

BETWEEN CONTROL AND EMPOWERMENT: LOCAL GOVERNMENT ACKNOWLEDGMENT OF ADAT COMMUNITIES AND ADAT VILLAGES IN INDONESIA

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Abstract

The local government's acknowledgment of adat (customary) communities and adat villages, as regulated in the Village Law 6/2014², appear to signal an increasing recognition of adat law. However, the current acknowledgment practices and adat village formalizations have become areas of legal contestation between adat communities and state-national and local governments. Despite the resurgence of formal legal pluralism, those acknowledgment and accommodation mechanisms are double-edged. They involve control and empowerment as emphasized in Hellman's framework applied to analyze the dilemma in a plural society regarding cultural politics. On the one hand, the acknowledgment and accommodation mechanisms conducted through an official process necessitate the fulfillment of a list of requirements set by the government (controlled). Thus, there is a possible drawback for an asymmetrical position between the formal institution (recognition giver) and the community (recognition recipient). Conversely, the mechanisms are used by adat communities as a means to gain the rights of self-determination. Thus, empowerment is realized, because most local acknowledgment regulations include obligations of protection by the state and local governments. This paper discusses the dynamics of legal pluralism in Indonesia using cases of local acknowledgment and adat village institutionalization in which adat law becomes an element in formalizing the communities' existence and adat village format. However, a question remains regarding whether the central position of adat law in such a mechanism is merely applied to fulfill the acknowledgment and accommodation requirement or whether it actually strengthens its capacity.

Keywords: *adat communities, local acknowledgment, adat village, control, empowerment*

Abstrak

Pengakuan Pemerintah Daerah atas masyarakat adat dan desa adat, sebagaimana diatur melalui Undang-undang Desa Nomor 6/2014, seperti menandakan semakin meningkatnya pengakuan terhadap hukum adat. Namun, praktik pengakuan pemerintah dan formalisasi desa adat saat ini merupakan arena kontestasi dalam bidang hukum antara pemerintah negara bagian dan nasional, dan masyarakat adat. Terlepas dari menguatnya pluralisme hukum secara formal, pengakuan dan mekanisme akomodasi tersebut memiliki dua sisi, kontrol dan pemberdayaan sebagaimana ditekankan oleh Hellman untuk menganalisis dilema dalam masyarakat plural dalam politik kebudayaan. Di satu sisi, mekanisme pengakuan dan akomodasi yang dilakukan melalui proses resmi mensyaratkan pemenuhan sejumlah persyaratan yang ditetapkan oleh pemerintah (kontrol); karena itu, memiliki potensi terjadinya posisi asimetris antara lembaga

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² Indonesia, *Undang-undang tentang Desa* (Village Law), UU No. 6 Tahun 2014, LN No. 7 Tahun 2014 (Law Number 6 Year 2014, SG No. 7 Year 2014)

formal (pemberi pengakuan) dan masyarakat (penerima pengakuan). Sebaliknya, mekanisme-mekanisme tersebut juga digunakan oleh masyarakat adat sebagai alat untuk memperoleh hak penentuan nasib sendiri. Untuk itu, aspek pemberdayaan disertakan dalam sebagian besar peraturan pengakuan di daerah termasuk kewajiban perlindungan oleh negara dan pemerintah daerah. Tulisan ini mendiskusikan dinamika pluralisme hukum di Indonesia melalui kasus-kasus pengakuan daerah dan pelebagaan desa adat, di mana hukum adat menjadi elemen dalam formalisasi keberadaan masyarakat dan format desa adat. Pertanyaannya adalah apakah posisi sentral hukum adat dalam mekanisme tersebut sesuai dengan penguatan kapasitasnya, atau apakah hanya diterapkan untuk memenuhi persyaratan pengakuan dan akomodasi.

Kata Kunci: masyarakat adat, pengakuan daerah, desa adat, kontrol, pemberdayaan

I. INTRODUCTION

After 1998–1999, which marked the beginning of the Reformation era, significant levels of hope were raised for the *adat* communities (*masyarakat adat* or customary communities) movement. Around these years, some significant changes had started to come up, such as the strengthening of *adat* revivals and subsequent changes in the politics and legal arrangement for a better treatment of *adat* communities in Indonesia. Acciaoli³ considers that:

“The first Congress of Indigenous Peoples of the Archipelago (KMAN I)⁴ had constituted a turning point in the mobilization of various “traditional” societies throughout the archipelago to demand recognition of their rights and achievements from the national government.”

Furthermore, decentralization or the Regional Autonomy policy has had a big contribution in this field. Malley⁵ also stated that the 1999 law “not only enhanced the autonomy of local governments from Jakarta but democratized them too,” adding that “decentralization must be democratic if it is to be successful.” Obviously, the changes were not instant efforts as many of them were products of long-term work and had been pioneered long before those years. This change of decentralization policy was then followed up by the Local Government Law 32/2004⁶ and subsequently enhanced by Law 23/2014⁷ and the latest Village Law 6/2014⁸.

These changes have also affected Indonesia’s *adat* communities. According to Moeliono, one direct impact is the emergence of a new kind of independence, which is most visible in the release over natural resources⁹. Another result is the raising

³ Greg Acciaoli, “From customary law to indigenous sovereignty, Reconceptualizing *masyarakat adat* in contemporary Indonesia” in *The Revival of Tradition in Indonesian Politics The deployment of adat from colonialism to indigenism* edited by Jamie S. Davidson and David Henley, (Oxon and New York: Routledge, 2007), p. 298.

⁴ It was held in 1999 in Jakarta attended by approximately 400 people leaders and element of *adat* communities from across Indonesia (‘Profil Aliansi Masyarakat Adat Nusantara (AMAN)’ <http://www.aman.or.id/profil-aliansi-masyarakat-adat-nusantara/>) accessed February 2 2020

⁵ Michael S. Malley, “New Rules, Old Structures and The Limits of Democratic Decentralisation”, in *Local Power and Politics in Indonesia – Decentralisation and Democratisation*, edited by Edward Aspinall and Greg Fealy, (Singapore: ISEAS, 2003) p. 102.

⁶ Indonesia, *Undang-undang tentang Pemerintahan Daerah* (Local Government Law), UU No. 32 Tahun 2004, LN No. 125 Tahun 2004 (Law Number 32 Year 2004, SG No. 125 Year 2004).

⁷ Indonesia, *Undang-undang tentang Pemerintahan Daerah* (Local Government Law), UU No. 23 Tahun 2014, LN No. 244 Tahun 2014 (Law Number 23 Year 2014, SG No. 244 Year 2014).

⁸ Indonesia, *Undang-undang tentang Desa* (Village Law), UU No. 6 Tahun 2014, LN No. 7 Tahun 2014 (Law Number 6 Year 2014, SG No. 7 Year 2014).

⁹ Moira M.M. Moeliono, “Adat and Globalization: Living Apart Together”, paper submitted in the International Association for the Study of Common Property, 9th Biennial Conference, Victoria Falls, Zimbabwe (June 17–21 2002), p. 13.

implementation of acknowledgment for the communities, which is placed in the local level, the district or region level. Although the type of this local acknowledgment was already stipulated in the Forestry Law 41/1999¹⁰ after 2000, it had been elevated into a more formalized and institutionalized format. By the coverage, the local government is not limited to only the “acknowledgment,” but is also extended into the “protection” and “empowerment” aspects. For example, the Lebak District Government Regulation stipulated the protection of Baduy communities’ *ulayat* in 2001¹¹ and the *Kasepuhan Adat Law Communities’ Acknowledgment, Protection, and Empowerment* in 2015¹².

In 2014, a new village law was promulgated, thereby replacing its predecessor, Law 5/1979¹³, which completely rearranged village governance into a more updated system in line with social development. In this law, there is a significant arrangement as well, which can be related to attempts to form or convert an administrative village (*desa*) into an *adat* village format. For this reason, this law facilitates the accommodation of the customary, indigeneity and plurality aspects of *adat* in Indonesia in societal areas where *adat* is still alive and actively practiced despite repressive efforts in the previous New Order era.

However, the current practice of government acknowledgment and the *adat* village formalizations have become arenas of contestation in the legal field between state-national and local governments, on one side, and *adat* communities, on the other side. Despite the resurgent channels of legal pluralism, the mechanisms involved are double-edged, involving both control and empowerment, as emphasized in the framework applied by Hellman¹⁴ to analyze the dilemmas regarding cultural politics in a plural society. In stating the framework, Hellman refers to Said and Wright¹⁵ and describes the cultural policies’ dual functions of controlling identity and political expression while raising cultural rights awareness and knowledge. He states that this discourse is suitable “as a means to the struggle for power such diverse groups as indigenous peoples.”¹⁶

Hellman’s other relevant point is to perceive culture, cultural politics and cultural rights as a “contested area” for constituting an arena for the battle of political ambitions¹⁷. This aspect is what Wright defines as the new meanings of “culture” as

¹⁰ Indonesia, *Undang-undang tentang Kehutanan* (Forestry Law), UU No. 41 Tahun 1999, LN No. 167 Tahun 1999 (Law Number 41 Year 1999, SG No. 167 Year 1999).

¹¹ Lebak District Banten Province, *Peraturan Daerah tentang Perlindungan Hak Ulayat Masyarakat Baduy* (Local Government Regulation concerning the Protection on Baduy People’s Ulayat Rights), Perda Kabupaten Lebak No. 32 Tahun 2001, Lembaran Daerah Kabupaten Lebak Tahun 2001 No. 65 Seri C (Lebak District Government Regulation Number 32 Year 2001, District Government Gazette No. 65 Series C Year 2001).

¹² Lebak District Banten Province, *Peraturan Daerah tentang Pengakuan, Perlindungan dan Pemberdayaan Masyarakat Hukum Adat Kasepuhan* (Local Government Regulation concerning *Kasepuhan Adat Law Communities’ Acknowledgment, Protection and Empowerment*), Perda Kabupaten Lebak No. 8 Tahun 2015, Lembaran Daerah Kabupaten Lebak Tahun 2015 No. 8 (Lebak District Government Regulation Number 8 Year 2015, District Government Gazette No. 8 Year 2015).

¹³ Indonesia, *Undang-undang tentang Pemerintahan Desa* (Village Government Law), UU No. 5 Tahun 1979, LN No. 56 Tahun 1979 (Law Number 5 Year 1979, SG No. 56 Year 1979).

¹⁴ Jörgen Hellman, *Performing the Nation – Cultural Politics in New Order Indonesia*, (Copenhagen: NIAS Press, 2003), p. 12; (cf. Edward Said, *The Importance of Education for Democracy*, Stockholm: Svenska Unescoradets skriftserie, nr 1, 1998; Susan Wright, “The Politicization of culture”, *Anthropology Today*, Vol.14, No. 1, (1998), pp. 7–15).

¹⁵ cf. Edward Said, *The Importance of Education for Democracy*, Stockholm: Svenska Unescoradets skriftserie, nr 1, 1998; Susan Wright, “The Politicization of culture”, *Anthropology Today*, Vol.14, No. 1, (1998), pp. 7–15.

¹⁶ Hellman, *loc.cit*

¹⁷ *Ibid.*

a political process of contestation over the power—in Wright’s case—to define key concepts.¹⁸ This point is relevant enough to be included in the discussion, as local government acknowledgment and *adat* village stipulation are closely related to the law and accompanying legal aspects yet inseparable from the political process and contestations among multiple actors’ interests in various levels (national and local).

Regarding Indonesia, actually, the control function in the government mechanism in managing *adat* communities is not new. In the Dutch colonial era, as Guinness¹⁹ states, the Dutch government actually attempted to:

“...centralize control over the widely dispersed Indonesian peoples by recognizing local leaders of diverse political traditions, and by codifying custom under what the Dutch termed adatrecht (adat law)... The diversity was guaranteed, but ultimate authority over people’s ways was centralized in the colonial regime.”

Using the cases of local acknowledgment and *adat* village institutionalization, the current paper applies the socio-legal and politics of law approaches²⁰ and is intended to critically discuss further dynamics and relevant aspects related to the “control” and “empowerment” characteristics of the acknowledgment practices, particularly in the related regulation. The socio-legal approach is relevant in this paper’s analysis, because according to Schiff, through this approach, the analysis is conducted directly to both and linked between the law and the social situation to which the law applies and, therefore, “... should be put into the perspective of that situation by seeing the part the law plays in the creation, maintenance and/or change of the situation.”²¹ As the law is intended for the people, its functions, relations and interplays will be crucial in understanding whether the analysis is linked with the society.

The second approach, politics of law, is necessary in analyzing how law and politics are intertwined. Russel explains this relation by saying that “law is part of [the] political realm.”²² Law is the product of a political process that manifests the political interests of the prevailing regimes or authorities. In the case of Indonesia, Lev, in one of his seminal works entitled “Legal Evolution and Political Authority in Indonesia,”²³ gives an explanation and some examples of how a country experiences shifts and changes throughout the years in terms of law and its relations with politics²⁴. Laws are also a legitimate instrument of government policy and implementation that aims, among others, to influence society. However, law can also be a mechanism to legally regulate the government’s power and obligations. In a broader sense, the politics of law in any law or regulation can be understood as an evidence of the state and/

¹⁸ Wright, *op.cit.* p. 14.

¹⁹ Patrick Guinness, “Local Society and Culture”, in *Indonesia’s New Order – The Dynamics of Socio-Economic Transformation* edited by Hal Hill, (St. Leonards, NSW: Allen & Unwin, 1994), p. 268.

²⁰ This paper is a part of the author’s Ph.D research and study titled “Legal Pluralism in Indonesia: Local Government Acknowledgment and *Adat* Village in the Village Law (Studies on *Kasepuhan Adat* Communities in West Java and Banten Provinces)”. Field research was conducted in 2018–2019.

²¹ David N. Schiff. “Socio-Legal Theory: Social Structure and Law”, in *The Modern Law Review*, May, 1976, Vol. 39, No. 3 (May, 1976), p. 287.

²² Peter H. Russel, “The Politics of Law”, in The Windsor Yearbook of Access to Justice Annual Distinguished Lecture, delivered October 30, 1990 in the Moot Court Room, Faculty of Law, University of Windsor, p. 127.

²³ Daniel S. Lev. *Legal Evolution and Political Authority in Indonesia – Selected Essays*, (The Hague, The Netherlands: Kluwer Law International, 2000).

²⁴ Lev provides rich illustrations in multiple periods how the state and various government political interests manifest in the Indonesian legal systems. Although he discusses at the level of politics of law and not at the direct level of people’s everyday life, all the experiences he elaborated have contributed in shaping Indonesian’s legal system and the implementation of law in the society.

or government trajectories in managing certain aspects. For example, if the regime is aligned to the principle of diversity or multiculturalism, then the resulting laws will have more sense to accommodate diverse groups. Similarly, if the lawmakers are more into development purposes, then the legal products will certainly secure and support development-related purposes.

The current paper focuses on certain normative regulations, and supporting examples come from the field research in the *Kasepuhan adat* communities in Lebak District. In such communities, certain local government regulations are emphasized in order to deepen our understanding of the topic at hand. The analysis is also critically conducted by including discussions on the implications of regulations, the political context, and the state's orientation particularly toward *adat* communities and pluralities.

The study focuses on how *adat* law becomes one vital element in the formalizations of the communities' existence and *adat* village format. The urgency of this kind of discussion lies in the need to examine the real value, meaning, intention and legal implications of the implementation of certain regulations and policies. Furthermore, legal pluralism is applied here to thoroughly observe the interactions among legal systems in the legal politics and society. However, a question remains regarding whether the central position of *adat* law in such a mechanism will help strengthen its capacity and position, or whether *adat* law is applied solely to fulfill the acknowledgment and accommodation requirement.

II. ASPECTS OF CONTROL IN THE RECOGNITION PROCESS

The recognition of *adat* communities in Indonesia has a long and dynamic history. In the VOC (*Verenigde Oost-Indische Compagnie* or the Dutch East India Company) era, the indifferent treatment toward *adat* communities resulted in the intervention of VOC in any process of traditional and *adat* legal procedures. The formal legal order division was introduced in 1848 during the Dutch colonial era, marking a seemingly better treatment for *adat* communities. However, it did not loosen the grip of the Dutch government as the clause of "public order." Thus, overcoming the void in the *adat* law still relied upon the European Law. Next, in the Independence era, the 1945 Constitution marked an advancement for the formal recognition of the existence of *adat* communities. However, in the lower hierarchy of legal products, such as the Basic Agrarian Law 5/1960²⁵, the phrase "as long as it still exists" was introduced. This term, whether intentionally or unintentionally, had a significant impact, as it became the crucial condition once the recognition for *adat* communities was given. According to Simarmata²⁶, this has become the example emulated by the next laws, including sectoral laws. It was also set as the basic principle of rule arrangement, which later developed into further requirements in giving the acknowledgment.

Furthermore, the clause turned into the control dimension of the state and government because, the phrase "as long as it still exists" in actual practice entails a certain "authority" for the central government to define or clarify the existence. In this case, "authority" becomes important in defining and deciding the true existence

²⁵ Indonesia, *Undang-undang tentang Peraturan dasar Pokok Agraria* (Basic Agrarian Law), UUPA No. 5 Tahun 1960, LN No. 104 Tahun 1960 (BAL Number 5 Year 1960, SG No. 104 Year 1960).

²⁶ Rikardo Simarmata, *Menyongsong Berakhirnya Abad Masyarakat Adat: Resistensi Pengakuan Bersyarat*. A paper presented in 'International Advocacy and Capacity Building for Indigenous Peoples in Indonesia' held by AMAN in Denpasar September 6-9 2004, p. 6.

of *adat* communities, and it has been considered by the government, specifically the ministry in which the sectoral law is authorized to implement, as the base operational of their interests.

On a broader scale, control is understood and used as one way to overcome the potency of disintegration, yet it still does not have a mechanism in accommodating the diversity. However, not all cases can be uniformed or suspected, because the intention to induce disintegration, which is much feared, is not necessarily there. The New Order era implemented such a repressive effort to oppress any element ethnically or customary, such as *adat* down, because of the excessive efforts to prevent the possibility of disintegration since the early stage.

The elements of control in the recognition of the *adat* community can come in the form of specific phrases or peculiarities. Certain phrases, such as “insofar as it still exists” and “does not conflict with the public interest” are commonly found in the laws and regulations regarding the *adat* community’s acknowledgment. From this part, it seems that there is a certain possibility of concern that (1) recognition cannot be given to an *adat* community whose *adat* is already diminished and that (2) recognition can lead to conflict with the public interest once the acknowledgment is given without basis on the principle of “public purpose/order.”

A counter-argument and question for the first possibility can be put forth here. An acknowledgment proposal will certainly relate to an *adat* community that still exists and needs formal recognition. In terms of concern as to when the acknowledgment will be given to the non-existent community, this could prove to be difficult owing to the existence of a verification and validation committee that has authority to check its existence. As for the term “public purpose/order,” the question raised here is which authority or what mechanism will be used as a parameter to measure or define such a term? If referring to other laws, then it means that the control function is clear, and the acknowledgment is not independent or freely given.

One example of this control and limitation can be found in the case of the Ministry of Home Affairs Regulation 52/2014 concerning The Guidance for *Adat* Law Communities’ Acknowledgment and Protection. This is the guidance that is followed by the lower regulations, including local governments, when they intend to initiate a process of formally recognizing *adat* communities. In the Consideration part point (a): In order to recognize and respect customary law community units and their traditional rights, **insofar as they are still alive and in accordance with the development of society and the principle of the unitary state of the Republic of Indonesia**, [there is a] need to recognize and protect indigenous peoples (highlight provided by the author)²⁷.

The listing of criteria attributes is also commonly used as a mechanism of control in many regulations to determine which *adat* community is qualified to receive acknowledgment. Although the lawmakers introduced this mechanism with a rather good intention to define the legal reasons for certain communities’ legitimation, it is also important to have a more critical understanding of the origins of such an intention. On the one hand, when the initiator comes from the government (national and local) side, it means that aside from the power stemming from the authority to

²⁷ Indonesia, *Peraturan Menteri Dalam Negeri tentang Pedoman Pengakuan dan Perlindungan Masyarakat Hukum Adat* (Ministry of Home Affairs Regulation concerning the Guidance for *Adat* Law Communities’ Acknowledgment and Protection), Permendagri No. 52 Tahun 2014, Berita Negara No. 951 Tahun 2014 (Ministry of Home Affairs Regulation Number 52 Year 2014, Government Gazette No. 951 Year 2014) – Consideration Point (a).

acknowledge, the institution also possesses the power to include or exclude certain communities (vertical qualification). However, there could be a certain danger in situations wherein the institution's interest dominates the laws' content and intention. Another illustration comes from Muur,²⁸ who exemplifies a situation wherein communities in conflict with the local government tend to be excluded from the status of indigeneity and, subsequently, their rights claim. On the other hand, if the initiator of the law comes from the *adat* community and supporting parties, such as NGOs, then the possibility of acknowledgment can serve the interests of a (certain) group or alliance, but there may be drawbacks from the inclusion and exclusion process done horizontally. In reality, when the initiative to propose an acknowledgment comes from multiple communities, it requires strong cooperation and sustained effort among the communities. If they have different interests as well as varying degrees of willingness or readiness, then it would be a challenge to formulate an acknowledgment proposal.

An example of the listing method in the qualification of *adat* communities in the local government can be taken from Lebak District Local Government Regulation 8/2015 Art. 5²⁹:

Kasepuhan Adat Law Communities must fulfill the following criteria:

- a. Consisting of a society in which the populace/members perceive themselves as part of one group, because the values are nurtured/treated together;
- b. Having an *adat* institution that is developed traditionally;
- c. Possessing wealth and/or *adat* objects;
- d. Having *adat* law norms that are still applied; and
- e. Having certain *adat* territories.

Thus, in order to propose and subsequently acquire a formal *adat* community acknowledgment, every community must satisfy these qualifications first.

III. LOCAL REGULATIONS REGARDING THE ACKNOWLEDGMENT OF ADAT COMMUNITIES

The requirement to set *adat* community acknowledgment in the format of local government regulations started at the end of the New Order era (e.g., the Forestry Law (41/1999) Art. 67(2)³⁰), although this was followed up slowly due to the political situation at that time. This law does not specify which local government (provincial or district) aimed for the level of the inauguration. However, in the next two years following its implementation and in line with the local autonomy implementation in Indonesia, several local government regulations to acknowledge *adat* communities and their rights were established. For example, Kanekes' (Baduy) *ulayat* rights local government acknowledgment in 2001, sponsored by the Lebak District Banten

²⁸ Willem van der Muur, 'Forest conflicts and the informal nature of realizing indigenous land rights in Indonesia', *Citizenship Studies*, 22:2, 2018, pp. 160–174.

²⁹ Lebak District Banten Province, *Peraturan Daerah tentang Pengakuan, Perlindungan dan Pemberdayaan Masyarakat Hukum Adat Kasepuhan* (Local Government Regulation concerning *Kasepuhan Adat* Law Communities' Acknowledgment, Protection and Empowerment), Perda Kabupaten Lebak No. 8 Tahun 2015, Lembaran Daerah Kabupaten Lebak Tahun 2015 No. 8 (Lebak District Government Regulation Number 8 Year 2015, District Government Gazette No. 8 Year 2015).

³⁰ Forestry Law (41/1999) Art. 67(2), states that: "[The] confirmation of the existence and abolishment of a customary law community as intended in paragraph (1) shall be stipulated in Local Government Regulation."

Province, can be considered as one of the earliest formal acknowledgments³¹ of *adat* communities and their rights at the district level. Furthermore, the Constitutional Court Decision XI/2012, which states that the *Adat* Forest is not part of state forest areas, also stipulates that local government regulation is the sole legal mechanism to acknowledge *adat* communities. Hence, the position of the district level local government regulation is significant for *adat* communities requiring formal recognition. This necessity is also clearer for further purposes, such as *Adat* Forest proposal, *adat* village, or any incentive and development program for *adat* communities, which also entail this district level formal acknowledgment.

Some considerations can be considered for initiating formal recognition at the district level. The consideration to initiate the acknowledgment of *adat* communities at the district level is in line with the local autonomy spirit, which puts more authority into the district level. Furthermore, there is a perception that the district level is the local institution that has a better understanding of the characteristics and situations of entities in its local territory.

This reason is not necessarily incorrect, because the good intention for that arrangement can also be executed well. However, despite the occurrence at the provincial or district level and aside from some concerns of excess power in the local government, the greater concern has to do with the assignment of the crucial aspects of acknowledgment to the local governments. This is because there is no proper measurement to determine whether all the local governments have responded well to the needs of the *adat* communities in their areas to be formally recognized. The measurement aimed here is not only based on qualitative parameters, but quantitatively as well. Numbers can certainly indicate good (or bad) performance; however, it cannot become a single parameter in valuing success in responding to *adat* communities' acknowledgment, because relying only on various quantitative results could prove to be difficult owing to the different local contexts and needs of such communities in their respective regions.

In terms of executing their authority to accommodate *adat* communities' need to be acknowledged, some local governments required a good understanding and smooth cooperation among the local governments (district and/or provincial), local legislative institutions, *adat* communities, and supporting entities, such as NGOs and experts, in order to produce local government regulations guiding the acknowledgment process. However, if that conducive situation is not established well among stakeholders (i.e., the head of the local government or the legislative institutions do not have an equal motivation with the *adat* communities and supporting agencies in initiating formal acknowledgment, then local government regulations will not be generated. Local regulation is a legal and political product that involves multiple stakeholders and requires solidity in the process; therefore, cooperation is a compulsory factor to guarantee success. In this case, concentrating the power to grant formal recognition to just one entity can lead to an asymmetrical position. Such a situation can also happen when the initiative to formulate local acknowledgment regulations is prepared and conducted by the communities and the supporting agencies, and the head of the local government simply accepts the final draft without being involved in the making or drafting process. Perhaps due to the desire to not interfere with internal community issues, the executive or legislative party simply allows the communities to solve their internal problems before proposing the draft to the local government. However, if the

³¹ At that time, it was also considered as the earliest local legal products of a district in the new Banten Province.

executive or legislative parties remain passive even though their active participation is needed in this situation, then the aim of generating local regulations will not be achieved. Therefore, the local governments must consider whether they can be active participants or passively allow the internal communities to independently find the required solutions.

There is an interesting yet intriguing case resulting from an analytical reading of the Ministry of Home Affairs Regulation 52/2014 concerning The Guidance for *Adat* Law Communities' Acknowledgment and Protection³² and the Lebak District Local Government Regulation 8/2015 concerning *Kasepuhan Adat* Law Communities' Acknowledgment, Protection and Empowerment³³, particularly in the element stipulated and the structure of *Adat* Law Communities committee, whose responsibilities include verifying and validating *Adat* Law Communities before being officially acknowledged. As is common knowledge, the lower regulation must be in accordance with the higher one. However, in this case, some elements can be perceived as a good progress and initiative from the locals.

Table 1.
Elaboration of the Scopes Applied in the Ministry Regulation 52/2014 and Lebak District Local Government Regulation 8/2015

	Ministry of Home Affairs Regulation 52/2014	Lebak District Local Government Regulation 8/2015
The Scope	Communities' Acknowledgment and Protection	Communities' Acknowledgment, Protection, and Empowerment

³² Indonesia, *Peraturan Menteri Dalam Negeri tentang Pedoman Pengakuan dan Perlindungan Masyarakat Hukum Adat* (Ministry of Home Affairs Regulation concerning the Guidance for *Adat* Law Communities' Acknowledgment and Protection), Permendagri No. 52 Tahun 2014, Berita Negara No. 951 Tahun 2014 (Ministry of Home Affairs Regulation Number 52 Year 2014, Government Gazette No. 951 Year 2014).

³³ Lebak District Banten Province, *Peraturan Daerah tentang Pengakuan, Perlindungan dan Pemberdayaan Masyarakat Hukum Adat Kasepuhan* (Local Government Regulation concerning *Kasepuhan Adat* Law Communities' Acknowledgment, Protection and Empowerment), Perda Kabupaten Lebak No. 8 Tahun 2015, Lembaran Daerah Kabupaten Lebak Tahun 2015 No. 8 (Lebak District Government Regulation Number 8 Year 2015, District Government Gazette No. 8 Year 2015).

The Committee Structure	To verify and validate the communities	To inventory and verify <i>adat</i> territories
	a. District/Municipal Local Secretary	a. Element from the regional work unit relate to the <i>adat</i> space or territory
	b. Regional work unit (SKPD) in public empowerment affairs	b. District land/agrarian office
	c. Head of Law Division of the district secretary	c. Academics
	d. Head of the sub-district (<i>camat</i>)	d. Element from the Ministry of Environment and Forest
	e. Head of the regional work unit based on <i>Adat</i> Law Communities and characteristics	e. <i>Adat</i> institution
		f. Non-government organizations
	Totally from the government	
	Specifies the communities' involvement in the process of verifying the identification history, territory, <i>adat</i> law, assets, and institutions with regent/mayor through the head of the sub-district. Therefore, the community is not part of the validation committee.	Includes more variety in the representative elements involving in the process of recognizing <i>adat</i> territories.

Source: Elaborated from Ministry Regulation 52/2014 concerning The Guidance for *Adat* Law Communities' Acknowledgment and Protection and Lebak District Local Government Regulation 8/2015 *Kasepuhan Adat* Law Communities' Acknowledgment, Protection, and Empowerment

Despite the difference of the responsibility, what can be taken from the comparison above is local government's readiness and openness to embrace all elements' representatives involved in the work relates to the acknowledgment process. Although, the ministry regulation was used as the guidance, that the local government developed the arrangement more progressively to create a better mechanism in guiding the acknowledgment procedure. This does not mean, however, that local government regulation deviates from the higher regulation. Rather, it shows that a certain local government has demonstrated positive awareness regarding the necessary scope, people involvement, and arrangements based on the local communities' needs. Another point from the comparison is based on the structure in the ministry regulation, which consists of government representatives, once again showing the exercise of control in the government side.

IV. ADAT VILLAGE IN THE VILLAGE LAW

The 6/2014 Village Law stipulates the *adat* village format and arrangement in Chapter XIII Articles 96–111³⁴. In those articles, the mechanisms used to enforce control and empowerment are specific terms and listing requirements. The highlighted points or requirements that are stipulated for the *adat* village accommodation and the conversion from national village format are as follows:

1. *Adat* law peoples with their traditional rights actually still exist territorially, genealogically, and functionally; in line with the social development and in line with the principle of the unitary state of Indonesia;
2. They must have a territory and one or a combination of the following: a shared

³⁴ Indonesia, *Undang-undang tentang Desa* (Village Law), UU No. 6 Tahun 2014, LN No. 7 Tahun 2014 (Law Number 6 Year 2014, SG No. 7 Year 2014) Chapter XIII Articles 96–111.

- group feeling, *adat* government institution, wealth or customary property, and *adat* law;
3. Must not threaten the Unitary State of Indonesia's sovereignty and integrity, and the *adat* law must be in accordance with and does not conflict with the laws;
 4. *Adat* dispute settlement based on *adat* law is in line with the human rights principle and prioritizes the deliberation mechanism;
 5. *Adat* judiciary settlement and (*adat*) village regulations are in line with existing laws;
 6. *Adat* village authority must take the diversity principle into account (non-discriminatory); and
 7. Provincial and district governments must be involved in the *adat* village arrangement stipulation of the *adat* village structure.

Based on the points highlighted in the articles above, there are rigid requirements in the *adat* village format should such communities have an intention to formalize their *adat* village status into a formal village acknowledgment (formalization). Here the understanding is that an *adat* village must endure and fulfill multiple burdens and obligations, namely, *adat* provisions based on *adat* law, administrative provisions and national provisions on integration and security. The last point (integration-disintegration and national security) results from the repetition of phrases in several articles, thus signifying a striking concern regarding the disintegration possibility and emphasizing its prevention when the *adat* village format is acknowledged.

There is also a possibility for the involvement of provincial and district governments in the inter-communities disputes and *adat* village stipulation. This differentiates *adat* village accommodation from the local government acknowledgment, despite the fact that both are channels for diversity acknowledgment. Unlike the local acknowledgment, which is mostly limited at a single official stipulation for the acknowledgment³⁵, the formal accommodation of an *adat* village requires the involvement of both provincial and district levels in the arrangements, thereby demonstrating the multi local leveling in the diversity and plurality accommodation.

V. PROTECTION AND EMPOWERMENT

The discussion on the terms “empowerment,” “protection” or even the

³⁵ Based on the Ministry of Home Affairs Regulation concerning the Guidance for *Adat* Law Communities' Acknowledgment and Protection No. 52 Year 2014 Article 6:

“(2) The regent/mayor stipulates the acknowledgment and protection of *adat* communities based on the recommendations of the *Adat* Law Community Committee with a Decree of the District Head.

(3) In the case wherein an *adat* community can be found in 2 (two) or more districts/cities, the acknowledgment and protection of such a community shall be stipulated by a Joint Regional Heads Decree.

However, a local implemented variation from the above provision includes a firmer and more explicit authorization for the Provincial Government, such as that stated in the East Kalimantan Province Regulation concerning The Guidance for *Adat* Law Communities' Acknowledgment and Protection in East Kalimantan Province No. 1 Year 2015 Art. 11 (2):

“In the case the *adat* law community is in 2 (two) or more districts/cities, the stipulation of acknowledgment and protection of the *adat* law community shall be carried out through a Governor Regulation.”

“preservation” of *adat* communities began near the end of New Order era. Many factors served as the driving factors to increase the inclusion of those terms as part of the *adat* revival and movement. Aside from the significant political changes, the shift in the ruler regime, and the strengthened civil society, another factor was the ratification of international conventions, such as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Labor Organization’s Convention on Freedom of Association and Protection of the Right to Organize (1998), the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights (2005–2006)³⁶. Since then, there have been significant changes in Indonesia’s legal and political systems, which began to integrate more human rights values into the system’s content and substance.

Another influencing factor is the emerging role of NGOs and human rights activists. Since the New Order era, some NGOs have actively included the value of human rights, such as empowerment and protection in the programs they operate in the society. The movement was then intensified in the Reformation era, as the social political situation was also more conducive to adopt and foster a more open and better arrangement in terms of social justice and self-determination.

Protection and empowerment are elements raised from the factors above. In the legal field, aside from “acknowledgment,” “protection” was the most heavily used term in the new regulations, followed later by the inclusion of empowerment purpose. Many local government regulations, such as the Regulation 32/2001 of the Lebak District Government concerning the Protection on Baduy People’s Ulayat Rights, started to use the term³⁷. Furthermore, in 2015, the same district stipulated the 8/2015 local government regulation concerning the *Kasepuhan Adat* Law Communities’ Acknowledgment, Protection, and Empowerment, thus signifying efforts to further advance adoption beyond mere protection.

There are several reasons behind this. *First*, there has been a strong intention to move further beyond just recognition. Recognition must be followed up by some consequences that can support *adat* communities’ empowerment and enable them to develop themselves so that they can achieve better self-determination. However, especially for the term “protection,” there is one more specific reason, which is the perception that the *adat* community is a passive and powerless victim suffering from

³⁶ Tim Henley, “Minorities and Discrimination in Indonesia: The Legal Framework”, in *Contentious Belonging: The Place of Minorities in Indonesia* edited by Greg Fealy and Ronit Ricci, (Singapore: ISEAS, 2019), p.8 (footnote 8).

³⁷ Lebak District Banten Province, *Peraturan Daerah tentang Perlindungan Hak Ulayat Masyarakat Baduy* (Local Government Regulation concerning the Protection on Baduy People’s Ulayat Rights), Perda Kabupaten Lebak No. 32 Tahun 2001, Lembaran Daerah Kabupaten Lebak Tahun 2001 No. 65 Seri C (Lebak District Government Regulation Number 32 Year 2001, District Government Gazette No. 65 Series C Year 2001).

³⁸ *Ulayat* rights is commonly understood as a community land rights on *adat* communities; Bedner and Arizona mention it as right to avail (Adriaan Bedner and Yance Arizona, *Adat in Indonesian Land Law: A Promise for the Future or a Dead End?*, *The Asia Pacific Journal of Anthropology*, 20:5, 2019, p. 427). Whereas communal rights is defined broader as it is not only related to *adat* communities, but also communal land rights of non-*adat* communities (see Nurul Firmansyah, “Menyoal Subjek Hak Komunal”, September 22 2015 in <https://www.hukumonline.com/berita/baca/lt5600f0bbb9b64/menyoal-subjek-hak-komunal-broleh--nurul-firmansyah/> - accessed July 11 2020; and Bedner and Arizona, *loc.cit*). The requirements related to both rights (*ulayat* rights and non-*adat* communities communal land rights) stipulations are differed as well. Further example of implemented regulation in this matter is Minister of Agrarian Regulation No. 10/2016 concerning Procedures for the Stipulation of Communal Rights over *Adat* Law Community and Communities within Specified Areas Lands (Government Gazette No. 568 Year 2016).

the repressive actions by the previous long-term regime. As the first and immediate remedy, it is necessary to protect them in order to prevent similar damages resulting from external actions.

Second, there is a strong will from the *adat* communities and supporting parties (i.e., NGOs and experts) to have greater involvement and responsibility post-recognition. This is crucial in ensuring long-term or sustainable commitment from local governments to support *adat* communities' existence and empowerment.

VI. RULE OF RECOGNITION AND THE POLITICS OF RECOGNITION AND ASYMMETRICAL POSITION

The component of control in the case of *adat* community acknowledgment, local government acknowledgment and *adat* village, can be taken into further points of discussion, which involve Rules of Recognition, Politics of Recognition, and Asymmetrical Position. Recognition based on limitations, such as the use of the terms "community's existence," "public order," and "legal order hierarchy-based compliance" can be considered as the rule of recognition. Such a rule is in line with Hart's theory in his book, *The Concept of Law*³⁹, and officially underlines many regulations related to acknowledging *adat* communities' existence, law, and even territory. This becomes a pattern in formulating recognition, although it has to question as well whether all the lawmakers in the national and local levels clearly understand the meaning and consequences of using all the limitations.

At a glance, we can see that the use of such limitations essentially shows that the recognition will not have an impact on disintegration, social conflict, or opposition to higher laws. Rather, it is seemingly an attempt to convince the government, the people's representatives, and the general public that the acknowledgment is totally a pure remedy to recognize the rights of *adat* communities. However, if we observe this clearly, this can mark the control of the government and state in managing unity and integration. Therefore, even if the laws are initiated from the civil society and community, unconsciously, they follow the pattern to still incorporate elements of government control from within.

It is true that the political regime has shifted toward better management. Nevertheless, putting the limitations in the acknowledgment regulations show that concerns on disintegration or impacts resulting from the recognition policy remain. Therefore, it can be gleaned from this thought that, although the position between the government and the people is more balanced because of a more democratic political situation, the possibility of an asymmetrical position in terms of government control has never truly disappeared. At the local level, the ultimate factors in this matter are as follows: (1) the character of governor and regent or *bupati* and his/her vision to develop the district and empower the people within his/her jurisdiction; (2) pressure from local civil society to balance the asymmetrical positions; and (3) the openness and willingness of all stakeholders, including local representatives.

The Lebak District in Banten Province can currently be considered one of the more progressive districts in Indonesia and has a conducive environment and cooperation background in accommodating *adat* communities. The path of development is clear starting from the protection and, later on, the empowerment which motivates *adat* communities to develop themselves. For example, the Karang *Kasepuhan* community

³⁹ H.L.A. Hart. 1994. *The Concept of Law*, Oxford: Clarendon Press, pp. 94–95.

achieved *Adat* Forest stipulation in 2016. Therefore, its people can manage their land comfortably free from all fear from the repressive actions and accusations of illegal operation on their land⁴⁰.

VII. CONTESTATION ARENA

Interestingly, local government regulations and *adat* village stipulations in the Village Law can be seen as an arena of contestation in several dichotomies: national/local vs. societal interests, formal law vs. *adat* law, and community control vs. empowerment.

First, in terms of the national/local and societal dichotomy, local government regulations concerning *adat* communities' acknowledgment and *adat* village stipulation cover all the elements. This is a manifestation of the government's changes in accommodating—and subsequently protecting and empowering—diversity, multiculturalism, and plurality as well as minimizing inequality in Indonesia. Based on a discussion in the previous part of this paper, we can say that national control is never ceasing, but it is also true that the degree of such control has changed. In this case, the local government becomes significant, because the stipulation of acknowledgment and further *adat* accommodation, access, and incentives, such as *Adat Forest*⁴¹ and *adat* village recognition, require the local government's approval⁴². Furthermore, it is clear here that interest contestation is also considered in the administrative and procedural field. Communities' interests can also be contested in terms of the elements they can include as their identity and belonging (*adat* law and territoriality), so that they can have the chance to be protected and empowered by the government through the obligation in the empowerment section of the local regulations.

There is a double-edged dimension in the part of community and identity strengthening. By putting varied limitations, the government still placed much control and measured the extent to which acknowledgment and accommodation of *adat* values can be undertaken. Thus far, the strengthening position and *adat* law can be conducted in the *adat* territoriality and *adat* village formalization. Both aspects can provide support for greater autonomy and self-determination, including the exercise of *adat* law and the recognition of the communities' social and political rights.

In the acknowledgment of the *adat* community, recognizing the legitimacy of *adat* law is compulsory. However, *adat* law also applies certain conditions and limitations, as manifested by such phrases as “insofar as it is still existing,” “not contrary with the social and public order,” and “not contrary to the (positive) law,” even without being directly stated as such. Historically, the position of *adat* law has been marginalized for a long time as a result of the colonial government ethic politics, the choice of the unitary state format, the unification of law, and the repressive politics of recognition

⁴⁰ Based on field research and observations recorded in September 2018.

⁴¹ See Art. 5(2) Regulation of Minister of Environment and Forestry No. P.21/Menlhk/Setjen / Kum.1/4/2019 concerning *Adat* Forests and Rights Forest (State Gazette Republic of Indonesia No. 522, 2019)

⁴² “The local government regulation on recognition of *adat* communities is needed to determine the status of the *Adat* Village in the Ministry of Home Affairs, the issuance of the *Adat* Forest Decree (HA) in the Ministry of Environment and Forestry (KLHK) and the determination of the Land of Agrarian Reform Objects (TORA) in the Ministry of Agrarian Spatial Planning and the National Land Agency (ATR / BPN).” (Yuliana Ratnasari, “Penetapan Desa *Adat* Masih Terhambat Peraturan Daerah” March 16 2017, <https://tirto.id/penetapan-desa-adat-masih-terhambat-peraturan-daerah-ckQS> - accessed July 11 2020).

in the New Order era. Yet, despite the marginalization and strict control to limit its practice, in various ways *adat* law is still implemented by the communities in Indonesia. Therefore, at the grassroots level, groups of communities often prioritize their own laws over formal or non-community laws. This condition is commonly called “legal pluralism.”

However, there is a clarification to Griffith’s statement regarding strong and weak legal pluralism⁴³. Griffith defines weak legal pluralism as referring to non-state norms depending on the recognition by the state or government administration, whereas strong legal pluralism refers to a situation wherein multiple laws can co-exist without depending on state or central administration. If we apply this perspective in Indonesia case, then most likely the implementation of formal recognition indicates a weak legal pluralism. However, that result comes from a top-down and more on the formal law and legal-based perspectives⁴⁴. On the contrary, based on the legal anthropology perspective, many *adat* communities practiced and put their *adat* law first despite having formal or central recognition.

However, it is true that, in Indonesia, there is evidence that the condition of legal pluralism in the formal macro level and legal political aspect relates to the state’s control. Marginalization of *adat* law⁴⁵ and efforts to formally domesticate the extent of *adat* law practice exemplify this notion. Such a domesticating instance can also be seen in the local regulations. In the Lebak District Local Government Regulation 8/2015 The Acknowledgment, Protection and Empowerment of *Kasepuhan Adat* Law Communities⁴⁶, two articles are read as follows (some parts of the text underlined by the author):

Article 18–*Adat* Law

- 1) The Regional Government recognizes the existence of customary law that grows and develops in the *Kasepuhan* Customary Law Society;
- 2) Problems arising in *Kasepuhan* are prioritized for settlement through customary law;
- 3) If settlement through customary law as referred to in paragraph (2) cannot be implemented, then the problem can be resolved based on legislation; and
- 4) The implementation of customary law as referred to in paragraphs (1) and (2) must pay attention to the principles of social justice, gender justice, human rights, and environmental preservation.

⁴³ John Griffith, “What is Legal Pluralism?” in *Journal of Legal Pluralism*. Vol 24. 1986, pp 5–8

⁴⁴ Yuksel Sezgin, “Theorizing Formal Pluralism: Quantification of Legal Pluralism for Spatio-Temporal Analysis” in *Journal of Legal Pluralism* Vol 50. 2004. pp. 101–118. Furthermore, Sezgin states that ‘strong’ and ‘weak’ legal pluralism is no more than a statement of legal doctrine, and hence irrelevant for sociological investigation.

⁴⁵ According to Ball, in the VOC era there had been an indifferent treatment and ignorance of *adat* law implementation (John Ball, *Indonesian Legal History*, Sydney: Oughtershaw Press, 1982, pp. 226–236) and in the Dutch Government era despite the principle of dualism is applied, low hierarchical base perception and negative stigma were on the *adat* law (for further elaboration, also see Rikardo Simarmata, *Pengakuan Hukum Terhadap Masyarakat Adat Di Indonesia*, Bangkok: UNDP Regional Office. 2006.

⁴⁶ Lebak District Banten Province, *Peraturan Daerah tentang Pengakuan, Perlindungan dan Pemberdayaan Masyarakat Hukum Adat Kasepuhan* (Local Government Regulation concerning *Kasepuhan Adat* Law Communities’ Acknowledgment, Protection and Empowerment), Perda Kabupaten Lebak No. 8 Tahun 2015, Lembaran Daerah Kabupaten Lebak Tahun 2015 No. 8 (Lebak District Government Regulation Number 8 Year 2015, District Government Gazette No. 8 Year 2015), Articles 18 and 22.

Article 22 Dispute Settlement

- 1) The Regional Government approves and accepts customary courts to resolve inter-member disputes that occur within customary territories;
- 2) The Regional Government can help resolve inter-*Kasepuhan* disputes through mediation; and
- 3) In the event that it is approved by paragraphs (1) and (2), it is not successful, then it is settled through the formal court.

Despite the drafting and initiative to formulate the local law as coming from community or local civil society, some points can be considered from the articles above. First, both articles seemingly strengthen the position of *adat* law within the *adat* society. At the same time, however, they also demarcate or domesticate the scope of its practice as an internal community law. Hence, these articles merely represent a re-affirmation of what is already happening in the community and society. In addition, there is an open opportunity for non-*Kasepuhan* party to be involved in the settlement, although it is defined in the inter-*Kasepuhan* communities. However, it not only shows the lack of confidence among the communities to solve their dispute using their own laws, but that reliance upon the local government institution or in a suspected auspice still forces the such a government to focus on the communities. Finally, the use of the principles of social justice, gender justice, human rights, and environmental preservation also proves that this acknowledgment is not independently applied. The explanation for this local regulation also does not offer further elaboration as to what this principle means. The possibility might be similar to what happened in the Dutch colonial era, when the multi legal systems were applied and formally acknowledged while the standard for such a principle (“legal order” and so on) was taken from European Law. This is also applied in terms of the legal vacuum of *adat* law, the judge will then refer directly to European Law for further elaboration⁴⁷. Therefore, nothing significantly changes for the *adat* law position apart from territoriality and local village-governing level (*adat* village accommodation).

From the discussion above, despite the resurgent channels of legal pluralism, the mechanisms involved are double-edged, involving both control and empowerment, as emphasized in the framework applied by Hellman⁴⁸ to analyze the dilemma in a plural society regarding cultural politics. On the one hand, the acknowledgment and accommodation mechanisms are conducted through an official process that entails the fulfillment of a list of requirements set by the government (controlled). Thus, there is a danger for a possible asymmetrical imbalance to occur between the formal institution (the giver of recognition) and the community (recipient of recognition). On the other hand, the mechanisms are used by *adat* communities as a means to gain and argue for their rights of self-determination. In doing so, empowerment is realized, because most local regulations include the obligation of protection by the state and local governments, which can function to conserve the existence of *adat* communities.

VIII. CONCLUSION

Local recognition and *adat* village accommodation grants are two channels in

⁴⁷ Simarmata, *loc.cit.*

⁴⁸ Jörgen Hellman. *Performing the Nation – Cultural Politics in New Order Indonesia*, Copenhagen: NIAS Press, 2003, p. 12; ((cf. Edward Said, *The Importance of Education for Democracy*, Stockholm: Svenska Uneskoradets skriftserie, nr 1, 1998; Susan Wright, “The Politicization of culture”, *Anthropology Today*, Vol.14, No. 1, (1998), pp. 7–15).

improving the position of *adat* communities in the society, both from political and legal aspects. Furthermore, local recognition has become a requirement that is enforced to achieve or proceed further with other forms of formal recognition, such as that involving *adat* forests.

Some things have improved in this resurgent era of *adat* and the increasing trend of local acknowledgment for *adat* communities, such as open opportunities to advance access (*Adat* Forest or *adat* village) based on the communities' interests. However, such trends remain limited in certain aspects, such as territoriality and local village politics. Moreover, the inherited perspective of *adat* law and the asymmetrical positions in *adat* communities remain; thus, the process of gaining further improvement is still filled with challenges and may take a long time to completely process⁴⁹.

Legal pluralism in Indonesia is definitely not beyond the state control. However, at the grassroots and community level where the contestation among legal system takes place, it often happens that *adat* law is applied more. This is because the communities have a certain moral and cultural preference for prioritizing their law, and they believe that *adat* law is more suitable.

Another important aspect raised through the discussion in this paper is the importance of knowledge in formulating or drafting a legal product, including the process of understanding the implications of each article after their formulation. They do not necessarily aim to follow the previous pattern in drafting, as it must also be suitable with current developments and social needs. As a legal and political product that requires much effort, any opportunity to create one for *adat* community acknowledgment is deemed important. Therefore, understanding the balance between control and empowerment is necessary.

⁴⁹ Even up until now, after years of legislation, the draft of *Adat* Communities Law has yet to be stipulated. This has prolonged the absence of a main regulation, under which all *adat* community-related arrangements are covered. Consequently, the latter is still reliant on the current sectoral and partial field provisions.

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