

# ADAT COMMUNITY IN THE VILLAGE GOVERNMENT: STATE AND SOCIETY RELATIONS IN INDONESIA

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## Abstract

Reformasi politik yang dimulai sejak tahun 1998 di Indonesia telah menciptakan Undang-Undang No. 22/1999, kemudian direvisi oleh Undang-Undang No. 32/2004 sebagai kerangka kerja dalam menata hubungan antara Negara dan rakyat pada tingkat desa. Kedua UU tersebut sebagai pengganti Undang-Undang No. 5/1979 sebagai produk rezim Orde Baru. Undang-Undang No. 5/1979 telah menyeragamkan bentuk sistem pemerintahan desa sehingga sama sekali tidak memberikan peluang bagi berjalannya suatu sistem pemerintahan adat (perpaduan) pada desa masyarakat adat tertentu, sehingga hubungan antara negara dan rakyat diikat dengan kerangka sentralistik. Namun sejauh keberadaan Badan Permusyawaratan Desa (BPD) dibahas, kerangka kerja yang dibangun oleh Undang-Undang No. 32/2004 tersebut belum menciptakan hubungan yang baik antara negara dan rakyat pada desa masyarakat adat, terutama pada desa masyarakat adat *saibatin* karena belum mampu mengakomodasi kepentingan masyarakat adat yang bersangkutan.

**Keywords:** *Adat Community, Village Government, State and Society Relations.*

### I. The background of Problem

Indonesia is a country inhabited by various tribes. According to the Indonesian Central Statistics Agency (*Badan Pusat Statistik Nasional*) in 2010 which conducted a survey on the number of the tribes, Indonesia consists of 1,128 ethnic groups, each of them has own regulatory system and has been recognized as *adat* community. Many scholars have defined the *adat* community. According to Barend Ter Haar, *adat* community is permanent and order community, has its own power, and has tangible and intangible wealth. In addition, none of the members of the community has the mind sets to break the bond or to break away from the bond.<sup>1</sup> While *adat* community according to Hazairin is customary law community (such as *desa* in Java, *marga* in South Sumatra, *nagari* in Minangkabau (West Sumatra), *kuria* in Tapanuli (North Sumatra), and *wanua* in South Sulawesi) has completeness as unity of community that is having union law, union ruling, union environment based on mutual rights over land and water for all members.<sup>2</sup> The other scholar is Bushar Muhammad who says that *adat* community is a group with a permanent organization, subject to certain regulations as a system defended by its leaders and shared by its members with all heart and trust. The group has a tangible and intangible wealth. Tangible wealth is like inheritance, which has been preserved for generations. Then no one in this group does have the desire or mind to dissolve the group or to get away from the group.<sup>3</sup>

Based on explanation above, it can be concluded that *adat* community is customary law community which is permanent and order, and has traditional rights, has the power and has tangible and intangible wealth. Besides that, there is none of the members of the community does have desire or mind to dissolve the ties that have grown or to escape from the bond.

*Adat* communities in Indonesia are recognized and protected by the state reflected in the 1945 Constitution. Before having amended, the recognition was in the Article 18 which explained that the Indonesia government recognized the approximately 250 self administering units and communities like *desa* in Java and Bali, *nagari* in Minangkabau, *dusun* and *marga* in Palembang (South Sumatra) and so on. Those areas have natural order and therefore can be considered as a special territory. The Republic of Indonesia respects the position of those territories and the state regulations regarding them will pursue their historical rights.<sup>4</sup>

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<sup>1</sup>Barend Ter Haar, *Asas-Asas dan Susunan Hukum Adat* (Jakarta: Penerbit Pradnya Paramitha, 1960), p. 16.

<sup>2</sup> Afdilah Ismi Chandra, 'Dekonstruksi Pengertian Kesatuan Masyarakat Hukum Adat dalam Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.' (Ph.D. diss., Brawijaya University, Malang, 2007), p. 31.

<sup>3</sup> Bushar Muhammad, *Asas-Asas Hukum Adat* (Jakarta: Penerbit Pradnya Paramitha, 2003), p. 22.

<sup>4</sup> Hans Antlov, 'Village Government and Rural Development in Indonesia: The New Democratic Framework', *Bulletin of Indonesia Economic Studies* 39, 2 (2003): 194. The original text of Article 18 of 1945 Constitution before having amended is that "Dalam teritor negara Indonesia terdapat lebih kurang 250 'Zelfbesturende Landschappen' dan 'Volksgemeenschappen' seperti desa di Jawa dan Bali, Nagari di Minangkabau, Dusun dan Marga di Palembang dan sebagainya. Daerah-daerah itu mempunyai susunan asli, dan oleh karenanya

After having amended in 2000, the recognition and respect of the state in the 1945 Constitution towards *adat* communities in Indonesia written in Article 18b paragraph 2 which says "the state recognises and respects the unities of any *adat* communities and their traditional rights, as long as they are still alive, in accordance with the development of society, in accordance with the principles of the Unitary State of the Republic of Indonesia, and regulated by law".<sup>5</sup>

Unfortunately, the constitutional recognition has not been followed up by all legal rules following the 1945 Constitution. So that, the privileges that should be owned by *adat* communities to manage their traditional territories as mandated by the Constitution fade and eventually disappear. Violation of the constitutional recognition began, among other things, with the Law No. 5/1979 on Village Government which incorporated *adat* communities into *desa* (village) government system. Term *desa* in the context of Indonesian government is the lowest government division led by a village head (*kepala desa*). Indonesian government in the state hierarchy starting from central government, the provinces, the districts, subdistrict, and village (*desa*). Through Law No. 5/1979, New Order regime uniformed the form of village government, which consisted of (a) village head and (b) the Village Consultative Assembly (*Lembaga Musyawarah Desa/LMD*). In the implementation of the duties, the village head assisted by (a) a secretary, and (b) the heads of sub-village. The village head was directly elected by the villagers. The village head was also as the head of LMD and other institutions such as the Rural Community Resilience Institute (*Lembaga Ketahanan Masyarakat Desa/LKMD*).

The existence of the village head is to lead the governance in the village and also to control LMD and LKMD. In this context, democracy efforts are not expected to work, LMD was not to control village governance, but as an institution that has been subject to the village head. So, the Law 5/1979 has given the village government as the lowest executor of deconcentration principle and the village head is the deconcentrational tool.<sup>6</sup>

Law 5/1979 is one of the forms of democracy based on the "hegemony of meaning" of New Order regime. Hegemony of meaning, according to R. William Liddle, was a nationalism interpretation of the New Order regime, which is based on the Pancasila and the the 1945 Constitution, which dominantly maintained national integration by, among other things, establishing a uniform system of village government in all parts of Indonesia.<sup>7</sup>

Through a uniform system of village government, Law 5/1979 has destroyed the traditional governance system of any *adat* communities in various regions in Indonesia. Traditional governance system in each *adat* community is a part of the social institutions established by customary law. The *adat* community generally has the political institutions in somewhat accordance with trias politica system, which consists of the legislative, judicative, and executive institutions. The legislative institution in various regions has different names such as *Rapat Desa*, *Kerapatan Adat*, *Rembung Desa*, *Kumpulan Salapanan*.<sup>8</sup> While the name of judicative institution is like *Kerapatan Adat Nagari* (KAN) in West Sumatra. KAN acts as a customary judicial institution and as a forum for the deliberation of the traditional ruler, *Majlis Adat* and *ulama'* (Muslim scholars). KAN also acts as an agency for the consideration of other institutions related to the customs and religious matters.<sup>9</sup> The chief of the executive has also different designation names. For example, in West Sumatra, The chief of the executive is

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*dapat dianggap sebagai daerah yang bersifat Istimewa. Negara Republik Indonesia menghormati kedudukan daerah-daerah istimewa tersebut dan segala peraturan negara yang mengenai daerah itu akan mengikuti hak-hak asal-usul daerah tersebut.*

<sup>5</sup> The original text of Article 18 of 1945 Constitution after having amended is that "Negara mengetahui dan menghormati kesatuan-kesatuan masyarakat hukum adat beserta hak-hak tradisionalnya sepanjang masih hidup dan sesuai dengan perkembangan masyarakat dan prinsip Negara Kesatuan Republik Indonesia, yang diatur dalam undang-undang". Chandra, 'Dekonstruksi Pengertian Kesatuan Masyarakat Hukum Adat', p. 1.

<sup>6</sup> Principle of deconcentration is that the authority of higher rank government is run by a lower rank government, while the principle of decentralization means the transfer of authority by the higher rank government to a lower rank government, and that authority becomes his own authority, see M Solly Lubis, *Pergeseran Garis Politik dan Perundang-Undangan Mengenai Pemerintah Daerah* (Bandung: Alumni, 1983), p. 190

<sup>7</sup> R. William Liddle, 'Rezim: Orde Baru', in *Indonesia Beyond Soeharto*, ed. Donald K. Emmerson (Jakarta: Gramedia Pustaka Utama, 2001) p. 80.

<sup>8</sup> R. Yando Zakaria, 'Kembalikan Kedaulatan Hak Ulayat Masyarakat Adat', in *Menggugat Posisi Masyarakat Adat Terhadap Negara*, ed. Sandra Kartika dan Candra Gautama (Yogyakarta: Pustaka Pelajar, 1999), p. 151.

<sup>9</sup> Eko Sutoro, *Masa Lalu, Masa Kini dan Masa Depan Otonomi Desa* (Yogyakarta: IRE'S Insight Working Paper, 2008), P. 74.

identified as *Wali Nagari*, in South Kalimantan is recognized as Pambakal, and in North Sulawesi is recognized as Hukum Tua.<sup>10</sup>

Democratic process in the traditional governance works well. For example, in North Sulawesi, the democratic process is reflected by the existence of *Badan Kerapatan Adat*. This is as a legislative institution that serves as the voice of the villagers and the companion of *Hukum Tua*.<sup>11</sup> Aside from Sulawesi, Aceh also shows the same situation. This region practices local democracy through the distribution of powers between the legislative and the executive in the village (*gampong*). Legislative represented by *Tuapeuh* (a group of wise men), while the executive is represented by *Keuchik* and *Peutua Meunasah*. *Keuchik* is one who acts as the village head, and *Peutua Meunasah* is one who takes care of the affairs of worship, inheritance, *zakat* and *waqf*.<sup>12</sup>

The traditional governance systems above was devastated when Law. 5 of 1979 had been applied. Taufik Abdullah states that when *gampong* had been made into the national village government system, just *keuchik* was recognized as village head and got honorarium, while *Peutua Meunasah* did not. Previously both were surrounded by *Tuapeuh*, now are surrounded by LMD and LKMD members.<sup>13</sup> Piet Alexander Tallo also describes the process of survival of the national village government system in the province of East Nusa Tenggara. "LKMD, for example, has destroyed local norms because the form of organization created and imposed from the central government. For Tallo, the central government should empower local uniqueness, and should not bring a stranger thing to local norms. Then he asserts, the implementation of Law 5/1979, which brought the uniform system of village government, gave effect to the "... institutions such as the LMD LKMD are less able to function optimally ....., this was due to the law did not consider the balance of local wisdom and local justice."<sup>14</sup>

In short, through Law 5/1979, the New Order regime did not provide a place for traditional governance systems of any *adat* communities that have existed for some time. After the collapse of the New Order regime in 1998, the law 5/1979 was replaced by Law 22/1999, later replaced by Law 32/2004.

## II. The Models of State and Society Relations in the New Order Regime

So far, there have been at least five models often presented when it is talking about the pattern of state-society relations in Indonesia before political reform in 1998.<sup>15</sup>

The first model is what is called by Benedict Anderson as a state-qua state. Anderson has analyzed the characteristics of state-society relations in colonial regime and has associated with characteristics the New Order regime. Departing from the basic assumption that the colonial regime almost entirely ignored or suppressed aspirations or interests from the community, and then implicitly concluded that the pattern of state-society relations in the New Order has the same basic characteristics with the pattern of state-society relations in the colonial period, namely the dominant role of the state and virtually ignored the role of society in the decision-making process in almost all policies. So that there was always a conflict between the interests of the state and the interests of society. Modern Indonesian state is described as a self-serving entity, pursuing its own interests based on its own understanding which conflicted with interests of society. State wasted resources and wealth of the nation and state power was in the hand of the

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<sup>10</sup> Pratikno, 'Pergeseran Negara dan Masyarakat dalam Desa', in *Arus Bawah Demokrasi: Otonomi dan Pemberdayaan Desa*, ed. Dadang Juliantara (Yogyakarta: Laper Pustaka Utama, 2000), p. 134.

<sup>11</sup> Ibid.

<sup>12</sup> Nindyantoro, *Kepemimpinan Tradisional di Desa dan Pengintegrasian Undang-Undang No. 5 Tahun 1979* (Banda Aceh: Pusat Pengembangan dan Penelitian Ilmu-Ilmu Sosial Universitas Syiah Kuala, 1987), pp. 10-11.

<sup>13</sup> Badan Penelitian dan Pengembangan Agama, *Curah Pendapat Konflik Sosial dan Agama di Indonesia* (Jakarta: Departemen Agama, 1999), p. 16.

<sup>14</sup> Piet Alexander Tallo, 'Pengalaman Membina Daerah,' in *Otonomi atau Federalisme*, ed. Suara Pembaruan (Jakarta : PT Primacon Jaya Dinamika, 2000), p. 122.

<sup>15</sup> See other models of state-society relations in Indonesia in New Orde regime, among others, Integralistic state model, Marsilam Simanjuntak, *Pandangan Negara Integralistik* (Jakarta: Grafiti, 1994).; Beamtenstaat model, Ruth McVey, 'The Beamtenstaat in Indonesia', in *Intrepeting Indonesian Politics: Thirteen Contributions to Debate*, ed. Benedict Anderson and Audrey Kahin (Ithaca, New York: Cornell Modern Indonesia Project, 1982), pp. 84-91.; Java patrimonialism model, Fachri Ali, *Refleksi Faham Kekuasaan Jawa dalam Indonesia Modern* (Jakarta: Gramedia, 1986).; Bureaucratic authoritarian rentier state model, Arif Budiman, *Negara dan Pembangunan* (Jakarta: Yayasan Padi Kapas, 1991); Rent Capitalism State, Olle Tornquist, 'Rent Capitalism, State and Democracy', in *State and Civil Society in Indonesia*, ed. Arief Budiman (Monash University: Center of Southeast Asian Studies, 1990), pp. 29-50.; Authoritarian bureaucratic corporatist state model, Mochtar Mas'ud, *Ekonomi dan Struktur Politik Orde Baru 1966-1971* (Jakarta: LP3ES, 1989).; Rentier military state model, Richard Tanter and Kenneth Young, *The Politics of Middle Class Indonesia* (Clayton, Victoria: Monash University Press, 1990).; Bureaucratic Capitalist State model, Richard Robinson *Power and Economic in Soeharto's Indonesia* (Manila, Philippines: Journal of Contemporary Asia, 1990).

military, this basically has unchanged since the colonial period, and there was little space for political participation.<sup>16</sup>

The second model is bureaucratic polity and patrimonialism. According to Karl D Jackson, despite the government has changed from the Old Order to the New Order regime, the state-society relations in Indonesia has been more patterned with bureaucratic polity in which power and participation in decision-making process for national development was limited to the state officials, especially government officials and high-ranking officials in the bureaucracy (senior officials, military and civilians), including experts. Bureaucratic elites can freely determine the policy without constraining any interests of the public. Opportunities for participation by others only at the stage of policy implementation, it was generally only minor adjustments at a local level.<sup>17</sup> For Horald Crouch, the relationship among the bureaucratic elites was in competition for rewards and benefits (office), and on the other hand the relationship between them and the head of state was based on the patron-client. So the state is not responsive to the interests or pressures from inside or the outside.<sup>18</sup>

The third model is the bureaucratic authoritarianism. This model explains that the state is very independent in the face of society. State continues to reject political demands of community leaders, especially come from the lower classes, even those leaders are also removed from certain positions that can influence the political decisions made by state. Furthermore, state also, according to Dwight Y. King, regulates and limits the mechanisms of public participation in the decision-making process.<sup>19</sup>

The fourth is pluralistic bureaucratic model. The term pluralistic bureaucratic was introduced by Donald K. Emmerson as an attempt to give an alternative between Anderson, who emphasizes the character of monistic state, and the picture of bureaucratic polity that emphasizes competition among patrimonial groups solely for the sake of office. Emmerson used the term to analyze the role of bureaucrat-military and bureaucracy-civil' in the decision-making process for a variety of national policies in Indonesia. For him, the state was more pluralistic than that portrayed by Anderson, political competition was not merely to get personal gain among group clients, but also to make debates about substantive policy matters. From his analysis results, Emmerson formulated some conclusions, two of which are of interest to be highlighted: (1) There is no one department has been dominated by officials from the military. (2) Suharto's commitment to internal security (national) and economic growth reflected not only through a very strict control of the important parts of the bureaucracy that is closely linked with security issues, but also by a desire to realize the nation's economic development by involving civils.<sup>20</sup>

The fifth model proposed by William Liddle and labelled by Andrew MacIntyre is restricted pluralism. The model argues that although state actors played a major role in the formulation of national policies in Indonesia, at certain stages there was room for extra-state actors to influence the decision-making process at the national level. They are, for example, local governments, organizations of producers and consumers, members of parliament, press and intellectual groups, who directly or indirectly affect the decision-making process at the national level.<sup>21</sup>

As far as the five models of state and society relations are concerned, the first four models (state-qua-state, bureaucratic polity and patrimonialism, bureaucratic authoritarian, and pluralistic bureaucratic), expressly states that the process of decision-making on national policies

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<sup>16</sup> Benedict Anderson, 'Old State, New Society: Indonesia's New Order in Comparative Historical Perspective', *Journal of Asian Studies* 42, 3 (1983), pp. 488-93; Syarif Hidayat, 'Desentralisasi dan Otonomi Daerah Dalam Perspektif State-Society Relation', *Jurnal POELITIK* 1, 1 (2008): 13.

<sup>17</sup> Karl D. Jackson, 'Bureaucratic Polity: A Theoretical Framework for the Analysis of Power and Communications in Indonesia', in *Political Power and Communications in Indonesia*, ed. Karl D. Jackson and Lucian W. Pye (Berkeley: University of California Press, 1978), p. 3.; Hidayat, 'Desentralisasi dan Otonomi Daerah', p. 13.

<sup>18</sup> Horald Crouch, 'Patrimonialism and Military Rule in Indonesia', *World Politics* 31, 4 (1979): 571-87.

<sup>19</sup> Dwight Y King, 'Indonesia's New Order as a Bureaucratic Polity, a Neopatrimonial Regime or a Bureaucratic-Authoritarian Regime: What Difference Does It Make?', in *Interpreting Indonesian Politics: Thirteen Contributions to the Debate*, pp. 110-15.; Hidayat, 'Desentralisasi dan Otonomi Daerah', p. 14.; Junjungan SBP Simanjuntak, 'Format Hubungan Negera dan Masyarakat,' *Journal Harmoni Sosial* II, 2 (2008): 65.

<sup>20</sup> Donald K. Emmerson, 'Understanding the New Order: Bureaucratic Pluralism in Indonesia', *Asian Survey* 23, 11 (1983): 1231.; Hidayat, 'Desentralisasi dan Otonomi Daerah', p. 14.

<sup>21</sup> R. William Liddle, 'The Politics of Shared Growth: Some Indonesian Cases', *Comparative Politics* 19, 2 (1987): 127-146.; Andrew MacIntyre, *A Business and Politics in Indonesia* (New South Wales: Asian Studies Association of Australia in association with Allen & Unwin, 1991), p. 16.; Hidayat, 'Desentralisasi dan Otonomi Daerah', p. 14.

is dominated by political elites at the central level. If it is possibly happened, so the process of making decisions is no more just a reflection of the interests of the state or state actors. Meanwhile, the fifth model (restricted pluralism) which states that, in spite of the political elites at the national level play a key role, they do not monopolize decision-making process, because there are other actors (extra-state actors) that directly or indirectly affect the decision-making process at the national level. It can be said, although policy making process still represents the interests of the state, but the interests of the society is still reflected, despite in the relatively limited capacity.

### III. Legal Framework for State and Society Relations in the Village

Political reform that began in 1998 considered that the political system had been built by the New Order regime was less able to meet the aspirations of democracy, so it was not been able to manage relationships with both the State and society. Weak mechanism of checks and balances between state and society gave a centralized power which bored injustice. To develop Indonesia as a nation towards a democratic and prosperous state, political reform has changed the power system and the state structures, hoping being able to create a good relationship between the state and society.<sup>22</sup>

The changing the power system and the state structure was through Law 22 of 1999, later replaced by Law 32 of 2004 on Regional Governance. Law 22 of 1999 provided flexibility to the regions to organize regional autonomy by emphasizing the principles of democracy, community participation, equity and justice, as well as by considering the potential and diversity of the region. So the Law 5 of 1979 on Village Governance which made uniform name, form, structure, and position of village governance in the regional government was no longer in line with these principles, and also incompatible with the 1945 Constitution.

Law 22 of 1999 provided the framework in an effort to make good relationships between the state and society in the village. Firstly, this law defines the village, or called by any other name, as the legal entity located in the district and has the authority to regulate and oversee the interests of the village community based on their historical rights (*hak asal-usul*) and their customs are recognized in national governance system.<sup>23</sup> With this definition, the law has given the freedom to use the name of the village in accordance with local social and cultural conditions such as *nagari* in Minangkabau (West Sumatra), *marga* in South Sumatra, *gampong* in Aceh, *huta* in Tapanuli (North Sumatra), *negeri* in Maluku and in Papua.<sup>24</sup> In contrast with Law 5 of 1979, Law 22 of 1999 had put a village was not under the control of sub-district or district government, and gave it as an autonomous legal entity in the district. This law also has given authority to the village government based on the existing authority based on historical rights of village, has given the authority that has not been implemented by the local government, and the authority that is given by central government, provincial governments, or district government.<sup>25</sup>

Secondly, according to Law 22 of 1999, the village government consists of the village head (assisted by his staff) and Village Representative Board (*Badan Perwakilan Desa/BPD*) as the executive and legislative branches of government. In an effort to build democracy at the village level, this law clearly separates the village head and BPD.<sup>26</sup> Separation of the two institutions is a paradigm shift of power in the village government, where according to law 5 of 1979, the village head was also the chairman of Village Consultative Assembly (*Lembaga Musyawarah Desa/LMD*) and all village institutions including the Rural Community Resilience (*Lembaga Ketahanan Masyarakat Desa/LKMD*). Thus, the village head became the sole ruler and also as a representative of the central government. The village head was accountable for his/her duties and obligations to the higher level of government, not to the people who had chosen him. LMD also could not be expected as a means of channeling the aspirations of villagers and also could not be a supervisor of the village governance process.

BPD or called by another name, according to Law 22 of 1999, is as a legislative and as a democratic institution at the village level, and plays role as a partner of the village head. Therefore, the villagers can participate in the decision-making process through their representatives in BPD. Its members as well as village head elected from and by the villagers who have met the requirements.<sup>27</sup>

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<sup>22</sup> Megawati and Ali Murtopo, *Parlemen Bikameral Dalam Sistem Ketatanegaraan Indonesia : Sebuah Evaluasi* (Yogyakarta: Penerbit UAD Press, 2006), pp. 1-2.

<sup>23</sup> Law 22 of 1999 on Regional Governance, Article 1. The original text of Article 1 is that “*Desa atau disebut dengan nama lain, selanjutnya disebut Desa, adalah kesatuan masyarakat hukum yang memiliki kewenangan untuk mengatur dan mengawasi kepentingan masyarakat setempat berdasarkan asal-usul dan adat istiadat setempat yang diakui dalam system Pemerintahan Nasional dan berada di daerah kabupaten.*”

<sup>24</sup> Elucidation of Law 32 of 2004 on Regional Governance, Article 93.

<sup>25</sup> Law 22 of 1999, Article 99.

<sup>26</sup> *Ibid.*, Article 95 and 104.

<sup>27</sup> *Ibid.*, Article 104

BPD has duties is to serve nurturing customs, to make regulations along with the village head (these regulations do not require Regents approval any more), to receive and channel the aspirations of the people, as well as to monitor the implementation of village governance.<sup>28</sup> The monitoring function includes supervising the implementation of village regulations, budget, and the village head's decisions. BPD also stipulates the candidate of village head elected with the most votes to be endorsed by the Regent,<sup>29</sup> and appointed by the Regent or other designated official.<sup>30</sup> BPD and the village head may establish other institutions in accordance with the interest of village people which is drawn up in village regulation.<sup>31</sup>

Duties and obligations of the village head are to lead the village government, foster community life and economy village, maintain peace and public order in the village, reconcile disputes, to represent his village inside and outside the courts, and may appoint his legal counsel.<sup>32</sup> In carrying out the duties and obligations, the village head is responsible to the people through BPD, and submit a report on the performance of its duties to the Regent.<sup>33</sup> This is in contrast with Law 5 of 1979 that has been set that the village head was accountable for his/her duties and obligations to the higher level of government, not to the people of the village who had chosen him.

With position and authority granted by this new law, BPD is a manifestation of the effort to build good relationship between the state and villagers. So far the Law 22 of 1999 has been discussed and it can be concluded that it's presence is intended to set the village government to make it more dynamic and democratic, and to establish structures of power which more have checks and balances between each other. The existence of democracy, and the checks and balances of power is expected to grow the initiative and creativity of villagers, and can encourage their increasing participation in rural development.

This law, however, does not regulate the issue of *adat* community apparently. But in line with the change of power in the village government, the law has provided great opportunities for *adat* community to participate in decision-making process and policy implementation. Even, this law may provide opportunities for *adat* community to integrate village governance system with the *adat* governance system.

In 2004, the government along with the House of Representatives made Law 32 of 2004 on Regional Governance, replacing Law 22 of 1999 which is considered incompatible with the development of the state, and the demands of regional autonomy. According to this new law, village, or called by any other name, is the unity of the legal community which has territorial boundaries, and which has authority to control and manage the interests of the local community, based on the origin and local customs that are recognized and respected in the governance system of the Republic of Indonesia.<sup>34</sup>

Table 1. Village Governance in the 1979, 1999, and 2004 Laws

	Law 5/1979	Law 22/1999	Law 32/2004
Definition of village	A territorial entity	A legal community	A legal community and a territorial entity
Terms for village and village head	Mandatory use of <i>desa</i> and <i>kepala desa</i> throughout Indonesia	District can legislate for the use of traditional terms	Idem
Village institutions	Appointed Village Consultative Assembly (LMD) and Village Community Resilience Board (LKMD) under the authority of the village head, no other institutions permitted	Elected Village Representative Boards (BPD/ <i>Badan Perwakilan Desa</i> ) with far-reaching rights and autonomy, plus other institutions that the village or district sees fit to establish	Appointed Village Consultative Boards (BPD/ <i>Badan Permusyawaratan Desa</i> ) with certain rights, plus other community empowering institutions that the village or district sees fit to establish

<sup>28</sup> Ibid.

<sup>29</sup> Ibid., Article 95.

<sup>30</sup> Ibid., Article 98.

<sup>31</sup> Ibid., Article 106.

<sup>32</sup> Ibid., Article 101.

<sup>33</sup> Ibid., Article 102.

<sup>34</sup> Law 32 of 2004, Article 1. The original text of Article 1 is that "*Desa atau yang disebut dengan nama lain, selanjutnya disebut desa, adalah kesatuan masyarakat hukum yang memiliki batas-batas wilayah yang berwenang untuk mengatur dan mengurus kepentingan masyarakat setempat, berdasarkan asal-usul dan adat istiadat setempat yang diakui dan dihormati dalam sistem Pemerintahan Negara Kesatuan Republik Indonesia.*"

Village government	Village head and LMD, inseparably	Head and BPD as separate entities, but 'partners'	Idem
Village head	Appointed by and accountable to the district; maximum term of office 16 years	Appointed by and accountable to the BPD, after approval from district; maximum term of office 10 years	Appointed by, approval and accountable to the Regent; maximum term of office 12 years
Dismissal of head	Proposed by subdistrict, approved by district	Proposed by BPD, approved by district	Proposed/not proposed by BPD/ approved by district
Village legislation	Drafted by village head and LMD, approved by district	Drafted and approved by BPD together with village head	Drafted by village head, approved by BPD together with village head

Source: Modified from Hans Antlov.<sup>35</sup>

Unlike the law 22/1999, the Law 32 of 2004 puts the position of the village under the district/municipality government.<sup>36</sup> The law also has changed the name of BPD from the Village Representative Board (*Badan Perwakilan Desa*) to the Village Consultative Board (*Badan Permusyawaratan Desa/BPD*). BPD members are representatives from sub-village defined by deliberation and consensus.<sup>37</sup> According to the Law 32 of 2004, BPD does not longer function to nurture customs, to make regulations and to supervise the implementation of Village Governance but rather serves to establish regulations of the village together with the village head, and to accommodate the aspirations of the people.<sup>38</sup> Those regulations may concern, according to the Government Regulation No. 72 of 2005, about the matters of forming new sub-village,<sup>39</sup> of the organizational structure and administration of the village government,<sup>40</sup> of village budgets,<sup>41</sup> of medium term plan for village development,<sup>42</sup> of the village financial management,<sup>43</sup> about the formation of village-owned enterprises,<sup>44</sup> and about the formation of other social institutions.<sup>45</sup>

The law 32 of 2004, on the other hand, authorizes the village head a larger power so it makes the village head higher position than BPD. The authority of the village head includes (a) to lead government organization based on the policies established by village head together with BPD, (b) submit draft of village regulations, (c) stipulate regulations that have been approved by BPD, (d) prepare and submit a draft of village budgets to be discussed and stipulated by village head and BPD, (e) foster rural life, (f) fostere rural economy, (g) coordinate participatory village development, (h) represent his village in and out of court and may appoint legal counsel to represent him in accordance with the rules, and (i) to exercise another authority in accordance with the laws and regulations.<sup>46</sup>

Furthermore, according to Law 32 of 2004, the village head has an obligation to provide village governance report to the Regent/Mayor once a year, and to provide that report to the BPD once a year. End of term of office, the report submitted to Regent/Mayor and to BPD.<sup>47</sup> Thus, the village head in carrying out its duties and obligations is no longer accountable to the people through BPD but to the Regents. It is almost the same as with the Law 5 of 1979 that had set that the village head was accountable for his/her duties and obligations to the higher level of government, not to the village people who had chosen him.

But this law still gives freedom to the village government to establish other institutions in order to deceive the public over the village, the institutions are such as welfare, and empowering institutions. Establishment of such institutions is by the village regulation, and guided by higher regulation. The duties and obligations of such institutions are as "co-workers" with village head to realize village people empowerment.<sup>48</sup>

<sup>35</sup> Hans Antlov, 'Village Government and Rural Development in Indonesia', p. 198.

<sup>36</sup> Law 32 of 2004, Article 200.

<sup>37</sup> Government Regulation 72 of 2005, Article 30.

<sup>38</sup> Law 32 of 2004, Article 209.

<sup>39</sup> Government Regulation 72 of 2005, Article 3.

<sup>40</sup> Ibid., Article 12.

<sup>41</sup> Ibid., Article 61 and 73.

<sup>42</sup> Ibid., Article 64.

<sup>43</sup> Ibid., Article 76.

<sup>44</sup> Ibid., Article 78.

<sup>45</sup> Ibid., Article 89.

<sup>46</sup> Ibid., Article 14.

<sup>47</sup> Ibid., Article 15.

<sup>48</sup> Law 32 of 2004, Article 211.; Government Regulation 72 of 2005, Article 89, 90, and 91.

## Implementation of State and Society Relations in Village of *Adat* Community

One of villages of *adat* community in Lampung province is Pematang Lioh (it is not real name). It is located in Pesawaran district, Lampung province. The village has an area of 2,302 hectares, divided into the rice field with an area of 240 hectares, the farm/plantation with an area of 850 hectares, a broad settlement with 114 hectares, and into the other need is 1,098 hectares. Pematang Lioh village has six sub-villages and has 2,684 people: 1,339 men and 1,345 women. The villagers of Pematang Lioh has some sorts of livelihood which have been divided into four predominantly, namely farmers are 60 percent, government employees are 10 percent, self-employees are 20 percent, and workers are 10 percent. The villagers based on the level of education are divided into as follows. Graduating from elementary school is 20 percent, from junior high school is 30 percent, from senior high school 35 percent, graduating from universities is 15 percent.<sup>49</sup>

Pematang Lioh village has five *adat* communities that are recognized as Lampung *saibatin*. For the purpose of discussion in this paper, we call them as *saibatin* I, II, III, IV, and *saibatin* V.

### *Adat* Community of Lampung *Saibatin*

Lampung community is native people who live in the southern part of the island of Sumatra. They have two custom systems, *pepadun* and *saibatin*. Lampung *pepadun* community settles along the river that empties into the Java sea while Lampung *saibatin* community lives on the coast and along the river that empties into the Indonesian ocean. Based on these two custom systems, the province of Lampung is called *Sai Bumi Khua Jurai*, which means "the land/territory has two custom systems".<sup>50</sup>

Both groups of Lampung community have a number of sub groups. The sub-groups of the Lampung *pepadun* community are composed of: (1) *Lampung Pubian Telu Suku*; (2) *Abung Sewo Mego*; (3) *Tulang Bawang Mego Pak*; (4) *Way Kanan*; (5) *Sungkai*. While the sub-groups of Lampung *saibatin* community are as follows: (1) *Lampung Pesisir Belalau/Krui*; (2) *Lampung Pesisir Pemanggilan*; (3) *Lampung Pesisir Semaka*; (4) *Lampung Pesisir Kalianda*; (5) *Lampung Pesisir Melinting*.<sup>51</sup>

The traditional leader of Lampung community is known as *punyimbang*, which acquired by hereditary position through male line (patrilineal). The traditional leader has several functions. These functions are almost similar to the functions of the traditional leaders in other *adat* communities. Koentjaraningrat has given a number of functions for traditional leaders in general. Among them is to set the inheritance including land for the community, to organize production as a source of income in the unity of the community, to organize activities of mutual cooperation, to arrange marriage ceremony, and to keep the integrity of the community.<sup>52</sup>

As a community, Lampung *saibatin* has two kinds of territory: (1) *pekon* (village) and (2) *kebandaran*. The total area of *pekon* is determined by the area opened by the people who first came to the region. While the area of the latter is the total number of areas of *pekon*. Both territories are important element in the maintenance of kinship, social, political and economic systems. The relationship between those systems and *pekon* is called *saibatin*.<sup>53</sup> *Sai* means "being able" or "single," while *batin* means "heart". Thus, *saibatin* is a community who have a particular territory, and who are able to unite with the oneness of heart in terms of establishing and running a life together in accordance with the terms specified by the customs of their ancestors.<sup>54</sup>

*Saibatin* has some leaders, they are *punyimbang saibatin* and some *punyimbang suku*. The latter is called as *jakhagan/jukhagan suku*. *Suku* is the extended family or a combination of some extended families. *Jakhagan/jukhagan* derived from the word "jakhu", which means "artisan/member", and from word "ganggan" which means "to improve/organize." *Jakhagan/jukhagan* are people who lead and manage the matters of the members of the extended family or several extended families in accordance with the the custom. *Punyimbang suku* are (1) *punyimbang suku kanan I (pampang balak)*, known as *suku*, (2) *punyimbang suku kiri I*

<sup>49</sup> Pematang Lioh Monograph 2012.

<sup>50</sup> Ali Imron, *Perubahan Pola Perkawinan Bujujokh dan Samanda pada Masyarakat Saibatin Lampung Barat* (Master thesis, Gadjah Mada University, Yogyakarta, 2001), p. 1.

<sup>51</sup> Sayuti Ibrahim, *Buku Handak II* (Bandar Lampung: Gunung Pesagi, 1995), pp. 13-15.

<sup>52</sup> Koentjaraningrat, *Beberapa Pokok Antropologi Sosial* (Jakarta : PT Dian Rakyat, 1990), p. 115.

<sup>53</sup> Said Arifin, *Sekilas Cakak Saibatin Khik Cempala 12* (Lampung: Without Publisher, 2000), p. 2.

<sup>54</sup> Ibid.

(*pengepik*) known as *jakhu suku*, (3) *punyimbang suku kanan II/hulu balang (panetop embokh)* known as *paku sakha*, (4) *punyimbang suku kiri II (pengapik)* known as *suku pandia*, (5) the next is *panggobok/penggewok* known as *panggobok/penggewok*, and (6) *punyimbang lamban lunik*, known as *punyimbang lamban lunik*.

*Punyimbang saibatin* and *punyimbang sukus* have kinship ties through patrilineal, and the ancestor of *Punyimbang saibatin* is the oldest one.<sup>55</sup>

### The Existence of BPD and Its Function

The village government of Pematang Lioh under discussion is in the year 2012, which is based on the law 32 of 2004. Its village head was elected by the village people in November 2006, and approved by the Regent in February 2007. The Village Consultative Board (*Badan Permusyawaratan Desa/BPD*) was formed earlier in August 2006. The discussion has looked at the existence of BPD and its function, and has used the interview to the members of BPD, to the village head, and to other qualified informen about the issue.

The existence of BPD is problematic because the implementation of decision-making process, which is one of its function, in Pematang Lioh village is dominantly influenced and more concentrated on a certain elites who are led by the village head. In most cases, the decision-making process is done without any involvements of BPD members. As the head of BPD and some its members say that “we never know how the policies or regulations are made, and we are just informed that certain policies and regulations has been made. According to them, based on the Law 32 of 2004, BPD has less power than the village head, and this can be seen from the fact that “the rubber stamp” of BPD is in the hand of village head (Interview, 9 October 2012).

Those elites are bonded by the ties of kinship and they came from one saibatin. They also have the ties of cooperation as “a success team” when the present village head was being a candidate. In addition, they have the political scenario in the future; to keep the village head position for second time for the next period (Pematang Lioh village will hold village elections in 2013).

The political scenario effected the formulation of newly appointed BPD members for period 2012-2018. BPD has nine members as the same number as the previous BPD members (period 2006-2012). Five from nine members are old members. From political power, seven of nine members are in favor of the village head, and they were as a part of previous “success team” of the village head. Five of those seven members have a kinship base and derived from one saibatin and the other two have friendship ties with the village head.

With the majority of political power in BPD based on kinship, it is understandable that the village head has desire to have power over the village again in 2013 and to have power over BPD until having not any resistance in running village governance.

Some adat leaders has given some responses about the existence of BPD) and its function in Pematang Lioh village. Khairullah, as one of *adat* leaders in *saibatin* I (Interview, 14 October 2012) realizes that the existence of the Village Consultative Boards (BPD) is still considered important because it is as an instrument in the decision-making process for adat community. Each adat community can actively involve and empower, through their representatives in BPD, in determining the direction of their future. This engagement is as active participation which can provide the *adat* community awareness and wider political space. In addition, M. Ikbal, as one of *adat* leaders in *saibatin* II (Interview, 13 October 2012), has the same view and says that BPD is a democratic institution in the village, and has a formal position, its political action or wisdom manifested in the form of village regulations. In another sense, Ikbal explained that *adat* community can participate in determining the political wisdom, the equality of villagers, the freedom for all villagers in a positive sense.

But the existence of BPD in Pematang Lioh village in the view of Apit Wiraman Firdaus, as one of *adat* leaders in *saibatin* III (Interview, 10 October 2012), has disfunction process in which BPD tends to be a political machine in order to achieve certain political interests, not to advance the interests of villagers. As told by Alpin Rusli, as one of the traditional leaders of *saibatin* IV (Interview, 15 October 2012), *adat* leaders has never been consulted or sought the opinion before the policy being made. “... we do not unite well with the village head because it

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<sup>55</sup> Ibid., pp. 16-23

is as usual since the first (New Order time), the village government affairs and *adat* community affairs are separated even the village head and *adat* leaders has never consulted each other.”

In addition, BPD's function is more being as a standard control in an attempt to maintain the status quo of the village head. As Hipni Marzuki, as one of *adat* leaders in saibatin V (Interview, 10 November 2012), says that the village head has recently chosen the members of BPD for period 2013-2018 who are not representatives of various *saibatins* in Pematang Lioh village, but mostly from one *saibatin*.

For this, Ahyani, as another *adat* leader in *saibatin* I (Interview, 16 October 2012) gives some suggestions. For him, the members of BPD should be representative from various *saibatins* in the village. Next, the village head should consult the *adat* leaders in drafting any regulations. Lastly, the village head and BPD should be hand in hand in decision-making process.

#### IV. Conclusion

As far as the existence of BPD and its function in the village government of Pematang Lioh is concerned, the Law 32 of 2004, as a one of political reform in the village in the reformation period in Indonesia, does not make any adjustments in establishing good relation between state and society in *adat* community. On the contrary, it gives the opportunity for the village head much more power over the BPD until its function is dominantly influenced by the village head. So any implementation of village policy is without any involvements of BPD members. The law also gives the BPD chance of being sit on by certain elites, based on the ties of certain kinship. So, the Law 32 of 2004 is still not good enough as legal framework for state and society relations in the village of *adat* community.

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