necessity dictated or when a festival was celebrated.

(Schebesta 1926:3)<sup>9</sup>

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<sup>9</sup> Translated by Kummerow and Baer 2005.

Civilizing the Kubu was apparently not always successful, and land use continued as before. In respect of the land tenure of the Bahar Kubu, Keereweer (1940:368) states the “*beschikkingsrecht* (right to avail – *bak ulayat*) belongs to the Kubu community. They needed a large area, borders were known and safeguarded”.<sup>10</sup> In summing up, we can state that under Dutch rule, the Batin Sembilan were also marginalised and were not acknowledged as owning land as this was appropriated by the colonial state.

### After Independence and New Order

After Indonesia reached independence in 1945, a new category for communities like the Kubu was created by the Indonesian government. The Batin Sembilan, still called Kubu, were, like other communities all over Indonesia, defined as *suku terasing* (“isolated tribes”), then as *masyarakat terasing* (“isolated communities”) and, finally, as *komunitas adat terpencil* (KAT; “traditional remote community”; Depsos 2003). Forest dwellers such as the Batin Sembilan were judged as being highly dependent on natural resources and isolated from development and progress. Thus, their way of life was associated with backwardness and ignorance (Saudagar 2002:i). The Social Department stated that a big gap and a lot of difference exist between the value system of the local culture and those of the people (i.e. “mainstream” Indonesian) outside of the traditional remote community (Depsos 2003:10). State policies tried to minimise these differences by forcing remote communities into modernising and development programmes, where attempts were made to teach moral and religious values, as well as a sedentary lifestyle and agricultural practices. Starting in 1973, more than 6,000 Batin Sembilan in the Bahar region were officially settled by the Social Department. Nevertheless, as already experienced under Dutch rule, most of the Batin Sembilan returned to their former ways of life inside the still forested areas as long as this was tolerated.

### Batin Sembilan and Landless Peasants becoming “Indigenous”

As already briefly outlined, the Batin Sembilan have been a marginalised community for centuries who were never acknowledged by sovereigns to possess land as their own property. Their land tenure was either connived or ignored and violated. Who is the SAD 113 community that now claims land to be *tanah adat* of the Batin Sembilan?

The SAD 113 group derives its name from being “Suku Anak Dalam”. They trace their origin back to three ancestral Batin Sembilan villages (*dusun*) that had been located inside the plantation area. SAD 113 was founded in 2003 and, at that time, claimed 113 ha of customary land: The spokesman of SAD 113 is Pak Bebas (pseudonym), who traces his genealogy back to ancestors who originally inhabited the Bahar region (see above). The group consisted of about 530 families in 2012, but the majority of these families could not prove autochthonic origin. They are mostly of Javanese origin and have either married a spouse from a local Batin Sembilan family or claim to be

<sup>10</sup> Whether *beschikkingsrecht* can be translated as “*bak ulayat*” is discussed by legal scholars, see e.g. Soesangobeng (2012b).

members of an extended family and friends of the autochthonous Batin Sembilan population. The descent system of the Batin Sembilan is bilateral and a member (whether male or female) of another ethnic group who marries a Batin Sembilan is acknowledged as Batin Sembilan. Land tenure is inherited by sons and daughters equally. This system allows, for example, a Javanese migrant who married a Batin person to call him/herself Batin Sembilan and claim access to customary land as regulated by Batin Sembilan *adat*. Accordingly, many strategic marriages take place.

The SAD 113 who not only claim but also occupy the land of the PT AP are supported by various institutions, including political parties as well as NGOs; they form a heterogeneous alliance of activists who associate themselves mainly with the “new agrarian movement” (Peluso et al. 2008). Each of these outside partner groups bring in their own visions and goals which are merged with the original claims of the Batin Sembilan producing a new dynamic. In 2012, the SAD 113 requested about 3,800 ha of land inside the concession; this land should be given the status of an “enclave” and then be controlled by the occupiers. Similar to the government’s policy of allocating land to transmigrants, the occupiers intend to grant each family 2 ha.<sup>11</sup> Since the occupied land is already planted with harvestable oil palms and the activists do not plan to change the crops, the families would become owners of individual oil palm plots, thus participating as smallholders in the agribusiness.

The occupiers are supported by the People’s Democratic Party (Partai Rakyat Demokrat – PRD),<sup>12</sup> an Indonesian left-wing political party. By using anti-neoliberal rhetoric, this party demands that all natural resources shall be used for the welfare of the Indonesian people. The National Peasant Union (Serikat Tani Nasional –STN) is affiliated with the PRD, supports farmers in land struggles and is one of the leaders of the agrarian movement.<sup>13</sup> STN is actively coordinating the organisation of the SAD 113 in Jambi. With the support of STN, the SAD 113 set up an infrastructure and a central camp inside the plantation area with a meeting place also functioning as office. Everybody who wants to enter the camp from the main road has to pass a security post which is painted in the PRD’s party colours and is decorated with the PRD’s and STN’s flags and symbols.

The unifying moment between the indigenous Batin Sembilan and the agrarian movement is the claim for land, either as ancestral territory linked to a local ethnic identity or for the landless people, such as Javanese who spontaneously immigrated to the area, who as an economic and social class strive for social justice and economic participation. In response to the demands of SAD 113 and also based on the criteria of RSPO and articles 16-32 of UNDRIP, PT AP argues that SAD 113 community members are mostly not SAD, that is, indigenous people in a narrower sense. They, therefore, tried to identify the genealogies of the occupiers in order to check whether

<sup>11</sup> The remaining land will probably be managed by the supporting activists together with the SAD 113.

<sup>12</sup> The PRD had previously existed as the People’s Democratic Union, which was established in 1994.

<sup>13</sup> A few years before the fall of Suharto demonstrations, strikes and other forms of action against the regime in Indonesia increased. These demonstrations and strikes were led by several organisations, which started their activities around 1993-1995. Some of these organisations were the STN.

they can prove a long-standing relationship with the area and, thus, are legitimised to make claims on behalf of RSPO criteria.

The SAD 113, not least through the activities of the STN, strategically use criterial and relational aspects in defining their indigeneity to facilitate the inclusion of non-indigenous activists as well. The activists’ self-identification not as Batin Sembilan, but as Suku Anak Dalam (SAD) is of great significance.

SAD is a politically correct but, at the same time, more powerful synonym for KAT or “Kubu” (Departement Pendidikan dan Kebudayaan 1985:26). Following the pan-Indonesian indigenous organisation AMAN, the term KAT (*komunitas adat terpencil*, or traditional remote community) was replaced by the name “*masyarakat adat*” (traditional community). *Masyarakat adat* is translated as “indigenous people” and allows them to ally with the international indigenous peoples’ movements. SAD, therefore, explicitly refers to *masyarakat adat* and the distinctive international attention indigenous communities receive; they are, as Tyson called it, different and “special” (Tyson 2011) and, therefore, appeal to the category of “indigenous” as defined by the ILO convention and used in UNDRIP.



Batin Sembilan graveyard inside PT AP oil palm plantation. Photo: Stefanie Steinebach 2012

In contrast, the name Batin Sembilan implies not first and foremost indigeneity, but rather defines the community’s place in history and the changing socio-cultural landscapes and ruling dynasties over centuries. The term rather links the Batin Sembilan in a positive way to the sedentary general populace, than differentiates and distinguishes them from the latter.

The strategic self-identification as SAD in the context of land disputes with PT AP is a political positioning that relates local claims to global discourses. At the same time, the self-identification as SAD combined with the Batin Sembilan's inclusive systems of kinship, makes being SAD a homogenising and inclusive category. The cultural differences, once highlighted by the Depsos 2003, were de-emphasised in favour of a unified political positioning vis-à-vis the nation state. This unification is provided with its own particular history. Pak Bebas also insisted on the use of the term SAD, as it reduces cultural differences and hierarchies between Batin Sembilan and "others". He states:

There are many groups of SAD, but we all can be traced back to the same ancestors – in former times it was the time of the *depati*, Depati Sending Ketanoh, Depati Jentikan [the Batin Sembilans political authorities are called depati]. This was some time ago, well, we do not like to be called Kubu now, but Suku Anak Dalam. Why SAD? Because we used to have a religion, we used to have settlements, we lived an appropriate life. During the colonisation by the Dutch and the Japanese [during the Second World War], we ran into the forest because we did not want to be colonised. Colonised – we did not want to be, so our ancestors gathered in the forest where we again established a village in this forest – ha, that's our history.

We own the absolute authority (sovereignty) here – I said we will fight for our land but actually we are fighting for the self-confidence of the Suku Anak Dalam because in 1986 we were expelled by the [oil palm] company. I know the history; there existed villages, graveyards that were destroyed by the company. Who cares if the name [of the company] was PT BDU or PT Asiatic a few years ago if we can still see durian trees, graveyards...Before the Dutch colonisation, we already had our villages here. Bahar was the oldest settlement of all.

(Pak Bebas August 2012)

In this statement, some of the frictions, fractions and contradictions in the construction of a local indigenous identity according to global criteria are revealed: Pak Bebas self-confidently dissociates himself from the "Kubu" they once were according to historical sources. He emphasises the SAD similarity with the sedentary majority population and the "appropriate" lives (in the government's sense of the term) their ancestors had led. Paradoxically, by doing so, he inadvertently erases the historical characteristics of being "Kubu" from which today's occupiers originally draw their legitimisation of claiming the once forested territory. This also means that the differences between the SAD and the non-SAD are eradicated and, therefore, the differences that would grant the SAD the privilege of the special others, the "indigenous", are negated.

For Pak Bebas, the social (re-)integration of the marginalised SAD in the national mainstream society and the acknowledgement of political sovereignty over land are another goal he wants to achieve. In this context, it does not matter whether the group's ancestral villages and settlements were established before, during or after

colonial rule. The SAD’s shared attitude towards the former colonisation when they resisted by fleeing into the forest seems to be more important. This resistance against colonisation also unites the SAD with the sedentary majority of the Jambinese population who actively opposed the Dutch. This explanation given by Pak Bebas also links the SAD to the nationalistic anti-colonisation rhetoric of the STN.

When I attended a community meeting in the central camp in August 2012, people were busy installing posters of the young (socialist) president Sukarno (who was forcibly succeeded by the rightist New Order regime in 1965). He was shown in military uniform; a slogan against colonialism and for the freedom of the Indonesian people was written across the picture; beneath was the text: “Let’s practice article 33 of the 1945 Indonesian constitution”. This article on the national economy and social welfare states in paragraph (3) that the land, the waters and the natural resources within shall be under the powers of the state and shall be used to the greatest benefit of the people. After the ceremonial opening of this meeting, the community was asked to stand up and sing the “*lagu darah juang*” (a political battle song challenging the Suharto regime) with raised left fists.

Anti-colonial rhetoric is an important element in claiming peasants’ rights. It is beyond the scope of this article to discuss in detail the category of the “peasant” used in this political context and to distinguish it from a “cultivator” (who, for example, practices shifting cultivation) or from a (rather entrepreneurial) “farmer”. Nevertheless, the nomadic Kubu once practiced shifting cultivation, a form of production that differentiated them from the sedentary peasants who practised intensive wet rice agriculture. This reclassification of the SAD’s economic activities, and the subsuming of different livelihood systems under the name of a single mode of production (“peasants”), facilitates the overcoming of (cultural) differences and the creation of a single political category – the peasant class. Here again, contradictory and conflicting versions of history are employed to create a unifying and powerful local identity.

The “peasant” is understood by the STN and in accord with the PRD as a pre-industrial social and economic category that suffered from various impacts of colonial oppression and capitalism. In the context of land occupation, being a peasant is associated with being part of a class struggle against unjust economic conditions. Later during the meeting, the head of the local STN branch commented on the importance of supporting the indigenous claims for customary land:

We have to evoke feelings – a feeling of ownership! This is what Pak Bebas said – this is *tanah adat uayahat*. In the moment we say this is our customary land, we are fighting for our customary land which was stolen by PT BDU in 1986 which then changed its name to PT Asiatic (Asiatic Persada). Today we continue to come back to our home villages of origin of which we are the heirs. This means, we say we are getting ready, we prepare ourselves, all we different groups or the members of the SAD. Because this land is our property (*milik kita*); we do not steal or rob it from Asiatic, but we will come back to our villages of origin. We will set up shelters and huts, and, in the near future, maybe we will build a nice meeting hall. We will invite all the peasants or SAD groups to set up guard posts...



By taking up Pak Bebas' statement, the STN's speaker also explicitly establishes a connection between the SAD and the non-indigenous population. The "different groups" mentioned by the speaker should unite in their struggle for access to land that was unrightfully taken from them. All the SAD are victims; victims of the Indonesian state. Pak Dedi (pseudonym), the STN's speaker, continued:

We do not only fight for our customary land but also for the self-confidence of the SAD. Ninety-nine per cent of the SAD are illiterate, but the government does not care, they do not care for the SAD. If the government does not care about the SAD it is not our fault, but the fault of the government. The SAD have always been peasants. They just did not have the right technology to become successful.

(Pak Dedi, STN Jambi)

## Conclusion

Land tenure conflicts, such as the SAD 113 versus PT AP case, are the outcome of struggles over the acknowledgement and allocation of rights, local history, power, and ideologies; they lead to changing patterns of inequality (Peluso 2012) in respect of land access and economic welfare. The peculiarity of this case lies in the heterogeneous composition of the activists whose ideologies, political experience and strategies and, therefore, also their access to power originally differed. In the course of their fight for land, which brought these different groups – autochthonous people, landless immigrants, the STN (and also NGOs) – together, these groups merged, resulting in what they named as the SAD 113. Their common goal, which eclipsed cultural differences, is to get access to productive land and receive a tract of land, a plot of oil palm plantation, as land to allocate and manage according to their own will. Through the concept of indigeneity, as promoted by international conventions and subsequently by NGOs, their claims have gained attention and recognition. The Batin Sembilan, not least through their documented history in the contested area, as I have shown above, certainly fit the global category of indigenous peoples; they fulfil the criteria as described by the ILO convention 169 and others. It is the distinction of being "indigenous" in an international sense that makes them something "special". However, the Batin Sembilan are only one part of the SAD 113. Additionally, their marriage patterns (bilateral descent) which easily allow the integration of "foreigners" promote anything but boundedness and exclusivity. They allow the alliance with members of other communities, such as landless immigrants, and support from the STN. Therefore, other members of the SAD 113 are landless cultivators who sail under the flag of the peasant movement. These claimants argue on behalf of the national Indonesian constitution which states in article 33 "that the land, the waters and the natural resources within shall be under the powers of the state and shall be used to the

greatest benefit of the people”. They understand it as the national citizens’ and, therefore, everybody’s right to gain access to land for their own use. In the struggle for land, discourses of indigeneity argue with the distinctiveness of territorialised culture, often opposing the nation state. The landless peasants’ discourse refers to their rights as citizens as defined by the state. While applying these discourses of indigenous and peasant, both seem contradictory at first glance, especially when claiming the same piece of land, as in the Bahar region. However, these discourses or peasant and tribal allegories (Tsing 2003) are not necessarily filled by the local activists. The Batin Sembilan do not want to be indigenous tribal people different from others; they see themselves, nowadays, as sedentary farmers like others who are not Batin Sembilan, and as displaying an identical culture. They also expect to gain access to land which will mostly be planted with the boom crop – oil palms.

Taking into account the international discourses on human rights and indigenous peoples that acknowledge these minorities as subjects with rights that should be protected against the laws of the nation state, legal pluralism becomes another dimension in which customary law is defended against national law. By applying the global category of indigenous people, the SAD 113 group makes use of it for their economic empowerment and a strategic positioning. It legitimates not only the occupation of the plantation, but also the creation and occupation of a third space, one that is between discourses. The SAD 113 have developed a rhetoric of inclusion uniting territorialised culture and landless class by explicitly referring to common citizenship. This leaves room for manoeuvres that do not fit the categories of indigeneity or of landless peasants, but is an expression of strategies of unification: Peasants become indigenous and the indigenous are included in the peasant class. This new identity as a “class of indigenous peasants” makes the Bahar region a new frontier of land control where national notions and global discourses of land ownership and property tied to local identities are challenged.



# Being Wana, Becoming an “Indigenous People”. Experimenting with Indigeneity in Central Sulawesi

*Tracing the trajectories of indigeneity should be  
about enablement and not endless deconstruction.*

(Cadena and Starn 2007a:22)

*Anna-Teresa Grumblies*

## Introduction

The often quoted revival of *adat* (custom or tradition) in Indonesia is closely related to the international movement of indigenous peoples. The latter invoked the former. The Wana of Central Sulawesi decided to become indigenous in 2011,<sup>1</sup> but did they also decide to become part of an international movement?

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<sup>1</sup> While some data here apply more generally to Wana of Central Sulawesi, in the following I am concentrating on Wana living in and around Taronggo and Salisarao, Kecamatan Bungku Utara, Morowali. I have carried out fieldwork in this area for a total of about fourteen months, spread over a period of three years. I am deeply grateful to the members of the Wana communities in that area for their hospitality and patience, as well as to the residents of Taronggo.

Wana only recently became involved in the politics of the so-called *masyarakat adat* (*adat* communities) movement.<sup>2</sup> The ongoing threat of land loss and forced resettlement, historically a well-known state of distress for Wana, led to new network-building with a local NGO from Palu, the province's capital. This fresh-born relation initiated a novel form of agency, so far unknown to Wana. The embracement of their status as *masyarakat adat* brought with it a new vocabulary and attitude towards their status as a marginalised people, leading, on the one hand, to what might be called empowerment, but, on the other hand, causing several new forms of conflict. In this contribution, I will focus precisely on the politics of becoming *masyarakat adat*, its effects and complications, and how its outcome is deeply entangled with the religious beliefs and experiences of marginalisation. Based on field work conducted before and after the Wana redefined themselves as *masyarakat adat*, I will pay special attention to the dynamics of this change and reveal several complexities of what "empowerment through indigeneity" can mean.

At its beginning, the global movement of indigenous peoples was mainly formed in those countries that are dominated today by people of European descent, so-called settler societies. It was not until the 1990s that the global movement, with its roots in America and Australia, spread to Asia and Africa. However, the revival of local custom as a signifying marker of the indigenous people movement in Indonesia was also inaugurated by specific national processes related to the downfall of the Suharto regime in 1998 and the concurring democratisation and decentralisation. Furthermore, historical circumstances forming and extending the meanings of *adat* added to the specificity of Indonesia's indigenous people movement. Last but not least, following Henley and Davidson (2008), it was the poor conditions under which minority groups had to face a marginalised standing under the politics of Suharto's New Order regime. Due to these reasons, it would be too easy to reduce Indonesia's *adat* revival to part of an indigenous movement that is primarily formed and directed through international discourse – on the contrary: "the current interest in *adat* is not just a national offshoot [...]. The revival also reflects a specifically Indonesian ideological tradition in which land, community and custom [...] provide the normative reference points for political struggles" (Henley and Davidson 2008:849). One of the main players in the current *adat* movement is AMAN (Aliansi Masyarakat Adat Nusantara), founded in 1999 after the first nationwide meeting of *adat* communities in Jakarta. These communities initiated AMAN out of their experience of marginalisation, for example, in the form of land loss or forced resettlement, during the Suharto era. With AMAN they formed a new weapon to fight for their rights, especially land rights, which were neglected and violated under the New Order regime. Engaging in the *masyarakat adat* movement and associating with AMAN or other NGOs triggered new, often conflict-laden, processes, socio-cultural change and shifting political constellations for these groups. Salisarao

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<sup>2</sup> I am aware of the fact that it is a critical and in some ways political decision to equate the term *masyarakat adat* with "indigenous people". However, as Acciaioli, for example, has made clear, it is the term used by activists of the Indonesian movement and underlines its global connections. Therefore, I will use it in the same way, keeping in mind the inconsistencies and, therefore, problematics of using both terms as a synonym for each other (Acciaioli 2007:314).

Wana used the apparatus of the *masyarakat adat* initiative and entered the movement for exactly the same reasons: To fight for their land.

Although there were numerous criticisms attacking overly romanticised pictures of indigenous people tied closely to a pristine idea of the environment, in Central Sulawesi, as Tania Li has pointed out (2007b), AMAN activists in 2003 were still defenders of the popular picture of indigenous groups as the often quoted "ecologically noble savages" (Raymond 2007; Redford 1991). Activists stated, according to Li, "that there still exist communities in Indonesia living in harmony with their environment, possessed of indigenous ecological knowledge" (2007b:343). Furthermore, it was added that indigenous groups were sharing communal land tenure systems and would rely on independent, democratic forms of traditional autonomy, thereby portraying "an oasis in the middle of the desert" (Li *ibid*). In this sense, the idea of indigenous groups in Indonesia as not only "ecologically noble savages", but also "self-organized people" reveals a national context in which the imagination of indigeneity is closely connected to local or countrywide experiences. For Li, the indigenous people movement or, better, the *masyarakat adat* idea

presented [...] the direct inverse of everything that was problematic about New Order development: individualism, greed, ecological destruction, an emphasis on modernity understood as Westernisation, control by international financial institutions, burdensome debt, and the loss of national economic, political, and cultural autonomy glossed as globalisation.

(Li 2007b:343)

Of course, the problem behind these assumptions, in local as well as in international debates, is complex. While Li speaks about the "difficulty of locating the perfect *adat* subject" (Li 2007b), the same accounts for global discourse, where a general definition of indigenous people is a highly political and tricky issue (see the chapters by Göcke and Cabrera, this volume; see also Dove 2006; Hodgson 2002; Kuper 2003; Pelican 2009), leaving "anthropologists anxious about the concept" (Dove 2006:194) of indigeneity itself. This anthropological "over-concern" concerning the definition of indigeneity led Dove to the following question: "What do we make of the extraordinary coincidence that anthropology (and the social sciences) began to critique the concept of indigeneity at the very time that it was being legitimised by mainstream global organizations like the United Nations and the International Labour Organization?" (Dove 2007:147-148).

In this essay, I will try, therefore, to avoid a discussion of what the *adat* movement means on a national or international scale or in terms of definition. Instead, I will focus on the "art and politics of being Wana, becoming *masyarakat adat*", a phrase I have borrowed in part from Jane Atkinson, who worked among northern Wana and wrote the ingenious monograph "The arts and politics of Wana shamanship" (1989), as well as from Dorothy Hodgson with her recent book on Maasai indigeneity titled "Being

Maasai, becoming indigenous” (2011). In combining these two titles, the current theme of recent Wana involvement in a movement becomes apparent and makes clear their ongoing positioning (Hodgson 2011) between culture and discourse.

The debate on indigeneity and, to quote Li, “the discourse of *adat* is a political force” (2007b:338). *Adat* can be an important source of power for historically marginalised people, as the Wana of Central Sulawesi are. One first must get access to this political force, however, and then must learn to handle it. It is a force Wana people did not possess until recently. As swidden farmers living in the uplands of Central Sulawesi, the Wana are often described as “primitive” people who “better fit the bill” (Li 2000:162) of the “real indigenous”. They could probably easily be described as a “perfect *adat* subject” (see above). However, they were not spotted by the brokers of the indigenous people’s movement until recently.

The process of reframing their identity, which was based for so long on ethnicity and religion, to embrace a new identity as indigenous people (Hodgson 2011:3) is rather a current process whose effects are not fully assessable at this point.

## Ethnographic Setting

The Wana ethnic group is located in Central Sulawesi, living in an area covering the realms of three administrative districts (*kabupaten*): Morowali, Banggai and Poso. Most people talking about the Wana ethnic group in Kabupaten Morowali generally refer to those Wana living in the Cagar Alam Morowali (Nature Reserve) – the largest nature reserve in Central Sulawesi, covering an area of 225,000 ha of the eastern peninsula. The anthropologist Michael Alvard describes those Wana living in the upland area of the Cagar Alam in an article from 2000 as “rather remote” compared to their coastal neighbours: “They have maintained relative isolation from much of the outside world, and most adults speak no or very little Indonesian, have little or no interaction with the cash economy, and maintain a traditional religious belief system” (Alvard 2000b:429). More than ten years after Alvard’s research, I was confronted with a different picture. Isolation was still a matter for consideration, but mainly for geographic and infrastructural reasons. Wana living inside the Cagar Alam frequently visit villages outside its boundaries, mainly to sell resin or rattan. The resin trade has a long history for Wana (Atkinson 1989:264) and plays an important part in their current economy, effecting intense interaction with people outside the nature reserve.

Although the amount of research focusing on the Wana remains low,<sup>3</sup> the attention paid by outsiders towards Wana inside the reserve is noteworthy: A number of tourists,

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<sup>3</sup> Apart from Jane Atkinson, who did research in the Upper Bongka region, and Michael Alvard, who conducted research on hunting practices and sustainability among Wana of Posangke (2000a; 2000b), an M.A. thesis by Cynthia Riccardi (1999) deals with agriculture among the Wana of Kayupoli, focusing mainly on the documentation of the swidden cycle. Additionally, there are two short articles by the environmental activist and current governmental representative Jabar Lahadji dealing with minority rights and the impact of reserve zones on the Wana (1999; 2008). The extensive work by the Dutch missionary Albert Kruyt, published in 1930, offers highly valuable insights in historical conditions among the Wana (Kruyt 1930). Regarding literature on my specific research area, there is



Taronggo is located within an ocean of oil palms.

Photo: A.-T. Grumbles 2011

tourist guides, a local NGO, documentary filmmakers,<sup>4</sup> and anthropologists have occasionally been visiting Wana within the reserve. Nevertheless, visitors generally almost never concentrate on Wana living outside the reserve's borders. One such area is Salisarao, located east of Kayupoli and south of Posangke (both Wana settlements within the reserve) and north of the village of Taronggo. Salisarao Wana, although conveniently located for tourist interest, i.e. only a couple of kilometres hiking upland from road-accessed Taronggo, have never before been visited by non-Indonesians, nor do Indonesians pay attention to the area. An informant from Kolonodale told me that Salisarao Wana were “too modern” for tourist or NGO means and are believed to “have moved away too far from their ancestors’ way of living”. This is a common argument tied to the indigeneity discourse, where “the spurious calculus of authenticity and cultural purity” denies an indigenous status to those who do not fit the “stereotypical ‘feathers-and-beads’ expectations [and who] often find themselves stigmatised as ‘half-breeds’, ‘assimilated’, or even ‘imposters’” (Cadena and Starn 2007a:9). My source referred to the opportunity for Wana living outside the reserve's borders to be able to engage in a different agricultural system, for example, growing cash crops, coconut trees or, more recently, cocoa, since the nature reserve's

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only the work by Alvard on the Posangke area; no research has yet been conducted on Salisarao or Taronggo.

<sup>4</sup> The filmmakers Gerard Nougatrol and Martine Journet have produced a number of outstanding documentaries on Wana shamanship, for example, “Indo Pino” (2002) and “Gods and Satans” (2004).



restrictions do not apply to them. Their involvement in cash crop cultivation and the decreasing importance of the “traditional” swidden farming cycle has led outsiders, such as the source in Kolonodale, to come to the conclusion that Salisarao Wana are less “backward” than their semi-nomadic neighbours within the reserve. Planting cash crops seems to have a significant impact on perceptions of indigeneity. As Li states for the Lauje in the Western part of Central Sulawesi, growing cocoa has turned them from “primitives” into “‘real farmers’ building up a long-term investment” (2002b:421). Since cocoa has “the lure of modernity” (Li 2002b:421), Salisarao Wana have become for some, i.e. tourists, their inner-reserve relatives, or, as the source stated above, too modern.

## Marginalisation

For others, however, such as their neighbours living in the lowlands or state officials, Salisarao Wana still remain in the marginalised stance they experienced even before colonial times (Atkinson 1979; Kruyt 1930). Explanations can be found in a multiplicity of reasons, all related to each other and of relevance to the Indonesian *adat* discourse. One reason is religious affiliation. According to state ideology, adherence to one of the six officially recognised “world-religions” functions as a marker of modern citizenship; religion is further “associated in nationalist culture with education, cosmopolitan orientation, sophistication, and progress” (Atkinson 1979:688). Moreover, “Wana failings to match the ideal of a progressive citizenry are summed up for nationalist Indonesians in the fact that the Wana lack a religion” (Atkinson 1979:688). Most upland Wana have successfully managed to resist conversion attempts with which they were confronted from the colonial side, lowland neighbour side or contemporary missionaries. In addition, as Saputra insists: “[H]ome grown animism has always been given a devil’s image” (Saputra 2012). In this regard, religious conversion to either Christianity or Islam is an important matter for perceptions of “civilizatory modernity”, since Taronggo, the geographically closest full administrative village, is inhabited by an interreligious community, where non-converted Wana, Wana who have converted to a “world religion”, and other Christians and Muslims live together.<sup>5</sup> In this interreligious context, Atkinson’s analysis of how Wana religion is shaped alongside this outside pressure, although written long before the downfall of Suharto’s regime, remains meaningful today: Wana

are acutely aware of and sensitive to the way they are regarded by others more powerful than themselves. What they call agama [religion] Wana represents a self-consciously constructed response to the judgments of the dominant society.

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<sup>5</sup> In the following I will use the term Wana from a religious perspective. There are also Christian and Muslim Wana living in Taronggo, but in this essay, I will apply the term only to those Wana who have so far resisted religious conversion.

This response builds on the images of what constitutes a religion that the Wana have received in their dealings with Muslims and Christians.

(Atkinson 1988:53)

Apart from Salisarao Wana’s reliance on their belief, an important aspect distinguishing between “modern” and “backward” citizens remains the reliance of most Wana on swidden agriculture, their non-centralised housing situation, their language and their lack of proficiency of Bahasa Indonesia, the official state language, and their remote location. Hence, Salisarao Wana can easily be described as an “indigenous group”.

By the time I entered the field in 2010, it seemed that Wana had not heard of the opportunity of empowerment by claiming status as indigenous people. They presented themselves to me, the anthropologist, as a marginalised people who had no chance of overcoming their status. Of course, Wana had and have their own strategies of resistance, their own “weapons of the weak” to speak with Scott’s words (1985). But their resistance was a rather subtle notion of “tentative resistance” (Scott 1998:289); it was an everyday form of boycotting or ignoring government or other institutions that were disadvantageous to Wana.

Wana in the uplands, as well as Wana living in the interreligious community of Taronggo, never seemed to openly challenge the government or other oppressors; they showed no obvious motivation to directly and openly oppose the processes of marginalisation. Avoidance of direct confrontation seemed to be a historically congruent matter among Wana.

The Dutch missionary Albert Kruyt, who wrote an early account on the Wana (1930), and Jane Atkinson came to the conclusion that the Wana were historically generally rather “shy victims” than heroes:

Timidity [among the Wana] had its roots in the endemic regional warfare of the nineteenth century. In the regional game of headhunting the Wana were often the heads, the victims of neighboring peoples [...]. Although the imposition of Dutch rule in the region at the beginning of this century put an end to raiding, it inaugurated a new form of local terrorism.

(Atkinson 1989:263)

In this last sentence, Atkinson refers to Wana resettlements forced by the various governments – a fact already mentioned by Kruyt:

The To Wana have been a much disturbed folk. [...] Peace did not become their share either, when the [Netherlands] government put its powerful hand on them. In the beginning of the occupation the administrative government supposed that these shy people would get to know order and law most easily if they were forced to live near the coast. But the people did not wish that with

the result [...] that many patrols of soldiers were sent repeatedly into this land to draw the people down to the coast. [...]

The misery of these people must have been great. Of those who had let themselves be forced to settle near the coast, many died.

(Kruyt 1930:403-4, translated by A.G.)

Forced resettlements remain a government objective which Wana are all too much aware of; I will return to this aspect later. Pressure experienced through the colonial government still plays a major part in historical accounts shared by the Wana today. Atkinson describes Wana “timidity” as rooted in early warfare activities. Historical experiences of being disadvantaged during fighting regimes led to an open self-victimisation: “Wana openly acknowledge their cowardice as a people” (1989:262).

“Timidity” has remained an important point of self-reference, embodied in a self-marginalisation process deeply entangled with a millenarian cosmological perspective. In the following section, I will elaborate further on cosmological narratives to demonstrate why the Wana are reluctant to resist.

## Cosmological Narratives

In Wana cosmological narratives, also called *katuntu* (Wana language, called Bahasa Taa: BT), it becomes clear how important the current state of marginality is for their prospective future.<sup>6</sup> The Wana see their land as the navel of the world, *pusen tana* (BT). *Pusen tana* is, furthermore, the source of *baraka* (BT, power), *kasugi* (BT, wealth) and *pagansani* (BT, knowledge). In the past, it is told, there was a golden age, called *tempo baraka* (BT) – a time of magical and powerful knowledge when the Wana region was inhabited by the *taw baraka* (BT), powerful people. All Wana were able to access and use these sources of power through, as Atkinson has shown, *wali m panto'o* (BT), meaning “the becoming of the word” in Atkinson’s translation (1989:43). One would just need to close his or her eyes, for example, speak the spell *adi adi* (BT) and the wished-for object would appear (see also Atkinson 1989:43). However, in Atkinson’s words, “the golden age was not to last”. One day, a special group of Wana, the *taw baraka*, decided to leave the earth and go to another place at the end of the world. Their departure ended the golden era. The *taw baraka* took with them the attributes of the golden era: power, wealth and knowledge (and, depending on the story-teller, clothes and/or a book).

Their departure demarcated the end of the Golden Age and opened up a new age of poverty where “powerful knowledge is no longer a commonplace but limited to a very few”, and ordinary Wana were left behind, “powerless, poor and limited in their

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<sup>6</sup> Atkinson (1989:44) calls these stories of a time when wishes would become true *katuntu*. During my research, the meaning of *katuntu* appeared to be extended to all stories of a magical and powerful past.

access to knowledge” (Atkinson 1989:44). Magical knowledge, wealth or power were no longer accessible to the Wana people. Therefore, Wana often present themselves today as a poor and pitiful people, caught in a marginal stance.

Nevertheless, there is hope. The Wana believe that one day, their powerful allies, the *taw baraka*, will return to *pusen tana* and introduce a new Golden Era for them. In the meantime, it is essential for Wana not to break out of their current state of misery. Only those Wana who remain in the current powerless state of pity and have not converted to another religion will be rewarded by the returning *taw baraka* (see also Atkinson 1989:44).

In this cultural construction, marginality is cosmologically constituted as a temporary condition. A breakout is, however, possible with the help of the *taw baraka*, expected to come back one day. This explanation becomes crucial for the marginalised status of the Wana when talking about resistance and empowerment, as I will show in the following. Furthermore, this condition as pitiful people, continuously displaying their own people with the words *kita taw be’a*, meaning something similar to “we are a stupid people”, is another explanation for Wana “timidity”, or at least for their reluctance concerning open resistance strategies.<sup>7</sup>

Organised or open resistance, in accounts told by my informants, was not a matter of concern in Salisarao or Taronggo meetings. Instead, the refusal to meet with state officials or missionaries, returning to, staying in or hiding in the upland regions were the common strategies to deal with outside pressure. Pratt highlights the role of physical isolation in this relation: “Remoteness, when activated as a force, almost inevitably translates into difference and a perceived absence of assimilation. It can also generate a narrative of refusal of a presumed invitation to assimilate” (2007:402).

Nevertheless, this pattern was soon to change. By the year 2011, during my research stay, the Salisarao Wana were confronted with the danger of land loss and the urgent pressure from the local government to resettle to a centralised village. These risky developments inaugurated the process of becoming “indigenous”, or what can also be called becoming *masarakat adat*.

## A Chronology of Becoming Indigenous

Similar to many other regions in Indonesia, Central Sulawesi is home to a growing number of palm oil companies among many others. PT Kurnia Luwuk Sejati, a national palm oil company from the Eastern part of Central Sulawesi (Luwuk, Kabupaten Banggai), has continuously bought land in the area around Taronggo, beginning in 1997/8. Nesting between the mountainous uplands to the north, the Cagar Alam to the west and partly east, as well as a river and other settlements to the east, Taronggo today is encapsulated in an oil palm plantation, reaching out from the south. Seen from above, Taronggo appears like an island in an oil palm ocean.

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<sup>7</sup> Atkinson refers to the strategy of dealing with pressure from outside in the form of fleeing as more complex than Krut suggested. She points to a more organised form of resistance, also encompassing the practice of disappearing into the forest, but backed up by leaders who “were thought to have special access to information about the fate of the Wana land” (1989:319).

Numerous Wana complain that they have been illegitimately disowned from the land they were holding around Taronggo. False promises by company and local governments left many Wana without any compensation. As a consequence, available land had become extremely scarce in the Taronggo area in 2010, though PT Kurnia had high intentions for expansion. The new target for plantation development was found in the upland area north of Taronggo: the area of Salisarao.

The company's and local government's joint plan became more and more pressing. More than 100 Wana households were currently located in the approach region of Salisarao. A new project was formulated for those Wana living in Salisarao: All families were to be resettled to a new village that was still to be built. The plans were presented to me by government officials and company affiliates with great enthusiasm, offering Wana the opportunity to live in a modern setting, a village with road access, a school and a church. Government and company ignored the fact that Wana living in Salisarao were not only practicing swidden agriculture on their land, but had also been successfully planting cocoa for more than 15 years. A resettlement would have made them landless peasants, left without the opportunity of independent cash crop cultivation and/or a subsistence economy. Furthermore, road access was not desired by the community, neither was the construction of a church.

Resettlement programmes in the name of development during the New Order regime were a common picture in Indonesia, to quote Li's account from 1999: "[t]he target group is expected to move from isolation and backwardness to the status of 'ordinary villagers' culturally normalised and enmeshed in the regular system of village administration and national development" (1999:302). Through the resettlement of Salisarao Wana, government and company would have easily killed two birds with one stone: Succeeding with the expansion of the plantation (thereby more profit for the *kabupaten*) and letting Wana become part of the Indonesian mainstream, making them "civilized people" with all the attending attributes.

As I mentioned earlier, the Wana have had several historical experiences with resettlement programmes. Taronggo itself was built as such an action by the Dutch government at the beginning of the 20<sup>th</sup> century. At the beginning without success: Kruij describes Taronggo as an uninhabited village, a proof of Wana strategies of resisting resettlement initiatives by the colonial government: "This new village, and all the other villages that I have visited later on, clearly shows that the To Wana have remained faithful to their old habit of living scattered on their fields. [...] I did not even meet a dog or chicken in some villages on my journey through this land" (Kruij 1930:406-7; translation A.G.). Up to today, Wana have more or less silently boycotted resettlement strategies. A recent resettlement site close to Taronggo, now a part of the village called Rio Tinto, was built after a landslide in 2007. However, except for a small Christian group that has settled there and has opened up an orphanage for Wana people, only two or three Wana families have settled there permanently. Most Wana have returned to the uplands, leaving behind an abandoned settlement, a witness to failed resettlement goals.

Nevertheless, this pattern or (successful) strategy of subtle resistance would not have worked against the new resettlement plan in 2011. The fear of actual land loss made the situation extremely threatening for Salisarao Wana. How could they defend

themselves against the (as it seemed) overwhelming power of government and company?

The biggest problem, the Wana stated, was the lack of information about their rights to their land. When local government and PT Kurnia officials spread the word that the Wana had no legal ownership of their land or their crops, everyone believed it, since, and here again I quote Li: “The legal standing of any of these ‘rules’ would certainly be disputed by legal experts on customary land rights. But in the absence of countervailing knowledge and support, a headman’s bullying is sufficient to unsettle villagers who are isolated and unsure of their ground” (Li 2007b:342).

One might argue that the situation after 1998 should look different, with regional autonomy laws actually strengthening local communities. However, authors such as Erb et al. argue that decentralisation and regionalism has not always worked in favour of *masyarakat adat* who “are still not being given the kind of autonomy that they desire, to design and arrange their own culture and communities” (2005:150). One example is the invention of the BPD (village representative body, *Badan Perwakilan Desa*), mentioned in the regional autonomy law no. 22 of 1999. This group of people is supposed to watch over the *kepala desa* (village head) and to make sure that local custom and *adat* is respected and protected; “to make the rules of the *desa*; to make sure that the needs and desires of the population are heard; and to make sure that the local village government acts properly and does its job”.<sup>8</sup> By this means, the BPD is an attempt to put an end to KKN (abbreviation for corruption, collusion and nepotism) and to guarantee local participation. However, Erb et al. give a warning concerning the role of the BPD: As a counterpart to the *kepala desa*, the BPD will remain the target of the former, who if “he still wants to be involved in corruption, etc., will do his best to keep control of power in the village and obstruct the BPD” (2005:170). To come to my point here: The head of the BPD (Ketua BPD) in Taronggo is also the *kepala desa*’s father! So much for the end of KKN in Taronggo. What has changed after the end of the New Order regime is the law, but without access to it (or knowledge about it), the situation for Salisarao Wana after 1998 had not changed much.

What was needed was legal advice. The Wana searched for this among their, what I call, “powerful friends”. Let me briefly explain why I chose this, I believe, rather provocative term. Dorothy Hodgson describes her situation as an anthropologist entangled in a Maasai indigenous movement with a position as an interlocutor. She does so to refuse a position as a “collaborator”, as Les Field has argued, in an attempt to bring together academic working and collaboration with peripheral communities (Field 1999:195; see also Hodgson 2011:15). Hodgson, however, describes her situation instead as a:

scholar who shares her ideas and work with Maasai activists and organizations in ongoing, constructive, and perhaps, even occasionally contentious dialogues and debates in an effort to inform and shape their policies and practices, without directly aligning myself with one group or faction of the movement.

(Hodgson 2011:15)

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<sup>8</sup> Law no. 22, Passage 104. Translation taken from Erb et al. (2005:170).

With this intention, I fully agree with her positioning as an interlocutor, but during my research it became very clear to me that I was not regarded by my informants as simply that. The people I met, lived with, engaged in interviews, and so on perceived of me as a person with significant power – something they lacked substantially while facing the threat of land loss. It was very clear for them that I would serve as their “powerful friend” in times of struggle. Aligning myself with one group or one side of the protest was a decision that I had to make – but it was also already made for me by my Wana interlocutors.

In the beginning, actual and less subtle resistance started with the idea to make a signature list signed by all willing members of Salisarao and Taronggo Wana – an idea for which I was responsible. Of course, I was worried about my own positioning as an anthropologist, but eventually I was regarded as a person with resources, knowledge and networks, hence I answered many questions and tried to help with information the best I could. In the end, the signature list was somehow the beginning of “open” Wana resistance. What followed were informal gatherings, long discussions with neighbours about opportunities and chances. Then finally, the local government and PT Kurnia organised a community meeting with Salisarao Wana, initially planned to happen in the upland area; but instead, Salisarao Wana pressed for a meeting in lowland Taronggo, where they hoped for support from their “more educated” village neighbours. Instead of waiting for the officials to hike up to the mountains, Salisarao Wana hiked down to meet them in the village community hall. It took a long time waiting for them. It was a Sunday and the *kepala desa*, the elected village head, had spontaneously decided to attend the church service with an unofficial gathering afterwards. The word spread that he was not brave enough to face his upland citizens within the “realm of the law”. People believed an upland meeting would have encouraged *kepala desa* and the company towards further lies and manipulations. The upland as a realm of the uncivilised, the primitive, where the state border seems to become blurry and fuzzy, would have functioned as lawless, thus stateless, hinterland. In the end, the meeting was helped by the severe delay, and had positive consequences: the plan for the plantation’s expansion was terminated.

Nevertheless, although the success was celebrated, Salisarao Wana did not trust the decision. As time passed, more and more people became intimidated by the official’s “helping hands”. The local head of the company himself told me that the moment I returned to Germany, the expansion and resettlement plans would immediately restart again. Therefore, due to the ongoing threat of land loss, the Wana searched for more “powerful friends”. They found them among the members of the NGO, Yayasan Merah Putih.

During my research stay, I had once mentioned the NGO, Yayasan Merah Putih, to my informants. This NGO is located in Palu, Central Sulawesi’s capital, and had already been working with Wana from the Bulang area on the northern coast of Central Sulawesi. Among other things, they had helped those Northern Wana to fight a resettlement plan in that area. Furthermore, they had implemented a special form of school to promote at least some education for Wana people in the area, the *sikola lipu*, named after the local word for Wana settlements. This form of school system is self-

organised by NGO-trained Wana individuals and focuses on basic skills, such as reading, writing and mathematics.<sup>9</sup>

I mentioned the NGO and its school only in passing, but the interest it raised among Salisarao Wana was astonishing. Insufficient education is for Wana people, another explanation for their marginalisation. Those Wana living in the mountains are too far away from the village infrastructure to be part of the state school system. Lowland Wana within the village of Taronggo go to school, but are not very enthusiastic about it, since both teacher and the curriculum are very oriented towards Christian values. Praying and singing are regarded as tools to press Wana children towards religious conversion.

The idea of a Wana school “free from religion” was stuck in many heads and I noticed my interlocutors often kept discussing this topic until sunrise. Finally, in March 2011, they wrote a short letter to the Yayasan Merah Putih explaining their situation with the palm oil company and pleading for further help. Three months later, two Wana were invited to meet with the NGO members in Palu. Meanwhile, in July 2011, I left for Germany and kept out of the dynamics between the NGO and Wana.

### **Suddenly *Masyarakat Adat***

By the time I returned to the field in March 2012, something had changed. I was welcomed, not by my usual welcome committee, but by “members of a *masyarakat adat*”. I had left the field site with the Wana not knowing what the term *masyarakat adat* actually meant or how it was connected to the indigenous people’s movement. Wana in Taronggo and Salisarao had not much of an idea about their rights and how special their situation was. Similar to other upland groups in Central Sulawesi, they had not heard about a movement in Indonesia, neither had they heard, at least the vast majority of them, of AMAN. As Li highlights: “Most Central Sulawesi villagers are not aware of definitional debates among activists and scholars taking place in the provincial capital Palu and in other urban centers” (2007b:345). To this point, Wana had not been part of a political movement of indigenous people, but the new and ongoing interaction with Yayasan Merah Putih had made them become part of the movement. Suddenly they were *masyarakat adat*.

At the time of my return to the field, the enthusiasm of the Wana was great. Hiking up through the Salisarao mountains, I was surprised to find magazines and leaflets of various NGOs, information material concerning palm oil and indigenous groups all over the world in almost every household. Additionally, DVDs on land loss, environmental degradation and indigenous rights were watched repeatedly in the village. Numerous Wana had participated in meetings with the NGO, and once, even the *bupati* (administrative head of the *kabupaten*) had welcomed them. At that point, it seemed that the plan for the plantation’s expansion in the area of Salisarao had been finally terminated.

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<sup>9</sup> For a description of Bulang Wana (Kabupaten Tojo Una Una) and their entanglement with YMP, see the work of Nasution Camang (2003).



Among other things, these new developments had in some ways changed some people's impressions of being marginalised. Similar to changes Li had discovered during interviews she conducted in 2001 and 2003 with her informants claiming to have “learned to talk bravely” from his NGO allies” (Li 2007b:346), many of my interlocutors also claimed an improved self-confidence when talking to government officials or outsiders, using the Indonesian language, “being able to speak to power” (Jackson and Warren 2005:557); although not always fluent, they did not feel as shy (*mea*, BT) as before. Further developments were, for example, that informants stated they were no longer afraid of the government, but had now experienced how to behave *berani* (courageous). They had learned about their rights and stated now to know how to engage in a discussion with officials. Of course, this was not the same for all Wana. Those people who were in closer contact with NGO allies evidently profited the most in terms of how to behave and react in discussions with officials, “*belajar berpolitik*”, while others were still very hesitant and reluctant towards the new processes.



Old and young learners at the sekolah lipu in Salisarao.

Photo: A.-T. Grumblies 2012

The most central change came in the form of the so eagerly wished for school *sikola lipu*. The NGO had given in to this urgent wish. On a visit to Taronggo, they had trained six locals as teachers in a two-day workshop. Two of them were sent to Palu for further training. After that, a group of very enthusiastic Wana had built a large house in the Salisarao mountains to be used as a school building. Then finally, in April 2012, the first day of the new school started. More than 50 children and around 15

adults arrived, some of them hiking for more than two hours. Scheduled twice or three times a week, the school functions as an important sign of self-determination for Wana people. For them, it is part of *becoming masyarakat adat*. It is part of expressing agency.<sup>10</sup>

## Problems

Nevertheless, the politics of representation were not without any problems. The process of “being Wana, becoming indigenous” led, on the one hand, to some empowerment; on the other hand, several new problems occurred. The concept of *masyarakat adat* was or is not understood, imagined and used by Wana people in a uniform way. New sources of knowledge and new “powerful friends” led to new power constellations. There occurred, for example, a problem between the old leaders and the new leaders. Wana who had developed closer ties to the NGO and/or now took a position as a new kind of leader are regarded with a sense of distrust by some individuals. Their motivations are sometimes unclear to the rest of the community. It happened that Wana who had travelled to Palu adopted a new language filled with NGO vocabulary that was incomprehensible for their upland families and produced a sense of distance.

Furthermore, former leaders, although respected elders, were worried about their status, as they were now often left out of discussions and informal meetings due to allegations of corruption. These new developments prompted among some of them a repositioning towards government officials, while simultaneously functioning as administrative representatives of the *suku* (BI, ethnic group) Wana. Tyson notes the same dynamic: “a return to *adat* has, in many places, been found to perpetuate clientelism by creating ‘opportunities for powerful groups to advance their interests in the name of a revival of distinct traditions’” (Tyson 2011:660).

Distrust became, furthermore, a matter of concern related to those teaching at the *sikola lipu*. From the Wana side, the teachers, although most of them Wana themselves, are assumed by some to receive money from the NGO, profiting a great deal from the school’s institution. This source of jealousy makes the internal solidarity hard to sustain. The non-Wana community of Taronggo perceives of Wana teachers as a source of trouble. The common opinion in Taronggo is that the school itself is illegal, since it has so far not been acknowledged by the state, nor does the curriculum include religious teachings.

Pressure on teachers is very high, especially on converted Wana teachers, who are distrusted by non-converted Wana and disapproved of through their Christian or Muslim community. During the first four weeks of the school’s inauguration, four of the teachers resigned and were replaced by other, non-trained Wana. Religion, therefore, remained a matter of concern, although the school was celebrated as a *sekolah tanpa agama*, a school without religion. A number of Wana were suspicious of the school and assumed that there was a Christian or Muslim missionary background

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<sup>10</sup> In addition, YMP and other NGOs are currently working on a PERDA (Peraturan Daerah), a regional regulation, for the Kabupaten Morowali, to monitor the protection and recognition of Wana people and their rights (see also Li 2007b:346).

connected to the school. Wana have historically experienced strong religious pressure from their neighbours and the government to convert to Christianity or Islam, as mentioned above. Therefore, many Wana still do not fully trust the NGO – or the anthropologist – to be free of religious intentions.

Connected to religious concerns, another worry becomes relevant: Some of my informants were reluctant to become involved in the movement due to cosmological reasons. Here, I come back to what I introduced at the beginning as the cosmological grounds of marginalisation. According to Wana belief, breaking out of their current pitiful condition could make the Wana no longer suitable for the expected Golden Age predicted in Wana cosmological narratives. Wana who were to become rich and powerful, even educated, due to their new empowerment, would no longer fit the bill of the pitiful people who are to be rewarded with salvation by their spiritual friends, the *taw baraka*. Some Wana fear they will no longer be proper candidates for the *taw baraka* once they have left marginality behind. This consternation leads to further mixed feelings among upland and lowland Wana towards the new political positioning as *masyarakat adat*. Hirtz reminds us that it takes an idea of difference to enter the indigeneity category, “it takes modern means to become traditional, to be indigenous” (Hirtz 2003:889). It is this modernity that blocks the way towards salvation.

In this context, another paradox becomes apparent: On the one hand, the solution to the current problem lies, according to the movement, in the recognition of being *masyarakat adat*. This implies, however, recognition of the nation-state as such, but: “Why should *masyarakat adat* demand recognition from a state whose claims to sovereignty they wish to challenge?” (Li 2001:653). Based on this contradictory appeal, the act of playing by the rule of the state, adopting its strategies, the legitimacy of the state receives acknowledgment by those who initially had the aim of challenging it (Li 2001; Tyson 2011). The ambivalence of this potential expected to lie behind the idea of recognition (Tyson 2011:670) is further traceable in the difficulty Wana see in recognising the state (see above). In their millenarian and experience-based perspective, recognition of the Indonesian nation-state has never been a goal of Wana political positioning.

These are just some examples of consequences which occurred entering the *masyarakat adat* movement. Becoming indigenous in Taronggo is a highly political decision and its consequences are, up to this moment, not fully visible. The process of becoming *masyarakat adat* saved the Wana from land loss, but led to several new problematic constellations. The challenges of being recognised as indigenous are manifold.

## Discussion

The process of becoming indigenous not only produced and produces new power constellations among the Wana, but also interethnically and interreligiously. The new positioning the Wana have taken is, however, a state of articulation others have made, or as Li formulates: “Those who demand that their rights to be acknowledged must fill the places of recognition that others provide” (Li 2001:653). In this respect, their

repositioning closer towards NGO allies gave them the opportunity to resist the resettlement project, which is a common reason in Indonesia to enter the movement. It gave them a school to provide education according to their own wishes and needs. However, it also meant they would become more visible on the political stage. It further meant they could one day break out of their marginalised status. A status they need to keep, at least in some sense, to enter their millenarian idea of a new Golden Era. This has led to serious concern among Wana families living in the uplands.

Wana becoming indigenous is a development exemplary for other groups becoming part of the indigenous people movement: "Individuals and communities that have been attracted to the *masyarakat adat* movement have found there a language, a sense of solidarity, and a set of allies that have helped them articulate and advance their claims, especially claims against the state for control over ancestral lands" (Li 2007b:346). They have not, however, suddenly transformed, as Hodgson states for the Maasai, "from peripheral minority groups with little political recognition or power vis-à-vis their nation-states to transnational activists with formidable international lobbies and leverage" (Hodgson 2011:2). Instead, the Wana used an expanding transnational structure dedicated to strengthening the position of indigenous people and used it for their own needs. They had not heard much about the *adat* discourse in the past, the debate was mainly held in cities and far away from the people it affects. They had no idea how it could be applied to them or whether they would count as "indigenous". Nevertheless, in the fight for their land, it became a tool of resistance and a marker of a new identity that explained at least part of their marginalisation to them. However, as I have outlined, the Wana becoming *masyarakat adat* led to processes of cultural transformation and social change and its full extent has, to this moment in time, not yet become assessable.

Cadena and Starn remind us of the global character that underlines indigeneity; for them it "is a worldwide field of governance, subjectivities, and knowledge [...]. Indigeneity itself materializes in an intricate dynamic among converging and competing agendas, visions, and interests that transpire at local, national, and global levels" (Cadena and Starn 2007a:12). Albeit indigeneity was and is celebrated by most scholars and activists as an international movement, the example of the Wana becoming indigenous reveals, in the first place, the importance of actual local aspirations and circumstances. Wana had no interest in becoming part of the international or even national movement or to become recognised as indigenous. Instead, they were in search of allies, "powerful friends" to help them deal with their concrete situation as uplander citizens of the Indonesian nation-state that continues to form the political, economic and social conditions and preconditions in which Wana have to find, rearrange and formulate their positioning.

The idea of indigeneity in Indonesia emerges through the lure of resisting unequal power relations. Sangaji concludes from his insider perspective that, in the case of Central Sulawesi, the *masyarakat adat* initiative "is in the first place a reaction to restricted and unjust forms of economic development" (Sangaji 2007:333).

The Wana have become indigenous for the same reasons. Whether the development initiated was something they had expected or even wished for is a critical question, the problems stated above testify to the far reaching consequences their

decision had. Pratt reminds us: “The process of becoming indigenous [...] does not end when one acquires the label. It begins there” (Pratt 2007:399). The Wana are no victims in this movement, however, they are creative agents of their culture who, against the background of complex and hybrid dynamics and dimensions of marginality, are constantly renegotiating and reformulating their position as an upland group. Some use the discursive powers revealed by the politics of becoming *masyarakat adat* and turn them to their own use, some will eventually turn away from the label and return, some in a metaphorical, some in an actual sense, to the uplands, waiting for the *taw baraka*, while others will keep on searching for new strategies.

# ***Adat* as a Means of Unification and its Contestation. The Case of North Halmahera**

*Serena Müller*

## **Introduction**

After the fall of Suharto in 1998, the politics of democratisation and decentralisation triggered manifold developments with regard to *adat* and culture in Indonesia. In many regions, it led to a “revival of *adat*” (Henley and Davidson 2008) and “new politics of tradition” (Bubandt 2004). By this time, the Maluku region had experienced tensions and violent conflicts. In many parts of the region, *adat* was seen as “the only viable means for long-term reconciliation, social cohesion, and successful local government” (Frost 2004:1). Therefore, many efforts were undertaken to strengthen *adat* and *adat* institutions for reconciliation and peace. Bräuchler (2007) analyses two cases in Maluku and describes the strategies and challenges applied. Although she mentions divergent perceptions of the relationship between governmental politics and *adat*, she does not examine the consequences of an overlap of political authority and endeavours to strengthen *adat*. This is the point of entry of my paper. I will analyse the political authority of the district head of North Halmahera and the way he and his supporters engage in *adat* to promote unification and reconciliation among formerly conflicting parties. The district head’s double role as a representative of the state or *dinas* and as *adat* leader became prominent when he hosted the Fourth Congress (KMAN IV) of

Aliansi Masyarakat Adat Nusantara, the Indigenous Peoples' Alliance of the Archipelago (AMAN) in Tobelo in April 2012.

In focusing on the contested character of *adat*, I will, firstly, briefly portray the key actors, their background and motivation. In a second step, I will describe and analyse the currently dominant version of *adat* and how this version should contribute to reconciliation and peace. I will, furthermore, show how this dominant version is contested by another diverse set of actors consisting of *adat* leaders from different locations and other public figures. I will argue that *adat* in North Halmahera indeed has significant potential for reconciliation, especially the bridging of religious differences. However, the promotion of a shared *adat* implies a homogenisation, and takes place at the expense of the multiple local *adat* variations and of the migrants excluded from it – especially those from Java and those belonging to the ethnic minority of the Makean who are now living in the southern Kao region<sup>1</sup>.

The district of North Halmahera was established in 2003 as part of the decentralisation and administrative restructuring of the province of North Maluku (*pemekaran*). Its population was about 160,000 people in 2010. While the province is numerically dominated by Muslims (75%), the majority of the district of North Halmahera is Protestant (60%).<sup>2</sup> The district is divided into four regions.<sup>3</sup> My research<sup>4</sup> focuses on three of these regions: Kao, located in the south, the territory of Tobelo town and the region of Galela in the North. Discourses on *adat* often refer to this geographic differentiation, as does the analysis of the violence that took place there between 1999 and 2001: Kao was the region where the conflicts started; the other regions only became involved later.

Different interpretations of the causes of the conflict were given by scholars in the aftermath. Brown, Wilson and Hadi (2005:18-19) relate the conflict to the establishment of the province of North Maluku in October 1999 and, therefore, see it as a result of the decentralisation policy. The administrative restructuring, as Wilson argues in another paper, led to violence that was indeed about “territory, natural resources, and ethnic solidarity”, primarily between migrants from Makean and the local residents of Pagu, one of the communities in Kao (Wilson 2005:89). A similar interpretation is given by Braithwaite et al.: They see the ethnic competition between migrants and the “indigenous population” of the region for “access to justice, access to compensation and a failure to be heard by government” as the main reason for the conflict (2010:224-225). Bubandt takes a different stand when he explains the conflict as the consequence of “the rise of a new politics of tradition” (2004:13), as a

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<sup>1</sup> The island of Makean was hit by a volcanic eruption in 1975. Therefore, many people migrated to Kao (Hondt and Sangaji 2011:4).

<sup>2</sup> Census 2010 (BPS 2010).

<sup>3</sup> “Region” refers to the four areas distinguished by North Halmahera’s government: Tobelo, Kao, Galela, and Loloda (see also Dinas Pariwisata dan Kebudayaan Kabupaten Halmahera Utara).

<sup>4</sup> The field research in North Halmahera between April and May 2012 was part of a research project on indigeneity in Indonesia in the context of the project on “Cultural heritage between sovereignty of indigenous groups, the state and international organisations in Indonesia” (directed by Brigitta Hauser-Schäublin of the Interdisciplinary Research Unit, “The Constitution of Cultural Property”, at the University of Göttingen, funded by the DFG).

competition between Ternate and Tidore, the two sultanates of North Maluku, over political influence in the newly established province (see also Klinken 2001).

In spite of these diverse interpretations, most authors agree that the conflict had taken on a religious character, a fight between Christians and Muslims, by the end, especially in the regions of Tobelo and Galela. As Duncan points out in “Reconciliation and Revitalization”, an analysis of the revitalisation of *adat* for purposes of reconciliation in Tobelo, the community leaders of Tobelo concur. In their point of view, the weakness of *adat* in Tobelo made the town vulnerable to violence (Duncan 2009:1088). Therefore, they initiated a “resurgence of tradition” in the aftermath of the conflict, because “by strengthening, and in some cases recreating, *adat* institutions, they believe they can ensure future peace and stability” (ibid:1091).

The currently dominant version of *adat* as proposed by a group of powerful Tobelo actors focuses on the establishment of unity of what is called *Hibua Lamo*. This means “big house” in the Tobelo language. It is used as a term for a philosophy and a spatial and social organisation based on a common *adat* structure. Thus, it stands for the unity of ten “indigenous communities”<sup>5</sup> in North Halmahera, living in the four regions of the district. *Hibua Lamo* is thought to unite the inhabitants of North Halmahera independent of their religions. People involved in processes of *adat* strengthening declare that *adat* can “rebuild unity and prevent future conflict in the region” (ibid:1084). It has to be added that the two factions, both the group which is reshaping and promoting *adat* as a means of regional integration and unification, as well as its opponents, are elite people whose discourses have only been adopted or supported by people in everyday life to a limited extent.

## Set of Actors

### The “Tobelo Group”

Let me describe the two different sets of actors involved in the negotiations over *adat* in North Halmahera.

The first, which I will call the “Tobelo group”, is consciously shaping and creating a unifying version of *adat* for the whole of North Halmahera, which they call *Hibua Lamo adat*. The central figure is the current district head.

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<sup>5</sup> The term “indigenous community” is here used as the translation of the Indonesian term *masyarakat adat* (see the Introduction by Hauser-Schäublin and the chapter by Arizona and Cahyadi in this volume). The crucial criterion for becoming “indigenous” is self-identification. Based on this self-identification some community leaders applied for AMAN membership. As some respondents emphasised, the ten communities discussed in this chapter were encouraged to take this step by what I call the “Tobelo group”. The group’s endeavour to promote an encompassing regional *adat* by uniting them under the umbrella of *Hibua Lamo* is strongly interconnected with their membership of AMAN and engagement in the indigenous discourse.





Jiko Makolano: The district head's election campaign poster illustrates the blurred boundaries between the *adat* and the administrative sphere. It merges the spatial and social order of *Hibua Lamo* with the state's division of the province.

Photo: Serena Müller 2012

He holds an engineering degree and started his political career as the sub-district head of Tobelo in 2001. After the conflict, the governor of North Maluku had charged him with re-establishing peaceful relationships between Christian and Muslim factions of society. This endeavour proved quite difficult: He was faced with rejection and resistance from both groups in the beginning (Bataona 2009:107-108; Dramastuti 2012:84; Braithwaite et al. 2010:223). Nevertheless, he finally succeeded in encouraging Muslim refugees on the island of Morotai to return to Tobelo, and convinced the two parties in the conflict to sign a peace declaration in April 2001. In 2005, two years after North Halmahera became a district of its own, the sub-district head was elected as district head. He is not only politically important, but also active and respected in the local branch of the Evangelical Church, the *Gereja Masehi Injili di Halmahera* (GMIH). *Adat*, for him, is the only collective resource powerful enough to overcome the religious differences. This conviction is obvious in all his social and political engagements: He gives speeches in the Tobelo language, wears traditional costumes and integrates traditional dances and music in public appearances, and always strives to

act as a role model in implementing *adat* values. Because of his deep commitment to *adat*, he was appointed as *Jiko Makolano* (“Ruler of the Bay”), as “guardian and protector” of the region (Papilaya 2012:1) in 2005; as *jiko makolano*, he is regarded as the highest *adat* leader of the regional unity of *Hibua Lamo* (see below). He is seen as an integrative figure (*pola anutan*), source of inspiration (*sumber inspirasi*) and guardian (*pengayom*) (Namotemo 2009:11). He “structured *adat* institutions” (*kelembagaan adat*) and “made publicly known and actualised institutions” of *Hibua Lamo* culture (*budaya*) (Papilaya 2012:89).<sup>6</sup> He then documented further institutions of this encompassing *Hibua Lamo adat* structure and began with their establishment. In 2012, after KMAN IV was successfully held in Tobelo, the district head was elected head of the National Council of AMAN.<sup>7</sup>

The district head closely consults and collaborates with a local *adat* activist in these activities. He works as a “special advisor on Tobelo *adat* issues”, as Duncan has expressed his tasks in English (2009:1093). The advisor’s parents were both craftsmen producing local handicrafts and educated him with an awareness of *adat* and culture. He, also an engineer, had founded dance and music groups since the 1980s in order to promote cultural practices and to further pride in local *adat*. The advisor is interested in local history and culture, continuously searches for North Halmahera’s *adat* roots, forms and histories, and has published on these issues as well. He teaches social and cultural anthropology, with special reference to local customs and tradition, at the Padamara, a college established in Tobelo after the conflict in order to facilitate a harmonious and peaceful North Halmahera. For this purpose, the college explicitly focuses on the inclusion and transmission of local knowledge in its “development-oriented education”.<sup>8</sup> The *adat* advisor is engaged in the promotion and dissemination of *adat*, both by dance and music performances, as well as ceremonies, which he organises for the district head. He designed the monument for KMAN IV held in Tobelo in 2012 and was in charge of the opening ceremony as well as the inauguration of AMAN’s head and its national council.<sup>9</sup> He also designed his own house in a style

<sup>6</sup> These are only two out of eight important roles (*peran*) of the district head mentioned in “Kharisma Hibua Lamo”, a book paying tribute to his charismatic leadership and appreciating his merits in the establishment of *Hibua Lamo* as a uniting element in North Halmahera (Papilaya 2012:87).

<sup>7</sup> This council is called *Dewan AMAN Nasional* (DAMANNAS). Together with the Secretary-General (Sekjen), the highest representative of AMAN, the council functions as the highest decision-making body for the alliance (see AMAN 2012c).

<sup>8</sup> For further information on the college’s history and aims see the college’s website (Admin poltecpadamara) (2012).

<sup>9</sup> The monument “*O libuku iata ma akere*” (*empat penjuru mata air*, the four directions of the springs of water) consists of an octagonal basin and four stairs leading up to a second circular shaped basin with four pillars on top. The construction of the stairs alludes to the four cardinal directions fundamental to North Halmahera’s philosophy. During the congress a “ritual of the archipelagic waters” (*Ritual Air Nusantara*) took place. For this purpose, indigenous delegates had brought water from well-springs located in their communities’ ancestral territory. These waters were merged in the monument. This is meant to symbolise the unification of indigenous endeavours into a more promising nationwide struggle for indigenous rights and recognition.

he classifies as traditional.<sup>10</sup> As it is constructed around a big open space, it can be used for meetings, such as workshops during KMAN IV. The position as an *adat* activist is complemented by his membership of North Halmahera's parliament.<sup>11</sup>



The monument Air Nusantara in Tobelo. Holy water from all over Indonesia was merged in the monument during the opening ceremony of KMAN IV in April 2012. Tobelo activists borrowed from *Hibua Lamo* philosophy in its construction, especially the importance of the number eight and the cardinal points.  
Photo: Serena Müller 2012

Besides these two key actors, the Tobelo group comprises only a handful of other people. Almost all of them are Christians. Further members are, for example, the district head's wife, pastors, *adat* leaders, an expert in the Tobelo language, the owner of a local newspaper, and the head of the Department of Culture and Tourism.

Thus, they are affiliated with very different social institutions and fill important positions in the administrative, religious and academic fields. They all share a common interest in cultural issues and strive to make *adat* an important issue in the public and private life of North Halmahera's population. United by this shared motivation, their endeavours are organised and coordinated: They promote the discourse on *adat* by

<sup>10</sup> He used the octagonal form and equipped it with cultural emblems and symbols. He used red and yellow/gold very lavishly to symbolise the struggle and fame of the kings and simultaneously prosperity of the society. Furthermore, he decorated it with the *salawaku*, the traditional shield, symbolising skilfulness, heroism and peace (Papilaya 2012:51).

<sup>11</sup> He was member of North Halmahera's parliament as a representative of the Golkar party until he, the district head's wife and another person active in *adat* strengthening in North Halmahera, were accused of having violated party bylaws and replaced by Golkar in March 2013 prior to the election of the governor (Marsaoly 2013). The district head (also Golkar) ran for Governor in this election as an independent candidate, although Golkar had officially nominated another person (Sidik 2013).

conducting meetings and publishing books on *adat*-related issues. The Tobelo group sees culture and *adat* as a modernising interpretation of the past; they also acknowledge their personal involvement in the shaping of *adat* performances and in material objects. However, these actors differ in their perspective on the relationship between political-administrative and *adat* affairs: Whereas the district head underlines that it is impossible to distinguish between these spheres as he performs both roles simultaneously, his *adat* advisor is critical of this merging of roles and highlights the dangers of *adat* being spoilt by politics. The latter's call for a strict separation of these roles is supported by other members of the Tobelo group.

### "Hibua Lamo Critics"

The second set of people, whom I will call "*Hibua Lamo* critics", has one important role in common: They all function as contacts and representatives of their communities with the Tobelo group. Therefore, they are invited to and attend meetings organised by the Tobelo faction on issues of North Halmahera's *adat*. Some are invited because of their leading positions in *adat* structure, which is acknowledged by their community. Others are civil servants, and thereby, the district head's direct subordinates, and are appointed by their superior as a "coordinator" of their particular community. They are, therefore, neither representatives of, nor legitimised by, their communities to speak or decide on *adat* issues. Consequently, they cannot make decisions on behalf of their communities and do not feel comfortable in their position. This is especially so as, in some cases, there are incongruities between the local delineation and composition of the community and the boundaries as defined by the Tobelo group. This applies particularly to Galela in the north. *Hibua Lamo* critics are scattered in the regions of Kao and Galela. They are quite diverse in their perspectives, motivations and aims and less organised than the Tobelo group.

The *Hibua Lamo* critics I met are sub-district heads, *adat* leaders as well as religious authorities; accordingly, they are also situated at the intersection between *dinas*, *adat* and *agama* (religion). Although they have been involved in the process by the Tobelo group, they are critical of the developments in recent years. One major point especially mentioned by representatives from Kao is that they reject the religious interpretation of the conflict from 1999-2001 as promoted by the Tobelo district head and his supporters. Instead, they emphasise ethnic causes and struggles over territory and natural resources in the course of administrative restructuring. However, in contrast to Kao, representatives from Galela follow the Tobelo group's religious interpretation of the conflict and share their perception of *adat* as a bridging force. Thus, they share Tobelo's perception of the importance of *adat*. However, they refuse their efforts to homogenise local articulations of *adat* and demand respect for diversity and each community's particularities.

All critics from Galela and Kao criticise and refuse modernised forms of *adat*. Many of them are *adat* leaders and are, therefore, interested in and knowledgeable about what they regard as traditional *adat* ceremonies, manifestations and forms. They consider themselves the "true experts" (in *adat*) and claim to hold knowledge on "authentic" *adat*. *Hibua Lamo* critics stress rather the importance of the originality of

*adat* forms, such as costumes, and underline diversity rather than uniformity of *adat* as promoted by the Tobelo group. The critics also refuse modernisation and active (re-) creation or “adjustment to present-day necessities”, such as the use of cement in the construction of traditional houses or the accommodation of *adat* costumes to “office needs”, as it is propagated by the Tobelo group. Some of them recognise change as an inevitable process, but reject its deliberate creating and shaping.

Generally, *Hibua Lamo* critics agree with Tobelo activists that *adat* in Tobelo itself has almost disappeared, whereas it is still quite lively and visible in the regions outside town, especially in Kao. However, in their opinion, activists should draw on extant forms when strengthening *adat*. In this context, each community regards its own *adat* as the most original, most authentic one. *Hibua Lamo* critics admit that Tobelo activists visited, for example, the region of Kao to learn about *adat* in the aftermath of the conflict; but they feel that the *adat* implemented does not really draw on these visits and find themselves misquoted in publications. Some of these critics even speak of *adat* as “made up” (*dibuat*) and “invention” (*rekayasa*) by the Tobelo group and accuse them of “lying” and creating “myths” that are not “real” history.

This modernised *adat* is often criticised for its “Tobelo centredness”. The *Hibua Lamo* critics blame the Tobelo group for authoritarian behaviour, enforcing an expansion of Tobelo *adat* by interfering in the internal affairs of other communities and attempts to erase non-Tobelo communities’ histories and wipe out their identities. This perception is strong, as Tobelo’s role as a focus of *adat* strengthening is fused with its position as a political-administrative centre. Whereas the Tobelo group is divided over the relation between governmental politics (*dinas*) and *adat*, *Hibua Lamo* critics agree on the necessity of carefully separating these spheres. It is difficult for them to see the synergies and positive effects of the double role of the district head. Most of the *Hibua Lamo* critics hold *adat* in high esteem and fear, therefore, that *adat* will be subordinated to governmental-political affairs or personal interests.

## ***Adat* to Overcome Religious Tensions**

When talking about *Hibua Lamo*, Tobelo activists refer to the different meanings of the word. The first is the literal translation of the Tobelo word as “big house”, and refers to the traditional communal meeting house. The second one is a more metaphoric understanding of *Hibua Lamo* as a local philosophy and system of values – something that is inscribed in every *Hibua Lamo* member’s heart (Papilaya 2012:39-40). Related to this, *Hibua Lamo*, in its third connotation, refers to a social and spatial organisation based on this philosophy.<sup>12</sup>

The house, therefore, is essential to the understanding of *adat* as a uniting force in North Halmahera. As Platenkamp analysed, in Tobelo, a house unites people of a common origin on a particular territory, endowing the members with a shared identity

<sup>12</sup> According to scholars, *Hibua Lamo* or, in his former spelling, *Saboea lamo* (Campen 1883:309, cit. in Platenkamp 1993:69) or *Laboenab-lamo* (Aantekeningen 1856:224, cit. ibid) is also rendered as the name of one of the communities residing at Lake Lina (Platenkamp 1993:69, ibid 1988:129; Leirissa 1990:126). Today, this community is identified with the *boana* Gura.

(1990:77). When Tobelo activists called for a strengthening of *adat* with its potential to overcome religious differences and unite people of different origins after the conflict, they advocated *Hibua Lamo*, seeing it metaphorically and physically as a house that creates a shared identity and a unity. The district head comments that the suitable approach to establish a feeling of solidarity

[...] is to re-establish mutual trust between local residents and establish a feeling of brotherhood and peace, because greed and suffering will not outdo love and the consciousness of brotherhood, of being of one blood and of one family in Tobelo, in this territory.

(Papilaya 2012:21; transl. S.M.)

Therefore, for him, it is the call of an “upright consciousness” to resurrect *Hibua Lamo* culture (*budaya*) that is “about to moulder if one does not make it blossom”. This culture will create unity while also recognising and appreciating the existence of differences (district head in Papilaya 2012:22; transl. S.M.).

### *Hibua Lamo* as Philosophy

As briefly mentioned, *Hibua Lamo* literally means “big house”. The form and function of the traditional communal house in North Halmahera constitute the framework of the *Hibua Lamo* philosophy. There are two important features of a communal house in North Halmahera: One is the large shared centre of the house which constitutes a space for communication, interaction and conflict resolution for all families living in the different wings attached to the house (Duncan 2009:1088-1089). The second important feature is its octagonal form and the openness resulting from an absence of walls, symbolising openness in all cardinal directions (Papilaya 2012:41).

This philosophy also has two facets: On the one hand, “*Hibua Lamo* is understood to function as a glue, a means of development and a force to unite spirits and bodies for communal prosperity” (ibid:42; transl. S.M.) and, therefore, create a unity of *Hibua Lamo* people who share one common origin. On the other hand, *Hibua Lamo* is described as being able to incorporate people from outside into the community. The *adat* advisor stated that everybody is invited to the community like the wind that can enter the house from every direction. Everybody coming to the house or community is to be regarded as *saudara*, sibling, regardless of their religious, ethnic or cultural background, and every guest is to be treated like royalty. Thus, a spirit of “solidarity, familiarity, kinship, equality, and mutual respect” is created, both with people of the same origin and with migrants living in the region (ibid:27). *Hibua Lamo* philosophy is a bearer of “love, truth, wisdom, and benevolence. The ancestors of *Hibua Lamo* have transmitted it to their descendants. It functions as a bearer of wisdom, as identity and universal blessing” (ibid:28; transl. S.M.).

*Hibua Lamo* philosophy, as it existed in the past and manifested itself as a cultural practice, has been transmitted orally. Since, according to the Tobelo group, *adat* had almost ceased to exist prior to the conflict, knowledge about values and their practical implementation had also receded in importance. Therefore, the Tobelo group strives for a reactivation of awareness of *adat*. They convey the philosophy of *Hibua Lamo* and its inherent values to North Halmahera's population in two ways: by publications and by enactment. The district head favours the latter means of transmission. He underlines the fluidity of the concept and the process necessary to come to an encompassing understanding. He stated in an interview that he continues to become aware of new values to be added to the core of the philosophy. Therefore, he resists giving lectures or writing about it, but he tries himself to become a model and inspiration for others through his public behaviour. He presents himself as an embodiment of *Hibua Lamo* values and behaviour. He hopes that more and more people will follow his example and act with patience, respect and humility. In his function as the host and moderator of KMAN IV in Tobelo in April 2012, he successfully soothed the participants' emotions in many sessions by reminding people of "adat behaviour", by deploying his charisma and by just being calm himself. Although he led the congress as district head and *adat* leader, he also served guests by providing beverages, cleaning the floor of rubbish and equipping speakers with microphones. By doing so, he enacted the basic "ideologies" of simplicity (*kesederhanaan*) and honour (*kehormatan*) and gave an example of the fundamental values of *Hibua Lamo* philosophy.

These values are further described in the Tobelo group's publications as affection (*kasih saying*), truth and justice (*kebenaran* and *keadilan*), sincerity and concern/compassion (*ketulusan* and *kepedulian*), and mutual assistance (*kepelayanan*), and partnership or unity (*persekutuan*). This kind of documentation constitutes the second strategy that is employed to convey *Hibua Lamo* philosophy and values to community members. In creating it, members of the Tobelo group break down the "universal" philosophy of *Hibua Lamo* and carefully select specific values and guiding principles which they consider crucial for adequate everyday behaviour. The results are published in co-operation with the local government.<sup>13</sup> This documentation focuses on the intellectual understanding and direct dissemination of the philosophy. It both complements the district head's way of bringing *adat* into public view, and, in its codifying character, also opposes his perception of *Hibua Lamo* philosophy as something that one can only understand incrementally over a period of years.

The *Hibua Lamo* critics neither explicitly use the term *Hibua Lamo* philosophy, nor do they analytically differentiate between values, ideology and principles, as the Tobelo group does. They just speak of *adat*. *Adat*, in their opinion, is a guideline for everyday life and social interactions and embodies values. Here, their views show similarities with the district head's perception of "behaving as *adat* people do". When asked about

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<sup>13</sup> The most prominent examples are Banari's paper on cultural values, Kuat's publication on *adat* values and their implication in North Halmahera (both published in Duan (2009), a book documenting the close connection between the district head and *Hibua Lamo*) and Papilaya's explanations (2012:27-43).

guiding values, they refer to similar concepts as those highlighted by the Tobelo group. All *adat* leaders underline the importance of mutual appreciation and respect, as well as politeness and familiarity, as fundamental values in their respective communities; they even invoke the same examples of the implementation of these values in everyday life. In line with their criticism of Tobelo centredness and their perception of having the most original and authentic culture, most *Hibua Lamo* critics refer only to their own communities' values. They rarely refer to similarities in philosophy which they might share with other communities, and sometimes even describe their values as particularly outstanding. With regard to the implementation of values in daily life, most critics agree with Tobelo activists that awareness of *adat* has declined in times of "modernisation". Therefore, they state that families and schools should play a crucial role in transmitting these values to the younger generation as they are necessary for harmonious social interaction. Here, the *Hibua Lamo* critics advocate the more intensive teaching of *muatan lokal*, a school subject in which the students are taught "local contents" (such as local language and customs). In their opinion, this can become a means to transmit each particular community's values, history and language to children and, thus, maintain them as an integral part of their identity.

### *Hibua Lamo* as Regional Unity<sup>14</sup>

According to the Tobelo group, *Hibua Lamo*, as a regional and social entity, unites ten indigenous communities or *boana* in the "big house" of North Halmahera. The Tobelo word *boana* has a range of meanings: It can refer to descent, a community, an ethnic group, or just to residents of a particular territory. Four of these ten *boana* are located in Tobelo town, two in the regions north of the town (Galela and Loloda) and four in the southern region of Kao. Accordingly, the definition of a *boana*, its internal constitution and its boundaries vary. According to the Tobelo group's understanding, belonging to a *boana* in Tobelo town is defined by origin and, thus, descent, whereas for Galela and Kao, they define membership by residence in a particular territory.

The suggested unity of these ten *boana* derives from a shared historical origin. Their ancestors once settled together at Lake Lina, south of Tobelo town. In the course of history, they moved away because of changing living conditions, natural disasters and internal social conflicts, settling in different places in North Halmahera and creating new communities. The Tobelo group seeks to trace and write down this history of fissions and expansion by referring to academic sources and oral histories.<sup>15</sup> Above all, *Hibua Lamo* is meant to promote peaceful relations in North Halmahera. Today, *Hibua Lamo* is more or less geographically congruent with the district of North Halmahera. The unity of *Hibua Lamo* is reinforced by common *adat* institutions and an *adat* leader representing all ten *boana* at the top of the hierarchy: the *jiko makolano* ("Ruler of the Bay"). Today, the district head holds this title. Historically the term refers to a chief of a political domain or a "district" rather than an *adat* leader, since this title was given to well-deserving officials by the sultan of Ternate in order to ensure the loyalty of the

<sup>14</sup> The Tobelo group often refers to the unity as "*boana ngimo*", "ten *boana*".

<sup>15</sup> The common origin at Lake Lina and their dispersal up to the current partition into ten *boana* is documented in Papilaya 2012:53-59 and Yesaya B. et al. 2012.



chief and his community (Fraassen 1980:90; Duncan 2009:1092). The title had been obsolete for a long time but was brought back into use after an old woman had the revelation that the *jiko makolano* would return in the person of the current district head. In 2013, he established an *adat* court and its members were appointed.<sup>16</sup> They were tasked with formulating *adat* regulations and functioning as an organ of jurisdiction.<sup>17</sup> Complementary to this encompassing *Hibua Lamo* structure, Tobelo activists pushed forward the strengthening of internal *adat* institutions in each *boana*. This re-establishing and revitalisation of *adat* structures was especially urged upon the communities prior to the KMAN IV in April 2012.

It is precisely this spatial and social unity of *Hibua Lamo* that is controversial for *Hibua Lamo* critics. Although some of them acknowledge and respect endeavours to apply *adat* as a bridging force, most of them deny an encompassing spatial and social unity and refuse to acknowledge its importance for unification. The most contested elements are the common origin from Lake Lina, as suggested by the Tobelo group, the classification into *boana*, the position of an encompassing *adat* leader, *jiko makolano*, and, last but not least, the filling of this position by the district head.

Both Galela and Kao representatives deny their descent from Lake Lina. Most of them argue on behalf of oral histories or with reference to the works of Adnan Amal (2010a; 2010b), a Galela-born lawyer who published on Maluku's history, to counter the Tobelo group's version of history. The most sophisticated endeavour was undertaken by activists from Galela, who initiated a meeting of respected *adat* leaders to discuss the Galela people's origin. With the support of a social scientist teaching in Yogyakarta, the outcome of the discussion was combined with an interpretation of academic writings (both local and international) in a paper explicitly challenging the Tobelo activists' publications (Anonymous ca. 2012).

Critics from Galela and Kao also contest the naming of the ten communities as "*boana*". Prior to registration in AMAN, every group used its own particular terminology both to conceptualise and to name the community. However, in order to create unity, administratively and in other ways, the Tobelo group, as the initiating force<sup>18</sup> of AMAN membership, started to establish *boana* as a common term for all communities.

*Hibua Lamo* critics, by disclaiming common origin, also challenge the unity of the ten *boana*. They prefer to position themselves as partners (*mitra*) rather than members of *Hibua Lamo* in the sense of the Tobelo group. An interviewee from Kao maintained

<sup>16</sup> See Dinas Pariwisata dan Kebudayaan Kabupaten Halmahera Utara 2013a.

<sup>17</sup> See Dinas Pariwisata dan Kebudayaan Kabupaten Halmahera Utara 2013b. Notably, this establishment is legitimised by a district head's decree (430/132/HU/2013) and, therefore, undertaken in his function as part of state administration and not primarily as *adat* leader.

<sup>18</sup> AMAN membership of indigenous communities located in North Halmahera was initiated primarily by the district head's *adat* advisor, who got in contact with Jaringan Baileo Maluku, a Maluku-based network committed to the struggle for indigenous rights, the recognition of *adat* institutions and community development. Presently, AMAN engagement is restricted to Tobelo groups and the community of Pagu, which established close relationships with the provincial and national offices of AMAN independently of Tobelo and is focusing on reclaiming its ancestral territory that is used by a gold mine.

that the four communities in Kao indeed constitute a unity of their own. He argued that they were once under the reign of the Sultan of Ternate who appointed one official, a particular *jiko makoano*, for the region of Kao. Kao should, therefore, relate as a partner to Tobelo and, similarly, both *jiko mako(l)anos* should be equal (*setara*) to each other. Kao representatives also reject the term *hoana*, and some, furthermore, even the names for their communities or the translation and historical explanation of these names. Their self-identification contradicts the identification by Tobelo activists. This leads to a perception that they are neither equal members in *Hibua Lamo* nor equal partners with Tobelo groups. Instead, their histories and, thus, their identifications are marginalised or neglected.

The *Hibua Lamo* critics from Galela argue differently, but with the same outcome. For them, the difference in language is the most important indicator of the differing origins of Galela and Tobelo people (Anonymous ca. 2012:44). Furthermore, they state that their own concept of a communal house is *bangsaba* and not *Hibua Lamo*. Nevertheless, they concede that they are living in North Halmahera and, therefore, in the area that the Tobelo group defines as that of *Hibua Lamo*; but they insist that they do not belong to *Hibua Lamo*. They say that Galela/Loloda does not consist of two *hoana* but of two *doku*<sup>19</sup> whose boundaries are not congruent with those defined by the Tobelo group. This also explains why the Galela communities were often represented in *Hibua Lamo* meetings of the ten *hoana* by sub-district heads who were appointed as *hoana* coordinators and not by *adat* elders or leaders. Therefore – like Kao – they consider themselves not as members of *Hibua Lamo*, but as autonomous partners.

Critics from both regions also reject the idea that they live in the realm of an encompassing *jiko makolano* or are his subjects. They accept the district head's administrative authority, but refuse his claim of *adat* leadership that will “evolve a hegemony of one group over another that is, due to historical circumstances, in a politically weaker position” (Anonymous ca. 2012:45; transl. S.M.). Some do this by challenging the historical evidence of such a title; others with reference to Tobelo lacking a bay – an argument countered by Tobelo activists by hinting to North Halmahera's shape of a bay. Many critics fear Tobelo's political supremacy and their subordination to its definition of *adat* domains.

### *Hibua Lamo's* Material Expressions

The third element of *Hibua Lamo adat* I analyse is *adat* in its materialised form. Tobelo activists regard these manifestations as essential for the promotion of *Hibua Lamo adat*. In “Kharisma Hibua Lamo” they highlight the development of the cultural facilities (*pembangunan fasilitas budaya*) pushed forward by the district head, such as the communal house and their “*Batik Hibua Lamo*”, as one out of eight important steps in his charismatic leadership to strengthen *adat* (Papilaya 2012:87).

The decision to build a communal house in Tobelo town was one of the Tobelo activists' first steps to promote *adat*. As mentioned above, the term for the traditional communal house “*Hibua Lamo*” stands for many different things, including a

<sup>19</sup> Others speak of *soa*. These different perceptions exemplify the contestation and space for interpretation.

communal house as well as a philosophy. Tobelo's communal house, inaugurated in 2007, was meant to integrate these dimensions and become a place for meetings and conflict mediation in order to promote peaceful coexistence. Today, the communal house functions as a venue for carrying out "traditional ceremonies" (*upacara adat*) and "meetings of leaders with their people". It is a symbol of "unity and reconciliation" (Dinas Pariwisata dan Kebudayaan Kabupaten Halmahera Utara.). In one of their publications, the Tobelo group explains the house as a "symbol of kinship (*kekerabatan*), a meeting centre and a place to honour *Hibua Lamo* values, the spiritual values they inherited from their ancestors (*lelubur*)" (Tobelo Post 2009; transl. S.M.).

The house is constructed in a traditional way and draws on a few examples still existing, such as the one on Kakara, a small island off the coast of Tobelo, which is regarded as one of the *adat* strongholds of *Hibua Lamo*. It has an octagonal floor area and, thus, adopts a fundamental architectural feature shared by different *boana* in *Hibua Lamo* (Namotemo 2009:19). The newly built communal house in Tobelo has been adjusted to present-day circumstances, as it should function as the communal house of all *Hibua Lamo* communities and enable meetings of North Halmahera's inhabitants. In contrast to its historical model, it has exterior walls. It has four entrances, in order to be congruent with the value of openness as the elementary feature of *Hibua Lamo* philosophy, one in each cardinal direction. Moreover, it has been furnished in a modern style (Papilaya 2012:42).

Meanwhile, the "*Hibua Lamo*" in the centre of Tobelo town has also become a tourist attraction with the tourist information centre next to it. Its importance is further highlighted by the fact that the government of North Halmahera decided to make it the emblem of the district.

For Tobelo activists, the communal house in Tobelo, constructed in the centre of *Hibua Lamo* territory, should occupy a special emotional place in the heart of *Hibua Lamo* people, too. However, *Hibua Lamo* critics rarely refer to the function of the communal house spontaneously. As it is located in Tobelo town, they say, its importance is restricted only to Tobelo. When asked about the architecture of the building, the *Hibua Lamo* critics elaborate on regional differences in style and, most notably, disapprove of its modifications for practical purposes.

## Conclusions

The analysis above examines the shaping and deployment of *adat* by a charismatic Tobelo leader and his supporters as a means to unite people of different religious affiliations. In a period of only ten years, a broad knowledge and understanding of *Hibua Lamo* both as a philosophy, a system of values and a form of spatial and social organisation has been established among the inhabitants of North Halmahera. This shared knowledge and understanding is based on a narrative of common origin and shared traditions and rituals. The most important event is the annual celebration and commemoration on April 19 of the Peace Declaration of 2001. This declaration marked the onset of an intensified promotion of *adat* and, thus, is a constitutive moment in *Hibua Lamo*'s recent history. Since 2007, this date is marked as *HUT*

*Hibualamo*, as the birthday of *Hibua Lamo*<sup>20</sup>, and celebrated with a parade through town, cultural festivals and competitions.<sup>21</sup> This yearly commemoration reminds North Halmahera's population of the violence that has recently shaken the region and simultaneously highlights the importance of *Hibua Lamo adat* for living peacefully together.



Rehearsal ritual: Revitalised rituals are an important element of Tobelo activists' endeavours to strengthen *adat*. These ceremonies are often arranged by the district head's *adat* advisor. The picture shows the traditional war dance called *cakalele* that is performed with a spear and a *salawaku*, a shield. The rehearsal shown here is for a ritual that had not been performed for decades; it took place in May 2012 with great media attendance. Photo: Serena Müller 2012

Endeavours to strengthen *adat* and promote a common identity and history of *Hibua Lamo* require negotiation, selection and emphasis upon certain elements and variant forms of *adat* over others. Different interpretations express particular actors' interests and motivations. The negotiation and especially the contested character of *Hibua Lamo* unveil different perceptions of the connection between the political-administrative domain (*dinas*) and *adat* and of the legitimate authority to talk about, define and enact *adat*. Most representatives of the Tobelo group perceive *adat* as flexible and dynamic. For them, *adat* is constantly transformed and can be or has to be actively adjusted to

<sup>20</sup> The communal house in Tobelo was inaugurated on April 19, 2007. The birthday, thus, primarily refers to the communal house, but by linguistic sameness also to the establishment of *Hibua Lamo* as a regional unity.

<sup>21</sup> In 2012, the date was chosen intentionally as the day for the opening of the KMAN IV. In 2011, a parade showing *Hibua Lamo*'s diversity was organised and a *Hibua Lamo* cultural festival is held almost every year (2008, 2010, 2011, and 2013).

changing conditions. Critics of this perspective refer to another concept of *adat*. According to them, *adat* is something static, “traditional” and has to be “authentic”. Therefore, they demand historic evidence of *adat* symbols, institutions and common history. In general, they reject active, goal-oriented intervention.

The economic, political, and symbolic resources available to actors in negotiations are distributed unequally. Members of the Tobelo group are embedded in the state-administrative as well as in the *adat* domains. Thus, they draw on governmental and other public resources to carry out research on *adat*-related issues and history, hold discussions and meetings, promote the results of these meetings as an “official” version of *adat* and history, and disseminate it throughout North Halmahera. This powerful position facilitates a quick dissemination of *Hibua Lamo* philosophy and unity. Several *Hibua Lamo* critics are also civil servants, though subordinate to the district head in rank, and, in general, because of their rural location. They are, therefore, in a less powerful position in these negotiations and face difficulties in making their voices heard; they feel disrespected. The powerful implementation and greater visibility of the Tobelo group’s *adat* endeavours is perceived as an attempt to create an *adat* hegemony in North Halmahera by critics (Anonymous ca. 2012:45) with its centre in Tobelo town and a rural periphery.

Most critics do not challenge the district head’s authority as an elected representative in the state administration, but they criticise the unclear distinction between his two roles in *adat* and *dinas*. The establishment of *boana* and an encompassing *adat* organisation, as well as the effort to make the communities re-establish their internal *adat* institutions, expands the political-administrative power of the district head to the domain of *adat* and, therefore, interferes in particular communities’ *adat*.

Up to now, the *Hibua Lamo* critics have not been organised as a group; they act rather as individuals when they challenge the Tobelo group’s dealing with *adat*. Most people are indifferent about *adat* strengthening. Furthermore, the shift, which Tobelo hopes to effect, of people with a shared *adat* instead of with their particular religions has not yet been accomplished (Duncan 2009:1081). Many people still think in categories of religion. Danius’ (2012) study of local interpretations of election results, party politics and the appointment of governmental employees shows that interreligious envy and mistrust are still pervasive. It remains questionable, therefore, whether *Hibua Lamo* can serve to bridge the differences among religious and social factions in the long-term.

# **Mobilities of Indigeneity: Intermediary NGOs and Indigenous Peoples in Indonesia**

*Miriam Harjati Sanmukri*

## **Introduction**

“Together, we’re working towards one vision: A just and sustainable world.” With these lines the foundation, Global Greengrants Fund, presents its mission. This US-based charity provides funds to indigenous groups in Indonesia through co-operation with a Southeast Asian non-governmental organisation (NGO). To make claims for recognition in the name of *masyarakat adat* seems to require more than self-determination. Fund-raising and coalition-building with international and national NGOs have helped nurture indigenous activism in Indonesia and continue to provide pivotal financial but also ideational resources until the present day. The largest actor in this *adat* movement, the Indigenous Peoples’ Alliance of the Archipelago (AMAN), for example, lists about two dozen collaborations with international donor organisations and more than 30 national non-governmental allies.

But with so many parties involved – how can and do such coalitions work? What motivates organisations from different political, institutional and regional fields to join forces for indigenous issues? Why is it that indigenous peoples may contribute to a “just and sustainable world”? Do these external actors take part in shaping the political discourse on indigeneity in Indonesia?

Many questions arise when focusing on the institutional functioning of the *adat* movement, supporting actors and their use of the concept of indigeneity. An analysis of external collaboration, which AMAN as part of this movement establishes, consequently leads to the field of international development. One anthropological entry-point for analysing the role of social movements in development is a critical, constructivist perspective (Escobar 1992, 2012; Ferguson 1997). Proponents of this perspective often highly criticise the arena of international development as a form of western, neoliberal imperialism that maintains itself through the implementation of normative policies. “As a solution” to technically focused practitioners, who impose projects “from the top”, they assume social movements from the Global South.<sup>1</sup> Those would fight for peoples’ interests “from the bottom” or “grass-roots” and protest against or resist mechanisms of imperialism. Those NGOs, taking an intermediary and officially often neutral position between both sides, are often accused of being Trojan horses of western interests (Carroll 2009).

I argue that merely aligning to this perspective would lead to one-sided assumptions in the Indonesian case. I do not intend to estimate whether NGOs are “doing good” or not (Murdock 2003), nor does the critical constructive perspective explain the fact that AMAN does not resist, but instead establishes ties within the field of development.

Therefore, I will not only look at the discursive sphere of official texts and policies, but also at an unofficial sphere of practices “beyond policies”. These are, first and foremost, dynamics of interaction between individuals behind the formal structure of international development. This interaction has consequences for the internalisation of particular norms and modes of action for both practitioners and activists. They endorse a conceptual mobility of policies by reinterpreting and reproducing those norms. I adopt the conceptual frame of “order and disjuncture” (Lewis and Mosse 2006) to grasp both the official and unofficial sphere and its interrelation. In this frame, order is meant to be the official sphere in which the organisations co-operate. It is formed by policies and programmes. Disjuncture then occurs within or through the informal sphere, as different goals, meanings and interpretations can be traced there. Constructivists often regard the latter as potentials to break the official order. My findings will show a more differentiated, less dichotomic picture instead. Interaction enables actors to follow different interests, while upholding order at the same time.

Drawing from fieldwork in Jakarta and Bogor, I will explore various arenas of interaction between AMAN and the Southeast Asian organisation, The Samdhana Institute, and the Indonesian organisation, Partnership for Governance Reform.<sup>2</sup> In an

<sup>1</sup> The term refers to developing countries and is an alternative to existing terms, such as “Third World”. It is considered as less judgmental and less subjective in academic literature than “Third World”, which indirectly ascribes negatively connotated backwardness to nations and defines development as an inevitability that has to be imitated by these nations.

<sup>2</sup> My fieldwork was part of the project “Cultural Heritage Between Sovereignty of Indigenous Groups, the State and International Organisations in Indonesia”, led by Brigitta Hauser-Schäublin, and is part of the interdisciplinary research unit on “The Constitution of Cultural Property”, funded by the German Research Council (DFG). I would like to thank Brigitta Hauser-Schäublin and

intermediary position, these organisations constantly have to balance relations between different parties from the bottom and the top.

The paper begins with a description of visions and programmes to illustrate the official order into which the organisations embed their assistance. This is complemented with insights from the rather unofficial sphere of dispositional meaning that lies behind the statutes. What follows are examples of recent support for AMAN along two common topics which demonstrate the reproduction or embeddedness of policies. Together, normative programmes and reworked policies reflect certain notions of indigeneity which will be subsequently outlined. The last part of the chapter focuses on the lifestyles of practitioners and activists to trace the unofficial arena of interaction and its establishment. Thereby, another crucial dimension of mobility will be revealed: social mobility. I argue that these conceptual and social mobilities balance the encounters of order and disjuncture and bridge the official and unofficial sphere of international collaboration.

## **The Intermediaries: Visions and Programmes**

### **The Samdhana Institute**

The Samdhana Institute (hereafter Samdhana) is a transnational NGO focusing on mainland and insular Southeast Asia. It has a representative office in the Philippines and another one in Indonesia. Founded in 2003, the Samdhana Institute is an “Asian Centre for Social and Environmental Renewal” made up of “a community of practitioners” who work in different fields, such as conservation, international development, law, education, and human rights activism (The Samdhana Institute 2013a). Beyond the official definition, respondents added a personal intention to establish a “post-institutional” space where the expertise of its members can be congregated and oriented towards agendas to which they are personally committed rather than just for which they are employed. Another major motivation is to pass this expertise on to the “following generation” by mentoring it; so, as the Sanskrit term *samdhana* indicates: “a peaceful coming together, a giving back” exists (The Samdhana Institute 2013a). Samdhana officially envisions

a region where natural, cultural and spiritual diversity are valued and environmental conflicts are resolved peacefully, with justice and equity for all parties. Achieving this requires that communities who directly manage their local natural resources have clear rights, ready recourse to justice, strong and skilled leadership, stable financial resources and access to appropriate technical support.

(The Samdhana Institute 2013a)



Samdhana's main issue is "Sustainable Natural Resource Management". Although this broadly addresses nature conservation, Samdhana's members also emphasise people's rights and benefits in the context of social justice and human rights. As mentioned above, this focus is not only reflected in official formulations, but it also constitutes the personal commitment of many members, which is based on shared values. Apart from these outward-oriented goals, Samdhana has another rather internal purpose which, in the official sphere, is articulated as follows: "To offer [its members] opportunities as well as support [...] to remove themselves from their immediate environment and reflect upon and communicate their experience and ideas" (The Samdhana Institute 2013b). Therefore, Samdhana wants to promote its members by offering them a shared, almost private space for contemplation and the exchange of views. This idea is based on a rather spiritually interpreted work ethic and a personal "bond" between the members, which is expressed and performed by occasionally practicing yoga together. Therefore, team meetings are sometimes held in a yoga centre in Bali. Many Samdhana members, who generally call themselves Samdhana Fellows, informally identify the organisation as a form of "family" or "home" and underline their feeling of togetherness. However, their engagement is predominantly part-time in addition to their main employment in institutions such as international organisations, Indonesian NGOs or research institutes. More than a third of all members are Indonesian and also live in Indonesia, while others come from or are working in other countries. The organisation comprised 59 Fellows at the time of the field research. As Samdhana's work is transnationally spread throughout Southeast Asia, an International Board of Directors was installed as the highest governing body and policy-maker. The office in Bogor is run by seven to nine Indonesian employees together with some Fellows. Their tasks include grant and general finance management, human resources and project coordination. The whole functioning of the organisation (administration and projects) is based on funds granted by international donor organisations, such as the Ford Foundation and the International Union for Conservation of Nature.

Samdhana has three official "priority themes" (The Samdhana Institute 2013c), namely

- Natural Resource Conflict Resolution,
- Leadership Development, and
- Community-Led Natural Resource Management.

To realise these themes, the organisation primarily provides financial support to "local NGOs and community-based organisations (CBOs)" (The Samdhana Institute 2012). Therefore, Samdhana established a so-called Small Grants Programme in 2005. Via this programme, applicants can receive financial grants ranging from USD 100 up to USD 20,000. The importance and benefit of such small-scale funding is warranted in official statements as an approach that focuses on beneficiaries "where other support is not available" (The Samdhana Institute 2013d) because donors find them "too small to fund" (unpublished document). Thus, the Small Grants Programme attempts to bridge the gap between donors and local initiatives through Samdhana's ties to both parties. Considering the informal sphere and internal ideology behind the small grants

approach, this focus on local initiatives seems to derive from the personal commitment of Fellows with the “grass-roots”. This provides evidence of a rather unconventional, activist orientation, which Samdhana aims to integrate into the official and conventional frame of project mechanisms. This orientation can be further identified within the ideology of Samdhana’s main funding organisation of the programme, which has specialised in small grants to support rights-related and environmental issues: the Global Greengrants Fund mentioned already. The charity states on its website: “Our strategy is to support local leaders – primarily outside the United States and Western Europe – in fighting [social] injustices. Through activist-led grantmaking, we find these leaders and provide seed funding for grass-roots action on the front lines of social change” (Global Greengrants Fund 2013).

Besides financial support, Fellows also provide direct assistance to local actors around the three priority themes. In the context of Conflict Resolution, Samdhana’s lawyers offer legal support and conflict mediation for communities in situations of land seizure or detention. Beyond this reactive assistance, Samdhana’s work also addresses conflict prevention for both multi-actor disputes and internal conflicts within communities. Importance is given here to critical, political education as assistance in policy analysis and development.

Local Leadership Development is another priority theme within Samdhana on which members perceive it necessary to work because large-scale development and conservation projects would neglect such direct assistance at the grass-roots. Therefore, Samdhana, with its small-scale approach, intends to strengthen the long-term functioning of local organisations in order to make them self-reliant, for example, in fund-raising. This again unconventional approach seems to be strongly connected with the personal identification of Fellows as “mentors”.

The third official priority theme, Community-Led Natural Resource Management, usually called Community-Based Natural Resource Management (CBNRM) among conservation experts, is regarded by Fellows as an appropriate approach for a realisation both of social justice and biodiversity preservation. Therefore, Fellows advocate for and support communities’ traditional ways of environmental use.

### Partnership for Governance Reform

After the fall of the Suharto regime in 1998 and the elections in 1999, international donor organisations together with Indonesian representatives from governmental and non-governmental fields jointly took measures to foster the democratisation process in the country. Based on an initiative by the World Bank and the United Nations Development Programme (UNDP), the Partnership for Governance Reform (hereafter Partnership; the Indonesian name is Kemitraan) was founded as a UNDP programme in March 2000 (Mallarangeng and van Tuijl 2004: 924). Two years later, the project-based programme was registered as an independent “non-profit civil law association” managed by Indonesian-led bodies (Partnership 2012a). However, it retained its status as a UNDP programme until 2009.

The Partnership’s vision is “to establish fair, democratic and sustainable governance for the welfare of Indonesian citizens” (Partnership 2013). Looking at the

official sphere, a thematic proximity to concepts and ideas from the field of international development seems to prevail. All activities, which the organisation realises, shall lead to good governance. In general, the concept of good governance emphasises political reform of governmental structures and practices and aims at building a transparent and legally accountable state apparatus. The Partnership follows this approach and contextualises it within the Indonesian setting.<sup>3</sup> Its official mission is described as, “disseminating, advancing and institutionalizing the principles of good and clean governance among government, civil society and business, while considering human rights, gender balance, the marginalized and environmental sustainability” (Partnership 2013).

The organisation follows a so-called “multi-stakeholder approach” by appointing its members from sectors of government, civil society and business (Partnership 2012a:4). The realisation of political reform is sought through a twofold strategy, namely, to build internal capacities of state institutions and to enable actors from civil society to monitor these institutions and engage with them at the same time. Hence, the Partnership’s motto is “building capacity from within, and applying pressure from without” (2012a:11). This transports the image of the strongly intermediary and neutral position of the organisation. Formulations stress the Partnership’s role of involving all relevant actors in the reform process, first and foremost, in the design and evaluation of the Partnership’s programmes. Moreover, their strategies would need to be synergised and harmonised within a strong network of “partners” (Partnership 2012a).<sup>4</sup>

Another indicator for the Partnership’s orientation towards international development are the UN Millennium Development Goals, into which activities are embedded. At the time of my research, the Partnership focused on four programmes which serve as clusters for different projects and give evidence of the importance of the concept of “good governance”.

These were:

- Democratic Governance,
- Public Service Governance,
- Security and Justice Governance, and
- Economic and Environmental Governance.

(Partnership 2012a)

These headings comprise projects such as “Corruption Eradication”, “Dezentralisation”, “Poverty Eradication”, and “Human Rights Promotion” (Partnership 2012a). The Partnership provides a huge portfolio of assistance for the

<sup>3</sup> For a complete list of the good governance principles which the Partnership pursues, see [www.kemitraan.or.id/main/content3/21/22/24](http://www.kemitraan.or.id/main/content3/21/22/24) <June 3, 2013>.

<sup>4</sup> The usage of the term “partner” or “partnership” is highly debated among scholars within the anthropology of development. Constructivist critics argue that these terms conceal unequal power relations which, in fact, would determine donor-NGO relationships. For a critical discussion of The Partnership of Governance Reform, see Crawford (2003) and Mallarangeng and Van Tuijl (2004).

implementation of such projects, including workshops, policy analysis, technical supports, and grants (Mallarangeng and Van Tuijl 2004:921). Until the end of its status as a UNDP programme, members in the Partnership's main governing bodies were also appointed from international donor organisations. These members had a supervisory role (Crawford 2003:146-148; Mallarangeng and Van Tuijl 2004:921). Since its establishment as an independent association, the Partnership has been governed by two completely Indonesian-managed bodies. Its executive office is situated in Jakarta and the organisation's administration and activities are funded by foreign money. The major funding organisations are national governments, such as the government of the Netherlands and the United States of America, international organisations, including the Asian Development Bank and the World Bank, and internationally operating companies from the private sector, such as Siemens, a German technology enterprise. In contrast to Samdhana, the Partnership's official programme and statutes do not indicate a critical positioning of the organisation in regard to conventional or rather unconventional development work. However, these texts comprise only one domain to analyse NGOs. In order to understand how universal concepts are, in fact, understood by practitioners, I will analyse in the following chapter how these organisations support indigenous peoples in practice.

## Climate Mitigation and Mapping

Samdhana and the Partnership support AMAN in manifold ways. The Partnership and Samdhana often operate on similar topics, which is, I suggest, the impact of international policies concerning indigenous issues.

One important topic is REDD+, a policy instrument stemming from international climate politics.<sup>5</sup> It can be described as a market-based scheme of compensation payments from industrialised countries to initiatives for forest conservation and emission reduction in the countries of the Global South. Its introduction to Indonesia began in 2007. At the time of my research, the Indonesian state was still in a preparatory test phase, officially called the REDD Readiness phase. Thus, policies were still in preparation and exemplary pilot projects were implemented. Although still in an initial phase, the Indonesian government and national and international companies displayed great interest in this form of management of natural resources, which follows the definition of forests under REDD+.<sup>6</sup> As pilot projects have shown, REDD+ inevitably affects indigenous peoples, since many of them are living in and around forested areas (Forest Peoples Programme 2011).

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<sup>5</sup> REDD stands for "Reducing Emissions from Deforestation and Forest Degradation" and generally describes the idea of a payment mechanism for forest conservation. The term REDD+ indicates concrete measures to practically introduce and finally realise this idea (Clements 2010).

<sup>6</sup> REDD policies in the Indonesian context are based on a weak definition of forests, which is due to the absence of a globally accepted definition. The current UN definition only puts emphasis on the territorial size and tree cover of an area and does not refer to characteristics such as primary or secondary forest (see FAO 2013; Hein 2013).

To turn this passive involvement into active involvement, Samdhana started the “REDD Preparedness Project” within its Small Grants Programme. Seen as an answer to top-down, government-led measures under the term REDD Readiness, this project focuses on the “preparedness and engagement of indigenous peoples, local communities, community based organisations and local NGOs” in REDD+ issues (The Samdhana Institute 2012). It is interesting that 30% of small grants are constantly flowing to AMAN communities. This assistance goes back to a Memorandum of Understanding (MoU), which the organisations signed in 2009 (AMAN 2012b). Samdhana funds local AMAN initiatives, which conduct “capacity building” for communities on REDD. In other words, people are introduced through AMAN to policies and overarching concepts such as climate change, “Free, Prior and Informed Consent” or REDD.<sup>7</sup> They are taught about their legal rights and opportunities through workshops, traditional gatherings, etc. This is also in line with Samdhana’s priority themes of Conflict Resolution and Leadership Development, which address political education.

REDD+ is also a guiding topic for the Partnership’s collaboration with AMAN members. The Partnership’s assistance is part of its so-called Forest Governance Programme, in which sustainable ways for the management of forested area are elaborated.<sup>8</sup> In Central Kalimantan, which is a priority region for REDD+ pilot projects, the Partnership, as intermediary, co-operated with the provincial representative of AMAN. Together, the organisations identified exemplary *adat* groups for the development of a pilot scheme within the ongoing Readiness Phase, the “community REDD+”. This scheme demonstrates how REDD+ could be successfully introduced to a community and indigenous issues could be integrated into broader policy processes. Therefore, training sessions on Free, Prior and Informed Consent were held for AMAN cadres. According to the Partnership, climate change negotiations and REDD+ projects can offer opportunities for indigenous groups to formulate claims in the public sphere. In part, this perspective seems to be based on a rather informal consensus of the Partnership practitioners with AMAN concerning the recognition of indigenous peoples. Respondents underlined that they endorse indigenous claims for “rights on customary (*adat*) land” (Partnership 2012b) and acknowledge AMAN’s critical position towards the Indonesian state. However, because of AMAN’s critical position, staff of the Partnership often find it difficult to mediate between the indigenous alliance and state representatives.

“Participatory mapping” is another topic or instrument which Samdhana and the Partnership support. In contrast to REDD+, this topic partially originates from an international arena of large-scale conservation, but was brought forward by activists and has to be seen against the political background of the New Order regime that did

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<sup>7</sup> “Free, Prior and Informed Consent” (FPIC) is a guiding but not binding principle, institutionalised within the UN framework. It is also part of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). In sum, it implies an unmanipulated consultation of indigenous peoples before project implementation in order to reach the consent of all parties involved, which is based on equal knowledge (see also Barelli 2012).

<sup>8</sup> The Forest Governance Programme is part of the Partnership’s Economic and Environmental Governance Cluster.

not recognise the land claims of indigenous peoples. As land conflicts with the state and companies have been a major issue of the indigenous movement since its beginning in the 1990s (see the chapter by Steinebach in this volume), participatory mapping has become an important instrument for indigenous activism. Indigenous peoples can identify and visualise their knowledge about the boundaries of their customary territory by themselves with the help of modern technology, such as GIS systems. Proponents of this instrument regard it as an important entry-point to empower *adat* communities to fight for their land claims. According to Peluso (1995), early forms of participatory mapping had already entered Indonesia in the 1980s via international conventional projects for conservation. At that time, ideas that local peoples and their knowledge could contribute to biodiversity conservation began to enter international organisations, such as the World Wildlife Fund (WWF), based on experience in the field (Alcorn 2005:52-53). In Kalimantan, for example, traditional management systems were documented to improve the long-term management of a nature reserve (Peluso 1995:395). Indonesian activists then took the opportunity to adopt this kind of mapping and to spread it to local groups. As Peluso states, they reinterpreted it as a sort of resistance and counter-movement to state mapping, which did not consider people's rights but instead was a basis for exploitive development projects of the Suharto regime (1995:398-400). Thus, by "stealing the master's tools", (Tsing et al. 2005) participatory mapping could "cut through the labyrinth of Indonesia's elite politics that never really touches upon the lives of 'small people'" (Natalia 2000:75).

In 1995, Indonesian activists established a national network for participatory mapping activities, the Jaringan Kerja Pemetaan Partisipatif (JKPP; see also Royo 2000:82). In 2010, the Indonesian government took a step to unify its spatial data of forest cover, the One Map policy. Until then, forest mapping had been produced by several ministries leading to various legal regulations and, thus, a lack of indigenous peoples' legal protection, among other things (see the chapter by Arizona and Cahyadi in this volume). AMAN took the opportunity of customary maps to become recognised in this One Map. In co-operation with JKPP and Forest Watch Indonesia, the indigenous alliance founded a national agency to feed customary maps into a national database – the Ancestral Domain Registration Agency (Badan Registrasi Wilayah Adat, BRWA).<sup>9</sup> This agency functions as an official data and information provider to its members and partner organisations and, most notably, to the Indonesian state apparatus. AMAN signed a MoU with the National Land Agency (Badan Pertanahan Nasional) in 2011 which officially stated that "indigenous" maps would be integrated into governmental data. Samdhana, JKPP and AMAN joined forces to foster the participatory mapping and the Ancestral Domain Registration Body. Samdhana, thereby, provides assistance in two ways: It funds the mapping activities of AMAN members through the REDD Preparedness Project, and Fellows also give practical technical support in the field.

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<sup>9</sup> Further partners are the Indonesian non-governmental organisations Telapak, Sawit Watch and Konsorsium Pendukung Sistem Hutan Kerakyatan (KpSHK).

The Partnership supports the participatory mapping projects financially. Funds do not go directly to AMAN but to its partner JKPP, which is implementing the mapping. It is interesting that this endorsement of actors who originally countered development is not contradictory for the Partnership. This could be due to the fact that mapping activists changed their oppositional position to a more approachable one after the fall of Suharto, which is in line with the Partnership's concept of "applying pressure from without". Thus, one aim of the Partnership is to accelerate the process of registering customary maps with the National Land Agency, because the MoU between AMAN and the latter has apparently not yet led to a concrete outcome producing common maps. Therefore, the organisation also provides special advisers who help AMAN, JKPP and the Indonesian government to link their respective mapping activities.

These two examples, REDD+ and participatory mapping, demonstrate that an official "discursive" dominance or order of certain topics within civil society collaboration does not automatically lead to one-sided meanings or interests, which are imposed by donors and implemented by intermediaries. Instead, all the organisations rework these universals in their own way. Moreover, the Partnership's assistance to AMAN shows that the intermediary also makes room for the ideas and goals of activists. This is due to a shifting positioning of Indonesian NGOs and, not least, of the Indonesian government.

## Notions of Indigeneity: Disjuncture within Order

Although Samdhana and the Partnership officially refer to indigenous peoples' self-determination, diverse notions of indigeneity can be identified when looking more closely at both the official order of the institutional collaboration, with its policies and programmes, and a more informal arena in which practitioners reinterpret official policies according to personal values and specific political contexts.

### The Community Focus

In addition to conservation, Samdhana focuses on "people", namely "communities". Communities are not defined in the official texts of Samdhana, but project reports indicate the image of an organised, small-scale group of people who reside in some villages or a whole district. Different terms are applied to them, such as "local peoples' organisations", "local communities", "local groups", "local peoples", or "community-based organisations". Hence, indigenous peoples constitute just one type of community among Samdhana's target groups; but all of them are conceived and promoted as caretakers of the environment. Accordingly, the terms "indigenous peoples" or *masyarakat adat* seldom appear in official policies, whereas the terms above are used frequently. Samdhana supports what Alcorn (2005: 39) defines as "little conservation", i.e. small in scale, community-based and oriented towards the communities' benefit. Looking closer at the policies of Samdhana's donors, conceptional similarities become apparent. The Climate and Land Use Alliance (2013), for example, strives towards "supporting locally-driven innovation", such as

“community forest management”, because “[p]rotecting and enhancing the livelihoods and rights of indigenous peoples and rural communities is an essential part of the solution”.

Similar to Samdhana, the Partnership’s community focus in regard to indigenous peoples is contextualised within natural resource management, namely “Community Based Forest Management” (Partnership 2011a:iii). The organisation transports the notion of indigenous peoples as a spatially fixed group as well. Both Samdhana and the Partnership refer to the governmental land-use schemes, *Hutan Kemasyarakatan* (Community Forest) and *Hutan Desa* (Village Forest), as legal instruments for ensuring communities’ access to and use of natural resources (Partnership 2011a; Samdhana 2012).<sup>10</sup>

These governmental schemes are based on a definition of community in terms of spatial administrative entities, i.e. villages (*desa*). In this context, the land-use schemes officially contradict perceptions which AMAN represents in general. AMAN’s understanding of *masyarakat adat* is based rather on an ancestral origin than on administrative regulations. Furthermore, instead of land-use rights, AMAN focuses on land ownership that is based on the recognition of customary or *adat* rights. However, the NGOs promote the governmental schemes on the local level and respondents stated that some AMAN members adopt these schemes.

Another frame shaping the community focus of the Partnership is the PNPM Peduli project.<sup>11</sup> The project officially aims at “inclusive development”, namely poverty reduction and socioeconomic development of “community groups at the grass-roots level”. “Poor indigenous peoples” are one of these target groups (PNPM Support Facility 2011). AMAN members, however, do not yet participate in the project.

### Forest Inhabitants

As seen above, Samdhana’s main support of AMAN is currently funded through a REDD-related project addressing forest management. Consequently, indigenous peoples living in and around forests are officially targeted by Samdhana and AMAN. However, forests are not clearly defined within REDD policies, so that their definition leaves NGOs room for interpretation and local groups options for the strategic use of indigeneity.

The ecological classification “forest” also plays a major role in the Partnership’s objective for supporting indigenous peoples. Indigenous issues entered the Partnership’s agenda only after the establishment of its Forest Governance Programme in 2007. Therefore, AMAN receives financial and other support mainly in the context of improving the management of forested areas. Thus, assistance for indigenous peoples living in coastal or urban areas is not provided in terms of indigeneity in the official policies of the Partnership. It is interesting that interviewees stated that some

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<sup>10</sup> The schemes *Hutan Kemasyarakatan* and *Hutan Desa* were adopted in 2007 and 2008, respectively. They guarantee local communities the management of and benefits from forested areas.

<sup>11</sup> PNPM stands for *Program Nasional Pemberdayaan Masyarakat* (National Programme for Social Empowerment). The term *peduli* literally means “care”. PNPM Peduli was established in 2011. It is managed by the World Bank and funded by various international development agencies.



international funders actively took part in integrating forest and, at least, “indigenous” issues into the Partnership’s programme. When looking more closely at the contexts behind these policies, an interrelation between the Partnership’s focus on forests and international political dynamics seems obvious. Environment-oriented projects started in 2008, right after the 13<sup>th</sup> UN Climate Change Conference had been held in Bali in December, 2007, where UN member nations decided on direct actions for climate mitigation – including the implementation of REDD+.

### Agents for Climate Change and Stakeholders of Democracy

The focus on REDD in the agenda of both the Partnership and Samdhana indicates that an overarching topic officially determines international support for indigenous peoples at the moment: climate change. Some of the names of Samdhana’s funding organisations, for example, the Climate and Land Use Alliance or the Climate Works Foundation, already point to the official dominance of this topic. Such donors endorse the thematic symbiosis of combating climate change and people-oriented development in policies. The Ford Foundation (2013), which funds the activities of both Samdhana and AMAN, intends, for example, to “contribute to mitigating climate change, while improving livelihoods of rural populations, particularly indigenous groups and ethnic minorities”. Thus, in the case of Samdhana, Indonesian activists together with foreign practitioners propagate indigenous knowledge as a contribution to climate change mitigation.

Climate change is also a major issue within the Partnership’s programme. Nevertheless, since the organisation is more focused on socioeconomic and political development than on conservation, climate change is always contextualised within political reform measures towards good governance and democracy. By following their so-called “multi-stakeholder approach”, (good) “forest governance” has to be accomplished first to achieve climate change mitigation. Based on democratic principles such as participation, transparency and equality, the Partnership intends that all “stakeholders”, i.e. all relevant parties, are recognised, their rights legally secured and their voice given room in the public sphere. Therefore, AMAN, which is seen by the Partnership and its donors as the only and legitimated representative of the indigenous peoples in Indonesia, receives support as a “stakeholder” from this NGO in the context of natural resource management. Whereas Samdhana is officially guided by the assumption that indigenous peoples already possess methods to use the environment in a sustainable way, the Partnership backs efforts to “make these actors sustainable”. According to Samdhana, rural communities, including indigenous peoples, exert stewardship over the environment through “traditional knowledge”. Fellows even want to learn from these local communities and, thereby, aim at changing conventional conservation; they follow the ideological notion of social change “from the bottom up”.

When practitioners from the Partnership told me about assets in regard to indigenous peoples, they mainly referred to people’s traditional skills in agriculture, which indigenous groups once possessed but lost due to modernisation processes, such as industrial agriculture. The Partnership wants to revive this knowledge and

these skills and combine it with market-oriented, economic thinking. Following this line, traditionally cultivated products could form an economic niche, which people could then use for sustainable economic development and poverty reduction. Moreover, statements of the Partnership suggest that they understand knowledge and skills, first and foremost, in terms of the quality of soil and its improvement, and less in human agency in general; they understand customary territories as fertile ground for sustainable agriculture.

### Safeguarding

Benefits for and protection of indigenous peoples are nowadays often expressed as “safeguarding” in international policy frameworks for development measures. So-called “safeguard policies”, thus, form a major official frame through which indigenous peoples become integrated into technically-oriented development theory and practice. In these policies, the need for the protection of indigenous peoples, to which development agencies should adhere, is based on their cultural distinctiveness. These actors, therefore, are characterised as a “cultural group” equipped with a special “cultural life” that needs to be preserved.

In the context of the PNPM Peduli Project, the Partnership developed an “Indigenous Peoples Planning Framework”, which is stipulated by the World Bank.<sup>12</sup> It defines indigenous peoples as a “social group which has a distinct socio-cultural identity” and “socioeconomic benefits from projects have to be in line with the local culture” (Partnership 2011b, translation by M.H.S.). Remarkably, the Partnership partly integrated the governmental term *komunitas adat terpencil* (remote *adat* community) into the Framework. AMAN and many Indonesian activists contest this term, as, for them, it transports negative connotations of isolation and backwardness. In a disjunctive way, AMAN is, nevertheless, interested in continuing its collaboration with the Partnership, since the latter offers resources; the negative connotations of *adat* communities, which the latter transports, has no direct effect on the indigenous alliance. Samdhana adopts the concept of “safeguarding” as well. In its REDD Preparedness Project, the activities of organisations such as AMAN receiving small grants are termed as support that goes to groups which need to be safeguarded (The Samdhana Institute 2012).

These identical notions used in international policy papers as well as in Indonesian NGOs’ working papers demonstrate the interrelation of official and unofficial collaborative arenas in regard to policies and practices of the NGOs. Ideas travel from the official, often internationally formed strategies of conservation and development through Indonesian contexts and become adopted by practitioners. On the other hand, ideas taken over from international or even Indonesian indigenous activism re-enter official discourses. The diffusion of these concepts is, I think, a consequence of the informal interactions and communications of actors working in different institutions

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<sup>12</sup> The Indigenous Peoples Planning Framework (IPPF) is one of the World Banks’ Social Safeguard Policies. These are guidelines for the Bank and borrowers concerning project planning and implementation. Borrowers are obliged to formulate a project-related IPPF in order to guarantee sustainability within projects by defining stakeholders and stating their participation and benefit sharing (World Bank 2013a, 2013b).

and organisations. Thus, different ideologies or interpretations can prevail side-by-side as governmental and rather critical activists' concepts. They do not break the discursive order of official policies in a disjunctive way, but instead coexist behind the texts where different interests are negotiated. This is made possible as practitioners strategically adopt dominant international topics to uphold this order so that they can gain resources.

## Mobile Lives and Organisational Cultures

Samdhana's Fellows and the Partnership's practitioners are professionals in the fields of conservation, development practice and law. Professionalism implies technical expertise and know-how of methods and theories based on long-term experience. Professionalism in this domain, however, implies more than that, namely a mutual, historical understanding of indigenous issues which arise in various political, economic and social contexts in Indonesia. This understanding derives from long-lasting joint work between Indonesian and foreign practitioners and nationally and locally engaged activists, which had already started within the New Order era.

During that oppressive era, environmentalism was the only channel open to NGOs to mobilise people on the local, national and international level to fight for democratisation and social change (Gordon 1998; Hirsch and Warren 1998; Okamoto 2001; Moniaga 2004; Peluso et al. 2008). Thus, many now "professionalised" Fellows became engaged with conservation and activism simultaneously, as they intended to stop environmental and human exploitation, discrimination or harassment. Similarly, leading activists of AMAN and other mass organisations started to commit themselves to social change by supporting and establishing "indigenous", "agrarian" or "peasant" movements (Peluso et al. 2008). Significantly, Indonesian and even some of the foreign Samdhana Fellows took part in the birth of these movements at the beginning of the 1990s. They were students, young scientists or members of NGOs at that time. An intense exchange between activists from local communities and outsiders who studied and lobbied for the grass-roots took place. This resulted in nationwide networks and shared visions on how to improve local communities' living conditions (Afiff and Lowe 2007).

Moreover, studies about traditional land use and conservation in rural areas conducted by Indonesian and foreign scholars contributed to the argumentative ground of activism. It fuelled or even formed issues as Community-Based Natural Resource Management, participatory mapping and indigeneity, which, nowadays, are part of the official, political discourse. This discursive order was complemented with elements from the international indigenous movement through networking and coalition-building by Indonesian activists (Afiff and Lowe 2007; Peluso et al. 2008; see also the chapter by Steinebach in this volume). Up to the present day, shared lines of argumentation, which I have partly outlined above, are jointly advocated by what Peluso et al. in reference to Hajer call "discourse coalitions" (2008:379). Hence, a discursive professionalism has developed among practitioners, activists from mass organisations, such as AMAN, and within affiliated communities (see the chapter by

Grumbles in this volume). It connects the actors both personally and institutionally in the official as well as unofficial arenas of co-operation.

From an analytical stance, mobility constitutes itself as a crucial element for these interrelational processes; however, it does so, I argue, in more than one dimension. Following Urry's (2007) concept of mobilities, my findings reveal that the social mobility of individuals also becomes a crucial element for coalitions and providing indigenous actors with financial and political resources from national and international organisations.

Most of the practitioners and activists literally "passed through" many institutions in the course of their personal career. They worked for national NGOs, international donors and/or research institutes, often on a project basis. Consequently, some people had been working simultaneously for AMAN and the Partnership, or Samdhana and the Partnership. In this way, the actors developed professional ties on an institutional level, which are essential for the intermediaries and especially for AMAN as a mass organisation until the present day. In addition to their changing employment, Indonesian activists and foreign professionals also developed personal relationships that developed into complete interpersonal networks. Driven by common interests and goals, friendships evolved with "the categories of friend and workmate cross[ing] from one to another" (Elliott and Urry 2010:57).

At the same time, the various engagements of experts in different localities led to a geographical mobility which contributed to a multi-sited understanding of local situations. Indonesian activists, who had become more and more professionalised over time, could thereby uphold connections to local, rather unprofessional activism. Foreign practitioners, on the other hand, became sensitised to local needs, and thus, in a way, "activists" within their professional, technically oriented environment. These processes, I argue, nurtured the ideological ground of social justice, which, nowadays, binds Samdhana internally and also externally with AMAN. Moreover, these shared arenas of interaction bridge actors with different approaches, such as the Partnership and AMAN. The professionalisation through mobility and personal ties is, in turn, crucial for the functioning of AMAN, since activists need such know-how to manoeuvre in the international development scene, which requires project management or fund-raising.

With the establishment of Samdhana, some of these personal and professional ties were gathered together and combined. Moreover, common visions are framed through the organisation. This can be traced within Samdhana's organisational culture. In this regard, the Fellows' similar mobile ways of life characterise organisational procedures: As their engagement for Samdhana as "advisers" or "mentors" is voluntarily conducted in addition to their main occupation, many of the practitioners are working in different places to realise Samdhana's and other projects in, for example, conservation, community development or mapping. They literally hop from one place to the other, while their families and homes are often based in Jakarta, Bogor or even in another country. Those who work full-time for Samdhana, similarly travel within Indonesia or abroad, meet or skype with Fellows, partner organisations or donors in other countries to run the organisation.

Friendship as a result of social mobility is, therefore, part of Samdhana's organisational culture. Besides the bonding effect on a personal level, actors also use these ties strategically in the institution in which they work, but rather in an informal way. While "friends" from donor organisations hold fellowship, befriended AMAN activists become advisers for projects within the Small Grants Programme. Even Fellows employed at state institutions are Samdhana members. Hence, plans for collaboration are often discussed in an informal way, based on mutual trust. In this way, the interests of funders and AMAN can be negotiated, while AMAN is given space for interests and ideas, which leads to a mutual adjustment of official programmes and policies.

## Concluding Remarks

It becomes clear that the coalition-building of NGOs for indigenous peoples in Indonesia is determined by an interplay of processes between official and unofficial arenas of interaction. The examples of Samdhana and the Partnership illustrate different forms of "intermediaries" and contest the image that they are more or less just implementing their donors' goals, as some critical constructivists within the Anthropology of Development assume (e.g. Petras 1999; Crawford 2003). The Partnership seems to be dominated by international, normative ideas at first sight. However, by looking more closely at both its policies and activities, it becomes evident that the organisation, in fact, supports concepts and issues derived from the indigenous and other social movements. Samdhana already demonstrates its rather "unconventional, activist approach" in the official arena of policies. Samdhana, nevertheless, adopts overarching issues such as climate change and REDD in a similar way to the Partnership. This shows that Samdhana is also part of the discursive order or "knowledge regime" into which NGOs are embedded. However, the presence of this order does not lead to a levelling or homogenisation of meaning and action. Instead, individuals make room for manoeuvring through interaction in an informal way under the surface of policies. Therefore, different interests of actors ranging from socioeconomic development over nature conservation to land rights are simultaneously advocated and negotiated between donors, NGOs and the indigenous peoples' movement.

Supporters of indigenous peoples and some of their representatives have established a space which constitutes a distinct social milieu of professionalism, knowledge and personal commitment between official and unofficial domains. This space encompasses international "professional" arenas, the indigenous peoples' movement and even governmental institutions. In fact, it produces disjuncture; however, not so much in regard to the order of international development, but rather in terms of the dichotomic image of international development imperialism and oppositional social movements, as some constructivists such as Escobar (1992, 2012) or Veltmeyer (2005) assume. AMAN undertakes strategic endeavours by engaging with international development to acquire resources, which is a "disjunctive" behaviour as, officially, it may not always be in line with AMAN's own ideology.

The interaction between individuals from development work and activism leads to a mobility of concepts within the official arena of co-operation and produces different notions of indigeneity. Thus, the notions do not simply resemble international concepts, but rather contain meanings which derive from distinct social contexts of these individuals. Such reworked ideas travel informally along personal ties of friendship or “fellowship” and shared experience. They are, therefore, very dynamic in meaning, but can also become normative through strategic advocacy of “discourse professionals”, entering dominant discourses.

Thus, the space of non-governmental support for indigenous peoples in Indonesia emerges as an unrestrained melting pot of interests, strategies, arenas, and interaction, coated by universalism but shaped by mobilities.



# **How Indigenous are the Balinese?**

## **From National Marginalisation to Provincial Domination**

*Brigitta Hauser-Schäublin*

### **Introduction**

Bali is an untypical case of indigeneity and the indigenous movement in Indonesia. The “autochthonous” (*asli*) Balinese, who understand themselves as Hindu Balinese, are not a minority but a dominant majority within their province. This dominant majority has decisively shaped the inter-cultural and -religious co-habitation of the inhabitants – among them an increasing number of non-Hindu – on the island. Only a handful of villages are members of the Alliance of Indigenous Peoples of the Archipelago or AMAN, and many of the communities seem to be only half-hearted members. Membership obviously depends more on single, highly motivated actors, most of them well-educated and interested in economic and partly social modernisation according to their own visions; none of them belongs to a title-holding stratum of society. Actually, the majority of the Hindu Balinese do not feel “indigenous” in the internationalist sense of the word, but strongly support Balinese *adat* (“customs and traditions”) and, in this respect, understand themselves as *masyarakat adat* (literally “people whose life is governed by traditions”). In Bali, *adat* is intrinsically linked to *agama* (religion), an issue AMAN carefully circumnavigates. It is, therefore, the aim of this chapter to explore



why Bali, as a stronghold of *adat*, does not apparently need AMAN to attain self-determination and national as well as international recognition, as most other member communities outside of Bali hope to gain through the support of this organisation.

After the fall of the Suharto regime in 1998, the politics of decentralisation and regionalisation – the latter conferred power especially to the district level (*kabupaten*) (and less to the provinces) – constituted a turning point in the significance of *adat* and *masyarakat adat* within society and the nation as a whole (Henley and Davidson 2007). While one of the main goals of decentralisation and regionalisation was the promotion of democratisation by delegating responsibility and power to institutions and bodies in the provinces, the social, political and economic conditions of many *masyarakat adat* started to change considerably (Schulte Nordholt and Klinken 2007; Holtzappel 2009).

This chapter, therefore, examines the special case of Bali, the significance of Balinese *adat* in the political social and context of the province and its relation to *dinas*, the administrative governmental organisation of village life. I will investigate why some communities have at least formally joined AMAN and with what expectations. I will start by briefly outlining the provincial regulation Peraturan Daerah Provinsi Bali nomor 2001 (Perda 03/2001) and the way in which regional autonomy was implemented by taking Hindu Balinese *adat* as a basis of its constitution (see Janamijaya et al. 2003). I will then show how people view the relationship between “being Balinese” and “being Indonesian” and try to establish a kind of division of labour and with what consequences between their own *adat* organisation and AMAN, each of them with its particular goals.

## ***Adat* as the Regulatory Principle**

The post-Suharto Balinese Provincial Regulation, Perda 03/2001, contains a couple of crucial elements that reflect the Hindu Balinese’s attempt to establish a province regulation that takes their particular *adat* as a starting point (Ramstedt 2009).

As the Perda introduction shows, the *desa adat* was renamed *desa pakraman*. Thus, a Sanskrit word (*kraman*), which had already been used in old-Balinese inscriptions, replaced the more recent expression of Arabic origin, *adat* (Ramstedt 2009:350-351; Picard 2011:120-121). The *desa pakraman* is described as the unity of *masyarakat hukum adat*, that is, a customary legal community. According to Perda 03/2001, the *desa pakraman* has developed over centuries and possesses an original autonomy (*otonomi asli*) that has provided the basis for the living and the prosperity of its inhabitants. By calling the Balinese villagers “umat Hindu” (congregation of *agama* Hindu or the Hindu people), the *desa pakraman* – the only type of village mentioned in the regulation – is defined as a community sharing the same religion. The characteristics of the Balinese village are: the Three Village Temple system (*kahyangan tiga* or *kahyangan desa*) and a village territory (*palemahan*). The villagers (*warga desa pakraman*) are also seen as those who have an inner and outer attachment to the temples and the ceremonies carried out

there. Furthermore, *awig-awig* or village regulations,<sup>1</sup> are based on the Hindu Balinese concept of Tri Hita Karana (“Three Causes of Wellbeing”)<sup>2</sup> and are part of the village properties. The village assembly, *paruman desa*, is a further constituent. This is the legislative body that takes decisions based on discussion and consultations; it is orchestrated by the *pengurus* or (a number of) *prajuru*, village officials with different tasks. The latter are elected or appointed by the village community according to its *awig-awig*. Such a village assembly is complemented – in a bottom-up way – by the *paruman alit* on the sub-district level (*kecamatan*), by the *paruman madya* on the district level and, finally, by the *paruman agung* on the provincial level. The *paruman agung* or the Majelis Utama Desa Pakraman consists of the council of village *prajuru* and is the highest *adat* body of the province.<sup>3</sup>

Furthermore, Perda 03/2001 officially acknowledges the function of a village *adat* police or security force (*pecalang*) that had formerly performed only in the context of temple festivals and ceremonies. *Pecalang*, as the Balinese *adat* police, complements (or sometimes even challenges) the *dinas* police or the official state police. The 2001 regulation also spells out that the *desa pakraman* is seen as the fundamental actor for the protection (*pengayoman*), empowerment (*pemberdayaan*) and preservation (*pelestarian*) of Balinese *adat* and culture (*budaya*) and the values associated with them, especially for the sake of Bali’s identity (*jati diri*).

I would like to briefly comment on the way in which *adat* has been used in this regulation. Bali and Balinese culture had been the most important tourist destination of Indonesia for decades and, therefore, a major source of income for the central government. The Balinese struggled with the New Order government in order to regain control over their island, their culture and their lives. Perda 03/2001 also mirrors the fact that the Hindu Balinese had perceived themselves (and, in fact, had been) a powerless religious and cultural minority within the centralised state. Additionally, they had been exposed to almost unrestricted external cultural influence through international tourism which also resulted in a touristification of society (Picard 1996; Schulte Nordholt 2007). Simultaneously, distinctiveness and cultural identity (*kebalian*) became more and more important issues which finally resulted in the *ajeg*

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<sup>1</sup> Perda 03/2001 states that the *awig-awig* may not contradict religion (*agama*), the five national principles as formulated in the Pancasila, the National Constitution, and the basic rights it grants (Undang-Undang Dasar 1945), or human rights. It would need further discussion to discover whether individual *awig-awig* contain discriminations in one form or another (for example, due to religion or cultural origin).

<sup>2</sup> Tri Hita Karana outlines the balance of three different relationships people should follow: the relationship between the village and God (*parhyangan*), the relationship between the members of the *desa pakraman* (*pawongan*) and the relationship of the villagers with their natural environment (*palemahan*) (for more details, see Ramstedt 2009:344-350). This concept has become more influential since the 1980s, not least in political matters, such as the Balinese’s protest against huge tourism projects promoted by the central government and carried out without consulting the provincial authorities in the 1990s (see Warren 2007).

<sup>3</sup> The individual village assemblies are institutionalised and merged under the umbrella of *majelis* (forum, council), *majelis utama* on the province level, *majelis madya* on the district level and *majelis alit* on the sub-district level.

Bali, the political and cultural conservative movement which arose after the Bali bombings in the 2000s (Schulte Nordholt 2007).

Compared with the situation during the New Order era, Perda 03/2001 steers in the opposite direction: It apparently aims at creating a province based on one single form of *adat*, the *adat* of the Hindu Balinese.<sup>4</sup> Thus, the regulation creates a new form of cultural citizenship – being Hindu Balinese, being guided by Hindu Balinese principles and living under Hindu Balinese conditions – that seems to be more important than national citizenship (see Hauser-Schäublin and Harnish in press).<sup>5</sup> Cultural citizenship – in Bali equalled with provincial citizenship by being a member first and foremost of a particular village – privileges one segment of society (the Hindu Balinese). Perda 03/2001 turned a national minority (the Hindu Balinese) into the dominant majority of the province and endowed it with special rights – at the expense of other minorities (Christian, Buddhist, Chinese, and Muslim Balinese, as well as labour migrants, mostly in the service of Bali’s tourist industry, from other parts of Indonesia). In contrast to cultural citizenship, national citizenship postulates equality and equal rights for all its citizens (whether equality and equal rights are really granted in practice is another question). Therefore, Perda 03/2001 has created an inequality among Indonesian citizens living in Bali province.

A closer look at the way in which “the Balinese village” is described in Perda 03/2001 reveals particularities that do not necessarily fit with what is historically documented. The regulation mirrors a vision of “the Balinese village” that resonates some of Dutch colonial fantasies, such as an egalitarian and democratic “village republic” (Korn 1984). This image, in fact, neglects that – though in changing combinations and in varying degrees – most of the villages had been at some time bound in religious, economic and political networks culminating in principalities and kingdoms. There were large areas of land owned by kings and also by royal temples which had been worked by villagers in *corvée*. Although most of the disputes which arose in a village were solved by the villagers themselves, many cases – especially in conflicts over land and water between villages – were brought to the attention of regional lords or even kings, who, as a rule, had the institution of a *kerta*, a tribunal, at their palaces. In this jurisdiction, Brahmana priests played an important role. Conversely, offenders of royal regulations were brought directly to this court and sentenced. Apart from the integration of villages into such overarching polities, Balinese society was a stratified society, ranking from the nobility down to slaves. Furthermore, in many villages, even if they were not (or no longer) part of a principality, the village organisation (*keramu desa*) was (and still is) based on the principle of seniority and open only to married men who were born in that village. In some places, the most important offices were inherited within particular families who were in a definitely more powerful position than others.

<sup>4</sup> It has to be noted that the regulation, though in general emphasising the more or less unchanged nature of *adat*, also suggests that Balinese culture should not close itself to “the influence of other positive cultural values”.

<sup>5</sup> Perda 03/2001 mentions in one paragraph that the national culture (*kebudayaan nasional*) should be cultivated, preserved and developed as well.

With regard to their location, many villages were not fixed entities but quite a lot of fluctuations took place in the course of centuries. Families or whole settlements moved in and out due to changing political, social, economic, and ecological conditions. Battles between principalities, invading newcomers (“pirates”) and conflicts between and within villages contributed to in and out fluxes. Village boundaries often changed, according to the (power) relationships within and between the villages and the outcome of disputes.

The question of village boundaries is one of the most sensitive subjects in the Provincial Regulation since it raises the distinction between *desa dinas* (the official administrative village) and *desa adat* (the customary village), a differentiation the Dutch had introduced as part of the restructuring of their colony. The goal was to keep the domain of Balinese religion and customs, which they wanted to preserve in its original condition, separate from the domain of politics and administration of the colonial government. Thus, two types of villages were created, sometimes even with different territorial boundaries. This division was taken over by the Indonesian state after Independence (Warren 2007). Characteristically, Perda 03/2001 does not even mention the administrative village. Today, disputes over boundaries are one of the reasons why some villages want to abolish the distinction by giving priority to *desa adat/pakraman*. In many other cases, the incongruence of the *dinas* and *adat* boundaries lead to the splitting up of villages (*pemekaran*).<sup>6</sup>

This brief review of some results of historical research in comparison to *desa pakraman* as described in Perda 03/2001 shows that the latter operates with an idealised picture of “the Balinese village”, an image that emphasises continuity, immutability and stability. Moreover, it also suggests that Balinese society was based on equality and was a fundamentally democratic social organisation.

### ***Adat* between Self-Determination and National Loyalty**

Apart from the cultural, social and political privileges the *desa pakraman*, but even more the districts enjoy, there is also an economic advantage from which these units benefit: They receive a substantial share of the redistribution of taxes (see Review Regulasi n.d.). According to the Surat Keputusan Gubernur no. 65/2001, the percentage the eight *kabupaten* and the province capital, Denpasar, receive together is higher (60%) than the share of the province (40%; Review Regulasi n.d.). Moreover, every *desa pakraman* receives an annual contribution from the provincial government. In sum: The position of the *adat* villages within the province and the economic and political empowerment they have reached since the end of the New Order regime has increased remarkably. There is probably not much left on the agenda of promotion, participation and autonomy the *desa pakraman* could wish to get. The postulates AMAN set up in its first congress all seem to be fulfilled. So what kind of support does Bali – or rather the

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<sup>6</sup> In the interviews I had with AMAN representatives in Bali in 2012, the number of *desa pakraman* in Bali was given as 1,458. In an official announcement issued in November 2012, the number was given as 1,480. In 2003, 1,399 *desa pakraman* were listed (Janamijaya et al. 2003); thus, 81 new *desa pakraman* came into being within ten years.

villages and representatives who are members of AMAN – expect from this well-established nationwide organisation?

As the records of the first congress of AMAN illustrate – and many informants also told me – one of the influential founding members was I Nyoman Sueta from Catur (Bangli) (AMAN 1999).<sup>7</sup> Under the New Order, the Balinese had already gained experience in formulating and using *adat* as a means to position and defend themselves against the national government (see Ramstedt 2012:10). One of the key contests of power between the Balinese and the central government, which also gained worldwide attention, was fought over the Bali Nirvana Resort project near the temple of Tanah Lot in the 1990s (Warren 1998, 2007). The Balinese representative, therefore, was probably an important actor in the constitution of AMAN in 1999.

The Hindu Balinese inhabitants of the province could be considered as a single *masyarakat adat* in the way they are described in Perda 03/2001. The AMAN definition is almost congruent with it: The Hindu Balinese share a genealogical origin, they live in a defined geographical area, have a joint system of (Hindu) values and ideology, as well as a similar economic, social and political organisation; in sum, a shared culture. Yet, Bali, or rather the collective of the *desa pakraman* (the Majelis Utama Desa Pakraman as an overarching body), is not a member of AMAN but individual settlements are. Seven registered members from Bali were on the AMAN list in 2012 (AMAN 2012d). These are: *desa adat/pakraman* Antap Dlod Sema (Tabanan); Catur (Bangli); Mayungan Let/desa Antapan (Tabanan); *dusun/banjar* Pengubengan Kauh–Kerobokan, Kuta (Badung); *desa adat* Les (Buleleng); *banjar* Bendesa, *desa adat/pakraman* Penarukan (Buleleng); *banjar adat* Banjar Jawa, *desa pakraman* Kota Singaraja. The list reveals that the Balinese communities are heterogeneous in several respects. First of all, these member units are not all *desa pakraman* but some are only neighbourhoods, *banjar*. The choice of the villages seems to be random, as well as the size of the settlements, their location in the province, and the districts. Not all *kabupaten* are even represented: Gianyar, Jembrana, Karangasem, and Klungkung are missing.

Almost without exception, these *banjar* and villages have become AMAN members because of the individual actors who were already engaged in other social networks and, therefore, took the initiative.<sup>8</sup> All of these actors, local representatives of AMAN, had an academic education. Several of them have been members of AMAN since its inception and are experienced in the politics of “culture” or *adat* and in dealing with NGOs. In almost all cases, these individuals – all male and most of them below 50 – raised the issue of AMAN membership in the *banjar* or village assembly and convinced their fellow villagers to agree to a corporate AMAN membership. Many of the activities the local AMAN representatives have taken up reflect their personal ideas and goals. There are no special forums in the villages where AMAN issues are discussed and decisions made, thus, leaving quite a large range of action to the

<sup>7</sup> Together with I Nyoman Resiyasa, (the late) I Nyoman Sueta became one of the first two representatives of Bali in the National Council of AMAN.

<sup>8</sup> For reasons of protection, I will keep the identity and the local origin of my interlocutors anonymous in cases where their statements may create conflicts.

individual AMAN members. These activists are well interlinked and frequently communicate with each other.

When AMAN came into being, there had been many more Balinese villages or neighbourhoods, about 40, which became members of AMAN, as one of my interlocutors pointed out. Since everyone had had their own ideas about what and how things should be done, he said, it had been difficult to reach any agreement or conclusion. As a consequence, many villages quit AMAN. With seven left, the discussion of core issues is apparently easier than before.<sup>9</sup>

I Made Suarnata from *banjar* Pengubengan Kauh, Kerobokan (Kuta), referred to the fact that Balinese villages are not uniform and, therefore, have different issues on the agenda. The structure and the size of villages are in some cases so complex and unwieldy that they can be considered neither as a single unit, nor are they able to act as such. *Desa adat* Kerobokan, for example, consists of 50 *banjar*. How can the assemblies of 50 neighbourhoods be convinced that they should join a voluntary association such as AMAN? Their interests may be too divergent. Moreover, this *desa pakraman* is not linked to a *desa dinas* with an elected village head. Since Kerobokan is part of Bali's most important tourist strip, Kuta, Kerobokan has the status of a *kelurahan* (a higher administrative unit that is part of the district of Kuta). The *lurah*, the leader of a *kelurahan*, is not elected by the people but is a civil servant, that is, an office holder appointed by the administration. He, therefore, carries out national or provincial policies and not, first and foremost, the wishes of the villagers.

Another example is Banjar Jawa in the city of Singaraja, the home of another of AMAN's representatives. Banjar Jawa is a *banjar pakraman* (that is, not an administrative neighbourhood) that belongs to the *kecamatan* of Buleleng.<sup>10</sup> The *kecamatan* Buleleng consists of 30 *desa dinas* or *kelurahan*; from the perspective of *adat*, it comprises 21 *desa pakraman*. *Desa pakraman* Buleleng is part of the town of Singaraja (the administrative capital of Buleleng) and Banjar Jawa is one of the *desa pakraman*'s 14 *banjar pakraman*.<sup>11</sup> However, at the same time Banjar Jawa is administratively a *kelurahan*. Thus, the pattern or structure of the *kecamatan*, and even more the *kabupaten*, is intricate with cross-cutting units and structures of *desa dinas/ kelurahan* and *desa pakraman*. Furthermore, some villages and *banjar* or *dusun* have either a Hindu Balinese or Muslim majority, which creates a further element of heterogeneity. Viewed together from the perspective of *adat* and *dinas*, a complicated picture emerges that turns Banjar Jawa into a multilayered entity with corresponding structures and authorities. These

<sup>9</sup> These seven AMAN officials are also networking with many actors in other villages. Therefore, many other places are indirectly involved in AMAN discussions.

<sup>10</sup> Together with eight further sub-districts, the *kecamatan* of Buleleng constitutes the district (*kabupaten*) Buleleng.

<sup>11</sup> The name of Banjar Jawa might suggest a settlement of Muslim from Java. In fact, there is a small Muslim community living there which has its own cemetery. Yet, the majority are Hindu-Balinese. According to oral histories, Banjar Jawa was founded when a king of Majapahit sent an elephant as a present to the Balinese king. Those Javanese who had brought the elephant to Bali, remained there and founded a settlement, Banjar Jawa. Many of the original inhabitants later moved to a Muslim settlement, *kampung* Mumbul.

multiple classifications create cross-cutting units, each with particular boundaries. Apart from *adat* communities, there are also those of religion, *agama* (see below).

It is evident that the divergence between *adat* and *dinas*, on the one hand, and the different administrative level (*desa dinas* and *kelurahan*) with either elected or appointed office holders, on the other hand, does not promote the consolidation and the sharing of the goals of the Balinese of either *agama*. Several Balinese *adat* representatives emphasised that this situation calls for two different types of loyalties, each directed to different institutions and their centres, as well as their different goals. I Made Nurbawa put it in a nutshell when he said: “I have two citizenships: I am a citizen of Indonesia and a citizen of Bali” (“*Saya statusnya dua kewarganegaraannya: saya sebagai warga Negara Adat Bali dan sebagai warga Negara Indonesia*”). “But when should I (or can I) be”, he continued, “a national citizen and when a Balinese *adat* citizen?”

The respondents expressed in several interviews that the gap between *desa dinas* and *desa adat* (or *pakraman*) has grown wider since *otonomi daerah* (regional autonomy); at the same time, the exigency to live up to both has become more difficult. The respondents stressed that they did not challenge national citizenship, the national constitution, state law, or national unity. They saw it as a framework within which they tried to accommodate or find a niche where they could achieve their Balineseness and autonomy.<sup>12</sup> Most of my interlocutors pleaded for a reunification of both types of villages or, rather, for a restoration of the pre-colonial conditions, though some conceded that it would be difficult to say what consequences this would have for the villagers concerning *adat* and *dinas*.

## Division of Labour between Majelis Desa Pakraman and AMAN

This issue, whether *desa dinas* and *desa adat* should be merged, is, as all interlocutors underlined, an exclusively inner-Balinese problem. They referred to *otonomi daerah* when asked about such matters and the role of AMAN; they said that a division of labour exists. The Majelis Desa Pakraman, the council or forum of all *desa pakraman*, is responsible for inner-Balinese questions. Its tasks consist, as described in Perda 03/2001, of the promotion and protection of *adat*; this forum should also assist in the organisation of religious ceremonies (*upacara keagamaan*) when needed.<sup>13</sup> The inner-Balinese disputes related to *adat*, which an individual village is unable to solve, are reported to this forum as a counselling and decision-making body. The case is usually firstly brought to the sub-district level. If no solution can be achieved, the case is handed over to the next higher section until it reaches the highest level, the Majelis Utama Desa Pakraman of the province. The Majelis Utama Desa Pakraman is the official partner of the governor in *adat* matters. During meetings, the governor

<sup>12</sup> Some said that the *desa pakraman* should also receive judiciary rights according to *adat* law. Others saw this as rather problematic, since such judgements based on *adat* law could contradict national law. However, they agreed that a village should have a justice of the peace (*hakim perdamaian*).

<sup>13</sup> Several of the respondents underlined that AMAN pushed the Balinese to create an *adat* organisation that encompasses the individual villages. The institution of Majelis Desa Pakraman (as outlined in Perda 03/2001) is also said to be the result of AMAN and other Balinese activists.

announces the latest political decisions concerning *adat*, especially the amount of money (redistribution of taxes) destined for the *adat* communities.<sup>14</sup> Majelis Utama Desa Pakraman also receives annual financial aid from the provincial government: 1 billion Rp./year for Majelis Utama Desa Pakraman (province), 100 million Rp./year for Majelis Madya Desa Pakraman (district) and 50 million Rp./year for the Majelis Alit Desa Pakraman (sub-district) (Metrobali March 15, 2013).

The task of this institution to decide in matters of *adat* in such a way that the parties concerned are ready to accept its decision is not an easy one. The intra-village conflicts over *pemekaran* (splitting up) are sensitive issues which are difficult to solve. The forum failed, for example, to achieve reconciliation or to restore peace in the case of *banjar adat* Tamblingan which wanted to split from *desa pakraman* Munduk. The major problem is that the council's decision is understood by both parties as biased, either by pleading for the status quo or for splitting.

Ironically, the attempts of smaller units to split off from a *desa pakraman* are one of the consequences of *otonomi daerah* and the quest to receive a bigger share of the taxes. As briefly mentioned, the Provincial Government redistributes a certain amount of the taxes among the almost 1,500 *desa pakraman*. This money is then divided among the *banjar adat*, the neighbourhoods. The temptation to get the full sum allocated to a village with the official status of a *desa pakraman* seems to be a common motif of *banjar adat* for *pemekaran* (Bali Post January 3, 2013).<sup>15</sup> Such internal matters, though intrinsically linked to the many ways in which *adat* has become a fundamental issue even in everyday life, are kept within the province, although it clearly transgresses the boundaries between *adat* and *dinas*; even parliamentarians get involved in such problematic cases as well.<sup>16</sup> Two Balinese AMAN representatives who live in the same *desa pakraman*, Les, though in different *banjar pakraman*, know about the challenge associated with this division since this single *desa pakraman* is divided into two *desa dinas*. Should the *desa pakraman* also split into two and follow the path of the separate *desa dinas*? Or should the two *desa dinas* merge? There are proponents of both solutions.

Nevertheless, the problem of which social unit should be eligible for AMAN membership has not yet been solved. Should each Hindu Balinese *banjar* or *desa pakraman* have the opportunity of becoming an individual member of AMAN? What implications would it have on AMAN if more than 1,480 *desa pakraman* (not to mention their sub-units, the *banjar*) became individual members?

<sup>14</sup> For example, the Governor of Bali announced at a meeting with the Majelis Utama Desa Pakraman at the governor's office in November, 2012, that each of the 1,480 *desa pakraman* will receive 100 million Rupiah in 2013 (Berita dewata 2012).

<sup>15</sup> In March, 2013 (the election of the Governor takes place in 2013), the Governor even promised 200 million Rupiah per *adat* village for 2013 (Metrobali March 15, 2013).

<sup>16</sup> Another problem, though clearly linked to the *adat/dinas* division of villages, are territorial boundaries (since the territory of a *desa dinas* may differ from the boundaries of a *desa pakraman*) and the implementation of *otonomi daerah*. This may cause problems for some villages that rely on the traditional use of resources (such as well) sometimes located on the territory of a neighbouring village.



As I Made Rimbawa, a former judge and the AMAN representative of *kecamatan* Buleleng, explained, the current contingency of membership should be replaced by more evident and convincing criteria for membership. The villages and their inhabitants, especially in north Bali, cannot be considered as displaying a homogenous culture. Many villages are culturally mixed with Balinese of Chinese descent, Muslim and Christians (Muslim and Christian Balinese, Arabs as well as migrant workers) living there. The Chinese do not practice separatism by living only among themselves, as one interlocutor emphasised. Probably due to their economic function – as traders, shopkeepers, entrepreneurs, and other business men, but also truck drivers – they live in a rather dispersed way. Therefore, they do not aim at setting up their own *desa pakraman*.<sup>17</sup> My interlocutor contrasted the ethnic Chinese, most of whom practice Tri Dharma or Kong Hu Cu (Confucian) rituals, with Muslims who prefer living together in separate units. There are Muslim settlements (all of them with the administrative status of *kelurahan*) in the town of Singaraja<sup>18</sup> (and beyond), such as Kampung Bugis, Kampung Anyar, Kampung Baru, and Kelurahan Banjar Bali. Some villages in Buleleng, especially in the *kecamatan* Sukasada and Gerokgak, have a Muslim majority. I Made Rimbawa pointed out that Buleleng has always been a region of cultural plurality and had to accommodate the fact that *adat* does not mean the same for all these different communities.

Similar to the Hindu Balinese, some of the traditional Muslim villages also have their own territory, their own customs and their own places of worship (seen as equivalent to the Hindu Three Temple System) as well as their own burial place. Some of the Muslim villages have also pleaded to the provincial government to become recognised as *desa pakraman* (Rieger in press); to my knowledge, the decision is still pending. In this multi-religious context, the question of *adat* and whether it can be limited to Hindu Balinese *adat* as defined in Perda 03/2001 arises.

### Three Categories of Balinese *Adat* and Culture

To acknowledge this cultural plurality, local AMAN leaders summoned a meeting (*musyawarah*) with village *adat* representatives from the district of Buleleng. As a result of these discussions, they proposed the creation of three categories of Balinese culture as represented in the district. Each category should become a collective member of AMAN. These three categories were: Bali Pesisir, Bali Mula and Bali Apanage (Laporan Hasil MUSDA AMAN 2011). Bali Pesisir subsumes the Balinese who are living along the north coast. All these villages have been interacting with the outside world for centuries due to their location on the trading route to the Spice Islands. Many of them have adapted elements from merchants, sailors, savants, and saints from other Indonesian islands and far beyond (see Hauser-Schäublin and Ardika 2008).

<sup>17</sup> As a respondent explicated, the Chinese do not have a particular *adat* organisation but have a funeral organisation (*organisasi kematian*) called Bukit Suci (Pure Hill), which unites the Chinese independent of their residence.

<sup>18</sup> Singaraja is divided into 18 *kelurahan* and 1 *desa dinas* (Desa Baktiseraga), <http://ciptakarya.pu.go.id/profil/profil/timur/bali/singaraja.pdf>. <June 24, 2013>.

Among the Bali Pesisir, there are also mixed Hindu-Muslim as well as Muslim villages. Some local AMAN representatives have so far already proposed four Muslim villages (Kampung Singaraja, Pegayaman, Kampung Bugis, and Kampung Kajanan), all belonging to the Bali Pesisir category, for membership of AMAN.

The category of Bali Mula (sometimes also called Bali Aga, though the interpretation and assessment of both terms vary) contains a number of villages which the Dutch had originally classified as pre-Hindu or even animistic (see Hauser-Schäublin 2004). These are mainly villages in the mountain area that had not been under the continuous influence (or dominance) of the Hindu courts (and their priests) in the south. They, therefore, practiced rituals (such as burying a corpse instead of cremating it) that differed from those in the southern plains. After a consultative meeting in Singaraja in 2011, the AMAN representatives listed seven villages as Bali Mula (Laporan Hasil MUSDA AMAN 2011).

The category of Bali Apanage consists of the “main-stream” Balinese culture. Many noble immigrants from south Bali are living in such “Apanage villages” in Buleleng. Many of these families are affiliated in one or the other way to royal courts and Brahmana priests; today, many of them hold important positions in these villages.

The AMAN leaders from Buleleng have submitted a request for acknowledgement of the three categories of Balinese culture and accepting them as members of the organisation to the headquarters of AMAN. An answer has not yet arrived (in July 2012).

The tripartite categorisation of “the Hindu Balinese” reminds one of Geertz’s classification of three socio-cultural or religious streams (*aliran*) in Java: He distinguished the court-oriented, refined *priyai* from the syncretic *abangan* tradition of the peasantry and the *santri* of the pious Muslim worldview (Geertz 1960, but see also Latif 2008). Without discussing whether this classification is “correct” or not, we have to note that this adaptation to Bali is understandable in the attempt to acknowledge plurality with regard to possible AMAN membership and to overcome homogenization and limitation to the Hindu Balinese. Nevertheless, it will be difficult to anticipate the consequences of these new distinctions which, as such, emphasise difference by eclipsing similarities and interconnectedness. In fact, the distinction especially between “Bali Mula/Aga” and “Apanage” becomes increasingly blurred by intra Hindu Balinese reformation resulting in standardisation – and by Perda 03/2001, which defines “the Hindu Balinese village” (see above and Hauser-Schäublin and Harnish in press).

Additionally, the progressing economic development (mainly tourism) and urbanisation of Bali and its corresponding lifestyles also raise the question, to what extent does *adat* still determine everyday life, especially of job holders and city dwellers.

All of my interlocutors were aware of the difficulty of defining *adat* without mixing it with *agama* (see Hauser-Schäublin 2011). The latter, religion, is consequently avoided by AMAN as an organisation. It focuses exclusively on *adat* and, in fact, has managed to unite Muslim, Christian, Hindu, and any other followers of ritual practices and beliefs throughout the archipelago by arguing on behalf of *adat*. In the case of Bali, local *adat*, as described in Perda 03/2001, is intrinsically linked to *agama* Hindu (see also Warren 2007). The amalgamation of *adat* and *agama* for the non-Hindu Balinese are

experienced even in their everyday life. It is, therefore, no surprise that Muslim village representatives wrote “*keagamaan*” or “*religi*” into the AMAN list when asked about their local particularities. By contrast, the Hindu Balinese filled in dance performances and the like (Laporan Hasil MUSDA AMAN 2011). Thus, the question I asked my interlocutors was, if the Balinese speak of their *adat* – as Bali Hindu or Hindu Bali – do they not anticipate that it is inseparably interlinked with *agama*?

Most of my respondents denied that *adat* Bali also implies *agama* Hindu. One of them added the term *budaya* (culture) to emphasise the neutrality when he spoke of “*budaya adat* Bali-Hindu”. On further enquiry, he added that Balinese citizens of the Muslim creed are already included in this term; he made a distinction between “*budaya* Hindu” and “*budaya adat* Bali Hindu”. The former implied a Hindu culture, the latter a “culture of Bali Hindu *adat*”. Concerning the name of their religion, he said, he would have preferred “Agama Bali” as the official denomination, but since the national state requires that each citizen follows a world religion, the government would not have accepted this name (Picard 2004, 2011).<sup>19</sup> Therefore, the affiliation with Hinduism as a world religion was chosen and accepted as a name. Today, many Balinese ask themselves whether “Agama Hindu” should not to be changed to “Agama Hindu Bali” to emphasise the localised aspect of this religion (Picard 2011). The interlocutor concluded that it is the spirit of Hinduism that enlivens Balinese *adat*: Perda 03/2001 already makes the interconnection between *adat* and *agama* (especially in the definition of the tasks of Majelis Desa Pakraman) explicit. The same interlocutor added that another forum (Forum Kerukunan Umat Beragama), in which he is also involved, is taking care of harmonious relations between communities of different religions.

In sum, as has become evident, *adat* cannot be treated as an independent category but is interlinked with *agama* – and also with politics. In the province of Bali, the Hindu Balinese are the dominant majority, as acknowledged and reinforced by the Provincial Regulation (Perda 03/2001). All other non-Hindu Balinese – clearly minorities – have become second-class citizens in their own province. This seems to exceed by far the expectations and goals the AMAN founders had in 1999.

However, one of my interlocutors still regretted that local AMAN’s efforts and goals did not sufficiently acknowledge the expectations and claims of Balinese activists, particularly to get a bigger share of taxes from the central government for the benefit of Bali and its culture. He expects the elaboration of more explicit policies from AMAN and, therefore, welcomed the founding (in 2012) of Forum Perjuangan Hak Bali (Forum for the Fight for Balinese Rights, FPHB; see Joewono 2012). One of the main actors is the secretary of Majelis Madya Desa Pakraman in Denpasar.<sup>20</sup>

What are the Balinese AMAN activists’ further expectations concerning AMAN as a nationwide organisation?

<sup>19</sup> Balinese Hinduism was recognised as one of the national religions by the government in 1958.

<sup>20</sup> This forum seems to be founded as a reaction to the Permendagri No. 32/2011 (Peraturan Menteri Dalam Negeri Nomor 32, 2011 Tentang Pedoman Pemberian Hibah Dan Bantuan Sosial Yang Bersumber Dari Anggaran Pendapatan Dan Belanja Daerah). This regulation of the Ministry of the Interior outlines (and redefines) the relationship between the central government and the provinces concerning the redistribution of taxes destined as support and social assistance in the provinces.

One respondent pointed out that a formalized link between Majelis Desa Pakraman (which, ultimately, is an institution set up by the province) and AMAN does not yet exist. A closer cooperation could create more synergy. Since Bali is a province with a high percentage of foreigners living there (work migrants, tourists, investors, business people, etc.), one respondent expressed the hope that the Hindu Balinese will get support from AMAN as a national organisation. AMAN could or should assist the Hindu Balinese in their own endeavour to facilitate the adaptation of foreigners to Balinese culture: The foreigners should learn more about Balinese culture and behave in an appropriate way. This field is seen as a possible interface between AMAN and Majelis Desa Pakraman.

### Addressing the Future: “Bali Goes Global”

An overview of the activities and goals of the Balinese AMAN representatives shows that they predominantly understand AMAN as a national organisation with excellent international networks and donor organisations. They appreciate the direct contact and the exchange of ideas with other AMAN members from different provinces during national meetings. For them, AMAN is seen as a two-way bridge from the local to the national and the global perspective. One of the representatives, who is also member of the UNESCO Board supervising the Balinese UNESCO World Heritage (listed in 2012), emphasised that Balinese culture is now propagated worldwide. The Balinese World Heritage bears the title: “Cultural Landscape of Bali Province: the *Subak* System as a Manifestation of the *Tri Hita Karana* Philosophy” (Cultural Landscape 2012). In the nomination text, the Balinese *subak* or wet rice irrigation system is featured as a social and material expression of the Hindu Balinese “philosophical concept” of *Tri Hita Karana*, which brings together the realms of the spirit, the human world and nature” (ibidem). Described as (an unchanging) spiritual-ecological irrigation model and practice, this important aspect of Balinese culture is understood as an exemplar for the world community: “Balinese culture goes global”, as another respondent called it.

My Balinese interlocutors, almost without an exception, saw the strength of AMAN in shaping the future of their villages and Bali as a province. They realised that the preservation of *adat* is not enough for a viable future. Several of the representatives are running social, economic and ecological development projects or NGOs, some of them with considerable success: I Made Suarnata, the AMAN representative from Pengubenang (Kerobokan), is very active in the environmental NGO Yayasan Wisnu. He and the AMAN representatives from Les and Catur are involved in a number of different projects, all of them with a strong environmental component, such as ecowisata (ecotourism), agrowisata (agrotourism), aquawisata (the rehabilitation of coral reefs for snorkelers) or the production of certified bio coffee. The idea of sustainable economic and social development is prevalent in their expectations for the future. They all aim at empowering the villagers and assisting them in gaining new sources of income by cultivating, at the same time, the “spirit of *adat*” in the sense of *Tri Hita Karana*.

The Yayasan Wisnu also has special programmes for “capacity building” in the villages on its agenda; capacity building should create the prerequisite for the implementation of sustainable projects on the local level. Some of the programmes, which are also promoted by AMAN, are ideologically supported (transfer of knowledge) and even subsidised by international NGOs with whom AMAN has been successfully cooperating for many years (see chapter by Sanmukri). All of my interlocutors were hoping to get more involved in international networks and organisations through AMAN for the sake of their projects. They were all aware of the fact that the label “indigenous people” AMAN used in the English translation of *masyarakat adat* is an advantage in getting interlinked with international organisations and supporters of “indigenous peoples”. If the translation of *masyarakat adat* were “peoples of traditions” (or similar), this would be much more difficult. I Dewa Nyoman Suardana from Penuktukan (Buleleng) reminded that the change of name from *desa adat* in *desa pakraman* is, from an international perspective, a disadvantage. While *adat* has become an established concept which has been translated with “indigenous”, *pakraman* does not fill the same slot. “There are *hukum adat*, indigenous rights, but no *hukum pakraman*, *pakraman* rights; there are indigenous land rights but no *pakraman* land rights; this makes no sense”, he concluded. He has already written and talked about this issue in different media and pleaded for a reintroduction of the term *desa adat*.

The electronic media – email, internet platforms and mobile phones – play a crucial role among the activists in their communication within Bali and beyond. The social media, such as Facebook, are used for the exchange of information and opinion-making. Some of the representatives frequently comment on matters of *adat* and politics in these media. I Made Nurbawa from Belatung (Tabanan), who is working in the regional Broadcasting Commission of Indonesia and is especially experienced in communication matters, highlighted the importance of fast communication in today’s networks. He pointed to the way in which traditional *adat* leaders – those who are in office due to particular *adat* regulations within individual villages – communicate with each other: It focuses on personal face-to-face interactions, mainly during official village meetings, rather than electronic media. In most *desa pakraman*, a man enters the village association – the *krama desa* – only when he is married. The *krama desa* is based on the principle of seniority<sup>21</sup> and a man gradually steps up in the *krama desa* hierarchy the older he gets until he reaches one of the most important positions – unless he is a widower or all his sons are married.<sup>22</sup> In fact, the *adat* leaders in most of the villages – at least those who are not elected but are in office through the gradual promotion in the *krama desa* – are elderly men and, therefore, still belong to the generation who is not familiar with the use of electronic communications media. Communication with *adat* leaders in the villages throughout the province is, therefore, difficult. Furthermore, senior members of the *krama desa* are not necessarily those who are well informed about encompassing issues discussed in provincial, national or international networks.

<sup>21</sup> As has already been mentioned, the most important *adat* offices in some villages are tied to particular families and are passed on patrilineally.

<sup>22</sup> In this respect, some local variations exist; but in general, a man has to step down from the *krama desa* when his sons are married and have children.



Modern technology plays an important role in today's organisation of AMAN Bali, as well as of *adat* temple ceremonies (here, doing the accounts in the temple Bale Agung in Catur village after its sumptuous renovation and elaborate rituals).

Photo: Brigitta Hauser-Schäublin 2012

By contrast, a local AMAN representative is independent from the otherwise binding rules of *adat* of his village if he wants to start some special activities and cooperation with NGOs. One of my interlocutors praised AMAN membership and the freedom it provides when he said: "I attended AMAN meetings when I was still a very young man and I can continue far beyond my 60s; I can stay and be active as long as I want." Another respondent praised the democratic principle of AMAN because everyone can be elected as a representative: "There [in contrast to the national parliament] I really see people on the council who are like me, ordinary people."

Nevertheless, some of the representatives who were very much in favour of AMAN's democratic principles got caught up in contradictions. One of them lamented that some NGOs at an AMAN congress in Pontianak (Kalimantan), KMAN III 2007 pleaded for an equal participation of women in AMAN matters. My interlocutor argued that *adat*, politics and decision-making is the domain of men according to Balinese *adat*. Yet, *adat* and its values should be protected; gender equality and women's rights, therefore, run contrary to Balinese *adat*. In spite of his (and others')

opposition, the AMAN congress decided to give women the same rights as men; AMAN's provincial representatives have to consist of one man and one woman.<sup>23</sup>

This interlocutor apparently did not think that the democratisation he had welcomed in matters of *kerama desa* membership and *adat* leadership also contradicted village *adat*. *Adat* rights and human rights – indigenous groups have received international support thanks to the UN Human Rights Convention and subsequent declarations – are, at least in some points, incongruent (see also Bouchier 2007:125; Warren 2007:198). However, as several respondents remarked, democratisation and development imply “social transformation”. One interlocutor emphasised that social transformation will be necessary for Balinese villages so that they may confidently look ahead and not only back to the past and its traditions. Some also mentioned “multicultural” coexistence and tolerance when asked about what they understood by social transformation. One representative added that it is only recently that people have started to categorise themselves and others according to *agama*, thus highlighting differences and eclipsing commonalities. Here, social transformation means to bring people out of their shell – without losing one's own roots in *adat*.

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<sup>23</sup> In Bali, the female AMAN representative of Bali province is the wife of a male AMAN representative of a *kabupaten*.

# Whose *Adat* is it?

## *Adat*, Indigeneity and Social Stratification in Toraja

*Karin Klenke*

### Introduction

During my fieldwork in Toraja in 2009/2010<sup>1</sup>, the *adat* elders of noble descent with whom I discussed the ongoing nomination process of Toraja as World Heritage surprised me with their enthusiastic engagement with the politics of indigeneity: Most of them were active in the local branch of the Aliansi Masyarakat Adat Nusantara (AMAN, Indigenous Peoples Alliance of the Archipelago).<sup>2</sup> Indigeneity is generally understood – whether it be in the field of politics and international law or in anthropological research – as being at least partly opposed to a state, as a socially, economically and politically marginal or marginalised position in the context of a

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<sup>1</sup> I conducted a total of ten months of fieldwork in Indonesia (from October to November 2008, from September 2009 to April 2010 and again in May 2011) as a researcher with the Brigitta Hauser-Schäublin led project “Transcultural authorship, copyright and film. The case of funeral rituals among the Toraja in Sulawesi, Indonesia”. The project was part of the German Research Council (DFG) funded Interdisciplinary Research Unit “The Constitution of Cultural Property” at Göttingen University. I would like to thank Brigitta Hauser-Schäublin, Stefanie Steinebach and Jovan Maud for their comments and criticism of earlier versions of this paper.

<sup>2</sup> By equating indigeneity with *masyarakat adat* in the Toraja case-study, I follow my interview partners who used the terms interchangeably.



nation state.<sup>3</sup> However, my interview partners were not marginal. They represented the government in Toraja: the acting Regent, a former Vice-Regent, the Regional Secretary, a retired high officer from the State Ministry of National Development Planning in Jakarta, heads of local government offices, and so on. They all came from the ruling families of the 32 *adat* districts which make up the Toraja highlands and many of them held high church positions. Why were mostly very well educated, influential and affluent noble Torajans, firmly integrated in powerful institutions, so eager to claim an indigenous identity? Their explanations – *adat* lay at the core of indigeneity and they, as members of the ruling local elite, had the greatest command over *adat* – stirred up my interest in exploring the deployment of *adat* in claims of indigeneity in a stratified society. Indigeneity may be the only empowering subject position, the only place of recognition possible to inhabit, for groups like the Batin Sembilan (see the chapter by Steinebach in this volume), the Orang Rimba (Steinebach 2012) or the Wana (see the chapter by Grumbly in this volume). Toraja noble elders, however, have greater agency in their engagements with the national government, an agency which they happily employed in the past and still do. Why would people who are part of the local or regional – or in some cases even of the national – elite want to claim an identity that seems to make them marginal by definition?

## Indigeneity as a Relational Identity

As several writers have pointed out, the meaning of indigeneity is not based on essential qualities or inherent properties, but emerges in a process of differentiation, that is, in relation to what is understood as not indigenous in distinct historical social formations (see Cadena and Starn 2007b:4; Li 2000:151; Niezen 2004:70; Merlan 2009:304-5).<sup>4</sup> Even the vague attempts at criterial definitions in the sphere of international law by Martínez Cobo (1983) or Daes (1996) rely partly on a relational understanding as the processes of settlement and of marginalisation encompass “the indigenous” and its “other”.

While I share the constructionist approach, I also endorse Li’s warning against interpretations that “seem to suggest that maximizing, goal-oriented actors switch or cross boundaries in pursuit of their ends, approaching questions of identity in consumer terms, as a matter of optimal selection” (2000:150). Instead, she argues that a group’s self-identification is rather “a positioning which draws upon historically sedimented practices, landscapes, and repertoires of meanings, and emerges through particular patterns of engagement and struggle” (2000:151). While the patterns and formations that enable the emergence of a certain articulation of indigeneity are ever

<sup>3</sup> Definitions in international law and in the UNESCO Declaration on the Rights of Indigenous People have deliberately been vague and non-binding, giving priority to self-identification (see the chapters by Göcke and Cabrera in this volume). They all stress, however, that indigenous people are not hegemonic (Martínez Cobo 1983:379).

<sup>4</sup> This statement cuts short a long and controversial discussion about the “nature” of indigeneity. See Kenrick and Lewis (2004) and Mackey (2005) for an (at least strategically) essentialist understanding. Kuper (2003; 2005:204-218) staunchly rejects even the idea of indigeneity.

changing, indigeneity generally describes the relationship between a marginalised, culturally distinctive group and a somehow culturally unmarked hegemonic other.

## Emerging Indigeneity in Indonesia

The Indonesian term for indigenous community is *masyarakat adat*, which means literally *adat*-based community. This term is confusing, since in public understanding, it is taken for granted that every Indonesian “has” *adat*, which is seen as the basis for one’s ethnic identification. As Indonesians are not faced with a hegemonic settler population and each ethnic identification – be it marginalised or hegemonic – is based on *adat*, *adat* cannot be immediately equated with marginality or indigeneity. As Tsing summarised: “Indigeneity is not a self-evident category in Indonesia. Almost everyone is ‘indigenous’ in the sense of deriving from original stocks; Indonesia is not a white settler state” (2007:34). No claims to rights, resources and political participation can be based on *adat* alone.

The conceptual equation of *masyarakat adat* with indigeneity emerged from specific social formations: the experience of economic, political, social, and religious marginalisation which many groups – mostly ones living in sparsely populated, resource rich areas like rainforests – have suffered during the developmentalist New Order regime (see chapter by Arizona and Cahyadi in this volume). As so-called *suku terasing* (isolated tribes) and later as *komunitas adat terpencil* (remote *adat* communities), they were the target of heavy social engineering programmes aimed at “modernising” them and turning them into proper citizens: “By working to assimilate these people into normative Indonesian standards and grouping them into discipline-oriented villages, the program provided a striking and inexpensive model of how development was to operate at a national scale” (Tsing 1999:171; see also Duncan 2004). Forests inhabited by nomadic groups were opened up for resource exploitation, thus robbing these groups of their livelihoods. Such resource conflicts led to the foundation of local NGOs which, in turn, attracted the attention of international NGOs with an ecological agenda. Although ecological issues were very often not at the core of the conflicts, ecology was one of the few public spaces in Suharto’s repressive New Order regime where social protest was possible (Tsing 2007:37). *Adat* emerged as the most promising common political term in the ongoing discussions and struggles. It was neutral enough by its common usage in Indonesia not to stir suspicion; it bore the possibility of positioning local juridical norms and rights against the national laws, and it could easily be brought into dialogue with transnational activism, such as the indigeneity movement. During the first clandestine nationwide meeting of representatives of these groups and NGOs engaged in their struggle in Rantepao in 1993, the umbrella term *masyarakat adat* was chosen (Moniaga 2004), a term most groups had used for themselves instead of the derogatory *komunitas adat terpencil*.<sup>5</sup>

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<sup>5</sup> See Acciaioli (2007) and Moniaga (2004, 2007) for an analysis of the emergence of *masyarakat adat* as a political category in Indonesia.

While the term *adat* has not acquired political or juridical implications during the New Order, the term *masyarakat adat* implies the experience of marginalisation by the nation state and is associated with political and juridical claims. The political implications of the terminology are made clear by the comment the representative of Indonesia made in the UN General Assembly immediately after the adoption of UNDRIP: “Given the fact that Indonesia’s entire population at the time of colonization remained unchanged, the rights in the Declaration accorded exclusively to indigenous people and did not apply in the context of Indonesia. Indonesia would continue to promote the collective rights of indigenous peoples” (sic!) (UN 2007). While he – just like Tsing – concedes that all Indonesians are “deriving from original stocks”, there is a fine difference: For the Indonesian state, it is only marginalisation by white settlers that transforms minorities of “original stocks” into indigenous people.

As numerous studies have shown, *adat* can take on various meanings and be deployed for different purposes (Davidson and Henley 2007; for central Sulawesi, see Li 2007b). In the context of indigeneity, *adat* also opens up various possibilities from claiming land rights (Steinebach in this volume) to the pacification of a region after violent conflicts (Müller in this volume). The deep involvement of Torajan activists of indigeneity with the structures of the nation state, with indigeneity’s “other”, thus gives rise to promising questions about the uses of indigeneity in a stratified society.

In my reading of the noble Torajans’ activism, indigeneity is an emergent form of negotiating relationships with others – with institutions and actors beyond the state level, with the national government (never as monolithic as implied by the singular noun), with the imagined community of Indonesia as a multi-ethnic society, with regional neighbours like the Bugis and the Makassar, and also – and maybe most importantly – with Torajans of non-noble descent. What kind of agency vis-à-vis these institutions and actors is engendered by the employment of *adat* as indigeneity which an agency based on shared citizenship, religious or political affiliation or democratic representation does not grant?

## Outline of Toraja

The region of Toraja is located in the highlands of South Sulawesi. The fragmentation craze of decentralisation led to a split of the former district Kabupaten Tana Toraja into the regencies *Toraja Utara* (North Toraja) and *Tana Toraja* in 2008.<sup>6</sup> The population numbers almost 430,000 people, overwhelmingly Torajans, but also Bugis, Makassar and Javanese. Due to migration of mostly landless Toraja since the 1970s, an even larger number of Torajans live outside Toraja.<sup>7</sup> In 2005, 88.7% of the Toraja

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<sup>6</sup> When I talk about “Toraja”, I refer to these two regencies.

<sup>7</sup> The homepage of the former regency of Tana Toraja mentioned more than 600,000 migrants in 2007 (Kabupaten Tanah Toraja 2007).

population were Christians (56.5% Protestants and 32.2% Catholics), 7.3% were Muslims and 4.0% were Hindus (BPSKITT 2007:102).<sup>8</sup>

Toraja was a stratified society with a ruling nobility, free commoners and slaves in pre-colonial times. The local articulations and the flexibility of this stratification varied widely between *adat* districts.<sup>9</sup> Within the nobility, status was primarily dependent on a person's descent from the clan's *tongkonan*, the ancestral house. The older the *tongkonan* was, the higher the status of the noble clan (see Waterson 2003; 2009:123-200). The lavish funeral ceremonies, of which the length, elaborateness and grandeur depended on one's rank, were the central social arena for claiming, reproducing, enhancing, and contesting status. The claim to high status was open to contestation and a source for intense competition among the nobility. Gender is a largely unmarked category in Toraja. While there is a gendered division of labour, it does not result in fixed hierarchies (Waterson 2009:242). The main axis of social inequality in Toraja runs along the lines of stratification, not gender.

In contrast to the centralised Islamic kingdoms of the Bugis and Makassar in the lowlands, the highlands were never politically united in pre-colonial times (Waterson 2009:25).<sup>10</sup> The relationship between lowlanders and highlanders was based on warfare, trade and marriage. Noble highland leaders sold a large number of people of lower descent as slaves to Bugis traders. It is estimated that up to 10-15% of the population were sold (Waterson 2009:82). Noble marriages and trade notwithstanding, the relationship between Torajans and Bugis was uneven: Torajans, who refused to take on Islam but held on to *aluk to dolo*, were seen as inferior unbelievers, their political structures lacking in complexity and sophistication. Bugis frequently raided the highlands and took Torajans of all ranks as slaves.

The highlands came under Dutch colonial rule in 1906. For administrative reasons, the Dutch divided the region into 32 *adat* districts, each headed by a noble leader. The internal fragmentation as such and the differences in *adat* between these 32 districts are central to the Torajans' understanding of themselves as an ethnic group. The Calvinist Dutch Reformed Mission set up the first mission post in 1913 in order to create a buffer against the lowland Islamic neighbours by Christianizing the upland "heathens". The Christian mission was unsuccessful during colonial times, but conversions sped up rapidly after independence.<sup>11</sup> The idea of the people living in the highlands as indeed being "a people" slowly developed under the influence of the converging forces of strategic political considerations of the ruling noble leaders, linguistic research by the missionaries, a self-conscious religious differentiation from the Islamic lowlanders, and colonial administrative measures (Roth 2004). The inhabitants of the highlands finally fully identified (themselves) as Torajans in the 1930s (Bigalke 2005:149-179).

<sup>8</sup> The 4 % Hindu are probably mostly followers of the local religion *aluk to dolo*, which gradually lost its appeal after independence. It was successfully registered as a variant of Hinduism at the Indonesian Department of Religion in 1969 (Waterson 2009:356).

<sup>9</sup> For an excellent discussion of the intricacies of Toraja stratification see Nooy-Palm (1979:43-57).

<sup>10</sup> The name "Toraja" stems linguistically from the Bugis expression *to rija* – "the people living upstream", and does not refer to shared cultural features but to a geographical location.

<sup>11</sup> A detailed analysis of the historical context of conversions and the consequences of the mission for the local religion *aluk to dolo* is provided by Waterson (2009:297-430).

Today, the council of the noble leaders of the 32 *adat* districts, the *kobongan kalua*, is the highest political *adat* institution in Toraja, while the two regional parliaments (DPR-D) are the highest political institutions in terms of the nation state. The political landscape of Toraja is thus characterised by legal pluralism and by intense centrifugal and centripetal forces that are constantly in flux.

The highland economy is predominantly based on wet rice cultivation, cash crops, such as spices or the famous Toraja coffee, and tourism. Ownership of land is extremely uneven. This dates back to the times of the slave trade when some members of the nobility

had amassed huge acreages of rice lands seized from rivals or those too weak to resist. The coming of the Dutch, while it halted these destructive processes, also had the effect of confirming and consolidating patterns of ownership as they were at the moment of takeover.

(Waterson 2009:82)

Landlessness, as has been said before, is one of the prime reasons for migration. The coffee plantations and big hotels are, with only a few exceptions, owned exclusively by Torajans or at least by holdings with prominent Toraja participation (Aditjondro 2010:66-76). Toraja has no history of resource conflicts with the state or state-supported companies.

The region was included in Indonesia's Second Tourism Development Plan from 1974-1978 and saw an amazing increase in the numbers of domestic and foreign tourists from the late-1960s until the mid-1990s. Since 1994, visitor numbers have dropped sharply from more than 261,000 to only about 32,000 in 2005 (BPSKTT 2007:212-213) and are hardly recovering at all, a fact of great concern for the regional and local administration and the Torajans working in the tourist business.

The position of the Toraja nobility in colonial times was challenged by the formal abolition of slavery and other rank-related rights through the Dutch administration, although the Dutch still relied heavily on the nobility as their local counterparts (see also the chapter by Thufail in this volume). Christian theology which posits that all men are equal before the Lord (although with a Calvinist twist in Toraja) threatened noble hegemony as well, as did the postcolonial state with its democratic constitution. In the post-Suharto years, the nobility succeeded in expanding their *adat*-based political hegemony into the sphere of representative democracy and state administration: High positions, such as heads of government offices, have always been held by noble Torajans, but the new policy of *putra-daerah* ("children of the region"), which gives preference to local candidates, has further consolidated the access of noble Torajans to high positions – often to the distress of Torajans of non-noble descent.

Stratification has been of high significance in many regions of Toraja up to the present day, but the meritocratic orientation of the migrant population poses new threats to the *adat*-based privileges of high-ranking Torajans. Toraja migrants of lower

descent are now able to amass riches outside the highlands. They wish to transform this wealth into social capital via big houses and grand funeral ceremonies, or into powerful political positions such as the regent. Contestations of rank and status, therefore, do not only occur on a horizontal axis between competing noble families, but also on a vertical axis. Stories abound concerning successful Torajans of slave or commoner descent whose ambitions in the field of politics or ritual are stymied by the firm grip the nobility still has on *adat* regulations and by the influence the noble leaders command over the voting behaviour of the descendants of their former slaves. While I cannot judge the empirical basis of these stories, their existence and the excitement with which they are told point to the intense contestations under which the system of rank finds itself.

Although *adat* is a given in research on Indonesia and a cornerstone of Toraja identity today, Torajans have only “had” *adat* for about 100 years. In pre-colonial times, *aluk to dolo* was an encompassing system regulating the relationships among humans, between humans and their natural environment, and between humans and the deities and ancestors (see Waterson 2009:297-351). In contrast to religion (*agama*), *aluk to dolo* was unseparable from other aspects of life. One of the most important tasks of the missionaries was, therefore, to carefully filter Toraja (ritual) life and belief in search of incompatibilities with Christianity, since “heathen” magical beliefs lurked everywhere. All rituals bordering too closely on or even trespassing over the line between “just culture” and “magic” were not allowed for Christian Torajans. This process gradually led to an almost complete loss of all “magical” rituals aimed at enhancing fertility, while the funeral rites, of which only some aspects were forbidden and some re-interpreted, were continued. The mission process, thus, not only brought the concept of a separable sphere of *agama* as “religion” to the highlands, it also instilled the idea of a complementary secular sphere of *adat*.

After this glimpse into basic features of Toraja life, I will scrutinize the historical trajectory of *adat* in different fields: the mission process, the development of tourism in the 1970s, the UNESCO World Heritage nomination and, finally, AMA Toraya.

## ***Adat* and Tourism**

Communal ancestral houses and lavish rituals had been seen as proof of the backwardness and irrational wastefulness of outer island inhabitants from the perspective of modernisation and development in the 1950s and 1960s (Adams 2006:101). Against this backdrop, some ethnic groups ranked higher than others: With Javanese court culture in the centre, cultural sophistication was seen as gradually declining in concentric circles, positioning outer island inhabitants at the fringes of and nomadic rainforest-dwellers beyond the limits of cultural worthiness. TV coverage of a Toraja funeral ceremony in 1978 which had cost US\$ 225,000 stirred debates about whether these rituals were proof of the vitality of “traditional cultures” or rather a symbol of the lack of economic reason of the highland population (Volkman



Pana, a hamlet which is not officially recognised as a “tourist object”, boasts of the global tourist attention it nevertheless attracts. Photo: Karin Klenke 2008

1984b:191). It was the economic promise of tourism which brought new recognition to these “backward” structures and practices.

Tourism loomed large in the modernisation scheme of the New Order regime, as it was hoped that it would not only attract an international public and, thus, foreign money, but also national visitors for the sake of postcolonial nation-building. Since cultural tourism relied on what is called today “traditional cultural expressions”, an understanding of *adat* in the form of *seni* (arts) and *budaya* (culture) was supported. Kipp called the resulting effect of these efforts “showcase cultures” (1996:108), de-contextualised and often reformulated or invented little gems of folklore which had to be visually consumable, as most tourists do not speak Indonesian or local languages.

As one of the regions included in the Second Tourism Development Plan in the 1970s, Toraja was to be developed into a cultural destination. Many Torajans were excited about the recognition their cultural expressions attracted and published booklets, brochures and books which focus on Toraja culture in this folklorised sense. One example is “Dances in Toraja” by Beatrice Bulu (1989), who served – among other influential positions in the civil service – as the head of the local Department for Tourism and Culture. The book starts with forewords written by several high-ranking government officials at the regional and local level. The Governor, Mr. Amiruddin, writes:

I have the pleasure in contributing this brief foreword to the publication of “Dances in Toraja”, the product of a creative mind of a native writer in her attempt to participate in developing preserving (sic!) the local culture which is a source and foundation of national culture. This coincides with the Indonesian government’s policy on intensifying the tourism sector. At the time when national development, which includes the tourism sector, is being intensified the role of textbooks on culture and tourism is becoming more important and should be effectively utilized. As the Governor of the Province of South Sulawesi it is my earnest hope that the publication of this book will encourage and challenge other native writers to explore and expose the local culture of South Sulawesi, a potential element of the National culture and National development.

(Bulo 1989:vii)

As elsewhere in New Order Indonesia, everyday life in Toraja had to be carefully reflected as to which of its aspects could be transformed into a “culture of spectacle” (Acciaioli 1985). Death rituals were marketed as archaic and exotic remnants from the past and are even today an indispensable part of every highland tour package. Elaborately carved *tongkonan* of the nobility became an icon of Toraja-ness and disseminated into Makassar architectural style and even onto the 5000 Rp banknote.<sup>12</sup>

Tourist attention was, however, not given to humble slave funerals or plain and uncarved *tongkonan* of Torajans of lower descent. While *adat*, of course, encompasses the life of all Torajans, it surfaced as purely noble *budaya* (culture) and *seni* (arts) in the field of tourism. Toraja *adat* elders were quick to grasp the advantages of tourism for their own endeavours. Old feuds and competitions could be fought anew in the field of tourism.

When tourism development accelerated in the 1980s, the Northern nobility under the leadership of the *adat* district Kete Ke’su’ succeeded in securing “tourist object” status almost exclusively for Northern sites (Adams 2005). The sites certified attracted government money, tourism development projects and visitors.<sup>13</sup> Luxury hotels sprang up, mostly built by noble Torajans from within or outside of Toraja.

The state’s interest in tourist revenues did not always coincide with the interest of the nobility in promoting their status via tourism. The Regent of Toraja, a Bugis, issued a statute in 1985 that for touristic purposes, all Torajans living on the main roads had to decorate their houses with carvings. The call to carve houses irrespective of the rank

<sup>12</sup> The importance of tourism in and for Toraja has been reflected in a number of anthropological analyses. The early development of tourism is discussed by Volkman (1982; 1984a; 1984b; 1987). For an intricate study of the mutually constitutive fields of tourism and “culture” in Toraja, and the Indonesian state as an important actor in shaping the local understanding of Toraja culture, see Adams (2006).

<sup>13</sup> Money provided by the state and foreign NGOs went into the renovation of noble *tongkonan*, while 60% of the entrance fees to officially registered tourist objects go to the noble clan which is responsible for the oldest *tongkonan* in the hamlet.



of the inhabitants transformed carvings from a marker of social status into a mere decoration or a marker of an encompassing Toraja identity and was fiercely protested against by noble Torajans (Adams 2006:107). Noble tourist culture was contested from below as well: Tour guides of lower descent resented the teachings of noble *adat* elders about the meaning of carving motives – mostly related to highland flora and fauna – as an expression of rank and suggested instead that they were proof of the Torajans' early environmentally conscious attitude (Adams 2006:98-9).

Tourism development started at a time when the central government still had a firm and defining grip on the outer islands. Entering the national public sphere via *budaya* and *seni*, therefore, helped to counter the image of the backward mountain dwellers living in communal houses and wasting money on useless rituals: Torajans had something valuable to offer to the young nation, even if it were external actors – the tourists – who attributed this value to Toraja culture. Tourism also helped to redefine the hierarchical relationship vis-à-vis the historically hegemonic Bugis: When Joop Ave, then Minister of Culture and Education in Jakarta, called Toraja the touristic “prima donna” of South Sulawesi and declared that Makassar was the entry port to Toraja, he summed up the symbolic impact of Toraja tourist hegemony in South Sulawesi (Adams 1997:163).

While not intended by the state, *budaya* and *seni* relied on selected and isolated elements of *adat*, which are a privilege of the nobility. It brought the greater share of recognition, money and status to the upper stratum of Toraja society and opened new realms of agency for noble Torajans. Their networks and entanglements connected Jakarta, Makassar and Toraja and encompassed the spheres of *adat*, state administration, private business, and early NGOs. Involvement in tourism development, a long experience with the tourist gaze (and the acute awareness of and pride in the constant and intense anthropological attention they attracted and still attract) have deeply shaped noble Toraja reflections and understandings of themselves. The idea that *adat* contains something like *budaya* (culture) or *seni* (arts) evolved from these encounters with institutions and people that looked for “culture” in what was once *aluk to dolo* and later *adat* to Torajans.

## ***Adat* and the World Heritage Nomination**

The UNESCO World Heritage nomination, the early history of which is insightfully told by Adams (2010), grew out of the historical rivalry between the *adat* districts of Kete Ke'su' in the North and Sangalla in the South, which dates back to mythological times. The noble clan of Kete Ke'su' started the initiative in the early-1990s in order to secure their status. One family member, a skilled carver and heritage educator, worked in the Department for Monument Preservation in Makassar; and a distant family member was the right-hand man of Joop Ave, the Minister for Culture and Tourism – a happy coincidence which made the project promising. In the mid-1990s, the Indonesian government put Kete Ke'su' on the tentative UNESCO World Heritage list. In 2001, an ICOMOS delegation saw Kete Ke'su' authentic and outstanding enough to become a World Heritage Site (ICOMOS 2001:87-90). After some

backlashes, the nomination was reformulated as Cultural Landscape, encompassing several sites including Kete Ke'su'. In 2005, the Department of Culture and Tourism produced a nomination document, which has not yet been submitted to UNESCO.

The material structures which constitute the "Tana Toraja Traditional Settlement" are the richly carved *tongkonan* with the accompanying rice barns (*alang*), ceremonial grounds (*rante*) with menhirs (*simbuang*) commemorating noble burials, and hanging graves (*liang*) or rock graves with wooden effigies (*tau-tau*). As in the field of tourism, the structures nominated for consideration as UNESCO World Heritage are exclusively a materialisation of Toraja noble rank.

According to UNESCO (2008), the outstanding value of a site is based on authenticity and integrity, which, in turn, are guaranteed by customs, knowledge, economic uses, and spiritual practices. The continued existence of a "traditional way of life" is, therefore, a prerequisite for a successful nomination. The seemingly disparate elements of the Toraja nomination are bound together by *adat*. Although not named specifically – as UNESCO World Heritage does by definition exclude intangible phenomena – *adat* is clearly the thread that weaves the material structures into a thick fabric of culture which fulfils the UNESCO criteria of authenticity and integrity (see also ICOMOS 2005). In contrast to the folklorised and de-contextualised *adat* as *budaya* and *seni* in the realm of tourism, *adat* in the World Heritage context appears as a holistic entity which guarantees the authenticity of the sites by its timeless character and the integrity of the traditional lifestyle. The nomination document stresses accordingly: "Tana Toraja Traditional Settlement is a living tradition. It is a heritage that has been handed over from generation to generation for at least 700 years or even longer back to prehistoric time" (Department of Culture and Tourism 2005:27).

The authenticity and integrity of *adat* was enthusiastically endorsed by the *adat* elders from the nominated sites. They explained the rightful nomination of their own site with their strict adherence to *adat* and never hesitated to cast serious doubt on the authenticity of the neighbouring district's material structures or lifestyle. Local *adat*, my interview partners said, not only proved its strength and authenticity by the preservation of *tongkonan*, but also by adherence to social stratification. In order to contest the authenticity of Kete Ke'su's, an *adat* elder from a rivalling district pointed out to me that the nobility in Kete Ke'su' had actually begun to eat together with their slaves and thus their nomination could not be justified. Kete Ke'su' elders, in turn, tried to cast doubt on the integrity of another site by questioning the rank of its ruling family:

In the South, it has become very difficult to determine if their *esolon* 1<sup>14</sup> is still actually true. Like the person you have been talking about: His father definitely was *esolon* 1, but is it true that he himself is still *esolon* 1? We don't know .... That is because there are some who say "My father was *esolon* 1 so I must be *esolon* 1 as well". But you cannot take that for granted! It also depends on your deeds, on your thinking, on your character and the like.

(Interview Bapak T., December 2<sup>nd</sup> 2009)

<sup>14</sup> *Esolon* is the Indonesian term for the ranks of civil servants, with *esolon* 1 being the highest rank.

Kete Ke'su's nomination and the exclusion of others were in turn defended by an *adat* elder from a neighbouring district:

Further to the North, in Tondon-Maranthe and Sa'dan-Balusu, everything is already modern, because commoners and slaves are now allowed to slaughter as many buffaloes as they please during funerals. The people do not adhere to the rulings of the nobility anymore. Kete Ke'su' as the centre of Toraja, however, still follows the *adat*. ^

(Interview Bapak Viktor, February 9<sup>th</sup> 2010)

In contrast to the field of tourism, *adat* in the context of World Heritage is not de-contextualised and folklorised as “culture” and “arts”. While in everyday life, *adat* is understood to be flexible and, hence, able to deal with and integrate transformations and new challenges, in the context of the UNESCO nomination, it emerges as a holistic, unchanging and timeless foundation of Toraja life.

With UNESCO, a powerful institutional player from beyond the confines of the nation state had entered the field in which Torajans negotiate relationships. To secure “outstanding universal value for humankind” – the definition of a World Heritage site – for one's own district would be an extremely powerful argument in any local status competition. It would also symbolically reverse the ethnical hierarchies in South Sulawesi. No one, my interview partners frequently mentioned gleefully, had ever considered Bugis culture worthy of international recognition! The same held true for the position of Toraja in the ethnic mosaic of Indonesia: Borobudur, the world-famous monument with UNESCO World Heritage status, was definitely beautiful, Bapak Viktor told me. However, it was also dead, because there was no thriving community which would fill it with life. It was just like a dusty museum, not based on living *adat*. While the adherence to *adat*, to ancestral houses and elaborate ceremonies had once been a sign of backwardness in the development-oriented nation, it now propelled Toraja to the forefront of international cultural politics. However, Torajans were still painfully dependent on the state for submitting the UNESCO nomination.

UNESCO's insistence on authenticity and integrity (2008:21) also offered a powerful argumentative resource for social stratification. The material structures to be nominated relied existentially on stratification and any substantial change would endanger the authenticity and integrity of the sites. The idea of *adat* as a guarantee for authenticity and integrity, therefore, emerged from a specific formation of state, local actors and UNESCO as a transnational player. It consolidated the nobility's hegemonic position with new arguments of authenticity and integrity and, thereby, moved it from the political field into the realm of culture and heritage. Somehow, stratification became an authentic and interesting cultural feature in need of protection by UNESCO.

## ***Adat* and AMAN**

As mentioned at the beginning, many of the *adat* elders I knew from the World Heritage nomination and as representatives of different government offices were active in AMAN. Bapak Palimbong, the head of AMA Toraya (Aliansi Masyarakat Adat Toraya)<sup>15</sup>, had already taken part in the legendary first meeting and demonstration of *masyarakat adat* in Jakarta in 1999. At that time, he was in charge of the arts section at the local Department of Culture and Tourism. The late Bapak Sombolinggi, a high noble Toraja elder and head of the NGO Wahana Lingkungan Hidup Indonesia (WALHI, Friends of the Earth Indonesia), which had facilitated the first meeting of *masyarakat adat* in Rantepao in 1993, had invited him to join the meeting in Jakarta. Bapak Palimbong found the motto of the demonstration – “If the state does not acknowledge us, we will not acknowledge the state” – too extreme, but realised the importance of the movement. Based on his initiative, AMA Toraya was founded in 2000, six months after the first AMAN congress in Jakarta. Bapak Palimbong became Vice Regent of Toraja in 2000.<sup>16</sup> Toraja noble elders quickly became involved in AMAN on different levels (see Tyson 2010). Membership in AMAN, however, is a contested issue in Toraja, as nobles from competing *adat* districts claim to be the only officially recognised AMAN representative and try to prevent others from gaining access to the structures and resources.<sup>17</sup> While some Torajans of high noble descent hold prominent positions in the AMAN headquarters and in indigenous peoples’ organisations on the national and international level,<sup>18</sup> Bapak Palimbong and his group are quite reserved when it comes to the sometimes radical stance of the national headquarters of AMAN. However, they are regular participants in the seminars and workshops that are offered on the international level funded by UNDP (United Nations Development Programme) or AIPP (Asia Indigenous Peoples Pact) in Thailand, Malaysia or Indonesia (see chapter by Sanmukri in this volume). They attend seminars in ecological agriculture, take part in gender training workshops or send their sons and daughters to seminars for future indigenous leaders (*mengkader pemuda/pemudi adat*) in order to prepare them for a possible leadership role in their respective *adat* district.

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<sup>15</sup> “Toraya” is the Torajan word for Toraja.

<sup>16</sup> His term ended in 2005.

<sup>17</sup> AMAN membership is not based on a representative system, which means that several groups from one *masyarakat adat* or ethnic group can register with AMAN. See Acciaioli (2007:299-303) for further explanations.

<sup>18</sup> Ibu Den Upa Rombelayuk, the wife of the late Bapak Sombolinggi, who facilitated the first meeting of *masyarakat adat* groups in Toraja in 1993, was one of the heads of the founding board of AMAN and head of AMAN’s committee for indigenous women. Their two daughters both worked for AMAN and are now transnational activists with the Asia Indigenous Peoples’ Pact (AIPP).



The late Bapak C.L. Palimbong, head of AMA-Toraya until his death in 2010 delivers the opening speech at the official ceremony for AMA-Toraya's 11<sup>th</sup> birthday  
Photo: Karin Klenke 2010

The intertwined structures and personnel of AMAN and the local administration brought almost instant success to local AMAN endeavours:

- In 2001, the DPR-D officially recognised the *kobongan kalua*, the representative body of the 32 *adat* districts as the most important self-governing body in Toraja.
- Also in 2001, the DPR-D passed the “back to *lambang*” regulation: the re-organisation of territories at the village level into *lambang*, pre-colonial units based on *adat*. The *lambang* regulation has detailed guidelines which – among other aspects – state that only members of the highest social strata may be elected as heads of *lambang* (*kepala lambang*). While this was (somehow paradoxically) seen as a step furthering democracy on the grass-root level, the effects were not completely positive, as de Jong describes: “The key positions in the *lambang* administration are filled only by members from the highest class, and they make decisions which are largely in the interests of this class. As the *lambang* representative body includes the same people as the *adat* committee, it becomes difficult to function as a controlling committee that represents the best interests of all layers of society. In fact, the interests of the executive and the legislative are largely intermingled, paralysing the controlling function of the legislative committee” (2009:279).
- In letter No. 222/II of 2005, the Regent formally recognised the 32 *adat* districts and the legitimacy of their representation by the noble *adat* leaders in the *kobongan kalua*. He further obliged himself to consult with the *kobongan kalua* before he granted any concessions for the exploitation of natural resources and officially recognised the *masyarakat adat* of Toraja as the most important partner for the state administration in governing and developing the regency.

Some AMAN members pursue personal interests in the field of folklore: The late Bapak Palimbong was an ardent collector of Toraja culture in a folklorised sense and the founder of the *Yayasan Torajalogi* (Society for Torajalogy). He made an – as he called it – inventory of Toraja arts (*kesenian*) and published four books: one on Toraja carving motifs, one on the legend of LakiPadada, a third one on Toraja proverbs, and the last one on the *tongkonan* as a political institution. His dream was to create a huge outdoor living history museum, where visitors could watch people pursue an authentic Toraja lifestyle without electricity and the amenities of modern life.

Bapak Palimbong's numerous activities notwithstanding, the most important AMAN activities within Toraja were the return to traditional political structures and the (re)consolidation of noble hegemony. On March 20, 2010, I witnessed the *Hari Kebangkitan AMA Toraya ke11*, the festivities for the 11<sup>th</sup> anniversary of the founding of AMA Toraya. The perfectly choreographed event took place at the *tongkonan* of the regional secretary of Kabupaten Toraja Utara, who was Bapak Palimbong's deputy in AMA Toraya. The event was exclusively for the heads of the *adat* districts with their delegations and the sub-district head (*camat*) from the sub-districts (*kecamatan*). State and *adat* leaders often came from the same noble family, but were sometimes even one and the same person. Many candidates who ran for the position of regent in 2010 were present as well. Bapak Dalipang, the acting-regent of Toraja Utara held a speech, as did Ibu Den Upa Rombelayuk, who was introduced as a Toraja delegate from the AMAN headquarters. In his speech, Bapak Palimbong stressed that the *masyarakat adat* in Toraja is the nobility, because they know, guarantee and pass on the *adat*. The rest of the Torajans are *masyarakat kecil* ("little people"), as he called them. This might be true, as no "ordinary" Torajans I talked to had ever heard of AMA Toraya before and found it to be a typical noble project.

In the context of indigeneity, *adat* does not surface as *budaya* or *seni*, such as in tourism (except for Bapak Palimbong), or as a timeless and unchanging way of life, such as in the World Heritage nomination. It is now the outspoken claim to local political hegemony. How did indigeneity emerge as a promising political identity for the Toraja elite? In my interpretation, decentralisation and democratisation have not only loosened the grip of the central government on outer island politics. When local politics became the hotspot of decision-making and economic potentials, being associated with the state alone did not offer great advantages. Positioning oneself additionally in a strategic opposition to the state opened possibilities to directly ally with transnational institutions and tap the political, economic, legal, and educational resources they offer. While Toraja elders depended on the state for a successful World Heritage nomination, they are now free to interact with institutions like UNDP or AIPP without interference from the central government. As the example has shown, this does not imply a rejection of the state, as most of the local protagonists are intimately engaged with state structures.

## Conclusion

As the examples have shown, *adat* has been framed in very different ways in Toraja, but the framing has tended to privilege the same stratum of Toraja society. Toraja nobility has had the defining power over *adat*, from a de-contextualized and folklorised *adat* as arts and culture, the timeless authenticity of *adat* in the World Heritage context and now *adat* as traditional political structures in the local indigeneity movement. Processes of exclusion and inclusion have been largely the same in all three fields of inquiry. The social formations which once gave rise to the idea of *adat* as *budaya* in the context of tourism in the early 1970s have almost been turned upside down in the context of indigeneity: The firm grip of the central state has been loosened and power and money have been transferred from the centre to the former periphery. In Toraja, the changing political landscape on the national and international level has transformed *adat* from a marker of localized backwardness and lack of sophistication into a signifier of global connectedness and modernity.

While Toraja is an interesting example of a creative and selective local engagement with a global discourse, it is also a frustrating example for actors who are committed to democracy, participation and the strengthening of civil society. Sangaji (2007) reports similar stories from Central Sulawesi, where the power vacuums created by rapid decentralisation have been occupied by people who strategically position themselves as



The acting district head of North Toraja, Bapak Y.S. Dalipang, is ushered to his seat at the official ceremony to celebrate the 11th anniversary of the founding of AMAN.

Photo: Karin Klenke 2010

indigenous. Torajans undoubtedly count as indigenous according to the AMAN's definition of *masyarakat adat*: "*Komunitas masyarakat adat* are groups that possess a genealogy in a specific geographical area, as well as a distinct system of values and norms, that have command over land and natural resources and that live their lives in accordance with norms and institutions of their *adat*" (AMAN 2012e, translated by K.K; see the chapter by Arizona and Cahyadi in this volume). Sangaji points to the weaknesses of the vague AMAN – and indeed all – definitions of indigeneity, that allow a usurpation of the idea and the movement by people with aims opposing the AMAN endeavour:

By foregrounding distinctiveness (*ketersendirian*) and making no reference to progressive values such as justice and democracy, it suggests that the movement may not be concerned with social stratification within *adat* communities themselves. This glossing allows for the resurrection of feudal elements, which continue to find resonance with certain segments of Indonesian society.

(Sangaji 2007:321)

As the evolving historical trajectory of the uses of *adat* in Toraja has shown, the nobility was able to bring to bear *adat* in the context of very different transnational discourses because of its polyvalent character. By aligning their cause with the state – be it in matters of tourism, World Heritage or indigeneity as a special articulation of non-radical regionalism – noble Torajans were successful in securing state support for causes that also stabilised their hegemony within stratified Toraja society. *Adat* has proven to be a perfect mediator for the respective interests of state, nobility and international discourses. Its new emergence as *masyarakat adat* or indigeneity is due to a specific constellation of these three actors: a central state that has given away power to the periphery, a ruling nobility in search of new legitimizing discourses and transnational institutions that focus these peripheries as sites of promising democratic political projects.

Indigeneity is generally credited with having the potential to re-define or ideally even reverse the relationship between centre and periphery. The Toraja case, however, points to a more complex situation. Toraja actors in the field of indigeneity skilfully use the state as a resource to articulate their political claims vis-à-vis Torajans of lower descent. Inequality is re-inscribed in a space in which it is not assumed to exist according to a nostalgic concept of indigeneity: within Toraja society itself. Far from enabling "the subaltern to speak", indigeneity in the Toraja case serves as a means to again silence those who find it difficult to make political claims. Several writers have pointed out that the idea of indigeneity is also a sentimental reflection of – or relational to – the uneasiness of the West with modernity (Niezen 2004:70). Anthropology should not fall prey to this romanticised notion, but needs to keep on asking the same old questions: Who is speaking? Who are the locals in "local"? And who is included in and excluded by the "we" that claims culture – or *adat*?





# Becoming Aristocrats: *Keraton* in the Politics of *Adat*

*Fadjar I. Thufail*

## Introduction

An incident in West Jakarta District involving a group of thugs unravels the fraught relationship between the royal families of Javanese *keratons* and the public,<sup>1</sup> exposing contentious issues over cultural property, political connection and symbolic status. The incident discloses an overlooked connection between the aristocracy and economy and sheds light on the challenges the aristocrats confront to rethink how noble culture and *adat* encounter the encroachment of capital and the state into the palace realm. In other words, the incident with the thugs depicts the predicament that the *keraton* and its noblemen must negotiate in order to sustain and assert the cultural sovereignty of the palace despite the continuous pressures from the state and capital to curtail the political role of the *keraton*.

Indonesians often talk about thugs and thuggery, or *premanisme*.<sup>2</sup> Thugs are extrajudicial actors, some recruited by the police to help monitor the criminal world, and others employed by politicians and businessmen as bodyguards to protect them from political rivals or business competitors. The security apparatus compensates the

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<sup>1</sup> In this essay, I use *keraton* (palace) as a generic category to refer to *kesultanan* (sultanate) and *kerajaan* (kingdom).

<sup>2</sup> *Preman* comes from *vrijman* (Dutch), literally meaning “free men”. *Preman* refers to people involved in petty crimes or organised crime, including robbery, extortion, mugging, or debt-collecting.

*preman* by allowing them to exert control over a specific territory and extort “protection money” from local businesses, creating reciprocal relationships between the thugs and the state apparatus and between the thugs and the local business owners. Therefore, no-one is surprised if the police rarely crack down on the protection businesses run by the thugs.

However, an incident in early 2013 unsettled the comfortable alliance of thugs and state apparatus. The West Jakarta District Police arrested forty thugs from a construction site in West Jakarta. Hired by the contractor to watch the construction site, the thugs tried to force the company to raise their service fee, a request that the company quickly turned down. The company complained that they had paid more than 5 million rupiah (USD 550) to the thugs. The company reported the extortion to the police who reacted swiftly to arrest the thugs after a small scuffle over police presence at the construction site. The event would have passed unnoticed had the media not disclosed that Hercules was among the forty thugs arrested by the police.

Hercules Rozario Marshal, nicknamed Hercules (about 50 years old), is one of the most feared criminal “godfathers” in Jakarta. Before coming to West Jakarta, he controlled Tanah Abang, a dangerous district in Central Jakarta densely populated by drug-dealers, drug-users, gamblers, and prostitutes. From Tanah Abang, Hercules had run many businesses to provide “security” guards, debt-collectors and even hit-men for anyone who wanted to eliminate their enemies. In 1997, Muhammad Yusuf Muhi, a competitor in the crime business, managed to push him out of Tanah Abang. Hercules had moved and, since then, he has controlled West Jakarta District.

The Hercules affair attracted public attention not only because it was the first time the police had put him behind bars, but also because people immediately learned that Hercules held an honorary noble title (*gelar bangsawan*) from Kasunanan palace of Surakarta. Hercules received the honorary title in 2012, conferred by KGPH Tedjowulan in his claimed capacity as Sunan Pakubuwono XIII.<sup>3</sup> As an honorary noble title holder, Hercules was assigned the honorary name, KR Yudhoprano.<sup>4</sup> While the arrest confirms Hercules’ involvement in many illicit businesses, at the same time, it has exposed his connections to the military and Javanese aristocrats.

KGPH Tedjowulan, a colonel in the Armed Forces, knew Hercules, a native of East Timor, when the prince was on military assignment in East Timor in the 1970s. During the military operation in East Timor, the military entrusted Hercules with guarding ammunition storage. Hercules was wounded in the war against the Fretilin guerrillas and was brought to Jakarta to undergo amputation of his right hand. Since

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<sup>3</sup> KGPH stands for Kanjeng Gusti Pangeran Haryo, the highest title of Kasunanan noblemen after the king. The title KGPH is reserved only for direct male descendants of the king. When Hercules received his title, the Surakarta’s Kasunanan palace was divided into KGPH Tedjowulan and KGPH Hangabehi factions, both claiming to be the legitimate Sunan Pakubuwono XIII. KGPH Hangabehi occupied the palace in Surakarta, while KGPH Tedjowulan was ousted and had to “rule” from outside the palace.

<sup>4</sup> KR stands for *Kanjeng Raden*, this is the lowest rank of male honorary titles from Surakarta’s Kasunanan palace.

then, he has lived in Jakarta, and soon turned into an important figure in the criminal world of Jakarta.

Hercules' controversial honorary noble title is the story of an ambiguous and contentious encounter between the Javanese palaces and the outside public. It is also about the desire of the monarchs to hold on to their role as the custodians of culture, tradition and *adat* in the modern era. Awarding and receiving an honorary noble title is, therefore, a practical event, identical to what Sherry Ortner (1999) calls a "serious game". Ortner says that people

do not just enact either material necessity or cultural scripts but live life with (often intense) purpose and intention; [...] social and cultural contexts [...] frame not only the resources [people] start with but the intentions and purposes they bring to the games of life; that social life is precisely social, a matter of relationship – of cooperation and competition, of solidarity and exploitation, of allying and betraying.

(Ortner 1999:23)

As a "serious game", the event of giving and receiving an honorary noble title draws attention to a transactional encounter that shapes the relationship between the palace, the economy, and the definition of and access to cultural property in the politics of *adat*. At the same time, it also relates the narrative of the desire and intention of the aristocrats when they want to reclaim and fulfil their declining status as the custodians of culture and *adat*.

The "serious game" of an honorary noble title award endows the efforts pursued by the royal families with symbolic value to maintain and reinstate the cultural and political sovereignty of the *keraton*, at a time when the *keraton* is threatened by state politics and capital encroaching into the realm of the monarchy. There are three settings that frame the "game". Firstly, it demonstrates how the royal families of the Javanese palaces reach out to people not genealogically related to the royal families. Secondly, it differentiates noble titles into the titles that remain owned exclusively by the royal family and the titles that can be accessed by the public, albeit in a limited manner. The encroachment leads to a parcelling out of the *adat* into symbolic and material elements, and into elements that can be distributed to the public and those that should remain exclusively retained by the monarch as their traditional custodian. Thirdly, it indicates an ambiguous desire and intention of the aristocrats in responding to the encroachment of state politics and capital into the most private realm of the *adat* norm of the palace.

## The Palace and the Encounters

The relationships between the *keraton* and the state and between the *keraton* and the public have often been contentious ones. Before the Dutch instituted the colonial government in the Netherlands East Indies in the late-18<sup>th</sup> century, the *rajas* and the *sultans* were able to maintain independent sovereignties and often waged war against each other to secure important sea or land trade routes. The *Vereenigde Oost Indische Compagnie* (VOC; Dutch East India Company), which arrived in the 17<sup>th</sup> century, was soon involved in fierce competition against the *rajas* and the *sultans* over access to cloves, nutmeg and spices. The decline of the VOC in the 18<sup>th</sup> century and its transformation into the Dutch colonial government brought the Netherlands East Indies under the direct control of the Dutch government. The Dutch soon created new bureaucratic institutions to manage and secure colonial interests in the colony, and the new institutions required numerous people to fulfil clerical work (Sutherland 1979).

The institutionalization of the colonial bureaucracy caught the aristocrats in an ambiguous position. On the one hand, they were reluctant to join the colonial bureaucracy, since it would mean that they conceded to colonial power and colonial authority. At the same time, the aristocrats must find ways to sustain their symbolic status and cultural sovereignty when the colonial government challenged the *keraton's* formerly independent control over cultural and economic resources. This ambiguous situation continued until the late-1940s when the Dutch colonial government gradually lost their political control over the Netherlands East Indies.

After Indonesia declared its independence in 1945, the sovereign status of the *rajas* and the *sultans* remained a contentious issue in the postcolonial political structure. In the early-20<sup>th</sup> century, the Dutch colonial government created a self-governance domain (*zelfbesturend gebied* or *swapraja*) to force the *rajas* and the *sultans* into a quasi-contract transaction with the Dutch. However, after independence, the nationalist and the socialist factions in the republican government opposed the *swapraja* domain, arguing that maintaining the *swapraja* would mean acknowledging the independent jurisdiction and regulation of the *keratons* over territories under their direct control. At the same time, the volatile political situation sent a clear signal that the republican government should avoid interfering with the *swapraja* domain since it would confront the sovereignty of the *rajas* and the *sultans*. The existence of the *swapraja* domain had, therefore, undermined the political authority of the republican government and become a target of attack from officials who condemned the colonial inherited system of having violated republican consensus.

International political pressure and the struggle for independence in the 1940s hardly prevented the Dutch from launching a massive military campaign to regain its control over the Netherlands East Indies and disrupted the process of consolidating political power in the new state. Lack of a mutually recognised transfer of authority created an uncertain period that lasted from 1945 until 1949. Amid the confusion, the Dutch created the Federation of Kings (*Dewan Raja-raja*) in September 1946 to assure that the *rajas* and the *sultans* hold on to the contracts they had signed with the colonial government, and, in so doing, they acknowledged Dutch control. The Federation of

Kings, however, only lasted a few years; Law No. 44 enacted in 1950 by the republican government abolished the Federation of Kings (Ardhana 2005:52-54).

The political and economic contracts between the monarchs and the Dutch colonial government that culminated in the abolishment of the Federation of Kings had accentuated the ambiguous stance of the noblemen toward the revolutionary cause, especially with regard to the economic and political interests of the *rajas* and the *sultans*. The leftist faction of the republicans particularly denounced the support that the *keratons* received from the Dutch to nurture their elite cultures. Dutch patronage produced an elite circle disconnected from the people who fought for independence in the revolutionary war. The leftists pointed out that the aristocrats had enjoyed a special social status that opposed the principle of social equality that the postcolonial Indonesian state hoped to fulfil.

The postcolonial government failed to resolve the ambiguous status of the monarchies. The nationalist and socialist factions in the government together with the political parties (PKI, PNI, PSII, Murba, Sobsi, Perbesi, Partai Buruh, Pemuda Muslimin Indonesia, Pemuda Banteng, Mahasiswa Demokrat, and Sarbupri) insisted that the monarchy system should be abolished. These groups formed a coalition called the Anti-*Swapraja* movement (De Locomotief 1954). They argued that the monarchy system propagated a stratified status system that classified people according to their hereditary rank, and it was contrary to the democratic system that they would like to institute. The republicans' argument regarding the incompatibility of the monarchy with the democratic ideal of equal opportunity reflected a distrust the republicans had (and still have) about the loyalty of the *rajas* and the *sultans* to the newly independent state.

The heightened tension, starting in 1945, between the republican government and the monarchies had affected the royal families in different ways. The period of 1945-1950 was crucial to understanding the role of the palace and the royal families in modern Indonesia. The Javanese palaces in Surakarta (Kasunanan and Mangkunegaran) and Yogyakarta (Kasultanan and Pakualaman) reacted differently to Sukarno's proclamation of independence and to the Dutch attempt to restore their colonial power. In Surakarta, the Kasunanan and the Mangkunegaran *keratons* struggled hard to restore their symbolic status and political influence, but were immediately confronted by socialists and republicans who disliked the idea of recuperating the autonomous status of the *keratons*. Besides, the relationship between the anti-colonial, revolutionary fighters and the Surakarta noblemen during the late colonial period had always been contentious. During the revolutionary war, the revolutionary *laskars* (freedom fighters) received little support from Surakarta's Kasunanan aristocrats, who were uncertain whether the Dutch would be able to restore their control over the former Netherlands East Indies territory. On the contrary, the Kasultanan and the Pakualaman *keratons* in Yogyakarta responded diligently to the proclamation by affirming their loyalty to the new republican government and declaring that the Kasultanan and the Pakualaman territories belonged to the Indonesian state. Sri Sultan Hamengkubuwono IX of the Yogyakarta Sultanate along with KGPAA Pakualam VIII of Pakualaman palace drafted a historic statement declaring their loyalty to the republican government (de Rosari 2011:64-65). Prince GBPH Prabukusumo, the son

of Hamengkubowono IX, describes the Sultan's decision as a very emotional gesture since it means that the Sultan "has surrendered his dignity and his pride as a king and became a subject of the nation-state".<sup>5</sup> On September 5, 1945, Sultan Hamengkubowono and KGPAA Pakualam VIII enunciated a decree instructing Yogyakarta people to obey the republican government and the Indonesian state. Sukarno responded in favour of the statement, and the state announced Law No. 3 in 1950 to grant a legal recognition of *Daerah Istimewa Yogyakarta* (Yogyakarta Special Autonomy Status). This special status later provoked an emotional controversy when the post-1998 regime wanted to abolish it under the pretext that the automatic appointment of the Sultan as a governor and the Pakualam as a vice-governor runs against the democratic electoral system. The debate over the special status is also a "serious game" because it shapes the normative construction of the legal existence of the *keratons* and, at the same time, affects the dignity of the aristocrats.

The anti-*swapraja* movement in the late-1940s and early-1950s proved to be a decisive moment that shaped the encounter between *keraton*, royal families and the state with consequences up to the present. Small palaces faced far-reaching consequences of the encounter. There were palaces that had to immediately relinquish their territorial control to the local governments and, in so doing, also lost political privilege. These small palaces have lost their lands and buildings, appropriated legally by the state or illegally by squatters. In Buton Sultanate (South-eastern Sulawesi Province), for example, what remains after the 1950s is no more than a few dilapidated buildings and a small plot of land once part of a larger palace compound. The anti-*swapraja* movement and its political and administrative consequences drove the aristocrats to rethink and re-evaluate their political role and symbolic position as the custodians of *adat*.

When the New Order military regime (1967-1998) managed to seize power in 1967 and secure its political consolidation of the postcolonial Indonesian state in the early-1970s, *rajas* and *sultans* were soon confronted with a difficult option: They had to negotiate with the new military regime over an appropriate way to keep the *keraton* existing. Otherwise, they could have no other choice than terminating court rituals and activities, discharging palace employees and closing down palace offices. However, there was a limited number of *keratons* that had the power and resources to negotiate with the military regime. Large *keratons* in Java (Surakarta, Yogyakarta, Cirebon) and Bali are examples of such *keratons*, while Buton Sultanate represents the palaces that failed to consolidate resources required to continue their symbolic functions and cultural sovereignties. However, regardless of whether they were large or small *keratons*, they had, firstly, to accept the political sovereignty of the new military regime and its ideology of a *negara kesatuan* (united state).

The historical fact that the *keratons* were able to exercise sovereignty despite the Dutch surveillance alerted the postcolonial regimes about the alleged capacity of the monarchies to undermine the *negara kesatuan*. The anti-*swapraja* movement in the 1940s until the 1960s was an effort by the Sukarno administration to pacify the political

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<sup>5</sup> Interview with Prince GBPH Prabokusumo, March 20, 2013.

influence of the *keratons*. In the New Order period, Suharto's military regime followed the attempt to mitigate the *keratons'* political power by enacting Law No. 8 on Mass Organisations (*Organisasi Kemasyarakatan*) in 1985. The law defines the *keraton* as a cultural institution (*organisasi kebudayaan*), and the administration and activity of the *keraton* is subject to regulation stipulated in the law. Law No. 8/1985 classifies the *keraton* in the same category as the religious Islamic organisation of Nahdlatul Ulama, the environmental organisation of Wahana Lingkungan Hidup (WALHI), or the other social or non-governmental organisations. In classifying the *keraton* as a "cultural mass organisation", the New Order regime managed to draw a clear boundary between the political role and the cultural sovereignty of the *keraton*. Law No. 8/1985 was a normative strategy deployed by the New Order regime to reduce the political reach of the *keraton*. Other strategies included the full support granted to cultural activities and court rituals, and the adoption of Javanese court norms in the political discourse of the state (Pemberton 1994).

Another important legal move introduced by the New Order regime was the inclusion of the *keraton* into the discourse of cultural heritage, as stipulated in Law No. 5/1992 on the Protection of Cultural Monuments (*Perlindungan Cagar Budaya*). The law limits public access to the *keraton* by designating some sites or buildings in the palace compound as protected historical monuments. It prevents anyone, including the royal families, from changing anything or using the buildings for purposes other than activities endorsed by the Cultural Office (*Dinas Kebudayaan*) or the Office for Preservation and Protection of Historical and Ancient Monuments (*Balai Pelestarian and Perlindungan Sejarah dan Purbakala*). The enactment of Law No. 5/1992 directly encroaches upon the sovereignty of the palace, since the *raja* or the *sultan* no longer has unlimited access to their properties.

Laws No. 8/1985 and No. 5/1992 delineate the encounters of the *keraton* with the New Order state and with the public. In other words, the "serious game" takes place only within the normative space allowed by the laws, framing the palace as a cultural instead of a political actor, especially through Law No. 5/1985, which discourages the palace from exercising its political role. If the Dutch colonial government required the assistance of the *keraton* to secure its political control, the postcolonial state was hardly interested in acquiring political support from the *keraton*. On the other hand, however, it was feared that the abolishment of the monarchy system would provoke strong resistance and might incite radical separatist movements. Framing the role of the *keraton* within the discourse of culture is the most critical option in the "serious game". It allows the monarchy to exist but, at the same time, restricts the political influence of the *keraton*.

The appeasement of the *keraton* opened up different room for manoeuvre. Because the New Order regime distrusted the aristocrats, the *keraton* had to rely on the individual initiative of a king, a prince or a princess to deal with the bureaucratic apparatus of the state. It, therefore, depended on the network, intention, experience, and willingness of the individuals to reach and negotiate with the state bureaucracy. The *rajas* or *sultans* with long experience dealing with the state bureaucracy faced less difficulty in reaching the state than did those with little or no experience, or those with a history of opposition against the political regime. The *rajas* or *sultans* drew on their



personal networks to co-operate with the state apparatus; some aristocrats joined political parties, ran as local or national legislators, or occupied bureaucratic posts in local or national state offices. The limitation imposed on the *keraton* to exercise political authority holds the state to be responsible for helping advance cultural activities. The support the *keraton* received from the state in the cultural sphere allowed the aristocrats to focus more on or expand existing cultural activities. Palace rituals flourished during the New Order period, and the Javanese and Balinese palaces became the most important sites for cultural tourism. Awarding an honorary noble title to people not genealogically related to the royal blood started to become more common during this time.

### Buton Sultanate and the *Keraton* Festival

When the *swapraja* domain in Buton was abolished in 1951, the Buton Sultanate also ended. Sultan La Ode Muhamad Falihi, the 38<sup>th</sup> Sultan of Buton and the last sultan (ruling 1937-1960), appointed no caretaker of the sultanate, so that the Buton Sultanate slowly faded away. The *adat* council also ceased to function and members of the *adat* council grew older without anyone to replace them. Sultan Falihi's son, La Ode Manarfa, the strongest candidate to replace his father should the sultanate continue, never tried to revive the sultanate. Instead, he pursued a political career. He was elected as a member of the Provisional People's Consultative Assembly (MPRS) in 1967, and he was the spokesperson of the provincial parliament (DPRD-GR) in 1971. He joined the People Representative Assembly (DPR) in 1972 and again from 1982 until 1987. Manarfa held many Certificates of Acknowledgement (*Piagam Penghargaan*) that he obtained from the Golkar party, the Parliament, several ministries, and the National Defence Institute. All these distinctions demonstrated his close connection to the Golkar ruling party and the military. He passed away in 2009.

Butonese *adat* regulates that an *adat* council (*siolimbona*) elects a king and, therefore, kingship is not inherited. Because the *adat* council had ceased to function since the 1960s, the sultan's seat remained empty after Sultan Falihi's death. Everything was quiet until 2010, when the *Forum Komunikasi dan Informasi Keraton se-Nusantara* (FKIKN), or the Forum for Communication and Information of Archipelago *Keraton*s, selected Buton *keraton* to host the 8<sup>th</sup> Festival Keraton Nusantara (FKN), or the Festival of Archipelago Keratons, in 2012. The selection alerted government officials in Buton City and South-eastern Sulawesi Province to find someone who could represent Buton Sultanate, as the sultan's seat was empty. Butonese aristocrats were also anxious and embarrassed to acknowledge that the *keraton* lacked a sultan, and choosing a new sultan would be a very difficult process because the *adat* council was inactive and, therefore, could not perform its duty.

However, in 2011, people claiming to be Butonese *adat* leaders gathered to revive the Buton Sultanate, and their first step was to reactivate the *adat* council (*siolimbona*). A few months later, the new *adat* council gathered to hold a ritual for the election of a sultan. They eventually appointed La Ode Muhammad Ja'far, La Ode Manarfa's nephew, as the new Sultan of Buton. The inauguration ritual of the new sultan took

place on May 19, 2012, at *batu popaua*, the most sacred spot in the palace compound. The election and inauguration of La Ode Muhammad Ja'far as the new sultan of Buton remained controversial. Some Butonese aristocrats refused to acknowledge the sultan, claiming that since the *adat* council was illegitimate, its decision was, therefore, an unlawful violation of *adat*. However, the majority of the aristocrats had chosen to remain passive and made no effort to resist the newly appointed sultan.



Delegates from Banten Sultanate at the Nusantara Keraton Festival in Buton, 2012.

Photo: Fadjar I. Thufail

The biggest challenge came from the local government. When La Ode Muhammad Ja'far was inaugurated at the *batu popaua*, there were no officials of the city government attending the ceremony. The city government, in fact, went further to issue a certificate acknowledging La Ode Ja'far Hibali, the cousin of La Ode Muhammad Ja'far, as the Sultan of Buton. This government move irritated La Ode Muhammad Ja'far and other aristocrats who alleged that the government had interfered too deeply in *adat* matters. Even though La Ode Ja'far Hibali was related to La Ode Muhammad Ja'far, his manoeuvre annoyed the Butonese royal family. Since then, the Butonese public has talked about the quarrel as a conflict between the "*adat* sultan" (*sultan adat*) and the "certificate sultan" (*sultan piagam*).

The conflict between the two sultans peaked at the 2012 FKN. The two sultans, La Ode Muhammad Ja'far and La Ode Ja'far Hibali, attended the Festival Keraton Nusantara activities and the presence of the two sultans at the event confused other kings and embarrassed the Butonese royal family. The Sultan of Aceh wondered: "I do not know which one is the Sultan of Buton." The son of the former secretary of Buton

Sultanate also remarked: “This incident is a slap in our face (*tamparan ke muka*). Buton Sultanate should be ashamed that this incident was taking place in front of kings from all over the country.” La Ode Muhammad Ja’far’s faction reacted fervently to the presence of La Ode Ja’far Hibali. At a ceremony before the street parade commenced, the *kapitalao* (prime minister) of La Ode Muhammad Ja’far went berserk, drawing out his sword and warning people that they should obey the decision of the *adat* council. In Butonese *adat*, the *kapitalao*’s gesture of drawing his sword was a very strong statement that no-one was allowed to question the sultan. In the past, if the *kapitalao* brandished his sword before the public, he should behead someone to prove that the statement he had made was a serious one.

The incident between the two Sultans of Buton at the FKN illustrated how practice shapes the legitimacy of access to *adat*. A sultan should reiterate his access to the legitimacy continuously through gestures, appearances and transactions, in short, through “serious games”. If the legitimacy was questioned, the sultan must reclaim it back through gestures, performances and transactions. At the Festival Keraton Nusantara, the competition over legitimate access to *adat* between the government official and Sultan La Ode Muhammad Ja’far also took place on the stage. During the opening ceremony at the Baubau City Hall, the Governor of South-eastern Sulawesi appeared on the stage dressed in traditional clothing specifically designed to honour prominent guests. By comparison, the sultan wore a simple traditional costume for receiving ordinary guests. Butonese aristocrats sensed this gesture was to reflect the governor’s attempt to overpower the sultan and the sultanate. Dressed in a more prestigious costume than the sultan’s, the governor was making the statement that he was more important than the sultan and he was the real host of the event.

The state has been the source of legitimacy for past and present sultans of Buton and, at the same time, the Butonese aristocrats have to compete with local politicians for access to state resources. The Butonese aristocrats have encountered similar experiences that the other sultans or rajas have also faced, especially the sultans and the rajas who no longer have palaces and symbolic resources but want to revive the status they used to hold.<sup>6</sup> On the other hand, however, larger *keratons*, mostly in Java and Bali, resort to cultural resources they possess to negotiate with the state.

## Twin Suns Hanging over Kasunanan Palace

The phrase “twin suns” (*matahari kembar*) refers to the conflict between two kings (*sunan*) of Surakarta’s Kasunanan palace, Central Java Province. The conflict broke out when Sunan Pakubuwana XII died on June 11, 2004, without leaving behind or appointing a successor. The *keraton*’s *adat* rules that the successor of a king is the son of a queen (*prameswari*), preferably her oldest son. However, Sunan Pakubuwana XII did not appoint any of his eight wives as the queen. No-one knew why the Sunan

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<sup>6</sup> See Klinken (2007) for a list of *keratons* that have sought to revive their symbolic status and political power.

Pakubuwana XII decided to have no queen,<sup>7</sup> but this situation left a serious and emotional consequence when Pakubuwana XII's death revealed an enduring anxiety over what political and cultural sovereignty would mean for the Kasunanan palace.

Internal conflicts often take place in Central Javanese *keratons*, despite the fact that all Javanese kings of Kasunanan, Mangkunegaran, Kasultanan, and Pakualaman palaces descend from Sultan Agung, the first Sultan of the Mataram kingdom. The current *keratons* originated in the 1755 Giyanti Agreement when the Dutch VOC divided the Mataram kingdom into the Surakarta and Yogyakarta palaces. Internal conflicts in each palace further split the Surakarta palace into the Kasunanan and Mangkunegaran *keratons*, and the Yogyakarta palace was divided into the Kasultanan and Pakualaman *keratons*. While frictions and rivalries shape the relationship between the Surakarta's Kasunanan and the Mangkunegaran palaces, only minor tensions exist between the Kasultanan and the Pakualaman palaces of Yogyakarta.

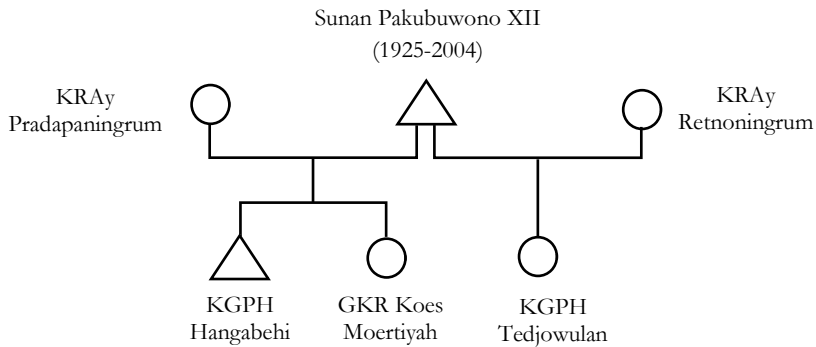


Illustration of the kinship relations at Surakarta's Kasunanan Palace described below.

Succession has also often been the source of internal conflict in the *keraton*, even though, in some cases, when a sultan did not appoint anyone to be the crown prince, the situation did not escalate into a conflict. An example of this was when Sunan Pakubuwono X, Sunan Pakubuwono XII's predecessor, did not select a queen; the sultan's death provoked no dispute over who had the legitimate rights to be crowned as a new king (Moedjanto 2002). However, after Sunan Pakubuwana XII had passed away, the situation turned ugly. KGPH Hangabehi claimed that he was the rightful successor to the throne. He argued that since he was the oldest son of the late king's first wife, KRAy Pradapaningrum,<sup>8</sup> the *adat* endowed him with the rights to replace the Sunan. However, another son from one of the late Sunan's wives asserted a similar claim. KGPH Tedjowulan, the son of KRAy Retnadaningrum, stated that the majority of royal families (*sentana dalem*) and the general public supported him ascending to the

<sup>7</sup> When questioned by one of his sons, Sunan Pakubuwana XII never explained why he did not select a queen nor appoint a son to be the crown prince. The prince could only guess that the king was not convinced that any of his wives had a son that he could trust (Interview with an anonymous prince, April 2013).

<sup>8</sup> KRAy stands for *Kanjeng Raden Ayu*, a title for a Kasunanan noblewoman.

throne. On September 30, 2004, KGPH Tedjowulan declared himself as Sunan Pakubuwono XIII, a move that soon triggered a reaction from KGPH Hangabehi, who also declared himself as Sunan Pakubuwono XIII only ten days after Tedjowulan's declaration. Since then, the Kasunanan *keraton* has had two kings, each claiming to be the legitimate successor of Sunan Pakubuwana XII.

Despite the continuing dispute over the legitimate Sunan, KGPH Tedjowulan worked actively with other *rajas* and *sultans*, mostly from Java, Sumatra and Kalimantan, to promote *Forum Silaturahmi Kerajaan Nusantara* (FSKN), the Alliance Forum of Archipelago Palaces, and chaired the FSKN from 2009 to 2012. However, King Tjokorda Jambe Pamecutan of Bali disputed Tedjowulan's chairmanship, claiming that he, King Tjokorda Jambe Pamecutan, has been the legitimate chairman of the FSKN since 2007 when the FSKN was established. The Kasunanan *keraton* had actually sent Prince Gunarso Kusumadiningrat to serve as the General Secretary of the FSKN before he was fired in March, 2009, by King Pamecutan over an allegation of a fraudulent use of the FSKN name.<sup>9</sup>

Despite its initial aim to provide an independent venue for *rajas* and *sultans* to co-operate and work to promote royal culture and *adat*, the FSKN has relied on the state for political support. The first and most important step was when the FSKN held a courtesy visit to President Susilo B. Yudhoyono at the Presidential Palace in 2009. During the meeting, the FSKN Chairman, Tjokorda Jambe Pamecutan, assured the President and the government officials that the FSKN had no intention of creating *negara dalam negara* (a state within the state) or of pursuing political interests, but simply wanted to advance existing cultural activities. The President's statement at the meeting made it clear that the government supported the FSKN because the forum was a cultural, not a political, forum. The FSKN Chairman's and the President's statements hinted at a veiled distrust that had existed between the state and the *keratons* since colonial times. The end of the authoritarian New Order regime had changed nothing and the state remained anxious that the noblemen could have persisted with their political objective. KGPH Tedjowulan's active involvement in the FSKN shows how the Kasunanan *keraton* of Surakarta tries to reach out to the state and to other *keratons*. In addition to the FSKN, there are actually two other associations or networks created by the noblemen: the *Asosiasi Keraton dan Kerajaan Nusantara* (AKKN) and the *Forum Komunikasi dan Informasi Keraton se-Nusantara* (FKIKN). The Kasunanan *keraton* also supports the activities of the FKIKN. Whereas KGPH Tedjowulan was a central figure in the FSKN, KGPH Hangabehi's faction, especially GKR Koes Moertiyah and her husband KGPH Edy Wirabhum, plays an indispensable role in the FKIKN. This shows that the dualism of leadership inside the Kasunanan palace, the "twin suns",

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<sup>9</sup> Gatra Magazine (24/03/2009) reported that a scandal broke out in 2009 allegedly involving King Pamecutan and the FSKN. Several renowned artists and 258 royal family members from *keratons* all over Indonesia gathered in Jakarta to prepare an excursion trip to Europe to meet European royal families. When they had arrived in Jakarta, they realised that they had been cheated. The delegates reported they had paid 3 million rupiah each to the king to participate in the trip. King Pamecutan denied his involvement in the scandal and accused the Surakarta prince of having misused the FSKN by sending the invitation letters to the *rajas* and the *sultans* on behalf of the FSKN.

extends to shape different affiliations of the *keraton* to existing palace organisations or networks.



The author in front of a house of a prince in Kasunanan Palace in Surakarta.

Photo: Upik Sarjiati 2012

The FKIKN was founded during the first of the bi-annual Festival Keraton Nusantara (FKN) in 1995. The Central Javanese *keratons* of Kasunanan, Kasultanan, Mangkunegaran, and Pakualaman initiated the first festival, and were soon joined by the Cirebon palaces (West Java Province). When the festival participants consisted of fifteen palaces, they decided to establish the FKIKN, stating that the forum would function mostly as a communication forum among its members. Since then, GKR Koes Moertiyah and her husband have played a decisive role in the activities of this association. They designate their private office at the Kasunanan *keraton* as the FKIKN secretariat. Until the latest festival held in Buton in 2012, GKR Koes Moertiyah and KGPH Edy Wirabhumi had pushed the FKIKN to set up a working agenda; for example, during the 2012 festival in Buton, they urged the FKIKN to prepare a legal drafting of the Law on *Adat* People (*Draft Rancangan Undang-undang Masyarakat Adat*) and advise the People's Representative Assembly (DPR) to include *keraton* in the normative definition of *masyarakat adat* (*adat* community).<sup>10</sup>

<sup>10</sup> The follow-up of the FKIKN meeting still remained unclear at the time this essay was submitted for publication. Even though the DPR has held hearings with several *rajas* and *sultans*, they came to the hearings in their individual capacities, not representing the FKIKN. The academic draft of the

Building an alliance with the state and with other palaces through active participation in the palace organisations or networks is a “serious game” (see Ortner 1999) that the Surakarta’s Kasunanan palace and its noblemen play to craft a space for reclaiming cultural sovereignty. The Kasunanan’s “game”, however, does little to attract the Yogyakarta palaces (Kasultanan and Pakualaman *keratons*) to follow, apart from limited participation of the Yogyakarta palaces in the cultural performances held during the *keraton* festivals. A high-rank prince of the Kasultanan *keraton* said that the Kasultanan was reluctant to participate actively in the palace organisations or networks, either the FSKN or the FKIKN, because he felt that the organisations were more interested in pursuing a political agenda than a cultural one.<sup>11</sup> Despite the different interests they have in the existence of palace organisations or networks, the Surakarta Kasunanan and the Yogyakarta Kasultanan are both involved in the “game” to award honorary noble titles (*gelar bangsawan kehormatan*) to outsiders. The *keratons* resort to the “game” to craft room to reclaim and assert their cultural sovereignty as the legitimate custodians of *adat*.

## Becoming Aristocrats

Awarding honorary noble titles to people not genealogically related to a royal family is a common practice in many palaces all over the world. As Sherry Ortner has demonstrated (1999), the practical context and implication of a “serious game” emerges from the intentions, desires and anxieties of those involved in the game, as well as from the engagement of the actors with chances and dispositions opened up by the political or economic structure. Therefore, the republican political system of the post-New Order Indonesian state reveals the practical contexts that address the aristocrats’ concern over the future existence of the palace, either physically or symbolically.

The practice of bestowing an honorary noble title to people other than royal descendants of the Mataram kings has existed for a long time. However, in earlier times, the honorary titles were awarded only to *abdi dalems*, a group consisting of palace clerks, soldiers and guards, lower ranking administrators such as *lurahs* and *wedanas*, and court artists and performers. Only later, after 1945, did outsiders with no royal blood connection begin to receive the honorary titles. The Surakarta and Yogyakarta *keratons* apply similar criteria to bestow the honorary titles. The receiver of the title should express his or her commitment to help to protect Javanese culture, or he or she has demonstrated actual work to promote Javanese culture and tradition, such as staging art performances or publishing rare, ancient Javanese texts.

The Hercules’ royal title affair demonstrates the ambiguity of the criteria that the *keraton* applies to select a person to receive the title. Despite the normative criteria that the person is supposed to express a good conscience, the Sunan or Sultan retains the

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law, the one that GKR Koes Moertiyah asked the *rajas* and the *sultans* to prepare drawing on their palaces’ concerns, has yet to materialise.

<sup>11</sup> Interview with an anonymous prince of Yogyakarta’s Kasultanan palace.

final and absolute decision to grant the title. Each year, the court administration (*Pengageng Parentah Keraton*) recommends names of people that meet the criteria to bear an honorary title. When the proposed names have passed a careful examination by the court administration, the Sunan or Sultan typically accepts the recommendation. Apart from this list, the Sunan or Sultan often has his own candidates, and, in this case, the court administration has to accept the king's candidates. When KGPH Tedjowulan suggested that Hercules should receive the honorary title, the prince referred to Hercules' merits in supporting the security apparatus during the military operation in East Timor. Although Hercules has never demonstrated any public contribution to promote Javanese culture, nor assisted the Kasunanan palace, the award of the honorary noble title to Hercules was never disputed until the incident in West Jakarta attracted public attention.

In addition to the Hercules affair, some honorary noble titles awarded by Surakarta's Kasunanan *keraton* have also created public controversies. The honorary titles awarded by KGPH Hangabehi are no less controversial. His decision to grant an honorary noble title to Julia Perez, a controversial artist, provoked furious reactions. Julia Perez is also known for her involvement in sex scandals and her inappropriate behaviour. This reputation runs against the image of Javanese culture as a sophisticated and refined culture. Similar to Hercules, Julia Perez has never made any effort to promote Javanese culture and tradition. Regardless of the negative public image, KGPH Hangabehi bestowed a noble title on the artist in 2010 by giving her the name Nyi Mas Ayu Yuli Rachmawati. The controversy over the title reached a peak when Julia Perez was later found guilty of physical attack against Dewi Perssik, another controversial artist, and she was sentenced to a few months in prison. Since the court decision came out, the Kasunanan has decided to withdraw the noble title.<sup>12</sup>

The "game of becoming aristocrats" is a social practice to mediate the *keraton's* encounter with the outside realm. The practice foregrounds the transactional element of the game and, in so doing, shows how the *keratons* choose arenas, resources and strategies to reclaim their cultural sovereignty that the state has undermined. It demonstrates how the aristocrats draw on the desire and intention (Ortner 1999) to hold on to their symbolic role when the *keraton* encounters the state that has encroached upon the palace realm.

The decision made by KGPH Tedjowulan to award the honorary noble title to Hercules shows how the cultural practice of granting titles can also serve as a political statement. Hercules' assistance and his close connection to the Indonesian military during the occupation of East Timor becomes a more important factor than his later involvement in the criminal world. In other words, the game being enacted in the Hercules affair sheds light on a potential role of the *keraton* to make a political statement and, in so doing, situates the *keraton* on the same discursive level as the state institutions. On the other hand, KGPH Hangabehi's decision to bestow a title on the

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<sup>12</sup> The Hercules and Julia Perez affairs are only two examples among other controversial honorary noble title awards granted by the two Sunans. The others include noble titles awarded to the artists Syahrini and Ahmad Dhani and to politicians and high-ranking government officials. The decision of the Kasunanan to revoke Julia Perez's title was related to me by a Kasunanan prince. (Interview with an anonymous Kasunanan prince).



controversial artist Julia Perez draws upon the economic potential of the award. Before she was imprisoned and despite her negative image, Julia Perez was a famous public figure. Her stage performances and films attracted audiences throughout the country. KGPH Hangabehi could have seen this economic potential that the artist could draw and, by incorporating her into the inner circle of the cultural elite, the *keraton* expected to enjoy the fame and accompanying economic benefits. This was a rational option to resolve the financial problem that the Kasunanan *keraton* had been facing since the internal conflict broke out. Since KGPH Tedjowulan and KGPH Hangabehi each announced that they were Sunan Pakubuwono XIII, the Solo city government has halted its regular assistance funds (*dana bantuan*) to the Kasunanan. As the regular funds constituted the major part of the *keraton*'s annual budget, the city's decision to stop the disbursement of the funds affected the regular maintenance activities of the *keraton* and the routine and compulsory cultural ceremonies arranged by the *keraton*, such as the *gerebeg maulud* ritual and *jumenengan* ceremonies. This situation required the *keraton* to find alternative sources to compensate the suspended funds.

Unlike Yogyakarta's Kasultanan or the neighbouring Mangkunegaran palace that still run their businesses or have the means to invest in private companies, many of which they obtained during colonial times,<sup>13</sup> the Kasunanan palace lost most of its businesses in the aftermath of the anti-*swapraja* movement in the 1950s and 1960s. Even though the Kasunanan palace owned a railway company, sugar plantations and sugar factories in the early-20<sup>th</sup> century, the anti-*swapraja* faction in the government had managed to take over the *keraton*'s ownership of the businesses. As a consequence, the *keraton*'s source of income diminished significantly. This situation requires the *keraton* to be creative in its search for alternative sources, and the awarding of noble titles is seen as a viable solution without drastically compromising the *adat*. A Kasunanan prince points out that the noble title award is, in a general sense, a transactional practice.<sup>14</sup> The Sunan grants the noble title drawing on contextual interests: Firstly, as a gesture of honour to individuals proven to be valuable assets promoting Javanese culture and, secondly as a response to fulfil people's need to have a symbolic social status. In the first gesture, the Sunan exercises his function as the custodian of Javanese culture and *adat*. In the second gesture, he is in pursuit of viable alternatives to secure the continuation of the *keraton* institution and administration, and the maintenance of palace buildings. In other words, in the first gesture, the Sunan is a Javanese king. In the second one, he is the manager of *Keraton, Inc.*

## Epilogue: Toward Keraton, Inc.

John and Jean Comaroff (2009) write on how the struggle for ethnic recognition in the late-20<sup>th</sup> century has entered a realm where identity, rights and history intermingle with capital, state power and affects. The intertwining of identity, capital and power forms an "identity economy", an economy of producing feeling and attachment to a

<sup>13</sup> For a rare account of businesses owned by Mangkunegaran palace, see Pringgodigdo (1950).

<sup>14</sup> Interview with an anonymous Kasunanan prince in 2013.

particular construct of identity (2009:8-9). They emphasise that the identity economy in the late-20<sup>th</sup> century relies less on an uncritical view of collective consciousness than on the ability of ethnic discourse to be construed as an entrepreneurial activity. The process of framing something as emotional as an ethnic identity and ethnic attachment into entrepreneurial discourse lies at the heart of what John and Jean Comaroff have termed Ethnicity, Inc. Ethnicity, Inc., the Comaroffs say, includes practices, materials and dispositions toward recognising a different engagement with collective identity and collective consciousness, in short, toward “giving affective voice to belonging” (Comaroff and Comaroff 2009:142). The central element in the Ethnicity, Inc. practice is the affective disposition to recognise the significance of belonging and the working of the capital, in their case, the venture capital.

The “serious game” of the encounter of the *keraton* with the outside realm is also a practice where a collective consciousness of becoming an aristocrat intermingles with state power, individual disposition and capital. The collective consciousness of becoming an aristocrat runs parallel with the interest of the aristocrat to enact a role as the custodian of *adat*, a consciousness comparable to a political move to repossess the custodian interest of the indigenous people. Part of the collective consciousness of the noblemen emerges from the encounters of royal family members with the state, and the other part of the collective consciousness transpires in the co-operation and competition among the *rajas* and the *sultans*, as reflected in the politics of the FSKN and the FKIKN. As Sherry Ortner aptly demonstrates in the “serious game” of high-altitude mountaineering (1999), the dispositions create a structure of feeling and desire, and, at the same time, accentuate the different experiences, interests and desires of the individuals. The “serious game” of awarding honorary noble titles illustrates the structure of feelings among the Kasunanan or Kasultanan aristocrats, and among the factions within the Kasunanan *keraton*. Surakarta’s Kasunanan invests an improvised meaning on the noble titles, locating the practice in the desire to recuperate the symbolic role of the *keraton* as the primary custodian of Javanese *adat*. On the other hand, the Yogyakarta’s Kasultanan dwells on the “serious game” with an interest in affirming loyalty from its *abdi dalem*s and to strengthen the patron-client relationship of the royal families with their close relatives. In other words, the Kasunanan’s “serious game” has drawn on a structure of feeling different from the one framing the Kasultanan’s “game”.

The “serious game” to reclaim access to *adat* is taking place not only among the *keratons*, but also among the groups of indigenous peoples. The *keratons* and the indigenous groups both draw their claims on the discourse of custodians of culture, but they differ in the materials incorporated to frame the notion of custodianship. The *keratons* locate their claim in the arts and written culture, while the indigenous groups frame their claim with international legal instruments. It is not surprising if the indigenous rights movement is less interested in the expressive dimension in the “serious game” of claiming access to *adat*.

The encounter between the *keraton* and the outside realm is a struggle for recognition and over ownership of cultural properties. Since the colonial time, the *keraton* has received recognition not only through the political power it exercises, but also through the economic capacity of the *keraton* to shape and mould cultural identity.

The encounter of the *keraton* and the outside realm forges the “economic identity” of the *keraton* by reworking *adat* and symbolic materials into entrepreneurial activities that can be offered to politicians, to people seeking symbolic status, to the state apparatus, and to tourists looking to experience authentic culture. This is what would constitute “Keraton, Inc.”.

## From a Comparative Perspective Epilogue

*Francesca Merlan*

Given its aim of exploring the relations between legal and anthropological perspectives on indigeneity in Indonesia, the proceedings of the workshop represent the work of two participants with particular legal expertise (Göcke, Cabrera), and a majority of participants with ethnographic and anthropological expertise and interests (Hauser-Schäublin, Steinebach, Klenke, Grumbles, Müller, Sanmukri, Thufail). Among the authors are also scholars who have been closely involved in the work of the principal Indonesian indigenist organisation, AMAN (Aliansi Masyarakat Adat Nusantara, founded in 1999): Arizona and Cahyadi – who also take what might be generally called a legalist perspective, the view of indigenous matters from international and national legal viewpoints.

I was asked to write an Epilogue to the volume, not as an Indonesianist – which I am not – but as an anthropological colleague with long-standing interest in the development of concepts and practice concerning “indigeneity” as at international, national and other levels. My own main field of relevant research has been in Australia, a settler colony where many of the issues concerning indigeneity are rather different than they are in Indonesia, but perhaps not altogether as different as some may imagine.

In what follows I first very briefly comment on the results of the Workshop as represented in these proceedings. Then I discuss some of the issues concerning indigeneity in Indonesia that the first summary reveals to be significant. Finally, I offer

some comparative remarks situating Indonesia within a broader field of nation-states working through the contemporary emergence of indigeneity; and finally, return to summaries of the papers in this volume in terms of the themes raised in the first sections of this Epilogue.

## Brief Summary

In summary, the content of these papers seems to me as follows: those examining international and Indonesian law concerning indigeneity (Göcke, Cabrera, Arizona and Cahyadi) all fairly clearly presuppose the empirically determinable existence of indigenous people/s whom legal frameworks are intended to support and whose interests they are meant to advance and protect. Thus we may say they all take an “essentialist” view of the category of indigeneity. It is probably significant that among this group of contributors are those who have been closely involved with AMAN as founder/s and supporters and who may therefore, without any prejudice intended, also be considered indigenist advocates.

Perhaps unsurprisingly, those with anthropological bent (Steinebach, Grumblics, Müller, Sanmukri, Hauser-Schäublin, Klenke, Thufail) all proceed from a more constructionist view of indigeneity. The most influential position of this kind relating to Indonesia has, in my opinion, been established principally though not exclusively in the recent work of anthropologist Tania Li (2000, 2002a, 2007a, b, 2010). Works in this vein explore the complex connections between contemporary processes of indigenous identification with other intertwined categories and processes in Indonesia, including *adat* (customary law, with its long history of existence as well as re-organisation and systematisation under the Dutch), and various others relating to notions of culture, ethnicity, social inequality and stratification, as well as the work of AMAN itself.

Thus it seems to me that the original concept of the Workshop – to bring together legal viewpoints and anthropological ones on indigeneity in Indonesia – has not united them as one, but confirmed fairly strong underlying differences in the ways these two groups of practitioners position themselves with respect to the Indonesian situation. Therefore this Epilogue may serve a useful function by attempting to epitomize the elements that go into this difference of viewpoints. AMAN, in particular, continues to struggle to gain legal recognition for communities as indigenous, and the question becomes poignant: who is gaining such recognition, and who not, and on what bases? This Epilogue also seeks to bring this Indonesianist volume into relation with comparative commentaries on some of these issues as they are emerging in other parts of the world; and finally, to summarise some of the themes from the papers.

## **Indigeneity: Internationalist Phenomenon and Indonesian Interpretations**

Most sources, legal and anthropological, have little difficulty agreeing that “indigeneity” in its current internationalist acceptation is a recent, post-war phenomenon proceeded partly through the general development of multilateral organisations in that period, and that has its strongest organisational and advocacy framework within the UN system (see Muehlebach 2001, Niezen 2003, Merlan 2009 on these developments), especially within the broader organisational framework of human rights issues. Especially the UN Working Group on Indigenous Populations was for years a vital node in the developing “indigeno-scape” (Beckett 1996).

From there, however, it seems to me that there are differences, as there are within this volume, between those who consider indigeneity to be discoverable in essentialist terms, versus those who take some kind of constructionist view of it. The former view, as with essentialism generally, depends on the notion that there is a set of attributes necessary to the identity and function of people as indigenous, which makes them what they are. This set of attributes may be a fixed or variable set, or people may be seen to embody only some and not others, but the basic idea remains that people are “indigenous” and that it remains for them to be appropriately identified as such, now that the category has won some wide recognition.

The second, constructionist, view – like all views of its kind – rests on the notion that the identification of people as indigenous is contingent on the way that the variables in terms of which this notion is understood by social actors come together with a range of other social variables, rather than being simply understandable as the result of inherent qualities possessed by these people themselves.

A constructionist view of this kind on indigeneity in Indonesia has been most fully articulated by Tania Li. She sees indigenous identity as neither “natural or inevitable” nor “adopted or imposed” (2000:151), and especially recommends avoiding the pitfall of an extreme instrumentalism or tactical focus, but rather thinking in terms of “articulation” (as per Hall 1986): the notion of forging of particular connections where there is a range of possible connections. Li’s caution concerning avoidance of an instrumentalist extreme is important. For with social constructionism comes a concern to define agency, and with the latter always the possibility of a move to understanding action from an actor-perspective, often as tactical and instrumental, and based on the actor’s considerations of how one maximizes advantage under given circumstances. While some of the papers do show evidence of such maximisation (e.g., Grumbly shows a rapid adoption of indigenist perspectives among Wana), Li (2000:153) notes that while a tactical element “may become explicit at times of heightened politicisation and mobilization”, particular connections (Hall’s “articulations”) are possible and meaningful in that they derive from certain fields of power which cannot be reduced to a given momentary possibility of advantage. In other words, extreme instrumentalist thinking is usually reductionist, and in any case instrumentalism is only an aspect of social process, and does not in itself comprise an adequate understanding of what makes it possible and likely for things to go one way or another, and for actors to choose some possible forms of action over others.

Li's (2000) thinking about communities' adoption of indigenist positions developed through a comparison of two settings in Sulawesi, one in Lauje, the other in Lindu. In both places the main occupation was swidden agriculture, and in both locations there were social and economic dimensions of peasantry. Li wishes to explain these different outcomes, not in terms of essential differences between them, but in terms of the kinds of connections that could be made under particular historical circumstances. The first place remained an ordinary-seeming, indeed somewhat fragmented, peasant community in which people deal regularly with state functionaries; while in the second effloresced an (internationally recognizable) indigenous identity.

Over time, the Indonesian government has developed (basically) two frames for categorizing village communities: as isolated and exotic (*terasing*, see also further), and everybody else. The existence of a system of customary law (*adat*) is not necessarily a feature that clearly or necessarily distinguishes these, as any community (of either kind) may be said to be an *adat* community if it evinces a system of customary law/culture (frequently one which may have been documented as such in Dutch colonial times, lending it an additional dimension of codification). But in the first mountainous location, Lauje, whose people had periodically been participants in coastal labouring schemes, and later the subject of (unsuccessful) resettlement, there were few thematic foci and (outside) actors of the kind that promoted any focused unification and special identification of the area and its people, such as came to feature in Lindu. In the latter area, a hydroelectric dam was proposed on Lindu lake around which local and (outside) environmentalist opinion and activism coalesced, and in which the locals became able to present themselves and some of their cultural assets as unique, as grounded in the local landscape, and linked to special, valuable forms of environmental knowledge. Thus, against conceivable expectations, over a period of years of activism focused on objection to the damming of the lake, the Lindu population – Christian, relatively well-off in material terms – became able to identify itself, and be accepted as, indigenous.

Li (2000:169) considers this to be a study in the conditions for articulation, including: focusing of events and efforts around competition for resources, which served to define group boundaries; the existence of a customary political (*adat*) structure able to represent the local population; the presentation of identity and cultural knowledge in terms intelligible to outsiders; and focus upon a particular place arising from a conflict in terms of which locals appeared pitted against state forces. All of these, runs her argument, were broader conditions or issues with which locally-adopted actions and positions could articulate. The need to understand possibilities for connection, and conditions that may militate against it, in Li's view should keep us from adopting too instrumental or narrow a view of agency and local aspirations, as well as too simplistic a view of the determinant force of wider conditions.

Li's is a kind of position certain not to please everyone, and perhaps especially those who take a more essentialist view of indigeneity: on the one hand her view specifically declines a naturalist view of indigenous "being". On the other hand, it also may not please some constructionists, in that she counsels against simply strategic or tactical understandings of "becoming" indigenous. More interestingly, the kind of contrast she suggests, between those who can, and those who apparently do not, conform to terms of indigenous identity broadly (i.e., internationally) understood, may

actually represent a contrast which applies to a very large number of people in the world whom the UN system at least potentially classifies as indigenous, including many in India, Africa, parts of South-East Asia, and so on. For another aspect of indigenous classification that has to be kept in mind is that it is, like all identifications, relative – and thus depends on an understanding that there are some people who are not indigenous, as well as some who are.

It is partly because the clarity of classification as indigenous is not obvious in the Indonesian situation that so many other elements and levels come to play a role in the understanding of indigeneity. And this is a place at which it is useful to mention the seeming clarity of difference between colonial settler states and others like Indonesia, and to follow up with some comparative cases more similar to Indonesia in some respects.

## Indigeneity Compared

Many writers on indigeneity have charted its development from within particular international institutional (especially human rights) contexts, and from within the institutional and activist circles of particular nation-states. Muehlebach (2001) traces the latter back to the Americas, and Merlan (2009) argues for a thrust forward in this regard from particularly the Anglo-American settler states (with contributions from Scandinavia), and the counter-movement that made it precisely those states that for a time refused ratification of UNDRIP (Declaration on the Rights of Indigenous Peoples).

In the settler colonies there appears or is often taken to be a fairly clear distinction between settlers and those who were there before – the indigenous peoples – that simply does not exist in this form in Indonesia, as well as in many parts of Africa, India, and many other parts of Asia and South-East Asia.

However, in the settler colonies there are certainly complexities in how the category “indigenous” may be applied, and especially how governments delimit its reference with respects to benefits, programs and projects of the state. An important issue has to do with a certain, expectable, lack of clarity about how to define the “indigenous” population when the dimensions of time and intersection with in-coming settler populations are taken into account. With time, as in every settler colony, there has come to be a large number of people who are certainly biological descendants of the pre-colonial population, but also of the colonial population. Typically there is contention over state-led as well as vernacular practices and ideas concerning them. To such populations, that have almost inevitably suffered from dispossession, marginalization and discrimination, recent (especially post-war) liberalizations have increasingly allowed for self-identification as part of a set of moves towards normative recognition. This has had, as one result, identification of themselves as indigenous (or whatever relevant term is nationally or regionally employed) by an increasing number of people, some of whom might have earlier tended to minimize, insofar as possible, their connections to the indigenous population. In Australia and elsewhere, there has also been a distinct tendency for that self-identification to be total, involving a



rejection of the idea of “fractional” or “mixed” identities, that include both indigenous and other, perhaps especially “settler”, components. Though gradually there is now an emergent celebration of “mixed” ancestry, there has been some resistance to this. Certainly, a certain line of reasoning or feeling runs: in the past we were discriminated against as if we were “native”, and sometimes – even worse – were regarded as combining the worst traits of native and settler populations. Now, when it is possible, we wish declare ourselves entirely “native”. Since, however, identification is an interactive process which may involve lack of acceptance and certainly almost always involves power differentials; such a self-determined identification is often not accepted by the mainstream or dominant community, who say: these are not native people as we understand it. They are changed from an earlier condition which made them different and, even if we attempted to suppress them in the past, remarkable.

Both positions, that of the person who wishes to be recognized as “native”, and her “other” whose societal position does not lend support to extinguishing the earlier population physically but to denying the authenticity of mixture, have something in common: they usually do not adequately take account of the fact that none of these processes of mutual identification are outside history and interaction. People do change culturally, attitudinally, biologically, and in their capacities, through interaction, and “miscegenation” is part of that. In short, both positions tend to adopt a static view of what it means to be “native” that harkens back to some early period and imagery, and thus is retrograde with respect to the question of what it might mean to be “indigenous” today. Note that explicitly socio-biological thinking, reckoning purely in terms of biological descent, is politically rather incorrect in the liberal-leaning societies today – so that, on the face of it, biological mixed descent cannot overtly be taken as any kind of conclusive argument against indigenous status. (One may, for these reasons, want to consider the quantitative reckoning of descent fractions by tribal councils on many American Indian reservations as other than “liberal”). Any criteria must also be social and these, inevitably, will be complex and fragmentary – not only with reference to biological but also cultural factors.

In short, in the settler colonies (as well as in many other nation-states where large-scale interaction of originary and later-introduced populations have been hugely significant shaping processes) issues of identification in a critical sense must be grasped historically and in their particularity. This is something that overarching classifications such as “indigenous” (and even basic colour-based classifications such as “black” and “white”) tend to simplify, if not rigidify. Social process historically understood is apparently highly bounded by such terms as “indigenous”, but many of the underlying societal issues evolve rather than go away.

But there is an even more problematic aspect of indigenous identification which belies what might be assumed to be the certainty of this category in the settler states. It also has to do with process. And that is the rather recent, foreign and “top-down” nature of this particular form of classification itself, and the processes that gave rise to it. Since it has been developed as a category in international organizational contexts, and intended as inclusive and restorative, it is hardly surprising that the concept of indigeneity as internationally understood, together with the word itself, has limited circulation among most ordinary people to whom it might be thought to apply.

“Indigenous” people have been used to calling themselves by other terms, such as “coloureds” (one thinks of the admixtures neaten up from the dominant-society’s perspectives under this term in South Africa), or “Blacks”, or “Aborigines”, or “Murrís”, or “Métis”, or “Maori”, or by a whole variety of regionally and sometimes nationally recognized terms that typically do not involve the spatially and socially inclusive, and connective, dimensions of internationalist indigeneity. One might go further and say that the dissemination of ideas concerning indigeneity has been largely the preserve of governmental, professional, internationally-oriented persons and organizations; and that at the social base intended to be represented by this ideal, indigeneity still has relatively little traction (some of the papers in this volume have shown NGOs and activists in Indonesia to be key vectors of notions of indigeneity).

Internationalist indigeneity evolved partly in the effort of representatives of pre-settler populations to by-pass some of the rigidities of state management of their situation, and reach for broader international assistance and mechanisms. And while these processes have undoubtedly been influential, they have naturally had a couple of consequences. First, as noted, the social base of such populations has typically remained less than broadly participant in these developments (this may be interestingly compared with the fact that over two thousand Indonesian communities have joined AMAN). But second, some aspects of the processes have become part of the governance functions of the relevant liberal democratic states (one might think here of the evolution of such offices as that of the Aboriginal and Torres Strait Islander Social Justice Commissioner in Australia, a branch of the Australian Human Rights Commission created in 1992 in direct response to a national enquiry). So in a sense, such organizations, though critical of government in part, also belong to the range of government structures. The liberal democratic governments of settler states, in short, do not reject the internationalist concept of indigeneity. They accept it – though it carries with it conceptual and practical limitations discussed above – as a category which does some work within the nation-state towards an articulated goal of improving the lot of the country’s most disadvantaged, though how this is to be done is conceived in often radically different ways.

We may now compare that acceptance and integration of indigeneity into government with the official position of Indonesia, and more broadly, a whole range of nation-states who see the internationalist concept of indigeneity as inapplicable to themselves. To a large extent, their rejection is on the basis of a first principle that there is no clear distinction to be made between earlier and later populations. As Klenke (in this volume) quotes Tsing:

Indigeneity is not a self-evident category in Indonesia. Almost everyone is “indigenous” in the sense of deriving from original stocks; Indonesia is not a white settler state.

(Tsing 2007:34)

As Klenke remarks, Tsing's statement relates to the position of the Indonesian state that it is "only marginalization by white settlers that transforms minorities of 'original stock' into indigenous people". While that is certainly the Indonesian state's position, we may also refer back to Li's (2000) critical anthropological position that there is no simple or essential distinction to be made between indigenous people and others within the population. In another place Li (2002a:365) has commented that peoples in Indonesia have co-mingled, displaced each other, and migrated over centuries. And we can also draw in the preceding discussion, which has argued that governments in settler states do not fundamentally reject the internationalist concept of indigeneity, but that their understandings of it inherently tend to immobilize it rather than infuse it with historicity.

The colonial population in Indonesia was never large and did not lead to a continuing distinction of the settler-indigenous kind such as is found in Australia. Colonists were a governing power but not a demographically significant category internal to Indonesian societies or, eventually, to the internal post-independence state. As these papers (and many others) also illuminate, the possible applicability of notions of indigeneity have widened in the Indonesian reform era (post-1998) characterized by policies of decentralization and calls for greater degrees of local autonomy and broader public participation in socio-economic processes.

The colonial power exerted, of course, significant effects, including by making use of kinds of socio-political and religious phenomena to categorize and organize the populations they sought to govern. It is within this range of phenomena that much debate about the relevance of "indigeneity" has gained traction in the *reformasi* period, particularly with respect to all-important socio-environmental issues and tensions over rights in land and land use. A key concept that plays a role in this governmentality is *adat*, which thus naturally emerges as a principal issue in a number of the papers in this volume (from an historical and legal perspective, Arizona and Cahyadi; Grumbles; Müller; Sanmukri; Hauser-Schäublin; Klenke; Thufail).

The Arabic-derived word *adat* has broad reference to cultural norms, values, customs and practices found among specific ethnic groups in Indonesia (as elsewhere in parts of continental and insular south-east Asia), to an (originally) unwritten traditional code regulating social, political, and economical as well as maritime laws.

Autonomous governance, protection from external encroachments, natural resource management and land usage are among the most important features of *adat* in Indonesia.

(Tyson 2011:653)

Tyson (2011:654) also observes that status is central to the *adat* world he writes of (specifically, Sulawesi), introducing an element of social hierarchy and differentiation that has clearly played a large role in contemporary revitalisation of *adat* in many parts of Indonesia (papers by Klenke on Toraja, Thufail on the *keraton*, or palace). Li (2007b)

discusses a variety of deployments and interpretations of *adat*, including its use by political elites as an ethno-political tool of mobilization. However, both hierarchy and status differentiation are outside standard internationalist expectations of indigenous peoples and societies, which tend to focus on equality and communalism. Indeed it is often only in terms of an asserted communalism (if not tribalism, see Li 2000), that local populations and villages can confront the powerful interests of resource extraction (forests, minerals) and land use (timbering, plantations).

British and Dutch colonial powers, as (noted by Arizona and Cahyadi note, p.4), studied and contributed to codifying *adat* in many regions, making these available in many cases as *Adatrechtbundels* (Adat Law Tomes), and even published findings declared to be a “discovery” of customary law. Among other things, the existence of *adat* law communities became a means of indirect rule. The authors cite ter Haar (ibid) as having seen common origin and shared territory as key dimensions of an *adat* community, thus raising kinds of problems mentioned by (Li 2000) of the multi-ethnic and historically layered nature of many forms of local organization, and explored also in papers in this volume by Steinebach (this volume, regarding strategic marriage into Batin Sembilan, and by Hauser-Schäublin for Bali, where, disregarding other differences with other parts of Indonesia for the moment), it has been seen as necessary to recognize the “mixed” character of *pesisir* villages on the northern coast.

Arizona and Cahyadi further explore the difference between two phrases, *masyarakat adat* and *masyarakat hukum adat*, the second of which has a somewhat more delimiting, officialised resonance and usage, while the first is used by NGOs and activists. The phrase *masyarakat adat* was in fact devised by NGOs in 1993, as a translation for the internationalist concept of Indigenous Peoples, and was assumed to correspond to a category of people living according to ancestral ways and in fixed territories – a correspondence which has proved to be difficult to find on the ground, if not illusory (see Li 2007b:571ff). The conflict over usage of *masyarakat adat* and *masyarakat hukum adat* revolves around the extent to which entities (or communities) as subjects of law have been officialised, or not; and, as the authors put it, the extent to which concepts have been taken over from colonial into current discourse (the addition of Arabic-derived *hukum*, governance or government, evidently suggests colonial regimentation). But at the bottom of such contests over designations and their content is the question how communal entities are to be defined, most saliently, from the point of view of the state. With the recent addition of questions of “indigeneity”, the question arises how, and which, such entities may be entitled to seek rights or provisions as ones applying to indigenous peoples – a notion which, as earlier noted, the Indonesian state does not see as having application, while activists, NGOs and others contend strongly for such recognition.

Similar kinds of conflicts about designation and concomitant affordances exist, as Hauser-Schäublin illustrates, in the Balinese contrast between *desa dinas* and *desa adat* (official administrative and customary villages respectively), here fully involving the question, not only of their status as entities in relation to the state, but their territorial boundaries. In any event, she notes that in Bali the *desa adat* has been renamed *desa pakraman*, a designation connoting religion, territory, and regulations – overall a notion

of a customary legal community, but one that also invokes the notion of a shared religion.

However, none of these alternative designations and complications get past the fact that there is no clear, cross-cutting notion of temporal priority of one definable category of people over others (such as emerges in settler state settings, even if complicated by history in many ways), nor is there a clarity of socio-cultural difference setting off such a putative category from others. The many complications result precisely from the fact of long-term embeddedness of people and villages in landscapes according to local forms of organization and governance. These existed both in relation to pre-state formations, in relation to the colonial system, and were to varying extent codified as part of the colonial project.

Probably the Indonesian state categorisations which approach most closely notions of indigeneity as understood in international and in other national contexts are those discussed most fully by Steinebach (this volume). These are successive terms by which some populations were considered *suku terasing* (isolated tribes), *masyarakat terasing* (isolated communities), and finally as *komunitas adat terpencil* (remote *adat* community). Many of these groups were mobile, remote and/or forest-dwelling. They were seen by the state as in need of development, hence periodically removed or re-settled and otherwise subjected to management. Steinebach shows, however, how a spokesperson for such a group explicitly identifies himself and others in many ways with majority rather than marginalized populations: as having in fact been sedentary and having lived lives comparable to others', fleeing into the forest only to oppose and escape the Dutch. The spokesman cited conjures up a local identity which has as many elements of the peasantry as of any other category, marked by struggles over land with the state. The population referred to, the reader has earlier learned, is also in fact characterized by significant Javanese in-marriage, woven into the fabric of the local community. Overall, such a depiction in relation to the question of the indigenous, or other, identity of such a population seems most satisfactorily illuminated by Li's notions of the kinds of connections that can be made under complex historical circumstances, not least contemporary ones of resource competition, state decentralization, and reshaping of local political structures, rather than by any simple designation.

Kinds of complexity in relation to indigeneity have been treated in many other situations in the world, with respect to a broad swathe of nation-states and even large parts of continents. Lutz (2007) notes a general African position that all Africans are to be treated similarly, and not singled out for special treatment. Certain African countries (e.g. Botswana) have specified in their constitutions that no such distinctions of race or ethnicity will be made. A range of anthropologists (e.g. Geschiere 2005, Leonhardt 2006) have raised questions of the potentially disruptive effects of internationalist identifications of indigenous peoples as having special status, especially in African contexts in which equal treatment of people as citizens is only weakly established practice, and there are many visible tendencies towards preferential treatment of some, and disregard or worse of others, on the basis of race, ethnicity, tribalism, and/or "autochthony" (see further).

More particularly, studies of some cases have shown how the application of indigenous concepts yields ambiguous results. In many African contexts, there is a

continual negotiation of the relative status of those considered linked to the land over the long term, “sons of the soil” or autochthones, versus those who arrive later from other locations and are seen, sometimes over generations, as recent arrivals or migrants. Kopytoff (1987) has argued that African societies tend to produce themselves at internal frontiers so constituted. And indeed, this distinction was inscribed colonially in Francophone Africa as one between *autochthones* and *allogènes* (see Geschiere 2009).

Pelican (2009) illustrates through a case study of Mbororo of Cameroon how such local discourses of autochthony and internationalist ones of indigeneity yield distinctly different results. Mbororo, who belong to the ethnic category Fulbe, and are Muslim, were originally mobile pastoralists. They have migrated southwards in considerable numbers to reside among Grasslands-dwelling farmers by whom they are considered temporally secondary, or *allogènes*. Though Mbororo have become sedentary, their outsiders status as “northerners” has been perpetuated over time, so that symbolically they are identified as migrant, and as a pastoral people. Partly, however, because of their original pastoralism and its assumed connotations, the Mbororo were able to achieve international recognition as indigenous. Their (original) pastoralism, nevertheless, conflicts with a dimension of supposed temporal priority of indigenous peoples, for they are, as noted, locally perceived as migrant and it is well understood that they arrived in this area subsequent to those of the category of resident farmer *autochthones*. The symbolic force of Mbororo as pastoral evidently here has trumped what Malkki (1992) terms the “sedentary metaphysic”, the valuation of being recognized as in place, implying priority and superior belonging. Their preferential identification as indigenous has, as Pelican (2009) illustrates, exacerbated relations with their sedentary neighbours at certain times. The Cameroonian state, though it has introduced a notion of indigenous peoples into its constitution, has not implemented any particular measures on their behalf, so that they have not materially benefited from this identification.

The potential difficulties of identification of particular groups as indigenous in African contexts was foreshadowed by an African Group’s (2007) aide memoire to the UN Working Group on Indigenous Populations in the run-up to UN adoption of the Declaration on the Rights of Indigenous Peoples. This memoire specified some African members’ reservations about the legal and constitutional implications of indigenous identification for issues concerning land and resources, distinct political and economic institutions, national and territorial integrity, and sustainability of state responsibility for the monitoring of land and resources (see Oldham and Frank 2008). For another African context, Tanzania, Igoe (2006) has raised some questions comparable to those raised relating to Mbororo. Shah (2010) for southern India has critically analysed local appropriations of discourses of indigeneity as important to the combined perpetuation and transformation, as well as intensification, of class differences. Baviskar (2007) critically discusses the early uptake of indigenist discourses in the context of the Indian Narmada dam controversy by those opposing it, but the later transformation of indigenist into Hindutva (Hindu rightist) activism.

This brief consideration of concerns about indigenous identification and the relation between international processes and those at other levels could be extended. It

serves here to signal a series of critical, practical and moral qualifications concerning indigenous identification: anthropologists' awareness of how locally pre-existing discourses may be contradictory or incompatible with internationalist precepts; states' concerns about its implications for some of their functions and relations to citizenries; its possible implications for internal contention within groups seeking indigenist identification, as well as between them and others.

Returning to Indonesia, Li (2002a) has written about the moral implications and responsibilities incumbent upon anthropologists, activists and others in advancing indigenous claims over those of others. She sketches how, three years after the fall of the Suharto government, a large number of internal refugees had been created in various parts of Indonesia – Papua, Timor, Maluku, Sulawesi, Kalimantan, Sumatra – partly as a result of greater freedom on the part of some to unilaterally claim superior rights of belonging in particular locales, and resulting victimization of those seen as migrants. Focusing on the instance of Dayak murder and expulsion of Madurese, in particular, in West Kalimantan, Li raises the question whether ethnic territorialisation may be exacerbated by indigenous rights activism. What seems to provide security for some, who indeed may have been oppressed over a long term, may create radical, life-threatening insecurity for others. Though it may not be altogether fashionable to compliment colonialists, Li regards it as a virtue of the colonial period that in making a tri-partite distinction among Europeans, Foreign Orientals (Chinese, Indians and Arabs), and Natives, it nevertheless did not make invidious distinctions among “Natives” that would have given some priority over others, but instead developed this as a category within which all were regarded as equally native, and which served as a frame for an ideal of common citizenship upon independence. This resonates with the official positions of some African states which recognize the perilous weakness of mechanisms of common citizenship, and the dangers of politicizing distinctions based on notions of priority or exclusive attachment in light of continuing deficits of social justice and pluralist recognition.

## Summary of the Papers

The introduction to this volume by Hauser-Schäublin briefly sketched the emergence of indigenist mobilisation in Indonesia, the forms of imagination which shape internationalist imaginings as against some of the issues of the multiple deployments of *adat* and concepts of autochthony, as well as oppression and disadvantage, which configure indigenism in Indonesia. This introduction, like much of the material it cites, gives a sense of the complexities involved in the identification of an indigenous sphere, and the multi-vocality of many of the concepts – such as *adat* – typically deployed in the effort to do so.

The next several papers deal with indigenism in the framework of international law. Göcke argues that indigenous peoples have been regarded as subjects of international law and holders of sovereignty for centuries, and assumes that they have rights to self-determination, while conceding the ambiguities inherent in the phrase. In my (admittedly anthropology-centric) point of view, the paper stands in tension with the

constructivist perspective outlined in this Epilogue, and with some of the further implications of such a perspective.

Cabrera argues that there have been two kinds of approaches to indigenist identification under international law: a human rights approach (emphasizing needs for protection of often-marginalized peoples) and a second, functional approach which centres on indigenous peoples' participation, and though it their contributions to attaining international goals in areas of environmental protection, traditional knowledge, cultural diversity, economic development and international governance generally.

Arizona and Cahyadi's is a paper which highlights some of the way-points in the development of indigenous activism in Indonesia, the emergence of AMAN (Aliansi Masyarakat Adat Nusantara), and most recently, and both the passage of new laws protective of indigenous rights (RUU PPHMHA) and their shortcomings. Arizona and Cahyadi see shortcomings as consisting in the constraints imposed by traditional elites, as well as the "conceptual imprisonment" reflected in recent regulations. They advocate the need to transcend this.

Turning to the more anthropological papers, Steinebach contributes to the depiction of the historically changing, multi-faceted and complex position of people she writes about, whom some might seek to classify as indigenous. Generally known as Batin Sembilan ("nine tribes", and exponents of a deep, regional and politically relevant 'tribal genealogy'), they were previously qualified as *kubu* (hiding, isolated), later as *kommunitas adat terpencil* (traditional remote community). They generally evince an anti-colonial positioning, characteristics of a landed peasantry, as well as being integrated into market production and aspiration and hoping to gain further access to land for oil palm development. As noted above, this case well illustrates the complexities of which Li writes, discussed above.

Grumbles writes of Wana, a relatively isolated but nevertheless cash-cropping population who retain cosmological understandings of the region as having been inhabited by ancestral *taw Baraka* (powerful people). Over a relatively short period of time these people were contacted by exponents of indigenous identification and developed some enthusiasm for pursuit of the possibilities such identification would enable. At the same time, these developments created some distrust between older and newer leaders as these new constellations for mobilisation developed. Seeing Wana enthusiasm for participation in indigenist mobilisation as grounded in long-term injustice in economic and other terms, Grumbles also notes a reluctance on the part of some who fear that new forms of relationship and empowerment will render them ineligible for reward by the *taw Baraka* (powerful people) whose return some still anticipate.

Müller discusses contestation over the desirability of strengthening of *adat* in Tobelo, North Halmahera, a predominantly Protestant district. In view of a recent history of violent conflict, some movement in favour of *adat* has emerged, as well as some strength of opposition to doing so, and to the measures proposed. Questions that preoccupy the contestants are: what form/s of *adat*, according to proponents, are to be strengthened? And what would be the implications for others? One of the crucial objects of contestation is the symbolic unity of *adat* as grounded in Hibua Lamo, a



notion of an ideal-material constellation of ten communities living in four regions of the district. Activists, largely located near Tobelo town, are led by a district head who is, at the same time, an advocate for the renewal and extension of unifying *adat* and a member of North Halmahera parliament. Their advocacy for regional unity of *adat*, is framed in terms of the maintenance, indeed renewal, of culture and traditional performance; but not only this. Some also see in this unity a potential for overcoming religious differences that contributed to earlier conflict (embodied in the metaphor of Hibua Lamo as a common “big house”), and were motivated by this hope. This version of *adat* has unifying aspirations which are variously cultural, political and religious in character, even as both politics and religion are seen by some of them as contentious and to be kept at arm’s length. It also implies a certain internal hierarchy, with shadowy internal historical subdivisions, which are the subject of some criticism. The opponents of the “Tobelo version” of *adat* emphasize and demand instead respect for the particularity of communities. There is a certain town- or Tobelo-centrism to the whole contention over the redevelopment of *adat* here. This is perhaps most conspicuously epitomized by the Hibua Lamo “big house” being located in a concentrated physical form, that is as a structure, in Tobelo town. Critics of the Tobelo version of *adat* see the wearing of traditional costumes as more demotic and equalizing. Overall, then, Müller’s paper exemplifies struggles in the renewal of *adat* and its implications.

Moving to an organisational frame, Sanmukri explores how NGO activity supports the emergence of a recognizable indigenous sphere. She examines the relations of an NGO, Samdhana, to AMAN, as these emerge through Samdhana’s sectoral activities: principally ones to do with environmentalism and natural resource management. She argues that development organisations overtly operate in terms of very general and widely, including internationally, promulgated discursive concepts of participation, empowerment, etc., and measures to achieve these aims: official discourses and practices. But beneath the surface are a multiplicity of other-than-official discursive and practical tactics and aims, which have been characterized by strong orientations towards support for an indigenous constituency in the post-Suharto period. Within an organisation such as Samdhana are many national workers of activist formation and connection who operationalize the overt official programs in a variety of ways, introducing activist connections, dispositions, aims and modes of operation into their activities. At the same time, however, they are exposed to official discourses and practices, and may internalize some of these. Such organisations as Samdhana and AMAN bring together development workers and activists with diverse backgrounds and connections, some of whom are mobile between and among work venues; and there is some transfer of ways of thinking and operating among them. The paper mentions a persisting tension in the activities and relations between NGOs and AMAN: the assumption that indigenous communities are characterized by sustainable environmental practice, qualified however by a sense that there is a need to restore and revive these very practices. The paper provides some insight into how an indigenous sphere emerges in practice, despite the numerous complexities and ambiguities that continue to surround its identification as such.

Bali, with its considerable self-consciousness of distinctive Hindu culture and practice (and also, earlier political marginalisation within the centralized Indonesian state), might seem like an obvious locale in which indigenous identity would be rapidly taken up at scale. But Hauser-Schäublin shows that this is hardly the case. There have been numerous recent modifications of notions of Balinese communal and provincial regulation, the latter (PERDA, Peraturan Daerah Provinsi Bali nomor 2001) practically underwriting a shared form of Hindu Balinese cultural citizenship, and creating the possibility, as Hauser-Schäublin suggests, of large-scale *masyarakat adat* community/ies. Yet few Balinese communities belong to AMAN, the major Indonesian indigenous organization; and the number of participating communities has in fact declined over recent years. Though Bali is largely Hindu, and Perda 03/2001 explicitly recognises this, the question of *agama* (religion) in its relation to *adat* does not seem to be a central issue in the apparent lack of Balinese uptake of AMAN and its activities. Though AMAN leaders have recognized kinds of Balinese pluralism, making distinctions among Bali Pesisir, Bali Mula and Bali Apanage communities (respectively, north coast with its multi-ethnic populations, Bali Aga or “animist” communities, and “mainstream” communities), AMAN simply does not appear to speak to some of the main concerns of Balinese, including deriving greater benefit from the central government, and furthering external connections and tourist potentials, among others. Nevertheless, AMAN seems to have some uptake, due to its offering a kind of positioning to some outside existing village socio-political structures. Insofar as it does, some AMAN representatives become caught up in some of the discussions which play out Indonesia-wide with respect to contemporary organizational representation and participation: how compatible is representation by women with *adat* on the one hand, and with democratization and social transformation on the other?

The last two papers by Klenke and Thufail have in common that they deal with issues of social stratification in the context of indigenism. Klenke asks why Torajan elites were eager to claim indigenous identity. She answers this by neatly showing how possibilities of decentralization, tourism, and World Heritage nomination have all been folded into the reconsolidation by Torajan elites of noble hegemony as their particular version of revitalizing *adat*, and of assuming an indigenous identity, thus reinscribing social stratification and inequality “in a space in which it is assumed not to exist” (Klenke p.20), namely, among indigenous peoples.

Thufail, adopting from Ortner (1999) the figure of the “serious game” -- here of becoming aristocrats -- shows how particular notions of *adat* are reworked to support the material and symbolic position of the nobility and the *keraton*, the palace, with illustrative examples from Java and other parts of Indonesia. While Indonesia’s nobility had a somewhat ambiguous status under the Dutch, and had to treat with the New Order to sustain the *keraton*, the recent period has opened up for them the possibility, and the necessity, of reaching out to a wider public not genealogically related to royal families, to shore up the position of the *keraton* materially and socially. Thufail effectively illustrates this by discussing the extension of noble titles to palace outsiders, including some of dubious reputation but a certain popular standing.

In short, the last two papers focus on stratification in Indonesian societies, a bit of a renegade topic here in that “indigenous peoples” are generally understood as non-

hierarchical, but an important dimension of the uptake of indigenist possibilities in Indonesia. The papers illustrate how *adat* is adapted to the purpose of sustaining hierarchical institutions in the hands of controlling persons whose positions are nonetheless unsettled and the nature of their political role considerably undermined by the state. Both state, and wider populace, nevertheless evidently continue to have a certain sense of investment in the cultural and social priorities of the nobility.

Together, the papers illustrate a range of articulations in the present period. These involve the emergence and negotiation of indigenous identification, claims concerning *adat*, and often the issue of relation between these, in contestations over land, resources, environment, and socio-political position.

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## Abbreviations

AIPP	Asia Indigenous Peoples' Pact (umbrella organisation uniting 46 indigenous (sub-) national organisations in Asia)
AKKI	Asosiasi Kerajaan dan Kesultanan Indonesia (Association of Kingdoms and Sultanates of Indonesia)
AKKN	Asosiasi Keraton dan Kerajaan Nusantara (Association of Palaces and Kingdoms of the Archipelago)
AMA Kalbar	Aliansi Masyarakat Adat Kalimantan Barat (The Indigenous Peoples' Alliance of West Kalimantan)
AMA Toraya	Aliansi Masyarakat Adat Toraya (The Indigenous Peoples' Alliance of Toraya)
AMAN	Aliansi Masyarakat Adat Nusantara (The Indigenous Peoples' Alliance of the Archipelago)
BAL	Basic Agrarian Law, passed in 1960
BFL	Basic Forestry Law, passed in 1967
BI	Bahasa Indonesia (Indonesian language)
BPD	Badan Perwakilan Desa (Village Representative Body, mentioned in the Regional Autonomy Law no. 22 of 1999)
Brimob	Brigade Mobil (Mobile [police] Brigade)
BRWA	Badan Registrasi Wilayah Adat (Ancestral Domain Registration Agency, a co-operation between AMAN, JKPP and FWI for the registration of the maps developed in the process of community mapping)

BT	Bahasa Taa (Wana language)
CBNRM	Community-Based Natural Resource Management
CBO	Community-Based Organisation
DAMANNAS	Dewan AMAN Nasional (AMAN's National Council, the Alliance's highest decision-making body)
DPR, DPR RI	Dewan Perwakilan Rakyat Republik Indonesia (National Parliament)
DPR-D	Dewan Perwakilan Rakyat Daerah (People's Representative Assembly at a local level [province, district or city])
DPRD-GR	Dewan Perwakilan Rakyat Daerah <b>Gotong Royong</b> (Gotong-Royong Regional People's Representative Assembly)
FKIKN	Forum Komunikasi dan Informasi Keraton se-Nusantara (Forum for Communication and Information of Archipelago Palaces)
FKN	Festival Keraton Nusantara (Festival of Archipelago Palaces, organised by FKIKN)
FPHB	Forum Perjuangan Hak Bali (Forum for the Fight for Balinese Rights, formed in 2012)
FPIC	Free, Prior and Informed Consent (A principle ensuring communities' participation in decision-making processes, enshrined in the ILO 169 Convention and in the UNDRIP)
FSKN	Forum Silaturahmi Keraton Nusantara (Friendship Forum of the Palaces of the Archipelago)
G30S	Gerakan 30 September (the Movement of September 30, 1965, which led to President Sukarno's downfall)
GBPH	Gusti Bendara Pangeran Haryo (royal title in Yogyakarta's Sultanate)
GKR	Gusti Kanjeng Ratu (royal title in the Kasunanan keraton of Surakarta)
GMIH	Gereja Masehi Injili di Halmahera (local branch of the Evangelical Church in Halmahera)
Golkar	Partai Golongan Karya (The Party of the Functional Groups)
HuMa	Perkumpulan untuk Pembaharuan Hukum berbasis Masyarakat dan Ekologis (Association for Community and Ecologically-Based Law Reform)

ICRAF	International Council for Research in Agroforestry founded in 1978
IFAD	The International Fund for Agricultural Development
IFC	World Bank Group's development institution "International Finance Corporation"
ILO	International Labour Organisation
IPPF	Indigenous Peoples' Planning Framework
Jagat NTT	Jaringan Penggerak Masyarakat Adat Nusa Tenggara Tengah (Network of the Indigenous Activists of East Nusa Tenggara)
JAPHAMA	Jaringan Pembelaan Hak-Hak Masyarakat Adat (Indigenous Peoples Rights' Advocacy Network)
JKPP	Jaringan Kerja Pemetaan Partisipatif (Participatory Mapping Network)
KAT	Komunitas Adat Terpencil (Remote Adat Community)
KGPAA	Kanjeng Gusti Pangeran Adipati Ario (royal title in the Pakualaman keraton of Yogyakarta)
KGPH	Kanjeng Gusti Pangeran Haryo (the highest title of Surakarta Kasunanan noblemen after the king. The title KGPH is reserved only for direct male descendants of the king)
KKN	Korupsi, Kolusi, Nepotisme (Corruption, Collusion and Nepotism)
KMAN II	Kongres Masyarakat Adat Nusantara ke-dua (Second Indigenous Congress organised by AMAN 2003 in Lombok, West Nusa Tenggara)
KMAN III	Kongres Masyarakat Adat Nusantara ke-tiga (Third Indigenous Congress organised by AMAN 2007 in Pontianak, West Kalimantan)
KMAN IV	Kongres Masyarakat Adat Nusantara ke-empat (Fourth Indigenous Congress organised by AMAN 2012 in Tobelo, North Maluku)
KPA	Konsorsium Pembaruan Agraria (Consortium for Agrarian Reform)
KpSHK	Konsorsium Pendukung Sistem Hutan Kerakyatan (Consortium for Supporting Community-Based Forest System Management)

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KR	Kanjeng Raden (the lowest rank of honorary male titles in Surakarta's Kasunanan palace)
KRAy	Kanjeng Raden Ayu (title for a Surakarta Kasunanan noblewoman)
LBBT	Lembaga Bela Banua Talino (Institute for Community Legal Resources Empowerment)
LIPI	Lembaga Ilmu Pengetahuan Indonesia (Indonesian Institute of Sciences)
MoU	Memorandum of Understanding
MPRS	Majelis Permusyawaratan Rakyat Sementara (Provisional People's Consultative Assembly)
Murba	Musyawah Rakyat Banyak (Great People's Consultative Party)
NGO	Non-Governmental Organisation
Perda	Peraturan Daerah (Regional [provincial] Regulation)
PKI	Partai Komunis Indonesia (Indonesian Communist Party)
PNI	Partai Nasional Indonesia (Indonesian National Party)
PNPM	Program Nasional Pemberdayaan Masyarakat (National Programme for Community Empowerment, managed by the World Bank and funded by Governments of Australia, Denmark, the Netherlands, United Kingdom, United States, and the European Union)
Polres	Polisi Resor (Resort Police, police command at district level)
PRD	Partai Rakyat Demokrat (People's Democratic Party)
Prolegnas	Program Legislasi Nasional (National Legislation Programme)
PSII	Partai Syarikat Islam Indonesia (Indonesian United Islamic Party)
PT. AP	PT. Asiatic Persada
PT. BDU	PT. Bangun Desa Utama
PT. TPL	PT. Toba Pulp Lestari
PT. TÜV Rheinland	RSPO-accredited German assessor which evaluates the implementation of the RSPO criteria

REDD	UN Initiative on Reducing Emissions from Deforestation and Forest Degradation
RSPO	Round Table on Sustainable Palm Oil
RUU	Rancang Undang-Undang (Draft Law)
RUU PPHMHA	Rancang Undang-Undang tentang Perlindungan dan Pengakuan Hak Masyarakat Hukum Adat (The Draft Law on the Recognition and the Protection of the Rights of Indigenous Peoples)
SAD	Suku Anak Dalam, self-determined name of a Batin Sembilan activist community
Sarbupri	Sarekat Buruh Perkebunan Republik Indonesia (Estate Workers Union of the Republic of Indonesia)
Sobsi	Sentral Organisasi Buruh Seluruh Indonesia (All Indonesia Centre of Labour Organisations)
STN	Serikat Tani Nasional (National Peasant Union)
TAP MPR	Ketetapan Majelis Permusyawaratan Rakyat (decree of the People's Consultative Assembly of the Republic of Indonesia)
UN	United Nations
UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNGA	United Nations General Assembly
VOC	Vereenigde Oost Indische Compagnie (Dutch East India Company)
WALHI	Wahana Lingkungan Hidup Indonesia (Friends of the Earth Indonesia)
WIPO	World Intellectual Property Organisation
WWF	World Wildlife Fund
YLBHI	Yayasan Lembaga Bantuan Hukum Indonesia (Legal Aid Foundation of Indonesia)
YMP	Yayasan Merah Putih (Red-White Foundation, NGO located in Palu, the capital of Central Sulawesi Province)



## Contributors

**Yance Arizona** is a programme manager for the law and society programme at Epistema Institute in Jakarta. In addition, he is a lecturer of Constitutional and Administrative Law at the Law Department, President University, Jakarta. He is a graduate of the law programme at Andalas University (2007) and received his Master of Law at the University of Indonesia (2012). In 2011, Yance took part in the tailor-made course on Agrarian Transition for Rural Development at the Institute of Social Studies (ISS), Erasmus University, the Hague, Netherlands. He also participated in the Beahrs Environmental Leadership Program at the College of Natural Resources, University of California, Berkeley, in 2013. He has written several books relating to agrarian law reform and the indigenous peoples' land rights. Currently, Yance is preparing a book based on his Master's thesis entitled *The Agrarian Constitutionalism*.

**Maria Victoria Cabrera Ormaza** is a Ph.D. candidate at the Institute for Public International Law and European Law at the University of Göttingen. Her main research focus is on the status and role of indigenous peoples in the law- and decision-making activities of international organisations. She holds a LL.M. from the University of Heidelberg and the University of Chile. She has been admitted to legal practice in Ecuador and Chile. She finished her law studies at the Universidad de Especialidades Espíritu Santo in Ecuador.

**Erasmus Cahyadi** is the director of the Law and Human Rights Programme at the the Indigenous Peoples' Alliance of the Archipelago (AMAN). He is a regular contributor to the bi-monthly bulletin *Gaung AMAN* and other AMAN publications, such as: *Activists' Manual on the Application of the Principle of Free, Prior and Informed Consent* (FPIC), *Climate Change Adaptation and Mitigation* and *The Indigenous Peoples' Perceptions*



*about Poverty*. He also writes in several other bulletins, including The Institute for Policy Research and Advocacy's (ELSAM) *Asasi* and the Peace Brigades International (PBI) bulletins. In addition, he is a trainer and a facilitator at community training sessions and workshops on FPIC. He was a reviewer and a resource person for several research projects and workshops (*Masyarakat Adat di Perbatasan Negara* and *Efektivitas Peradilan Adat dalam Penyelesaian Konflik*) organised by the Agency for the Development of National Law (BPHN) and several other workshops, some of them organised by the Indonesian government.

**Katja Göcke** studied law at the Bucerius Law School (Hamburg) and the University of Sydney. Following her First Legal State Examination in 2005, she did an LL.M. at the University of Sydney, and between 2006 and 2008 completed her Rechtsreferendariat (legal clerkship) at the Higher Regional Court, Hamburg. From 2008 until 2012, she worked as a senior research fellow at the Max Planck Institute for Comparative Public Law and International Law (Heidelberg) with a research focus on indigenous peoples' rights. Her doctoral thesis is on Indigenous Peoples' Land Rights. She currently works at the Institute for International Law and European Law, Göttingen University.

**Anna-Teresa Grumbli** studied cultural and social anthropology, gender studies, history, and philosophy at the University of Göttingen and at the University of California in Santa Barbara. She graduated in 2010 with an M.A. thesis concerning the scholarly debate on indigenous knowledge. Since 2010, she has been a doctoral student at the University of Cologne under the supervision of Prof. Martin Rössler, funded through a Ph.D. scholarship by the a.r.t.e.s. Research School. She conducted around 14 months of fieldwork among the Wana of Central Sulawesi between 2010 and 2012 where she researched marginalisation processes among upland groups in Indonesia. She is an editorial assistant for the journal *Historical Social Research*.

**Brigitta Hauser-Schäublin** has been Professor of Anthropology at Göttingen University since 1992. She has conducted a number of research projects in Papua New Guinea (1972-1985), Indonesia (from 1988) and Cambodia (from 2008). Her main research topics are political and religious organisation of space, propertisation of culture, as well as gender and body. She is currently the project director of several projects (on the nomination and listing of UNESCO World Heritages, indigeneity in Indonesia, diverging claims in debates about return and restitution of cultural property, and culture-specific human interaction with tropical lowland rainforests in transformation in Jambi, Sumatra); these projects are part of the Interdisciplinary Research Unit on the Constitution of Cultural Property and the Interdisciplinary Collaborative Research Centre CRC 990 on Ecological and Socioeconomic Functions of Tropical Lowland Rainforest Transformation Systems (Sumatra, Indonesia).

**Karin Klenke** studied cultural and social anthropology and sociology at the universities of Göttingen, Germany, and Copenhagen, Denmark. In her Ph.D. dissertation (published in 2011) on body, beauty and gender in Tanah Karo (Sumatra, Indonesia), she analysed the growing importance of beauty practices as a way of modernising the gendered self in patrilinear Karo society. As a post-doc researcher in the interdisciplinary research group on cultural property at Göttingen University, she studied the pending World Heritage nomination of Toraja (Sulawesi, Indonesia) on both the local and the international level. Karin Klenke is currently the academic coordinator of the research network “Dynamics of Religion in Southeast Asia” in Göttingen.

**Francesca Merlan** is Professor of Anthropology at Australian National University. She has pursued research on social transformation in indigenous social orders and their relations to Australian state and society (*Caging the Rainbow: Places, Politics and Aborigines in a North Australian Town*, 1998), on social change, welfare and segmentary politics in New Guinea (*Ku Waru: Language and Segmentary Politics in the Western Nebilyer Valley, Papua New Guinea*, co-authored with Alan Rumsey, 1991), change in landed livelihoods (*Tracking Rural Change: Community, Policy and Technology in Australia, New Zealand and Europe*, co-edited with David Raftery, 2009), on anthropology's engagement with economy (*Economic Anthropology: Transforming Economies, Changing States*, 2009), and has a particular comparative interest in the emergence and circulation of concepts of indigeneity (*Indigeneity Global and Local*, *Current Anthropology* 50:303-333, 2009).

**Serena Müller** graduated in anthropology from Münster University, Germany, in 2010 (M.A.). She is currently a Ph.D. candidate at the Institute for Cultural and Social Anthropology in Göttingen and a research associate in the anthropological project on indigeneity in Indonesia, which is part of the Interdisciplinary Research Unit on “The Constitution of Cultural Property” at the University of Göttingen. She has carried out fieldwork on this issue between 2011 and 2013. She specialises in ‘culture’ as a resource for indigenous communities in Indonesia.

**Miriam Harjati Samukri** is a Ph.D. candidate at the Institute of Cultural and Social Anthropology at Göttingen University and research associate in the Interdisciplinary Research Unit on “The Constitution of Cultural Property”. Graduated from Bonn University in Southeast Asian Studies in 2012, she currently works on the role of non-governmental organisations in the Indigenous Peoples Movement in Indonesia. Her research interests focus on development studies and the relationship between social movements and international aid.

**Stefanie Steinebach** currently holds a post-doc position in the DFG Collaborative Research Centre 990, “Ecological and Socioeconomic Functions of Tropical Lowland Rainforest Transformation Systems (Sumatra, Indonesia)”, based at Göttingen University. She is a research associate at the Institute for Cultural and Social Anthropology and works in the project on culture-specific human interaction with tropical lowland rainforests in transformation in Jambi, Sumatra. She holds a diploma in forestry and a Ph.D. in anthropology. Her anthropological dissertation *Der Regenwald ist unser Haus. Die Orang Rimba auf Sumatra zwischen Autonomie und Fremdbestimmung* (published 2012) is the result of a 15 months’ research (2003-2009) among the semi-nomadic forest-dwelling Orang Rimba in Jambi Province. Her research interests focus on human-environmental relationships with a special interest in cultural and ethnic identity, power relations, land rights, critical history, and postcolonial theories.

**Fadjar Ibnu Thufail** is a researcher at the Research Centre for Regional Resources of the Indonesian Institute of Sciences and a research fellow of the Cultural Property Research Group at the University of Göttingen. He received his Ph.D. in anthropology from the University of Wisconsin-Madison. He was a research Fellow at the Max Planck Institute for Social Anthropology in Halle/Saale, Germany, from 2007 to 2010. Together with Martin Ramstedt, he edited a book entitled *Kegalauan Identitas* (Grasindo, 2011) and a special edition of the journal of Asian Ethnicity in 2012. Currently, he is working on a DFG sponsored project of the Göttingen research unit on *adat*, the state and aristocrat subjectivity in Indonesia, and preparing a book manuscript on the May 1998 riots in Indonesia.



A number of UN conventions and declarations (on the Rights of Indigenous Peoples, the Protection and Promotion of the Diversity of Cultural Expressions and the World Heritage Conventions) can be understood as instruments of international governance to promote democracy and social justice worldwide. In Indonesia (as in many other countries), these international agreements have encouraged the self-assertion of communities that had been oppressed and deprived of their land, especially during the New Order regime (1966–1998). More than 2,000 communities in Indonesia who define themselves as *masyarakat adat* or “indigenous peoples” had already joined the Indigenous Peoples’ Alliance of the Archipelago” (AMAN) by 2013. In their efforts to gain recognition and self-determination, these communities are supported by international donors and international as well as national NGOs by means of development programmes.

In the definition of *masyarakat adat*, “culture” or *adat* plays an important role in the communities’ self-definition. Based on particular characteristics of their *adat*, the asset of their culture, they try to distinguish themselves from others in order to substantiate their claims for the restitution of their traditional rights and property (namely land and other natural resources) from the state. The authors of this volume investigate how differently structured communities – socially, politically and religiously – and associations reposition themselves vis-à-vis others, especially the state, not only by drawing on *adat* for achieving particular goals, but also dignity and a better future.

