

## Reconciliation of Traditional Territories of Indigenous Communities from the Perspective of Collaborative Governance

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*Received November 13, 2024; Accepted December 24, 2024; Published March 15, 2025*

**Abstract** – In the Unitary State of the Republic of Indonesia, the Village is the smallest and lowest government unit. With the establishment of the Indonesian state and the enactment of regulations related to state-formed villages with western characteristics, there will certainly be a confrontation between indigenous model villages and western model villages where these two models have different values. The purpose of this study is to analyze and explain the customary areas of indigenous communities in the Boti Village community and how reconciliation is offered in the perspective of collaborative governance. This study uses a qualitative approach with a case study research type. The location of the study is in Boti Village, East Nusa Tenggara Province. Research informants were determined using purposive techniques. The focus of the study is the reconciliation of the customary areas of the Boti community in the perspective of collaborative governance. Data analysis uses data analysis from Creswell. The results of the study show that for the management of the indigenous Boti community's customary territory from a collaborative governance perspective, the Boti Village Territory Reconciliation model must be used using the King Model as the Coordinator of the Traditional Village Territory and other villages are also made into traditional villages or the Boti Village Territory Reconciliation Model of Traditional Village Exclusivity Model where the Boti Traditional Village becomes an Exclusive Traditional Area Village whose customary authority covers other villages included in the Boti customary and genealogical territory.

**Keywords:** *Indigenous, Village, Customary Land, Collaborative Governance*

### 1. INTRODUCTION

Villages have existed for a long time, long before Indonesia became independent, and villages were not even created by the Dutch. (Sugiman, 2018). In carrying out its authority, the village uses its original authority that has existed and lived since the village was formed. Original rights or authorities are rights or authorities that are owned by indigenous peoples, not those given or handed over by the state. Therefore, the village should be regulated based on the principle of recognition (Meitikasari & Drianus, 2012) or state recognition of these original rights. If in village regulation there is a lack of original authority, then the principle of subsidiarity is needed (Ruqayat, 2021) from the state to fulfill the deficiencies or vacuums of government regulations, development, coaching and community empowerment. The two principles, namely the principle of recognition and subsidiarity, are expected to guarantee the realization of the principle of village independence. Indonesia when it became independent chose the form of a unitary state (Safa'at, 2015). Through the 1945 Constitution, the State has also provided a guarantee to indigenous model villages that the State will continue to guarantee space for their original authority and the value of original rights. Indonesia is a pluralistic country consisting of various ethnic groups, cultures, values, customs, and local wisdom. The culture that exists in society is a national cultural wealth (Badri & Najicha, 2022). Thus, villages should be assisted in the inculturation process, namely by going through the process of searching for their own (local) identity after decades of state intervention in its arrangement, after which the process of cultural acculturation is carried out (Kaplan, 2022).

Boti village together with its indigenous people who live in it, its condition is as described above. The Boti community actually has a genealogical bond that cannot be separated from the social life of the Boti community itself. This genealogical relationship cannot be limited by territory or territory that it continues to have a relationship all the time and even though it is separated by different

regions. However, after Indonesia's independence and the establishment of the Unitary State of the Republic of Indonesia, village planning began to be carried out by the state. Currently, through the Minister of Home Affairs Regulation Number 1 of 2017 concerning Village Planning in Article 7 paragraph 1 section f, it states that the boundaries of the Village area are stated in the form of a Village map that has been stipulated in the Regent/Mayor Regulation.

Furthermore, mapping of village boundaries is an implementation of Law Number 4 of 2011 concerning Geospatial Information and Law Number 6 of 2014 concerning Villages. It is clearly stated in the Village Law that. Villages are Villages and Traditional Villages or those referred to by other names, hereinafter referred to as Villages, are legal community units that have territorial boundaries that are authorized to regulate and manage government affairs, local community interests based on community initiatives, original rights, and/or traditional rights that are recognized and respected in the government system of the Unitary State of the Republic of Indonesia. The interests of the local community are based on community initiatives, original rights, and/or traditional rights that are recognized and respected in the government system of the Unitary State of the Republic of Indonesia. The boundaries of the Village stated in the form of a Village Map are determined by the Regent/Mayor regulation.

The above is as stated in the Regulation of the Minister of Home Affairs Number 45 of 2016 concerning Guidelines for Determination and Confirmation of Village Boundaries. Village boundaries are boundaries of administrative government areas between Villages which are a series of coordinate points on the surface of the earth which can be in the form of natural signs such as ridges/mountains, river medians and/or artificial elements in the field which are poured into the form of maps. Determination of Village boundaries according to Regulation of the Minister of Home Affairs Number 45 of 2016 concerning Guidelines for Determination and Confirmation of Village Boundaries is the process of determining Village boundaries cartometrically on an agreed base map. Confirmation of Village boundaries is the activity of determining Village boundary coordinate points which can be carried out using cartometric methods and/or field surveys, which are poured into the form of boundary maps with a list of Village boundary coordinate points.

With the current village arrangement, the genealogical area of the past is then divided and limited administratively when the areas that in the past were a unit were then divided into their own administrative villages. This then caused this genealogical community to be separated by administrative boundaries. In practice, the life of the Boti indigenous community does not actually carry out its socio-cultural-customary life based on these territorial ties but based on the existing genealogical ties. This can be seen from the tribal/clan ties in Boti which are headed by the "Amaf" (head of the clan or tribe) in each existing clan. This shows that although the state provides recognition as stipulated in the Minister of Home Affairs Regulation Number 1 of 2017 Article 6 paragraph 2 that the Establishment of Villages takes into account the initiative of the Village community, origins, customs, socio-cultural conditions of the Village community, as well as the capabilities and potential of the Village. However, the state through its regulations and derivative regulations also provides a model to be emulated by the village. This kind of condition in this study is considered a form of state hegemony.

This then causes the Boti village to need to be regulated according to the origin, customs, and socio-cultural conditions of the village community by not using the hamlet system within the village area but using the tribal system. Where the tribal community will be genealogically bound in building their social relations. This allows even though administratively the community is in the area of a village, either the same or different in terms of administrative boundaries, their customary rights and obligations genealogically towards the boti remain attached to them wherever they are. Because if the hamlet system is implemented, the indigenous community will be separated by administrative boundaries. In fact, the binding value of the solidarity of this indigenous community is genealogical. What is to be achieved and created certainly requires the right approach. In this case, the collaborative governance approach is a process and structure that allows the involvement of various parties across organizational boundaries. So that collaboration in this case is used to describe formal, active, explicit and collectively oriented cooperation in management and public policy in order to achieve the desired goals. The purpose of this study is to analyze and explain the customary areas of indigenous communities in the Boti Village community and how reconciliation is offered from a collaborative governance perspective.

## **2. LITERATURE REVIEW**

### **2.1. Customary Law Community**

Customary law communities are also known as "traditional communities" or indigenous people, in everyday life they are more often and popularly referred to as "indigenous communities". (Samosir, 2013). It is also emphasized in Law Number 32 of 2009 concerning Environmental Protection and Management, CHAPTER I Article 1 point 31 "customary law communities are communities that have traditionally lived in certain geographical areas because of ties to ancestral origins, strong relationships with the environment, and the existence of a value system that determines economic, political, social and legal institutions". The definition of customary law communities is a community that arises spontaneously in a certain area, the establishment of which is not determined or ordered by a higher authority or other authority, with a high and very large sense of solidarity among members of the community as outsiders in using their territory as a source of wealth can only be fully utilized by its members (Soekanto, 2005).

Indigenous communities show a very close relationship with communal forms in interpersonal relationships and social interactions that occur between humans, giving rise to these patterns in a way (a uniform or costumery of behaving within a social group). All humans essentially want to live orderly and peacefully. After that, each group in the community has a different understanding of the meaning of orderly and peaceful. Indigenous communities according to Soepomo, are basically divided into 2 (two) groups according to their basic structure, namely based on genealogical ties and based on the regional environment (territorial) (Soekanto, 2005).

The form and structure of the legal community which is a customary legal association, its members are by territorial and genealogical factors. Reflecting on the understanding put forward by legal experts in the Dutch East Indies era, what is meant by a legal community or territorial legal association is a permanent and orderly society, whose members are bound to a certain residential area, both in worldly terms as a place of life, and in spiritual terms as a place of worship for ancestral spirits. While a genealogical legal community or association is a regular community unit, where its members are bound to a common lineage from an ancestor, either indirectly because of marriage ties or customary ties. (Hadikusuma, 2003).

### **2.2. Collaborative Governance Concept**

The development of governance, collaborative governance (collaborative governance) has become a new trend and phenomenon that is interesting to research and study. "Collaborative governance itself has been developed over the past two decades" (Ansell & Gash, 2008). Collaborative governance is a step in the governance system in which there is involvement of all parties between government, civil society, and the private sector in the implementation of government with an egalitarian and democratic framework that creates a governance system that prioritizes the interests of society. Collaboration between government, civil society, and the private sector is a step to optimize the role of government in implementing public policies and organizing public services. In general, it is explained that "Collaborative Governance is something in which to carry the interests of each agency in achieving common goals" (Subarsono., 2016).

This is different from the definition of Collaborative Governance explained by Agrawal and Lemos that: "Collaborative Governance is not only limited to stakeholders consisting of government and non-government but is also formed from the existence of multi-partner governance which includes the private sector, society and civil communities and is built on the synergy of stakeholder roles and the preparation of hybrid plans such as public-private and private-social cooperation." (Subarsono., 2016).

The definition above explains that Collaborative Governance is a process and structure in the management and formulation of public policy decisions involving actors who constructively come from various levels, both in the government or public institutions, private institutions and civil society in order to achieve public goals that cannot be achieved if implemented by one party alone. Collaborative governance between institutions is an important issue in government science considering that many government problems have broad implications that cannot be handled optimally and solved completely if they only rely on one government institution. Through this collaboration, it is hoped that the problems faced can be overcome or at least can be minimized significantly.

### **3. METHOD**

This study uses a qualitative approach with a case study type of research. Furthermore, the type of case study used in this study is an instrumental case study because in this study the researcher examines a particular unique case (the customary territory of indigenous peoples in Boti Village) to better understand the issue and also to develop and refine the theory. The location of this study was determined using a purposive technique (using certain considerations). This study itself was conducted in South Central Timor Regency, especially in Boti Village, which is where the Boti tribe lives. The focus of the study is the reconciliation of the customary territory of the Boti community from a collaborative governance perspective. The informants in this study were determined using a purposive technique (using certain considerations). For field data collection, the researcher used interview methods, document studies and observations. The data analysis technique used in this study is as stated by Creswell (2015). This researcher uses several methods to ensure the validity of the research results, including: (1) Triangulation (consisting of data triangulation and technique triangulation, and time triangulation), (2) Using reference materials, and (3) Member check.

### **4. DISCUSSION**

#### **4.1. Current Condition of the Boti Indigenous Community with its Customary Territory**

The Boti community before entering the new style village period carried out its customary community unity or life based on territorial genealogical legal society. Because the Boti community is a community unit that is not only bound by residence but also bound by hereditary relations in blood ties and/or kinship. However, after entering the new style village period, the village was then formed not based on looking at the factors as mentioned above. Based on the Law of the Republic of Indonesia Number 5 of 1979 concerning Village Government, Article 2 paragraph 1 states that a Village is formed by considering the requirements of area, population and other requirements that will be further determined by the regulations of the Minister of Home Affairs. Furthermore, Article 2 also states that the Formation of the name, boundaries, authority, rights and obligations of the Village are determined and regulated by Regional Regulations in accordance with the guidelines set by the Minister of Home Affairs.

The regulation above caused the Boti village at that time to be divided into several villages. The division of the village was also inseparable from the history of the Boti kingdom which the colonizers tried to weaken by dividing the territory of the Boti kingdom into several small villages. So that when entering the new style village period, the formation of villages referred to the form of these small villages. The arrangement of the new style village then divided the indigenous people who had actually been bound genealogically-territorially. The unity of the indigenous people was then divided by the arrangement of the new style village which had clear administrative and territorial boundaries. Making one village with another village have clear boundaries with each other. However, in fact, the genealogical ties of the Boti people were not broken by the differences in the boundaries of the village. However, over time in the new generation, this clear territorial limitation will most likely loosen the genealogical ties in Boti Village. This is what must be read immediately and must be prevented immediately.

At this time also through the Regulation of the Minister of Home Affairs Number 1 of 2017 in Article 1 paragraph 7 concerning the requirements for the formation of a village, several requirements are mentioned which then also threaten genealogical-territoriality because based on the results of the study that several hamlets in Boti Village also when they have met the population requirements they want to expand into new villages. This shows that the regulations issued by the village actually make the guarantee of genealogical-territoriality in Boti threatened. Because the community when they are separated into different villages, whether they realize it or not, this will create different and distant feelings between each other between the communities.

The most important thing is related to land ownership in Boti Village, the entire territory of which is controlled on the basis of customary land ownership owned by the King of Boti as the holder of customary land rights for the Boti area. Ownership of customary land itself has been legally recognized in the Unitary State of the Republic of Indonesia. As stated in Article 1 paragraph 3 of the 1945 Constitution which explains that the Republic of Indonesia is a country of law. The regulation of customary land has been mentioned in Article 3 of Law Number 5 of 1960 concerning Basic Agrarian Principles which reads that considering the provisions in Articles 1 and 2, the

implementation of customary rights and similar rights from customary law communities, as long as in reality they still exist, must be such that they are in accordance with National and State interests, which are based on national unity and must not conflict with other higher laws and regulations.

Customary land is a plot of land on which there are customary rights from a particular customary law community. Customary law itself is a series of unwritten rules that bind a community, and originate from customs that grow and develop in a particular community which are then accepted as law from generation to generation. In formal legal terms, the recognition of the existence of customary law communities and their rights in Indonesia is recognized. It is recognized that the recognition of the existence of customary law communities varies greatly from one sector to another. Likewise, the form of recognition of the existence of customary law communities by regions also varies.

In the case of land/territory affairs; the state exercises its hegemony over customary land control by the customary law community in Boti. Various regulations issued by the state then actually weaken the value of Boti's independence in land/territory affairs which have been regulated based on customary rights. One of them is UUPA No. 5/1960 which takes over customary lands then determines them as state lands and is handed over to the regional government. This causes customary land owned by the community to become increasingly scarce, while most of the land that has been converted into state land is then determined to be state forest. In addition, the customary territory of Boti which is usually regulated based on tribal genealogy is replaced by the government through various regulations issued to be regulated based on administrative areas based on territorial geography (Dusun). This causes the customary territory of Boti to become small, limited by administrative areas. Social ties of the community according to genealogy also begin to fade due to administrative boundaries imposed by the state.

#### **4.2. Reconciliation of the Customary Territory of the Boti Indigenous Community with a Collaborative Governance Perspective**

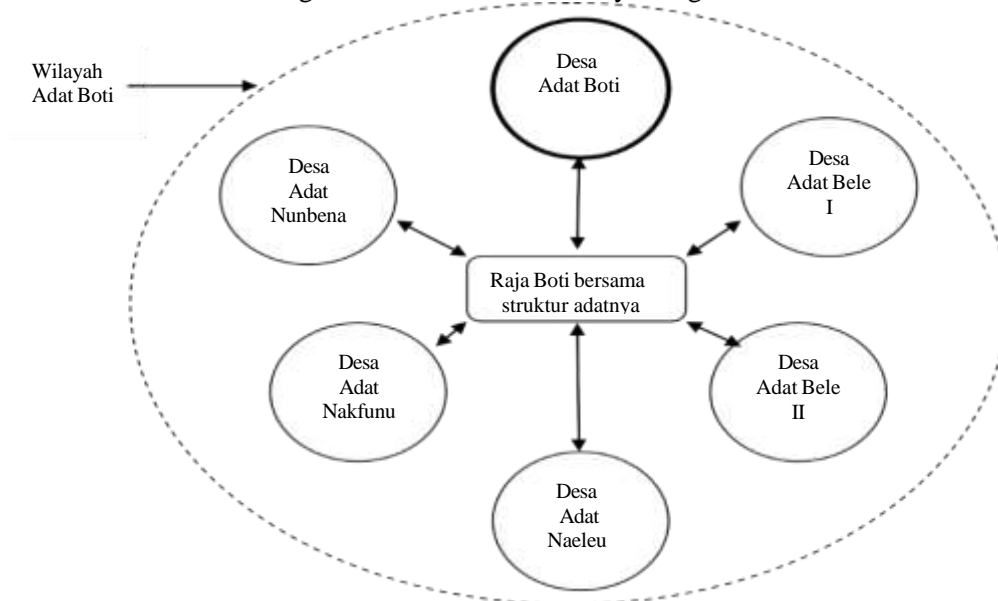
At the time of the research, the researcher had discussions with the Boti Village government and also the Sonaf Boti government and asked for views from the community, local government and academics to discuss the proposed reconciliation model to be considered as a model that is in accordance with the current conditions in Boti Village. Based on the results of the study, it can be said that the current village model is not suitable for Boti Village because the current village model adheres to the village association legal community system which is a concept of a community that has a shared residence, where residents are bound to a residence that includes villages or hamlets where all are subject to the leader. Examples of villages in Java and Bali. Villages in Java have legal associations that have a fixed structure, there are administrators, there are territories, there are assets, and generally it is impossible to dissolve.

There is a need for the implementation of asymmetric decentralization for provincial/district/city areas where the villages require specialization such as Boti. Asymmetric decentralization is autonomy that is implemented in a country with the principle of being unequal and incongruent. Each region has different characteristics that to a certain degree cannot be generalized. This has an impact on the decentralization format built by a country. The decentralization format that is too generalized (Homogeneous/Symmetric Decentralization) is often the choice of a country in running regional government management because it makes it easier for the central government to control. However, sometimes problems often occur because it is too forced even though it is not according to needs, in the end inefficiency occurs. With these limitations, the heterogeneous (asymmetric) decentralization format is used as an alternative policy in overcoming the limitations.

Some things that can be done and tried to be offered by research through this research are that the Boti village can be designated as a traditional village by expanding the scope of its traditional area. So several villages that are also in the territorial genealogical area of the Boti indigenous community are also included in the scope of the Boti traditional village customs. In the sense that villages that are also in the territorial genealogical area of the Boti customary area that currently still have the status of ordinary villages are encouraged to become traditional villages together with the Boti Village. The Boti King will then be positioned as the "customary village coordinator" or "customary village sub-district head" or with other names that are in accordance with the existing

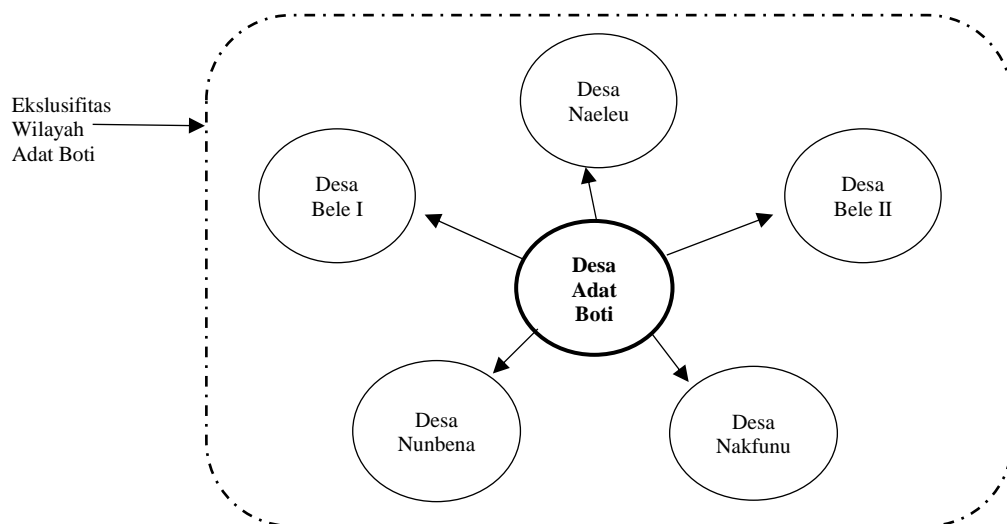
local wisdom values. However, if the villages around the Boti village cannot change status to become traditional villages, then other villages or the Boti village can still organize their governments, but "Boti Dalam" must become a special area with exclusive arrangements (exclusive government).

This means that Boti Dalam has its own exclusive government structure within the village. This means that administratively Boti Dalam may be limited but its customary authority in terms of territorial genealogy may not be limited or reduced by the state. The researcher's suggestion will then be described in the following model (see the image below). In the image, it can be seen that Boti Village together with other villages (former Boti areas that are included in the Boti customary area) are also encouraged to become customary villages. The status of these villages will become customary villages under the leadership of the Boti King as the customary coordinator who will coordinate the administrative village heads in each customary village area. The Boti King functions as the customary coordinator for all villages included in the Boti customary area. Boti Village becomes the main customary village where the Boti King lives and exercises his customary authority and carries out his coordination together with other customary villages.



**Figure 1. Reconciliation of the Boti Village Territory using the King Model as the Coordinator of the Traditional Village Territory and other villages are also made into traditional villages.**

Furthermore, the second suggestion/recommendation related to the implementation of Boti village as an exclusive village/area can be described in the following model (see the image below). In the image, it can be seen that other villages, if they cannot be encouraged to become traditional villages, will remain ordinary villages. Only Boti Village was then encouraged to become a traditional village. However, the customary authority of Boti does not only stop at the administrative boundaries of Boti village but also includes other villages that are included in Boti's customary rights, which are called the exclusive customary area of Boti:



**Figure 2. Reconciliation of Boti Village Territory, Model of Exclusive Traditional Village, Where Boti Traditional Village Becomes an Exclusive Traditional Village Area whose customary authority covers other villages included in the customary and genealogical territory of Boti.**

The administrative village position has consequences for the limitations of village authority, especially in the planning and financial processes. The original authority is difficult to translate and identify because of its diversity. The authority in the areas of government that is delegated by/from the district is more of a residual authority that cannot be implemented by the district/city and contains many burdens because it is not accompanied by proper funding. The limitations of authority also limit the function of the village and do not provide room for the village to manage its own governance.

The main idea of development decentralization is to place the village as an autonomous entity in managing development. Thus, bottom-up village planning must also be transformed into village self-planning, in accordance with the limits of authority held by the village. Decentralization of development is identical to making development planning sufficient to the village level only. Therefore, the village has independence in development planning without instructions and intervention by the supra-village government. This is where the role of the Village Consultative Body (BPD) or what is called by another name, as an institution that is the embodiment of democracy in the implementation of village government as an element of the village government organizer. This BPD must be the driving force of village autonomy. Village autonomy or what is called by another name based on the mandate of Article 18B paragraph (2) must at least cover three levels of original rights, namely: recognition of the original structure; recognition of the system of social norms/institutions that are owned and applicable; and, recognition of the material basis, namely customary law and village assets (property rights) (Rudy, 2012). Thus, in fact, village autonomy can be implemented well within the framework of traditional villages, not administrative villages.

Based on the description above, the researcher can convey several things to create reconciliation of the customary territory of the Boti indigenous community in the perspective of collaborative governance, namely: (1) Boti Village in carrying out its original authority is positioned as an indigenous community. (2) Boti Village in carrying out its original authority is also positioned as a legal community. (3) In carrying out its authority, the village is not only a local self-government that carries out the function of deconcentration, but also as a self-governing community. (4) The authority for village development planning must be carried out with a Bottom-up system with the principle of village self-planning. (5) Village independence in the case of original authority in Boti Village, South Central Timor Regency still exists, is still alive, and is still running to this day with the Boti community positioned as a "customary legal community" / self-governing community that carries out its own original authority. The various things that have been put forward can be realized if all parties, be it the village government, regional government, or central government to the customary legal community unit, provide the principle of complete recognition of the independence

of the Boti village community as a customary legal community unit which in this study is referred to as the collaborative governance approach.

## 5. CONCLUSION

In matters of customary land/territory, villages need to be given space to manage their land based on customary rights. The state must also provide legal clarity in recognizing customary land and also regarding its management. The uncertainty of laws, regulations and policies that cover or regulate customary land needs to be fixed so that customary rights have a clear basis. All customary land that was previously taken by the state and changed status needs to be reviewed to see the level of usefulness, whether it is better managed by the customary law community with its customary rights or owned by the state. Villages also need to be given space to create their own customary territory based on genealogical aspects. The state should not limit villages only with administrative boundaries (hamlets) which then restrict genealogical ties (tribes). Customary territories must be viewed as genealogical tribal territories that are not limited by geographical space. However, all of these lineages are tribal ties that will strengthen the social ties of the community. If needed, administrative areas can still be made to be administrative maps for government administration services. However, it should not be viewed as a fixed territorial boundary that then separates communities into boxes in geographical administrative space. The government must also conduct a study to find the right model related to the intended traditional village model, whether in the form of a traditional sub-district, traditional village, or traditional coordinator village. This is still a limitation of the research that can be studied by further researchers.

## CONFESSION

This work was supported by the National Natural Science Foundation of China (61303022), the Natural Science Key Project of Jiangsu Higher Education Institutions (17KJA520002), and the Nanjing Scientific & Technological Innovation Project for Outstanding Overseas Students. This is an example

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