

“Land Law and Shifting Cultivation: Indonesian Adat Communities and the Struggle for Statutory Rights”

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The idea of land rights within statutory law are often reduced to ownership rights; however, as Schlager and Ostrom (1992) point out in their “bundle of rights” approach to land tenure, rights to access, use, manage, exclude and alienate other users are all equally important. *Adat*, or customary law, within West Java’s *Kesepuhan* communities often accounts for these other forms of land tenure. The semi-nomadic status of some *Kesepuhan* communities has therefore not been a problem under *adat* land management. In the past year, *adat* communities have been forced to confront the differences in customary and statutory perceptions of land tenure when a 2013 Constitutional Court ruling overturned the Indonesian state’s claim to ownership of *adat* forests and granted it to local communities. As land reform slowly moves forward in the country, how is shifting land tenure to be accounted for in the coming years of Indonesia’s statutory laws on land? This paper explores the multiplicity of land tenure rights and how ethnic minority communities struggle to navigate the levels of land laws controlling their rights to ownership, use, management, exclusion and alienation of land they view as their own. This paper presents the West Java *Kesepuhan* communities as a case study for the interaction between statutory and customary laws within land reform movements in Indonesia.

Introduction

Adat, generally translated as “customary law” and defined as the “cultural beliefs, rights and responsibilities, customary laws and courts, customary practices and self governance institutions”, is the life framework governing culture, politics, and economics for indigenous communities throughout Indonesia (Alcorn 2000). The balance between statutory (formal legal systems) and *adat* is often delicate and easily upset. The ways in which these two systems of law interact has implications for indigenous communities and their access to land. Within Indonesia, *adat* communities are often forest-dependent, live in areas of high biodiversity, and are more likely than their lowland neighbors to have their land access restricted in the state’s attempt to

create protected areas. While this is obviously not always the case, it is an important component of land conflict within the country.

Within this paper, I analyze the ways that ownership and use rights have been expressed through both statutory and adat law in Indonesia. More specifically, I explore the extent to which adat law and statutory law have overlapped in the lives of indigenous communities, especially the Kesepuhan Banten Kidul of Banten and West Java. One of the chief characteristics of adat that makes it so dynamic is its ability to evolve and adapt to changing social structures (Soesangobeng, 2004). It is an advantage that statutory law systems find difficult to emulate. At the same time, it is this exact characteristic that makes adat difficult to incorporate into state or provincial level laws regarding land use. Codification renders it static; generalization renders it locally irrelevant. Adat also varies widely across the archipelago, as “each indigenous group in Indonesia has a system of *adat* laws and traditions, developed over time to meet the individual needs of each particular cultural and environmental community” (Szczepanski, 2002: 236). Using the recent Constitutional Court ruling of 35/2012¹ (which presents the possibility of returning nearly 40% of state-owned forests to indigenous communities in Indonesia) as a lens to view the history of adat within statutory land laws, this paper explores the possible futures for incorporating customary law and indigenous ownership/use rights into legal institutions and land management practices in PAs. Since the recent Constitutional Court ruling (35-2012) has only recently been passed and not yet implemented, the discussion of statutory and adat land laws and their connections is intended to shed light on the historical trajectory leading up to the Court’s ruling, as well as the possibilities for incorporating adat ownership rights into its implementation.

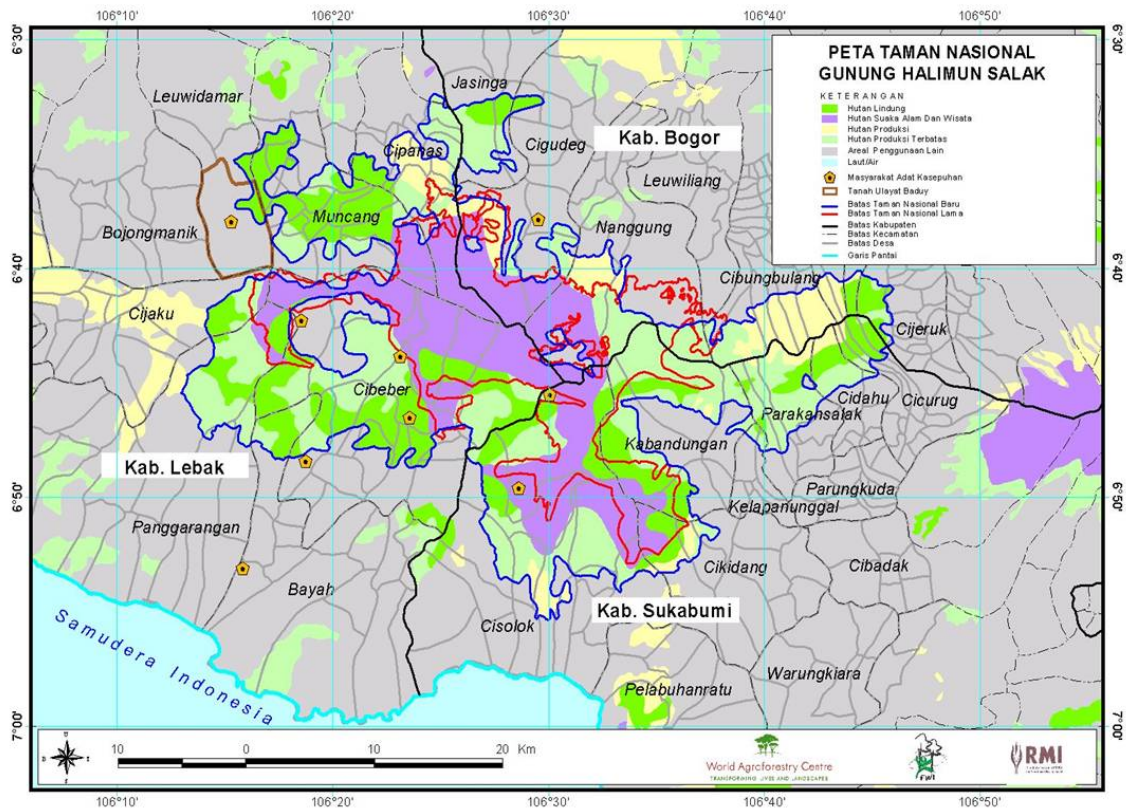
¹ Constitutional Court Ruling 35/2012 refers to a May 2013 ruling that declared parts of the Basic Agrarian Law of 1990 unconstitutional. These specific parts deal with the ownership of forests in lands designated as adat community lands. It has the potential to affect up to 40% of currently state owned land.

Gunung Halimun Salak National Park

Gunung Halimun Salak National Park (GHSNP) lies in three districts - Bogor and Sukabumi districts in West Java province and Lebak district in the Banten province². The site of village level research, Ciptagelar, lies in the Sukabumi district, but is very close to the Lebak district line and villagers often have use-right land parcels in both districts.³ The park has areas of colline, montane, and submontane forests covering nearly 40,000ha and an elevation ranging from 500 to 1,929m (Harada, 2003). The park is significant because it is the largest area of remaining forested land and the highest levels of biodiversity on the island of Java (Takahashi, 2006; Kubo and Supriyanto, 2010).

² Banten province was created in 2001, making it one of the newer provinces in the country.

³ Members of the community live in both districts, making it difficult to think of them as a single entity from a government perspective.



Gunung Halimun Salak National Park “Boundaries”

The Gunung Halimun area was first designated as a protected forest (1932), based on the hydrological function it provided to the Bogor-Jakarta area (Harada, 2004). The original gazette and delineation process for this designation took place under the Dutch from 1906 to 1938 (Galudra *et al*, 2008). In completing this first gazetting of the area, the Dutch ignored local communities living in and around the park.⁴ The communities protested the erasure of their existence on maps of the area and in 1922 over 3000 swidden farmers from the area were put in jail for protesting the inclusion of their lands into the state’s “protected forest” (Galudra *et al*,

⁴ The high population density of the area has been a source of conflict, as protected areas generally require “empty” space, of which Southeast Asia has very little. For example, Java hosts over sixty percent of Indonesians on just seven percent of the country’s land area along with 12 of the country’s 50 national parks (Szczepanski, 2002).

2008). In response, the Dutch Colonial government ruled that a new gazetting was needed, which would take the local people into consideration. However, World War Two began and the process never took place (Galudra *et al*, 2008). Yet, after Independence, the Indonesian government, in creating GHSNP, used these Dutch maps as proof of an “empty” space. They also claim that the space cannot be re-gazetted to incorporate local communities, as the Dutch Colonial government had planned to do (*ibid*).⁵

As the rest of the island succumbed to deforestation and to the land needs of an exploding population, Gunung Halimun’s isolation and lack of transportation infrastructure allowed the area to remain high in biodiversity and it is now the highest level of biodiversity on Java. In recognition of its growing importance ecologically, the Indonesian government changed the area’s status to a nature reserve in 1979 (Decree No 40/1979) using the Dutch gazetting as the basis for areas included in the reserve (Harada, 2003). These designations continued to be largely on paper. The local people continued to live on their land, often without knowing that it was now considered state or national park land (Kubo, 2008). Indonesian Law on the Conservation of Biological Resources (No. 5, 1990) states that there should be no one living within national park boundaries. The implications of this being that communities have continued to live in areas where there is no possibility of statutory land ownership rights.

Under reserve status, overlapping land claims between the state and the villagers were dealt with using a profit sharing model. Under this model, the communities could stay and farm in the park boundaries, but they were required to give 25% of their profit or harvest to the national park office authority. In 1992, its status was again changed (with much protest from local communities) into a national park. Using more strict core zoning, the profit sharing model

⁵ It is important to note that the Indonesian government owns around 70-75% of land in Indonesia, including all land designated as forests. All forestland is under the jurisdiction of the Ministry of Forestry, which decides whether forests are labeled as conservation, protection, or production forests (Colchester 2004).

was discontinued, officially. The community (perhaps trying to retain legitimacy for living in the park) continues to pay taxes to the park from their harvest. In an event known under adat as *tatali* villagers come to a central building to report their harvest and pay a portion of it to the village council. The council then divides the rice up into a group for payments to the government, village resources (can be resold to villagers), tribute to Abah Ugi, and rice to be used for ceremonies.

After its change in status to “national park,” residents of 31 villages within the boundaries of the park met to protest the declaration (Galudra *et al*, 2008). They formed an organization out of the meeting, *Forum Komunikasi Halimun Jawa Barat-Banten* (Halimun Jawa Barat-Banten Communication Forum) to represent their grievances, including inclusion of their land claims within the national park boundaries. This group facilitated reports to government officials concerning the disputed status of the land. Older reports showed around 8,000 ha of land in the park being disputed (Galudra *et al*, 2008). More recent reports claim 9,520ha of disputed land (RMI, 2003). An updated map is currently being completed that shows the current state of disputed land claims in GHSNP.⁶

Although fairly close, Gunung Halimun and Gunung Salak were originally two separate parks. Perum Perhutani was a state forest logging concession that ran the corridor between the Mount Gunung and the Mount Salak areas. Originally its plantation area was excluded from the nature reserve, but in 2003, after massive deforestation and mismanagement of the area, the concession was revoked and the area was included in the national park area. This effectively closed the corridor between the two mountains and created one national park instead of two and changed the name of the area to its current title of Gunung Halimun Salak National Park. During

⁶ This map is not complete, but Abah Ugi has agreed to provide a copy of the map for this research when it is completed.

the 11 years of Perum Perhutani management, the corridor lost nearly 50% of its forest cover (Galudra *et al*, 2008)⁷. However, some community members preferred Perum Perhutani's management of the land because they allowed villages within the concession as well as entrance to the forest concession area to farm in a system known as *tumpang sari*. This is an agroforestry system where edible agricultural crops are planted underneath the production forest trees. With the change to a national park, the Kesepuhan communities that now fall within the park boundaries have raised concerns about limitations on their agricultural production, firewood collection, and gathering of building materials (Suganda, 2009).

There are 314 villages in the GHSNP boundaries, with around 100,000 residents (Kubo, 2008; Kubo and Supriyanto, 2010). Villages are classified by the National Park system as adjacent, enclaves, or encroachments (Harada, 2003). Adjacent villages are just outside of GHSNP boundaries. Enclaves are villages or plantations that lie within the park's boundaries, but outside of its administrative jurisdiction. Encroachment villages are within the boundaries of the park as well as under park jurisdiction. While resettlement projects have been discussed, these villages still exist within park boundaries and villagers are, understandably, resistant to resettlement (Harada, 2003). Geisler (2003) defines those who "involuntarily part with their livelihood claims in places set aside for natural protection" as "conservation refugees" (2003: 69). Encroachment villagers' tenure is the most precarious and they are the most likely to become conservation refugees. These are not necessarily villages that have "encroached" on GHSNP land since its designation as a national park (Harada, 2004; Harada, 2003). Many were in the area since before the national park management plan, but have not been zoned as "enclaves" for one reason or another.

⁷ This corridor is currently the focus of a restoration project called the Green Corridor Initiative Program through the Indonesian Institute for Forest and Environment (RMI) based in Bogor.

While not always the case, enclaves and encroachment villages tend to be labeled according to their links to “indigenous” status. The encroachment villages are more likely to be rural subsistence farmers that have moved, whether 10 or 70 years ago, from elsewhere in Java. While they may be “indigenous” in other regions of the island, they are not considered such in the Gunung Halimun region. The village of Cibedug is an example of an encroachment village. Harada (2003) describes their situation as “politically disadvantaged” and notes that they have less of a claim to land ownership with the state in GHSNP and little expectation of such (280). Constitutional Court ruling 35/2012 does not apply to the rural farmers within the park. As Hall, Hirsch and Li (2011) note, inclusion always includes an aspect of exclusion, and in this case the inclusion of “indigenous” peoples in Indonesia in ruling 35/2012 inherently means the exclusion of small-scale, rural farmers that cannot claim indigeneity to this region.

Members of the Kesepuhan adat community number around 16,000 (Suganda, 2009). There are 13 Kesepuhan villages, most within the GHSNP boundaries, but there are many more followers scattered throughout the other villages within GHSNP. The Kesepuhan people, according to their oral history, are descendants of the Pajajaran-Bogor kingdom. They are led by an *Abah* (father), which is a hereditary position. In fact, all adat positions for the community are hereditary. In Ciptagelar, the highest-ranking position under *Abah Ugi*, the *pedukunan*, is held by a man with two daughters and a stepson. The ancestors have not yet decided who should hold the position next, but it is clear (without even consulting with the ancestors) that the stepson cannot inherit it and neither can either of the daughters or their husbands. The man’s nephew is currently being groomed for the position, but later the ancestors will have to be consulted to see if he should, in fact, inherit the position.

The village of Ciptagelar is the most recent settlement of the Kesepuhan of Abah Ugi's line. (There are conflicting stories of the legitimacy of different Abah's, but most are from the same family and Ciptagelar is the largest of the Kesepuhan communities.) The village was relocated to Cikarancang (now called Ciptagelar) in 2000 after the ancestors instructed Abah Ugi's father (Abah Anom) to relocate the village (under adat and not a state project). The technical problem with this spiritual instruction was that Ciptagelar was within the GHSNP boundaries, whereas Ciptarasa (the previous village) was listed as an adjacent village. This distinction changes the level of rights recognized by the state and national park office and highlights the difficulties of land rights for semi-nomadic and nomadic peoples.

The stories for their semi-nomadic lifestyle vary, but two common themes relate to religion and land. One given reason is for the Kesepuhan to gather the most devout and relocate to start anew. Another reason cited is the need for Abah to continually maintain control and identity of customary lands that are scattered across three districts (Suganda, 2009). On a more biological level, the timing of relocation is also consistent with the exhaustion of swidden fields and the need to find new plots.

On average, the community stays within a village for around 10-15 years before relocating. The community members strongly believe in Abah Ugi's connection to the ancestors and they believe that perhaps soon (13 years in the present location) they will instruct Abah Ugi to move the village once more. One villager stated that adat requires that they move and they are an adat community so if the ancestors instruct it, they will follow Abah. However, they are fully aware of the consequences of doing this in the eyes of the National Park officers. One said, without hesitation, that they would take up arms if they needed to in order to protect their right to

go where the ancestors instructed them. They claim that they are searching for *uga kebak cawane* or the “promised land”.

Following Ministerial Decree “P.56/Menhut-II/2006” establishing guidelines for national park zoning in Indonesia, the GHSNP management plan has zoned the park into seven areas: core zone; wilderness zone; utilization zone; special zone; rehabilitation zone; traditional zone; and a religion, culture, and social zone (Mulyana, 2010; Supriyanto, 2007). Zones can be reviewed every three years and changed if needed, although they are rarely reviewed or changed once they are created (Mulyana, 2010). GHSNP is primarily core zone, with a strict code of no settlements allowed. All of the other zones may or may not have settlements, although the management plan is clear that conservation of biological diversity is their top priority and no settlements within the entire park boundaries would be ideal (*ibid.*). The wilderness zone serves as a buffer area for core zones. The utilization zone contains tourism roads and a research center. The special zone contains all provincial roads and “company” roads, presumably for the former Perum Perhutani concession company. The rehabilitation zone is for forestland that was previously degraded and is now being rehabilitated. This is often land that was associated with the concession company. The traditional zone is for Kesepuhan villages. Confusingly, the religion, culture, and social zone is not for current religion, culture or society, but rather for monuments to such. This confusing system has complicated an already ambiguous land situation within the park. Due to its complicated nature, some scholars have called for a reduction to a two-zone system that would greatly reduce ambiguity for park officers and villagers (Mulyana, 2010). For example, it would be a strict park and special use zone system that would account for any land being used in some manner throughout national parks.

In addition to the official national park zones, there are three types of forest classifications under Kesepuhan adat: *leuweng tutupan* (closed/protected forest), *leuweng titipan* (entrusted forest), and *leuwung garapan* (use forest). Protected forests make up about 60% of the Kesepuhan's forest claims (Suganda, 2009). They are primarily off limits, but may be entered with the permission of Abah. No cutting or collecting is allowed in the area and generally ceremonies and offerings must be completed before entering this zone. Entrusted forests make up about 20% of the Kesepuhan's forest claims (ibid). They are generally used as a buffer zone, but community members may collect non-timber forest products. The last zone, use forests, makes up the final 20% of the community's forests (ibid). Agriculture, gardens, houses, community buildings, livestock, etc. are all located in this area. This is also referred to as use land, as it is technically no longer forest. The Kesepuhan villages, including Ciptagelar, claim customary land tenure for these zones, which includes cultivation, building, hunting, gathering, and extraction rights, depending on the zone. These classifications are specific to the Kesepuhan Banten Kidul Abah Ugi followers and may vary in different regions of the park.

Villagers' use of the land within GHSNP consists of paddy fields, gardens, forest gardens, swidden fields, and tree gardens. They also regularly collect firewood from the surrounding forest. Villagers will collect firewood from use forests and occasionally from entrusted forests, but they will not from protected forests (under their adat zones). It is important to point out that these adat forest zones often do not overlap or correlate to the national park's official zones. Within my research, I had to be specific with participants about which zones I was referring to. If I asked, "Do you respect forest zones?" a villager may respond that they do and then go cut a tree down in the park's core zone, but fully within an adat use zone. Then when

asking a park officer if villagers respected forest zones, he may reply that they do not since they cut trees in the core zone.

In general, a high level of forest dependence still exists in Kesenpuhan villages. Harada (2003) found that "...local residents used more than 400 plant species for food, house construction, agricultural materials, kitchen utensils, as well as for traditional medicine, fuelwood and so on" (273). These species are often gathered from "national park" lands, but unclear boundary markers make it debatable whether the villagers even know they are collecting from national park land. At times when they do clearly know that they are gathering on land claimed by the park, there is a feeling that they understand and know better than park officials of how to sustainably manage lands they consider to be their own. Harada (2003) found that, "...the law prohibits them from using the resources they largely depend on, and also forces them into obeying laws that make no sense to them. Consequently, they are forced to be involved in the current fashion of biodiversity conservation" (280). Finally, there is also a longstanding tradition of authorities "turning a blind eye to these activities, to some degree, because they do not have adequate administrative methods to manage the coexistence of the two sides, realizing simultaneously the conservation efforts and the use of the resources" (Harada, 2003: 275). While villagers recognize the importance of conservation efforts, they believe that they are doing an excellent job of conserving their forests, as is evidenced by the government's desire to turn it into a national park for the rest of Java to enjoy.

Conclusions

In this essay, I have presented the historical connections between adat and land law, both statutory and customary, as this history offers many lessons for the implementation of

Constitutional Court ruling 35/2012 in the coming years. The historical processes are also an important consideration for understanding the motivation of the Indonesian government and indigenous communities in fighting to have the ruling disregarded or considered and implemented. By looking at the historical consequences of pitting the two institutions of law against each other is telling of the importance for a more serious consideration of adat in the future, especially where protected areas and indigenous land ownership/use are concerned. The rest of Southeast Asia will be looking towards Indonesia in the coming years as 35/2012 is implemented. Indonesia has an opportunity to set a precedent in reversing the damage of colonial systems of land control and dispossession inflicted on indigenous groups. This does not have to come at the expense of protected areas if Indonesia considers the unique opportunities adat presents.

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