

Resource claims between tradition and modernity: masyarakat adat strategies in Mului (Kalimantan Timur).

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Since the introduction of administrative and fiscal decentralization in 1999 and their implementation in January 2001 through law 22/1999 and law 25/1999 respectively, Indonesian local politics have been undergoing thorough revisions. (1) Whereas many aspects of local governance were under direct control of the central government during the Orde Baru, law 22/1999 delegated a number of wide and varied powers and responsibilities to lower administrative levels and to the districts (kabupaten) in particular. Many local governments instantly set to work in implementing changes in administrative, social and economic policies so as to fit central regulations to local circumstances. At the same time, the reformasi that was the cause of decentralization brought about a wave of spirited public participation in local politics that called for a return of local identity which had for years been secondary to Indonesian unity and nationhood. Inspired by this desire to "do things the local way," local adat returned to the fore of social life and public administration (e.g., F. and K. von Benda-Beckmann 2001, Sakai 2003). In representing and emphasizing local identity through ceremonies, distinctive architecture, and the like, adat has for years been a useful instrument to the national government for limiting local diversity to subjects harmless to matters of national unity (e.g., Acciaioli 1985), but in as far as it is concerned with matters of national interest such as claims to land or natural resource management, local adat and national government frequently have opposing views regarding each others' authority. (2) Although Indonesian land law includes references to adat land claims and acknowledges their existence, the status of adat claims to land and other natural resources is far from unconditional recognition and the law allows the government to make numerous limitations to adat rights (Article 5/Basic Agrarian Law (Undang-Undang Pokok Agraria), see Haverfield (1999:51-54) for a more elaborate discussion) which limited their recognition under the Orde Baru mostly to a theoretical principle.

Since the beginning of reformation, conflicts over adat land have become widespread throughout the archipelago and pose difficult problems for local and central governments alike. Adat claims to land and natural resources have become a source of criticism of government planning, of demands for formal recognition of rights to land and of the return of adat lands to communities. The government approach to land conflicts tends to evaluate land claims by considering to what extent they have formerly been recorded by official procedures of land registration. Yet, as land administration policies do not allow for the registration of communal claims to land shared by all members of an adat community (a phenomenon often referred to as hak ulayat in scientific and legal discourse, but found in an enormous variety of names and concepts throughout Indonesia) there is hardly any evidence of the continued existence of such land usage in official files, and claims to adat land have to compete with registered concessions that are supported by official archives and individual user certificates issued by relevant government authorities. Perhaps this is what the head of Badan Pertanahan Nasional (BPN, the national land agency) referred to when he mentioned on television that adat lands continue to exist in West Sumatra alone. (3) As Indonesian land law does not allow BPN to register communal claims to adat land, it is impossible for BPN to recognize such claims because no proof can be found in its archives. On the other hand, adat groups claiming rights to land tend to have little use for BPN's

archives, but base their claims on oral history, social relations, and other unwritten sources that are difficult to verify and usually unknown to people not part of the adat community. In return, this has given rise to the development in administrative and research discourse of the concept of "adat revivalism" which assumes that adat disappeared from daily life and had been replaced by state law, hence viewing recent claims as an artificial matter not in the interest of the community but inspired by individual hopes of personal prestige or material gain. With the administration, this impression is fostered by the explosive growth of the number of regional non-governmental organizations (NGOs) which claim to represent the interests of adat groups. Many of these are driven by enthusiasm rather than experience, and frequently come across to government bureaucrats as meddling amateurs. Another problem is their claim of representation. It is not uncommon for new adat NGOs to state that they represent a certain group without consulting these people or making their intentions known to them. This has led to various cases where district governments made agreements with an NGO, only to discover that the NGO held no representative authority whatsoever, as will follow below. Many district governments hence treat approaches from NGOs with caution and are suspicious of malafide practices.

Although it is not unlikely that attempts to revive adat for personal gain do occur, this approach ignores the fact that the Orde Baru regime chose to overlook adat land claims while at the same time its government apparatus was not so effective as to establish control over all land matters and introduce an effective system of land registration throughout the nation. In fact, a situation came to exist in which adat systems of land tenure were ignored by the government but continued to be used to a greater or lesser extent by a large part of the Indonesian population.

In this paper I investigate some recent conflicts regarding access to natural resources that involved the relation between adat authority and formal law among the Orang Mului of Gunung Lumut, kabupaten Pasir, East Kalimantan. The cases took place around August and September 2004. The two cases discussed here show an imaginative and continuing interpretation of adat that is both fluid and adaptive. Although the Orang Mului consider their adat to be based on tradition and customs which are used as a frame of reference in settling problems, this adat is not an absolute ideology. Rather than deciding cases according to the precedent of similar ones, their usage of adat goes beyond past cases and takes details of the current case and the individuals involved into account. Adat hence is both a starting point and a frame of reference in deciding social matters. This approach, in which adat is a living, evolving body of agreements, rights and rules allows the Orang Mului to bring new developments, either from local or foreign origin, into the context of life in Mului. Occurrences that are new to Mului's society are considered through Mului cultural terms and concepts and a solution is devised based on the result. Used in this way, adat is not just tradition. It is also a framework for the regulation of life in the village that indicates a way of approaching the problem but leaves the specific consideration of the case and the considerations to be made up to the community to decide.

Some Remarks on the Functioning of Adat as a Normative System

Traditional leadership and custom play an important role in many Indonesian societies, forming a framework of rules and laws that are optimally adapted to the circumstances of each individual ethnic group. Being valid for relatively small and autonomous societies (it is rare for even two villages to have a completely similar adat, (4) it is possible for adat to encompass a measure of socially specific detail that is impossible for a larger system, such as a system of national law. In addition, the small size of the society makes direct influence by individuals in the decision-making process possible, as decisions are often taken in communal deliberation. As comes to the fore in the writings of such authors as Koesnoe (1977), Djojodigono (1969), and Soepomo (1962), adat can be said to be "alive," to be continually changing and developing according to the feelings and needs of the community adhering to it with a speed and agility that could never be rivaled by a system of national law. To confine adat to the field of law therefore does not do it justice. Adat goes beyond the mandatory character of law and also encompasses the preferable, the possible and the advisable, and is open to negotiation because of its communal character. When an adat community is confronted with a national system of law that differs from its own adat rules, it is therefore not a given that national law will replace adat because a national

system lacks the autonomy, detail, and practicality of local adat. In addition, making the legal order synonymous with the power of the state rules out small local systems possessing any degree of autonomous law or legal organization. This may have the effect that continuing a traditional way of life effectively puts a group in an illegal position from the point of view of national law (e.g., Parnell (2002:47)), making it less than likely that the autonomy of the local system will readily be traded by locals for national law. Yet, as Diamond (1974:274-80) shows, national law may also be a source of solutions to new, modern problems for which a local system such as adat does not have an answer. In this case aspects of national law suitable to the needs of the community can enrich adat, but it is also possible that there is a point where national law begins to replace adat as the locally preferred system in certain aspects of community life. This may be caused by disruptions in the community such as the influx of migrants or an increased dependency on forces from outside the community. On the other hand, it seems unlikely that national law can fully replace the many functions of adat simply because its purpose is much less specific. A useful approach to adat in modern Indonesian society is through the concept of semi-autonomous social fields (Falk Moore 1973) which refers to the idea that society can be seen to consist of a multitude of (partly) overlapping arenas that are not defined by their boundaries, but by their ability to generate rules and to coerce or induce compliance to them. This means that the difference between national law and other regulating systems is not necessarily the main issue in adat research; rather, emphasis should be placed on those normative systems, institutions, and processes that are actually found to be in operation, regardless of their recognition by state law. The relation between adat and state law is a difficult one. Although adat is still very much in force among many groups of the Indonesian population, its usage for legal purposes at the national level is seriously hampered by its regional diversity and its lack of predictability. As adat is uncodified, it may lead to different conclusions in similar cases, even locally. Attempts to incorporate local adat rules into local government policies, as communities all over Indonesia have advocated since decentralization, are likely to be obstructed by this lack of predictability. Adat is a social system rather than a legal one. Its focus is in the first place on individuals and their specific relations and only then on the rules that may or may not apply. Compared to formal state law this makes adat rather hard to understand and predict, first for those not part of the adat community, but as clearly formulated and uniformly valid rules are often non-existent, even those adhering to it may have difficulty in deciding what is to be done. Members of an adat community may have a reasonable idea of its mechanics and their own positions within it, but room is always left for the dynamic presentation of a legal dispute. As such, a certain degree of legal plurality can be said to exist, as participants may rephrase the definition of the dispute in its different stages (Slaats and Portier 1986). Therefore adat is not exclusively about local law, or about tradition or custom. Adat is primarily about restoring social order, about finding a mutually satisfying interpretation of the argument in order to settle it and, in situations of disturbed social coherence, it can also be about winning the argument. Thus, adat is both a body of precedents and the processes used to arrive at solutions.

An Introduction to the Orang Paser and Mului

The Gunung Lumut area is a sparsely inhabited part of the kabupaten Pasir in the south of the province of East Kalimantan. In the recent past, the area's extensive mountains and forests limited traveling to the rainy season, when the rivers were high enough to be navigated by boat. Lack of roads made travel over land a slow and arduous job unsuited for longer distances. The area's population mainly consisted of small communities of Orang Paser who constructed ladang (swiddens) and hunted and gathered in the surrounding forest for subsistence and to a lesser extent for commercial purposes. (5) The Orang Paser consider themselves to be the original inhabitants of the Paser area and make up almost forty percent of the kabupaten's population. They live along the coast, in the plains between the sea and the mountains, and in the mountains themselves. Various sub-groups are distinguished, which differ from one another in dialect and in adat. (6)

Along the coast and in the plains, Orang Paser have from early times onwards intermingled with Bugis from South Sulawesi, Banjarese from South Kalimantan and Javanese settlers. Migrations and transmigrations of more recent date have made the kabupaten capitol of Tanah Grogot a city

populated by Indonesians from all over the archipelago, and the national language of Bahasa Indonesia is more commonly used than any regional language. Tanah Grogot replaced the old capitol of the Bugis Sultanate centered around Pasir Balengkong when the Dutch Indies government exiled the last sultan to Java at the beginning of the twentieth century. Culturally, the kabupaten is divided into the Bugis-Malay oriented people of the plains around Tanah Grogot and the more inland oriented groups of the mountains. The lack of infrastructure in the mountains has for long limited the influx of coastal migrants there to insignificant numbers. The cultural orientation in the mountains was towards the north and east, where contacts with various Dayak tribes existed. (7) The opening up of the area in recent decades through the construction of logging roads changed the cultural orientation towards the coastal areas and many Orang Paser living in the mountains no longer consider links with Dayak groups essential. In daily life, however, many traits of Dayak culture and beliefs remain visible. Sowing and harvesting are surrounded with ceremonial procedures and marked by religious festivals aimed at appeasing the spirits of the woods and the crops respectively. In case of illness a shaman is called upon to appease the spirits of disease, and at a later stage a celebration is held with prayer, sacrifices, and food to commemorate the recuperation of the patient. In various villages in the Gunung Lumut area small houses on high poles (panti) can be seen that are intended as resting places for spirits, as well as the occasional wooden human figure (also called panti) which represents an ill individual seeking a cure through spiritual means. Nowadays, nearly all Paser groups are Muslim, but to varying degrees. Whereas those living in the coastal regions that have for long been in contact with Javanese and Bugis are well-versed in the religion, those in the mountains tend to abstain from eating pork but otherwise know little of prayer or the Koran. This seems, however, to be changing rapidly. Younger generations enter school or migrate to the coastal cities and become well-versed in both religion and the ways of the city.

[ILLUSTRATIONS 1-3 OMITTED]

In the past three decades the Gunung Lumut area was opened up by logging companies that constructed dirt roads for the extraction of timber and the delivery of supplies to the base camps they built in their concession areas. With them came transmigrants from other areas of Indonesia, traders from nearby cities and an intensified influence of the district government. The opening up of the area caused an increase in the amount and diversity of forest products gathered for trading purposes and an increase in wealth in the Gunung Lumut villages, as the dirt roads facilitated the distribution of products to the market towns of Long Ikis and Long Kali. Timber, readily available in abundant quantity, is by far the most important export product of the area but rattan, wild honey, fruits, song birds, game and bird nests are important forest products as well.

In recent years decentralization brought the idea that not only the central government could issue logging permits, but that the kabupaten and village governments were allowed to do so as well. This was contested by the Ministry of Forestry who put a stop to all concessions issued by the kabupaten, but is relatively powerless when it comes to controlling the countless small-scale concessions given out by the villages. As early as 1983 the Ministry of Forestry declared a central part of Gunung Lumut a protected forest (hutan lindung), (8) but many of the surrounding villages are nowadays logging the areas they consider as their rightful adat forests. Whereas the hutan lindung status offers part of the forest official protection against logging, in practice logging proves very hard to counter when done by small-scale loggers working from mobile camps, such as those who have begun operating in the area in significant numbers since decentralization.

The village of Mului is located just within the borders of the protected forest, on a hilltop with two rows of houses alongside a logging road that passes through the village. The location along this road facilitates transport and contacts with the world outside the village, but the high location dictates that the villagers have to walk about a kilometer along a steep road for bathing and to collect drinking water, which they consider a huge disadvantage of their village's location. The Orang Mului live along the Mului River in an area of some 8600 hectares of adat land that borders the lands of various other Paser groups that are separated by unmarked natural borders, such as rivers and mountains. Mului's economy is based

on subsistence farming, fishing, hunting, and gathering forest produce. The relatively abundant land and forest sustain the practice of swidden agriculture using slash and burn methods. Ladang are laid out on parcels of partly cleared, burned-down forestland. The ashes of the burned trees and undergrowth fertilize the land and sustain dry rice species for one or two years. After that the ladang may be used for vegetable farming for a further year or so and is then left to the forest again, or fruit trees or other forest products that need little attention might be planted. The ladang is left to recuperate for at least five years after which it can be burnt again. The relative abundance of forest and empty land in the vicinity of Mului mean that ladang are almost never further than half an hour's walk from the village. Rice and vegetables are grown mainly for local consumption, but occasionally surplus is sold in the market towns if transport is available. The forest provides an essential part of the daily diet in the form of fruits, wild honey and game, although these products are preferably sold for cash rather than consumed in the village. Fish caught in the nearby river are always consumed in the village. Songbirds are caught in the forest using bird glue. At regular times traders from the market towns come up to the village to buy the birds that are in high demand in the cities.

For much of their history the Orang Mului did not live in a village, but in individual houses spread across their territory. (9) In 1979 a national government structure was introduced into the area that opposed the existing adat structure. Among the people of the nearby Swan and Solutong Rivers, who were traditionally subservient to the leaders of Mului, a local government center was set up and Mului was made part of the desa Swan Solutong. A village named Mului was constructed at a distance of some two kilometers from Swan Solutong. In 1987 the uneasy power relations led to an open conflict. The people of Mului considered the distance between Swan Solutong and Mului too far for their young children to traverse daily in order to attend school and therefore built a new school in their own village. The local government did not acknowledge this school and refused to provide a teacher. In reaction a large part of the Orang Mului left their village and moved some ten kilometers upriver where they built new houses along the banks of the Mului River. In 1991 a transmigration site was opened near Swan Solutong that brought Javanese and Bugis migrants to the area. The people from Swan Solutong and those from Mului were both asked by the local government to come and live at the site as well. Those living along the river refused, but the people of Swan Solutong and some fifteen Mului families that had not moved upriver joined. They were given houses, seeds, utensils, clothing, money and assistance in setting up their new households in the transmigration village. The Mului people living upriver decided that they also wanted to take part in the world around them and partake of what it had to offer, but without losing their independence to the Swan Solutong government. Hence they applied for aid to the provincial governor who agreed to have a resettlement project planned by the provincial welfare department in Samarinda, and had it carried out by the kabupaten welfare department in Tanah Grogot. The Orang Mului had requested aid in moving their village to a former log yard along a logging road some two kilometers away from their settlement, as they felt that this would give them access to transport and make it easier for traders and other outsiders to reach them. The Samarinda welfare department agreed to build a new village at the site, on the condition that there would be a minimum of 52 families living in the new village. By imaginatively including bachelors as future families, that number was reached and 52 houses, a school and a mosque were built at the site in 2001. All the people (some 180 individuals) left their houses near the river and moved to the new village. From a governmental point of view the village remained part of the desa Swan Solutong and was listed as a dusun (hamlet) with no higher administrative leader than a kepala RT. Swan Solutong, by way of comparison, had six. (10) In effect the kepala RT of Mului wields little influence, first because the influential kepala adat and wakil kepala adat of Mului are both living in the village, and second because the population tends to prefer reaching a decision through communal discussion to following an individual leader's opinion, regardless of whether that leader's position is based upon governmental or adat authority, as we shall see below. (11) The titles of kepala adat and wakil kepala adat are Bahasa Indonesia rather than the local Bahasa Paser. The local equivalent is tuo adat or tuo kampung, but these words are hardly used in daily conversation since everyone knows who the tuo adat is. The title is mainly used when dealing with outsiders and then mostly in Bahasa Indonesia. (12)

Although they can govern their daily village affairs according to their own adat, the Orang Mului realize

that they cannot ignore the nearest government official, the kepala desa of Swan Solutong. The desa has about four times as many inhabitants as Mului, of which the majority are transmigrants with no understanding of local Paser adat. Yet the kepala desa of Swan Solutong has for several years now been an Orang Paser, the current one being a stepson of the kepala adat of Mului. Preferring to have one of their own as a leader rather than a migrant, the Orang Paser of Mului and Swan Solutong voted together en bloc to elect a Paser candidate rather than a migrant as village head, and so retained the strongest possible position for local adat.

The move to the new village did not influence the land claim upheld by the Orang Mului, although the new location is very near the edge of their territory. As part of the village construction and resettlement process the Tanah Grogot welfare department measured out plots of two hectares to go with each household to be certified by BPN. The lines and stakes marking the sites were, however, resolutely removed by the Orang Mului because they did not want to consider the land otherwise than as their communal property, (13) and because the land they considered to be theirs extends well over 104 hectares. A few years earlier, in 1999, a consortium of NGOs helped them to draw up a map of the land and the area which they claimed and this map was intended to be taken to the local government in Tanah Grogot for affirmation of the claim. This has, however, not been done as yet, partly because of transportation problems, partly because it is feared that government officials will be unwilling to confirm the claim. However, in daily life in Gunung Lumut the claim of the Orang Mului is recognized by the neighboring villages who themselves have similar claims to areas of adat land. Yet, the borders of these claims do not conform to those used by the local government, which occasionally has led to disputes over land and resources. A main administrative problem in Mului is the location of the village within the borders of the hutan lindung. Whether the welfare department overlooked the protected status of the location or was unaware of it is uncertain, but the forestry department voiced its concern over the presence of a village within a protected forest. In practice there is, however, little that the department can do about the village's location in the short term.

The Orang Mului as Masyarakat Adat (14)

Although isolated, the people of Mului are well connected to the outside world through relations with various NGO's that have been--or still are--active in the area, and through the nearby logging camps. A number of Orang Mului have attended NGO meetings throughout East Kalimantan and two or three representatives have attended national symposia of masyarakat adat groups in South Kalimantan and Bali. As representatives of Orang Paser adat communities these people spoke to other adat communities about the culture of Paser and the problems they encountered in maintaining their traditional way of life in modern Indonesian society. They exchanged experiences and came to the conclusion that one of the main problems they face is the lack of attention paid by the government to the adat systems used by such communities, even though these systems are very much alive and functioning. In daily life all matters in Mului are governed by adat rules and ensuing issues decided in public discussion. The need and the attention for state law are very minimal and only come to the fore in certain relations that involve participants from outside the adat area (which in effect means non-Paser people) or with regard to cases where adat is confronted by incompatible rules of state law. Occasions for which adat does not provide an answer are very rare since, when the proper course of action is unclear, the population gathers to discuss the problem and determine an answer by adding to the existing adat through deliberation of the problem. For the Orang Mului their adat is a useful and effective way of managing their land and society, and their own needs for state law solutions are next to none. Yet, whereas this system of adat is effective and functions well on the village level, it is unknown and not taken into account at higher governmental levels when deciding issues influencing local land and resources. The perspective of the Orang Mului on the government administrative structure is not so very different; they do not so much consider the provincial and central governments as the legitimate administration of the nation of which their village is a part, but as a legal system different from their own that occasionally intrudes into their life but is not as knowledgeable or authoritative as their own adat decisions. The Orde Baru regime, for instance, that was responsible for issuing the logging concessions concerning the adat forests claimed by Mului was recognized as a more powerful party that took their

wood but was not considered as having a claim to those forests more legitimate than their own. This perspective appears to be characteristic for the relations with the local government and other authorities from outside Mului. Apart from refusing to cooperate in the transmigration program of the early nineties, the Orang Mului in 1998 managed to stop an operation managed by the vice governor of that time from opening a gold mine on their lands by refusing to allow them access or cooperation. Since decentralization and the ensuing argument between local governments and the Ministry of Forestry on the validity of locally issued logging permits, logging companies need to negotiate directly with communities. Mului has taken the effective route of refusing all loggers access to their forests.

The status of forest in the adat of Mului is strong. Whereas many other villages allow small-scale loggers to work in their forests, it is forbidden in Mului to sell timber cut in the adat forests. To cut down a few trees for one's own needs is permissible if the plan has been discussed and did not meet with objections from the community, but no one may cut down trees for individual financial gain. In this the status of wood differs from that of other forest products that can be gathered by anyone and sold off if the individual wants to do so. The rule regarding wood and its limited usage was established some years ago after the people saw what had happened in other areas and what had started to happen in neighboring villages that gave out their own logging permits. A vivid warning is the area of land belonging to Swan Solutong, which lies between that settlement and Mului. It has been logged thoroughly in the past and is now an infertile stretch of *alang-alang* grass where the forest will not recuperate. It has been given out in plots to migrants and plans have been made to plant oil palms (*kelapa sawit*) on the land, but nothing has come of this as yet. Some of the owners have already left, as the soil will no longer support food crops and they have no funds to invest in plantations. In Mului the forest is considered as the main provider of all their requirements; be it food, building materials or products to sell when they require cash. Logging the forest would provide a lot of cash in a short time, but destroy future harvests of forest products not only for the current generation but also for their children. The forest is, as the *wakil kepala adat* called it, their "insurance" for when the rice harvest fails or some other disaster threatens them and a direct supply of resources would be needed. Although the decision not to log leaves Mului less well-off financially and materially than some of its neighbors, the steady flow of forest products and the self-supporting abilities of the community leave the people with little urgent need for cash. Surplus financial profit is almost always used to buy extra things and hardly ever needed to meet pressing needs.

Adat as a local system of rules is very much alive and kept up to date in Mului. Not only are the main village leaders the *kepala adat* and the *wakil kepala adat* rather than an official belonging to the formal administrative structure, adat is also applied in considering recent and modern developments. Apart from the prohibition against selling logs or timber that came into force a few years ago, older roles that are considered valid in theory but outdated in practice are reconsidered and altered. An example of this is the punishment for selling logs. As it had not yet happened that an individual sold logs for personal profit, the nature and severity of the punishment had yet to be established. The *wakil kepala adat* told me that the usual way of punishing someone who sells communal property for his own gain without the consent of the village is by fining him. A fine may consist of goods, foodstuffs, or--since the perpetrator is likely to have recently come into possession of a substantial amount of it--money. Relating to local history the *wakil kepala adat*, together with the *kepala adat* and some elders making up an ad-hoc council, came to the conclusion that the amount of such a fine should be two times four reals, a real being thought of as an ancient coin, either of silver or gold. This brought the problem that none of them knew how much the value of a real actually was or what its financial equivalent would be today, but by referring to the scarcity of reals in the area in former days it was quickly established that a real would at least equal 1,000,000 modern Indonesian rupiah. It was then called to memory how a nearby village had asked the assistance of the government in ending a conflict with a logging company that was working in the village's adat forest without their consent. A government mediator arrived and when it was established that the village had an adat fine of 1,000 rupiah for every tree that was felled the loggers' representative could hardly withhold his laughter and gladly promised that his company would pay this fine each time they transgressed the adat. Such a fine was no impediment at all and they indeed planned to transgress frequently in the near future. Through the support of the government

mediator the two parties finally settled on a fee of 15,000 rupiah to be paid to the village for every cubic meter of wood the loggers extracted from the forest. The adat authorities of Mului therefore concluded that it was of vital importance to adapt the amount of historical fines to an equivalent amount in the present. They also concluded that the perpetrator's identity and his profits should be considered in determining the fine. The fine should be higher than the money made by the perpetrator, but a logging company would laughingly pay a fine that a local villager would not be able to pay in a lifetime.

The relevance of a specific adat rule in Mului and in Mului's relation with Indonesian society, the rule's financial and material meaning, and the identity of the perpetrator are all aspects to be taken into account in arriving at a conclusion in Mului's present day adat cases. Following this rather theoretical observation are two discussions of recent adat cases and their outcomes.

Logging Neighbors: Some Problems and Solutions

The territory of Mului borders the hutan lindung of Gunung Lumut and the territories of various other Paser villages (Pinang Jatus, Kepala Telake, Rantau Layung and Long Sayo). The local population is well aware of the borders of the adat territory of each village, but these frequently differ from the borders registered by the local government. This rarely leads to problems as the villages refer to local adat borders and relations rather than to the official borders, but the different stances taken with regard to logging are a source of potential conflict. The hutan lindung, for instance, is a governmental construction that overlaps with adat land of various villages. The borders of the hutan lindung have been marked out with white poles but these are not controlled and there are no measures to keep small-scale loggers out. Not all villages whose adat forest is (partly) taken up by the hutan lindung consent to its protected status and at various locations logs are taken from the protected forest alongside logs from the adat forest that is outside the hutan lindung.

In August 2004, loggers from the village of Rantau Layung were working along the dirt road leading to Mului only a few kilometers away from the border between the two territories. As Mului is situated almost at the border of its territory, they were in fact working very near to Mului itself. This worried the kepala adat and the wakil kepala adat since loggers have a reputation of looking at trees rather than at borders (which are not marked anyway). The kepala adat sent word to the loggers to show them exactly where they were working and they drove a truck to Mului to pick him up and show him the site. It was agreed by both parties that the logging was taking place in the adat forest of Rantau Layung, but the kepala adat told the loggers to stay away from Mului's forest and retreat to two kilometers behind the border. After some negotiation the loggers agreed not to come closer to the border than one and a half kilometers.

At about the same time, at the other edge of Mului's territory, the village council of Swan Solutong decided to give one of their villagers permission to start a small logging operation in the nearby forest. According to the official map this forest belongs to Swan Solutong, but according to adat it belongs to the adat forest of Mului and hence cannot be logged. In Mului the people received news that this individual wanted to fell two or three trees to be able to pay for repairs to his motorbike, but when two of them went to investigate they found six trees had already been felled, two additional persons had been hired, chainsaws and a truck had been brought in, and a camp had been set up. This caused great concern in Mului, and the logger from Swan Solutong was told to take his felled logs and then stop immediately. The next day the kepala adat of Mului went to the market in Long Ikis and there ran into his stepson, the kepala desa of Swan Solutong, who told him that he had not sanctioned the logging and had not been consulted on it. Nor had there been an official meeting of the full village council since several of its members had come to the market with him. The kepala desa told the kepala adat that he would sort things out when he got back to his village. This proved, however, to be unnecessary, as the logger had in the meantime visited (on his motorbike) the wakil kepala adat in Mului and told him that as he was a migrant, he was unaware that the forest was part of the adat forest of Mului and he would take the trees he had already cut, eight by now, and otherwise leave the forest alone, to which the wakil kepala adat consented.

Two days later a car stopped in Mului from which alighted a delegation of the neighboring village of Long Sayu, consisting of several prominent villagers, the kepala adat of Long Sayu, and some friends of theirs from the village of Batu Kajang. Between Mului and Long Sayu lies a forest that belongs to Long Sayu, but as the people of Long Sayu originate from Mului, the people from Mului have a right to gather forest products in this forest providing that they do not take all and give shares of their finds to Long Sayu. The people from Long Sayu had decided to open this forest to logging, but were required by adat to inform the people from Mului and, for the sake of good relations, ask their consent. The main dilemma they faced was not whether they would allow logging or not, they had decided that they would, but whether it was more profitable to allow a large logging company to extract the wood in exchange for fees or to invite small-scale loggers who might pay a better price but are not as reliable. The people from Mului listened and politely argued against the entire idea of logging, but as this did not change their visitors minds the kepala adat finally spoke the concluding words that he did not agree with Long Sayu's plans and would be much happier if they forgot about it, but that if they wanted to go ahead he would not stop them. He did ask them, however, to be very precise with regard to the border between the two areas, and assured them that the Orang Mului would keep a close eye on it as well.

It is not unlikely that the resistance against logging in Mului will continue for quite some time to come. The official status of part of its territory as hutan lindung is of considerable importance as it allows government law to be used to their benefit. One thing that worries the people of Mului is that when their neighbors continue cutting their trees, the forest of Mului becomes ever more visible and ever more open to the outside world. If forest fruits and forest products become rare in their neighbors' territories because the forests that sustained them are gone, it is feared that these forestless neighbors will turn to Mului for help and in this way destroy its forest after all.

Trouble Over Old Iron

When in the seventies and eighties of the previous century the forests of Gunung Lumut were logged for the first time, it was common for broken equipment to be left at the sites of the logging camps. Over the years, these old chains, tires, broken cars and so on were overgrown with young vegetation and their locations, although known to the local population, were hardly ever visited. In more recent years buyers of scrap metal have developed an interest in these sites as it is not unusual to find tons of the material heaped together, which makes salvaging financially attractive. In Gunung Lumut several villages have struck deals with scrap metal buyers and sold the metal that loggers had left on their lands. Usually the logging companies do not meddle in such deals, as they are happy to create some goodwill among the population. Moreover, the villages often consider themselves as having a right to the materials that is stronger than the former right of ownership of the logging firms. The scrap metal was left on their adat lands many years ago; it has not been reclaimed by the firms and has become overgrown by the forest. Therefore it is obvious that the previous owners have no interest in it, and the metal has become part of the natural resources that are at the disposal of the adat community. In Mului scrap metal was located at a hill some six kilometers away from the road, on a plateau. The people considered this metal legitimately theirs, as it was left on their territory and the logging company had not expressed any interest in it over the past decades. Moreover, they felt that the logging company owed them. When the forest of Mului was logged in the seventies, the logging firm had not paid any fees or compensation, as is customary nowadays, and so the scrap metal was considered to be a compensation for past events. (15) The old road leading to the scrap metal site had disappeared, but a trail was left and although the going was tough, a scrap metal dealer from Long Ikis had ventured up to the site to inspect the quantity and made the villagers an offer which they were willing to accept: 500 rupiah per kilogram and extra expenses for clearing a road up to the site and salvaging the metal. The dealer had paid a deposit of half a million rupiahs to have the people start work on the road, which was to originate at the edge of the village, and by August 20 work had been underway for a few days so that the first kilometers were cleared.

On August 22, at about eight in the morning, a black extended Kijang drove into the village at full

speed. This immediately connoted the driver as a stranger since all who regularly use the dirt road leading through the village decrease speed upon reaching it, so as not to stir up thick clouds of dust from the dry road. From it emerged a married couple who owned a scrap metal business in Balikpapan, their Javanese associate, and a representative of a local NGO looking after the interests of adat groups in Pasir. They had with them a letter from the logging company that had left the scrap metal on the hillside in which it donated the metal to the NGO. The NGO had arranged for the Balikpapan dealers to buy the metal, and the NGO representative had prepared a document for the people of Mului to sign in which they stated that they agreed that the NGO owned the metal. In exchange they were offered part of the sum the dealers had agreed to pay for the metal, 150 out of 500 rupiahs per kilo, and possibly more if they would be willing to help in digging the metal up. The scrap metal dealers had agreed to pay 500 rupiah to the NGO, but its representative intended to use the remaining 350 rupiah for other projects and for paying for permits and permission from various government agencies. The people were greatly surprised at this and confused that their ownership of the metal was apparently not recognized by this new party. Their confusion was not lessened by the presence of the NGO representative as they had never heard of his NGO, and were upset by the idea that an NGO claiming to defend the rights of adat communities would contest their adat right of ownership and pay them a price considerably lower than the dealer with whom they were already doing business. In response, the NGO representative told them that his organization was for all the adat communities in Pasir and hence the money paid for the iron would go into projects at various locations. The NGO was working on fund raising and they had contacted various logging companies to inquire after possible donations of scrap metal. He explained that legally his organization was the owner of the metal left in Mului and that they already had arranged matters with the local government and police. Initial talk took several hours, but as the kepala adat was not in the village and expected back later that day, no decision was made. When he returned later in the afternoon, the people discussed the case among themselves and decided not to recognize the NGO ownership of the metal. Instead, they decided to cancel their agreement with the dealer from Long Ikis and leave the scrap metal where it was until matters were settled and business could be conducted without conflict. After this the metal dealers left again for Balikpapan, and the NGO representative returned to Tanah Grogot.

The next day a motorbike with two people on it arrived in Mului. One of them was the metal dealer from Long Ikis who had heard about the visit of his competitors and wanted to know what had happened. The wakil kepala adat told him that they wanted to terminate the deal and return his deposit, as the people were not keen on a confrontation with the government or police over what they considered to be their legitimate property. The dealer called them together in a meeting and convinced them that he had friends with the police in Balikpapan that would sort matters out with the local police, and that his right to buy the metal was as legal and as strong as that of the NGO. With the deal still in place, the scrap metal dealer left for Long Ikis and the villagers planned to go back to work on the road the next day.

On September 8 the NGO representative returned to Mului to try to explain his case again. He was received cordially, but the mood turned sour when neither party was willing to accept the other's point of view. The people of Mului started to consider the NGO representative as some sort of government representative keen on stealing their metal for his own profit. The NGO representative, from his side, considered the villagers surprisingly stubborn and backward since they did not see the greater goal towards which his organization was working. He considered calling in the police for help, but the irony of an NGO claiming to support communities such as Mului while simultaneously taking what these people considered to be their legitimate property by police force was not beyond him. Nonetheless he was getting vexed. This was the first case in which his organization had worked together with the Balikpapan traders, and the impression he had made until now was not very good.

On September 10 a meeting was held at Swan Solutong. The NGO representative had arranged for officials of the local police and military to accompany him there, as well as had called for the kepala desa of Swan Solutong and members of the village council to attend. The scrap metal dealers from Balikpapan attended as well. The company went to Swan Solutong by a different road, so that the people in Mului did not know that they were there. Then a motorbike was sent to Mului to ask the wakil

kepala adat to come to Swan Solutong. No reason for the request was given, but as the wakil kepala adat believed that the village council wanted to discuss a request Mului had made for financial support of a local project, he asked the kepala adat to come as well. In Swan Solutong the kepala adat and the wakil kepala adat were convinced by the assembled authorities to sign the agreement. For them, the decisive speaker was a Mului man living in Swan Solutong who was their senior in age and hence claimed to know best. It was agreed that the price the NGO would pay to Mului was to be 500 rupiah per kilo, which meant that the NGO would go empty handed but that at least the deal and their reputation would be saved. Afterwards the scrap metal dealers and the NGO representative gave the kepala adat and the wakil kepala adat a ride back to Mului and there were met by a very angry mob of villagers who did not agree to such a thing being decided without a public meeting. It appeared the metal trader from Long Ikis had found out about the meeting and while the meeting in Swan Solutong took place, he had gone up to Mului to tell the villagers what was going on and to give his view of the affairs, which included trying to save his own deal. The angry villagers demanded that the signed agreement be destroyed, which it was, and were unwilling to discuss matters any further. Again the NGO representative and the traders from Balikpapan had to leave without having reached a deal, but upon return to Long Ikis, the NGO representative requested the local police to arrest the Long Ikis dealer for being a provokator, which they did. The dealer spent the night in jail and consented to withdraw from the conflict.

Unknown to the NGO representative and the Balikpapan dealers the people of Mului next day built a barrier across the road leading to the scrap metal to make sure that no one could go there without their consent. The authority of the kepala adat and the wakil kepala adat was not questioned as such, but the population did not agree to their signing of the document, and this disapproval was made quite clear to them.

On September 12 the NGO representative and the metal dealers returned to Swan Solutong, and the kepala desa went to Mului to negotiate with the villagers. As there was no other buyer left and it was clear that the Balikpapan dealers did not intend to leave before they got what they had come for, it was agreed to sell the metal to them for 500 rupiah per kilo. However, the villagers demanded to trade directly with the dealers and wanted the NGO out of the process. The NGO representative had little choice but to accept.

On September 15 the Balikpapan scrap metal dealers came to Mului to discuss the terms of the agreement with the villagers. A deal was reached that provided the villagers with the work of digging up the iron while the dealers would provide for a cook and food supplies to be prepared at the worksite, as well as specialized personnel to cut the iron into manageable lumps.

When returning to Mului ten days later, we found that work was in full progress. The dealers' personnel had set up camp and brought in a bulldozer, a truck and mobile cutting torches. The kepala adat and some other individuals were absent as they had been invited as guests to the house of the metal traders in Balikpapan. Later in the day they returned and told us how they enjoyed their stay and the sights of the city. The wakil kepala adat remained in the village all the time and did not work at the scrap metal site. He stayed in the village in case someone might come to enquire after the metal and needed to be met by a local authority. He guarded the access to the site, as the barrier remained closed most of the time, and at the same time was reasserting his position as a local authority. In this case the people of Mului made an interesting choice. Rather than agreeing to the deal proposed by the NGO representative and cutting their losses, they chose to confront his authority and demand the application of adat to the situation and their right to what they saw as their legitimate property which they could sell or not sell as they pleased, and for which a price should be fixed in open discussion between the people and the buyer. The fact that the kepala adat and his wakil had initially agreed to the arrangement proposed by the NGO did not make the deal valid in the eyes of the other villagers, although their consent as local authorities made the deal valid under national law where decisions are made by authorities such as village or adat leaders rather than by public consensus. Whereas the NGO representative and scrap metal dealers believed themselves to be conducting legitimate business and

had made serious investments in material and permits, the villagers felt they were being deprived of the rights they held under adat. They made this into such a convincing case that the others saw no other option than to agree to an amended agreement that would avoid further harm to their interests and reputation, and finally get the work started.

During the months that followed the metal was salvaged and transported to a former logging camp in the coastal plain, from where it would be transported for processing to Surabaya. The workers were all recruited from Mului. The work was characterized by continual negotiations between the dealers and the people from Mului over the amount of rice provided for lunch, and the punctual payment of wages. Initially the Orang Mului decided that no scrap metal could leave the site without instant payment, but when this proved unworkable as the scrap metal dealers did not have such large financial reserves, they decided on guarding the transported metal until payment was made. Hence the metal accumulated at the logging camp was from then on guarded by at least three Orang Mului armed with machetes, who demanded--and received--food from the dealers as well. Events worsened for the dealers when the amount of scrap metal was found to be far less than they had estimated. After paying the Orang Mului for the metal and their work, the dealers' Javanese partner refused to send the ship he had promised if his share was not paid in advance, while the truck company that had transported the metal was also demanding payment. Faced with an acute financial crisis, the dealers decided to disappear for a while and in January 2005 their Balikpapan house stood empty and their mobile phone numbers were no longer in use.

Conclusion

Although Mului is part of the larger whole of the Indonesian nation, the adat of Mului is its governing system rather than the national state law and its representatives. In arranging daily matters this system is optimally adapted to local circumstances to a much higher and more personalized degree than state law ever can be. The fact that adat has not been recognized by the authorities for the past decades did not lead to its demise, but forced it to coexist with a legal system that was perceived as foreign and incomprehensible. The above examples show that adat relations and rules are not only used among groups that mutually recognize them, but that they also can be adapted to fit situations in which a right is claimed by a third party according to another law system, such as state law. In the case of the scrap metal, ownership had been granted to the NGO from the perspective of state law, but the villagers' demand for the recognition of their adat threatened the proceedings in such a way that it had to be taken into account by the dealers. This does not signify that Mului's adat has gained legitimacy over state law. What it does show is that adat in Mului is a vital system that governs daily matters and is very able to tackle modern problems by reducing them to basic facts that can be interpreted according to local adat rules by the population and its experts. This is a very essential aspect of adat: it has to be able to incorporate new phenomena. Like national law, or any other regulating system, adat has to adapt to changing circumstances in society in order to remain relevant. This does not, however, mean that adat is a beatific system. It offers opportunities for individuals to gain disproportional influence, the kepala adat must be checked just as the kepala desa, and it can disadvantage others who are not part of the adat community but have full rights according to national law, such as the scrap metal dealers.

The manner in which a masyarakat adat uses its adat, the strategies it deploys in dealing with the outside world, greatly defines its credibility as an adat community. The actions of the Orang Mului got them the attention of the district government and their refusal to cooperate with the district's largest adat NGO convinced this organization that they needed to spend more time on public relations since remote adat communities such as Mului apparently do not know that they have representatives in the district capital.

There are various other villages in the Gunung Lumut area that have their own adat, which governs all sorts of aspects of daily life to a greater or lesser degree, and areas resembling Gunung Lumut in social and economic circumstances can be found all over Indonesia. Since decentralization, the more relaxed political atmosphere of Indonesian society has allowed the population of such areas to become more

vocal and groups such as the Orang Mului to become more visible in their notions of rights and legality. Although it is possible that this might lead to newly invented forms of adat in areas where it had long disappeared, it should be kept in mind that the existence of adat was hardly recognized in the administrative practices of the past decades but that this did not mean that adat disappeared from daily life. It seems reasonable to assume that there is a hiatus in the government's knowledge of the contemporary position and dynamics of adat that should be addressed with due attention in order to come to a fruitful dialogue between population and government.

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(2) Often-used translations of adat are 'tradition' or 'custom', which adequately summarize the governmental thoughts on adat during the Orde Baru. A more extensive discussion on the meaning and role of adat as a normative system follows in this paper. Its main point is that adat is not limited to tradition but adapts to new situations and needs.

(3) In Acara Minggu at TVRI of 5 September 2004, a special broadcast on the theme of masalah pertanahan dan pembaruan agraria.

(4) Clifford Geertz (1983:176) illustrates this vividly with regard to Bali by stating that "no two [villages] do things exactly alike; if they find that they do, one of them changes something."

(5) In the local language "Pasir" is called "Paser," hence Orang Paser who live in kabupaten Pasir. In the text I use the names as much as possible as they are used locally, hence both "Pasir" and "Paser." The names are often used to connote differences between government and population views. The national and local government will speak of "Pasir," the local population and local organizations tend to use "Paser."

(6) These distinctions between sub-groups are, however, not very clear to non-Orang Paser. Sub-groups themselves distinguish further divisions, and written or official sources come up with numbers differing between four and thirteen. I believe thirteen to be more accurate than four, but more extensive study is necessary.

(7) In Mului the people believe they are descended from the Dayak Benuaq, to whom they are also linguistically related. In the Paser language of Mului, the word benno connotes the population of an area, from which the Dayak Benuaq are thought to have derived their name.

(8) See ministerial decree no. 24/Kpts/Um/1983.

(9) This rendition of Mului's history is based on accounts of past events given by Orang Mului.

(10) RT stands for Rukun Tetangga, an administrative division beneath the desa level.

(11) Kepala adat can be translated as 'adat head.' This is a person with a great knowledge of local adat, its history and its various rules. His word is often not absolute. Rather, his authority is like that of the chairman of an assembly, but his knowledge gives it substantial bearing. The wakil kepala adat is like the vice-chairman; he is the assistant and replacement of the kepala adat.

(12) Bahasa Indonesia was said to be preferred because outsiders do not understand Bahasa Paser. Although this is true when dealing with logging companies or migrants, it is not the case for Orang Paser from neighboring villages, where kepala adat was also preferred. It seems likely that the general

usage of kepala adat instead of local titles is an adaptation of national administrative terminology which uses this term, and hence suggests governmental approval of the individual holding the title.

(13) According to the kepala adat, they could not divide the land because it also belonged to their deceased ancestors and unborn children, whose rights could not be ignored. A second, more practical, reason is that the shift from communal to individual landownership holds significant potential for disrupting the social structure of the community, an insecurity that at the time held insufficient enticements to make it an attractive alternative.

(14) Masyarakat adat is a term used by groups who feel that they live according to their traditional adat, and wish to be regarded and respected as such by Indonesian society and the state. This involves not only respect for their way of life, but also recognition of adat claims to territories, and ownership or usage rights of land or natural resources. 'Adat community' is a functional translation.

(15) The Orang Mului based their claim on adat and considered it valid for two reasons. First, the metal was left on their adat territory by the previous owner decades ago. According to adat in Mului, land, gardens and other materials left unattended return to the communal ownership of the community. Second, since the metal was largely buried it could be claimed because of a specific type of adat rights on land called jemrut. It connotes claims to any useful or valuable materials found in or under the ground to which one has a claim. This right is asserted to an area regardless of the presence of any such materials, which is often not known beforehand.

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