

# TRADITIONAL RULE AS ‘MODERN GOVERNANCE’: RECOGNISING THE AMMATOA KAJANG ADAT LAW COMMUNITY<sup>1</sup>

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## *Abstract*

*This article discusses governance as it appears in the making of a regional bylaw that grants legal recognition to an indigenous adat community in South-Sulawesi. This process represents a move away from a traditional government approach. The coalition of legal drafters, which included state officials, community members and civil society, engaged in a joint effort of participatory law making. An analysis of this process addresses questions on how the decision-making process developed, what this meant for the outcomes and to what extent this new form of governance served the interests of all parties involved.*

**Keywords:** governance, law making, adat, customary land rights.

## *Intisari*

Penulisan ini membahas proses pembuatan peraturan daerah yang memberikan pengakuan hukum atas sebuah komunitas adat di Sulawesi Selatan, Indonesia. Proses tersebut merupakan sebuah gagasan baru tentang pendekatan partisipatif oleh pemerintah yang menjauh dari pendekatan pada umumnya. Gabungan tim perancang peraturan, turut menyertakan pejabat pemerintahan, anggota masyarakat dan organisasi masyarakat. Analisis yang ada menjawab bagaimana perkembangan suatu proses pengambilan keputusan, serta tujuan dari hasil yang ada dan sejauh mana bentuk tata kelola pemerintahan yang baru dapat melayani semua pihak yang terlibat.

**Kata Kunci:** perumusan hukum, pengakuan legal, masyarakat adat.

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## A. Background

Since 1998 Indonesia has witnessed an increasing diversification of forms of state rule. Liberalisation, democratisation and decentralisation have led to a landscape of government institutions far more pluriform than existed under the New Order – by both introducing new institutions and changing the power relations between them. Among the developments was the resurgence of a discourse of *adat*: all over the country customary law communities – or groups pretending this status – reclaimed the special position they had enjoyed during colonial rule.<sup>3</sup>

At the start of this process the expectations of those embarking on the *adat* bandwagon were high. Together with a number of NGOs, the newly established Alliance of Indigenous Peoples of Indonesia (AMAN) started a process of advocacy, which sparked national and international attention for the cause of indigenous communities but produced few concrete results. Facing a disadvantageous legal situation from the start, AMAN and its allies had to confront the vested interests of the Ministry of Forestry and of national and regional elites, which were unwilling to give up their control over land claimed as *adat* territory.<sup>4</sup>

The National Land Agency and the Ministry of Forestry have promulgated new regulations on the recognition of *adat* communities; the Constitutional Court has ruled that *adat* forest is no longer part of the state forest<sup>5</sup>; and Law No. 6 of 2014 on Villages has opened the possibility for villages to seek the status of *adat* village. Most recently, a decree of the Minister of Land Affairs/Head of the National Land Agency has relaxed the criteria for communities

seeking recognition of their communal land claims.<sup>6</sup> All of these enacted rules and regulations ultimately aim to achieve a more just situation for customary law communities with regard to land access and natural resource control.

These changes have potentially set the stage for new processes of recognition – not in the sense of new instances of recognition only, but also new in their nature. This paper will focus on these processes. They involve new actors (the Constitutional Court, regional parliaments, NGOs), play out at different levels (notably the district and the village), involve new forms of representation and deliberation, and in the case of recognition create a situation in which the standard hierarchical state model is amended. In other words, they offer an indication of the way in which governance in Indonesia has changed.

By governance we refer to ‘the various institutionalised modes of social coordination to produce and implement collectively binding rules, or to provide collective goods’.<sup>7</sup> Our main concern in this writing is **first**, to assess to what extent the processes mentioned above represent less hierarchical forms of social coordination than ‘traditional’ law-making, and whether they allow previously excluded actors (such as the community itself) to be involved. **Second**, we are also particularly interested in the level where these processes are located and to what extent different levels interact.

To this end we will focus on a case of recognising an *adat* community: the *Ammatoa Kajang* of Bulukumba (South Sulawesi). At the moment of writing the process of recognition has not been completed yet, but it is well advanced

<sup>3</sup> J. Davidson, et al, 2007, *The Revival of Tradition in Indonesian Politics. The Deployment of Adat from Colonialism to Indigenism*. Routledge, London & New York, page. 1.

<sup>4</sup> Bedner, A.W, et al, *The Return of the Native in Indonesian Law: Indigenous Communities in Indonesian Legislation*. Bijdragen tot de Taal-, Land- en Volkenkunde, Vol. 164, Issue 2-3.

<sup>5</sup> Decision of Mahkamah Konstitusi No. 35/PUU-X/2012 reviewing UU No. 41 year 1999 on Forestry against Undang-Undang Dasar Negara Republik Indonesia year 1945.

<sup>6</sup> Ministerial Regulation of Agrarian Affairs and Spatial Planning/Head of National Land Agency No. 9 year 2015 on Procedures for establishing communal rights to land of customary law communities and communities within a specific area.

<sup>7</sup> T. Risse, (Ed.), 2013, *Governance without a state?: policies and politics in areas of limited statehood*. Columbia University Press, New York, hlm. 9.

and likely to be completed soon. **Third**, In order to capture the relevant aspects of the case we do not limit ourselves to a discussion of the recognition process alone, but we provide a fairly elaborate description of the situation of the *Ammatoa Kajang* and their history, which is relevant for understanding how the process developed. We will start with explaining who the Ammatoa Kajang are, where they live, how they are socially organised, how their relations with the outside world are structured and what this all means for their position in the wider context of Bulukumba. Fourth, we then look at a land conflict between plantation company PT Lonsum and several communities in Bulukumba, including the Ammatoa Kajang, which has dominated the political situation in the district. Only then do we turn to the actual process of recognition, how this unfolded, and what it tells us about governance in Indonesia.

## B. Metode Penelitian

This study adopts a socio-legal approach involving three research methods. These are in-depth qualitative interviews, participant observation and legal analysis. The research has been carried out in Bulukumba district, South-Sulawesi province. Bulukumba was selected first because Bulukumba is the location where the district regulation was drafted and projected to be implemented and second, because Bulukumba has a long history of land disputes involving claims to adat lands.

## C. Results of the research and discussion

### 1. The Ammatoa Kajang

The Ammatoa Kajang, Bulukumba, South-Sulawesi, are generally considered to be the most authentic Makassarese customary law community

(*masyarakat hukum adat*). Since colonial times the Konjonese speaking community has drawn the attention of outsiders, due to their hierarchical organisation, their modest way of living in accordance with customary norms based on their belief system, their rejection of much of what they consider as 'modern', and their strict rules regarding the protection of their sacred forest territory.<sup>8</sup> Today, they are perceived as one of the most remarkable cultural enclaves of Indonesia, having 'managed to preserve many features of an almost archaic type of religious and social organization'.<sup>9</sup> Formally registered as Muslims,<sup>10</sup> the Ammatoans predominantly adhere to rules derived from their oral customary principles called *pasang ri Kajang*. The *pasang*, which allegedly have been passed on from generation to generation over the centuries, also prescribe the hierarchical organisation of the Ammatoans.

Despite the appearance of the Ammatoa Kajang as a closed community, they are not living in isolation. The Ammatoans engage in trade, selling harvested products at markets outside of their traditional territory, and for centuries they have engaged with external polities such as the kingdom of Gowa and the Dutch colonial administration. Today, members of the Ammatoa Kajang are active in regional politics. Furthermore, in recent years the Ammatoa Kajang have become something of a tourist attraction, drawing visitors from in- and outside Indonesia.<sup>11</sup> The district-government actively promotes the Ammatoa Kajang as a place to visit and regional tour agencies offer package trips to visit them.

<sup>8</sup> In 1931 colonial linguist Abraham Cense was sent to Kajang to do an ethnographic study on the Ammatoans. According to Cense, the Ammatoans were a very remarkable community compared to others in South-Sulawesi as the Ammatoans were only in a very limited way influenced by Islam. In the research report a map is provided which includes the demarcation of the territory of the Ammatoans. See *A. A Cense, 1931, De patoentoengs in de berglanden van Kadjang*, manuscript unpublished.

<sup>9</sup> Rössler, M, *Striving for Modesty: Fundamentals of the Religion and Social Organization of the Makassarese Patuntung*, Bijdragen tot de Taal-, Land- en Volkenkunde, Vol. 146, Issue 2-3, 1990, page 289.

<sup>10</sup> 99.9 percent of the population of Bulukumba is registered as Muslim, based on numbers provided in the Bulukumba Regency Statistical Yearbook 2010.

<sup>11</sup> The number of annual visitors is unknown according to the Bulukumba district department of culture and tourism, but locals report that visitors come every day.

### a) Territory and sacred land

The most essential aspect of the *pasang* principles is the attachment of the Ammatoans to the sacred land they inhabit, which is regarded as the mother of all mankind. Furthermore, the community has a core territory known as the *rembang seppang*; an area where strict rules apply and where inhabitants are prohibited from bringing modern goods as cars, mobile phones, etc. The largest part of the *rembang seppang* is located in Tana Toa village (*desa*), in the north-west of sub-district Kajang, Bulukumba district.<sup>12</sup> The area lacks paved roads or electricity connections. Non-traditional buildings, including schools, mosques and medical centres are absent. The *rembang seppang* can be entered from Tana Toa village, through a gate visitors may pass after reporting to the village head. A paved road leads up to the gate and an elementary school is located directly next to gate, just outside of the *rembang seppang*.

The village of the Ammatoans borders the *Tombolo* forest,<sup>13</sup> a plot of rainforest covering 331 hectares. The Ammatoans believe that the first man to live, named *Oeroe Taoea*, landed in this forest when he fell to earth. The forest hence is the most sacred piece of land on earth. According to legend, after *Oeroe Taoea*, a number of others also fell from the sky and landed in the forest as well. These men were the first to recite the rules that later became the *pasang*.<sup>14</sup>

The *pasang* distinguish three types of forests within the sacred territory. The first is the sacred forest (*borong karama*), which consists of two parts. The first is *pa'rasangent ilau*, where the local community worships and performs group rituals. The second part is *pa'rasangeng iraja*, where people collect non-wood forest products

such as fruits, shrimps, vegetables, which are used for consumption and as sacrifices in rituals. For entering this forest permission is needed from the *Amma*, the leader of the community. The second type of forest is *borong batassaya*. In this forest the Ammatoans are also allowed to collect non-wood products and they may enter and utilize the forest without prior permission. The third forest is *borong tattakang*, which may only be exploited by those Ammatoans who live at the border or very near the forest. Wood products can be collected by poor people who need to build a house, or for serving a public interest. Outsiders who do not adhere to the *pasang* are strictly prohibited to utilise the *Tombolo* forest. The area is guarded by forest rangers who are themselves *Ammatoa Kajang*.<sup>15</sup>

### b) Socio-political organization

In accordance with the *pasang*, the Ammatoans adhere to a clearly defined structure of social organisation. It consists of 26 leader positions, each with a different function. Some of them are tied to kinship, others are filled following election procedures. The highest leader of the community is the *Amma Toa* or simply *Amma*, who holds the highest spiritual and moral authority of all Ammatoans. He is considered the personification of the *pasang*, lives inside the *rembang seppang* and may never leave it. Whenever family or inter-community disputes occur, the *Amma* will be the mediator. In addition, when an Ammatoan violates the *pasang*, for instance by taking wood from the *Tombolo* forest without permission, a trial will take place in the house of the *Amma* and he will decide on the sanction. Other important positions are the *Galla Lima*, a group of five counsellors,<sup>16</sup> who each have a specific function. Some positions

<sup>12</sup> The *rembang seppang* area stretches over a total of four administrative village units (*desa*). These are Tana Toa, Malleleng, Pattiroang and Bonto Baji.

<sup>13</sup> The sacred forest is sometimes also referred to as *Borong Karassa* or *Pa'rasangan Iraja*.

<sup>14</sup> See: *A. A Cense, 1931, De patoentoengs in de berglanden van Kadjang*, manuscript unpublished.

<sup>15</sup> Based on information provided by Mr. Jumarlin (30 March 2014), an Ammatoan who works as a forest ranger for the Bulukumba district forest and plantation department.

<sup>16</sup> A *galla* is a traditional village head, a position that was recognized during Dutch rule. The position was abolished after Indonesian independence.

are transferred through kinship such as the three *Karaeng*<sup>17</sup> positions: *labirria*, *sulehatan* and *Moncongbuloa*.

For the Ammatoans, the hierarchical structure of governance prescribed by the *pasang* coexists harmoniously with the administration of the Indonesian government. The *pasang* prescribe that government authority should be accepted, even if they do not mention exactly which government.<sup>18</sup> The practical solution is that certain traditional leadership positions overlap with state government positions. For decades this has been a strategic way to preserve the traditional Ammatoa Kajang socio-political structure while at the same time recognising state authority. For instance, whoever is elected as village head (*kepala desa*) of Tana Toa village will automatically obtain the position of *Galla Lombo*, which is the *galla* position that deals with external relations. The head of Kajang sub-district, who is appointed by the District Head of Bulukumba, is almost without exception the incumbent *Karaeng libiria*, a hereditary position. This indicates that the Bulukumba district government takes into account the socio-political organisation of the Ammatoans when appointing officials.

### c) Livelihood

Most Ammatoans work as rice farmers. The yields are partly used for subsistence and partly sold at the market. Others own small plantation gardens in which they farm cloves, pepper, cocoa and coffee. Most of the rice fields owned by Ammatoans are located outside the *rembang seppang*. The rights to cultivate the rice fields usually rotate between family members, which means that one year one child may harvest the land, and the next

year another. Sometimes this leads to disputes, which are either settled by the family members themselves, or through consultation with the *Amma*. Within the *rembang seppang* there are no major differences in wealth, since all of the people living inside this territory are farmers who hold more or less the same amount of land.<sup>19</sup> Others claim that certain community leaders own a considerably larger amount of land than most other Ammatoans. One Ammatoan, who lives outside of the *rembang seppang*, informed me that many of the rice farmers inside the *rembang seppang* are wealthier than average rice farmers in Kajang sub-district because they do not spend their money on consumption goods – which they cannot use inside their territory.

Many Ammatoans live outside the *rembang seppang*, but according to the *Amma*, all Kajang people who live in accordance with the *pasang* can be considered as members of the customary community.<sup>20</sup> The majority of the followers of the *pasang* live in Tana Toa village, which has a population of around 4500,<sup>21</sup> but many live in other villages, either in- or outside of the *rembang seppang*. Some of the customary leaders live in villages that are relatively far away, such as the *galla ganta*, who lives in Bonto Biraeng village at the far west end of sub-district Kajang.

A distinction is commonly made between those Ammatoans who adhere to the *pasang* in all aspects of life, and those whose devotion to the *pasang* is less intense. Generally speaking, the Ammatoans who live inside the *rembang seppang* have a stronger commitment to the *pasang* than those living outside. However, most of the *pasang*, notably those that reject the use of modern goods, apply solely to a specific territory, which means

<sup>17</sup> *Karaeng* is a traditional title for noble rulers in South-Sulawesi. Under Dutch rule, the *Karaeng*, chosen by an indigenous council (*hadat*), was head of a sub-district (*regentschap* and from 1921 onwards *adatgemeenschap*) and subordinated to the Dutch regent of a district (*onderafdeling*). See also: J.Schwartz, 1947, *Nota inzake bestuur in de onderafdeling Boeloekoemba*, manuscript unpublished.

<sup>18</sup> One of the *pasang* reads: '*anrai 'rai 'i pammerentah anrai rai tokki, kala 'kalau ' pammerentah kala 'kalau 'tokki*, which can be translated as 'if the government goes west, we have to go west, if the government goes east, we have to go east.

<sup>19</sup> From a conversation with an Ammatoa woman inside the *rembang seppang* on 20 April 2014, Malleleng Village.

<sup>20</sup> From a conversation with the *Amma* on 03 April 2014, Tana Toa village.

<sup>21</sup> S. Maarif, 2012, *Dimensions of religious practice: The Ammatoans of Sulawesi, Indonesia*, Phd thesis Doctor of Philosophy, Arizona State University, Arizona, hlm. i.

that they are not altogether forbidden. For instance, Ammatoans are allowed to wear modern clothes or drive a motorbike, as long as this is done outside of the rembang seppang. Many Ammatoans living inside the rembang seppang do use electronic devices and wear modern clothes when they are outside of the borders. Indeed, just outside of the of the rembang seppang there is a house where many charge their cell phones.

Finally, it is not unusual for Ammatoans to move away from their homeland, to places outside of Kajang. Some Ammatoans have migrated to urban areas to work in construction. There are also accounts of Ammatoans who have gone to Malaysia to work on palm oil plantations, or to enter university. This includes the daughter of the Amma, who has been living and studying in Makassar.

All taken together, the Ammatoa Kajang are a remarkable community. They have maintained many features of a traditional lifestyle but do not adhere to them in any dogmatic manner. Their territorial approach to adat has provided them with a degree of flexibility in dealing with the products of modern society that is absent in most other adat communities. It allows them to keep up with developments in the outside world needed to maintain a degree of autonomy, without completely losing their identity as an adat community. This hybridity also characterises their economy. The combination of subsistence farming and producing for the market, as well as the possibility of temporary migration and taking up jobs in the modern economy provides them with the economic means needed for survival – and presently smoothes the introduction of tourism. The territorial approach has also helped to keep intact the essential part of their adat forest, as it enabled the Ammatoans to renounce some parts of their territory to commercial logging and plantations, but preserve its core. Finally, their relation with the state government

can be characterised as pragmatic. By accepting the government as the ultimate authority, but also by engaging with it and by having managed to install a system of overlapping government functions, the Ammatoans are not fully dependent on others for their political representation. We will return to this topic later on.

## **2. The land dispute with PT Lonsum**

Besides being the home of the Ammatoans, Kajang sub-district is also the location of a complicated long-standing land dispute between local farmers and a rubber plantation company named PT London Sumatera (hereafter PT Lonsum). The dispute has been going on for decades and in recent years, farmers' organizations and NGOs have linked the Ammatoa Kajang with the dispute in an attempt to strengthen their claim to the disputed land.

The dispute revolves around a rubber plantation covering some 5000 hectares stretching across various Bulukumba sub-districts, including Kajang. The company has held erfpacht rights to the land since 1918, which were converted to HGU (Hak Guna Usaha or cultivation rights) in the 1970s. However, the company did not cultivate much of its concession area until the early 1960s. By then, local farmers were already planting crops on the land for years but the company several times forced the farmers to leave the land, often with the help of the security apparatus. When PT Lonsum started expanding its rubber plantation in Bonto Biraeng village in the early 1980s, local farmers resisted this development. With the help of the district government and the military, PT Lonsum succeeded in forcibly evicting the farmers from the concession area. In 1982, 252 farmers from sub-district Kajang brought a case against the company to the Bulukumba district court. The litigants claimed entitlement to the land on the basis of long

time cultivation. The plaintiffs lost in first instance and on appeal, but the case eventually went up to the Supreme Court which ruled in 1990 that they were entitled to a substantial part of the disputed land on the basis of adat law. In 1999, after the start of Reformasi, 540 hectares of land were released from PT Lonsum's concession and returned to the plaintiffs, but the dispute continued as the size of the land the Supreme Court had ruled on had been 200 hectares only. Attempts from the district court to return the 'surplus' 340 hectares to PT Lonsum were met with strong resistance from farmers and therefore cancelled.

In the early 2000s many farmers in Bulukumba joined local pro-farmer NGOs which at that time popped up everywhere in Indonesia. Many of these activist organizations demanded the return of land expropriated during the New Order.<sup>22</sup> The dispute escalated in Bulukumba when the district head announced in July 2003 that the farmers from Kajang were entitled to no more than 200 hectares. To protest this decision, several local NGOs organized a collective occupation of PT Lonsum's Palangisang estate in Bonto Manggiring village. Serious fighting followed the attempt by the security apparatus to end the occupation by some 1500 farmers. The police did not hesitate to shoot at farmers who refused to leave the plantation. Of the dozens injured two died on the spot, while two others passed away several days later in Bulukumba Hospital.

After the shooting, many occupants fled. In the following days the police attempted to hunt down the men who organised the protest. Hundreds of farmers hid in the sacred forest of the Ammatoans, about 13 miles away from the plantation, where they knew the police would not dare to look for them. Allegedly, when the police came to Tana Toa village, the village head (and Galla Lombo) told

the police to leave, informing them that there were no occupants in Tana Toa. In the end the police arrested 36 people, a few of whom received jail sentences of several months. The events spawned outrage among activist throughout the country and national newspapers ran headlines of indications of gross human rights violations by the police. National Human Rights Commission Komnas HAM and human rights NGO Kontras sent teams to Bulukumba to thoroughly examine what happened.<sup>23</sup>

Subsequently, a number of national NGOs, including prominent environmental association WALHI, established SNUB (Solidaritas Nasional Untuk Bulukumba or National Solidarity for Bulukumba), a national network that aimed to uncover the injustices committed by the company and the police. In order to draw support for their case, SNUB began to write investigative reports on the dispute. A few months after the events of 21 July, SNUB released several reports which stated that PT Lonsum's rubber fields are located on customary land (*tanah adat*) of the Ammatoans. The report further noted that it was the Amma who first gave the company permission to temporarily work the land in Kajang in 1918. The company, however, never returned the land and in the 1970s began to annex more land allegedly belonging to the Ammatoa Kajang. The farmers working the land had obtained permission from the Amma, so the report claimed. Another report explains how the Komnas Ham team that investigated the police shooting paid a visit to the Amma. The report notes that during the meeting the Amma demanded that all customary land should be returned to the community.<sup>24</sup>

Thus, when national NGOs became involved in the dispute after 21 July 2003, the claim against PT Lonsum's concession began to be constructed in an *tanah adat* discourse, even though the Ammatoans

<sup>22</sup> A. Lucas, et al, *The State, the People, and Their Mediators: The Struggle over Agrarian Law Reform in Post-New Order Indonesia*, Indonesia vol 76, 2003.

<sup>23</sup> As a result of recommendations provided by Komnas Ham and Kontras, the South-Sulawesi provincial police department inspected the conducted of three policemen involved in the shooting, although none of them has been prosecuted or received sentences.

<sup>24</sup> Solidaritas Nasional Untuk Bulukumba, 2004, *Sejarah Perlawanan Masyarakat Kajang terhadap PT Lonsum*, laporan penelitian, manuscript unpublished.

or the Amma had previously never been linked to the dispute. During the legal proceedings of the 1980s no claim was ever made that the contested plantation was customary land belonging to the Ammatoa Kajang, nor did the plaintiffs argue that the Amma had first allowed farmers to settle on the land. The litigants from Bonto Biraeng village, approximately 10 miles southwest from Tana Toa village, had merely demanded to return to the land they had cultivated for decades. In the new climate of the nationwide politicised adat revival, framing the contested land as the customary domain of Ammatoa Kajang seemed like the strategy to go for. It is no coincidence that in the months that followed, NGOs were formed with names as AMAK (Alliansi Masyarakat Adat Kajang or Alliance of customary people of Kajang) and SPK (Serikat Petani Kajang or Farmer union of Kajang). These organizations frequently organized demonstrations such as the 500 men strong occupation of the South-Sulawesi parliament in Makassar in early 2004.

SNUB, AMAK and SPK dissolved over time, but new organisations have taken their place in recent years, such a regional branch of national NGO AGRA (Alliansi Gerakan Reforma Agraria). In August 2013 AGRA organized a protest in Bulukumba city by some 3000 farmers. AGRA too opposes PT Lonsum's presence in Bulukumba and continues to frame the land claim in terms of tanah adat. In their 2013 English fact-finding report, AGRA states that PT Lonsum has stolen the 'indigenous forests' of the 'Kajang indigenous people', who constitute 'one of the most ancient cultures of South-Sulawesi'.

By contrast, leaders of the Ammatoa Kajang have never explicitly made the claim that

PT Lonsum occupies their customary land. The traditional leaders of the community, including the Amma, rather tend to distance themselves from the dispute. A shortage of land does seem to be one of the most pressing problems encountered by Ammatoans. In recent years some Ammatoans, both living in- and outside of the rembang seppang, have joined farmers organisations that hold rallies and demonstrations to claim more land. Numerous Ammatoans with special positions in the traditional hierarchy<sup>25</sup> have argued that the dispute between the farmers and PT Lonsum is an issue between individuals and that it has nothing to do with the Ammatoa Kajang community. According to them, the Ammatoans who have participated in the frequently held rallies and protests are individuals going for private gains.

### **3. Towards formal recognition of the Ammatoa Kajang**

The Bulukumba district government has in recent years never considered the claim made by NGOs that PT Lonsum occupies customary land of the Ammatoans.<sup>26</sup> It considers these NGOs basically a 'troublemakers'. By contrast, it sees the Ammatoans as an integral part of Bulukumba. When the initiative was taken two years ago to formally recognise the Ammatoans as an adat community, several district government departments responded favourably.

Since Indonesia's decentralisation process began, a few regional regulations have been enacted that acknowledge the existence of customary (law) communities.<sup>27</sup> The enactment of these regulations has usually been the outcome of long negotiations between activists representing a community and a

<sup>25</sup> These were the labirria and the former Tana Toa village head/Galla Lombo. It is however important to note that both of them have relatively high functions in the Bulukumba district government. The labirria is the head of sub-district Kajang, while the former Tana Toa/Galla Lombo has held a seat in the Bulukumba parliament for three terms in a row and plans to run for mayor in the next elections. Their statements therefore could be politically motivated.

<sup>26</sup> Between 2005 and 2006 a mediation process between the Bulukumba farmers and PT Lonsum was held under the supervision of the provincial government of South-Sulawesi. Eventually the mediation process did not lead to a settlement of the dispute. See: Proses mediasi lahan tanah adat Bulukumba Provinsi Sulawesi Selatan, Perpustakaan nasional: Katalog dalam terbitan.

<sup>27</sup> Examples are the 2001 Lebak district regulation recognizing the communal land rights (hak ulayat) of the Baduy community and the 2012 Malinau district regulation, which inaugurates and protects the customary communities (masyarakat adat) in Malinau district, North-Kalimantan.



particular district government. In these cases the negotiations revolved around one specific issue: the government's recognition of customary land rights. Achieving recognition has proven to be a very complex matter, because of the strict legal requirements and the various economic and political interests at stake. Hence, customary land rights have only been recognised in very few areas.

For customary land rights to be recognised, Indonesian law stipulates that a community has to prove that it is a customary law community (*masyarakat hukum adat*). One of the conditions is that the community concerned must have a specific customary territory, where 'the necessities for their daily lives are obtained'.<sup>28</sup> In other words, the community must have daily access to their land. This means that customary land rights can only be granted to land already controlled by the applicant community. However, the reason why communities often seek formal recognition of customary land rights is precisely because a third party is in control of the land. This third party, frequently a private company, state enterprise or government body, can usually make a legal claim to the land on the basis of a plantation concession from the National Land Agency or a forest exploitation permit from the Ministry of Forestry.

Besides the legal difficulties mentioned above, it should also be emphasised that the commercial exploitation of the land by third parties generally serves the economic interests of regional governments. Therefore, the government tend to side with companies and are reluctant to acknowledge community rights over land exploited by others. The recognition of customary land rights hence rarely materialises. Bakker, who conducted research on the recognition of communal land rights

(*hak ulayat*) in several districts in East-Kalimantan, argues that communities have a higher chance of succeeding when they are 'relatively uniform' and have 'strong ties with the district's administration'.<sup>29</sup>

These characteristics are both in place in the case of the Ammatoa Kajang. Yet, like many other communities throughout Indonesia, the Ammatoa Kajang are not the legal owners of the territory they consider as their customary domain. While the sacred forest is of outstanding importance to the community, not Ammatoans, but the Indonesian Ministry of Forestry has the authority over forested land. Since 1997 the State has claimed control over the forest and administered it as 'production forest' (*hutan produksi terbatas* or HPT).<sup>30</sup> This means that the State can issue concessions to third parties to exploit the forest. In the present case it never did, though.

To support the Ammatoans, for years officials of the Bulukumba district government had plans to draft a regulation that would return the forest to the Ammatoans, but no legal mechanism was available. This changed when the Constitutional Court handed down judgment 35/2012. In this widely celebrated judgment, the Constitutional Court upheld the claim by AMAN by that customary forests (*hutan adat*) are not part of the state forest (*hutan negara*), as this violated the Constitution. This implied that customary forests, wherever legally recognised, would henceforth be placed under the authority of customary communities. The Constitutional Court ruling hence created the legal space for the Bulukumba district to provide the Ammatoans with full legal authority over their forest.

Thus, the urge for legal protection of the Kajang Ammatoa should be understood in relation to the threat that their sacred forest will be exploited

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<sup>28</sup> This condition is provided in ministerial regulation 5/1999 of the Ministry of Agrarian Affairs/National Land Agency, article 2.1. Similarly, the elucidation of article 67 forestry law (UU 41/1999) states that forest products should be collected for the daily needs of the community. As of May 2015, ministerial regulation 5/1999 has been replaced by ministerial regulation 9/2015. In this regulation, daily use of the forest/territory is no longer a requirement.

<sup>29</sup> See: Bakker, L. 2008. Can we get Hak Ulayat? Land and Community in Pasir and Nunukan, East Kalimantan. UC Berkeley-UCLA Joint Conference on Southeast Asia, 'Ten Years After: Reformasi and New Social Movements in Indonesia, 1998-2008'. UC Berkeley, Center for Southeast Asia Studies, UC Berkeley: 1-26

<sup>30</sup> Keputusan Menteri Kehutanan Nomor: 504/kpts-II/1997

by a third party, should the Minister of Forestry issue a forest exploitation license. However, even if legally the forest has been under the authority of the Ministry of Forestry for more almost 20 years, it has never been utilised for commercial purposes. De facto authority over the forest has consistently remained with the Ammatoans. To understand this situation we need to consider the community's good relations with the regional forestry department.

For years the Bulukumba Forestry Department has informally acknowledged the community rights over the Tombolo forest. Only Ammatoans are allowed to collect forest products for specific purposes, in compliance with the pasang. Should a member of the community violate these norms, then he or she will be brought before a customary court in which the Amma has the authority to decide on the sanction. The Bulukumba Forestry Department has acknowledged this customary court and delegated the authority to deal with illegal logging cases to the Amma, as long as these cases occur within the community.

#### 4. The district regulation draft-team

In June 2013, the district government announced that it had established a joint cooperation team to draft a district regulation (*peraturan daerah* or *perda*) that would recognize and protect the Ammatoa Kajang. The team consisted of various Bulukumba district government departments, but also included AMAN, and national and regional NGOs. The latter would serve as customary law experts and representatives of the Ammatoans. All parties were to be involved in the law-making process. After the parties would agree on the content, the draft would be submitted to the Bulukumba district parliament, which would have to approve it before it would come into force.

From the Bulukumba district government side, the heads of the departments of forestry and

plantations, legal affairs, and culture and tourism were included. As a representative of both the Bulukumba district government and the Ammatoa Kajang, the head of sub-district (*camat*) Kajang also joined the team. Within the leadership structure of the Ammatoans, he is the *labbiria*, a noble position inherited through his family line. After he took over the position of *labirria* from his uncle several years ago, the Bulukumba District Head also appointed him as Kajang Sub-District Head (*camat*), despite the fact that he was only in his mid-twenties at the time.<sup>31</sup>

AMAN<sup>32</sup> sent a legal expert from the central office in Jakarta and the head of the South-Sulawesi office in Makassar to participate in the law-making process of the draft regulation.

Regional NGO Balang, with headquarters in Bantaeng district, South-Sulawesi, also joined. Balang supports farming communities through community participation projects. It was assigned the important role of doing field research on the Ammatoans. The central aim of the field research was to collect data on the different types of traditional domains of the Ammatoa Kajang and also to map their customary territory, the results of which were going to be included in the draft. A senior researcher from CIFOR (Center for International Forestry Research) specialised in governance joined the research team of Balang and took also part in the drafting process. CIFOR is an international research organization focused on issues related to forest and landscape management worldwide. The organisation's main office is in Bogor, West-Java.

The team of researchers aimed to identify the areas of land that the Ammatoans use to worship and perform rituals. The Ammatoa Kajang customary leaders were consulted about the verification of this customary domain (*wilayah adat*), in particular the Amma. In total, 11 areas were designated, varying in size, spread out over four Bulukumba

<sup>31</sup> Personal communication with Andi Buyung (*labbiria/camat* Kajang), 6 April 2014 in Bulukumba

<sup>32</sup> <http://www.aman.or.id/en/about-aman/>

sub-districts: Kajang, Bulukumpa, Herlang and Ujoeng Loe. The research team moreover asked the Ammatoa Kajang leaders about the hierarchical structure of their customary organization. After the research was finalised, the team began to work on the draft of the regulation. The sources of research data served as the guidelines for most of the content of the regulation.

In March 2014 the draft team organized a seminar in a conference hall in Bulukumba city to announce its plans to draft the Ammatoa Kajang regulation, which was open for attendance by the public. Besides the different parties involved in the drafting process, around 50 people showed up, including customary leaders of the Ammatoa Kajang and regional officials of the National Land Agency. During the seminar, various speakers asserted the importance of formally recognizing the Ammatoans. Although each party seemed to have its own interest, a common motivation based on two underlying aims seemed present. First, the culture of the Ammatoans is unique cultural heritage and therefore it needs protection from external influences.<sup>33</sup> Second, through the protection of their culture, the Ammatoans' normative system that prioritizes forest protection will also persevere. The Ammatoans are known for their commitment towards the protection of their forest, in accordance with the pasang.<sup>34</sup> Hence, they are regarded as the perfect example of a traditional community that contributes to forest conservation.

After various speakers had accentuated the importance of formal recognition of the Ammatoans, a general discussion was held in which all attendants could participate. During this part of the seminar it became evident what the most difficult issue of drafting the regulation was going to

be: to reach a consensus on the customary territory that was going to be recognized by the regulation. The issue was first raised by the legal expert from AMAN. He stressed that in order to fully realize the rights of the Ammatoans, all areas designated as customary domain should be recognized by the regulation. The issue was picked up by one of the leaders of the Bulukumba division of AGRA, who had also shown up at the seminar. He argued that the customary territory of the Ammatoans not only included their sacred forest, but also land located inside the concession area of PT Lonsum. He further stressed that the Supreme Court had already declared this land as customary land, a comment that probably referred to the 1990 Supreme Court ruling of the case between the farmers from Bonto Biraeng village and PT Lonsum.

Ironically, the leader of AGRA could not count on the support of the Ammatoans present at the seminar. Most of the Ammatoa Kajang customary leaders remained silent and did not comment on the issue raised. Out of all the Ammatoans present, only the sub-district head of Kajang/Labirria responded. He distanced himself from the remarks made by the leader of AGRA and explained that the Bulukumba district government was not authorized to deal with the PT Lonsum dispute, because the concession was licenced by the central government.

## 5. Drafting the district regulation: the difficulties surrounding the customary territory

After the seminar ended, the draft-team gathered again at night in a closed session, in an attempt to finalize the draft.<sup>35</sup> During this session, no Ammatoans were present except the sub-district head of Kajang/labirria. The officials from the

<sup>33</sup> These concerns are not new. Colonial linguist Cense expressed his fear that the Ammatoa Kajang culture would soon vanish as early as 1931. More recently, scholars have argued that the traditional knowledge among Ammatoans is rapidly declining. See for instance the following article Rössler, M. (1990). "Striving for modesty; Fundamentals of the religion and social organization of the makassarese patuntung." *Bijdragen tot de Taal-, Land- en Volkenkunde* 146(2/3): 289-343.

<sup>34</sup> Maarif (2012) states that there have been dozens of research projects on the Ammatoans' forestry preservation carried out by forestry students. See: S. Maarif, 2012, *Dimensions of religious practice: The Ammatoans of Sulawesi, Indonesia*, Phd thesis Doctor of Philosophy. Arizona State University, Arizona. page 37.

National Land Agency had also left, since they were not part of the draft –team. The team first discussed the pre amble and considerations of the regulation and then continued with the description of the structure of the Ammatoa Kajang hierarchical organization. These aspects of the draft did not seem to cause trouble and the team quickly agreed on the phrasing. However, up next was the Ammatoa Kajang customary territory.

As the fierce debate held earlier that day had already foretold, the territory issue would divide the draft team. For AMAN, the recognition of customary land within the concession of PT Lonsum was a crucial priority.<sup>36</sup> Hence, the legal expert of AMAN underlined again that each area designated as customary domain of the Ammatoans should be recognized as such, even if third parties held rights to that land, by which he was obviously hinting at PT Lonsum. A member of the Balang Institute subsequently confirmed that according to their research, there were indeed three areas of customary territory located inside the concession of PT Lonsum. Two of these were located on top of a hill where rubber trees cannot grow. Ammatoans still regularly visited these forests for rituals.<sup>37</sup> Together the 2 plots had a size of 13 hectares. Both forests were located on the border of Tamatto and Bonto Manggiring village, where the shooting had occurred in 2003. The third customary area inside PT Lonsum's concession was a lake in which traditional rituals are still performed. The three areas are located in Bulukumpa and Ujung Loe sub-district, just outside of Kajang sub-district.

Not surprisingly, the government officials of the draft-team were in turn opposed to formally recognize these areas as customary territory, especially the department of legal affairs and the head of sub-district Kajang/la'biria. Besides the

plots located inside PT Lonsum's concession area, the head of the department of legal affairs was even opposed to include any other area than the Tombolo forest. To underpin his views he addressed the following points. First, he argued that individuals already privately own many areas that Balang designated as customary territory. Therefore, customary rights over this land could not be granted as this would lead to a conflict with the private owners of the land. Second, he brought forward that it would also be impossible to grant customary rights to concession land owned by the State. Third, incorporating parts of PT Lonsum's concession into the customary territory would create the risk that new conflicts between the company and locals would emerge. Fourth, to include areas outside of Kajang sub-district into the regulation could lead to problems, since the aim of the district-regulation is to only cover Kajang-sub-district.

Due to the differences of opinion the parties could not reach a consensus on the customary territory during the draft session. Therefore, a new session was initiated a month later. On 4 April 2014 the team gathered again. This time, the focus of the discussion went immediately to the customary territory, since the members of the draft-team had agreed on most of the other content of the draft. Again there was a clash between AMAN and the department of legal affairs. However, an official of the Bulukumba department of forest and plantations seemed successful in mediating between the two opposing views, which eventually opened the door to a compromise from both sides. According to him, the Ammatoans themselves did not regard their customary territory in terms of land borders or measured plots, but rather as domains of influence (*pengaruh*). Therefore, it would not be necessary to incorporate the exact borders and sizes of the

<sup>35</sup> After consultation with various members of the draft-team, one of the authors (Willem van der Muur) was allowed to join the meeting as an observer.

<sup>36</sup> A few AMAN-members from the provincial office of South-Sulawesi had been involved with the PT Lonsum dispute for years. One of them had even been present during the shooting in Bonto Manggiring village of 21 July 2003 when he still worked for WALHI. For them, the district regulation could finally recognize that PT Lonsum's rubber plantation was located on customary land.

<sup>37</sup> The two customary forests were identified as 'buki madu' with a size of 9 hectares in Bonto Manggiring village and 'hutan bukia', with a size of 4 hectares.

customary territories into the regulation, as long as the names of the customary forest were mentioned. Doing so would not necessarily interfere with rights held by others over particular plots of land. A member of Balang agreed and stated that the Ammatoans do not use borders or maps.

This view managed to bridge the gap between the legal affairs department, which did not want the district regulation to interfere with other rights, and the members of AMAN, who insisted that all areas designated as customary territory should be recognized. AMAN responded to the comments made by the forestry office and Balang by suggesting that there could be an article in the regulation that provides that where the customary territories overlap with legal entitlement of other entities over that land, the customary land rights will not interfere with the rights of third persons. BALANG replied that such a provision could indeed be a solution, especially with regard to the domains located inside PT Lonsum's concession. According to Balang, the Amma had said that the Ammatoans acknowledged PT Lonsum's rights over the land as private land and that only the areas on the two hills were still regarded as communal land.

All parties eventually agreed with AMAN's suggestion. In the final draft submitted to the Bulukumba district parliament, article 10 covers the customary territory of the Ammatoans. The article provides that there is a distinction between the inner territory (*rembang seppang*) and an outer territory (*rembang luara*). The difference is that in the latter, only a part of the population adheres to the *pasang*. Article 10 (4) states that parts of the outer area are located in sub-district Kajang, Bulukumpa, Ujung Loe and Herlang as specified on a map attached to the regulation. Article 13 (4) lists all the 11 customary forests of the Ammatoa Kajang, including those inside PT Lonsum's rubber plantation.<sup>38</sup> Finally, article 28 states that the existence of rights of third parties over the customary territory of the Ammatoa

Kajang customary law community will remain to be recognized in accordance to other laws and regulations.

The district regulation now awaits approval by the Bulukumba district parliament. After approval, the regulation will be sent to the Ministry of Environment and Forestry, which is tasked with excluding the Tombolo forest from the State forest zone, in compliance with Constitutional Court judgment 35/2012. Should the regulation see the light of day, then it will be the first district regulation to implement the celebrated court ruling.

#### D. Concluding Remarks

The drafting of the district regulation on the inauguration and protection of the Ammatoa Kajang is an example of participatory law-making, a relatively new form of producing legal rules in Indonesia. The process was initiated in order to protect the culture and the customary forests of the Ammatoans. The way to this process was paved by the Constitutional Court, another novel governance institution, as its judgment about state forest and adat forest reduced the authority of the national Forestry Department over the land concerned. It shows how governance processes have become less centralised and how they have opened up room for new interest groups that were formerly excluded.

Several observations can be made on this process. For a start, participatory law-making intends to guarantee that those whose interests are at stake will be able to directly influence the outcome. However, in this case one may wonder whether all 'stakeholders' were adequately represented. For a start, the Ammatoa Kajang themselves were mostly absent from the process itself. The only Ammatoan present was the Labirria, but he is also a member of the government administration. The most direct representative of the adat community was the Balang Institute – which had done research into them and their claims – and by AMAN, which

<sup>38</sup> These are hutan karenglohe, hutan karengpuang, hutan barombong, hutan pudondo, hutan buki, hutan madu, hutan buki'a, hutan sangkala Lombok, hutan pokkolo, hutan tamaddohon and hutan bongki.

presents itself as the champion of all indigenous peoples in Indonesia.

Yet, it is unlikely that in this case direct involvement of the Ammatoa Kajang would have led to another outcome. In fact, the modest claim of the Kajang to the limited area of forest they consider as customary land would certainly not have led to broader concessions than the district government was prepared to provide. One certainly cannot say that the Ammatoans' interests were squandered in one way or the other. The only consequence of some importance following from the district regulation is the obligations it imposes on the Ammatoans with regard to the preservation of their forests. While presently this is not a problem, the question is whether this will not become onerous in the future.

What is perhaps most remarkable in this case when it regards representation is the unwillingness of the Ammatoa Kajang to link their claim to the broader ones to much larger areas of land (including PT Lonsum's concession) and to serve as a vehicle to legitimise these. These claims have predominantly come from NGOs, both regional and national, whose leaders function as brokers for economically deprived farmers from Kajang and other areas in Bulukumba, who are desperately in need of more land. The attitude of the leaders of the Ammatoans (most notably the Amma) to these claims is consistent with the approach these leaders have taken over the years towards the state, and it has been key to their success in keeping most of their land. Legal recognition of their land adds to the security of tenure they already enjoyed, but not much and therefore is not the glittering prize it would constitute for many other adat communities who have already lost their land and want to retake it. Joining forces with NGO brokers to realise larger claims would be a big gamble for the Ammatoa Kajang. In fact, staying away from the law-making process could be a deliberate strategic choice to preserve their special status as an adat community.

Another feature which merits our attention is the role of the Balang Institute (and to a lesser extent CIFOR). Balang held the 'scientific' key to recognition: if they would have found that the Ammatoa Kajang did not fulfil the requirements of an adat community the entire process would have misfired from the start. While such a prominent role for a research institute in a law-making process seems a typical example of 21st century governance, in fact its pedigree reaches back to the colonial period. It has direct roots in Van Vollenhoven's adat school, which tried to turn a political debate about land use and policy into a legal-scientific debate – even if profoundly moral – about adat communities and their legal systems. In this case too, it were legal scholars who mapped the adat communities and the scope of their rights, and thus wrested some power away from the colonial government. The problem in present times is that with growing modernisation the adat claim has lost much of its former span and power, and that the entire concept of adat as the vehicle for land claims has lost the traction it had in the past.<sup>39</sup>

On a more general note, we are sceptical as to whether regional participatory law-making processes such as this one in Bulukumba can provide an outcome to the many problems related to competing land claims in Indonesia. As explained, the Ammatoa Kajang are a very particular case since they were already in control of most of their customary forest from the start and this surely increased the chances of the participatory law-making process to be successful. Therefore, the real challenge is to provide to a successful outcome in cases where other parties control the land claimed as customary territory by communities. Perhaps the most important contribution of this particular case is the precedent it has set in providing AMAN with successful access to the negotiation table, from where it may be able to produce further change.

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<sup>39</sup> J. Davidson, et al, 2007, *The Revival of Tradition in Indonesian Politics. The Deployment of Adat from Colonialism to Indigenism*, Routledge London & New York

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