

“Can we get hak ulayat?”

Land and community in Pasir and Nunukan.

Laurens Bakker
Institute of Folk Law, Radboud University Nijmegen
The Netherlands
L.Bakker@jur.ru.nl

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Abstract.

Following decentralization, district governments throughout Indonesia saw themselves confronted with claims to land based on local customary rights, or adat. A particular category of these are claims to communal land (tanah ulayat), made by a group rather than by individuals. Quite common as a traditional type of land tenure, hak ulayat is an ambiguous base for land claims under Indonesian land law, and impossible to register with the Indonesian national land agency (BPN). When in 1999 the Minister of Agraria/Head of BPN issued ministerial regulation 5/1999 containing directions to district governments on how to settle claims of hak ulayat, claimants' expectations rose. Eight years later, the actual impact of the regulation seems negligible for most of Indonesia, but some noteworthy exceptions do exist.

In East Kalimantan two district governments, from Pasir and Nunukan, chose to act upon regulation 5/1999. In this paper I discuss the processes of implementing ministerial regulation 5/1999 in these two districts and their (opposite) results. Looking at the legal concept of hak ulayat and its position within Indonesian society and Indonesian law, the usage of a wider approach to ulayat claims, that takes in the social and political contexts, is argued. I argue that claimants in the hak ulayat debate (and regarding adat land in general) stand a better chance of success if they are able to appeal to other, more modern arguments than 'tradition' or 'custom'. A paradox with as yet unforeseeable consequences, yet one that a strictly legal approach seems to ignore.

1. (Re)claiming hak ulayat.

Hak ulayat, a legal term connoting communal rights of an (ethnic) community to land based on that community's adat (custom or tradition), is among the most intriguing concepts in Indonesian land law.¹ Rich in history and burdened with political and

¹ This paper is based on research carried out in the districts of Pasir and Nunukan by the author from 2004 to 2006. The research is part of the Indonesian-Dutch INDIRA project and of the Indonesian-Dutch Tropenbos Gunung Lumut Biodiversity research project. The author would like to thank Fakultas Kehutanan of Universitas Mulawarman, Lembaga Ilmu Pengetahuan Indonesia, Tropenbos International Indonesia and the Van Vollenhoven Institute of Leiden University for their kind support of the research. Financial support was provided by the Royal Netherlands Academy of arts and Sciences (KNAW), the Treub Foundation, the Netherlands Foundation for the Advancement of Tropical Research (WOTRO) and

cultural associations it rose to prominence in local politics when Indonesia's government decentralized administrative authority to the district/municipality level in 1999. Throughout Indonesia ethnic groups demanded the return of 'their' *ulayat* lands and recognition of their right to that land. In West Sumatra, the homeland of the Minangkabau godfathers of *hak ulayat*, district governments energetically commenced to institutionalize customary *hak ulayat* as formal law.² The implementation proved itself to be considerably problematic as contesting claims, varying interpretations of *adat* rules and disagreements over *adat* authorities showed that what had been thought of as the strong and clear Minangkabau *adat* does in fact contain a broad local diversity (cf. F and K von Benda-Beckmann (2001), Biezeveld (2004), McCarthy (2005)).

In very few areas outside of West Sumatra did district governments issue regulations honouring, or even considering, claims of *ulayat* land rights. Three cases are known to me: Lebak (Banten), Nunukan (East Kalimantan) and Kampar (Riau).³ The regulations from Lebak and Nunukan are formal recognitions of *ulayat* claims by the Baduy and Dayak Lundayeh respectively. Both regulations contain details on the territory and authority of *adat* in the areas, and, in themselves, seem to meet the requirements of the ministerial regulation. The regulation from Kampar describes the status of *ulayat* land in that district and the rights, authorities and responsibilities of those having it. It does not recognize any *ulayat* rights, but seems to be a preparation for doing so.⁴ The implementation of all three district regulation has however met with problems, most commonly social tensions in the form of other local groups disputing, or ignoring, the status of *ulayat* land (cf. Moniaga (2005) on Lebak, Bakker (2006) on Nunukan). In Kampar social problems actually appear to prevent further steps towards the recognition of *ulayat* land claims.⁵

Many districts have issued regulations on the position of *adat* and *adat* organizations. Most do not refer to *adat* land as such, although some mention *adat* authority regarding land as a condition limiting the influence of new regulations.⁶

the Adatrechtstichting. This paper was presentend at an Indira Project workshop at Universitas Gadjah Mada, Yogyakarta, Indonesia, 31 May to 3 June 2007.

² As far as I could ascertain, at the time of writing four out of West Sumatra's nine districts issued regulations organizing *adat* governance at the *nagari* (village) level. Three of these (Agam, Lima Puluh Koto and Tanah Datar) include *hak ulayat* among its responsibilities. Borders, size and usage rights of *ulayat* land must be determined at the *nagari* level and confirmed in a *nagari* regulation (see for instance *Nagari Sungai Kamuyang* regulation 1 of 2003).

³ Lebak district regulation 32 of 2001, Nunukan district regulation 4 of 2004 and Kampar district regulation 12 of 1999.

⁴ Nunukan followed a similar strategy: district regulation 4/2004 follows upon regulation 3/2004 which defines and specifies the conditions under which a community qualifies as an *adat* community and is eligible to claim communal land.

⁵ No usable map of *ulayat* land in Kampar appears to exist (see Kompas, 26 April 2007). The lively report of the Direktorat Jenderal Perlindungan Hutan dan Konservasi Alam (2004) gives an overview of further practical problems surrounding the recognition of *adat* land rights in the district.

⁶ Examples of the latter include regulations from Pasir (3 of 2000), Luwu Utara (12 of 2004) and Kutai Barat (12 of 2002). Numerous districts have issued regulations on 'Improving, Preserving and Developing Adat and Adat Organizations' (*Pemberdayaan, Pelestarian dan Pengembangan Adat Istiadat dan lembaga Adat*) although such regulations usually do not mention authority over land, they usually include *adat* authority in an '*adat* area' (*wilayah adat*), a definition that is both broad and open to varying interpretations (see for instance Tyson's (2006) findings for South Sulawesi).

Formal recognition of *hak ulayat* claims thus is very rare indeed, if out of Indonesia's hundreds of districts⁷ only Lebak and Nunukan have issued district regulations that formally recognize *ulayat* rights. If this administrative result appears to doom claims of *hak ulayat* from the start, the hundreds of claims that are being made throughout the nation seem to indicate that a popular notion of *hak ulayat* as a legitimate and realistic right nonetheless exists. Communities and ethnic groups throughout the nation have seized the change of government and the extension of the district governments' administrative powers to argue for a return of their 'traditional lands'. A request which brings Indonesia into the worldwide debate on indigenism, and demands a reaction from the Indonesian government. Experiences with formal recognition of indigenous land rights in Australia (Strang, 2004; Reynolds, 2003) the United States (Brown, 2003:144-172) and Canada, have shown that such recognition not only poses the problem of proving indigeneity (Clifford, 1988:277-346) but also frequently lead to tensions with other, non-indigenous, local land users (notably Mackey, 2005). The matter is delicate, frequently putting issues of ethnicity over national identity and thus diversity before unity. Nonetheless, *adat* and *hak ulayat* have made a steady advance in Indonesian law since decentralisation⁸, suggesting that Indonesia is willing to credit *adat*-derived rights greater legal status. At the same time, however, ethnic tensions in the nation have risen (cf. Davidson, 2003; Van Klinken, 2001), suggesting that recognising and implementing ethnic-related rights such as *adat* and especially *hak ulayat* is going to demand delicacy and a subtle approach at the local level.

This paper is a case study into the effects of *hak ulayat* claims on district policies in Nunukan and Pasir. Both are located in East Kalimantan; the first has recognised *hak ulayat*, the second intended to formally record its absence but abandoned this plan after popular protest. I argue that whereas Indonesian law has undertaken considerable steps in defining the place of *hak ulayat*, a strictly legal approach to studying district government considerations of *ulayat* claims is too narrow to be of much actual use. The influence of local notions of *hak ulayat* and the stance of local authorities on the subject can be better understood through the inclusion of social, political and power relations which bring more, and other, interests to the fore. Such an analysis shows that not only is the law not the only authority in regulating *hak ulayat*, it is also caught in an inconvenient split between aspirations to nationwide applicability and the demands of local diversity.

2. State law and tradition.

In 1953 the Indonesian lawyer Supomo (1953:230-1) contemplated how the colonial domain-theory had wronged the Indonesian population by limiting their rights to their traditional *adat* lands⁹. He surmised that the Indonesian government would have to do away with the colonial heritage of the plurality of legal status of land and the domain-

⁷ On 5 August 2006 the website of the Indonesian Ministry of the Interior listed 439 districts and municipalities (see <http://www.depdagri.go.id/index.php>).

⁸ See Fitzpatrick (2007:139-142) for an overview of legal changes.

⁹ Under the domain theory all land not held under Western or agrarian ownership rights fell to the state. Since *adat* rights were neither and although they were often recognized as usage rights the land to which they pertained was considered as state land (*onvrije domeinen*).

theory. There should be one agrarian legal system, for which the maintained living power of *adat* should be considered in the first place.

This legal system was the Basic Agrarian Law of 1960 (hereafter BAL). Intended as a unifying code based on Western legal systems, but uniquely Indonesian (hence the inclusion of *adat*) the drafters of the BAL envisioned *adat* to gradually adapt to national law, or be absorbed and replaced by it (Soerodjo, 2003:17-19, Parlindungan 2003:5). In article five of the BAL it is stated that Indonesia's agrarian law is *adat* law, provided it does not clash with national interest, national unity, Indonesian socialism or other regulations set out in the BAL (see Haverfield (1999:51-4) for an extensive discussion of the limiting potential of this stipulation). Thus *adat* is declared a primary source of land law, and simultaneously submitted to all restrictions that the BAL contains. The status of *adat* land shows this ambiguity even clearer. Recognised in principle, *adat* land can only be registered, and hence certified, after having been rendered into one of seven private law land rights (article 16) recognised in the BAL. Formal recognition of land held under Indonesia's diverse *adat* thus requires a status change of that land, in which its *adat* base is relinquished in favour of a merger with the national system.

The BAL states in article three that *hak ulayat* must be brought in line with the national and state interests and may not oppose formal laws.¹⁰ Clearly, this article limits the validity of *ulayat* rights but it does not end them. However, communal title, such as *ulayat* land would require, does not exist. Land registration, and thus land title, is on an individual basis. Even if the BAL does not end *hak ulayat*, it does little to improve or guard its claimants.

Tjondronegoro (1991:20) writes alluding to article six of the BAL¹¹ that the social function of land has priority over individual and *adat* rights. The article was intended to provide legal security to the landless masses in accessing this resource (Tjondronegoro, 1991; Soemardjan, 1962), interestingly, the article was said to be derived from *adat* principles (Fitzpatrick, 1999:76) and aimed at the establishment of a balance between the interests of the individual and that of the community.¹² It is the authority of the state to provide the people with certainty and order regarding their usage of land and natural resources. The functioning of local officials in managing the land on behalf of the population has been likened to an *ulayat* system (Soetiknjo, 1987) for this reason. Daryono (2004:121-2) goes as far as to speak of 'state *ulayat*'; an authority which the state receives from the people. He immediately points out, however, that such state *ulayat* often conflicts with the interest of actual *adat* communities

The monopolization of state power under the New Order saw the implementation of policies that were, as MacIntyre (1991:17) notes, "largely unfettered by societal interest". Enforcement of the BAL was limited and coloured by the interests of the regime (cf. Lucas, 1997; F. von Benda-Beckmann, 1992), leading many to distrust the national system and continue adherence to their own traditions. Sometimes even after receiving formal title (Roth, 2006).

¹⁰ Article three, through a reference to article two, refers to article 33(3) of the 1945 Constitution, which states that all land in Indonesia is under the control of the state. Significantly, as Fitzpatrick (2007:137) writes, *hak ulayat* is not listed as a right that is converted to statutory title by the BAL.

¹¹ Article six states that all land has a social function.

¹² General elucidation to the BAL, chapter II article 4.

Following the resignation of Suharto as president of Indonesia, reform included the reoccupation of land by dispossessed farmers, and a sharp increase in land disputes as villagers and farmers reclaimed lands, *adat* and other, taken over by state and private companies associated with the New Order regime (Lucas and Warren, 2000 and 2003), actions in which ethnicity often was presented as a legitimizing factor (Peluso, 2005; Van Klinken, 2006). As land affairs are among the responsibilities devolved to the regional government under Law 22/1999, land conflicts and their settlement have taken on a distinctly local character in which highly specific socio-legal configurations frequently are decisive factors (cf. Thorburn, 2004; McCarthy, 2004). Unclear boundaries between *adat* and state land, as well as vague definitions of the former, add to the difficulties of solving these conflicts (Tjondronegoro, 2003:16, 18). Whereas *ulayat* claims generally involve not, or poorly, mapped territories and are based on vague (for outsiders) local *adat*, Indonesia's National Land Agency (hereafter NLA), the Department of Forestry, district and provincial governments all have certain rights in determining land matters. Depending on the specific legal and social circumstances surrounding an *ulayat* claim, each of these authorities is involved to a greater or lesser degree.

Verifying and settling *adat* land claims hence is hence complicated by the diverse constellations in which formal authorities may be involved. Yet claimants are not uniform either. For example, a recent research report written by Como Consult (2001:48-9) for the World Bank/National Land Agency cites three categories of claimants for the Javanese district of Kendal:

- Communities bullied to release their land during the Dutch period, now citing customary law as a basis for demands for restitution.
- Peasants forced to relinquish their land during the New Order period against unfairly low compensation.
- People who voluntarily released their land, but now claiming to be among the victims of the New Order regime.

Settling *ulayat* claims thus is an intricate and sensitive issue, frequently hampered by the diverse characters of the claims, the claimants, and the authorities involved. "Can we get *hak ulayat*?" the title of this chapter, is a question I was asked by a villager in the mountains of Pasir after my first few weeks there. At the time I did not know, and told him that. By now, my answer would to be: "according to formal law, probably nobody can. But do not let that deter you".

3. Solving the *hak ulayat* problem? Ministerial regulation 5/1999.

The BAL does not contain definitions of *adat* and *hak ulayat*, but its elucidation contains the statement that *hak ulayat* is similar to *beschikkingsrecht van de gemeenschap*, a concept originating in Dutch colonial law and used extensively by the *adat* law researcher Van Vollenhoven.¹³ Holleman (1981:43) summarizes Van Vollenhoven's concept of *beschikkingsrecht*¹⁴ as

¹³ See Van Vollenhoven (1909:19-20 or 1932:9-11) for extensive definitions, or Ter Haar (1981:XLVI-XLVII) for a short but concise English translation of Van Vollenhoven (1909:19-20).

¹⁴ '*Beschikkingsrecht*' is often translated as 'right of avail' (Holleman, 1981:278) and more recently 'right of allocation' (Burns, 2004:15). Translation entails considerable semantic difficulties and, unwilling to

“...the fundamental right of a jural community freely to avail itself of and administer all land, water and other resources within its territorial province for the benefit of its members, and to the exclusion of outsiders, except those to whom it has extended certain limited, and essentially temporary, privileges”.

Left out are Van Vollenhoven’s points that the community is held liable for unaccountable delicts within the area, and, very important, that the community cannot permanently alienate its *beschikkingsrecht* over land (Van Vollenhoven, 1932-9; Sonius, 1981:XLVII). In other words: Van Vollenhoven believed *beschikkingsrecht* to be an unalienable right, at least from the perspective of the community.

This is an important point as at least the first two categories of claimants in Kendal might find a legal ground in it if, as the BAL states, *hak ulayat* is equal to *beschikkingsrecht* and if they can prove themselves to be ‘jural communities’. These *rechtsgemeenschappen*, as Van Vollenhoven called them, are summarized by Ter Haar (1950:16) as ‘organized groups of permanent character with their own authority and material and immaterial capital’¹⁵, whose rights to land and water define them as subjects of law, partaking in judicial matters. Holleman (1981:43) points out that ‘jural’ is there to convey the legal character of these communities’ autonomy¹⁶, which sets them apart from other, more or less cohesive social organizations.

Do such groups still exist in Indonesia today? The number of *ulayat* claims suggests that there certainly are groups who feel they qualify. *Adat* has become a social rallying call that opposes the interest of the local to those of the state (cf. Antlöv, 2003:80-5; Acciaoli, 2002; Sakai, 2002). It politically legitimizes the interest of *adat* leaders in local administration and puts ‘local custom’ at a par with the laws of the state. Yet how can ‘the state’ recognize and find its way in local *adat*? A recognition of coexistence seems inevitable since, as Como Consult’s results and various scholars (cf. Li, 2001; Henley and Davidson, 2007) suggest, *adat* is not synonymous with legitimate, and claims pertaining to *adat* derived rights should be considered from a critical point of view. Like state law *adat* is susceptible to misuse, making the judging of claims a specialist affair that should include field research as well as historic data.

In 1999, the then Minister of Agraria/Head of the National Land Registry (*Menteri Negara Agraria/Kepala Badan Pertanahan Nasional*, hereafter MNA/KBPN), issued a regulation specifically instructing district level governments how to deal with *hak ulayat* claims. In the press the minister declared that he wanted to “challenge *adat* communities to prove their rights to *tanah ulayat*, whether they were still valid or not” (Kompas, 1999).

broach a well-published problem, I abstain from using an English term here (see also Thorburn, 2004:35-6). *Van de gemeenschap* (of the community) is often left away in English translation, although these are the words that make *beschikkingsrecht* communal.

¹⁵ ...geordende groepen van blijvend karakter met eigen bewind en eigen materieel en immaterieel vermogen.

¹⁶ Burns (2004:14) speaks of “...the distinctive legal significance ...[of]...the customs, conventions and values of the group”. Ter Haar (1950:15-6) puts emphasis on custom, ritual and belief as well.

The regulation, number 5 of 1999 entitled ‘Guideline to solving the problem of *adat* communities’ *hak ulayat*’¹⁷ has a clearer approach to *hak ulayat* than the BAL. The regulation contains no reference whatsoever to *beschikkingsrecht*, but provides clear definitions and concepts. Chapter 1 article 1 defines *hak ulayat*:

Hak ulayat and similar *adat* law community constructs (hereafter called *hak ulayat*), are rights that according to *adat* law are enjoyed by a specified *adat* law community to a specified territory that is the everyday environment of its members to exploit the profit of its natural resources, including land, in the aforementioned territory, for the benefit of their survival and daily needs, which are made clear by physical and spiritual relations of decent between the aforementioned *adat* law community and said territory.

Thus those eligible for *hak ulayat* are *adat* law communities. Article 3 of chapter 1 defines these as:

[An] *adat* law community is a group of people united by an *adat* law structure as equal members of that legal community through a communal place of residence or through descent.

The definition of *hak ulayat* given in the regulation closely resembles Holleman’s summary of *beschikkingsrecht*. What it leaves unaddressed is the alienability of *hak ulayat* which, in Van Vollenhoven’s perception, was not possible. This question is made more prominent by the definition of an *adat* law community; whereas the *rechtsgemeenschap* possesses material and immaterial capital next to having their own jural authority, the *adat* law community definition contains no references to property.

Conditions are named under which the continued existence of *hak ulayat* can be said to exist in chapter 2 article 2:

- a. A group of people is encountered who still feel united through *adat* law structure as equal members of a specified community, who recognise the rules of said community and apply these in daily life.
- b. Specified *ulayat* land is encountered which is the daily environment of the members of said law community and the area where the necessities for their daily lives are obtained, and
- c. An *adat* law structure is encountered regarding the administration, authority and usage of the *ulayat* land that is in effect and observed by the members of said law community.

Next, claims are limited. Article 3 states that *hak ulayat* cannot be claimed when the land is owned or used by others in accordance with other BAL-derived rights, or when the land has been disowned by the government. Regarding the authority and temporal dimension of *ulayat* claims, article 4 decrees that authority over *ulayat* lands is not only held by *adat* leaders, but also by the national state or other legal bodies. Moreover, if the

¹⁷ ‘Pedoman Penyelesaian Masalah Hak Ulayat Masyarakat Hukum Adat’.

community so desires, *adat* leaders must register *ulayat* land under individual rights such as recognised in the BAL, thus effectively replacing their *ulayat* with national land rights.

Yet the regulation concerns future arrangements for continued *hak ulayat* as well. It is possible for an *adat* law community to temporarily hand over rights to land to the state, which may then issue a temporary right of usage to third parties (chapter 2, article 2.2). When the usage period agreed between parties has ended, permission has to be sought from the *adat* community before the land usage may be continued. Permission from the state alone is insufficient. Nor may the state give out rights to *ulayat* lands for a longer period of time than what the *adat* law community has agreed to (chapter 2, article 4.3). Local district governments are instructed to research the claims of *hak ulayat* (chapter 3, article 5.1) using the conditions set out in article 2, and to draw up a district regulation to formally record the (non-)existence of *hak ulayat* (chapter 3 article 6). If *ulayat* land is encountered, a map must be drawn up to define its area (chapter 3, article 5.2).

Clearly, the interpretation of *hak ulayat* used here differs from Van Vollenhoven's *beschikkingsrecht*. The regulation considers *hak ulayat* to be an alienable right as no *hak ulayat* can be claimed if the land is owned by a third party under other, BAL-derived rights. The regulation hence contains possibilities for the recognition of *ulayat* rights in areas where no other land rights are in force as yet, but how many such areas do still exist in Indonesia today?

The regulation attracted considerable criticism. Researchers from Universitas Sumatra Utara (USU) and the NLA (Program Magister Kenotarian, 2002:70-7) pointed out that even though *adat* and *hak ulayat* are mentioned in the BAL, their legal stature is mainly theoretical in practice. The promulgation of the ministerial regulation is unlikely to change this, since the order of laws in Indonesia does not include ministerial regulations (pp. 117-118, 124-5; see also Pakpahan and Suwarno, 2005:13-4), the legal stature of regulation 5/1999 therefore is deemed questionable.¹⁸

Field research in North Sumatra let the USU team to conclude that the working definitions given in the regulation focussed on an *adat* organisation and not on *adat* communities. Testing the regulation's definitions in the field the USU team found them to be inadequate for the local situation (p. 123; see also Saidin, 2003), which makes it likely that this problem occurs in other areas as well.

They found the definition of *adat* authorities to be problematic (p. 123-4) as the regulations says very little about them, apart from that they have must exist among those claiming *ulayat* land. Yet these days new *adat* organizations sprout throughout Indonesia, do these qualify? Researchers from Universitas Indonesia (Tim UPD-LPEM, 2003) introduced an even more fundamental issue by arguing that the government, judging from the regulation, sees itself as the holder of all rights in Indonesia, which it can issue or withdraw at will. Rights of *adat* communities are not recognized if not issued by the government and hence, the researchers write, the regulation only recognizes the existence of *adat* communities. No rights.

The same UI team questions the procedure set out in the regulation. The district government is required to judge the existence of *hak ulayat* and to carry out the

¹⁸ In fact, Law number 10 of 2004 provides a hierarchy of laws in which ministerial regulations are assigned a place. However, the impact of this law is as yet unclear.

implementation of the research's conclusions. This, they feel, gives the district government disproportional influence vis-à-vis other stakeholders.

The fact that few districts acted upon the regulation is attributed by the USU researchers to its poor promulgation. Their research showed that NLA officials at the district level were informed, but not the district government (p. 124).

The USU team (p. 138-9) and Pakpahan and Suwarno (2005:20-21) reach several similar conclusions. They recommend that the regulation is revised. It needs more and better definitions, preferably based on field research data. It also needs a change of status since a ministerial regulation has little legal authority.

A further issue is the status of the regulation as valid land law for all of Indonesia. As discussed in chapter.... forest land falls under the authority of the Ministry of Forestry rather than BPN, thus greatly limiting the scope of the regulation. Simultaneous in time to these critical comments, the East Kalimantan districts of Pasir and Nunukan acted upon regulation 5/1999. The hands-on experiences of researchers, government officials and the districts populations with the implementation of the regulation offer a reflection on, and extension of the assessment of the regulation's validity.

4. *Hak ulayat* and politics in Pasir

Pasir is the southernmost district of East Kalimantan. Its territory covers some 15,000 square kilometres bordering the districts of Pasir Utara Penajam and Kutai Barat to the north, the provinces of South and Central Kalimantan to the south and west, and the Street of Makassar to the East. The district's main geographical features are a flat stretch of fertile land along the coast which gives way to the steep northern stretch of the Meratus mountain range, locally known as Gunung Lumut.

Pasir has a population of 270,000, most of whom are farmers living on the flat, coastal land. The district's capital is the small city of Tanah Grogot while a number of large villages have developed along the provincial road that bisects the district and connects the provinces of South and East Kalimantan. Small villages are scattered throughout the district, but notably on the coastal plain and along the coast. Many of these villages came to development when large oil palm plantations were set up in the area in the nineteen seventies and eighties. The plantation companies build roads connecting their extensive gardens to the provincial road and attracted local and migrant workers alike, who settled in village along the plantation roads.

Pasir has been a migration destination for centuries. Local myth suggests subservience to the Javanese kingdom of Giri in the remote past (In 't Veld, 1882), while from the sixteenth century onwards Pasir's ruling families became strongly affiliated to Buginese royal houses from South Sulawesi (cf. Assegaff, 1982). A colonial civil servant traveling in the vicinity of Tanah Grogot in 1904 describes the population there as 30% Buginese, 50% Pasirese, of whom some 60% converted to Islam whereas the rest were animistic Dayak, and extensive groups of Banjarese and semi-nomadic Badjau (Nusselein, 1905). The plantation industry added a considerable number of Javanese migrants, as well as groups from Sumatra, Central Sulawesi and Nusa Tenggara. These days, the coastal plain around Tanah Grogot is multi-ethnic, with sizeable minorities of

Pasirese, Buginese and Javanese. The Pasirese do not stand out apart from their language and certain local traditions.

Away from the coast, the plain rises into the steep Gunung Lumut Mountains. Very few migrants settled here because of the remoteness and isolation of the area. Communities living here are ethnic Pasirese with individual migrants, often men married to local women, in their midst in a 90/10 ratio for more remote villages, 80/20 for those nearer to the plain, while 50/50 is not uncommon in some of the villages along the inter-provincial road. In addition, a small number of resettlement villages have been started in the foothills of Gunung Lumut in the nineteen eighties. Whereas many of the original migrants of these villages have moved away, their places have been taken by new migrants travelling of their own account. In the Pasir-dominated mountains, these villages approach Tanah Grogot's population diversity.

In the mountain villages the district administration is a real, yet remote, authority. Although only around 10% Pasir's population lives in the mountains¹⁹, the area covers some 25% of Pasir's territory. The steep inclines and lack of good roads, combined with a reputation of the mountain dwellers for fierceness and black magic, make the mountains an unpopular destination for non-Pasir migrants.

The Pasirese communities are governed by village heads and *adat* leaders and many villagers feel that they have little need for government from outside the own community, especially since a majority of the government personnel are migrants. Daily life in these communities is regulated by local *adat*. The various Pasirese groups claim specified territories as their ancestral lands, which they communally manage according to *adat*. The villagers practice swidden cultivation in which fields are cleared in the forest, used for one or two years, and then left fallow allowing the forest to regenerate.

The Gunung Lumut communities feel that the district government agrees to their *adat*-based land claims. Official registration by the NLA would however be welcomed, as past experiences have installed the notion that the district government holds more power than the community. In the nineteen sixties and seventies, government-approved logging companies worked in the forests of Gunung Lumut. At that time, the communities had no leverage with the district government and hence decided to see it through. After the loggers moved on, they reclaimed control of the land but with a strong distrust of the district government. Registration of the group's *adat* lands would be welcomed by their members. Communal title would be preferred, but the idea of a division into individual plots is gaining acceptance, as these two can then be managed communally. Yet general objections exist to the idea of registration of less than the total *adat* territory. This poses a problem as *adat* territories in the sparsely populated mountains are many times larger than the maximum plots that NLA rules would allow the communities. A complicating factor is the fact that a significant part of Gunung Lumut has been designated a protected forest area by the Ministry of Forestry. This area overlaps with *adat* land claims. In practice, this formal status has little impact on daily forest and land usage (one village is completely located in the protected forest), but it might complicate future developments in formal matters.

The Gunung Lumut communities have very little notion of the district government's plans and politics since little news travels into the mountains, but it is known that *hak ulayat* has become an issue in the district. In early 2006, the Pasirese of

¹⁹ Personal estimate based on data of Pasir's statistics agency.

Gunung Lumut hoped that the district government would proceed to formally recognize their territorial arrangements which, they felt, conformed to *hak ulayat* even though different, local terms are used. Varied and contradicting rumours circulate: the district government will recognize claims or parts thereof; the government will recognize nothing; government officials will come to Gunung Lumut to research *ulayat* claims.

Acting upon ministerial regulation 5/1999, the Pasir district government had already set up cooperation with University Hasanuddin from Makassar (South Sulawesi) to research the existence of *hak ulayat* in 2002. In August of that year, a team consisting of both university scholars and district government personnel undertook a period of eight days of research, of which four were devoted to fieldwork, to establish the existence of *hak ulayat* in Pasir. Data were gathered through questionnaire-based interviews conducted with 180 respondents in nineteen villages. The research team concluded that *hak ulayat* no longer existed in Pasir. This conclusion was based on the facts that numerous respondents stated that they did not adhere to a *hak ulayat* system, while others were unable to make clear to the researchers what the *hak ulayat* they claimed to have exactly was. Various descriptions and definitions were given at different locations, and respondents appeared unwilling to distinguish between the *hak ulayat* which once was, and the reality of modern Pasir in which land has to be shared with others, such as migrants or oil palm enterprises (Tim Peneliti Fakultas Hukum Universitas Hasanuddin, 2002).

A draft district regulation was formulated in 2003 which stated the conclusion that *hak ulayat* no longer existed in Pasir. It held that since the criteria laid down in ministerial regulation 5/1999 were not clearly and convincingly met by the results of the fieldwork, it would be wrong to speak of *hak ulayat*. This did not mean, however, that other *adat*-derived rights to land do not exist either. Inheritance and usage rights based on *adat* were encountered which, the regulation suggested, can be registered individually and in accordance with Indonesian land law.

The draft regulation was presented at a meeting later that year, and criticized by the boards and members of two Tanah Grogot based NGOs, who both claimed to represent the interests of Pasir's *adat* communities. Involved in intense competition, the two disputed the authenticity of each other's claims of representation and refused to cooperate. At the time their bases differed somewhat. The first organization's board consisted largely of government officials, and had been designated by the district government as its official NGO partner in an earlier district regulation. The other organization accused the first one of supporting the government rather than *adat* groups, and legitimized its lack of access to the district government as a sign of the authenticity of its intentions. The organization flirted with the violent reputation of Dayaks by referring to itself as a 'Dayak Pasir' organization and seeking connections with other East Kalimantan Dayak organizations. Ethnic violence never occurred in Pasir, but the allusions made by this NGO kept its shadow looming in the background. Both NGOs could muster several hundreds of supporters in and around Tanah Grogot, but both were virtually unknown in the mountains.

Along broad lines the NGOs' critiques of the *hak ulayat* research converged. They pointed out that the research had only been conducted in easily accessible parts of Pasir, that the number of respondents was rather low, and that the researchers had not

differentiated between migrants and Pasirese. Most of the work was carried out on and around the coastal plain; no researchers entered Gunung Lumut, thus no mountain communities were taken into account in the research.

The district head declared himself open for other suggestions, and one of the NGOs presented him with a critical discussion of the draft regulation that mainly focussed on the incompatibility of the regulation with earlier district government policies, in which cooperation with *adat* representatives had been established. The NGO requested the district head and district parliament to reconsider the draft regulation. Their request was in turn followed by a request from a consortium of oil palm enterprises not to do so, as they feared massive claims for land compensation in case *hak ulayat* would gain some form of legal recognition.

By this time it was fall 2004, and district head elections were due in the second half of 2005. The district head in office, fearing negative consequences for his popularity, preferred to postpone the issue until after the elections and the draft regulation disappeared into a desk drawer for the time being. As it turned out, he lost the elections. A new district head was elected who had shown himself a supporter of what he called “ordinary men and women” in earlier government positions.

This man has had considerable impact on the existing power relations in Pasir politics. By inviting the population to visit him in person to discuss their problems he weakened the NGOs support base. The relevance of the *hak ulayat* issue was limited when the new district head ordered a department of the district’s administrative staff to mediate in land conflicts. As land conflicts were judged by the district court according to formal land law, *adat* claims, the vast majority of land issues in Pasir, were never settled. The district head’s willingness to work on the issue of *adat* land claims outside of the court gained him considerable credit among the Pasirese, and saw the settlement of various protracted disputes. However, the new mediation policy was less favoured by Pasir’s large plantation and mining companies who were confronted with numerous claims, the settlement of which saw the government in the delicate position of maintaining favourable relations with both parties while allowing neither to dominate.

Tanah Grogot’s *adat* NGOs swiftly adapted to the new situation. A senior civil servant charged with this mediation is also a member of the government-related NGO. In settling disputes, he sometimes calls upon the NGO leadership by way of popular representatives and *adat* authorities. The other *adat* NGO abandoned its policy of no government contact and established close relations with the newly elected vice-district head and various members of the district parliament. Both organizations have thus adapted to the new political course followed by Pasir’s district head and applied themselves to gaining favourable positions in Pasir’s constellation of authority.

The draft regulation on *hak ulayat* has not resurfaced and it seems unlikely that this will happen in the near future as none of the currently influential parties’ interests are served by the regulations’ ratification.

Is there *hak ulayat* in Pasir? Not according to the official research, but this is disputed by the *adat* NGOs and various communities in Gunung Lumut. Although the *adat* NGOs made it appear as if they were rightful and informed representatives of these, and other, communities, this claim is doubtful. In Gunung Lumut the organizations are not known. Moreover the rumours that circulated in 2006 regarding the district government’s plans for *hak ulayat*, a non-issue since mid-2005, show these groups to be

uninformed of the politics of the day. No requests for land conflict mediation reached the government from Gunung Lumut and, more than likely, the population there has no idea that the new district head engaged in such politics. Both the district government and the mountain communities are aware of each other's formal position within the district, but as recent as early 2006, neither had attempted to come in closer contact with the other.

5. *Adat and hak ulayat in Nunukan*

Nunukan is the northernmost district of East Kalimantan. It measures nearly 14,300 square kilometres and has a population of 106,400. A long, narrow district, it stretches from the Sulawesi Sea in the east to well into the central Borneo mountains in the west. It borders the districts of Malinau and Bulungan to the south, and Malaysia's Sabah and Sarawak to the north and west.

Like Pasir, Nunukan has a diverse population the make up of which differs per area. The majority along the coast consists of migrants, mainly Buginese, Javanese and Toraja, but nearly all of Indonesia's major ethnic groups seem to be represented. Coastal Dayak groups, indigenous to the area, adapted to 'Malayu' culture. The capital, the identically-named city of Nunukan, is located in this multi-ethnic coastal zone.

Moving inland, one encounters villages populated by a mixed Dayak-migrant population. Some of these Dayak have converted to Islam as well, while others have not. Generally speaking, the further removed from the coast, the more likely Dayak communities are to present themselves as Dayak and adhere to Christian or animist religions while the size of the migrant population diminishes.

Huge oil palm and wood pulp estates take up most of the lowlands between the coast and the mountains, profiting from the district government's willingness to develop the area commercially.

In the mountains of central Borneo lies Nunukan's westernmost sub-district Krayan.²⁰ Krayan is a relatively isolated area that can only be reached from the Indonesian side on foot or by aeroplane. Krayan is home to the Dayak Lundayeh, an ethnic group who live across the border in neighbouring Malaysia as well. As a consequence, Krayan's social and economic orientation is very much towards Malaysia. Very few migrants live in Krayan. The area's remoteness and isolation, combined with its overwhelmingly Christian Dayak population, deter most migrants. The rugged mountain terrain and a lack of navigable rivers discouraged logging companies while the cool climate makes oil palm plantations an impossibility. There is a clear sub-district level government presence, but in practice the Lundayeh form a rather autonomous group within the Indonesian state.

Contrary to what the above may suggest, education and an outward orientation are highly regarded among the Dayak Lundayeh. Notably after Indonesian independence, Christian missionaries started work in Krayan and, among others, founded elementary schools in the area. Missionary organizations provided scholarships to gifted students to continue their studies outside of Krayan. Although based in central Borneo, the Lundayeh nowadays have a comparatively high number of university graduates and professionals.

²⁰ In 2005 Krayan was split in two sub-districts: Krayan and Krayan Selatan. As most of the events discussed here took place before this division and were not influenced by it, I chose to refer to Krayan only rather than to Krayan and Krayan Selatan.

Many of these live outside of Krayan, in East Kalimantan's towns, in Jakarta or elsewhere in Indonesia²¹. Lundayeh are part of many East Kalimantan police forces and work as civil servants and government officials in many of the province's districts. Nunukan's vice-district head is a Lundayeh, as well as three members of its 25-member district parliament and several senior officials in the district administration: a strong position for an ethnic minority of less than ten percent of the population.

In 2003, the district head of Nunukan decided to act upon ministerial regulation 5/1999 and have research conducted on the existence of *hak ulayat* in Nunukan. Several theories exist locally as to why he decided to undertake the research at that time. According to government sources, the research was necessary in order to gain clarity regarding the land situation in Nunukan. The district head was said to be impartial towards the *hak ulayat* question himself, but wanted to carry out the instructions that he had been given and be done with it. It was an administrative procedure to facilitate efficient government and clarify the land situation with regard to future development planning.

Critics argued that the research was used as a camouflage to legitimise unpopular development plans that the district government had already made. These plans consisted of the development of huge oil palm estates in lowland areas that were as yet still under control of inland Dayak groups. The result of the research was to show that none of these Dayak groups had any valid *adat* claims to land and that the government therefore was free to do as it liked. The research result would then be used to deny *adat* claims concerning land already in usage by plantations as well.

A research team was composed consisting of researchers from Hasanuddin University, and district government staff, and a research period of four months was agreed upon. A 25-days field trip was undertaken to collect data throughout Nunukan. A serious point of consideration is that, as in Pasir, no difference was made between migrants and non-migrants among the respondents. In December 2003 the research results were presented at the district parliament's office, as well as a set of recommendations. The main conclusions of the research were that:

- 1) The shape and structure of *adat* communities differ throughout Nunukan. This is caused by varieties in *adat* among the various ethnic groups of the area. In the Krayan sub-district, the *adat* of the Dayak Lundayeh is very influential. It is a legal system that is genealogical and territorial. In other sub-districts the genealogy has become unclear, as well as the genealogical-territorial aspects which have become weak because of the formation of uniform village administrations. A population group using relatively pure genealogical-territorial law is the law community of Krayan.
- 2) The *adat* law community of the Dayak Lundayeh still exists according to this research's results and has never been interrupted. This is proven by the existence in their territory of places which they accommodate into their lives and livelihoods according to religious values, *adat*, and *adat* law institutions. Their

²¹ The Lundayeh in Krayan number around 10,000 individuals. People in Krayan believe a similar number to live elsewhere in Indonesia. Many of these Lundayeh migrants support their families in Krayan financially.

conditions of existence hence show the efficiency of an *adat* law structure in managing a population group as well as its collective rights to land (Tim Peneliti Universitas Hasanuddin, 2003:161-163).

In short, the research concluded that the Dayak Lundayeh of Krayan use a clear and authoritative *adat* for managing land and other resources, whereas all other groups, despite their own claims to the contrary, no longer have such a strong *adat*. The researchers argue that groups from lowland sub- districts probably used *adat* in the past as well, but nowadays no longer. This is concluded from inconsistencies in the answers that the research team received to its questions. According to the research, there are *adat* leaders and *adat* arrangements among specific groups and in specific areas of the various sub- districts, these are found among minorities and are exceptions. There was no conclusive proof found for the present existence of an authoritative *adat* anywhere in Nunukan outside of Krayan. The researchers recommended that these results should be recorded in a district regulation.

The government of Nunukan followed these recommendations by issuing district regulations number 3 and number 4 of 2004. Number 3/2004 on '*Hak Ulayat of Adat Law Communities*' defines and specifies the conditions under which a community can be said to qualify as an *adat* law community and make claims to communal land. It develops along the lines of ministerial regulation 5/1999 and does not recognize or deny any *hak ulayat* in Nunukan. This is done in district regulation number 4/2004 on '*Hak ulayat of the Lundayeh adat law community of the district of Nunukan*'. This district regulation confirms the existence of *hak ulayat* for the Dayak Lundayeh, and describes its relation to formal law. Basically the regulation is a formal authorization of *adat* authority as it took place at the time of research. *Hak ulayat*, *adat* and their authorities may operate independently of the district government and decide cases pertaining to land according to *adat* as long as this is not in contradiction with formal law and within the Lundayeh *ulayat* territory. However, no control mechanisms or sanctions are included.

The borders of the *ulayat* land are stated in the district regulation in Lundayeh *adat* terms. At my last visit in January 2006 a map explaining these borders to non-Lundayeh still needed to be drawn up, but I was explained that the territory fitted the borders of the sub-district of Krayan almost exactly.

District regulation 4/2004 was received with indignation among Nunukan's other Dayak groups. They felt that they as well had *hak ulayat* and *adat* rights that should be recognized by the district government, and that the only reason why this did not happen was that the research team had not recognized the existence of *adat* among them. This was due to the limited research, or so they claimed, since they did not know at the time exactly what the researchers were researching, and so could not clarify their *adat* sufficiently. In addition, it was argued, no other Dayak group in Nunukan had as many educated individuals or as much government influence as the Lundayeh. Therefore they could not be expected to assist the researchers as efficiently as the Lundayeh had done.

It should also be noted that the territory of Krayan is designated by the Ministry of Forestry as roughly half national park, half protected forest, thus raising the question of the district level's authority. In this case the district level forestry office objected to the

ulayat status of Krayan, while the provincial office agreed to support it.²² A complex situation the details of which are part of local politics.

In Krayan, Lundayeh *adat* leaders worked hard to consolidate and solidify their position and that of *adat* vis-à-vis the district government. They had an ally in the sub-district head who is a Lundayeh himself and was quite happy to be able to formally leave all internal matters relating to the population of Krayan to the authority of the *adat* leaders. According to the sub-district head this was far more efficient than when he and his staff had to look after daily affairs in close dialogue with the remote district government. A division of work ensued in which the sub-district head mediated between the *adat* leaders and the district government when this was necessary, and carried out all government-initiated work of general interest such as road construction or healthcare, in which he was given support by the *adat* leaders.

As a result, much authority that would normally lie with the sub-district government is in the hands of *adat* authorities. Similarly, police and military authorities find themselves contested by *adat*. Police officers are often consciously barred from Lundayeh internal affairs as *adat* is used to solve the problem. Only when non-Lundayeh are part of the problem do police officers gain a role, but if Lundayeh are involved as well *adat* will still be used to decide the matter fully or partly. Moreover, police and army officials are themselves not beyond the reach of *adat*. On more than one occasion *adat* leaders have sentenced police officers and soldiers to pay fines, which was then paid full or in part by their commanders in order to avoid unrest. Both the army and the police keep a low profile in Krayan's daily affairs.

Obviously, this is far beyond the authority that district regulation 4/2004 recognizes for *adat*, but there is little the local formal authorities can do. Located in a remote area far from the district capital, the small posts of army and police officials have little influence over *adat* leaders who overstep their formal authority, since these *adat* authorities have the support of the population and considerable leverage with the district government.

The matter was an important issue in Nunukan's district head elections that took place in April 2006. Five different candidates held various views regarding the *hak ulayat* question. The sitting district head saw no reason to change anything while three other candidates were in favour of continuing the recognition, but reviewing the claims of other groups. One candidate wanted to revoke district regulation 4/2004 altogether and follow it up with new research into the matter to start the process anew. The elections were won with a considerable margin by the sitting district head. Hence no changes have been made, nor are any scheduled to take place.

In Nunukan, the *hak ulayat* research brought about a debate on *adat* and formal authorities, but the daily situation with regard to *adat* practice actually changed very little. Before decentralisation and ministerial regulation 5/1999, *adat* authority was already prominent in Krayan while claims made in other sub-districts were not acknowledged. From a political point of view, the Dayak Lundayeh and the district government have profited from the opportunity offered by district regulation 4/2004 as it officially confirmed the existing situation. This does not mean that the situation is

²² Personal communication, district forestry office, Nunukan.

permanent: in four years a new round of district head elections might bring different results.

6. A view from the government

Is there a point in following up ministerial regulation 5/1999 from a district government perspective? The theoretical answer would be ‘yes’, as it clarifies the status of *hak ulayat* in the district. Yet this answer would immediately be refuted by anyone opposing the research’s conclusions.

Many district government officials with whom I have discussed the matter fear that to act on the ministerial regulation will cause problems rather than simplify the situation in their district. Discussions of the ministerial regulation with officials of four of East Kalimantan’s districts showed their reservations to be centred more or less on five issues.²³

- Research on *hak ulayat* is bound to stir up unrest among the population. When various ethnic groups inhabit a district (as is the case in all East Kalimantan districts), claims of *hak ulayat* by one group may be contested by others. In a worst-case scenario this may lead to interethnic violence such as took place in West and Central Kalimantan.
- Research on *hak ulayat* is bound to stir up unrest between the population and government. Ethnic groups may use the opportunity to attempt to lodge false claims that have to be disproved by the government. Members of the public could also do this involuntarily as they have no knowledge of the formal definition of *hak ulayat* set out in ministerial regulation 5/1999. Either way, it will demand considerable efforts by government employees to research and explain the situation, and restore calm.
- The economy of the district is bound to suffer. When the district government decides to recognize a group’s claim of *hak ulayat*, it will lose its access and control over the land claimed by that group.²⁴ This will not only lead to a decrease in the government’s income as less land means less economic activity, it also means that the government cannot influence the usage of the land. Hence protected forest may be logged, enterprises may find their government-ratified contracts contested or even denied by the *hak ulayat* holders, or, if the worst comes to the worst, the *hak ulayat* community may decide to attempt a split off from the district and become a district in its own right.
- The politicians in the district government are bound to feel the consequences in the next elections. Recognition of *hak ulayat* will earn them the gratitude of the

²³ These comments were given in the period 2004-2006, several years after the ministerial regulation had been issued and after the experiences of Pasir and Nunukan had become known. Hindsight is a likely influence in the views these officials express yet their reservations are enlightening as to why the following up on the ministerial regulation may have reached a virtual standstill in East Kalimantan and indeed in Indonesia.

²⁴ Only the most defeatist government official would consider the possibility of a district government formally recognizing an *adat* group’s autonomy over *ulayat* land (which is impossible from a legal perspective). From a practical perspective, with which district government officials are well acquainted, the possibility of a community gaining sufficient local influence to create near autonomy is not impossible.

- hak ulayat* community and the resentment of those damaged by it. A denial of *hak ulayat* would see the opposite combination of parties and sentiments.
- It is uncertain whether recognition of *hak ulayat* would gain district politicians positive attention from Jakarta. Many district government officials feel that over the years both the central government and the UUPA have been inclined towards annulment of *hak ulayat* and are not convinced that this stance is changed. Hence recognition might be harmful to one's future career.

Adat claims to land, such as *hak ulayat*, thus offer a vivid illustration of some of the problems that decentralization implies for district administrations, and the opportunities it offers to the central level of government. The central level honours popular demand for *adat* recognition by instructing the district level to research and settle *hak ulayat* claims. Yet district officials feel that the central level uses decentralisation as a tool to foster its own popularity by pretending to solve the issue while screening itself from possible negative reactions by delegating the decision taking to the district level. In the view of my district level discussion partners, the central level realises the value of favourable public opinion. Whereas in pre-decentralisation times the district level used to have the central level to blame unfavourable decisions to, the central level now forces the district level to make such decisions in its own name.

7. Concluding remarks

The opposite results of the implementation of ministerial regulation 5/1999 in Pasir and Nunukan can be seen as testimony of Indonesia's changing attitude towards the diversity of its population; some *hak ulayat* actually gets formal recognition while other claimants do not. This development illustrates the greater autonomy at the district level of government and the increasing confidence of district officials. The willingness of these officials, usually career politicians, to prioritize local interests over what they perceive as probable central government preferences indicates the importance they attach to local popularity. One must however ask whose local interests are served with the recognition of *hak ulayat* and in what way? It is undeniable that *adat* is strong in Krayan, but it is interesting to notice that only the *hak ulayat* of the Dayak Lundayeh is recognized while they are also the only Dayak group in Nunukan with a strong political representation. That such a link is important is shown in Pasir as well. Here self-proclaimed *adat* community representatives prevented the passing of a district regulation which denied the existence of *hak ulayat* in the district, but neglected to actually introduce themselves to their alleged grassroots support. The people in Pasir who might meet the definition of *hak ulayat*, the Pasirese of Gunung Lumut, had no idea of either the district regulation or the fact that they were being represented. Nonetheless the action allowed the NGOs to strengthen their cooperation with the district government. Paradoxically, the *adat* leaders of Gunung Lumut lack not only the reputation and the influence of their colleagues in Krayan, they also lack the opportunity to gain these as there are no representatives of the formal government in Gunung Lumut who may be contradicted or fined.

Formal law, in the form of the definitions set out in ministerial regulation 5/1999, and daily practice as takes place throughout Indonesia are not so easy to combine. Definitions, as good as they may be, are devised in the laboratory setting of a government

office and hence unlikely to encompass the broad diversity of Indonesia's *adat*. Clearly this is not the purpose of such definitions, but it has major consequences for politicians at the district level who have to pass judgements based on them. Acquiring formal recognition of *adat* rights requires more than qualifying daily practice. One needs to convince official researchers (provided these actually visit) of the authenticity and authority of *adat*, the district government needs to be persuaded to follow a favourable course, and foreign elements need to be prevented from moving in and usurping influence during the process. Recognition thus needs political support, if not political muscle. Rhetorical capacities and endurance within the surroundings of the district government apparatus are indispensable qualities. If any of these lack, and among politically inexperienced, *adat* abiding mountain dwellers this is more than likely, gaining formal recognition is an almost impossible task. Moreover, formal recognition in the shape of a district regulation as required in ministerial regulation 5/1999 might not suffice. As the regulation's own legal status is unclear and its authority over forest land questionable, its actual effect could be considerably less than intended.

There is the issue of the balance between *hak ulayat* as a national quality and as local exception. Both in Pasir and in Nunukan the research teams' findings were criticized for including migrants among their respondents. Whereas opponents considered this a fraudulent tactic, these migrants are as much inhabitants of today's Pasir and Nunukan as Pasirese and Dayak communities. From a national perspective their voices should be included when the current state of *hak ulayat* is researched, they as well need land and, as stated in the BAL, all land should have a social purpose. Yet it is very understandable that this meets with sincere local protests. Can *hak ulayat* still exist in today's Indonesia? Judging from the promulgation of the ministerial regulation it can. Research data from Pasir and Nunukan do not argue with this conclusion, but they indicate that a relatively uniform community must be found in an area relatively isolated from economic and popular development, while strong ties with the district's administration and educated representatives are an advantage. The advertised position will appeal to many communities, but how many can actually meet its requirements?

Finally, we should consider the consequences of denying *ulayat* claims. The definitions included in ministerial regulation 5/1999 suggest that a community that has *ulayat* land uses that land to meet its daily needs. Yet daily needs are a broad category, it obviously includes fields and fruit trees, but how about reserves of timber and fire wood? The swidden cultivation practiced in Gunung Lumut leaves stretches of land fallow for years, hardly daily usage. Yet limiting the communities' access to land would require a major change of agricultural techniques, hardly an easy complication to resolve.

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