# LAND, TREES, AND GOLD: THE POLITICS OF RESOURCE CLAIMS BY INDIGENOUS PEOPLES IN INDONESIA

A Dissertation

Presented to the Faculty of the Graduate School

of Cornell University

In Partial Fulfillment of the Requirements for the Degree of

Doctor of Philosophy

by

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May 2019

# LAND, TREES, AND GOLD: THE POLITICS OF RESOURCE CLAIMS BY INDIGENOUS PEOPLES IN INDONESIA

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Cornell University 2019

This dissertation analyzes the process of claims-making over natural resources in Indonesia, particularly within conservation zones. Using a framework of marginalization and inequality in the distribution and access to natural resources, I explore the varying routes that indigenous communities in Indonesia have taken for making claims on the land they inhabit and cultivate. I analyze the legal, cultural, and spatial claims the indigenous community, Kasepuhan Banten Kidul, has made to the Gunung Halimun Salak National Park lands in West Java, Indonesia. Specifically, I explore the scales for these claims and the actors actively participating in this struggle for resource access and use, including local, civil society, non-governmental organizations (NGOs), and government bodies.

There are three main areas of research within this dissertation. The first area is focused on the indigenous identity of the Kasepuhan and how they have used aspects of their understanding of indigeneity in order to make claims to land. The second research theme explores the participatory mapping efforts of the Kasepuhan and the different responses the communities in the region have toward NGO-led projects. The third area of research is focused on the legal systems (statutory and customary) interacting in the lives of the local indigenous population. All three themes combine to critically investigate the various ways (cultural, technical, and legal)

that indigenous peoples make claims to their land and other natural resources.

## BIOGRAPHICAL SKETCH

Rebakah Daro Minarchek, a native of Wellington, Missouri, attended Missouri State University in Springfield, Missouri for her Bachelor of Science with a double-major of Mass Media and Communication and a minor in English. She went on to earn a Teaching English as a Second Language certificate and teach a variety of age levels in Thailand for two years before returning to pursue further education.

She studied in Ohio University's Southeast Asia Program for a Master of Arts degree in International Affairs with a focus on Southeast Asia. She was awarded a Boren Graduate Research Fellowship through the National Security Education Program to continue her research on agricultural programs in Indonesia. While there, she was accepted into the M.S./Ph.D. program at Cornell University in the Department of Development Sociology. She completed the Master of Science degree in Development Sociology using her research conducted in Indonesia on alternative agricultural programs.

She returned to Indonesia to research indigenous communities' use of forests, natural resource access, and agricultural practices under a Borlaug Fellowship through the Global Food Security Program, an American Institute for Indonesian Studies grant, a Cornell Agriculture and Life Sciences grant, and a Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship. She defended her dissertation work on August 24, 2018.

In addition to her research, she has served as the Managing Director of the University of Washington's Southeast Asia Center and the Associate Director of the American Institute for Indonesian Studies.

Dedicated to Eliot and Fiona Minarchek

# ACKNOWLEDGMENTS

I would like to acknowledge the financial support of the USAID's National Security Education Program for their US Borlaug Fellowship through the Global Food Security Program; the US Department of Education's Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship; the American Institute for Indonesia Studies' Indonesian Research Grant; the Cornell University College of Agriculture and Life Sciences' AWARE Graduate Research Travel Grant through Cornell International Programs; and a dissertation write-up award through Cornell's Southeast Asia Program. In addition, I would like to acknowledge and thank Executive Dean Dr. Max Pfeffer for a year-long dissertation write-up award that allowed me to finish the analysis and writing of this dissertation.

Thank you also to the other members of my committee: Dr. Magnus Fiskesjö; Dr. Paul Nadasdy; and Dr. Carol Colfer, for their wonderful suggestions, support, and copious amounts of time. I'd especially like to thank Dr. Colfer for her extra support in professional development, which has been instrumental in finishing this doctoral program.

I appreciate the companionship and logistical support offered by the Southeast Asia Program at Cornell University and the KITLV/Royal Netherlands Institute of Southeast Asian and Caribbean Studies in Leiden, Netherlands.

I would also like to acknowledge my husband Matthew Minarchek, who has challenged me intellectually, edited my work, and offered helpful suggestions and advice for the past decade. Also, to our children, Eliot and Fiona, who have patiently dealt with our long hours, hectic schedule, and most importantly, our constant moves for work and research. Finally, to my parents who have always emphasized the importance of education, although I do not think they had a Ph.D. and a 35+ years in mind. Thank you, all, for your patience, sacrifices, and understanding.

Finally, I would like to thank the research participants whose participation has made this project possible. Thank you all for allowing me to share your lives, joys, sadness, and frustrations. I hope I have captured your sentiments in a way that adequately represents your kindness and fighting spirit.

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LIST OF ABBREVIATIONS

| | |
|---|---|
| AIFIS | American Institute for Indonesian Studies |
| AMAN | Indigenous Peoples' Alliance of the Archipelago – *Aliansi Masyarakat Adat Nusantara* |
| ASGM | artisanal and small-scale gold mining |
| BAKOSURTANAL | National Coordinating Agency for Survey and Mapping - *Badan Koordinasi Survei dan Pemetaan Nasional* |
| BIG | Geospatial Information Agency (*Badan Informasi Geospasial)* |
| BRWA | Indigenous Territory Registration Agency - *Badan Registrasi Wilayah Adat* |
| CGGM | community green gold mining |
| GHSNP | Gunung Halimun Salak National Park, Indonesia |
| GIS | geographic information system |
| GPS | global positioning system |
| HAM | National Commission on Human Rights – *Hak Asasi Manusia* |
| IBEKA | People-Centered Business and Economic Institute – *Institut Bisnis dan Ekonomi Kerakyatan* |
| JKPP | Indonesian Community Mapping Network |
| MK35 | Constitutional Court Ruling No.35 - *Putusan Mahkamah Konstitusi No.35* |
| NGO | Non-governmental Organizations |
| ORCs | Overseas Research Center |
| RMI | Indonesian Institute for Forest and Environment (*Rimbawan Muda Indonesia)* |
| SABAKI | Unified Indigenous Communities of the Kesepuhan of Southern Banten - *Kesatuan Kesepuhan Adat Banten Kidul* |
| SIM | Official Use-rights Title (*Surat Ijin Mengarap* |

| | |
|---|---|
| UNDRIP | United National Declaration on the Rights of Indigenous Peoples |
| USO | Universal Service Obligation |

## Introduction

From construction materials to paper, flooring, ships and boats, beehives, pallets, musical instruments, fencing, furniture, and fuel, the use of the world's forests resources are a vital component of our everyday existence. But aside from the obvious resources cut forests provide for human livelihoods, as a standing resource they also play a critical role carbon sequestration, sheltering biodiversity, and providing access to needed non-timber forest products for forest-dependent communities. Yet, the world's need and desire for timber and timber products often overshadows their importance as a standing resource. For example, 2016 was the worst year in history for forest loss, followed closely by 2017 (Weisse & Dow Goldman 2018). In 2017, there were an estimated 39 million acres in tree cover loss, which is roughly the size of Bangladesh (Weisse & Dow Goldman 2018). This is not a good time for

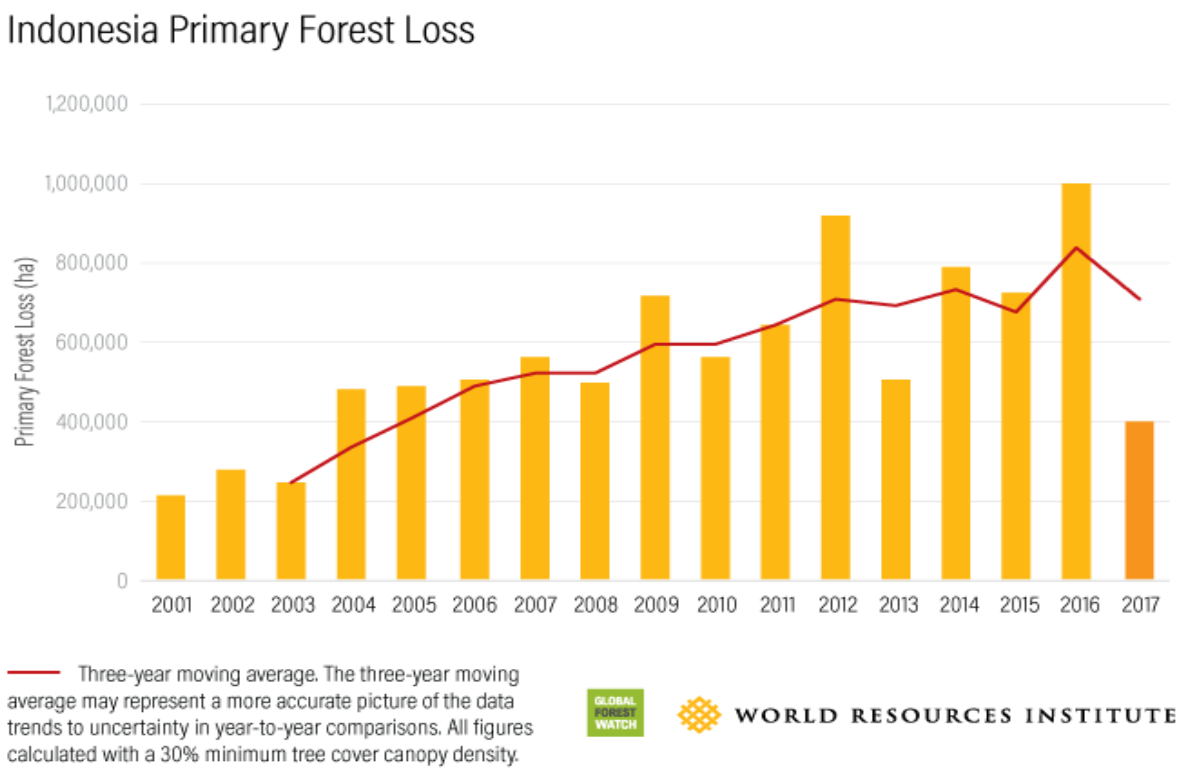


*Figure 1. World Resources Institute 2018 (http://www.wri.org/blog/2018/06/2017-was-second-worst-year-record-tropical-tree-cover-loss)*

forests or the environment.

My interest in researching tropical forests arose out of these concerns about deforestation and conservation efforts. In particular, I am interested in thinking about alternatives to traditional conservation practices, which tend to exclude local people. Conservation policy in Indonesia has followed along these traditional lines and has largely been about excluding people and human activities from the country's 534 protected areas, including 50 national parks covering a total of 28.2 million ha (Mulyana et al. 2010). My research investigates this "fence and fine" approach to conservation and questions whether meaningful involvement by indigenous communities in Indonesian conservation zones might lead to lower levels of deforestation.

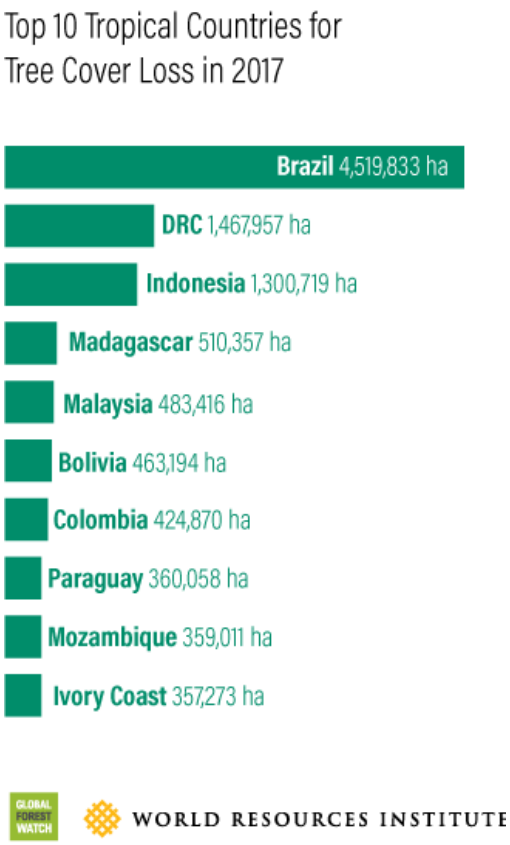


*Figure 2. World Resources Institute 2018 (http://www.wri.org/blog/2018/06/2017-was-second-worst-year-record-tropical-tree-cover-loss).*

Yet, this research not only questioned traditional models of conservation that excluded indigenous peoples but also questioned more recent "participatory" models. Without naïvely assuming that indigenous people would naturally be better stewards of the land they inhabit, my research questions whether an increase in the control and ownership of resources by indigenous peoples in Indonesia could produce an increase in their desire to sustainably manage the land. Previous research has shown that increased ownership of land by indigenous communities can positively impact cultural preservation as well as combat poverty, food insecurity, political instability, and

climate change (Pearce 2016). This dissertation is the start of a long-term research project with the goal of investigating such previous claims. The papers in this dissertation focus on the initial stages of such research, looking at how indigenous peoples are moving away from participation in state-led efforts and using their indigenous identity to make ownership and management claims over currently state-claimed resources. Follow-up research will continue to investigate natural resource use by the Kasepuhan indigenous group in Indonesia to determine how control over needed natural resources might impact their well-being in the coming decades.

I focused this research on the island nation of Indonesia due to its high rates of deforestation previously, its importance as the guardian of large swaths of the world's remaining tropical forests, and high rates of biodiversity in both flora and fauna. In addition, with 80-95 million people directly forest-dependent in Indonesia and over 40 million of those living on lands classified as public forests, the conditions were prime for a sociological study on natural resource use and conservation strategies (Lynch and Talbott 1995). Using the Kasepuhan indigenous group and the country of Indonesia as a lens, the following papers focus on questions of natural resource use, indigeneity claims used to access and manage natural resources, and control by indigenous communities in natural resource management.

## Scope of the Research

The earliest discovered evidence of early kingdoms on the island of Java date to the 5$^{th}$ century. Stone inscriptions found in 1863 in the region of West Java document these early kingdoms in the country now referred to as Indonesia. Although the first documentation of early kingdoms found in Indonesia, they are certainly not referring to the first kingdoms of Java, however, they are the first written documents to survive on Java documenting the presence. There are other sources from other countries, such as China, which have

documented earlier kingdoms (Zahorka 2007).

The Sundanese indigenous group profiled in this dissertation, the Kasepuhan, are followers of *Sunda Wiwitan*, which is shamanic animism mixed with Hindu and Buddhist practices. The followers, which are more far reaching than just the Kasepuhan, were historically holdouts against Islam, but influences from Islam have slowly crept in over the centuries, and currently, *Sunda Wiwitan* incorporate practices from Hinduism, Buddhism, Islam, and ancestor worship. However, the pull of Islam is not felt by all followers of *Sunda Wiwitan* and the Baduy (Kasepuhan "cousins" located in Banten province and referred to as the Urang Kanekes) still holdout against Islamic integration within *Sunda Wiwitan*.

Ethnically, the Kasepuhan and the Baduy are Sundanese, who number around 40 million within Indonesia. The Kasepuhan are ethnically no different than the general Sundanese people. Yet, the Kasepuhan people have successfully applied for regional recognition of their "indigenous" status[1], while the general Sundanese population is not eligible. The Kasepuhan (which literally means "old ways") are thought to be the descendants of the Pajajaran – Bogor kingdom (669 to 1579), and are followers of older Sundanese traditions and have, to some degree, rejected modernity in favor of keeping traditional Sundanese ceremonies and a way of life alive. In the American context, the Kasepuhan would be close to Mennonite communities here in the US, and their "cousins" the Baduy would be similar to the Amish. Just like the Amish and Mennonites, the Baduy and the Kasepuhan are ethnically very similar to the wider population but reject modern practices. While there is something to the idea of self-identification of indigenous, it also does not fully explain why some groups, from the same ethnicity, are considered indigenous and others are not. There is something more to be explored within the concepts of space, isolation,

[1] It took Cisitu around six years to get recognized as an official adat community.

privatization of land, location, forest-dependence, and cultural markers that create a believable identity of indigeneity. These topics and this situation are the focus of this dissertation.

After the fall of the Pajajaran kingdom, historians believe that certain groups from the kingdom split off and established themselves elsewhere in the region (Wessing 1993; Wessing & Barendregdt 2005). The Baduy are believed (according to one theory) to be the descendants of the aristocracy, sealing themselves into three main villages after the fall of Pajajaran and resisting integration to general Indonesian life to this day. One theory even suggests that the name *Baduy Dalam*, which is often translated as "inner Baduy" people, is incorrect in translation. Rather, it is from the old Sundanese world *dalem* which means "court" and would imply that these are courtly people (Wessing & Barendregdt 2005). It is theorized that the Kasepuhan are also descendants of specific groups (uncertain, but it is suggested that they were the priests or elite soldiers tasked with guarding the nobles) within the Pajajaran kingdom, carry their legacy to this day (Galudra 2003). The Cinta Mekar grouping of the Kasepuhan, which are one of the two groupings at the center of this research, along with the Citorek and Cicarucub groupings, carry their legacy of being peacebuilders or uniters (*Pancer Pangawinan)*.[2] Their task is to unite the Kasepuhan and create balance between all groupings. The Cisitu (the other grouping highlighted in this study) and Cisungsang groupings of the Kasepuhan are tasked with being torchbearers (*Pangawinan Guru Cucuk Pangutal Jalan)*. They are to open the path for other Kasepuhan should they receive a *wangsit* or instructions from the spirits (prophecy) to move location. These tasks are still important parts of the Kasepuhan oral history and can (and are) taken figuratively and literally by the Kasepuhan.[3]

[2] Kasepuhan oral history, personal research, 2014.
[3] Personal research, Cisitu and Cinta Mekar, 2014.

With regard to the natural resources of the region, the area of the Sundanese people is naturally rich in water resources. The neighboring Javanese people of Central Java adopted wet-rice agricultural production much earlier than the Sundanese as Central Java is a much drier area than the Sunda region and water control was seen as a necessary step in agricultural management. However, the Kasepuhan only adopted wet-rice agriculture around 100 years ago at the insistence of the Dutch because it encouraged more permanent settlements which made the population easier to track and monitor (Scott 2010). However, the decision to do so was forced by the burning of Kasepuhan rice stores rather than a willingness to switch from rain-fed rice production. To this day, Kasepuhan members claim that *huma,* or rain-fed rice, is for "life," but wet-rice rice is for production purposes.[4] The area still has abundant water resources, making rain-fed rice agriculture feasible for the community.

The Kasepuhan include a total of 15 community networks made up of multiple villages. Main Kasepuhan groupings include Kasepuhans: Cisitu; Cinta Mekar; Cisungsang; Citorek; Cicarucub; Cibadak; Cirompang; Pasir Eurih; Sinaresmi; Cibedug; and Karang. Lands claimed by these Kasepuhans vary, with Cisitu currently claiming 7,369ha, Cibedug claiming 2,167ha, Citorek claiming 7,535ha, Cirompang claiming 646ha, and Karang claiming 339ha. Only Karang has officially been granted land through the Indonesian government based on their indigenous status.

They are eligible for these land rights based on a 2013 Indonesian Constitutional Court ruling for a case submitted in 2012. The case is referred to in Indonesia and throughout this dissertation as MK35. The Constitutional Court ruling (MK35) begin in 2012 when the Indigenous Peoples' Alliance of the Archipelago (AMAN), along with two indigenous communities (Kenegerian Kuntu from Riau Province and Kasepuhan Cisitu from Banten

[4] Personal research, West Java 2013-2015.

Province) brought forth a case for a judicial review of Indonesia's Forestry Law of 1999 through the country's Constitutional Court.[5] They cited more than 10 years of the government using the law to "take over the rights of indigenous people over their customary forest areas to become state forest, which then on behalf of the state were given/or handed over to capital owners, through various licensing schemes to be exploited without consideration to the rights and local wisdom of indigenous peoples in the region…" (Constitutional Court Ruling Number 35/PUU-X/2012, 2013: 4). The case asserted that indigenous peoples' forests are forests that they themselves own rather than being owned and managed by the Indonesian state. The Court agreed with AMAN and the indigenous communities, agreeing to remove the word "state" from the Law that stated "adat forest is *state* forest which lies within the lands of adat communities" (Basic Forestry Law of 1999, Republic of Indonesia). However, the ruling means widespread reforms to the Indonesian legal system in order that MK35 might be implemented, a process that has technically begun but is not slated to be finalized until 2019. However, it is expected to take much longer.

Land access and rights in Indonesia is a complicated business. Legal rights to land include right of ownership (hak milik); right to cultivate (hak guna usaha); right to build (hak funa bangunan); right to use (hak pakai); and right to manage (hak pengelolaan). Also, customary land (adat land), is generally registered with a *surat girik*, or "Letter C" certificate, which denotes evidence of tax payment/s in the past. These certificates can be changed to *hak milik*, but the process is long and complicated. This is evidenced by the sheer amount of *Letter C* certificates that remain in circulation in the 58 years since the Basic Agrarian Law (Law no. 5 of 1960 – UUPA) which declared that all land not previously certified must be

[5] Kasepuhan Cisitu is a neighboring village also located in GHSNP. Their adat system is different from Kasepuhan Ciptagelar. Villagers in Ciptagelar commented that Cisitu has five Abahs and is more "democratic" and has more "freedom to experiment", such as with this Consititutional Court case. I plan to visit Cisitu upon my return later this year.

registered with the local land office. The process requires a Certificate of No Disputes, a Sporadic Litigation Mastery Certificate, letter of measurement from the Head of the Land Office, and a Certificate of Land History as well as an identity card, family card, and a tax notification letter for the current year with proof of payment. Payment of a land acquisition duty tax must also be done during the process as well as handling and processing fees. At a minimum, the process takes six months and payment of additional "fees" along the way to officials to ensure the processing of the paperwork.

However, MK35 promised to change this complicated situation for indigenous communities. Yet, it remains to be seen whether the interpretation of MK35 will mean ownership for individuals within indigenous communities, ownership for indigenous groups and collectively managed, apply or not apply to national parks, apply or not apply to forests classified as forests but containing no standing forests, and so on. Abah Ugi, the customary law leader of one group within this research has expressed his understanding of MK35 as the community owning the land, not the individuals. Among individuals, it would still be use rights, which they cannot sell for development but can buy, sell, and trade among themselves. The details, it seems, are a long way from being sorted out for MK35.

The impact of MK35 has been significant. There are (according to AMAN) 70 million masyarakat adat in Indonesia. Over 700 indigenous communities have already, formally and informally, made claim to over 8.23 million hectares of land. The process of sorting out these claims, indigenous mapping efforts, and official recognition of land claims are expected to be ongoing through 2019 in Indonesia. However, with current progress behind schedule, it will most likely not meet that deadline set by the Indonesian government. This research follows the beginning of that process in Indonesia and highlights the multi-faceted claims-making approach of one indigenous community involved in the struggle.

Theoretical and Practical Relevance of the Research

Broadly speaking, this dissertation explores the Marxist "agrarian question" and unraveling the linkages, relationships, and power dynamics among rural agrarian communities, the state, the economy, and civil society (Edelman & Borras Jr. 2016). In this lineage, I draw on questions raised by James Scott (1976; 1985; 2010) about the motivations, coping strategies, and options for resistance of rural agrarian communities. I am also looking at the process of integrating (with or without their knowledge or consent) indigenous communities into the broader capitalistic structure. Li's (2010) article and (2014) book Land's End claim that land claims are the process of making indigenous peoples capitalist subjects. She presents a story of changing property rights over time. Li (2014) and Watts (2004) highlight the gradual process of capitalism entering and transforming rural communities, rather than the abrupt and often violent transformation to capitalism that Polanyi (1944) and Marx (1959) detailed.

Broadly, I explore issues of vulnerability and systemic inequality that compounds in many different ways. Green and Hulme (2005) characterize chronic poverty as intersecting traps, which include insecurity in some form, limited citizenship rights, spatial disadvantage, social discrimination, and poor work opportunities. In addition, Adato et al. (2006) contend that even for vulnerable populations, coping and adaptation is limited, as institutional and political factors systemically limit their ability to rise from poverty or overcome vulnerability. This dissertation is an exploration of vulnerability and marginalized populations, including compounding vulnerability for certain segments of the population.

This dissertation is meant to highlight *some* of the ways that indigenous communities are making claims to the legitimacy of their indigenous status, and importantly, to use that indigenous status to make legal claims over natural resources. At the same time, I recognize that there are many other ways that communities around the world are making similar claims

in order to gain recognized land rights, whether those be communal, ownership, use, or other versions of "rights." The three papers are each focused on a different realm of claims-making. The first looks at the legal realm of statutory and customary law. The second looks at the realm of technology and how indigenous communities are using increased access to technology to create cartographic representations of their territorial claims. The third paper explores the social constructs of the idea of indigeneity and its connection (and often opposition) to national governance structures. In particular, it focuses on discursive arguments made to indigeneity through social channels in order to make claims on land.

The issues that are explored in this dissertation include: limited citizenship (the topic of indigeneity and adat); legal institutions that produce vulnerability and disenfranchise (pluralistic statutory system of law); spatial disadvantage (issues of geography and space, imposed isolation and self-imposed isolation, within a national park, mapping, territorialization); and resource insecurity (limited access to natural resources, bundle of rights, drawbacks of formalization of rights, access vs. use vs. rights to exclude vs. hunting vs. ownership). The applicable theoretical connections for each specific paper are detailed in each of the following papers.

## Research Design

I served as the sole researcher in the study. I designed the topics, questions, and follow-up materials for all interviews, data collection activities, focus groups, and surveys. I have previously done work on agricultural development projects in Thailand and Indonesia, gender and forest tenure in Southeast Asia, and alternative development projects involving agriculture and forests in Indonesia. I used this previous experience to help shape the research for this dissertation.

Under my guidance, I included two research assistants to assist with translation,

participatory mapping, and survey administration. Using their input on the feedback from various research activities, the research tools were tailored to best fit the needs and understanding of the participants. The two research assistants were Indonesians that lived in the community were the community level research was conducted. Both were teachers in the local school. The first, a 42-year-old female, was fluent in Indonesian, Sundanese, English, and Javanese. She is ethnically Javanese and has a BA in agricultural education. She worked for four years for a participatory photography non-governmental organization called "Photo Voices" located in Bali, Indonesia. Through her work with the organization, she traveled to the study site for the first time in 2011. There, she met another individual who was not a local but was living in the village. They were married in 2012 and they both now live full time in the village. Aside from her teaching responsibilities, she also assists the community head (Abah) in keeping track of village level finances for Kasepuhan Cinta Mekar.

The other individual was a 20-year old male. He was born in the community and is ethnically Sundanese. He is fluent in Sundanese and Indonesian. He had been teaching in the local school for the past year. He was recognized for his mechanical skills and assisted the village leader in many projects. As this research project was ending, he was preparing to travel to Japan to study for six months on an indigenous people's scholarship.

Aside from the previously noted occupations, I was also working part-time for the American Institute for Indonesian Studies (AIFIS). The Institute is a part of the network of Overseas Research Centers (ORCs) supported by the Department of State and the Department of Education. AIFIS is also partially funded by the Luce Foundation. My work consisted of filing funding reports, assisting in the administration of the fellowship program, applying for grants for the organization, programming oversight, membership recruitment and organization, and other tasks as they arise. None of the organizations involved in the research were also involved in AIFIS and there was very little to no overlap in the activities

aside from presentations on the research I completed while in Indonesia, which were organized by AIFIS.

I was thoroughly prepared to conduct the research through various qualitative and quantitative methods courses taken at Ohio University and Cornell University. I was also aware of local contexts through my involvement with the Southeast Asia programs and courses at both institutions as well as my work with the American Institute for Indonesian Studies. I have been living and conducting research in the Southeast Asia region since 2005 on topics of agriculture, development, alternative development programs, land and forest tenure, legal pluralism, and gender.

I first traveled to the site of village-level research in 2008. I spent a week in the location in order to assess its appropriateness for a future research project. Funding was secured for the project in 2012 and research began in 2013. Further funding was awarded at the end of 2013 and another research stint began in mid-2014.

The participants knew I was acquainted with the staff of the organization IBEKA, which is an NGO active in the area since 1989 building micro-hydro projects for small-scale electrification. It was through this organization that I was first introduced to the community. This connection, however, was complicated by my living situation. I lived with the female research assistant and her husband. It was well known that the NGO founders and this host family did not get along. This initially might seem to complicate the situation, but in fact, it allowed me to remain relatively unbiased in many situations where bias might have been a factor, due to connections with various community members that were known to not get along. All participants in the research were told prior to participation that the questions, interviews, and activities were all a part of my Ph.D. research for at Cornell University. They were asked for their consent and told that they could stop the interview, focus group, or activity at any time if they felt uncomfortable or had other activities that needed to be done.

They were also told the approximate amount of time each activity would take before they started and given information and time about requesting anonymity should they feel the need or desire.

There were no formal procedures for feedback on the interviewer/facilitator in place, although feedback was often given and heard informally. Participants were also encouraged to give feedback during the interview process at the end of longer research activities. For example, when participants finished the week-long food diary project and completing their "exit interview" they were asked to reflect on the process, what they enjoyed, what they did not, and what could have made the process easier. This provided interesting and useful feedback on the data collection process, but not necessarily the interviewer. One interesting piece of feedback came from a fellow researcher that visited the community on her own agenda. The community members informed her of my research and when we met later she asked if I did work on "food safety" as she had heard. This was an unfortunate mistranslation of the term *keamanan makanan* which could be interpreted to mean "food safety" or "food security." The food security translation was more correct as the research involved themes of resource acquisition, including food and forest resources, but due to my frequent visits to the community kitchen, could also perhaps have been understood as food safety.

A fair number of researchers and journalists come to the community throughout the year, so my presence was not considered strange or uncommon. It was my extended presence, however, that was more unusual. Villagers often remarked to other visitors, in explaining my presence, that only two "outsiders" come and stay in the village. I was one of those as well as a French student that often came throughout 2013-2015. This willingness to stay for extended periods, bring along family, and follow local customary law practices were seen as a positive trait and I was often rewarded accordingly with willing participation and acceptance. I often watched the weekend journalists come and get the same practiced story over and over again.

These “performances” were often given and then the “performer” would often give a smile or wink my way during or after, signifying that this was the story the journalist wanted so they would give it to them in the short amount of time available. Although, there is little way of knowing if the story that I received was also a life story that was practiced or the “truth.” Yet, either can be understood as “truth” to an individual about their life, especially if practiced and recited many times over. Eventually, the “performer” starts to even believe the “performance” and if it is their belief that it is true, who is the outside researcher to contend that it is not?

The study had a very low refusal rate. At the village level, there were some “dropouts” for some of the longer activities. For example, one particularly busy woman who held an important community position found it difficult to keep up with the daily recording tasks. She did the very minimal amount of recording and still received the incentive for that activity but was not asked to participate in later activities.

This research was conducted in Indonesia in 2013 and 2014. The location of the local-level research was in Sukabumi and Labak districts of the West Java and Banten provinces, respectively. Participants were chosen from the Kasepuhan Banten Kidul customary law community, primarily from four of the Kasepuhan villages. The Kasepuhan are a minority population living in the region. They are distinct in their dress, lifestyle, and customs from other Sundanese groups in the region and will be referred to throughout the paper as the Kasepuhan. The civil society-level research was primarily conducted in the cities of Jakarta and Bogor, where the offices for the organizations were located. Participants at this scale were interviewed in their organization’s office or during scheduled activities, such as conferences or workshops. For the government-level research, data were collected primarily in the city of Jakarta, but a two-day Human Rights Commission meeting was held in the city of Rangkasbitung, the capital of Banten province, where additional data was collected.

In general, I used qualitative methods of data collection, such as participant observation; structured and semi-structured interviews; focus groups; participatory mapping exercises; food diaries; activity logs; participatory photography; and cognitive mapping. I also created a land use survey for both qualitative and quantitative data. Some of these methods produced more usable data than others. Some, such as focus groups and interviews, were used throughout the research. Some, such as participatory photography, were deemed not as useful and were discontinued after initial efforts. Specific details about how each of these methods was used to collect data for each paper are detailed in the following papers.

Dissertation Outline

This dissertation follows Cornell University and the Department of Development Sociology's guidelines for the "three papers" option. This option includes provisions for the use of three distinct publishable papers exploring a central theme. In this case, each of the three papers highlights a sphere of influence (legal, technological, social) used by the Kasepuhan indigenous community to make claims on their indigenous status and their use of forests and natural resources.

The first paper explores the interactions between customary and statutory law in Indonesia, especially with regard to the limits of the pluralistic nature of the statutory system. The paper especially highlights the limits to and consequences of the national-level legal ambiguity, both for the system itself and for the communities governed by statutory and customary law. The second paper is a direct interaction with ideas of participation and the role of NGOs in assisting indigenous communities in mapping their territorial claims. Primarily, the paper refutes arguments that indigenous communities lack the skill, resources, and knowledge to spearhead their own movements to produce "counter" maps to the government's maps. Finally, the third paper focuses on the discursive nature of indigenous

claims and how customary law communities[6] are taking a layered approach to their own identity in order to make claims to land and resources. I contend that this process highlights aspects of their indigenous identity that are officially recognized as traits belonging to an indigenous group, however essentialized, but yet, leaves other aspects in relative obscurity regardless of importance to the Kasepuhan.

[6] Within Indonesia communities are generally referred to within legal documentation as "*masyarakat adat"* which directly translates to customary law communities. I have chosen, within the dissertation, to

**Paper 1: Cultivating Customary Law in Indonesia's Political Forests**

## 1. Introduction

The forests of Indonesia have long been a space of political confrontation. Rich in timber, water, and mineral deposits, they are home to an estimated 40 million people in forest-dependent customary law[7] communities (AMAN 2013; Lynch and Talbott 1995; Rights and Resources Initiative 2015). Understandably, these natural resources are an unending source of conflict as customary law communities, non-governmental organizations, the Indonesian national government, and national and international business all compete to access and claim Indonesia's forests. Underlining the political nature of Indonesian (and Southeast Asian) forests, the term "political forests" is often used to highlight the techniques of power, discipline, and coercion used by Southeast Asian states to territorialize and exert control over lands deemed "forests," whether forested or not (Peluso and Vandergeest 2001). Especially important to this paper is the inherent ties to the legal system present in the idea of a political forest. Based on Peluso and Vandergeest's ideas of the historical creation of the political forest through the legal system, this paper explores the contemporary remnants of colonial-era policies in forest law in Indonesia and how, over its seven decades of rule, the Indonesian state has slowly undermined its own power in these spaces.

While the theory of political forests pays particular attention to the ways that customary law is legitimized by the national-level governments in order to provide boundaries (physical and legal) for indigenous communities' ownership to land, it also,

[7] "Customary law" communities in this paper refers to Indonesian communities that follow a local and, often, uncodified legal system governing land access and use, social interactions, agriculture, inheritance, etc. Members of customary law communities number around 70 million people in Indonesia (Lynch and Talbott 1995).

perhaps because of its focus on historical trends, fails to think about the limits to this boundary-making by the statutory system. This paper focuses on these limits by exploring the way that the confusing, conflicting, and corrupt statutory legal system in Indonesia has undermined itself and its own power over the "political" forests of Indonesia. Contributing to the current literature on legal pluralism, indigenous politics, and land conflicts, I explore the motivations behind the persistence of customary law in Indonesia. In order to do this, I use the case study of the Kasepuhan customary law community in West Java and Banten provinces on the island of Java, Indonesia. The following historicizing of statutory and customary forest law in Indonesia highlights the limits of state legal ambiguity before citizens start turning away from statutory law and, in this case, look for stability in customary law (or *adat* in Indonesia) in order to govern everyday life.

On 16 May 2013, the Indonesian Constitutional Court issued a decision (MK35/PUU-X/2012 - hereafter MK35) regarding the ownership of Indonesia's forest estate, which overturned seven decades of state ownership of Indonesia's forests and promised to reverse widespread dispossession of land for indigenous communities that began under the Dutch colonial regime and continues to the present. The ruling declared that Indonesian state-claimed forests must no longer be declared "state" forests when inhabited by customary law communities (*masyarakat adat).* If implemented, the ruling would turn over ownership of nearly 40% of Indonesia's total forest lands to the customary law communities who inhabit them. Civil society had long advocated for such a ruling on the constitutionality of state-claimed forests and was (and continues to some degree to be) optimistic about the changes it might bring, but after decades of similarly promising legislation[8], Indonesia's customary law

[8] Legislation is used throughout the paper to refer to the process of creating laws through the statutory legal system. A law is used to refer to legislation that has been passed and implemented. A ruling is used to refer to a law that has been referred to the Constitutional Court and reviewed by its members. MK35 is a Constitutional Court ruling with that ruling referring specifically to the constitutionality of a previous law.

communities are less optimistic. The MK35 ruling is certainly not the first time that the national-level government has made promises to customary law communities and the statutory legal system of the country is full of laws that claim to respect the rights of these communities. Regardless of national-level legal promises to customary law communities, or perhaps even *because* of them, customary law in the country remains an important system for ordering everyday life in the forests of the island nation. This research explores why, in the face of such seemingly empowering statutory legislation, customary law retains such dominance in the island nation among indigenous communities.

On 14 July 2014, over a year after the passing of MK35, I held a focus group discussion in Kasepuhan Cinta Mekar[9] to hear from some of those affected by the ruling about the possibilities for its implementation. I arranged the focus group in order to discuss community members' thoughts on the ruling and an attempt to understand what I had initially perceived as their lack of motivation in pushing for legal changes that would initiate large-scale land reform in Indonesia. Group members said they did not know much about the ruling and furthermore, did not really care much about it either.[10] I continued to question community members through individual interviews in one village and then the next, but the answers were all similar and along the lines of "I don't know much about the ruling" or "I don't know how it would change anything for me."[11] The initial impetus for this research started with trying to understand what lay behind their lack of motivation or enthusiasm for a ruling with such promise. Analysis of the gathered data showed that community members

It also provides the basis for future legislation, but no guidelines for implementation. Indonesia is in the process of creating legislation based on the MK35 ruling.

[9] The Kasepuhan communities are a network of villages led by an Abah situated in a particular village. There are 13 main Kasepuhan communities. Together they are called the Kasepuhan Banten Kidul and number around 60,000. 16,000 of the population live within the boundaries of the Gunung Halimun Salak National Park. The followers of Abah Ugi Sugriana are called Kasepuhan Cinta Mekar. Kasepuhan Cipatgelar claims 568 individual villages and 30,000 followers.

[10] Kasepuhan Cinta Mekar focus group - July 14, 2014.

[11] Kssephuan Cinta Mekar community member interviews - August 2014 and October 2014

affected by MK35 were not ignoring issues of land security and resource vulnerability, but rather living with vulnerability and insecurity every day and saw the ruling as one more promise emanating from a statutory legal system that holds little weight in the political forests of Indonesia. After years of conflicting statutory laws, community members had become desensitized to the possibility of implementation of even the most promising of statutory laws.

For many forest-dwelling customary law communities in Indonesia, a pluralistic legal system governs everyday life. Many residents live balanced between customary and statutory law, which is the traditional understanding of legal pluralism. Merry describes legal pluralism as "a situation in which two or more legal systems coexist in the same social field" which is common in post-colonial spaces such as Indonesia (Merry 1988: 870). However, others live firmly embedded in the customary legal system (*adat)* only responding to statutory laws as they become impossible to ignore. The statutory system is often ignored, overlooked, or written off by community members in favor of customary laws governing forest resources, ownership, and use. This pluralism abounds in the statutory system itself, where competing laws are routinely passed that overlap and conflict with existing laws. Despite attempts to cancel out conflicting laws in forestry in the country, confusion is still pervasive. Throughout the paper, I highlight the confusing and conflicting nature of the "pluralistic" statutory system, and how the customary law system routinely provides stability and clarity for local use and ownership of forest land, leading to the continued relevance of the customary law system in the country. I argue that the creation of "political forests" in Indonesia has resulted in a pluralistic statutory system of law in the country that is rife with corruption, confusion, and conflict and has, as a result, strengthened the customary law system used by indigenous communities - the very system lawmakers were trying to limit. Furthermore, I contend that customary law will continue to be a relevant and necessary part of life for *adat* communities

as long as the statutory system of forestry law in Indonesia remains so ambiguous.

From 2013-2015, I conducted research in the Jakarta, Bogor, West Java, and Banten regions of Indonesia. Villagers (of the Kasepuhan indigenous group) were acutely aware of the insecurity of their land tenure rights within statutory law. At the same time, they felt somewhat secure in their rights under customary law, regardless of their location within a national park. I investigated the persistence of customary law, the pluralistic nature of the statutory system, and the creation of the political forest through the manipulation of customary law by the statutory system. In particular, I investigated the impact of these trends and features on land tenure and perceptions of land tenure and security for the Kasepuhan.

The paper is organized as follows. First, drawing on the literature from legal pluralism and customary law, I historicize the customary and statutory legal systems in Indonesia, with regard to forestry law and land claims for indigenous communities. Next, I present the Kasepuhan customary law group and the case study location. The paper progresses through the Dutch colonial influence, Indonesian independence, the New Order, and contemporary laws on forests, forest resource use, and conservation zones, highlighting the multitude of laws within the statutory system and their often-contradictory nature. Throughout each section, I use the theoretical underpinnings of the "political forest," in order to contextualize the impact of these laws and the impact on current land claims by the Kasepuhan and other customary law groups in Indonesia. This is in an attempt to draw attention to the ways that historical underpinnings are still impacting the everyday lives of Indonesia's indigenous communities. These findings highlight the pluralistic nature of the statutory system in the experience of the Kasepuhan people and demonstrate their reasons for relying on the *adat* system rather than statutory law.

## 2. Political Forests in Context

Within Southeast Asia, the concept of the "forest" has a dual meaning. The first is the common idea of land dominated by tree cover, but it can also mean politicized territory identified or classified as "forest" when in reality the land has no tree cover and is perhaps used for an entirely different purpose (Peluso and Vandergeest 2001). Peluso and Vandergeest (2001) refer to this second idea of the forest as the "political forests" of Southeast Asia. Important for this concept of the forest is the policies used by governments to grant and restrict access to these zones. This process grants legitimacy to some populations while denying rights to others (Peluso and Vandergeest 2001). This is done through two main channels. The first is the recognition and limiting of customary rights and the second is through the statutory legal system. Here, I focus on interactions between these two channels and, specifically, how the statutory legal system has been used by lawmakers in an attempt to limit customary power by creating an "unknowable" system for indigenous communities. However, in becoming unknowable through ambiguity and contradicting laws, the statutory system has become limited in its own power, even more so than the customary system lawmakers intended to bind and control.

Specifically, in Indonesia, customary law is known as *adat*. It is the "cultural beliefs, rights and responsibilities, customary laws and courts, customary practices and self-governance institutions" of many indigenous communities within Indonesia and the framework for governing culture, politics, and economics (Alcorn 2000). Within the country, customary law communities are often forest-dependent, live in areas of high biodiversity, and are more likely than their lowland neighbors to lack legal land ownership rights. Customary law in the country is often orally transmitted, such as in the case study site. In recent years these *adat* laws are occasionally written down and shared in much-abbreviated form, but most communities depend on the oral tradition. While *adat* is often viewed as "pure" or

"traditional" by many outsiders in Indonesia, the system of laws is, in reality, highly malleable and capable of transforming to everyday needs (Soesangobeng 2004). Much like a sponge, *adat* absorbs relevant outside influences and then transforms them to the community's needs, including forest-related needs. *Adat* routinely changes and transforms over time, providing stability for customary law communities in its ability to adapt to their changing needs. It is an advantage that statutory law systems find difficult to emulate. At the same time, it is this exact characteristic that makes *adat* difficult to incorporate into state or provincial level laws regarding land use. Codification renders it static; generalization renders it locally irrelevant. *Adat* also varies widely across the archipelago, as "each indigenous group in Indonesia has a system of *adat* laws and traditions, developed over time to meet the individual needs of each particular cultural and environmental community" (Szczepanski 2002: 236). Yet, despite the evolution of *adat* to adapt to changing social structures, it is still relevant to the daily life of customary law communities. Quite the opposite, though, the confusing and conflicting nature of the statutory system is often ignored in favor of *adat*. Yet, the pervasive nature of statutory law does not go unnoticed by indigenous communities (F von Benda-Beckman 2002). Customary law community members, and especially community leaders, are acutely aware of pluralistic legal systems governing their lives and subtly absorb laws and practices from other systems of law as it suits the community, reflecting the malleable nature of *adat* law and, I argue, the reason for its perseverance.

Yet, the pluralistic nature of legal systems between the customary and statutory systems are not the focus of this paper. Rather, I depart from traditional understandings of legal pluralism in that I argue that the pluralism between the customary and statutory system is irrelevant in the present when the pluralistic nature of the statutory system itself is undermining its power in indigenous communities throughout Indonesia. Broadly defined, legal pluralism "is the recognition of the simultaneous coexistence of multiple normative

worlds" (Parmar 2015: 9). More specifically, Merry defines legal pluralism as "a situation in which two or more legal systems coexist in the same social field (Merry 1988: 870). Legal pluralism makes the case that more than one system of law can, and often does, exist in a society, sharply differing from legal centralism, which views the law made and enforced by the modern nation-state as the only true law. Yet, can we view law in a pluralistic context when the pluralism is occurring in one system (the statutory) creating competing (and confusing) realms of law for its constituents?

The case of Indonesia is a point of departure from traditional legal pluralism in which there are differentiated spheres of law. Discussions of legal pluralism normally center around distinct legal systems such as customary and statutory systems (Pospisil 1981; Cotterell 1984). However, throughout this paper, I show how legal pluralism can also take place in a single system with important implications for customary law communities. In this particular case, legal pluralism is occurring in Indonesia in a single legal system - the statutory system. This is often the case within nations with high levels of corruption where 1) laws are passed to the advantage of one party or another and may often contradict laws that already exist; 2) where nations compete on a global stage to pass laws that represent some sort of development or progress; 3) laws are implemented on an ad hoc basis by government officials in situations where they are the most advantageous option. This plurality developing within the statutory system is present in Indonesia and has caused, and continues to cause, confusion and instability (Tsing 2005; Colchester *et al* 2006; McCarthy 2006).

While scholars do recognize this plurality to some degree, a "unity of a plurality of legal norms" (Kelsen 1992: 55), they still maintain the assumption that there is unity within that plurality. In addition, the plurality within one system in Kelsen's writing is used to refer to the different *scales* at which the state legal apparatus works, such as provincial, district, national, etc. Within this article I diverge from this idea of unity within plurality to show that

the plurality experienced within the Indonesian state's legal system is often exacerbated when confronted with international expectations, lack of resources, and corrupt enforcers, eventually reaching a point where unity no longer emerges. When that unity is lost, as in this case, communities look to other sources and legal norms for stability, giving rise to alternative systems of law and/or reinforcing existing alternative systems of law. In particular, communities continue to rely on customary law to govern everyday life, not necessarily because of competing rights or expectations between the systems, but because *adat* has made itself indispensable in the modern era in light of the highly pluralistic and confusing nature of the Indonesian legal system. While both systems are malleable and dynamic, which creates a world of "living law" (Ehrlich 1962), there is a point where that malleability stops laws from being accessible and applicable in a meaningful way to citizens and causes them to search out stability in other systems. In this case, the pluralistic nature of the statutory system causes confusion and frustration for indigenous communities, with laws that are passed but never enforced; laws that are passed that conflict or overlap with previous laws; and laws that are enforced in an inconsistent manner by representatives of the state. The nation-state's laws are, obviously, still applicable, but community members are never sure which ones apply at any given time. I contend that, in this sense, customary law in Indonesia owes much of its power and relevance in the modern era to the unpredictability and instability of the statutory legal system and customary law will maintain that power and relevance, at the very least, until the Indonesian state can provide indigenous communities with a fairly and systematically enforced legal system.

## 3. Methodology

Within this study, I sought to understand the use of customary law to legitimize indigenous land claims to Indonesia's political forests. I collected qualitative data from

members of the Kasepuhan Banten Kidul indigenous group of West Java and Banten provinces in Indonesia through structured and semi-structured interviews, focus groups, and participant observation over a period of twelve months from 2013-2015. Based on their self-identification as an indigenous community that followed customary law, I chose to work with four distinct groupings of the Kasepuhan people. I also took into consideration their location, with all being either in or near a forest and identifying in some way as a "forest-dependent" community. The case study site is designated as a National Park (Gunung Halimun Salak) by the Indonesian government and is primarily heavily forested with intermittent areas of swidden and permanent wet rice agriculture throughout the park area. I chose the case study site because of the Kasepuhan group's high level of forest dependency; previous interactions with government and NGO development schemes; and one Kasepuhan community's (Cisitu) involvement with a national-level independent community organization focused on indigenous rights (AMAN 2013). Through this connection, AMAN chose Cisitu leadership to serve as a signatory to the MK35 review for the Indonesian Constitutional Court. Although there are 13 Kasepuhan communities made up of multiple villages within and around Gunung Halimun Salak National Park, the research is focused on four of these (Kasepuhan Cisitu, Kasepuhan Cisungsang, Kasepuhan Cinta Mekar, and Kasepuhan Sinar Resmi) due to the logistics of travel around the region. These four groupings of villages could be reached by motorbike within a few hours while basing myself out of Kasepuhan Cinta Mekar. As the Kasepuhan groupings, in general, vary in political power, *adat* power, isolation, and access to natural resources and profits from those resources, these four particular villages are adequate representatives of the Kasepuhan people. However, two of these Kasepuhan groupings (Cisungsang and Cisitu) do have much higher income due to gold mining on their territorial claims. They are also the most integrated with national level non-governmental organizations, yet there are Kasepuhan further east who are more integrated with regional level non-

governmental organizations. Kasepuhan Sinar Resmi has an interesting, and somewhat complicated, structure compared to other Kasepuhans. Throughout the research, it was unclear (to myself and to many of those interviewed) whether Kasepuhan Sinar Resmi was an independent Kasepuhan grouping or a subgrouping of Kasepuhan Cinta Mekar. While it did have its own Abah (customary law community leader for the Kasepuhan) and leadership structure, interviewees often noted that it was subordinate to Kasepuhan Cinta Mekar. In fact, the Abah of Kasepuhan Sinar Resmi did send his own son to serve the family of the current Abah in Kasepuhan Cinta Mekar and one Kasepuhan Cinta Mekar representative for regional meetings hailed from Kasepuhan Sinar Resmi. Both of which lead me to classify it as a distinct Kasepuhan, but one which is much more directly linked to another Kasepuhan – a somewhat unique situation among the Kasepuhan.

During the course of the research, I completed 308 structured and semi-structured interviews with community members and leaders. I identified participants for the initial interviews based on their role within the Kasepuhan system. For example, village leaders were identified first, and, through a referral system, subsequent interviews were conducted with additional community members. I identified participants for semi-structured interviews based on their participation in Kasepuhan events and activities. Many of the villages have weekly communal work parties where necessary manual labor is completed. These work parties were a primary source of semi-structured interviews. I would attend these work parties and interview community members. Occasionally, I would follow-up with participants at their homes with structured interviews. Participants who spoke Indonesian were often interviewed in Indonesian directly with assistance from a research assistant who spoke English, Indonesian, Balinese, and Sundanese. For those that did not speak Indonesian, I relied on the translation services of the research assistant. Those who did not speak Indonesian were primarily over the age of 50 and had had little to no schooling and,

therefore, no chance to formally learn the Indonesian language. They spoke the local language of Sundanese and were also largely illiterate. This was around 30% of the participants in the study. The assistant was a 42-year-old female and fluent in Indonesian, Sundanese, English, and Javanese. She is ethnically Javanese and has a BA in agricultural education. She worked for four years for a participatory photography non-governmental organization called "Photo Voices" located in Bali, Indonesia. Through her work with the organization, she traveled to the study site. There, she met another individual, who was not a local but was living in the village. They married, and both now live full time in the village as community members. Aside from her teaching responsibilities, she also assists the community head (Abah) in keeping track of village level finances.

Over the course of the research, I hosted twelve focus group meetings within the Kasepuhan villages and with staff members of involved NGOs. Of particular relevance to this research were five official focus groups held in Kasepuhan Cinta Mekar (3) and Kasepuhan Cisitu (2) in 2014. A customary law leader of Kasepuhan Cisitu hosted the two focus groups held in his own home. Both were mixed gender meetings of around 5-11 participants. In Kasepuhan Cinta Mekar, two of the focus groups were conducted in the home of the village leader, although he was not present for either one. The participants were all male with occasional comments from female onlookers. Although I pushed for women's official participation, I respected the community's choice of male participants based on what the community identified as their knowledge of current events and use of forest resources. I held another focus group in the home of my community host, who was the public relations representative of Kasepuhan Cinta Mekar, as appointed by the customary law leader of the community. Six participants (two female and four male) participated in this focus group. The topic of each meeting was different, based on the background and knowledge of participants, but all questions and discussion centered around questions of MK/35, forest use and access,

land tenure, land claims, and border disputes. One group focused explicitly on Cisitu's mapping project history and on the reception to the map among neighboring Kasepuhan groups. Another group was similar, but as it was conducted in Cinta Mekar, it focused on Cinta Mekar's understanding and reception to Cisitu's map of its territorial claims. All focus groups were conducted in Indonesian and Sundanese. A translator assisted with focus groups conducted in Sundanese.

In addition, I spent countless hours in participant observation with community members as they conducted their lives. I assisted with rice planting, harvest, rice processing, cooking, prepping for village festivals, serving food, collecting taxes, selling makeup, wandering around the forests of West Java and Banten provinces, picking vegetables, making rattan crafts, and collecting firewood, among other activities. Convenience sampling was used during participant observation. Community members, of all genders and social standing, who were participating or observing community activities and ceremonies were asked if they would be interested in discussing the activity or ceremony. While there were, naturally, some declines, most agreed and many participated in follow-up interviews or surveys at a later date. At the regional and national level, I also observed participants in two multi-day national level meetings on the topic of MK35 (one in Rangkasbitung, Banten and one in Jakarta); two strategic planning meetings coordinated across civil society organizations (Bogor and Jakarta); and five Kasepuhan level ruling council meetings (one in Cisungsang, one in Bogor, one in Sinar Resmi, two in Cinta Mekar). I followed up these observations with structured interviews with many of the participants at later dates.

I gathered quantitative data with the same case-study group using a land tenure survey I developed specifically for the research with Kasepuhan community members (N 89 = 55 male and 34 female). I chose participants from community members who farmed land within the Kasepuhan system. This, by default, included only married men and women as unmarried

community members are not allowed under customary law to farmland. Questions focused on the use of land, distance to travel to their land, frequency of visits, boundary disputes, and forest resources, and were meant to elucidate the general situation of land disputes for Kasepuhan community members. In particular, I hoped to gain a larger dataset directly focused on land tenure, feelings of "security" in ownership, and the average amount of land under household control. Follow-up conversations with key informants continue until the present.

Upon return from the field, I coded the data in terms specific to the research. In particular, interviews and statements that focused on legitimacy, forest rights, access to natural resources, legal structures (customary or statutory), and the national park were selected for further analysis. I then juxtaposed the data against a historical analysis of national-level laws passed in the region now known as Indonesia. This accounted for Dutch colonial laws as well as laws passed by the Indonesian state after independence. While the data used in the analysis were primarily from village-level sources, national level census data were also collected from the Indonesian Central Bureau of Statistics. Additional qualitative data were collected at the national level with national park officers, Ministry of Forestry officials, representatives from the Indonesian Human Rights Commission, and also at the civil society level with representatives from non-governmental organizations.[12] Yet, during analysis, it was determined that the majority of data collected from these sources focused on alternative topics and were not particularly relevant to this paper. However, follow-up research is being organized to include more data from these other sources on their perception of the relevance of customary law in the country.

[12] Specifically, here, I use civil society to indicate the "third sector" outside of business and government, often made up of non-governmental organizations (NGOs).

## 4. Case Study - Kasepuhan and Gunung Halimun Salak National Park

The home of the Kasepuhan, Gunung Halimun Salak National Park (GHSNP), lies in three districts - Bogor and Sukabumi districts in West Java province and Lebak district in the Banten province. [13] The park has areas of colline, montane, and submontane forests covering nearly 40,000ha and an elevation ranging from 500 to 1,929m (Harada 2003). The park is significant because it is the largest area of remaining forested land and the highest levels of biodiversity on the island of Java (Takahashi 2006; Kubo and Supriyanto 2010).

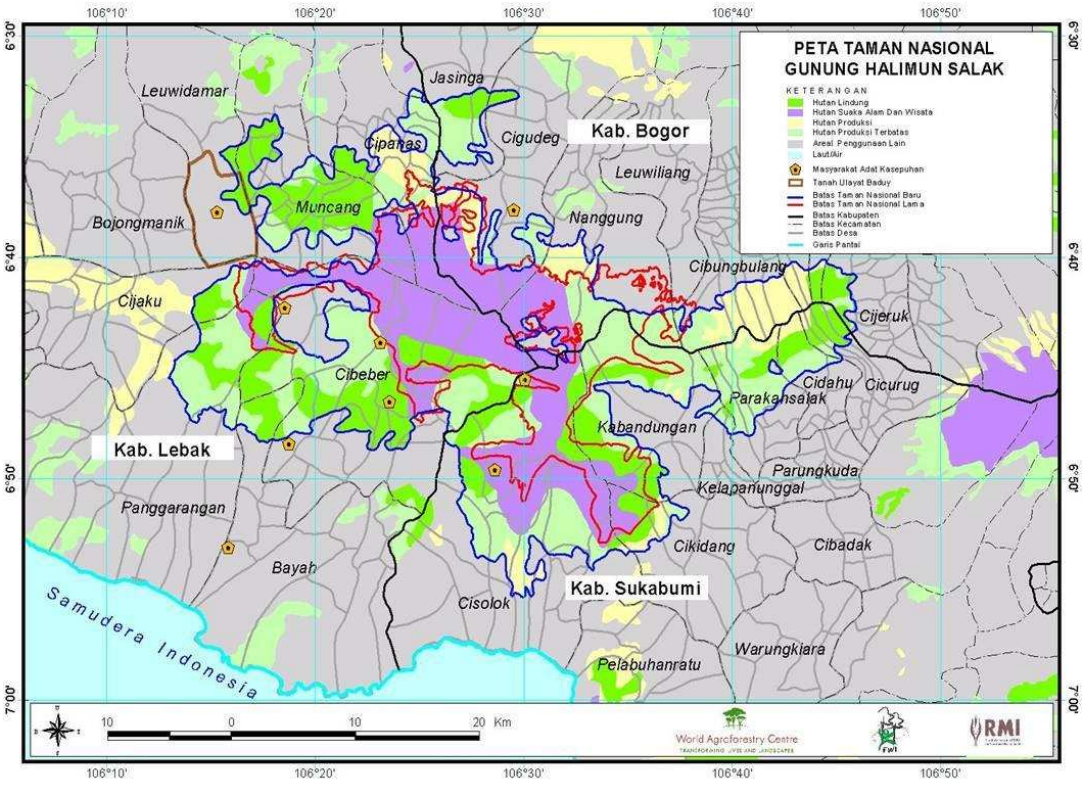


*Figure 3. Gunung Halimun Salak National Park Boundary map. Yellow pentagons denote Adat community locations. Red lines indicate the previous boundary of GHSNP and the blue line is the current boundary. Courtesy of the Indonesian Institute for Forests and the Environment (RMI) 2014.*

The original gazettement and delineation process of GHSNP took place from 1906 to

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

1938 during colonization by the Dutch. In completing this first gazettement of the area, the Dutch failed to indicate local communities living in and around the park.[14] The communities protested the erasure of their existence on maps of the area and in 1922 over 3000 farmers from the area were jailed for protesting the inclusion of their lands into the state's "protected forest" (Galudra *et al* 2008). In response, the Dutch Colonial government ruled that a new gazettement was needed, which would take the local people into consideration, but still, the Gunung Halimun area was designated as a protected forest in 1932, largely based on the hydrological function it provided to the Bogor-Jakarta area (Harada 2004). World War Two began in 1939, pulling the Dutch into the fighting in 1940 and the promised new gazettement never took place. After Independence, the Indonesian government, in creating GHSNP, used these Dutch maps as proof of "empty" space and declared that the space would not be re-gazetted to incorporate local communities, as the Dutch Colonial government had planned to do (Galudra *et al* 2008).

In recognition of its growing importance ecologically, the Indonesian government changed the area's status from "protected forest" to "nature reserve" in 1979 (Decree No 40/1979), and "national park" in 2003. They largely used the Dutch gazettement as the basis for areas included in the reserve and the subsequent national park (Harada 2003). As the rest of the island of Java succumbed to deforestation and to the land needs of an exploding population, Gunung Halimun's isolation, lack of transportation infrastructure, and the hydrological function of the forest to the greater Jakarta area all allowed the region to remain relatively high in biodiversity and it now has the highest level of remaining biodiversity on Java. Despite changing designations over time (protected forest to nature reserve to national

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

park), the local people have continued to live on the land, often without knowing whether it was considered state or national park land (Kubo 2008). Indonesian Law on the Conservation of Biological Resources (No. 5, 1990) states that there should be no one living within national park boundaries, but the reality is the Indonesian Ministry of Forestry claims ownership over 70% of land in Indonesia, including all land designated as "forests" and national parks (Colchester 2004; Collier and Toha 2015). All forest land is under the jurisdiction of the Ministry of Forestry, which decides whether forests are labeled as conservation, protection, or production forests. Due to the region's high population density, it is inevitable in Southeast Asia that large numbers of people live within conservation zones and AMAN estimates that nearly 40 million indigenous peoples live in conservation zones in Indonesia alone (AMAN 2013).

Prior to 2003, the area was classified under reserve status, and all overlapping land claims between the state and the indigenous villagers were dealt with using a profit-sharing model (Lund and Rachman 2018). This model allowed communities to live and farm in the park boundaries, but they were required to give 25% of their profit or harvest to the national park office authority. In 2003, when the region's status was changed (with much protest from local communities) into a national park, the profit-sharing model was officially discontinued due to stricter core zoning. Yet, the payment of 'taxes' legitimized their life in the park and the community continues to pay taxes to the local government from their harvest. In an event known under customary law as *tatali,* the heads of households come to a central building to report their household's harvest and pay a portion of it to the village council. The council then divides the rice up into four separate groups: payments to the local government; village resources (can be resold to villagers); tribute to Kasepuhan leadership; and rice to be used for

ceremonies.[15]

After its change in status to a national park in 2003, residents of villages within the boundaries of the park met to protest the declaration (Galudra *et al* 2008). They formed an organization out of the meeting, *Forum Komunikasi Halimun Jawa Barat-Banten (*Halimun West Java -Banten Communication Forum) to represent their grievances, which included the inclusion of their land claims within the national park boundaries and concerns about limitations on their agricultural production, firewood collection, and gathering of building materials (Suganda 2009). This group facilitated reports to government officials concerning the disputed status of the land. Older reports showed around 8,000 ha of land in the park being disputed (Galudra *et al* 2008). More recent reports claim 9,520ha of disputed land (RMI 2003). An updated map is being completed that shows the current state of disputed land claims in GHSNP.[16]

Currently, there are 314 villages in the GHSNP boundaries, with around 100,000 residents – around 16,000 of those are members of the Kasepuhan Banten Kidul community (Kubo 2008; Suganda 2009; Kubo and Supriyanto 2010). Another 44,000 Kasepuhan Banten Kidul members live outside of the national park boundaries (Suganda 2009). There are 13 main Kasepuhan community networks, which are made up of a number of villages. The Kasepuhan people, according to their oral history, are descendants of the Pajajaran-Bogor kingdom. They are led by an *Abah* (father), which is a hereditary position. Although there are 13 Kasepuhan community networks, there are not 13 Abah positions as some of the Kasepuhan groupings follow the Abah of another grouping. Yet, because of conflicting thoughts on lineage and legitimacy, there is not one Abah to lead the entire Kasepuhan Banten Kidul.

[15] Personal research, 2013-2015
[16] The map was not complete as of September 2017 but is still in process.

In general, a high level of forest dependence still exists in Kasepuhan villages. Harada found that "…local residents used more than 400 plant species for food, house construction, agricultural materials, kitchen utensils, as well as for traditional medicine, fuelwood and so on" (2003: 273). These species are often gathered from "national park" lands, but unclear boundary markers make it debatable whether the villagers even know they are collecting from national park land. At times when they do clearly know that they are gathering on land claimed by the park, there is a feeling that they understand and know better than park officials how to sustainably manage lands they consider to be their own[17]. Harada found that "…the law prohibits them from using the resources they largely depend on, and also forces them into obeying laws that make no sense to them. Consequently, they are forced to be involved in the current fashion of biodiversity conservation" (2003: 280). Finally, there is also a longstanding tradition of authorities "turning a blind eye to these activities, to some degree, because they do not have adequate administrative methods to manage the coexistence of the two sides, realizing simultaneously the conservation efforts and the use of the resources" (Harada 2003: 275). The situation is confusing for all residents of the GHSNP, park officials, and members of the Kasepuhan community. The following section details and historicizes this confusing, contradictory, and corrupt statutory system that the Kasepuhan community members find themselves living under.

## 5. Results - Forest Law and Adat in Indonesia

In October 2014, in a hot meeting room in the town of Rangkasbitung, Indonesia, participants gathered for a National Human Rights Commission (HAM) meeting to discuss MK35/2012. The participants in the hearing included: local Kasepuhan community members in the Lebak

[17] Human Rights Commission of Indonesia MK35 Hearings - West Java meeting - 14 October 2014

Regency, of which Rangkasbitung is the capital town; government officials from Lebak Regency, Banten province, and the national government; staff from regional and national non-governmental organizations (NGOs); and Ministry of Forestry officials. The topic of discussion was land conflict in the region between local Kasepuhan community members and the various officials that passed in and out of their remote villages.

The meeting progressed through specific cases brought up by community members, which highlighted larger issues of land tenure insecurity, conflicting laws governing forest use and inconsistent enforcement, the rights of indigenous communities to the land they have historically inhabited, and the importance of conservation to flora and fauna for human life. Framing the discussion was the reality of the Indonesian state's claim on nearly all forests in the country, even those "political forests" with no standing forests left. This includes all forested land where the Kasepuhan live, including most of their cleared agricultural land. How did agricultural lands used by customary law communities in the middle of a national park become the center of the conversation and why does the distinction matter?

The following sections show how the creation of political forests during the Dutch colonial era and followed by the independent Indonesian government has come to frame the argument on indigenous rights, land claims, and access to natural resources. It historicizes the current situation for the Kasepuhan by providing background information for their current land rights struggle. I also provide ethnographic details demonstrating the lasting impact of legal confusion among the Kasepuhan. Most importantly, I highlight how the history in Indonesia of compounding and overlapping laws regarding forest use, indigeneity, and land ownership have led to the confusing and contradictory nature of the statutory system for forest-dependent indigenous communities, and, thereby the resilience of the customary law system.

### 5.1 Dutch Colonial Legacy

This brief modern history of Indonesian forestry law starts in 1830 with the Dutch colonial government's introduction of *cultuurstelsel* or 'the cultivation system', which marked the point of Indonesia's entry into the modern world economy. The cultivation system was feudal in nature and required the native population to contribute one-fifth of their land to growing export crops for the colonial administration, or if they had no land, to contribute their labor (Szczepanski 2002). The system led to widespread poverty and famine, as landowners and laborers alike were forced to meet colonial production quotas before meeting their own needs. A tax system effectively became a forced labor system.

In 1870, the Dutch turned away from 'the cultivation system' (which had largely collectivized land) and implemented *Agrarische Wet* or the Agrarian Law. This law was meant to help establish more private businesses in Indonesia by granting 75-year leases to foreign entities. It was also intended to formalize land holdings with titles for the local population. Though in reality, large numbers of people who had recognized usufruct rights, but no formal title, were dispossessed of their land rights, including many customary law communities as the Agrarian Law included forest lands, *adat* land, village communal land, private agricultural land and native lands under usufruct rights (Djalins 2012). In a classic colonial model, the Dutch seized 'any useful lands or resources from the local people, without compensation' (Szczepanski 2002: 234). The effects of this program are still being felt in Indonesia. Much of the land claimed by the colonial government more than 140 years ago, especially indigenous lands, now forms the country's system of conservation zones for flora and fauna.

The Kasepuhan did not entirely lose possession of their lands during *cultuurstelsel* or *agrarische wet*, but they did lose formal control over much of it as they have traditionally managed over 80% of their land claims communally (Suganda 2009). Communally managed

lands were at the mercy of the Agrarian Law and those Kasepuhan lands largely form the basis of the current Gunung Halimun Salak National Park lands. One resident, when asked what a map of combined Kasepuhan lands might look like, asked me if I had a map of Gunung Halimun Salak National Park, insinuating that Kasepuhan lands and GHSNP lands were largely the same.[18] Currently, lands still inhabited (controlled to some extent but not owned) by the Kasepuhan continue to be managed using an 80/20 model. The 80 number within that figure represents communally-managed lands and the 20 represents recognized individual use. Communally-managed lands are administered by the respective Abah to benefit his community. The majority of these lands are rarely used, only in situations requiring drastic measures to ensure community survival. For example, one Kasepuhan community member mentioned a case where colonial officials burned a significant part of the community's rice fields in an effort to force them out of the forest.[19] The Abah at the time opened up more land in a part of the protected forest for community plantings in order to help the community make up for the loss. Lands controlled by the Abah and used for agricultural production to benefit the community also fall under this 80%. For the other 20% of Kasepuhan lands, individual usufruct rights are honored. Usufruct rights by individual households within *adat* land holdings are either earned by clearing the land for agriculture or a garden or by paying someone for their usufruct rights. However, it is not the actual use-rights that are being bought. The understanding is that the money is to pay for the labor of the person that originally cleared the land to make it suitable for agriculture, which is common throughout Indonesia (Wiber 1993; Suganda 2009; Dove *et al* 2011). Under *adat* law, the community members are not allowed to buy or sell land, so the distinction is important. This 80/20 model of land management for the Kasepuhan has not changed since the Dutch

[18] Cinta Mekar focus group, July 2014
[19] Interview with Bapak Ugis Suganda, 10 October 2014

Colonial period, which had profound implications for their formal land claims in the years following independence for the new nation. With independence came the promise of more secure land rights for the Indonesian people; however, as it soon became clear, those rights were reserved for specific populations, specifically Muslim, urban, nonforest-dependent, and/or Javanese. Indigenous peoples were granted no secure land rights in the years following independence for Indonesia or in the subsequent New Order era.

**5.2 Independence and the New Order**

With the advent of World War Two, Dutch colonial rule gave way to the Japanese occupation in 1942 and 1943. After the end of the war, the Dutch pressed to regain control of the country, but the native population resisted and drafted its first Constitution in 1945 as the people prepared for independence. After widespread deforestation, destruction, and violence suffered during the Japanese occupation, the government of the newly independent Indonesia idealized the Dutch model to some degree and reverted to the Dutch approach to forests (Peluso 1992; Szczepanski 2002; Kubo 2008). Picking up the Dutch legacy, it continued to write into statutory law the "assumption that only the state (in this case, the government), which had the right to access and control, [and] was capable of protecting the uniqueness of nature or wildlife species" (Galudra *et al* 2008: 7). Consequently, the maps created during the colonial regime took on a definitive status, regardless of whether they were under dispute with the colonial government, such as the Gunung-Halimun Salak maps.

Using the Dutch colonial maps and the *Agrarische Wet* mentality, the newly independent Indonesian government laid claim to nearly 96% of forests in the island country. According to the 1945 Constitution, Article 33.3, control of "earth, soil, water and wealth contained therein" was granted to the national government of Indonesia to be used as it saw fit to contribute to the welfare of the general population, often at the expense of the

population residing on that land or water. In 1960, the government saw a need to more formally explain how customary law (with their usufruct rights) and the Constitution of 1945 might co-exist and issued the Basic Agrarian Law of 1960, which officially revoked the colonial era legislation of *Agrarische Wet* and attempted to clarify the standing of customary law communities with regard to the nation's Constitution. Yet, all clarifications issued in the law reminded Indonesians that the "entire territory of Indonesia is a unified motherland of the whole of the Indonesian people who are united as the Indonesian Nation."[20] *Adat* was to be recognized, but only if it was not in conflict with statutory laws or the national government's plans for the development of natural resources (Wright 2012). As Peluso explains, the Basic Agrarian Law of 1960 "both eliminated legal pluralism based on racial or indigenous categories of rightful access to land, and established a single, unitary land law that represented a 'classic' form of agrarian reform legislation for the times" (Peluso *et al* 2008: 381). The new Indonesian government had effectively made itself the landlord for communities across the archipelago (Peluso *et al* 2008).[21]

The recognition of land rights for Kasepuhan community members can be a confusing process. With many types of legal rights that can be applied, community members are often unsure of which type applies to their land claim. The confusing nature of "rights" through formal legal channels often leads community members to ignore formal processes through the state for obtaining a form of title and rather depend on customary law proceedings. Complicating the matter of land rights for the Kasepuhan was a program through the West Java provincial Land Agency that attempted to convert locally recognized use-rights to official use-right titles (called *Surat Ijin Menggarap* or SIM) for villagers during the 1960s

[20] Basic Agrarian Law of 1960, Chapter 1, Article 1.1

[21] In addition, the Forestry Law of 1967 further solidified the government's claim to control Indonesian land and 75% of land in the country that was not held under official private title passed into state control (Li, 2003). Forests, in particular, were granted to the national government through Law no. 41 of 1999 on Forestry and Law no. 5 of 1990 on Living Resources and their Ecosystem.

and 70s (Suganda 2009). These SIM titles granted villagers *hak garapan,* or usufruct rights with a certificate. Although granted by the provincial government, the current government refuses to acknowledge these SIM certificates (Galudra *et al* 2008). This process has further degraded local belief in the legitimacy of statutory proceedings.

Current statutory laws pertaining to land ownership and access are still confusing and difficult to navigate for Indonesia's customary law communities. Presently, at the far end of the continuum of land access in Indonesia are *hak milik,* which is a freehold title and the highest form of ownership in Indonesian law. *Hak garapan* or *hak pakai* are types of usufruct rights. They may be locally recognized and unofficial or official, as in the case of the SIM titles. If official, they are issued in 25-year time periods. *Hak garapan* are specifically usufruct rights given for forest areas. They can be transferred to official ownership rights, but the process is expensive and not always possible. There are also *hak guna usaha*, which are cultivation rights. These titles are granted for use of state-owned land and are for 25 or 35 years and extendable for another 25 years but are often used for plantation companies, not individuals. *Hak adat* is a customary law title and *hak ulayat* is usufruct rights specifically under customary law. Kasepuhan community members hold a mix of *hak garapan, hak ulayat* and unofficial, but locally recognized, usufruct rights, depending on their location with regards to the national park.

In addition to the official national park zones, there are three types of forest classifications under Kesepuhan adat: *leuweng tutupan* (closed/protected forest), *leuweng titipan* (entrusted forest), and *leuwung garapan* (use forest). Protected forests make up about 60% of the Kesepuhan's forest claims (Suganda, 2009). They are primarily off limits but may be entered with the permission of Abah. No cutting or collecting is allowed in the area and generally ceremonies and offerings must be completed before entering this zone. Entrusted forests make up about 20% of the Kesepuhan's forest claims (ibid). They are generally used

as a buffer zone, but community members may collect non-timber forest products. The last zone, use forests, makes up the final 20% of the community's forests (ibid). Agriculture, gardens, houses, community buildings, livestock, etc. are all located in this area. This is also referred to as use land, as it is technically no longer forest. The Kesepuhan villages, including Cinta Mekar, claim customary land tenure for these zones, which includes cultivation, building, hunting, gathering, and extraction rights, depending on the zone. These classifications are specific to the Kesepuhan Banten Kidul Abah Ugi followers and may vary in different regions of the park.

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

Land holdings under customary law and statutory law are both recognized by the Kasepuhan community. In reality, land holdings recognized by the statutory system are quite rare among the Kasepuhan. Only 2% of surveyed members of the Kasepuhan with access to land had usufruct rights through the statutory system. The other 88% stated they possessed usufruct rights through customary law and furthermore, that the access was clear and stable.

Only 4% stated that their customary land rights were not clear.[22] While full-title ownership is obviously more secure at the national level, some community members noted that they actually preferred to use customary law recognition. One Kasepuhan resident remarked that he preferred usufruct rights (*hak garapan)* because they "are easier to change ownership."[23] His use of the word "ownership" is telling of the community members' viewpoint on legitimized ownership. Customary law possession of Kasepuhan lands is not subordinate to statutory law for many community members but rather strengthened by its knowable nature. He went on to express concerns that "full ownership (*hak milik)* from the state might be too tightly controlled."[24] This type of sentiment has led to continued widespread dispossession, for when disputes occur, the government wins because,

> 'in the majority of cases under review, landholders have never registered their lands, because of both the cost and the bureaucratic procedures involved. Thus, the only proof of ownership or cultivation rights is the length of time they have been cultivating the land and their payment of all financial obligations' (Lucas 1992: 84).

This low rate of ownership or official usufruct rights through the statutory system coupled with low rates of success at challenging ownership should disputes arise has given way to meaningful land access coming, not from the statutory system, but rather from customary law - a dangerous situation for the Indonesian state's legal system, threatening their relevance among indigenous communities.

### 5.3 Modern Indonesian Forestry Law

The New Order (1967-1998) came with the ousting of Indonesian dictator Suharto through mass demonstrations and riots. Civil society called for the revision of many laws written during the dictator's "New Order" regime. Importantly, the overthrow of Suharto marked the

[22] Land use survey (n-96), July 2014, personal research
[23] Kasepuhan Cinta Mekar resident interview - September 2013
[24] Kasepuhan Cinta Mekar resident interview - September 2013

beginning of a transitional period known in Indonesia as *reformasi* which opened a space where civil society actors could focus on indigeneity as a motivation for land reform (Kubo 2008). Prior to 1998, there were few repercussions for forestry officials who chose to ignore the opinions and practices of local villagers when implementing management plans for national parks. But as Kubo notes, in the modern period: 'the state forest bureaucracy now faces difficulties in implementing state policies without consideration of local interests due to the transformation of the state-civil society relationship that took place upon the commencement of *reformasi*' (2008: 85). Prior to that, there had been a widespread homogenization of society, reinforced by *Pancasila*[25] – the philosophical foundation of the Indonesian state (Li 2003). Although introduced by Sukarno, Indonesia's first President, Suharto took *Pancasila*, and especially the idea of a "unified" population, to a new level by attempting to create a homogenous Indonesia in which there were few or no rights for being 'indigenous.'

To this day, Indonesia's government is hesitant to legally recognize *masyarakat adat* as 'indigenous people.' To do so would not only grant them rights that differ from those of the rest of the population, but also give them international protection, and the government desires neither of these outcomes. It has used a number of terms to refer to *masyarakat adat* but maintains the discourse that all people in Indonesia (apart from ethnic Chinese) are indigenous and none deserve rights over and above any other group (Szczepanski 2002; Li 2003). However, the government has attempted to incorporate "customary law" (*adat*) communities (rather than using the wording "indigenous" communities) into some of the legal framework concerning protected areas.

The Forestry Law of 1999, which claimed to take customary law into consideration,

[25] Belief in the one and only God; a just and civilized humanity; a unified Indonesia; democracy, led by the wisdom of the representatives of the people; and social justice for all Indonesians.

was in reality heavily contested by *adat* communities. According to Li, Indonesia's Forestry Law 1999 had a mission: "to recognize peoples' presence in forested areas while conceding nothing on the issue of rights, and to enmesh them more securely in state regulatory regimes" (2003: 397). The law allowed private ownership over forest lands, but power ultimately remained in the hands of the state because of the wording: "*adat* forest is state forest which lies within the lands of *adat* communities".[26] This is precisely the phrase that brought about the Constitutional Court review that resulted in the MK35 ruling.

The Forestry Law of 1999 was not the first forest law affecting forest-dependent customary law communities. It was, in fact, a revision of the earlier Forestry Law of 1967. Yet, this attempt, and others like it, to rewrite and cancel laws only gave way to a statutory system filled with overlapping and conflicting laws as power oscillated between the centralized government and the provinces. Currently, there are 42,000 national regulations in Indonesia (Marzuki 2017). In 2012, there were 632 national laws and regulations specific to forests that governed the lives of those living in Indonesia's political forests. Many of those 632 were conflicting, overlapping, and/or never implemented, and after a process of synchronization and harmonization in 2012, 208 of those were declared redundant or conflicting (Collier and Toha 2015). Yet, even the synchronization and harmonization process did nothing to fix the systemic problem of passing laws with no plans for implementation. Laws have routinely been passed in the country in the past decade, due to the expanding influence of international standards and expectations regarding the rights of indigenous peoples, but a lack of implementation plagues the system. This lack of implementation can be explained by three primary reasons: a lack of resources to facilitate implementation; pressure from international governing bodies to grant land rights to

[26] Indonesian Basic Forestry Law of 1999

indigenous communities, but no real conviction on the part of ruling judges; and/or the inability to implement due to pre-existing and conflicting laws. All three produce situations where a lack of implementation undermines the strength of a unified statutory legal system.

Within GHSNP, the Indonesian government imitated an early European model of conservation, implementing a 'fence-and-fine' approach or exclusion model, in which 'restrictive regulations are enforced because a human presence in tropical forests is incompatible with the conservation of biodiversity' (Kubo and Supriyanto 2010: 1786). However, a ministerial decree in 2004 (P.19-Menhut-II/2004), only one year after the GHSNP's change in status to a national park, changed who could legally become a partner in conservation efforts (Mulyana *et al* 2010). Whereas the idea of forest management earlier ended with government actors, the decree stipulated that local people and non-governmental organizations could also be formal partners in conservation efforts in Indonesia. Yet, again, a decree changes nothing for local residents if it is not enforced.

In 2005, the Ministry of Forestry officially switched to the 'participatory' approach in conservation. Following the decree, provisions were made to implement co-management plans in national parks in Indonesia. The government, however, retains all ownership rights and overall authority. Most importantly, communities can still be ordered to leave settlements within park boundaries at any time if it is seen to be in the country's best interests. The co-management approach assumes that equal power is held by the co-managers and each is respected equally within the process (Kubo 2008), but the reality of power dynamics between government agents and indigenous peoples in Indonesia means that this is often not the case within Indonesian national parks.

In GHSNP, a pilot project for co-management was set up in 2005, in order to determine local capacity for park management (Kubo 2008). A team, comprised of national park officers and donor-agency representatives, was asked to determine the best course of

action for gaining the trust of the local people. This may have been quite easy if representatives of the local communities had been included on the co-management 'team', but they were not, and therefore felt little ownership over the process. Without input, participation, and 'without critical reflection, there is a risk that the co-management process simply co-opts rural people for state bureaucracy' (Kubo 2008: 90). This was a feeling that many villagers expressed in the GHSNP case. While co-management has the possibility to positively affect *adat* communities living in conservation zones, in reality, the program was understaffed, underfinanced, and park officers found it difficult to change their approach to training, which was built on the colonial legacy (Kubo and Supriyanto 2010). The lack of funding or training for park officers or community members in co-management practices and expectations has resulted in little change taking place over the past decade to actually incorporate *adat*. In the pluralistic legal world of Indonesian law, "co-management" has become another law, making unkept promises to customary law communities.

For the Kasepuhan, co-management has looked very similar to previous approaches, granting just enough recognition of their rights to look promising to the outside world, but in reality respecting nothing of consequence about customary law to make a difference in their lives. For example, Kasepuhan Cinta Mekar is primarily reliant on one species of tree for their firewood needs, *rasamala (Altingia excelsa)*.[27] The tree grows between 500 and 1500m above sea level. It grows tall and straight and will often grow to 30m or more before branching. It is therefore seen as an excellent species for firewood because the village men do not have to deal with branches when chopping the tree into small pieces. It is also good for construction because of its growth pattern and because it is an extremely hard wood. A family group, consisting of 5-10 households, often shares one tree after it is felled.[28] These

[27] From other studies with Kasepuhan communities (Sodi *et al* 2010) it has been shown that dependence on this particular species varies with location and with access to primary growth forest areas.
[28] Land use survey (n-96), July 2014, personal research

are informal groups and often consist of sibling groups and aging parents. All households would have these connections as even outsiders that come to follow Abah Ugi and join the community must have adopted parents within the community.[29] While customary law allows the use of the tree for firewood and construction purposes, it is not allowed to be used in household construction. One respondent, upon questioning her about the ban, said that she believed that it was because the name translates as a type of bodily excretion, which is not proper for building a home which will surround and protect the family.[30] The ban on *rasamala* may also have to do with its distinct red coloring. The tree grows primarily in the park's core zones and it would be extremely noticeable to park officers if it were used in home construction. Despite the ban, the tree has still been a source of conflict between park officers and local communities.

During the infrequent visits by park officers, trips to the forest for firewood ceased for fear of repercussions. This, subsequently, also meant that if the visit was ill timed and the household ran out of firewood that they would need to borrow from a neighbor, friend, or relative; otherwise cooking also ceased. During one visit, a park officer visited a nearby micro-hydro development project. A villager had cut a *rasamala* tree and planed it to smooth, long boards for the building that would house the turbine. He then sold the wood to the NGO for use in the project. The park officer noticed the wood and came back later in the evening, with a truck and several other officers, demanding that the villagers pay a fine for cutting down the tree that obviously came from a core zone. When the villagers could produce no one that knew anything about the wood, where the NGO had obtained the wood, or even an NGO representative the officers said that they were taking the wood to sell in order to pay the villagers' fine. Tempers were still flaring the next day when I interviewed residents, but the

[29] Ibu Umi interview, Kasepuhan Cinta Mekar, June 2013 (I was not required to have "adopted parents" in the community as I had not officially joined the Kasepuhan but was rather living within the community.)
[30] Ibu Umi interview, Kasepuhan Cinta Mekar, June 2013

sentiment that was repeated throughout the evening was that the park officers were crooks who were going to sell the wood and pocket the money. They wanted to report the officers to the Ministry of Forestry and showed me digital photographs of the participating officers and gave the names of the ones they knew.[31] This event happened in 2013, eight years after the implementation of "participatory" co-management of the park. This one example is hardly representative of the success or failure of the program throughout the park, but it certainly encompassed the majority of the statements that I heard about the park officers during my time in the village, which is indicative of the community's perceptions of the program's success.

As is seen in this example, forestry issues in Indonesia often pit conservation advocates against shifting cultivators and forest-dependent people (Peluso et al. 2008; 383). This unfortunate dichotomy was established through the creation of political forests when "colonial lawmakers created "traditional" and "modern" spheres of resource management, over which they were the supreme authority" (Peluso and Vandergeest 2001: 793). Further complicating the issue for indigenous communities is the "characterization of certain racially defined groups as incapable of sedentary or commercial agriculture. This characterization exempted them from forest laws but also ignored their territorial claims" (Peluso and Vandergeest 2001: 793). This sort of thinking acknowledges the rights of forest-dependent groups, such as the *Kasepuhan*, but limits them to swidden agriculture and collection of forest resources for subsistence use only. Ministry of Forestry officials thereby use the legal system to deny the rights of indigenous peoples to use their available forest resources for income generation, such as the use of *Rasamala* trees in ventures such as the micro-hydro pumphouse rather than for firewood.

[31] Kasepuhan Cinta Mekar micro-hydro project interviews, October 2013

The community's food security and quality of life is directly linked to their ability to access and use their surrounding forests due to their dependence on forest resources for firewood for cooking fires, non-timber forest products, and agroforestry products. The passing of MK35 may positively affect the community's access to much needed resources, but this largely depends on the implementation of the ruling and the indigenous communities that are legally declared "indigenous" under national-level laws. There is general confusion about where one should go for any "official" word on particular laws (national, provincial, or district?). Laws often overlap and contradict laws at the other levels of governance. This is the case for permits, land titles, and even for recognition of indigeneity. In light of such confusion and frustration with the statutory system, it is understandable that customary law communities find stability and structure in their own form of governance, often ignoring (or attempting to the best of their ability to do so) the state's web of laws governing life in Indonesia's political forests.

## 6. Conclusion

Within Indonesia, the creation of "political forests" have necessitated the use of statutory law to allow, define, and provide boundaries to customary law. At the same time, this process also requires a degree of ambiguity within the statutory system in order to counter customary law – a process driven by individuals within the statutory system with self-interest at heart and a lack of coordination across many bureaucratic departments. Yet, this ambiguity has limits and there are consequences for a statutory system that profits from being complicated and difficult to understand for the general population. Rather than creating legal pluralism between the customary and the statutory systems, the confusing and conflicting nature of the statutory system has created legal pluralism within itself. This has allowed the growth of the customary system, perhaps even past a point where the statutory system feels comfortable, as

it allows indigenous communities to make claims of ownership and use on the very forests where the state was trying to limit such claims. In summary, obfuscation of the statutory system throughout the colonial, independence, New Order, and modern eras has occurred through compounding and conflicting national laws concerning forest use, indigeneity, land ownership, and resource access. This has allowed the growth, persistence, and legitimation of customary law for many forest-dependent indigenous groups, including the Kasepuhan.

This legitimization of customary law has a profound effect at the national and international level. Customary law communities, which are often considered indigenous at the international level, can use the legitimization of their social and legal systems to make claims for specific rights under the international provisions for the rights of indigenous peoples. They can use it to make claims to land ownership over Indonesia's political forests. However, these are long-term effects in a process that has spanned nearly 200 years. Has the tide turned for indigenous rights at a global level, giving rise to similar changes within Indonesia that are inevitable?

In the foreseeable future, I predict that there will continue to be little money or interest in Indonesia in implementing laws in a systematic manner. National laws will continue to be implemented and applied ad-hoc and to the greatest advantage of individuals or interested parties, especially government officials, national park officers, and regional representatives. "Contradictory, confusing and conflicting laws and regulations also provide great opportunity - not just for obfuscation - but also rents at multiple levels of governance." (Wardell 2015). Unfortunately, citizens do not have the luxury of deciding which statutory laws they want to follow, but rather have them imposed upon them by enterprising government representatives. They do, however, have a say in their own customary law system. And until the Indonesian state can provide a clear and understandable system of law where citizens feel they can be treated equally, customary law will remain an important, and

necessary, part of everyday life in the country's forests. This will be in spite of even the most promising of laws being passed, such as MK35.

## Paper 2: Technology for the Masses? Sidelining "Participation" in the Control Over Indigenous Counter Mapping Projects in Indonesia

### 1. Introduction

> "...while counter-mapping has some potential to transform the role of mapping from 'a science of princes' (Harley, 1988: 281), it is unlikely to become a 'science of the masses' simply because of the level of investment required by the kind of mapping with the potential to challenge the authority of other maps." (Peluso, 1995: 387).

With participatory mapping projects emerging in the 1990s in Indonesia, Peluso's study of participatory and counter-mapping projects in the country followed close behind the phenomenon.[32] The quote that starts this paper acknowledges the role that non-governmental organization staff played (and continue to play in many cases) in the process. Serving as neither the "princes" nor the "masses," staffers were the gatekeepers to the technology, data, and processes that participatory mapping encompasses. Indigenous communities were the "masses" to Peluso, unlikely to be able to harness the information necessary in order to map their territorial claims on their own terms. Yet, in the two decades since Peluso's analysis of counter-mapping projects and nearly three decades after the emergence of participatory mapping in Indonesia, the conditions surrounding mapping, technology, and access to information have changed considerably. This paper questions whether the process of counter-mapping has indeed descended into a "science of the masses" in the country. Is participation in projects led by NGOs simply no longer enough for indigenous communities? Throughout this paper, I explore the possibilities of community-driven counter-mapping efforts by indigenous communities themselves to determine why communities might desire community-led mapping, how they

[32] A participatory mapping project in the early 1990s in Long Uli, Malinau, North Kalimantan is often recognized as the first participatory mapping project in Indonesia.

might go about the process, and to what end they might be mapping their territorial claims.

Late in the afternoon on November 21, 2013, ten representatives from the indigenous group Kasepuhan Adat Banten Kidul[33] gathered in Bogor, Indonesia for a meeting with the leadership of the independent community organization The Indigenous Peoples' Alliance of the Archipelago (*Aliansi Masyarakat Adat Nusantara* or AMAN). AMAN is a national-level organization with a mission of representing indigenous peoples' issues in Indonesia. Over the past decade, they have been helping indigenous communities throughout the country, including the Kasepuhan[34], map their territorial claims. There is a total of 15 Kasepuhan groupings, each composed of a network of villages. Although technically all 15 of the Kasepuhan groupings work with AMAN through their participation in a Kasepuhan-wide governing body called the SABAKI,[35] there are greatly varying degrees of participation from the individual villages and Kasepuhan groupings. The topic of discussion for the aforementioned meeting centered around AMAN's tendency to work with one Kasepuhan grouping in particular – Kasepuhan Cisitu.[36]

As the meeting progressed, the conversation led to the topic of AMAN's connection to Cisitu. The gathered men[37] cautioned AMAN leadership that Cisitu does not represent their entire community and that by working primarily with Cisitu, they had alienated a large portion of the Kasepuhan community.[38] To highlight this statement, the absence of one Kasepuhan representative, in particular, spoke volumes. Kasepuhan Cinta Mekar has historically been

[33] The Kasepuhan are an indigenous peoples group in the West Java and Banten provinces of Indonesia, also known as the Sunda region of Indonesia.
[34] Throughout the paper, I will use the term Kasepuhan as both a term to describe the people of the indigenous group, Kasepuhan Adat Banten Kidul, as in "the Kasepuhan people," as well as a term to indicate the village networks, of which there are 15, within the Kasepuhan Adat Banten Kidul. This research focuses on two of those networks, the Kasepuhan Cinta Mekar and the Kasepuhan Cisitu.
[35] Technically it is the SABAKI that maintains membership in AMAN on behalf of the entire Kasepuhan community.
[36] Kasepuhan Cisitu includes around 7,949 individuals.
[37] All participants in the meeting were men.
[38] SABAKI meeting with AMAN leadership, August 2014

viewed by many community members as the central seat of customary law (*adat*) and their representative had chosen not to attend the meeting.[39] Cinta Mekar leadership had repeatedly voiced concerns during this research that AMAN's interest in mapping was to make money from gold mining in the community.[40] Whether or not this was the case was beside the point, as villagers certainly felt that this was true and it had severely impacted their participation in mapping projects with the NGO. In fact, Cinta Mekar had gone so far as to start producing a map of their territorial claims on their own, without the aid of any NGOs.

Cisitu and Cinta Mekar were at the opposite ends of the spectrum where participation was concerned. What caused two villages in the same indigenous peoples group to view an NGO and a project so differently? As local indigenous communities throughout Indonesia battle for recognized land rights resulting from a Constitutional Court ruling in 2013,[41] NGOs have intensified their effort at mapping the land claims of indigenous communities, inviting their participation in participatory mapping projects. In this paper, I explore the complicated relationships between NGOs and local community members during community mapping projects. Rather than focus on the outcome of these types of projects in ideal circumstances, I highlight the case of alternatives to participation when communities challenge the somewhat inherent paternalistic structure of "participatory" mapping projects. Overcoming hurdles in access, technological know-how, and direct communication with government actors, I argue that "participatory" or "counter" mapping with the assistance of outside actors is no longer the only route to territorial claims for indigenous groups.

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[39] Kasepuhan Cinta Mekar includes around 360 villages and 29,000 people. This Kasepuhan grouping is also the home to the *Sesepuh Giring*, who is the traditional leader of the whole Kasepuhan community, chosen by a prophecy from the ancestors.

[40] Cinta Mekar research, 2013-2014

[41] (MK35/PUU-X/2012, issued by the Indonesian Constitutional Court on May 16, 2013)

To explore this process, I examine the different experiences of indigenous communities with NGOs in a battle for state-recognized land rights in and bordering a national park area in Indonesia. While some communities have become empowered by their experience with national and regional NGOs (such as Cisitu) others have not had the same experience. This paper is not meant to denigrate the assistance of NGOs within the participatory/counter mapping process, but rather to raise awareness of the process by which their collective organization has turned their assistance from "ally" to "enforcer" for some communities. The responses to this process can range from withdrawal and isolation from NGO projects, compliance and submission to the NGOs' authority, or, as is the focus of this paper, the empowering of communities to take on project leadership, implementing mapping projects on their own, without NGO assistance. And due to the increase in availability and accessibility of mapping technology, indigenous territorial mapping is now possible without communities being invited to participate in NGO-sponsored mapping projects.

The paper is structured into three distinct sections exploring why NGO-led community mapping is no longer the only option for indigenous communities in Indonesia. I specifically focus on the questions of *why* this is happening, *how* it is possible, and *to what end.* The first section focuses on community involvement and awareness of conflicting NGO agendas. This has been an issue for the communities as long as multiple NGOs have been active in the area, as a united front among NGOs is difficult to maintain, especially considering their distinct missions. In the case of mapping projects, communities previously felt powerless to do anything other than choose to not participate. However, as communities feel more empowered to create maps on their own with the help of advancements in technology, higher levels of formal education among community members, and changing national level policies, they recognize that NGOs are

providing a service and when that service is not needed or wanted, they can fulfill their own needs.

The second section looks at how it is possible for the science of mapping to move from traditional gatekeepers of such technology and knowledge and be dispersed to the masses. I contend that this change is new in the past two decades. In Indonesia, counterfeit software, user friendly technology, increased access to digital technology, and expanded internet access have allowed communities to purchase and download the software needed to create geographic information systems (GIS) maps. While previously, communities needed training from experts in the field of cartography, an increase in accessible technology, training videos and information, online learning communities, educated community members, and so on, has allowed communities to produce maps that have a format and information sufficient to be officially accepted at national-level ministries.

The final section focuses on the incentives for indigenous communities in mapping their territorial claims, either along with an outside organization or on their own. In particular, I highlight Indonesia's 2012 switch to a "one-map" policy.[42] This decree has significantly played into community empowerment in mapping territorial claims and helps to answer the question of *to what end?* for these communities in producing their own cartographic representations of their territorial claims. Indonesia previously lacked one formal map for all geo-referenced territorial claims, including private and governmental. The "one-map" policy seeks to change this and create one centralized map that records all private land claims, government land claims, national park territory, business concessions, community-held lands, and indigenous community lands. The ambiguity created by multiple "official" maps opened up a space where NGOs could act as a

[42] Presidential Decree No. 4/2011

broker between different government ministries and local communities. However, with increasingly standardized practices and expectations, communities have a better idea of what is expected from their submitted land claims. They know where to submit the claims, in what format, and what information is needed. The one-map policy is decreasing the need for NGOs to serve as brokers in the process.

**2. Participation and Counter Mapping**

The starting point for this paper is the idea that maps are not objective renderings of the earth's geographic features in a given location, but rather inherently social and political expressions linked to a context of power (Cosgrove and Daniels 1988; Crampton & Krygier 2006; Harley 1988; Kain and Baigent 1992; Orlove 1991; Vandergeest and Peluso 1995; Wainwright and Bryan 2009). Critical cartography, which emerged in the late 1980s and early 1990s, challenged the idea that maps represented a geographic reality, instead asserting that maps *create* reality as the makers see and understand it (or wish it to be) (Pickles 1992). As Harley and Woodward explain, "maps are graphic representations that facilitate a spatial understanding of things, concepts, conditions, processes, or events in the human world" (187: xvi). By linking maps to knowledge and political power, maps are no longer understood as simple expressions of territory, but rather representations of current social, political and economic conditions (Crampton 2001; Harley 1989; Wood 1992). In this sense, maps created by government agencies, NGOs, or indigenous communities are released from the expectation that they be definitive renderings of space and are acknowledged to be a statement about how the mapmaker views the world and his/her relationship to other entities. In this sense, I am not as concerned with the statement being made within the map produced, but rather the process of making such a statement.

Just as important as the current context of mapmaking is the historicizing of map production. Drawing on the politics of mapping, one understands that they never were simple expressions of territory. Maps were overt expressions of the reality of the mapmaker, which has important consequences in the colonial context (Vandergeest 1996). Especially for indigenous groups in Indonesia, maps played an important role not only in dispossessing them of their land but also in the creation of indigenous groups, connected simply due to their geographic location. As McCarthy explains, "As a clearly defined *adat* community needed to be associated with a circumscribed territory within the Colonial schema, territorialization involved the mapping of the administrative territory (*Landschap*) under each 'territorial head.' By negotiating *landschap* boundaries with local groups and then fixing them on maps, the colonial government seems to have further fixed notions of local group identity" (McCarthy 2005: 64-65). Using McCarthy's explanation of colonial mapping of indigenous territory in Indonesia, we can come to understand how maps have played a significant role in how the Kasepuhan have come to be divided and grouped together as a community based on lines drawn by cartographers – an action that has implications for current community relations.

The colonial legacy of mapped spaces in Indonesia led to boundary disputes in the present as many indigenous land claims are still situated inside "state" forests. In addition, there are many overlapping claims among government entities, between the government and indigenous communities, and even among indigenous communities inhabiting lands in the same region. And, as many indigenous community members have lamented, indigenous populations are often criminalized for the use of "state" land and resources. To counter these processes, participatory mapping emerged in the country in the early 1990s. "If the map is a specific set of power-knowledge claims, then not only the state but others could make competing and equally

powerful claims" (Crampton & Krygier 2006: 12). By the early 2000s, considerable consolidation of efforts was taking place among Indonesian NGOs. The future looked bright for participatory mapping, but concerns were being raised about the unintended consequences of the movement.

One concern was that the process imposed a Western framework for "legitimate" map-making which denied other conceptions of space and territory (Walker & Peters 2001). Participatory mapping combines modern cartographic tools and techniques with input by community members to document territorial claims, land use, and/or the spatial knowledge of communities. It is used to assess social structures, available services and resources, natural resource use and availability, etc. A more specific form of participatory mapping is counter-mapping, which is participatory mapping used to "appropriate the state's *techniques* and *manner of representation* to bolster the legitimacy of 'customary' claims to resources" (Peluso 1995 p. 384; original emphasis). Counter-mapping offers a way for indigenous communities to legitimate their claims by using the tools of the master, in order to dismantle his own house. Yet, the discussion has turned to the risk that communities run by placing notions of "legitimacy" on Western cartographic traditions instead of presenting their own indigenous cartographies. Younger generations risk being indoctrinated into the idea that indigenous knowledge is subordinate to more established (and often Western) frameworks. Indeed, scholars have raised concerns that "counter-mapping may increase, rather than weaken, state control of indigenous lands" (Sletto 2009: 147).

In addition, I contend that questions remain about what one would consider "participation" in the participatory mapping process. Traditionally, community participation is seen as a counter to state-led development. But by giving the community a voice in the mapping

process, do practitioners inadvertently give way to deeply embedded and existing social structures? As White explains, "There is politics, therefore, not simply in the form and function of participation, but also in how it is represented in different quarters" (2011:60). Devolution of control to communities in general "is not devolution to the community as a whole. Rather, it gives powers over community resources to groups within the community with an economic interest in the forest or to individuals in positions of authority" (Ribot 2011:304). Does "participation" inherently mean allowing community members to participate in, but not to lead the process? Does participation come with preconceived notions and terms set by those in power and thereby setting allowable limits to community participation? We should not assume that participation is apolitical, unbiased, or uneven. Some might claim that some participation, however biased, is better than no participation at all, but I would argue otherwise. The politics of participation can make it quite damaging to the community.

Counter-mapping inherently presents a cadre of civil society organization staff, cartographers, and non-governmental organization staff as the gatekeepers to the knowledge, expertise, and tools needed to produce such territorial representations. Peluso discusses two main forms of counter-mapping, both of which involve outside actors entering indigenous territories and initiating movements for mapping of territorial claims. "Culture-specific geographic content is regularly mistranslated, misrepresented, or outright mistaken when represented in another culture's spatial knowledge system" (Louis, Johnson, and Pramono 2012: 77). Yet, despite these concerns, Peluso claims that "...while counter-mapping has some potential to transform the role of mapping from 'a science of princes,' it is unlikely to become a 'science of the masses' simply because of the level of investment required by the kind of mapping with the potential to challenge the authority of other maps." (Peluso, 1995: 387). However, I argue that in the two

decades since her study, access to technology has increased in such a way that, for many communities, power and control over their mapping projects without the need for outside actors is a very real possibility. To support this statement, this paper uses the case study of Kasepuhan Cinta Mekar as an analytical tool through which to think about the implications of "participation" and the relationships between NGOs and indigenous communities in counter-mapping projects. While some communities have found clear advantages in working with NGOs, for other communities the drawbacks outweigh the benefits. Yet, with the increase in access and availability of mapping technologies, communities such as Kasepuhan Cinta Mekar no longer feel powerless to create their own maps. They now have the opportunity to produce maps using state-recognized techniques, and, perhaps, most importantly, are viewed by state agencies as having legitimate indigenous claims to land.

**3. Data collection and analysis**

This research seeks to understand participation trends by indigenous peoples (self-identified) in "participatory mapping" or "counter mapping" projects in Indonesia. I collected qualitative data from members of the Kasepuhan Banten Kidul indigenous group of West Java and Banten provinces in Indonesia and with staff members of national and regional non-governmental organizations through structured and semi-structured interviews, focus groups, and participant observation over a period of twelve months in 2013-2015. Based on their self-identification as an indigenous community (whether formally recognized or not), I chose to work with four distinct Kasepuhan communities out of 15 Kasepuhan groupings.[43] In this particular study, I focus on the

[43] The total number of Kasepuhan groupings varies depending on the source. Fifteen is at the low end of estimates but is used here as a conservative number because in interviews with community members their ability to name individual Kasepuhan groupings waivered and began to differ after fifteen.

work I completed in two of those Kasepuhan networks (Cinta Mekar and Cisitu) due to their current or former participation with national or regional non-governmental organizations in Indonesia. I also took into consideration their location, being either in or near a forest and identifying in some way as a "forest-dependent" community. The Indonesian government has designated large parts of the Gunung Halimun Salak region as a National Park. The research area is primarily within and adjacent to Gunung Halimun Salak National Park. The park is primarily heavily forested with intermittent areas of swidden agriculture, forest gardens, and permanent wet rice agriculture. I chose the case study site because of the Kasepuhan group's high level of forest dependency; previous interactions with government and NGO development schemes; and, in particular, Kasepuhan Cisitu's involvement with a national-level independent community organization focused on indigenous rights. Through this connection, the organization (AMAN) requested Cisitu leadership to serve as a signatory to the MK35 review for the Indonesian Constitutional Court, which brought them to my attention in 2013. Cisitu leadership said the decision to join the case was not taken lightly, with at least nine community meetings and the input of over 100 community elders[44] taken into consideration before committing to AMAN's request.[45]

The Kasepuhan networks are 15 larger "Kasepuhans," each made up of many small villages. The Kasepuhan groupings, in general, vary in political power, *adat* power, isolation, and access to natural resources and profits from those resources. However, the two Kasepuhan in these case studies stood out as unique in a couple of ways. Kasepuhan Cisitu does have a relatively higher household income than other Kasepuhans due to gold mining on their territorial

[44] It was not specified whether those elders were male or female in the interview, but I have only ever witnessed one female in a leadership role with the Kasepuhan.
[45] Kasepuhan Cisitu focus group discussion, July 2014.

claims. They are also the most integrated with national level non-governmental organizations, yet there are Kasepuhans further east who are more integrated with regional level non-governmental organizations. Kasepuhan Cinta Mekar, while not the most powerful of the Kasepuhan groupings, economically or politically, holds an unusually high level of *adat* (customary law) power among the Kasepuhan network. I was originally introduced to the general Kasepuhan Banten Kidul community by a colleague in Jakarta. This colleague led a non-profit organization focused on micro-hydro development in Indonesia. She and her husband had worked with the Kasepuhan Cinta Mekar community since the mid-1980s through the process of building a micro-hydro system. Through this connection, I entered the community as a researcher of forest-dependent, indigenous communities, who was especially interested in land rights and access, food security, and natural resource use.

*Table 1.* **Selected Characteristics of the Selected Case Study Sites**

| | **Kasepuhan Cisitu** | **Kasepuhan Cinta Mekar** |
|---|---|---|
| **Members** | 7,949 individuals | 29,000 individuals |
| **Location** | Inside and adjacent to Gunung Halimun-Salak National Park; Lebak Regency; Banten Province | Inside and adjacent to Gunung Halimun-Salak National Park; Sukabumi Regency; West Java Province |
| **Harvest** | Both traditional one harvest per year (70% of population) for each type of rice (wet and dry), and those who harvest 2-3 times a year (30% of population) using wet-rice agriculture for production purposes and which the surplus will be sold. The second category is not considered part of the *Kasepuhan* way of life and is acknowledged as such. | Strictly one time a year, each, for wet-rice agriculture and rain-fed rice agriculture |
| **Primary language** | Indonesian and Sundanese (interviews and focus groups were conducted primarily in Indonesian) | Indonesian and Sundanese (interviews and focus groups were conducted primarily in Indonesian) |
| **Rice barns** | 4,018 | 11,000+ |
| **Rice Varieties grown (landrace)** | 19 | 59 in regular rotation; 167 documented |
| **Land claims (ha)** | 1500ha (900ha overlapping with GHSNP) (RMI estimate) – in a focus group meeting they claim around 12,000ha | 10,000ha+ |
| **Major *Adat* ceremonies** | 1) Prah-prahan atau sedekah bumi – alms to the earth | 1) Seren Taun – harvest festival |

| | | |
|---|---|---|
| | 2) Seren Taun – harvest festival<br>3) Pongokan – visiting the graves of the ancestors<br>4) Mipit amit | 2) Pongokan – visiting the graves of the ancestors<br>3) Nanyaran – welcome new harvest onto the home<br>4) Opat Belasa – fullmoon |
| ***Adat* leaders** | Hereditary; highest position chosen by wangsit (prophecy); *Baris Olot* leadership structure. Led by four *Olot* leaders. | Hereditary; highest position chosen by wangsit (prophecy) and resides in this village; Baris (k)olot leadership structure. Led by *Sesepuhan Girang* who resides in Cinta Mekar. |
| **Adat role** | torchbearers | Balance/Unite |
| **Status of participatory mapping project/s** | Involved in an official participatory mapping project with JKPP and AMAN | Invited to participate in official mapping project with AMAN but has chosen to attempt community mapping on their own under the guidance of their own customary law leader |

Analysis for this paper relied primarily on data collected through structured and semi-structured interviews with key informants from the Kasepuhan community, NGO staff, and government workers; focus group discussions with community members and NGO staff; and participant observation.[46] During the course of the research, I completed 308 structured (52) and semi-structured (256) interviews with community members and leaders. I completed nearly 85% of the interviews with members of Kasepuhan Cinta Mekar, including all of the semi-structured interviews. The reason for this being: the sheer number of members of the Kasepuhan Cinta Mekar grouping (nearly four times that of Kasepuhan Cisitu); my primary connection to the Kasepuhan community having ties to Kasepuhan Cinta Mekar; and the fact that for most of the research I resided in Kasepuhan Cinta Mekar, so I had more informal access to its members. This focus on Kasepuhan Cinta Mekar influenced the analysis of the data by forcing me to reflect on why a community, such as Kasepuhan Cinta Mekar, would choose to work outside the NGO sector as a way to make claims on natural resources. This paper, therefore, is an explicit

[46] I also gathered quantitative data with the same case-study group using a land tenure survey I developed specifically for the research with Kasepuhan community members (N 89 = 55 male and 34 female). Questions focused on the use of land, distance of travel to their land, frequency of visits, boundary disputes, and forest resources.

reflection on that process for Kasepuhan Cinta Mekar with information from Kasepuhan Cisitu used for comparison.

I identified participants for the initial interviews based on their role within the Kasepuhan system. For example, village leaders were initially identified for interviews and, through a referral system, I was able to conduct subsequent interviews with additional community members. I identified participants for semi-structured interviews based on their participation in Kasepuhan events and activities. Many of the villages complete necessary manual labor through weekly communal work parties. These work parties were a main source of semi-structured interviews. I would attend these work parties and interview community members. Occasionally, I would follow-up with participants at their homes with structured interviews. I completed interviews in Indonesian with participants who spoke Indonesian with assistance from a research assistant who spoke English, Indonesian, Balinese, and Sundanese. With the consent of those being interviewed, I recorded interviews as they took place. During data analysis, I transcribed and translated the recordings from the original language into English. For those participants who did not speak Indonesian, I relied on the real-time translation services of the research assistant. Participants who did not speak Indonesian were primarily over the age of 50 and had had little to no schooling and, therefore, no chance to formally learn the Indonesian language. They spoke the local language of Sundanese and were also largely illiterate. This was around 30% of participants in the study.

*Table 2. Key Informants*

| Name | Occupation/Title | Gender/Age | Organization/Kasepuhan grouping | Participation method |
|---|---|---|---|---|
| Mia Siscawati | Supervisory Board member | F/50s | RMI | Semi-structured interview |

| | | | | |
|---|---|---|---|---|
| Nia Ramdhaniaty | Executive Director | F/40s | RMI | Semi-structured interview |
| Deny Rahadian | Executive Director | M/50s | JKPP | Structured interview; NGO focus group |
| Yoyo Yogasmana | Public Relations chair/farmer | M/40s | Kasepuhan Cinta Mekar | Structured and semi-structured interviews; focus group participant |
| H.M. Okri | Olot – Customary law leader | M/60s | Kasepuhan Cisitu | Structured interview; focus group participant |
| Mahir Takaka | Deputy of Empowerment and Services | M/40s | AMAN | Structured interview |
| Ugi Sugriana Rakasiwi | Abah - Customary law leader | M/20s | Kasepuhan Cinta Mekar | Semi-structured interviews |

The assistant for the research was a 42-year-old female, fluent in Indonesian, Sundanese, English, and Javanese. She is ethnically Javanese and has a BA in agricultural education. She worked for four years for a participatory photography non-governmental organization called "Photo Voices" located in Bali, Indonesia. Through her work with the organization, she traveled to the study site. There, she met another individual, who was not a local but was living in the village. They were married and they both now live full time in the village as community members. Aside from her teaching responsibilities, she also assists the community head (Abah) in keeping track of village level finances. Because of her role in the community, some community members did not feel comfortable telling me some information with her present. Due to this, I also relied on a second research assistant, who was a 20-year-old male school teacher in Cinta Mekar village. He was a Kasepuhan community member since birth and was widely accepted by community members. He did not speak any English, so interviews, when he assisted, had to be done in Sundanese and Indonesian. Her language skills made the first research assistant

more desirable, but in some situations, the second research assistant was more effective.

I hosted twelve focus group meetings within the Kasepuhan villages and with staff members of involved NGOs.[47] The three focus groups conducted in Kasepuhan Cinta Mekar in 2014 and the two in Kasepuhan Cisitu, also in 2014, were particularly relevant to this research. A customary law leader of Kasepuhan Cisitu hosted the two focus groups held there in his own home. Both were mixed gender meetings of around 5-11 participants. In Kasepuhan Cinta Mekar, the village leader hosted two of the focus groups in his home, although he did not participate in either one. I printed physical printed signs with focus group information to post as a call for participants. Loudspeaker announcements broadcast the time, topic, and location of focus groups in central villages. These two methods, along with word of mouth, often meant that participation was limited to central villages as villagers in outer areas either did not hear of the groups or it was too far to travel. Open calls for participants in this manner generally resulted in 8-12 participants per group and largely male participants. The participants were a majority male with only occasional comments from female onlookers. Although I pushed for women's official participation, I respected the self-selection process and the community's choice of male participants based on what the community identified as their knowledge of current events and use of forest resources. One focus group was held in the home of my community host, who was the public relations representative of Kasepuhan Cinta Mekar, as appointed by the customary law leader of the community. This focus group included six participants, two females and four males. The only other group with official female participation was held in Kasepuhan Cisitu, where

[47] At the regional and national level, I also observed participants in two multi-day national level meetings on the topic of MK35 (one in Rangkasbitung, Banten and one in Jakarta); two strategic planning meetings coordinated across civil society organizations (Bogor and Jakarta); and five Kasepuhan level ruling council meetings (one in Cisungsang, one in Bogor, one in Sinar Resmi, two in Cinta Mekar). I followed up these observations with structured interviews with many of the participants at later dates.

three out of the eight participants were female. However, they left in the middle of the group discussion to go to the kitchen to prepare lunch for the group.

The topic of each meeting was different, based on the background and knowledge of participants and a participatory approach, but all questions and discussion centered around questions of MK/35, forest use and access, land tenure, land claims, and border disputes. One group focused explicitly on Cisitu's mapping project history and on the reception of the map by neighboring Kasepuhan groups. Another group focused on Cinta Mekar's understanding and reception to Cisitu's map of its territorial claims. I conducted all focus groups in Indonesian with participants who also occasionally commented in Sundanese. A translator assisted with focus groups when participants used Sundanese to reply or comment.

I also conducted five organizational-level focus groups with specific non-profit and community activist organizations that were operating in the Gunung Halimun-Salak region and had had interactions with the Kasepuhan Banten Kidul indigenous group. Two were hosted by the "Indigenous Peoples' Alliance of the Archipelago," or AMAN. I use the acronym AMAN to refer to the group throughout the paper. The "Indonesian Community Mapping Network," or JKPP, hosted another group. Finally, the "Indonesian Institute for Forest and Environment," or RMI, hosted another two groups. I initiated these focus groups through a staff contact at each organization. In each instance, I provided a few dates and times that I was available and then the staff member organized the details with the organization's staff members for participation. None of the organizations required advanced notice of my prepared questions, but they did request a general theme so they had an idea of who would be appropriate to invite for participation. An opportunity to select participants was not provided in any of the instances. The respective organization chose participants based on their perceived knowledge of the general topic though

that did not always equate to active participation.

In addition, I spent countless hours in participant observation with community members as they conducted their lives. I assisted with rice planting, harvest, rice processing, cooking, prepping for village festivals, serving food, collecting taxes, selling makeup, wandering around the forests of West Java and Banten provinces, picking vegetables, making rattan crafts, and collecting firewood, among other activities. I sampled by convenience during participant observation. I asked community members, of all genders and social standing, who were participating or observing community activities and ceremonies if they would be interested in discussing the activity or ceremony. While there were, naturally, some declines, most agreed and many participated in follow-up interviews or surveys at a later date.

Upon return from the field, I transcribed and translated the structured and semi-structured interviews and focus group interview recordings. In particular, for this paper, I selected interviews and statements that focused on participation, mapping, AMAN, RMI, JKPP, gold mining, and territorial claims for further analysis. Using these documents, I coded the data in terms specific to the research, including the general theme of Kasepuhan claims to indigenous identity. I found that these were primarily legal, cultural, and technological in nature. All claims relating to the use of technology to legitimize claims formed the basis of this paper. I divided the other forms of claims-making (legal and cultural) into other papers.

## 4. Results

In 2010, the village of Cisitu finished a participatory mapping project with the help of the NGOs AMAN and JKPP. This map has been the source of inter-Kasepuhan conflict since it was finalized due to disagreements about the territorial boundaries for the Kasepuhan networks

involved. These disputed boundaries would change land use, land access, access and proceeds from gold mining, and access and use of timber and other natural resources. During a focus group interview with members of the Cisitu community, they claimed that the map was finalized and legal and that it was not contested by the other Kasepuhans as the other leaders all signed to validate the map.[48] However, the map, which is proudly displayed in a glass frame in the front of the room where we were speaking, has remained a source of conflict in the region, embodying political and social conflicts over gold, land access, land use, and timber/natural resources that remain unresolved.

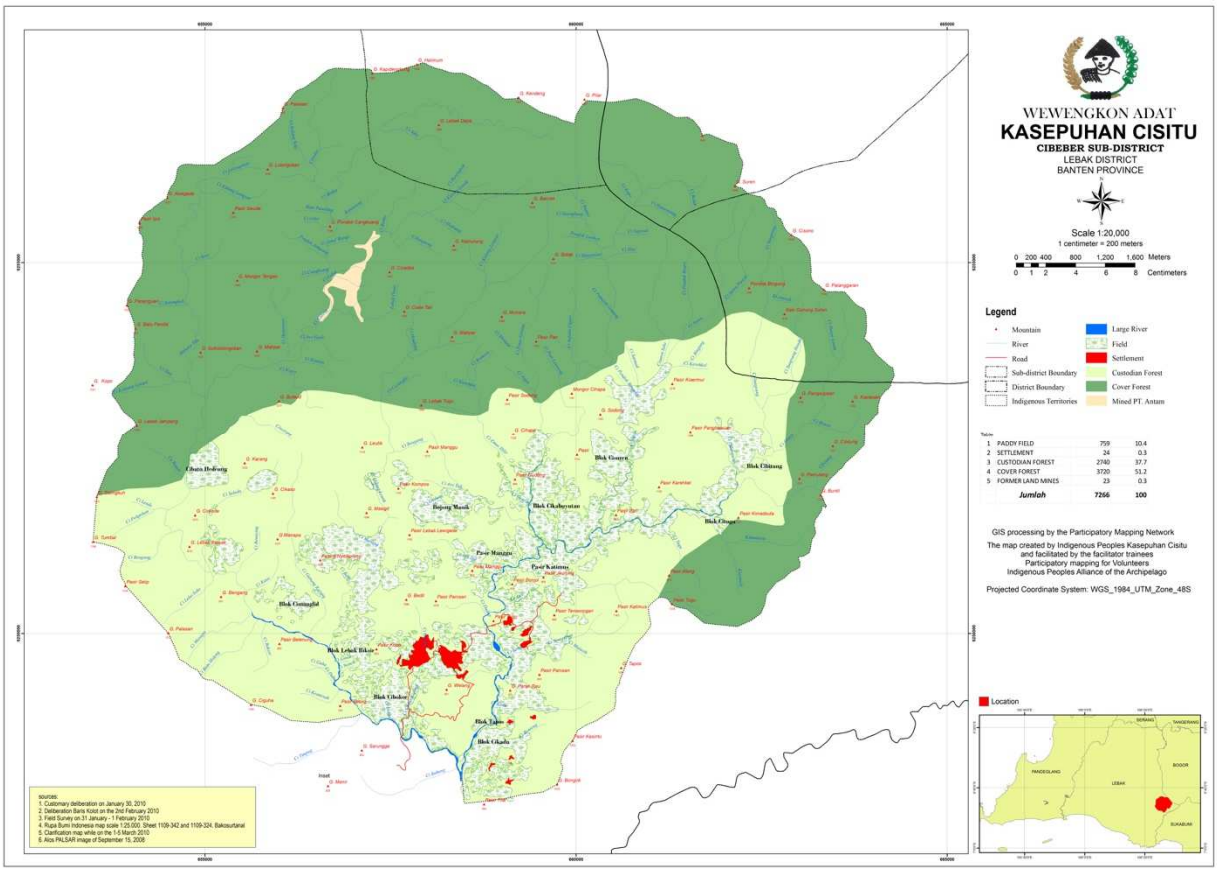


*Figure 4. Contested Map of Cisitu land claims; AMAN and JKPP, with "custodian forest" denoting forests used for resources by the Kasepuhan and "cover forest" denoting forests protected by the Kasepuhan but not used due to restrictions in place through customary law.*

[48] Cisitu focus group, July 2014

Complicating the matter, or possibly the source of the conflict, is the artisanal and small-scale gold mining (ASGM) taking place on the land claimed by Cisitu. The large trucks transporting rocks out of the gold mine on Cisitu's land claim must travel from an area claimed and controlled by Cisitu through the territory of neighboring village Cisungsang in order to access the main road. The two villages worked out a deal where the owner of the trucks[49] paid 10% of the value of the truck's contents. Cisitu is a "little brother" village of Cisungsang, as it broke away from the former, albeit nearly 300 years ago. In a society where even the language is based on hierarchy, one can understand how a "break-away" village daring to demand a lower percentage or to do away with the tax altogether, might be seen as offensive. However, Cisitu has done just that and the fallout from these demands has been significant. The land claims are contested. The map is contested. The gold profits are contested. Kasepuhan leaders blame each other. They blame the NGOs involved. The NGOs blame each other. And the result of the conflict has caused one Kasepuhan network, Kasepuhan Cinta Mekar, to lose trust in the NGOs and, in turn, to keep their mapping efforts secret from the NGOs and from neighboring villages. The following discussion is centered around three significant changes happening in the counter-mapping movement in the region in the past two decades. These changes (NGO and community conflict, increased availability of mapping technology, and Indonesia's One-Map policy) are significant because they make it possible to conceive of counter-mapping projects being led by community leaders, rather than by NGO staffers, such as in the case of Cinta Mekar.

The results of these mapping efforts are far from benign. There are serious implications associated with territorial claims. With the Constitutional Court ruling in 2013 (MK35/2012) and

[49] son of a Cisitu customary law leader

with land rights being granted to nine indigenous groups at the end of 2016 through Presidential Decree, it has become clear that there are very real land rights on the line. There are benefits to being involved in the process, but whether that requires the aid of NGOs in a situation where a community has lost trust in their motives remains to be seen. These mapping efforts are not simply to make a statement of territorial claims, but rather a deliberate effort to put forth claims for review by the Indonesian government for a legal hand-over of lands currently "owned" by the state.[50] Although Kasepuhan Cisitu has worked with an outside organization in the past, it is not the only way to produce territorial maps. The following analysis explores *why* communities might not want to work with outside organizations, especially focusing on the dynamics of organizational conflict within Gunung Halimun Salak National Park, where the Kasepuhan people reside. The next section highlights *how* a community has proceeded on its own and what advancements in technology availability and accessibility have happened over the past two decades in Indonesia to make this possible. The final section delves into the question of "*to what end?"* these communities are mapping their territorial claims. The "one-map" policy is detailed and how it could possibly lead to official land rights for indigenous communities in Indonesia.

### 4.1. NGOs not always "allies"

Important to this research is the realization that NGOs are inherently biased organizations, driven by an established mission, vision, and the motives of individual leaders. This is true for the NGOs working with the Kasepuhan, with a plethora of NGO staff members visiting regularly, all with their own understanding of the goals and motives of their respective organizations. The

[50] Three hundred years of Dutch colonialism in Indonesia has left a large majority (estimated at around 70%) of forests in Indonesia being claimed by the Indonesian state, regardless of local land claims, settlements, or historical land use.

three primary NGOs working with the Kasepuhan in Banten and West Java provinces are "Indigenous Peoples' Alliance of the Archipelago" (AMAN), the "Indonesian Community Mapping Network" (JKPP), and "The Indonesian Institute for Forest and Environment" (RMI). RMI is a regional NGO while both JKPP and AMAN are national organizations. AMAN is the largest and most connected to international donors and other organizations. Each organization has its own specific focus, but often they work together if their current projects align. RMI is focused on environmental education. JKPP is focused on mapping efforts and land rights. AMAN's focus is indigenous rights. The Kasepuhan's struggle for land rights in the Gunung-Halimun National Park is a triangulation of the interests of these three NGOs and all have expressed an interest in working with the communities of Banten Kidul. However, they are distinct organizations and while collaboration on a specific project might make sense at a specific moment in time, their reasons for pursuing the project are very different and their end goals can be noticeably different as well. In the case of the disputed map, they all have very different takes on why the conflict arose and who might be to blame. They also disagree on how to move forward to resolve the conflict. This disagreement amongst the NGOs has not gone unnoticed by the community leaders. One result was the meeting of the village leaders with AMAN noted at the beginning of this paper and another is the Cinta Mekar efforts to map their land boundaries on their own.

#### 4.1.1. RMI

RMI stands for "*Rimbawan Muda Indonesia*" or the English title they use for the organization is "The Indonesian Institute for Forest and Environment". It was founded in September 1992 and is based in Bogor, Indonesia. They work primarily in the Jawa Barat and Banten regions, making it

the most regionally-scaled of the NGOs profiled in this research. From their website and publicity materials, "RMI aims to develop the conservation of natural resources, through studies and action programs related to the protection, preservation and utilization of natural resources for welfare" (RMI 2017). They are currently working with 13 villages and 10 Kasepuhan communities in the Banten and West Java region.

In October 2014, I interviewed Mia Siscawati, Ph.D., a supervisory board member about the situation in Gunung Halimun Salak National Park. Dr. Siscawati received her Ph.D. in Anthropology from the University of Washington in 2012 and her dissertation focused on the community forestry movement in Indonesia. She is now a professor at the University of Indonesia. Also present was Nia Ramdhaniaty, who was the Executive Director of RMI at the time. When interviewed, both Dr. Siscawati and Ms. Ramdhaniaty were aware of the conflict between Cisitu and the other Kasepuhan communities. Ms. Ramdhaniaty noted that "Many people thought that the JKPP mapping in Cisitu was just a mapping exercise for the younger members of AMAN and the community members. Then suddenly it was being used as the formal map."[51] They both agreed that they must always remind the other NGOs that there are many divisions between community members, such as elite and non-elite, elite women and non-elite women, gender divisions, class divisions, and so on within the Kasepuhan. These divisions can produce entirely different maps of the same geographic region.

RMI recognized early on the importance of participatory mapping with the Kasepuhan communities. They began as an official organization in 1998, just two years after the "Indonesian Community Mapping Network" (JKPP). They have completed their own participatory mapping projects with several of the Kasepuhan communities, including Cirompang, Citorek, Cibedug,

[51] Nia Ramdhaniaty interview, October 2014

and Karang. Dr. Siscawati claims that they are unique in the process because they include women in the participatory mapping project. "The women are very cautious about the boundaries. The men just say, 'let's map' and they go quickly to try to get recognition quicker. The women are much slower and take their time in the process".[52] In consideration for their wider scope in participation than other organizations, RMI generally allocates two years for each mapping project.

Because the NGO is primarily focused on the environment, they tend to view the Kasepuhan as a whole rather than parts of a whole. This comes from viewing the ecosystem where the Kasepuhan reside rather than the district lines surrounding the communities. In a reflection of this approach, they were the group that encouraged the Kasepuhan community to come together as a single entity.[53] The product of this was the formation of the SABAKI council, which was the group meeting with AMAN in the introduction to this paper. However, logistically, this view of the Kasepuhan community as one group is difficult due to the three districts where they now reside. Once again, lines on a map have recreated divisions when they were just starting to come together.

As for the mining, Siscawati says RMI is not getting involved. She explains the "green gold mining" approach of AMAN but says that she does not think such a thing exists.[54] RMI's official stance is that ASGM is dangerous due to mine collapse[55] and chemical use, such as mercury and cyanide; however, they feel powerless to stop the proliferation. "Our position is to facilitate awareness – better to help them say no to gold mining, but it is impossible".[56] ASGM

[52] Mia Siscawati interview, October 2014
[53] Mia Siscawati interview, October 2014
[54] Mia Siscawati interview, October 2014
[55] Mining is often done by community members in mine shafts abandoned by large corporations or by gathering tailings and transporting them to their homes for processing with mercury.
[56] Mia Siscawati interview, October 2014

brings in money to impoverished communities and the appeal is understandable, but Ramdhaniaty says that the money also brings violence to the household.[57] They are currently implementing programming focused on empowering women to stop the violence.

Yet, RMI has not always distanced itself from AMAN. In 2010, RMI assisted AMAN in arranging a celebration of World Indigenous Peoples' day, which took place on July 31 and August 1 in Kasepuhan Cinta Mekar. RMI arranged to have some Kasepuhan women perform a traditional rice threshing display using a long hollowed out tree trunk known as a "*lisung*". The celebration was meant to highlight the farming lifestyle of the many indigenous peoples in Indonesia and encourage solidarity in pushing for Indonesia to implement the United Nation's Declaration of the Rights of Indigenous Peoples, which was passed three years earlier. However, the villagers of Cinta Mekar remember the celebration much differently than AMAN and RMI, with one villager stating that it was "weird" and that the NGOs interrupted the village's annual harvest festival when they brought out t-shirts, banners, and flags.[58] They claim that they were not made aware of the intentions of AMAN and RMI and felt like they were being used to advance the NGOs' agenda.[59]

### 4.1.2. Indonesian Community Mapping Network - JKPP

JKPP (Indonesian Community Mapping Network) was founded just before RMI in 1996. It was born of national-level efforts to further participatory mapping in the country and is a national-level NGO that has worked regionally with the Kasepuhan. They focus on participatory mapping, spatial conflict advocacy, and community land rights. Originally JKPP was a support

[57] Nia Ramdhaniaty interview, October 2014
[58] Yoyo Yogasmana interview, August 2014
[59] Abah Ugi interview, Aug 2014

group for other NGOs making maps, but they now focus more on facilitating the maps directly with the communities. However, as Executive Director Deny Rahadian explains, "For implementation, we can't work alone. We have to work with other organizations."[60] Although they do not focus solely on indigenous land claims, one of the main organizations that they have worked with is AMAN, which does focus exclusively on indigenous rights. They are based in Bogor, Indonesia. However, they have worked to set up service centers in the field so that communities do not have to travel to Bogor to participate. The mapping teams for JKPP use open-source Quantum GIS as well as ArcGIS software. They have 12 types of handheld GPS units that they can use for the collecting of geospatial information, called waypoints. The gathering of this information averages about two months for JKPP, which is a much shorter process than RMI's.

The organization offers two types of training; one for facilitators and one for the community. Facilitator training includes learning how to facilitate participatory mapping, analysis of data, and training in the use of GIS software. Community training includes information on how to collect data and how to hand draw maps. However, as Abah Ugi of Cinta Mekar commented in an interview these trainings are all focused on training outside actors to facilitate participatory mapping within the community.[61] They are never focused on training the community to lead the process. Rahadian said that he originally had the idea that the communities could do it themselves with training, but over time he realized that they needed more help.[62] Part of the reason for this, Rahadian explains, is that many indigenous communities have a culture of oral documentation, not written, and mapping is a "new" way to ensure that the

[60] Deny Rahadian, interview, October 2014
[61] Abah Ugi interview, August 2014
[62] Deny Rahadian, interview, October 2014

information is not lost.[63] Kasepuhan community members emphasized their oral tradition many times throughout the research.[64]

Rahadian insists that the mapping is not a top-down approach as the process includes many opportunities for the community's response. He explains that the original information is gathered by the community in the form of waypoints, discussion groups are held, and the data is verified with the community several times throughout the process. Once completed, the maps are given to the community and copies are held at the JKPP office. This process, Rahadian says, is the difference between "community mapping" and "participatory mapping".[65] JKPP has chosen to use the term "participatory mapping" in their organizational practices. This choice was made soon after the organization's founding, when one of the founders felt that "community mapping" was too difficult to translate into Indonesian and that, in general, the term "participatory mapping" felt more "inclusive".[66] Yet, the deliberate choice of terms leaves one to wonder if "participatory mapping" is meant to be more inclusive of the community or of the NGO.

Kasepuhan Cisitu was a community that JKPP worked with soon after the organization's founding. Rahadian says that he is aware of the conflict among the Kasepuhan community that stems from the Cisitu map, but rather than defend the map or the community, he corroborates RMI's story that the map was created through a training exercise. He claims that they were introduced to Cisitu leaders through AMAN and that they agreed to the mapping project thinking that it was a training exercise for the JKPP and AMAN staff. He shakes his head and says that it was such a long time ago and that, "Once the maps are made and the leaders sign, we can't

[63] Deny Rahadian, interview, October 2014
[64] Cinta Mekar focus group, July 2014
[65] Deny Rahadian, interview, October 2014
[66] Deny Rahadian, interview, October 2014

always control how the maps are used".[67] However, he says that he does think that the conflict has to do with the mining in the area.

While the organization's collaboration with Cisitu was long ago, their work with Cinta Mekar has been more recent. In 2011-2012, they worked with the community doing a few trainings, but they have not been back since. Rahadian admits that this is an unusually long period between the trainings and the result and says that this is because the "rituals" have not yet been completed and that without those they do not have permission to work with the community.[68] He is not aware of any mapping efforts in Cinta Mekar and Cinta Mekar leadership is determined to keep it this way. In 2014, the community renewed efforts to gain training through JKPP and AMAN, but they, again, did not mention any of their efforts to produce a map on their own.

### 4.1.3. Aliansi Masyarakat Adat Nusantara -AMAN

Formed in 1999, The Indigenous Peoples' Alliance of the Archipelago (AMAN) is a national-level independent organization comprised of indigenous communities in Indonesia. The mission statement of the organization focuses on the "realization of justice and prosperity in Indigenous people's lives; political sovereignty, *economic independence*, and cultural dignity for Indigenous peoples."[69] Economic independence is a main priority for the organization and the sovereignty of resources within the territory claimed by indigenous peoples drives much of their activities. AMAN wants communities to be able to achieve economic independence and the formalizing of land ownership is a key component of this goal. The result is the determination over natural

[67] Deny Rahadian, interview, October 2014
[68] Deny Rahadian, interview, October 2014
[69] AMAN mission statement, (emphasis my own)

resources on those lands, such as gold mining in the case of Cisitu.

Leading AMAN's drive for resource sovereignty among Indonesia's indigenous communities for the past ten years has been Abdon Nababan. He served as the Secretary General of the organization for two five-year terms and in the summer of 2017 turned over leadership to Rukka Sombolinggi. Nababan announced his candidacy for the governor of North Sumatra soon after he left AMAN. The election for leadership of the resource-rich region will take place in 2018. As it was with AMAN, one of Nababan's goals for the region is resource sovereignty. "We have no problem with development," Nababan said in a March 2017 interview with Mongabay, an international environment and conservation website. "The important thing is who controls the development: indigenous values or the greedy capitalist from Washington? If the community controls the model of development, I think no problems. They can grow themselves with development. But now development eats them. Because development is controlled by someone [else?]" (Mongabay 2017). Siscawati of RMI says she believes that a large part of why AMAN was an early supporter of Cisitu was their connection to gold claims, which could be used for ASGM. "But it was too quick. They didn't think enough about the social impacts and the consequences".[70] In fact, Kasepuhan members often cited conflict with the National Park officers over natural resources as one of the biggest problems facing the community.[71]

Yet, AMAN's drive for indigenous communities to benefit from their natural resources has hindered their relationship with Cinta Mekar. One interview subject claimed that "AMAN is only interested in gold" and also claimed that AMAN chose to work with Cisitu because they

[70] Mia Siscawati interview, October 2014

[71] Kasepuhan research (2013-2015) land tenure survey. Those mentioning such conflict were a 22 male, 60 male, 37 male, 40 male, 25 male, 60 male, 20 female, 27 female, 18 female, 20 female, and 64 female. Only other noted problems were lack of official land ownership and illegal logging by outsiders.

had the highest gold mining production among the Kasepuhan.[72] AMAN, however, refutes this, with Mahir Takaka, Director of Economic, Social and Cultural Programmes, saying that it is only one small gold mine, that it is a side-project, and that Cisitu approached them for assistance in making the mine more profitable and safe.[73] For their part, AMAN has assisted Cisitu in a switch to a process they call "community green gold mining" (CGGM).

Citing profits being stolen by outside corporations, deaths by landslides and cave-ins, and mercury poisoning, AMAN helped Cisitu form Cisitu Mulya Jaya, a community gold cooperative.[74] However, the "green" part of the CGGM for AMAN has more to do with the belief that indigenous peoples inherently take better care of their natural resources than outside corporations. Aside from implementing some new safety guidelines for miners and the disposal of waste materials, "greening" the ASGM activities has been limited. During a focus group interview with the Cisitu community members, they expressed their understanding of "green" gold mining as switching from mercury to cyanide in the isolation of the gold.[75] Yet, both of the substances are highly toxic and damaging to both human health and the environment. Cyanide does break down quicker than mercury, but both are highly toxic, can cause poisoning in humans, and are known to have long-term neurological effects (Hilson & Monhemius 2006).

In a 2012 document published by AMAN, they claim that the long-term goals of CGGM are, in part, to collect information on AMAN member communities that have gold mining potential, to develop an Economic Institute of Indigenous Peoples to manage and distribute the profits from gold mining, and to build a broader network of indigenous people in Indonesia to manage gold mining on indigenous lands (AMAN 2012). Indeed, while Cisitu earns profits from

[72] Yoyo Yogasmana interview, August 2014
[73] Mahir Takaka, personal interview, August 2014
[74] Mahir Takaka, personal interview, August 2014
[75] Cisitu focus group, July 2014

their ASGM, Takaka stated that they are still "preparing Cisitu to take over the control of the mining operation and cooperative" by having them learn to take over the enforcement of safety measures and obtain the necessary government permits on their own.[76]

As for their mapping efforts, AMAN (at the time of research) had already sent 424 maps of indigenous land claims to the government on the behalf of community members, which totaled more than 2.6 million hectares.[77] In December 2016, in part because of the efforts of AMAN, the Indonesian government returned 13,100 ha of land to nine indigenous communities in the country, including 486 ha to Kasepuhan Karang.[78] Takaka says that they will continue to assist communities with their mapping efforts, but only if their help is desired. He claims that AMAN helped Cinta Mekar in the past with their mapping efforts, but they have not with their recent mapping project, implying that AMAN is aware of their current project. He says that some communities are a bit more secretive in mapping their territory and that they are respectful of that. "We can still help other communities".[79]

The difference in opinion amongst NGOs, such as AMAN, RMI, and JKPP in this case, is not a new phenomenon in the Kasepuhan region. And as AMAN staff has indicated, the organization will continue to help those communities that desire their help, as will JKPP, RMI, and the other NGOs operating in the region. So, while the circumstances of *why* indigenous communities have decided to break with NGO partnerships have stayed somewhat similar (such as mission disagreement; outsider/insider differences; profit sharing disagreements, and so on) this paper now turns to the new and unique response of community-led mapping and the technological advancements that have made this turn possible.

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[76] Mahir Takaka, personal interview, August 2014
[77] Mahir Takaka, personal interview, August 2014
[78] Presidential decree, December 2016.
[79] Mahir Takaka, personal interview, August 2014

### 4.2. Technological advancements enabling community level counter-mapping

Modern technology started entering Cinta Mekar in the early 1980s. It began first with radio and continued with television but was not widespread through the community until the completion of a micro-hydro project in 1997 which provided electricity to the 330 households in the central village of Cinta Mekar.[80] The community now has their own radio (Swara Cinta Mekar, est. 2004) and television (CIGA TV, est. 2008) stations, run by villager Yoyo Yogasmana and a small team of teen boys whom he trains to operate the video and digital still cameras and the broadcasting equipment. As is common in the country, the radio station has operated without a license since its founding, but in March 2018 Yoyo traveled to the city of Bandung (the capital city of West Java province) to apply for an operating license for the radio station.[81] The television station is mostly filled with interviews with residents and documentation of *adat* ceremonies. They have recently added drone equipment and have been airing drone captured footage of Cinta Mekar lands and ceremonies. Access to internet material such as google earth and YouTube instructional videos is possible through the internet brought to the village in 2009 through the Ministry of Communication and Information's Universal Service Obligation (USO) program. Yet, internet access is limited to a small area, including the communal house *Imah Gede*, at the center of the village. Despite some limitations, all these technological changes have combined to provide an outlet for Cinta Mekar residents' dissatisfaction with NGO involvement in their community. Rather than being limited to a response of non-participation, due to these significant technological changes in the past two decades, Kasepuhan Cinta Mekar now feels

[80] The turbine for the micro-hydro project is aging and it is now estimated that it only provides electricity to around 10-20% of the Cinta Mekar community.
[81] Yoyo Yogasmana interview, April 2018

empowered to act on their own. These changes include two main areas discussed in the following sections - an increase in the technology available to community members and significant advancements in the accessibility of technology for end-users.

### 4.2.1. Availability of Technology

When residents of Cinta Mekar expressed discontent with the mapping processes carried out by AMAN, JKPP, and RMI in the area and refused to participate in more "participatory mapping" projects, customary law leader Ugi Sugriana Rakasiwi (Abah Ugi) wondered if there was another option. In an interview, Abah Ugi also revealed that the community has several monoliths[82] in the region that are historically used as markers for territorial claims. He explained that these monoliths, per his understanding of the Kasepuhan history, are nearly 3000 years old. There are three or four of them in the Kasepuhan territory around Gunung Halimun Salak National Park. There is no writing on them, but he is not sure if there ever was, or if it is because they are in the forest and the weather has worn away the carvings, or if parts of the stonework had fallen down or off. They are pyramid-shaped, which he claimed is similar to the Aztec created pyramids.[83] He also claimed that the government does not know about them. There is one national park officer who does know about them, but only because Abah told him. But the officer does not know all the information about them. They are deep in the forest area, and Abah Ugi fears that outsiders, including tourists and NGOs, will learn of their location through the mapping process and reveal them to the wider public. Citing the possible corruption of these spiritual places as one of his primary fears, as well as community discontent with existing projects, Abah Ugi initiated a

[82] Large single standing stone serving as a monument or, as in this case, a territorial marker.
[83] Abah Ugi, during the December 2014 interview, was very interested in the connections between the Aztecs and his own culture and expressed interest in learning more about the (potentially) shared history between his own culture and the Aztecs.

mapping project on his own to map the community's territorial claims – a counter to the counter-mapping process.[84] He hoped that by having control over the process, he, and thereby the community, could determine what is detailed on the map and what is left out.[85]

In their search for the tools needed to complete their community-led mapping project, Abah Ugi turned to the aging concrete behemoth of Ratu Plaza shopping mall, located in Gelora Bung Karno, Tanah Abang, Central Jakarta. Ratu Plaza was one of the first shopping malls built in Indonesia. It had its heyday in the 1980s after opening, but soon succumbed to the bigger, newer, and more centrally-located malls being built in the 1990s during an era of deregulation. It is now 6000$m^2$ of aging retail space. However, despite losing its footing as a luxury mall, Ratu Plaza has found its niche. It is five floors of vendors and small shops specializing in technology. One can get a computer repaired, find an elusive camera part, or buy the latest season of *Game of Thrones*. But perhaps most important for this research is the row upon row of vendors specializing in pirated computer software, including a variety of desktop (GIS) software used for making and using maps. Pirated software prices depend on the particular program being purchased, but average around Rp.50,000.[86] One, in particular, ArcGIS by Esri, costs $7,000 USD for the Standard Desktop version. The Basic version can be had for $3,500 USD. With the average Kasepuhan household subsisting on less than $40 USD a month[87] one can understand why pirated software is attractive. Intellectual property rights, whether morally and legally correct, fall by the wayside when more immediate rights to agricultural and forest land present themselves.

The handheld units used to gather global positioning satellite (GPS) data needed to input

[84] Ugi Sugriana Rakasiwi interview, July 2014
[85] Ugi Sugriana Rakasiwi interview, July 2014
[86] $3.45 USD
[87] Kasepuhan research, 2013-2015

into the GIS software are now smaller and cheaper than ever before, making them more accessible to communities even in remote regions of Indonesia. These units have decreased significantly in price since they were introduced to the general public in 1989. Units can be bought for as little as $100 USD now, which is far from the original $2,900 USD price tag. The community of Cisitu had access to handheld GPS units through their connection to JKPP, which primarily uses Garmin products. However, the Cinta Mekar community had to rely on barter to obtain two of their GPS units used in their mapping process. With no access to NGO-owned units, Abah Ugi traded for two units using gold mined from his mining claim in Banten province.[88] The raw gold, at the time of research, was trading at Rp.400,000 for one gram, about $30 USD.[89] One of the units, a Garmin Oregon 450 still retails for around $400 (as of September 2017), but was a base model for the Oregon series and did not come with pre-loaded base maps for Indonesia. This was an issue for Abah Ugi considering the cost and internet speeds needed to purchase and download the maps directly from Garmin. So, while the community now has several options for access to the tools needed to create their own maps, many hurdles still remain to be able to create maps that will be acceptable to the Indonesian government.

### 4.2.2. Accessibility of Technology

Another hurdle in completing the community-led mapping project included locating training sessions for the handheld GPS units and for the GIS software. Training programs offered by the local NGOs all focus on teaching outside facilitators how to use GIS software, so Abah Ugi has taken matters into his own hands. Lamenting that JKPP only wants to assist the community by allowing community members to participate in mapping projects led by non-community

[88] Ugi Sugriana Rakasiwi interview, July 2014
[89] Kasepuhan research, 2013-2015

members, he claims that they are doing it all on their own, with no help required.[90] He firmly believes that the community can teach themselves how to use the handheld GPS units, how to use the GIS software, input the waypoint data into the software, and so on, whether the NGOs want to help or not. Abah Ugi has taken to watching YouTube tutorials about the GPS units, mapping practices, and GIS software. He then instructs a cadre of local villagers in how to collect waypoints in the surrounding forests. Yet, Cinta Mekar is not entirely alone in their mapping mission. They have also enlisted the help of a young cartographer working for a mining company in Jakarta.

When Abah Ugi of Cinta Mekar was a boy, he had a friend who did not live in the village but visited regularly. The boy, Dedi Sunardi,[91] and his father traveled from Depok to visit Abah Ugi and his father, Abah Anom. They have kept in touch for more than twenty years. The young Ugi grew up to take over his father's place as the spiritual leader of the Kasepuhan Cinta Mekar community while the young Sunardi grew up to become a cartographer in the GIS department of an Indonesian mining company. Abah Ugi contacted him to discuss helping with the Cinta Mekar mapping project. Sunardi agreed to assist with the project pro bono, taking the GPS data in order to produce maps for Kasepuhan use.

Sunardi admits in an interview that Abah Ugi has not told him much about the mapping project or what the maps will be used for by the community.[92] Similar to the concerns of JKPP, he is not sure how the maps will be used once he turns them over to the community. He travels to the Kasepuhan Cinta Mekar regions occasionally to gather waypoints himself, but he also collects the raw data from Abah Ugi. He does not mind helping the community with the maps

[90] Ugi Sugriana Rakasiwi interview, July 2014
[91] *pseudonym*
[92] Dedi Sunardi interview, September 2014

but admits that he does not think that they could do it on their own. "Their education is too low and they're just farmers," he says.[93] But, yet, he says Abah Ugi nor other community members have never assisted him in making the maps, so he is not sure of their actual skill level. He is also not sure if community members would be interested, but he has never offered to teach them either.

Abah Ugi is not relying on only one mapper. He has many followers that are more than happy to help. Another community member is attending Padjadjaran University in Bandung. Sunardi admits that he is aware that the Padjadjaran student is also making maps for Abah.[94] In addition, Abah Ugi is making his own maps using the ArcGIS software that he recently acquired. He says that he has been learning how to navigate the ArcGIS software by watching YouTube videos. While Abah Ugi shows me the maps he and the others are making, he is reluctant to send me the maps or the data. He says that they are not finished yet and that he is also fearful that the data will get out to NGOs working with the other Kasepuhan communities.[95] Yet, he admits, the community is running low on money to support the project. He must pay the men to go to the forests and support them with food, cigarettes, and transportation as they collect waypoint data. Due to this, the project is taking much longer than he anticipated and while he does not want outside NGO help to complete the project, he is not sure if the community can complete the map in time to be relevant.[96] As Rahadian with JKPP pointed out in an interview, partnering with an NGO provides communities access to many resources, such as GPS units, vehicles, software, and mapping staff.[97]

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[93] Dedi Sunardi interview, September 2014
[94] Dedi Sunardi interview, September 2014
[95] Ugi Sugriana Rakasiwi interview, July 2014
[96] Ugi Sugriana Rakasiwi interview, July 2014
[97] Deny Rahadian, interview, October 2014

### 4.3. One-Map Policy Implications

The conflict amongst NGOs and the Kasepuhan community explains the *why* of community-led counter mapping practices and the increase in availability and accessibility of technology explains the *how*, but the final connection, which focuses on the question of *to what end?*, is the emergence of a new policy that is affecting the relationships between government ministries, NGOs, and the Kasepuhan. This policy, known as the "one-map" policy, was officially issued by President Joko "Jokowi" Widodo, through Presidential Regulation No. 9/2016. The process began much earlier with former President Susilo Bambang Yudhoyono. Yudhoyono was presented with two different maps from two different ministries, learning that the government had no standardized set of maps. The one-map policy seeks to synchronize all maps used by Indonesian ministries in order to create "one map" that details land claims by public and private entities (Mulyani and Jepson 2017; Samadhi 2017). Previously, as discovered by former President Yudhoyono, all ministries used their own internally-created maps using internal definitions for geographic elements, such as "forest" or "uninhabited". All government ministries have been instructed to start to integrate their maps, including mining, plantations, and forestry. It could take years to document all land claims and concessions, but the government has given the process until 2019. There are many overlapping claims, such as in the Kasepuhan/Gunung Halimun Salak National Park case, where a national park and mining concessions overlap with indigenous peoples' land claims. Historically, mining or plantation concessions were commonly given to businesses on land that indigenous communities considered their territory (McCarthy 2005). Without formal title to the land, they were powerless to fight the government ministry that had granted the concession.

The Indonesian government and former President Yudhoyono established the Geospatial Information Agency (Badan Informasi Geospatial, BIG) in 2011 in response to the realization that there was a significant need for a centralized government mapping effort and to assist with the implementation of the One-map Policy.[98] BIG replaced the National Coordinating Agency for Surveys and Mapping (BAKOSURTANAL). BIG has focused on synchronizing the maps from ministries, rather than indigenous maps. Given the absence of a national mechanism to identify and map out territory belonging to indigenous communities, AMAN and JKPP (and three other NGOs) have set up the Ancestral Domain Registration Agency (badan wilaya registrasi adat, BRWA).[99] The village of Cisitu currently has 7,368 ha of land claims registered on the site (BRWA 2018). Registration is the first step in the process, followed by verification and then certification. BRWA currently has nearly 14 mil ha of indigenous land claims registered in their system; however, only 1.42% is verified and only 3.13% is certified (BRWA 2018). Cinta Mekar does not currently have any maps registered on BRWA.

In the case of Cisitu and Cinta Mekar, BIG has played an important role in their individual mapping processes. In a December interview with Abah Ugi, he confirms that the Kasepuhan Cinta Mekar community has been mapping their territory for about three months. They usually do community territorial reviews anyway, one to three times a year, to check sites, forest conditions, and territory condition. Yet, the process is never as extensive as they had been doing for the past three months nor do they constitute the collection of GPS waypoints, and he explained that they are only about 50-75% done with the process. In addition, the money to support the project was running low and the majority of what has already been done is accessible

[98] Law No. 4/2011 on Geospatial Information and Presidential Regulation No. 94/2011 on the Geospatial Information Agency.
[99] brwa.or.id

by paved roads. The remaining territory is deep in the Gunung Halimun forest, making the remainder of the project much more expensive than the initial portion. He explained that he had been contemplating asking AMAN for assistance as he needs their promised funds for training, transport, and payment for the community members doing the mapping. The mappers are taking time out from their family farming duties and must be paid to compensate them for their time. At the time, Abah Ugi saw cooperation with AMAN as their only option.

By late December, Abah Ugi had arranged a community meeting with AMAN facilitators. Abah Ugi said that he and AMAN had "worked out their differences."[100] I asked about why he has never wanted to work with AMAN before but now does and he claimed that Kasepuhan Cinta Mekar has always had a representative with AMAN, but the process is much clearer as he was working directly with them. AMAN, during the meeting, was allowed to present their proposal for the community mapping project, including their estimates for duration and resources needed and those that they could provide. AMAN stressed that mapping is a long process. Everyone would need to go through training and they allocated additional time in their estimate for the gathering of social data on the community. There were also the logistics to consider such as when both parties were available to start, weather conditions, seasons, and agricultural cycles/duties. Abah also commented that AMAN should not underestimate how long it will take to walk around the forest but did not comment on the amount of work already done or how far along in the process they were. Despite this, AMAN staff started to consider who would join the process, how many people were needed, the teams, timeline, and so on. Ultimately, the logistics of the process with AMAN do not matter as Kasepuhan Cinta Mekar, soon after, joined with BIG in mapping the territory rather than AMAN. The final Cinta Mekar map was completed

[100] Abah Ugi interview, Dec 2014

by working directly with a newly-minted government agency, the first indigenous community in Indonesia to do so.

In this way, the one-map policy (and BIG) has the potential to significantly decrease the distance between the government and its people, especially if more indigenous land claims, like Kasepuhan Cinta Mekar's, are taken into consideration by BIG. "The government must lead and facilitate the One Map policy with a strong, honest and transformative leadership. Community members, including smallholders, private sectors and civil society, should play an active role in the process with good intentions" (Samadhi 2017). This process could very well sideline the role of NGOs and give preference to community members. In a precedent set by Kasepuhan Cinta Mekar, indigenous communities in Indonesia could increasingly have the opportunity to work directly with BIG to create territorial claims or submit standardized data on their claimed territorial boundaries directly to the government. Previously, they relied heavily on NGOs to know and understand the data required by each separate ministry. By creating one standardized map with clearly defined scale, boundary, orientation, and GIS data requirements, the Indonesian government has created the possibility for individuals and communities to create maps that fulfill these specific requirements in a relatively transparent process.

## 5. Conclusion

This research shows that mapping is no longer the exclusive domain of scientists, cartographers, and the educated, but that it has (albeit in a limited way) become a science of the masses. Indigenous communities in rural Indonesia now have access to the technology needed (handheld GPS units, GIS software, laptops, internet, YouTube "how to" videos) to produce maps of their territorial claims that are being taken seriously at the local, national, and international levels.

Community-led mapping is a possibility and communities are no longer tied to NGOs to create territorial expression. Counter to counter-mapping efforts are taking place in indigenous communities within the country.

This paper is not meant to villainize NGOs and the hard work they put into helping advance participatory mapping efforts in Indonesia, but rather to draw attention to the fact that NGOs are not neutral entities. They are comprised of individuals who shape the organization's mission and practices. That mission and those practices are not always aligned with community leaders' goals and when they are not, those communities have discovered a route to territorial expression on their own. That process deserves study and research just as much as the alternative route of partnering with the NGO.

The two main variables in this particular case are time and resources. Cinta Mekar ultimately became concerned about the finances to be able to pay for their mapping project. Abah Ugi and Kasepuhan Cinta Mekar, facing mounting technological and financial constraints, considered partnering with AMAN to complete the map and eventually partnered with the government agency BIG. Long-term research is needed to determine if the Kasepuhan Cinta Mekar mapping project was a one-off counter to counter-mapping efforts or if it signaled a significant turn in indigenous mapping due to the availability and accessibility of technology. Can counter-mapping become a "science of the masses?" In addition, follow-up research is needed to see if their map can truly be a community-led counter mapping effort, if it can be completed in time to be a meaningful tool in their struggle for land rights, and if it can be produced at a level which is acceptable to the Indonesian government. But, like many governments when threatened with a loss of land and resources, the Indonesian government could possibly find reasons to deny the claim and/or call for more information.

In addition, the timeline of the one-map policy is quite extended. Implementation of the policy is not scheduled to be completed until 2019 so it remains to be seen how it will play out. More research will need to be done in the coming years to see if there is government push-back against indigenous community-submitted maps or if the technology the communities are using is considered adequate. Again, there is a possibility that the agency will change rules and regulations mid-course to make it more difficult for individual communities to submit maps of their land claims. Yet, communities remain resilient in such cases and continue to adapt their techniques, technology, and methods as is demonstrated in this paper.

**Paper 3: Layered Identities: The Politics of Indigeneity and Land Rights in Indonesia**

## 1. Introduction

In December 2016, nine Indonesian communities were granted community land rights based on their indigenous status by the Indonesian President Joko Widodo. In October 2017, he granted another nine indigenous communities in the country community land rights. Both of these actions were based on a 2013 Constitutional Court decision (MK35/PUU-X/2012; hereafter MK35) which declared *adat* (or customary law) communities to be the true owners of the land they inhabited, rather than the Indonesian government. In the four years since the decision, a total of 10,800km$^2$ of land have been turned over to rural and indigenous communities with a plan in place by current President Joko Widodo for a total of 127,000km$^2$ by 2019. Yet, few questions have been raised within the country on the inherent structure of MK35, which emphasizes indigenous land rights but ignores the reality of the country's stance on indigeneity - a country where indigeneity has been overlooked, homogenized, and essentialized in troubling ways since independence in 1945. Rather than deny their existence, which is all too obvious, the government has repeatedly acknowledged indigenous groups in a trivialized manner – essentialized it to the least common denominator. Currently, there exists no formalized and/or standardized legal structure in the country that recognizes or protects indigenous peoples. In 2012, legislation was introduced called the "Recognition and Protection of the Rights of Indigenous Peoples Bill," but it was shelved in 2013 and has been languishing in a back and forth struggle within the Indonesian government bodies ever since.

In this paper, I explore the reasons why and how communities might express their indigeneity in order to make claims on natural resources through MK35 in the absence of a

standardized procedure for gaining official recognition as indigenous groups. I maintain that self-identified indigenous communities see an opportunity in occupying what Tania Li (2000) calls the "tribal slot," which, in Indonesia's case, reflects decades of Indonesian government practices of essentializing indigenous identities. This process has forced communities in Indonesia to reflect on why and how they might view themselves as indigenous and how that may or may not overlap with what the existing government regulations are (discussed below) for claiming land through MK35. The passing of MK35/2012, coupled with mounting international pressure for indigenous land rights, has led to the Indonesian government and Indonesia's indigenous peoples relying on an essentialized version of indigenous identity in order to implement MK35/2012.

While the official Recognition and Protection of the Rights of Indigenous Peoples Bill continues to be debated at the national level, there were four features identified within MK35 for recognition of indigenous communities: *the presence of an organized group; history of settlement in a particular area; self-governance; the presence of material and immaterial cultural objects*.[101] These were presented as evidence of indigenous practices based on a 1948 book by T.B. Haar focused on *adat* communities in Indonesia.[102] Indigenous communities in Indonesia can and have long sought official recognition at the regional and national level, but the process is not standardized. Legal recognition does happen, but the process is often individualized and lacks standardization. Yet, without this recognition (especially regional) communities are unable to claim land through MK35.

The paper is organized to reflect on generally-recognized features of indigeneity as presented by MK35 rather than specific regional requirements, which may vary. I use the case

[101] These follow somewhat closely to the World Bank's 1991 definition of indigenous populations.
[102] This book and theory is considered a part of an older and outdated anthropology which struggles to conceptualize change, but has troublingly been continued to be used in Indonesia.

study of the Kasepuhan people of Indonesia in order to view the process of claiming indigeneity in the country. Two out of the 15 Kasepuhan communities have successfully gained regional recognition of their indigenous status, yet, only one of those has legally gained land rights through MK35. Therefore, I present how members of the Kasepuhan Banten Kidul community have successfully (or in other cases, unsuccessfully) presented their indigeneity to the regional authorities for verification and recognition and how that process is often based on an essentialized view of their indigenous identity in order to be successful.

I do not make the claim that the communities involved in the research or across Indonesia are explicitly reflecting on these requirements and acting accordingly, but, rather, I am claiming that "indigeneity" within MK35 is a loosely defined embodiment of decades of government officials' understanding of indigeneity as well as a reflection of social conceptions of "indigenous" in the country. In fact, I do not believe that any of the communities involved in claiming land rights through MK35 could have successfully reflected on the new law and implemented any sort of organized strategy in the few months between the passing of the law and the research period. Rather, I use the MK35 indigenous community features as an analytical tool in order to understand the claims to indigeneity by groups in Indonesia. The paper is organized using these features, with the understanding that these four distinct ways of understanding indigeneity are important reflections on Indonesian society's conception (often essentialized) of indigenous life.

I argue that the reality of land rights through MK35 has forced communities to reflect on their position as indigenous and to perform and position it in the "correct" way so as to gain recognition of their indigeneity from regional authorities. That "correct" way often happens to be the trivialized and essentialized version of indigeneity espoused by the national and regional

governments. This recognition is then used to leverage land claims through MK35. When, in reality, the Kasepuhan have very fluid ideas of what it means to be indigenous or to "belong" to their communities, but they recognize that the Indonesian government does not (or cannot in the case of land rights) espouse such fluid ideas of indigeneity. In light of this, indigenous communities across Indonesia have chosen to highlight aspects of their indigenous identity that correlate with the government's essentialized version of indigeneity. They recognize the trap that many government and social actors fall into of equating indigeneity with "especially isolated or exotic groups, who conform to the slot imagined by international promoters of tribal environmental wisdom" (Li 2000: 156). They fill the "tribal slot" in order that they may secure land rights, but questions remain about how this process is reshaping the idea of indigeneity in the country and among the Kasepuhan people.

**2. Background on Indigeneity in Indonesia**

Important to the discussion on indigeneity in Indonesia is the historicizing of the term in the country. While the colonial legacy is understandably important, I restrict this discussion to the post-independence (1945-current) era. Important to the discussion of indigeneity is the connection to the Indonesian Communist Party (PKI) in the country. The PKI was revived, after a period of inactivity, in 1946-47 and continued to grow in waves throughout the next two decades, both in numbers and importance. This was a reaction to Indonesian independence and the growing space for political parties, but also a Cold War response in a global setting where lines were being drawn politically throughout nation-states in what we now think of as the Global South and North. Sukarno, Indonesia's first president, had a symbiotic relationship with PKI, and his opponents saw the connection as a strategic breaking point for his presidency. It

would eventually bring about his downfall as the PKI became the target of anti-communist purges in 1965-66. The party's popularity quickly declined as connections (and even assumed connections) to the party became a liability and possibly even a death sentence. Estimates of those killed in the purges range from 500,000 to 1 million (Roosa 2006). As the party waned in numbers and power so did Sukarno's power and in the aftermath of a bloody coup d'état, Sukarno was stripped of power in 1967 and replaced by General Suharto as president.

When discussing the importance of the communist purges in Indonesia for interpretations of indigeneity currently happening in the country, it is necessary to point out that the PKI membership in Indonesia was mostly a mix of ethnic Chinese Indonesians as well as ethnically "Indonesian" small-scale farmers. Many of the political arguments being made by the party were made by its poor rural farmers who argued for the redistribution of land in the new nation-state from wealthy landowners and national and multinational corporations to the peasant-class (Li 2003). Indigeneity was not seen as a source of conflict at this point, but rather it was seen as irrelevant when organizing the rural poor of all ethnicities along class lines (Li 2003). While the truth behind the communist purges during the time period is only beginning to be fully explained or revealed, Li (2003) suggests that, regardless, they were an effective tool at silencing class-based arguments that threatened the privileged class in the emerging nation-state at a time when their status was the most precarious.

In the following years of Suharto's leadership, with class-based struggles essentially silenced, indigeneity continued to be homogenized and trivialized in the country. There was little recognition of the complexity of indigeneity in Indonesia due to Suharto's New Order stance that all (except Chinese Indonesians) were technically indigenous and there was little need to recognize special rights based on indigenous status or even formally recognize indigenous status.

The country's national motto "Bhinneka Tunggal Ika" translates as "unity in diversity" and effectively silences any thoughts of difference being important. In addition, the country's founding philosophical principles are espoused in the theories of *Pancasila.* These five principles, developed under Sukarno, yet glorified to new levels under Suharto, homogenized all distinguishing traits and characteristics, leading the population to conclude that ignoring differences, such as indigeneity, would lead to peace and unity. To call attention to the differences that make Indonesia unique was, and still is in much of the country, akin to instigating violence and conflict. Finally, what uniqueness could not be hidden and ignored, was trivialized in an essentialized manner. Suharto and his wife, Siti Hartinah, conceived of a "mini" Indonesia park in the early 1970s and opened the park in 1975. It narrowly defined what it meant to be indigenous in the country, with token material objects (such as costumes, buildings, and food) highlighted and displayed from the largest ethnic groups in Indonesia. The park is still open and is one of the most popular tourist destinations in Jakarta.

The silencing of class-based struggles during and after the communist purges continued to affect Indonesia's political struggles in the coming decades. Due to this, and the banning of the Communist Party, space opened up socially and politically in the country where indigenous struggles have become a more accepted rhetoric for protest in Indonesia. However, that space is often confined to the narrow and essentialized understandings of indigenous identity presented in tourist attractions such as Suharto and Siti Hartinah's mini Indonesia park. And while indigenous rights have slowly gained ground in the country, at the same time the class-based struggles that were common when the PKI held political power have never rebounded as an acceptable talking point in Indonesia. The rights of small-scale farmers, whether poor Javanese, Sundanese, transmigrants, or even indigenous people who currently look and act similar to their rural

Indonesian neighbors, have often been obscured by the history of class-based repression in Indonesia and the growing acceptance of essentialized indigenous struggles.

### 3. Indigeneity and Resource Claims

This paper uses theories of ethnicity and indigeneity, especially in relation to other social actors, in order to understand the making of claims to natural resources. While in this particular case, I am focusing on land claims, much of the theoretical approach could be used in discussing other natural resources, and in many cases other natural resources are part of the same movement to claim land. For example, the communities in this study are often debating issues of land ownership, but are aware that claims to timber, water, and minerals (especially gold for the Kasepuhan) are all inextricably linked to these claims. Especially important within this study is the idea of essentialized indigenous identities and how indigenous peoples in Indonesia are successfully positioning their identity within a narrowly defined space of "indigeneity" in order to claim these natural resources.

Within the literature on ethnicity and indigeneity, essentialism views ethnicity as "stable, persistent and exact", and essentialism has been used to categorize groups based on cultural characteristics that are thought to be innate (Malesevic 2004: 2). Those who espouse essentialism argue that there are qualities perceived to be inherent to a particular group and that social interaction does not change these qualities. Essentialism theories "maintained that ethnic cultures and identities provided stability across different social contexts" (Wimmer 2013: 1). While problematic in the sense of narrowly defining exactly what it means to be "indigenous," essentialism can be appealing in light of the absence of universal guidelines at the international level for defining indigenous populations.

Perhaps the most cited document concerning the rights of indigenous peoples is the United Nation's Declaration on the Rights of Indigenous Peoples (UNDRIP) - passed in 2007 with a vote of 144 nations for, 4 against, and 11 abstaining - does not define what it means to be indigenous, but rather provides guidelines for the rights and protections afforded to indigenous populations.[103] It was originally submitted in 1994, but after 13 years of revisions and debate it still refrained from providing any definitive statements on how to identify indigenous peoples. The lack of explicit official guidelines on how to determine who is indigenous is seen by some academics and policymakers as a positive step in allowing individual cultures to reflect on what it means to be indigenous in their specific context (Colchester 2002). Yet, the lack of a definition or guidelines does create a problem for many countries. It is, therefore, understandable that governments tend to fall back on the stability of essentialized ideas of indigeneity as they move forward with legislation and rights specific to indigenous populations. The issues that Indonesia faces in defining who is and who is not indigenous is not an isolated problem.

Initially, the passing of documents such as the UNDRIP (2007) and the bestowing of separate rights on ethnic minorities put some nation-states on the defensive. The Indonesian government, even with the end of Suharto's reign in 1998, still tended to express the view that the entire population, with the exception of Chinese Indonesians, was indigenous to Indonesia and therefore were not in a position to receive any special rights (Li 2000). By not recognizing the term "indigenous" or "ethnic minority", the Indonesian government sidesteps internationally recognized rights, such as UNDRIP, for these communities and is not held by international obligations to enforce them. Instead, indigenous peoples are referred to as *tribal, neglected, remote, primitive, or customary law communities* in official documents. The erasure of the

[103] The UN did define "indigenous populations" in 1972 and amended the definition in 1983. It was added to again in 1986 – over two decades before UNDRIP.

complexity of ethnic identity seems an easier route for the Indonesian government, past and present, than the option of providing "special" rights. Yet, in this particular case, with the passing of MK35/2012 and mounting international pressure for indigenous land rights from transnational organizations such as the United Nations and the International Labour Organization, the Indonesian government has espoused an essentialized version of indigenous identity, informing their legal approach to the division and granting of land rights in response to MK35/2012.

The granting of official recognition often relies on primordialist and essentialized descriptions of ethnic groups as "backward", "primitive", "untouched by modernity and development", when in reality these descriptions "tended to obscure the degree to which such peoples have always played a role in the wider economy and have articulated – socially as well as economically – with the 'core' (Rigg 1997: 157). In a problem that has plagued indigenous communities for decades, governments and development schemes tend to deny ethnic groups the right to live in a modern world in common with the rest of the "developed" world. "The problem is that local communities or indigenous groups often have to prove that they still live their 'traditional lifestyle' by somehow substantiating 'cultural authenticity', which often implies a static and essentialized notion of culture, in order to be accorded collective/indigenous rights" (Braeuchler 2013: 5). Particularly in Indonesia, indigeneity is often represented as forest-dependent, interior populations that are non-Javanese, non-Muslim, and not usually represented in the Indonesian political structure. Yet, marginalized populations in the country do not always equate to indigenous and one large problem for the Indonesia government is determining how to allocate land rights based on indigeneity when walking a fine line between these two dialectics (indigenous does not mean "not modern" and marginalized rural populations are not necessarily

indigenous).

Governments are not the only actors falling back on essentialized ideas of indigeneity and ethnicity. Even civil society actors, such as non-governmental organizations and advocacy groups, tend to fall into the trap of essentialization. The social organization *Aliansi Masyarakat Adat Nusantara* (Indigenous Peoples Alliance of the Archipelago, or AMAN), even in its attempts to represent all of Indonesia's ethnic groups, tends to rely on essentialized versions of ethnicity. Their first national congress was held in March of 1999. At the conference, AMAN organized its constituents into representative committees. However, those chosen often fit into the essentialized version of an ethnic minority in Indonesia. "The congress therefore had a somewhat tautological character: the people selected duly filled the slot, thus consolidating the category *masyarakat adat* as an embodied reality" (Li 2003: 393).

Indonesian society itself even tends to resort to essentialized ideas of indigeneity. In describing the lives of indigenous peoples in Indonesia, Brigitta Hauser-Schaublin says that there is "a gap between the local practices of indigenous peoples and the assessment by and the expectations of outsiders" (2013:12). Here she speaks specifically to the reality of most indigenous peoples in Indonesia that live lives little different from their non-indigenous peasant neighbors. In addition to viewing indigenous Indonesians as essentialized forms of indigeneity, this process also strips them of their individuality and reduces them to an "indigenous community." Rather than seeing indigenous peoples as individuals, with individualized approaches to conservation, development, and resource extraction, indigenous peoples are homogenized into "age-old stewards of the environment whose ecological wisdom and spiritual connections to the land can serve as an inspiration for those in industrial society who seek a new, more sustainable relationship with the environment" (Nadasdy 2005: 292). Indeed, in the

struggle for official land rights, within Indonesian society, indigenous communities are often framed as better stewards of the land and, therefore, the logical choice in the battle for land rights against the government. Similar to Hasuser-Schaublin's concerns, Paul Nadasdy claims that "this stereotype denies the realities of native people's lives, reducing the rich diversity of their beliefs, values, social relations, and practices to a one-dimensional caricature" (Nadasdy 2005: 293). This "one-dimensional caricature" is of the "environmentally-wise indigenous" person and colors the debate in Indonesia over land rights and resource extraction (Nadasdy 2005).

Especially in the case of the Kasepuhan, gold extraction is a major point of tension among the government, the community, and conservationists. Nature advocacy groups and conservationists fall back on the idea of indigenous peoples as the "original conservationists," allowing land rights under the assumption that the indigenous community will promote communal land rights with little to no extraction of resources other than what is needed for daily life. Yet, central to the Kasepuhan's claims to land is the extraction and sale of gold through artisanal and small-scale gold mining (ASGM), pitting them against conservation groups. "Thus, when environmentalists unexpectedly find themselves opposed by indigenous people, they are more likely to dismiss any opposition as a result of cultural loss or "contamination' than to take indigenous people's concerns seriously" (Nadasdy 2005: 293). Yet, the community understands their indigeneity very differently, not seeing resource extraction and private land ownership as mutually exclusive to their status as indigenous.

Communities often have a much more nuanced version of their indigenous identity where membership is more fluid. This approach falls more in line with instrumentalist theories of ethnicity. Ethnicity, instrumentalists contend, is a socially constructed belief through which individuals can "choose between different identities as they see fit" (Wimmer 2013: 1). This

approach complicates culture as it recognizes the agency of individuals. While essentialism removes ethnicity from its social context, instrumentalism recognizes more clearly the presence and proliferation of culture in the social landscapes where it is constructed (Barth 1969).

Instrumentalists recognize the benefits of claiming a certain ethnicity or indigeneity. This recognition was the beginning of theories that acknowledged power and inequality as an important part of identity claims. Taking states and state agencies into consideration, instrumentalism puts forth a theory of self/other in relationship with outside forces – a trend that would continue with modernist theories (Barth 1969). The creativity of individuals, often in spite of or even because of power differences, is an important aspect of ethnicity for instrumentalists, separating culture and ethnicity rather than conflating them, as happens with essentialism. The work of Frederik Barth on instrumentalism was a definitive departure from essentialist theories as he suggested that ethnicity was socially constructed and formed in the process of social interaction rather than an essential inherent quality (Spear 1993). Before Barth's work on ethnicity, ethnic identity was thought of from the inside out and something one was born into. After his work, ethnicity was defined from the outside in, formed, re-created, and re-negotiated in the process of social interaction (Malesevic 2004). Before Barth, one could study ethnicity in isolation, such as a certain tribe or group. After Barth, this sort of approach was no longer adequate - one had to study ethnicity in relation to non-members (Malesevic 2004). In creating a more open-ended theory of ethnicity, Barth created a new explanation for essentialized ideas of indigeneity. But, in accepting that ethnicity is positional, historical, and geographical, it becomes difficult to write such a conception of ethnicity into policy.

Exactly as we see happening in the Indonesia case, indigeneity in the instrumental sense is difficult to incorporate into formal legal documents, instead often reverting to an essentialized

version of ethnicity and losing its fluidity. “If cultures are not clearly delineated, homogeneous entities, how can we expect people to agree on what that culture is, or who they themselves are? (Vermeulen and Govers 1994). As the members of the Kasepuhan Sundanese community told me, one person could not know all of what it means to be “Kasepuhan Sunda”. Ethnicity for the community is celebrated for its ability to adapt in the midst of social processes and the entire community is needed to remember details of rituals, taboo actions, the types of ceremonies needed for specific spirits, and so on. Everyone is an important part of creating the community’s ethnic identity. It would be impossible to codify what it means to be “Kasepuhan Sunda”, or at least this understanding of it. Writing down one person’s concept of their ethnicity would only record one interpretation of it and a specific rendering at a specific point in time. This is often the case with written vs. verbal histories. Those with the predominately written histories tend to have a more static interpretation of their culture and others’. Groups that rely on oral histories tend to have more fluid ideas of their ethnicity and culture (Li 2000).

In the face of these two extreme theories of ethnicity, there is a middle ground where indigenous peoples understand the difficulty in putting their instrumentalist version of their identity into legal documents, but yet they fear the fully essentialized versions of their ethnicity that governments tend to espouse. In negotiating for potential land rights, I contend that they accept a layered approach to their indigeneity for gains through their interactions with the nation-state. Land rights are a reward for looking and acting indigenous. Beth Povinelli calls all this process the “cunning of recognition” - groups claiming indigeneity in order to make claims on resources (Povinelli 2002).

The “cunning of recognition” raises concerns that it initiates a process whereby “to commodify and/or commercialize culture is to defile it, thus changing its meaning and destroying

it" (Bingaman 2013: 135). This concern is often connected to ecotourism and the perception that the act of performing culture for tourism will somehow eventually result in its dilution. Yet for ethnic minorities (often faced with poverty), there is an understandable appeal in the knowledge that their alterity can be commodified and used as a source of income or as a source of special rights. An essentialized version of their culture is often rewarded financially. In their book on the commodification of ethnicity, Comaroff and Comaroff (2009) challenge the assumption that the commodification of ethnicity is an essentialization process. They claim that ethnic tourism should be seen more like an "open-ended dialectic in which, under the impress of the market, human subjects and cultural objects produce, reproduce, and refashion each other (Comaroff and Comaroff 2009: 28-29). Furthermore, if we accept the idea that culture is socially produced and not static, then the issue of ethnic tourism, or the "cunning of recognition" for resource rights, becomes less about the essentialization of a culture and more about the everyday creation of culture in an ongoing process that includes the recognition of agency for indigenous populations.

Tania Li calls this process articulation, which she draws from the work of Stuart Hall (1996). She asserts that "a group's self-identification as tribal or indigenous is not natural or inevitable, but neither is it simply invented, adopted, or imposed. It is, rather, a positioning which draws upon historically sedimented practices, landscapes, and repertoires of meaning, and emerges through particular patterns of engagement and struggle" (Li 2000:151). These patterns of engagement are often expressed in relationship with the state. In fact, it is difficult to think of indigeneity outside of the state as indigenous status is often a dichotomy set up to contrast to those belonging to the colonizer (Beckett 1988). In Indonesia, this dichotomy with the colonizer involved the Dutch colonial government, which colonized Indonesia economically through the Dutch East India Company from 1602-1800 and formally through direct colonization from 1800-

1949, although Indonesia claimed independence in 1945.

Although no longer being defined by the Dutch colonial government, indigenous peoples throughout Indonesia are still feeling the effects of being different in some way that sets them apart from the rest of the population - for better or worse. "It was as if indigeneity was a kind of divine punishment that one should be born and live in the lowest levels of society. This was understood to be part of natural reality, never seen as a condition created by men and women" (Ramirez 2011: 31). In many parts of the world, that difference generally meant being part of a population that could be discriminated against without repercussions due to a lack of power. But, with greater recognition of indigenous rights on the world stage, Indonesian policymakers have realized, perhaps too late to change the course of national policies, that there are also inherent rights for indigenous communities. Indigenous peoples now recognize that indigeneity is something that comes with rights afforded to every other human being, increasing the "articulation" of the "tribal slot" in order to mobilize for political purposes. If we understand indigeneity in this way, then we lose our expectation to understand indigeneity as something that can be understood on its own terms. It is not expressed but rather produced. The following discussion follows the case of the Kasepuhan Banten Kidul indigenous group of Indonesia and their negotiation of the tribal slot in the production of their own indigenous identity in a carefully orchestrated conversation with the Indonesian state as they mobilize for officially recognized land rights.

**4. Methodology**

Within this study, I seek to understand the claiming, validating, and performing of "indigeneity" by customary law groups in Indonesia, especially in their process of making land claims tied to

their indigenous status. I collected qualitative data from members of the Kasepuhan Banten Kidul indigenous group of West Java and Banten provinces in Indonesia through structured and semi-structured interviews, focus groups, and participant observation over a period of twelve months in 2013-2015. Based on their self-identification as an indigenous community that followed customary law (and therefore with the possibility of receiving land rights through MK35/2012), I chose to work with four distinct groupings of the Kasepuhan people. I also took into consideration their location, with all being either in or near a forest and identifying in some way as a "forest-dependent" community, and therefore, technically eligible for land rights under the MK35/2012 ruling. The case study site is designated as a National Park (Gunung Halimun Salak) by the Indonesian government and is primarily heavily forested with intermittent areas of swidden and permanent wet rice agriculture throughout the park area. I chose the case study site because of the Kasepuhan group's varying success in petitioning for indigenous status; their location in an area designated as "forest" land; and one Kasepuhan community's (Cisitu) involvement with a national-level independent community organization focused on indigenous rights (AMAN). Through this connection, AMAN chose Cisitu leadership to serve as a signatory to the MK35 review for the Indonesian Constitutional Court, which made it an interesting case study for this research.

Although there are 15 Kasepuhan communities made up of multiple villages within and around Gunung Halimun Salak National Park, the research is focused on four of these (Kasepuhan Cisitu, Kasepuhan Cisungsang, Kasepuhan Cinta Mekar, and Kasepuhan Sirnaresmi) due to the logistics of travel around the region. These four groupings of villages could be reached by motorbike within a few hours while basing myself out of Kasepuhan Cinta Mekar. As the Kasepuhan groupings, in general, vary in political power, *adat* power, isolation,

and access to natural resources and profits from those resources, these four particular villages are useful representatives of the Kasepuhan people. Two of these Kasepuhan groupings (Cisungsang and Cisitu) do have much higher income due to gold mining on their territorial claims. They are also the most integrated with national level non-governmental organizations, yet there are Kasepuhan further east who are more integrated with regional level non-governmental organizations.

During the course of the research, I completed 308 structured and semi-structured interviews with community members and leaders. I identified participants for the initial interviews based on their role within the Kasepuhan system. For example, village leaders were identified first through a referral system and subsequent interviews were conducted with additional community members. Perhaps most important for this particular paper, I identified participants for semi-structured interviews based on their participation in Kasepuhan events and activities. Many of the villages have weekly communal work parties where necessary manual labor is completed. These work parties were a main source of semi-structured interviews. I would attend these work parties and interview community members. Occasionally, I would follow-up with participants at their homes with structured interviews. Participants who spoke Indonesian (often those under the age of 50) were often interviewed in Indonesian directly with assistance from a female research assistant who spoke English, Indonesian, Balinese, and Sundanese. For those who did not speak Indonesian, I relied on the translation services of the research assistant. Those who did not speak Indonesian were primarily over the age of 50 and had had little to no schooling and, therefore, no chance to formally learn the Indonesian language. They spoke the local language of Sundanese and were also largely illiterate. This was around 30% of participants in the study. The primary assistant was a 42-year-old female and

fluent in Indonesian, Sundanese, English, and Javanese. She is ethnically Javanese and has a BA in agricultural education. She worked for four years for a participatory photography non-governmental organization called "Photo Voices" located in Bali, Indonesia. Through her work with the organization, she traveled to the study site. There, she met another individual, who was not a local but was living in the village. They married, and both now live full time in the village as community members. Aside from her teaching responsibilities, she also assists the community head (Abah) in keeping track of village level finances. For those participants living in Kasepuhan Cinta Mekar who were not comfortable with discussing their lives and resources around this research assistant, I also was assisted by a young man who was born in the community and served as a local middle school teacher. He was generally regarded as a trustworthy local whom other community members felt comfortable with. Yet, he did not speak English so when I used his services we had to rely on a mix of Sundanese and Indonesian.

Over the course of the research, I hosted twelve focus group meetings within the Kasepuhan villages and with staff members of involved NGOs. Of particular relevance to this research were five official focus groups held in Kasepuhan Cinta Mekar (3) and Kasepuhan Cisitu (2) in 2014. A customary law leader of Kasepuhan Cisitu hosted the two focus groups held in his own home. Both were mixed gender meetings of around 5-11 participants. In Kasepuhan Cinta Mekar, two of the focus groups were conducted in the home of the village leader, which also served as a community center, although he was not present for either one. The participants were all male with occasional comments from female onlookers. Although I pushed for women's official participation, I respected the self-selection process of participatory research and the community's choice of male participants based on what the community identified as their knowledge of current events and use of forest resources. I held another focus group in the home

of my community host, who was the public relations representative of Kasepuhan Cinta Mekar, as appointed by the customary law leader of the community. Six participants (two females and four males) participated in this focus group. I used a participatory research framework in the research and, therefore, the topic of each meeting was different, based on the background and knowledge of participants. However, all questions and discussion centered around questions of MK/35, forest use and access, land claims, and the processes of making those claims. All focus groups were conducted in Indonesian and Sundanese. A translator assisted with focus groups conducted in Sundanese.

In addition, I spent countless hours in participant observation with community members as they conducted their lives. I assisted with rice planting, harvest, rice processing, cooking, prepping for village festivals, serving food, collecting taxes, selling makeup, wandering around the forests of West Java and Banten provinces, picking vegetables, making rattan crafts, and collecting firewood, among other activities. Convenience sampling was used during participant observation. Community members, of all genders and social standing, who were participating or observing community activities and ceremonies were asked if they would be interested in discussing the activity or ceremony. While there were, naturally, some declines, most agreed and many participated in follow-up interviews or surveys at a later date. At the regional and national level, I also observed participants in two multi-day national level meetings on the topic of MK35 (one in Rangkasbitung, Banten and one in Jakarta); two strategic planning meetings coordinated across civil society organizations (Bogor and Jakarta); and five Kasepuhan level ruling council meetings (one in Cisungsang, one in Bogor, one in Sirnaresmi, two in Cinta Mekar). I followed up these observations with structured interviews with many of the participants at later dates.

Upon return from the field, I transcribed and translated semi-structured and structured

interviews, meeting dialog, prayers and speeches by community leaders during *adat* events, focus group discussions, and meeting conversations. I hand-coded the resulting data in terms specific to the research. In particular, interviews and statements that focused on legitimacy, forest rights, access to natural resources, indigeneity and the tools for recognition of such, and the national park were selected and pulled out for further analysis. I then used the current legislation as an analytical tool in order to understand the data gathered from community members, government workers, and NGO staff. The data were not analyzed in a direct relationship with the legislation, but rather using the legislation as an embodiment of decades, and even centuries, of the central government's position and approach to indigenous identities.

**5. Results**

At the heart of this research is the analysis of the Kasepuhan people of West Java, Indonesia and their relationship to their identity as indigenous within the context of resource use and claims. Predominately sharing their history orally, they struggle to situate their identity within a national context that favors written history and physical evidence. According to their oral history, the Kasepuhan people are descendants of the Pajajaran-Bogor or Sunda kingdom, which existed in West Java between the 10th and 16th centuries. They are acknowledged in MK35 to have lived in the Gunung Halimun region since 1621. They are led by an *Abah* (father), which is a hereditary position of spiritual leadership. Members of the Kasepuhan community number around 16,000 (Suganda 2009). There are 15 main Kasepuhan groupings, made up of multiple villages, most of them within the boundaries of the Gunung Halimun Salak National Park. However, there are many more followers scattered throughout other villages within and around the Park. Kasepuhan Cinta Mekar is the central village for followers of Abah Ugi Sugriana Rakasiwi.

There are several Abahs within the Kasepuhan network and conflicting stories about the legitimacy of the various Abahs, but most who fill the positions are from the same extended family and Cinta Mekar is the largest of the Kasepuhan communities.

There are 314 villages within the boundaries of the National Park, with around 100,000 residents (Kubo 2008, Kubo and Supriyanto 2010). Some of these are Kasepuhan villages and some are villages made up of rural Sundanese farmers. The central village of Kasepuhan Cinta Mekar lies in the corner of the Gunung Halimun Salak National Park's southwestern boundaries and is home to about 300 households. It is the most recent settlement of Kasepuhan Cinta Mekar. The village was relocated to its present site in 2001, after Abah Ugi's father, Abah Anom, was instructed by the spirits of his ancestors to shift the location of the central village of Kasepuhan Cinta Mekar (Bolman 2006). The technical problem with this spiritual instruction was that Cinta Mekar now lies within the National Park's boundaries, whereas its earlier site did not, and it was formerly listed as an adjacent village. Stories about the semi-nomadic lifestyle of the Kasepuhan vary, but two common themes relate to spiritual beliefs and territory. One belief is that the Kasepuhan must periodically gather the most devout and relocate, to start anew.[104] Another is the need to continually identify and maintain control over customary lands that are scattered across three districts (Suganda 2009). When the swidden agricultural practices of the Kasepuhan are considered (discussed below), the need to relocate every decade or so may also be a practical way of finding new and possibly healthier lands for agricultural purposes.

On average, a community lives in a village for about 10 to 15 years before relocating. Cinta Mekar's people believe that Abah Ugi is spiritually connected to the ancestors and is able to communicate with them. They have lived at the present site since 2001, and 'perhaps soon' Abah

[104] Ibu Umia interview, July 2014

Ugi believes that the ancestors will instruct him to move the village again.[105] One villager stated that *adat* required them to move, and if the ancestors instructed it, they would follow their Abah.[106] They are, nevertheless, fully aware of the likely official reaction to the ritual migration of 300 Cinta Mekar households through the territory of the Gunung Halimun Salak National Park, which they suggest would be resistance and violence on the part of government officials. One said, without hesitation, that he and others would take up arms, if necessary, to protect their right to go where the ancestors instructed them.[107] They claim to be searching for *ugakebakcawane* (the 'promised land'). The official recognition of Kasepuhan land rights has as much to do with migration and agricultural practices as it does with secure ownership and resource use. Understanding the Kasepuhan's claims to land must start with understanding how they use the land.

The land claims associated with MK35 cannot be untangled from indigenous identities. The Indonesian Constitutional Court heard the case and ruled on it based on the idea that indigenous peoples within the country had been systematically alienated from their land and forests in the preceding centuries. Despite the same scenario for many small-scale, rural farmers in the country, land claims based on general disenfranchisement seem to be many years away. As Hall et al. (2011) note, 'inclusion' always involves an aspect of 'exclusion', and in this case the inclusion of 'indigenous' peoples in MK35 inherently means the exclusion of small-scale, rural farmers that cannot claim indigeneity to the region in which they live, but very well may be considered "indigenous peoples" elsewhere in the country.

Yet, at the same time, even those that can claim indigenous status are left to defend their

[105] Abah Ugi interview, August 2014
[106] Yoyo Yogasmana interview, October 2013
[107] Mang Dedi interview, October 2013

identity and legitimize it to themselves and others based on what the Indonesian government has declared "official" ways of being indigenous, which often do not entirely overlap with ways that the Kasepuhan (and other *adat* communities across Indonesia) understand their own indigenous identity. Especially with their proximity to their close "cousins" and neighbors the *Baduy* (who also refer to themselves as the *Kanekes*), the Kasepuhan have struggled to place their more liberal and open practices in relation to the official regional and national recognition that the *Baduy* have held since 2001.[108] The Kasepuhan are more open and accepting of outsiders, technology, change, and modernity, but that comes with a price. Many of the Kasepuhan communities are now no longer distinguishable from their non-Kasepuhan neighbors, especially with the spread of Islam. There are many instances, even recently, where community members are struggling with the wearing of the headscarf, which is common in Islamic practices but is not in traditional Indonesian culture. One community member remarked that she felt "pressured" to wear the headscarf at community events and that a female village leader told her that she would not be allowed at the former Abah's resting place if she was not wearing a headscarf.[109] Yet, at the same time, that same female village leader is the mother of the current king. There is little doubt that she views herself as 100% indigenous. It is apparent that these views of indigeneity and the understanding of one's identity are actively shaping the views of "indigenous" in the country.

Kasepuhan community members are faced with an increasingly codified (and essentialized) version of what it means to be "indigenous" in Indonesia. With land rights on the line, they are adopting and highlighting parts of their indigenous identity in order to be more in line with the Indonesian government's idea of indigeneity. Although, as the following examples

[108] Peraturan Daerah Kabupatan Lebak No. 32/2001
[109] Ibu Umi interview, June 2014.

show, their own understanding of the community, belonging, and being indigenous in Indonesia is very different from that essentialized government version, creating layered identities and meaning within community activities and ceremonies. The following analysis highlights the four "ways" of demonstrating indigeneity according to MK35, working through examples of the Kasepuhan community's everyday expression of their indigeneity. I would not characterize this expression as a response to the legislation, as many (most?) community members during the course of the research were not yet aware of the specific features of an indigenous community presented in the ruling. I would, however, say that it is a constantly evolving awareness and expression of their understanding of how the government and society view indigeneity and how to legitimize their indigenous status.

### 5.1. The presence of an organized group

One aspect of legally being recognized as an indigenous group in Indonesia within MK35 includes proving that the group operates as an organized community. In exploring the presence of "organization" for the Kasepuhan, I focused on the celebrations and events for the community. These events are ones that are unique to the Kasepuhan community, and one way of demonstrating an organized structure is a history of celebrating the same events. The two cases highlighted below explore individual Kasepuhan events, which are celebrated by most community members. The first is the annual harvest festival (Seren Taun) and the other, an annual event (Nanyaran) where Kasepuhan families eat rice from the new year's harvest for the first time. When conducting interviews among the Kasepuhan community, I found that Seren Taun was a ubiquitous event and it was often used as a common denominator across groupings of Kasepuhan. I would ask village leaders about their Seren Taun festival, how they celebrated,

average attendance, sponsors, etc. While some other festivals, rituals, and observances have faded away (including Nanyaran in some villages), Seren Taun appears to be a constant. It is not so much about celebrating Seren Taun, but rather the historical continuity of it all. Historically, the Kasepuhan people celebrated Seren Taun, so even those communities that had previously stopped celebrating have picked back up the tradition in the past few decades. However, Nanyaran is an event celebrated within the community, often with few to no outside visitors to witness the community sharing of food that characterizes the event. With a significant difference in the outside reception to these two events, the following analysis highlights the importance placed on documentation and participation for Seren Taun versus Nanyaran. This documentation is part of a larger case used by the community for "proof" of an organized community through a shared indigenous history.

### 5.1.1. Seren Taun

The Kasepuhan people celebrate their harvest annually at the end of August or beginning of September, depending on the moon's phases. The Seren Taun celebration consists of many ceremonies leading up to a final ceremony where the community's Abah gives thanks for the year's harvest and prays for a bountiful harvest in the coming year. It is a time of transition. It is the close of one chapter and the opening of the next. Yet, it is not simply about agriculture. As Olat Okri of Kasepuhan Cisitu explains, "Seren Taun is really about taking a count. It is an evaluation of production, especially farming, schools, and students.[110]" In this sense, Seren Taun is a time of reflection for the Kasepuhan people. While the celebration culminates in a final ceremony with much pomp and circumstance, the essence of Seren Taun is in the lead up to that

[110] Aki Ugis interview, Kasepuhan Cisitu, October 2014

ceremony. It is in the annual pilgrimage to the central seat of *adat* leadership, whether that be Kasepuhan Cinta Mekar, Kasepuhan Cisitu, or another Kasepuhan. It is in the payment of taxes to the Baris Olat (the leadership body of each Kasepuhan). It is in the donation of goods and labor to prepare for the festival. Seren Taun is about the gathering of followers and taking stock of resources for the Kasepuhan. It is a time to legitimate their community and their practices through a shared event that occurs annually, without fail. It is the creation of a living shared history.

In the weeks leading up to Seren Taun, followers travel to the Kasepuhan central villages (around 15 of these, depending on which line of leadership a family might follow). There, they are responsible for paying eight taxes: *ngalaukan*, *kendaraan mobil-motor, pamakayaan, jiwa hewan, jiwa manusia, kelapa-gula merah,* and *atap.*[111] The table below summarizes the taxes, their purpose, and the payable amounts. In 2013, Kasepuhan Cinta Mekar collected Rp.300,000,000 (around $21,000 USD) from these fees, which were used to fund the Seren Taun festival, village upkeep, and yearly ceremonies.[112]

*Table 3. Household and individual fees associated with Seren Taun*

| ***Tax*** | ***Purpose*** | ***Amount*** | ***USD*** |
|---|---|---|---|
| *ngalaukan* | Flat fee per household used to buy food and supplies for the Seren Taun festivities | Rp.70,000 | $5.08 |
| *Kendaraan mobil-motor* | Tax per vehicle or motorbike | Rp.25,000 per vehicle<br>Rp.5,000 per motorbike | $1.82<br>AND<br>$0.36 |
| *pamakayaan* | Goes to a central account to help finance *adat* ceremonies throughout the year. It can be paid in cash, in rice, and/or services. | Similar to a tithe system, the *pamakayaan* tax should amount to around 10% of a household's annual income. | Varies |

[111] Cinta Mekar Seren Taun tax form, personal research, September 2014
[112] Yoyo Yogasmana interview, personal research, September 2014

| | | | |
|---|---|---|---|
| *Jiwa hewan* | *Jiwa* translates to soul and the fees are to pay for each animal soul in a household. | Each soul is taxed at Rp1,000, which is set intentionally low in order that all might be counted and participate in the annual festival. | $0.07 per soul |
| *Jiwa manusia* | *Jiwa* translates to soul and the fees are to pay for each human soul in a household. | Rp.1,000 per soul | $0.07 per soul |
| *Kelapa-gula merah* | The contribution of a coconut and a bamboo tube of palm sugar per family. | Can be paid with the actual objects or an equivalent fee of Rp3,000 for the coconut and Rp.2,500 for the tube of palm sugar. | $0.22<br>AND<br>$0.18 |
| *Atap* | Used for building repairs, especially community buildings and buildings used for Seren Taun. | Rp.4,000 per family | $0.29 |

The paying of these fees represents active participation in the community but does not confer indigenous status. For example, there are a number of community members who have moved from elsewhere in Indonesia and adopted into the Kasepuhan. They are considered members of the Kasepuhan, but not indigenous by the Indonesian legal system. This type of belonging within indigenous communities is particularly problematic under Indonesian legislation. Of relevance, as well, is the position of outsiders, such as myself, who live/d in Kasepuhan villages full-time and participate in ceremonies. I paid a total of Rp.103,000 ($7.48 USD) in fees for Seren Taun, yet nothing about the paying of the fees conferred indigenous status upon me or implied that I was a member of the Kasepuhan people. Yet, at the same time, the payment of these fees does the exact opposite for many Kasepuhan people in the eyes of the Indonesian government. In light of such confusing conceptions of indigeneity by the Indonesian government bodies, it is understandable that the Kasepuhan people eagerly await their written receipt acknowledging their payment and participation in a ceremony that stands in as a substitute for any concrete evidence of being “indigenous” in modern Indonesia.

The celebrating of Seren Taun ranges from local vendors and handicrafts to large events sponsored by Indonesian corporations. Strangely enough, the Kasepuhans with corporate sponsorship tend to be smaller events than those with only local vendors and handicrafts. This, Yoyo Yogasmana, Kasepuhan Cinta Mekar's villager who handles media and public relations, tells me is because the Kasepuhan communities only resort to sponsorship when their tax revenue is less than it costs to host the festival.[113] Other Kasepuhan view the situation differently. Three out of the four Seren Taun ceremonies I visited were sponsored by the Indonesian cigarette company Djarum, a brand extremely popular among Kasepuhan males. Banners advertising the company were seen hanging proudly between light posts, from central stages, and from *adat* buildings.[114] The sponsored events were far less about traditional arts and *adat* rules on clothing and ceremonies and more about advertising products and "indigeneity" to outside actors. In place of artisans selling handmade brooms, fans, rice baskets, hats, and purses and produce such as green onions, corn, green beans, bitter melon, gourds, beans, and pumpkins, these events were dominated by temporary markets selling plastic ware, synthetic blankets, and mass-produced t-shirts commemorating the event. Kasepuhan Cisungsang even welcomed the Minister of Tourism in 2014 when he flew in for the ceremony in a government helicopter.[115]

As Seren Taun was celebrated in each of the Kasepuhan groupings that I visited, it became apparent that it was a relatively easy way of expressing indigenous connectedness among the entire Kasepuhan network. Villagers often asked for documentation of their participation. They took pictures with visiting government officials. Villagers flocked to central villages in the weeks leading up to the ceremony to assist with village cleanup and building

[113] Akhi Okri interview, personal research, August 2014
[114] Personal research from Cisungsang and Cisitu Seren Taun celebrations, August and September 2013 and 2014
[115] Personal research from Cisungsang Seren Taun celebration, August 2014

repair. They prepared for performances and purchased or repaired outfits to wear during the ceremony. Everyone vied for roles in the ceremony. Participation, documentation, and evidence were important to the community. Yet, the ceremony is tautological in nature as the community celebrates it as part of their indigenous identity, yet at the same time, the presence of and participation in the event gives proof of an existing and organized indigenous community.[116]

### 5.1.2. Nanyaran

Another example of their shared community history, but one not nearly as popular at the national or international level, is the Kasepuhan event of Nanyaran. Vitally important to the community for many reasons, it is not well known outside of the Kasepuhan community. There is little of the event that "looks" indigenous or follows the national government's essentialized idea of indigeneity. Similar to an American Thanksgiving celebration, Nanyaran is a time to celebrate community and family connections and give thanks for the abundance of the harvest. It is the time when community members will first eat the rice of the year's harvest and welcome the harvest into the home.

To celebrate, families will cook a number of dishes to be shared amongst the households of their neighbors, family, and friends. The number depends on household resources and social standing. The following examples are drawn from Kasepuhan Cinta Mekar from the 2013 and 2014 Nanyaran celebrations. The household of Abah Ugi, *Imah Gede*, spent around Rp.20,000,000 ($1,452.00 USD), cooked over 35 dishes, and sent them out to households all over the village.[117] They also shared with hundreds who come for the central ceremony. On a

[116] This is a rather common ceremony across Indonesia. For example, it is known as *uman padai mading* among the Kenyah and *gawai* among the Iban.
[117] Personal research, Cinta Mekar Nanyaran

smaller scale, each household has its own Nanyaran ceremony as well. One research subject, who is influential at the *adat* level but whose family had suffered financially since the death of its head of the household, spent around Rp.500,000 ($36.30 USD), cooked three dishes and sent dishes to 22 households.[118] An influential and wealthy family, whose head of the household was a leading member of the Kasepuhan ruling council the *Baris Olat*, spent nearly Rp.2,000,000 ($145.20 USD), made five general dishes and two special dishes, and sent out to 150 households.[119] The women of the Kasepuhan generally spend this time cooking, helping others cook, hand milling rice, and so on. The men of the Kasepuhan spend the time looking for wage labor in the informal economy to make money to pay for the festivities. After this they will start saving for Seren Taun expenses.

Nanyaran is a very expensive time of the year as a household must prepare many dishes with lots of proteins, such as chicken, fresh fish, eggs, and heart of palm. *Imah Gede* also had water buffalo and deer. Households celebrate on different days throughout a three-week period, which means three weeks straight of families sharing food. It is a time of plenty. One participant lamented that after Nanyaran it would be back to salted fish.[120] I asked how often people eat proteins in their diet and the response was laughter.[121] It was explained that it was because I phrased my question "how many times *a week* do people eat meat" and participants laughed and explained that it was more like once every four or five months and usually only for a special occasion like a wedding, Nanyaran, or Seren Taun.[122] They can also get meat from *Imah Gede*, but it is not common for general households.[123]

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[118] Personal research, Kasepuhan Cinta Mekar Nanyaran 2014
[119] Personal research, Kasepuhan Cinta Mekar Nanyaran 2014
[120] Mang Jamang interview, July 2014
[121] Here participants were referring to meat as protein sources such as chicken, beef, and goat. Dried fish was eaten regularly but was not considered a "meat" in the same sense.
[122] Mang Jamang and Mang Junedi interview, July 2014
[123] Personal research, Kasepuhan Cinta Mekar

Yet, regardless of the meaning of Nanyaran, there is no music, specific clothing, or ceremonies that strike the outsider as being "indigenous". It is a fairly low-key event with little to set it apart from everyday activities of cooking and eating. In fact, the most striking thing about the time of year is that it breaks up the monotony of generally available food. Spiritually it is special, as families eat from the new harvest for the first time, but that in and of itself is a hard thing to match to the Indonesian government's specifications for indigeneity. In this way, Seren Taun has come to represent much more to the outside world than Nanyaran. There are no community members asking for receipts of meals delivered. There is no paperwork to collect or photos taken to "prove" participation. It is a quiet and little-known event, but important to those who know its significance. In this way, Nanyaran and Seren Taun have come to be part of the communities' layered indigenous identity. While there is importance within the community for celebrating both, they also are acutely aware of the significance that the outside world places on Seren Taun. They respond in a way that allows them to document and legitimize their indigenous culture through Seren Taun, while celebrating Nanyaran in relative obscurity.

### 5.2. History of settlement in a particular area

The second qualification (history of settlement in a particular area) for being recognized as indigenous in Indonesia is quite tricky in the case of MK35. Communities must obtain recognition at the regional level before they can claim land at the national level, but ironically the features recognized by the Indonesian government to prove indigeneity include a specification that the group must prove settlement in a particular area. In this case, it means that indigenous groups across Indonesia must prove they own/reside on customary land in order to gain official land rights to customary land - which can, understandably, be quite difficult.

For many indigenous groups across Indonesia, this also means separating out how they use the land in order to make the claim that it is "customary" land holdings. Many indigenous communities practice swidden agriculture (or shifting agriculture), which is largely discouraged at the national level. Historically, there has been a divide over swidden systems between academics, swidden practitioners and civil society organizations on one hand and governments on the other. The feeling among many academics, practitioners and international-level organizations is that swidden agriculture is more sustainable than previously thought, with studies showing that the practice is a rational and potentially beneficial agricultural system in tropical climates (Conklin 1957; Geertz 1963; Dove 1983; De Jong 1997; Mertz et al. 2008). Many scholars have even shown the rationality of swidden agriculture specific to the Indonesian context (Colfer et al 2015; Colfer 2008; Colfer and Dudley 1993; Colfer and Peluso 1997; Dove 2012; Wadley and Colfer 2004). However, governments, including the Indonesian government, often see swidden agriculture as a destructive practice that leads to forest degradation, and governments within Southeast Asia have been less than tolerant of traditional shifting cultivation. Indeed, the common approach for governments has been to discourage swidden farming by means of regulation and ideological campaigning in the assumption that the practice degrades forest landscapes. Duncan (2004: 88) criticized this view by arguing that 'these environmental concerns about swidden can be considered a red herring, because often the Indonesian government opened up the forests for logging, mining, or transmigration as soon as forest-dwelling communities were resettled.' Forms of regulation imposed in Indonesia have included outright prohibition; prohibition without a permit; prohibition on certain classes of land; and tenure-related disincentives (Cramb et al. 2009). As well as these, there are also ideological persuasions, by which governments act to coerce or otherwise convince swidden agricultural

communities that their agricultural practices are outdated, backward and/or in need of conversion. This is the difficult situation in which *adat* communities find themselves. In order to prove customary land ownership, they often have to show that they are shifting cultivators, yet they step cautiously knowing that the government often bans and punishes the practice.

### 5.2.1. Agricultural practices

Throughout the centuries, the Kasepuhan have relied on swidden rice production, although they have also grown irrigated rice for more than one hundred years, after being forced by the Dutch colonial government to do so. They plant and harvest only once in every year, whether the crop is in swidden plots or irrigated paddies. Spiritually, the two methods of rice production are very different. Both are controlled by *adat* ceremonies, but the connection with the ancestors is made through swidden production. In fact, the Kasepuhan resisted irrigated-rice cultivation up until the late 1800s. One factor contributing to its eventual adoption was the impact from the Dutch colonial cultivation system (*cultuurstelsel)* in the mid-1800s that forced the native population to devote a certain percentage of their land or labor to growing export crops. The community responded by slowly converting small areas to irrigated-rice production, which generally produces higher grain yields than swidden production and requires less land. In this way, irrigated rice has, for the Kasepuhan, always been connected to production and capitalist markets, not their spirituality.

Of the four Kasepuhan villages involved in research, all had some residents who still practiced swidden agriculture, although it was a much more vibrant practice in some villages than in others.[124] Those villages that were closer to market access, main roads, National Park

[124] Personal research, West Java and Banten, 2013-2014

offices or gold mining operations tended to have fewer swidden farmers. This may have to do with the visibility of agricultural practices to government officials who favor wet-rice production; the inability of the Kasepuhan to sell rice under *adat* law, especially rice produced in swidden plots; and strict adherence to *adat* law, which emphasizes swidden rice production. The practice was particularly strong in Kasepuhan Cinta Mekar, where residents proclaimed that wet-rice agriculture was for production purposes and was introduced by the Dutch, whereas rice grown in a *huma* (swidden) was for *adat* and "for life."[125] Swidden rice production is how the Kasepuhan have traditionally grown their rice.[126] Indeed, those Kasepuhan communities that still practiced swidden farming were those closely linked with *adat* power and perseverance.

Kasepuhan swidden agriculture usually occurs on a seven-month cycle, with planting in October and harvest in April or May, depending on the rice variety. It follows the cycle of *nyacar*, *ngaduruk*, *ngaseuk*, *ngored* and *panen* (cleaning, burning, planting, weeding and harvesting).[127] These names are not merely agricultural activities within the annual cycle but are synonymous with *adat* ceremonies that are performed at each stage. No activity in the field, garden or forest can take place without the proper ceremony. For example, during the *ngaseuk* stage of the cycle, Kasepuhan spiritual leaders and members of the community will perform ceremonies that seek permission from the ancestors to proceed with planting, give thanks for the use of the land and seek guidance about planting times, efforts and locations.

On the day of planting, *ngaseuk*, the main ceremony involves the community's spiritual leader covering his head with a white cloth and then meditating and praying over the basket (or baskets) of seeds to be planted. The basket of seeds sits inside a square of bamboo slats, covered

[125] Personal research, Huma planting ceremony (*ngaseuk*) participant, November 2014
[126] Akhi Ugis interview, Kasepuhan Cisitu, October 2014
[127] Personal research, Kasepuhan Cinta Mekar, November 2014

by a white cloth. A small triangle of woven palm fronds is staked into the ground nearby. The basket of seeds also holds a variety of ritual objects, including a small mirror and a comb for Dewi Sri, the rice goddess; betel nut packets; an antique comb; incense; a small ceremonial dagger; and essential oils.[128] The spiritual leader chews "betel" nut, which is the crushed nut of the areca palm (*Areca catechu)* during the process and then sprays the juice on to his open palms. He then presses them down on to the seeds in the basket. An *adat* elder analyzes the spread of seeds stuck to the spiritual leader's hands and chooses the two that are most similar in position, size, and shape. These are then placed in a small white cloth to be buried in the earth beneath the basket of seeds.[129]

The ceremony takes place in front of all participating community members, who will later help to plant the seeds in the swidden. It will be replicated at the household-level by Kasepuhan families throughout the following few weeks. Fields are generally planted on the day of the week on which a prominent household member was born. At the end of the *adat* ceremony, community members gather around the ceremonial baskets of seeds to take handfuls for planting. Men usually walk first around the swidden plot with dibble sticks, while the women follow behind, planting three or four seeds in each hole poked into the soil by their counterparts. However, these roles are not static and depend on the availability of labor. Some women will help with dibble sticks and some men (usually younger men or adolescents) will help to plant the seeds.[130]

Some of the women also plant a variety of other seeds and small seedlings to be

[128] These are the same objects I found swidden farmers north of the city of Bandung to be using in their ceremonies during research in 2009. Yet, while the ceremonies were the same, somehow the Kasepuhan are classified as indigenous whereas the farmers north of Bandung were referred to by their neighbors as "backward" and "old-fashioned".
[129] Personal research, Huma planting ceremony (*ngaseuk*), November 2014
[130] Personal research, Huma planting ceremony (*ngaseuk*), November 2014

intercropped with the swidden rice. The swidden plots of the Kasepuhan are often intercropped with chilies, garlic, beans, *leunca* (*Solanum nigrum L.*), *terubuk* (*Saccharum spontaneum var. edulis, Hassk., K. Schum.*) and shallots among the rice.[131] In this way, the biodiversity in the swidden fields is often quite high, compared to the rice monocrops in paddy cultivation (Styger et al. 2007). Small saplings of various tree species are also left around the swidden to start its regrowth into secondary forest once cropping ends in five to seven years. Larger trees were harvested for building materials and firewood in the early stages of field preparation.

With regard to land tenure, there are two general swidden categories for the Kasepuhan. First, there are 'community' swidden plots which are worked by communal labor for the benefit of the Abah, his family, the workers, and guests. Then there are family plots which are worked by family units for their own benefit. These are often on land to which community members have usufruct rights. Being located in a national park means there are no official certificates or ownership rights, either communal or individual, but most community members hold rights through customary law to use plots of land. These rights are only occasionally disputed as the Abah and *adat* leaders allocate all rights. Families sometimes trade and sell usufruct rights certificates that detail a plot's location, but these trades must still be approved by the Abah and the *Baris Olat* council.

Some people are more forthcoming than others about their use of the land within the boundaries of the National Park. For example, a community member may deny both the existence of swidden farming and any knowledge of swidden practices by other members of the community, but then will be seen taking part in *adat* ceremonies for swidden farming. Other members will openly discuss the preference of park officers for irrigated rice agriculture but

[131] Personal research, Huma planting ceremony (*ngaseuk*), November 2014

confess to being puzzled by the preference because in their understanding the two practices have both benefits and drawbacks for the environment. Throughout the research, swidden agriculture was a common practice and community members would openly discuss its connection and importance to *adat*. However, it was rarely discussed in relation to land-use policies, the National Park's zones or rules, or MK35.

The agricultural practices of the Kasepuhan have interesting implications for their indigenous identity. Swidden agriculture is often seen as more closely connected to "indigenous" communities, yet, indigenous communities are often walking a fine line when they choose to highlight their swidden agricultural practices knowing that the government looks down on the method. Furthermore, communities are being asked to prove a connection to a particular place, region, or even specific location in order to gain indigenous recognition. Yet, to prove a connection to a particular location denies their reliance on swidden agriculture, which is generally shifting in nature. Specificity in location can improve the success of land claims, but inherently removes nomadic and semi-nomadic agriculturalists such as the Kasepuhan.

### 5.3. To have an established system of self-governance

Another feature of indigenous peoples presented in MK35 is the proof of an established system of self-governance. For the Kasepuhan, there are two levels of customary governance. The first is the Kasepuhan network level, with each Kasepuhan having a group of community members knowledgeable of *adat* and responsible for leading their respective Kasepuhan. These groups are referred to as a *Baris Olat*. The second level is tasked with representing the Kasepuhan Banten Kidul indigenous group as a whole and is referred to as the SABAKI (*Kesatuan Adat Banten Kidul*). This group is made up of representatives from each of the 15 Kasepuhans and serves as a

group council but was only officially revived in the early 2000s. Representatives are tasked with reporting back to their respective Kasepuhan network and are generally part of their local *Baris Olat.* These governance structures dictate rules for everyday life, such as what day families can plant their rice, who is eligible to purchase land rights from whom, who is in violation of *adat* law, and so on.

The *Baris Olat*'s primary function is to understand, interpret, and enforce *adat* for community members, while the SABAKI concern themselves more with the representation of the Kasepuhan group to outside entities. The SABAKI generally concern themselves with meetings with NGO leadership staff and regional and national government officials. While *adat* is a constant presence at meetings such as these, it is not the *point* of the meeting, which is often the case for the *Baris Olat*. While both would be considered political machines of the Kasepuhan, the *Baris Olat* is an internal structure and the SABAKI is an external structure. The SABAKI is seen as the representative to outside structures, yet for the Kasepuhan community members, the *Baris Olat* is the ultimate authority for everyday life. The *Baris Olat* maintains power and control over agricultural, religious, legal, and social practices, yet, to outside actors, it is the SABAKI that they turn to for communication and connection with the Kasepuhan. In its structure, perhaps, they see something that is understandable to them (democracy, representatives, etc.) so that it becomes the recognized "governance structure" of the Kasepuhan.

In the following section, I analyze the often-complex relationship between the Kasepuhan community and their governing bodies (*Baris Olat*, SABAKI, Indonesian national government). While they view themselves as indigenous people, they also view their identity in connection to the larger state. Identity and citizenship are often tangled in complicated ways for the indigenous peoples of Indonesia.

### 5.3.1. Independence Day

The connection to Indonesia as a state and its national-level legal framework remains subordinate for many in relation to Kasepuhan *adat* law and the rules of the *Baris Olat*. Indonesia celebrates its Independence Day on August 17 each year. Ceremonies are held in small, remote villages all over the country as well as in the cities. These celebrations are a petri dish in which to observe the reaction of mixing indigeneity and nationalism. In one Independence Day (2013) ceremony I observed at Kasepuhan Cinta Mekar, festivities were planned for weeks in advance. Children practiced the national anthem, leaders were chosen as the "official inspector" and "announcer" for the program, and preparations were made for a parade. It took place about two weeks before the yearly *adat* ceremony celebrating the harvest - Seren Taun. In this way, it was easy to observe the differences in planning, approach, and results for the two ceremonies – one celebrated with the nation-state and one celebrated through their indigenous identity.

With all the preparations that went into the ceremony, I assumed that it would be a serious matter. Traditional dress was required in shades of red and white to match the Indonesian flag. From the very beginning, it became obvious that the seriousness was to be short-lived. Abah Ugi had chosen childhood friends to conduct the ceremony. The "inspector" could not stop laughing throughout the program. One man marched in a strange way that had all the participants laughing. One made a mistake in reading a proclamation that changed the meaning of it entirely. A local dog tormented the choir and flag carriers by biting anyone that passed him. The flag was hung upside down initially and everyone had to wait while the teen flag bearers in their white gloves attempted to correct the mistake. The comedy of errors had the local *Baris Olat* members

of the community abuzz for the rest of the day trying to understand what the signs meant for the community in the coming year.

While the mistakes were not taken lightly, they were not taken all that seriously either. When compared with *adat* events, though, it becomes obvious that *adat* ceremonies are no laughing matter. The community takes the ceremonies that connect to their indigeneity, such as Seren Taun much more seriously than those connected to their citizenship. While they identify as Indonesian if asked about their country, their identity as Kasepuhan Banten Kidul is what defines their everyday life. In this case of the ceremonies attached to each, formality provides legitimacy. There are degrees of formality depending on the legitimacy embedded in the purpose of the ceremony. Royal family ceremonies and religious ceremonies (*adat*) are conducted with the highest level of formality, perhaps in an attempt to provide a framework of importance for community members, and even outsiders. This account is not meant in any way to posit that indigeneity is created outside of national factors, but rather to show how embedded the two are in their existence. It is yet another layer in the identity of the Kasepuhan. The frameworks for legitimacy and identity for all layers are never far apart.

### 5.4. To have material and immaterial culture

A fourth feature, according to MK35, of an indigenous community is the presence of material and immaterial culture. During the analysis of data, I looked at three specific forms of material and immaterial culture for this feature of indigeneity. With regard to the material and immaterial culture of the Kasepuhan, I focused on 1) specific artifacts passed down from one generation to another; 2) tools and/or handicrafts made as needed using the knowledge passed down from one generation to another; and 3) the passing down of knowledge needed to create material cultural

objects needed for everyday life. During the course of the analysis, I found that the legitimization for indigenous identity was often placed on the second and third categories for outside actors, but that community members often placed more emphasis on artifacts. As in many of the other cases, it became apparent that the Kasepuhan community members placed significance on both ways of expressing culture, but that they recognized that outsiders (social or governmental) often placed greater importance on material cultural items that were produced by indigenous people and gave them the "look" of an indigenous person. The importance of these differences can be seen in the following examples.

### 5.4.1. Artifacts

A previous Abah (customary law leader of the Kasepuhan), named Abah Arjo, passed away in 1982. The title of Abah is not inherently bestowed on the oldest son, but rather on the child who receives the *wangsit* (prophecy). In the case of Abah Arjo, he received a *wangsit* from the ancestors that leadership of the Kasepuhan should be passed to Abah Anom, his youngest son. Abah Arjo's oldest son, Abah Asep did not agree with this and has claimed his own title of Abah. One resident told me the story of how Abah Asep "stole" a sacred artifact.[132] He took an object of *adat* power, which in this case happened to be a *kris* (an Indonesian dagger with a distinct wavy blade and widely believed to be magical throughout much of Java) and then claimed that he was the true Abah, as he possessed the artifact.[133] There were some that followed him as the possession of such an artifact is important. Community members believe that the spirits and the ancestors would not allow someone who was not the true Abah to take and possess the artifact so

[132] I use the term "stole" here because that is the word used by the participant. However, she is a follower of Abah Anom's line, so a follower of Abah Asep might use a different term here, which would highlight feelings of legitimacy.

[133] Ibu Umi interview, August 2013

there was legitimacy to his claim through the possession of the sacred weapon. Abah Asep's followers, to this day, are a mix of loyal family and friends and those who believed in the power of the possession of cultural artifacts.

Abah Asep is still living and now resides in Sirnaresmi and is tolerated in his position among the other Kasepuhans with a number of his own followers. Although tolerated and acknowledged, Kasepuhan Sirnaresmi continues to have a complicated relationship within the Kasepuhan Banten Kidul structure. Throughout much of the research, it was unclear (to myself and to many of those interviewed) whether Kasepuhan Sirnaresmi was actually an independent Kasepuhan grouping or a subgrouping of Kasepuhan Cinta Mekar. Despite the leadership of Abah Asep, interviewees often noted that it was subordinate to Kasepuhan Cinta Mekar.[134] During 2013 and 2014 research visits, Abah Asep's youngest son was a familiar presence in the home of Abah Ugi (Abah Anom's son and receiver of his *wangsit*) in the village of Cinta Mekar. He was sent to serve Abah Ugi, according to some stories. In others, he was a spy sent to funnel information back to his father.[135] The complicated relationship did not end there, as Abah Ugi also allowed a Sirnaresmi resident to serve as his representative at regional and national meetings with the Indonesian government and various NGOs.[136] At one point, the representative and I attended the same meeting and Abah Ugi commented on the differences in the information given to him after the meeting. While I was in no way asked to attend and report back to Abah Ugi, the meeting (which I attended as part of my research) and what transpired came up in casual conversation with the *adat* leader. While the representative claimed that he was a loyal follower of Abah Ugi and Kasepuhan Cinta Mekar, he lived in Sirnaresmi and had frequent interactions

[134] Personal research, Kasepuhan Cinta Mekar and Kasepuhan Cisitu
[135] Mang Edi interview, Kasepuhan Cinta Mekar
[136] Abah Ugi interview, Kasepuhan Cinta Mekar, December 2014

with Abah Asep. These tangled loyalties stem from the legitimacy of artifacts and those who possess them.

Abah Anom accepted his own *wangsit* from the ancestors, as received by his father. Aside from the *kris* taken by his older brother, the sacred artifacts remained with him and his followers. The majority of the Kasepuhan members then followed Abah Anom after his father's death. Abah Anom resided in the village of Cinta Mekar after moving the village there in 2001 and was generally regarded as the true receiver of the lineage of the Abah's of the Kasepuhan. Abah Anom died in 2007 and passed on the leadership role for Kasepuhan Cinta Mekar to his son Ugi Sugriana Rakasiwi, who is now known as Abah Ugi.

Yet, despite the importance of these artifacts to the Kasepuhan people, they are obscure, seldom seen or used, and tend to represent more to the community than to government officials. In the next section, I discuss two different aspects of material and immaterial culture (handicrafts and the knowledge to produce them) that have found a place of importance among both government entities and regional and national NGOs – quite a different situation from artifacts.

### 5.4.2. Material Culture

More easily recognized than artifacts are the material cultural items being produced from knowledge passed down from previous generations, making the knowledge itself the artifact. As artifacts are generally singular items, they cannot be claimed by all community members but rather by the community as a whole. However, material cultural items tend to be a more straight forward claim to indigeneity. They are easily recognized in many cases and can be reproduced easily. For example, AMAN (Indigenous Peoples' Alliance of the Archipelago) often pushes its members to contribute to the material culture essentialization of indigenous culture, hosting a

craft fair in Jakarta, which further serves to fuel wealthy and far-removed urban Indonesian ideas of what it means to be "indigenous." AMAN also has a handicraft center located in Bogor, West Java. The mission of the center is not only to sell regional handicrafts, but also to help communities develop crafts for the target market, which is not local. This includes taking more localized handicrafts, designs, and patterns and altering them to make them marketable to foreigners and wealthy Indonesians. Some examples that were on display in AMAN's central office in 2013 and 2014 were beaded necklaces, "beach" bags out of rattan and lined with dyed fabric, batik shirts in modern designs using older, localized patterns. Money is paid to artists up-front at an agreed upon price and then the profits from the sale are used to fund AMAN projects.

Kasepuhan Cisitu members reported that AMAN asked them to contribute to its handicraft sales, but Cisitu residents expressed their confusion over the request during a focus group discussion. One claimed that they do not currently produce any handicrafts.[137] Another followed up with a statement that they were "a society of consumers, not producers."[138] Yet, these items fuel outside understandings of indigenous identity. And with governmental recognition on the line, groups like AMAN understand the importance of providing recognized evidence of "indigenous" practices, no matter how essentialized or concocted.

Kasepuhan Cinta Mekar, on the other hand, does currently produce some handicrafts from materials sourced from the surrounding forests, such as bracelets, bags, and baskets. The bracelets are called *simpay* or *simpai* in Indonesian and are common throughout the archipelago. They are woven using the center stem of the "resam" fern[139] (*dicranopleris linearis*) or of rattan. One local man, Aki Arjapi, makes the bracelets in his spare time to supplement his income by selling them

[137] Cisitu focus group, July 2014
[138] Cisitu focus group, July 2014
[139] *Dicranopleris linearis* likes disturbed and nutrient-poor soils. It is common around cultivated areas making it easy to find and work when attending to the fields.

to community members and tourists. In an interview, Aki Arjapi explained how his father-in-law taught him to make them but over the years he has come up with new designs to make them new and fresh again. His innovative designs have won him a new demographic of customers among the younger generation of Kasepuhan members and the limited number of tourists visiting the community. He has processes for making the ferns different colors, ranging from cream to almost black. He also makes new designs upon tourist requests, such as rings, armbands, and ankle bracelets. He generally sells them to one unrelated community member in particular – Ibu Simpay. Ibu Simpay then resells them to guests who visit the village for a small profit.

*Figure 5 Aki Arjapi cuts ferns to use in the production of simpay. Photo credit: Rebakah Daro Minarchek - November 2014*

Ibu Simpay is noted around the village as making a nice profit from her position as a broker of material cultural objects, such as the *simpai*, rattan bags, and wide-brimmed hats. She often hosts visitors in her home, so she has easy access to the consumers of these objects. She buys them cheap from the producers and then increases the prices. One villager assisted me in contacting a local artisan for an interview, who produces the local rattan handbags called *kaneron,* but asked that if I bought one not to mention that she helped me to Ibu Simpay because she is fearful of her finding out that she has been cut out of the profits of a sale.[140]

The community is also starting to produce (traditional and reimagined) items on their

[140] Teh Titin interview, August 2014

own, without the assistance of AMAN. On March 15, 2018, a community member from Kasepuhan Cinta Mekar published an Instagram photo of an "*aseupan*," which is a basket made from bamboo and rattan used to steam rice or food over a pot of boiling water. The caption under the photo shared that they were for sale for "only Rp.30,000[141]," but that one must order in advance and come to the village to pick up any orders. For members of Kasepuhan Cinta Mekar, an *aseupan* is a necessary tool for everyday life. Rice must be cooked over an open fire according to customary law. Rice cookers or butane stoves cannot be used for cooking rice, although other foods can be cooked using these if one has enough money to purchase one. However, as one respondent to the post mentioned, the *aseupan* has become popular in recent years with the general Indonesian population as a way to make pour-over coffee. The *aseupan* being advertised was much too small to make rice and is, in fact, a modern take on a traditional item to specifically be used to make coffee. The key to marketing and selling material cultural items, as community members have discovered, is to put a modern twist on a traditional item so that it is not simply nice to look at, but also functional - rice cooking baskets to pour-over coffee filters; male tool baskets to female purses; tunics adorned with beading to beaded necklaces; rattan baskets to fabric-lined beach bags.

Through these examples of the treatment of material culture such as artifacts and handicrafts, as well as the immaterial culture of knowledge transmission for handicraft production, one can see the importance that Kasepuhan members place on all aspects of material and immaterial culture. However, it also becomes apparent that outside actors, such as government representatives, NGO staff, and wider society, place greater appreciation on the making, imagining and reimagining, and selling of material cultural items such as handicrafts.

[141] $2.18 USD

Artifacts may legitimize rule for Kasepuhan members, but indigenous status is legitimized to the wider public through the production of items like handbags, bracelets, headscarves, necklaces, and so on.

## 6. Conclusion

This paper raises important questions about the process of and reasons for claiming indigenous status in Indonesia. Due to the passing of MK35 and the possibility of land rights that it embodies for indigenous communities, *adat* communities across the archipelago are racing to prove their indigeneity in specific ways, in order to receive land rights from the Indonesian government. Yet, in this paper, I am not discussing the extent of any communities' indigenous legal claims, but rather reflecting on the use of the "tribal slot" to make claims to natural resources. I conclude that the "tribal slot" allows communities to understand the limits of governments to categorize indigenous but still allows the community freedom to express their indigeneity in other ways outside of those criteria – to have cultural practices that "look" indigenous, but also to look and act like rural Indonesians as well. In this way, the legislation raises useful questions about the formation of indigenous identity in the country and informs future conversations about the conceptualization of indigeneity.

Yet, being aware of exactly how to prove one's indigeneity in order to make resource claims also opens up a host of problems. It has, already, become a tool by which local elites gain land rights, extract mineral resources, sell concessions to large tracts of forests, and so on. Corruption abounds even within indigenous communities, where the powerful (regardless of indigenous identity) use the government's metrics as a way to gain power over community resources. Within this research, all four of the non-governmental organizations involved

mentioned this as an issue of concern.

While no one would probably deny the Kasepuhan's claim to be indigenous, in many ways they are simply modern rural Indonesians (however that may be conceived), just trying to live life and obtain a bit of security to resources that they never consented to give to the State. But, due to historical legacies of colonialism, their land was forcibly taken from them and they now see a possibility of gaining some of that land back through the highlighting of their indigenous identity. No one would blame them for such a move, but neither should we assume that they will be better stewards of the land than the Indonesian government simply because they are "indigenous."

Finally, this research raises important questions about indigeneity in the context of politics and power. As I hope I have drawn attention to in this paper, indigeneity is not something that can be thought of outside of the context of what it is in opposition to, which is often the state. With the state effectively setting the terms on how to determine indigenous peoples within its boundaries, the process of claiming indigeneity now belongs to those groups most adept at navigating the system or those willing to partner with outside organizations already familiar with the system. Therefore, the relationship between power and political dexterity must be taken into account when thinking about the realities of "official" recognition of indigenous populations. Furthermore, the research draws attention to the reproduction of indigenous identities among future generations and the potential problems of seeking legitimation outside of the community. Is "official" recognition being tied to resource claims and rights setting a dangerous precedent for the youth of these groups? Is the process of claiming indigeneity reproducing existing power structures? But, yet, is there any way that a community might eschew the state's procedures without the potential of losing out to their more politically savvy indigenous neighbors? On the

other hand, is there a way to work within the state's procedures without inadvertently legitimizing its practices? More research on the politics of indigeneity is desperately needed in the coming decade as the race for resources continues.

## Conclusion

In this dissertation, I explore the reality of invoking indigenous status by the Kasepuhan people of Indonesia in the process of claiming minerals, water, land, forests, and other natural resources based on that status. In this particular case, I analyzed claims to land by the Kasepuhan to land currently classified as state-owned forests, whether actually forested or not. Each of the papers explores a particular sphere of influence in the process of making and legitimizing those claims.

### Summary of key findings

I found that customary law communities are using three primary avenues in order to gain legal recognition as "indigenous" which can then be used to claim land in Indonesia – legal channels through the legitimation of customary law, technological channels using GIS and GPS technology, and discursive claims to socially recognized markers of "indigenous" peoples. The three papers within this dissertation focus on this claims-making process for indigenous groups within Indonesia to natural resources.

The first paper highlighted the limits of a statutory legal system that is pluralistic in nature, with overlapping, confusing, and conflicting laws. The paper especially looked at the impact of a pluralistic statutory legal system on customary law communities and how the ambiguity, in fact, helped to strengthen the customary legal system and the use of customary law to claim ownership over natural resources.

The second paper focused on the participatory mapping process and while non-governmental organizations have traditionally served as brokers in the process, are increasingly being displaced by local communities as they find ways to map community territorial claims. The example in the paper showed a community that has done this by working directly with a

newly-formed government agency, but other configurations have also been observed within the Kasepuhan.

The third paper explored the discursive elements of indigeneity claims among the Kasepuhan in Indonesia. Specifically, it highlighted the layering of identity that communities do as they discover the national and international rewards to legal recognition as an indigenous group.

Conclusions from the research

Conclusions about this research can be drawn from each of the papers regarding the claims-making process by and of indigenous communities. The first paper draws attention to the often confusing and contradicting nature of the statutory legal system in Indonesia and how it has the unintended consequence of legitimizing, rather than de-legitimizing, the customary law system for many indigenous peoples throughout the country. Furthermore, the paper concludes that indigenous communities in Indonesia can use this legitimization of the customary law system to advance their claims on the political forests of Indonesia, and the home to many of these communities.

The second paper re-examines Nancy Lee Peluso's conclusion that participatory mapping could never become a science of the masses and that it would remain in the realm of civil society, the rich, and the government due to the technological know-how, training, and funding needed to produce scientifically valid maps. Rather, I conclude that due to misaligned interests with NGOs, advancements in technological availability and accessibility, and the promise of radical change through Indonesia's One-Map Policy that indigenous communities have reached a turning point in counter-mapping efforts. They now have the option to carry out counter-

mapping projects on their own, even if the effort is nascent and has some hurdles to overcome in the future. Regardless, all the pieces are now at their disposal as they learn to create maps of their territorial claims.

The third paper concludes that the future of indigenous recognition lies somewhere in-between essentialism, instrumentalism, and constructivism. The layered understanding of the indigenous identity that the paper presents for the Kasepuhan people demonstrates that the tightly-bound understanding of essentialism can be a starting point for official recognition of indigenous identity while recognizing that the reality of the indigenous identity for many groups lies more along the lines of instrumentalism or constructivism. Perhaps such approaches all have benefits in helping to allocate much-needed natural resources for forest-dependent peoples.

Importance of the Research

Is the dawning of the age of NGOs and outside organizations ending? Is it time that we see indigenous peoples not as participants, but as actors in their own right? This research might indicate that both these questions are important in the continuing debate over indigenous identity and resource claims. For at its core, this research is about mitigating inequality by seeing rural communities not as participants in outside projects, but as active agents in determining the direction of a community regardless if it aligns with outside ideas of what they should or should not be doing.

My research shows that indigenous communities are already serving as active agents of change with regard to the fight for legal recognition and official ownership of land and other natural resources. The Kasepuhan people, serving as a lens with which we can understand the process of claims-making for indigenous peoples, are legitimizing their customary legal system,

accessing technology in innovative ways in order to produce recognized maps of their territorial claims, and discovering the ways to position their ceremonies, artifacts, and legal system in order to find the greatest chance at success in proving their "indigenous status" to the Indonesian government, civil society, and the outside world.

Recommendations for Future Research

Despite the conclusions drawn from this research, the process of implementation of MK35 is ongoing in Indonesia. It is slated to continue until 2019, and with current implementation running behind schedule it is possible that it could continue past that date. Long-term research is needed in order to follow the process through official implementation and beyond. I hope that there is the possibility to continue this research, including with other customary law communities, in the coming years.

In addition, I believe that there is a large gap in the research concerning the reality of compounding inequality and marginalization. There must be further research into the ways that gender plays a role in participation, inclusion, and representation with regard to the implementation of MK35 in particular and the processes of claiming and using indigenous status. The majority of research for this dissertation was conducted with male respondents due to their overwhelming predominance in leadership roles for the Kasepuhan. It is not enough to simply say that the females' lack of presence is noted, but rather further research is needed to understand the implications of their marginalized voices.

Recommendations for Practitioners

For policymakers, I would recommend, based on the data from this research, that indigenous communities should be given more authority in the allocation of funding meant to improve their lives. They should have greater control in the planning of programs, allocation of resources, access to training, recruitment of participants, and the interaction with funders. There is little doubt that indigenous communities would benefit from the access to resources that are usually allocated to intermediaries. However, I believe that the biggest hurdle that indigenous communities face in implementing their own development agendas is in being given the autonomy to design and implement programs that are meaningful to them, regardless if those programs are in line with development goals, current research, or international and national agendas. Current policymakers have had the benefit of decades of learning experiences and it is time to allow indigenous communities to learn (and yes, probably make their own mistakes) from being in control of the funds and projects that directly impact their lives. For example, with direct implications for Indonesia's indigenous communities and their struggle for land rights, I would recommend that indigenous land rights organization such as the Rights and Resource Institute stop funneling funds through such a large number of umbrella organizations and national NGOs and rather, start providing direct funds to communities with only loose stipulations on the use of such funds. There will be a learning curve and it should be expected, but I predict, based on this research, that indigenous communities are ready to start leading their own fight for legal recognition and land ownership.

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