ADAT IN INDONESIAN LAW AND SOCIETY: A TOOL TO BUILD RESILIENCE AND OVERCOME DIVERSITY THROUGH CULTURAL AND LEGAL PLURALISM

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ABSTRACT

Legal pluralism—the presence of more than one legal order within the same country—is intrinsically linked to cultural, social, religious, and legal dimensions. In Indonesia, it takes the form of *adatrecht* or customary law, which—after a period of strong political and institutional centralisation—began to be seen as a true reflection of a living society. *Adat* is expressed as institutionally recognised plurality, which acts as a tool to bridge cultural, linguistic, ethnic, religious, and legal diversity in the country. Legal pluralism offers solutions that are based on communities' values and as such refutes legal centralism, which can be exclusive, unified, and hierarchical. Legal pluralism also presents a challenge to legal positivism, which does not attribute a moral value to the law or seek to explain its social aims or functions. Yet, the implementation of *adatrecht* has also introduced tensions, which are presented here through an analysis of the role of Islam and the environmental governance of customary law. This article contributes to a rich scholarship in legal anthropology, from which it seeks to build applicable solutions for pluralistic societies.

KEYWORDS: Indonesia, adat, customary law, international law, legal anthropology, crisis, change.

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INTRODUCTION

With over 1300 recognised distinct native ethnic groups and 700 living languages in the largest archipelago of the world, the Republic of Indonesia possesses significant cultural and legal diversity expressed through a wealth of traditions. From colonial to current times, this complexity has presented important questions as to the exact nature of the law, the relations between law and society, the ways in which the law is applied and in which specific situations, and who ultimately has the power to determine the rules. The concept of legal pluralism—the presence of more than one legal order within the same country—in the context of Indonesia can be seen as the interaction and the interconnectedness of multiple legal orders, including state law, customary law, and Islamic law, whose developments become integral to and inseparable from the social, religious, and cultural contexts.[1] This pluralism has come to be seen as a necessity in Indonesia, a dynamic, 'living' law that has shaped a model that best reflects and supports the societal complexities of such diverse groups. Establishing a rule of law based on legal pluralism is inherently a fluid and contested process that includes both top-down and bottom-up elements, which can work cooperatively with one another and be synergistic, but can at times also take a more bellicose and competitive form.[2] It offers solutions that are based on negotiations and communities' values. Legal pluralism differs from 'legal centralism', which can be intended as an exclusive, unified, and hierarchical order of norms and propositions.[3] Legal pluralism also presents a much-needed challenge to legal positivism, which does not attribute a moral value to the law or seek to explain its social aims or functions.

This article explores several elements of legal pluralism in Indonesia, its application as a cultural expression, and its role in the ever-present tensions between the concepts of unity and diversity. In particular, the development and use of the concept of *adat* (custom) and *adatrecht* (customary law) is explored across several perspectives, including the cultural, historical, and legal, in order to study the entwined characteristics of customs and the law, and their role as tools to unravel differences. Institutionally recognised plurality in Indonesia's rich body of law can be seen as a tool to bridge cultural, linguistic, ethnic, religious, and legal diversity in the country. *Adat*

[1] Ratno Lukito, *Legal Pluralism in Indonesia: Bridging the Unbridgeable* (New York: Routledge, 2013).
[2] Geoffrey Swenson, "Legal Pluralism in Theory and Practice," *International Studies Review* 20, no. 3 (2018): 438-462, https://doi.org/10.1093/isr/vix060.
[3] John Griffiths, "What is Legal Pluralism?," *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (1986): 1-55, https://doi.org/10.1080/07329113.1986.10756387.

for instance can be invoked to provide solutions to topical issues, such as environmental management and land disputes. Whereas in other contexts, such as Myanmar, ethnic and religious pluralism translated into deadly violence,[4] in Indonesia the existence of *adat* has—if not completely avoided conflict—at least established a workable degree of harmony and intercultural cooperation in rural and urban communities.[5] This research sits at the nexus between legal anthropology, seeking to answer questions as to how the law is present and expressed in cultures, and the practice of law, looking at how the existence of *adat* and the implementation of legal plurality has provided tangible answers to community problems based on values.

Adat and *hukum adat* (customary law as it is referred to locally) were already present in pre-colonial Indonesia and are still commonly considered one of the sources of law. They define the local traditional systems of rights, beliefs, and custom as they have evolved over time in different parts of the archipelago, with strong popular connotations towards authenticity based on ancestry, the value of community, order, justice, and harmony.[6] The term *adat* was first coined in the work of orientalist scholar Christiaan Snouk Hurgronje of the Leiden School, in his *De Atjehers* (1893). He became instrumental in bringing peace in the Aceh province after the long war between the province and the Dutch administration (1873-1904). Significant work on *adat* and *adatrecht* was subsequently undertaken by another legal scholar of the Leiden School, Cornelis van Vollenhoven who spoke of *adat law* as 'the totality of the rules of conduct for natives and foreign Orientals that have, on the one hand, sanctions and, on the other, are not codified'.[7] In his work, he strongly emphasised that there was no sharp dividing line between the strictly legal and other aspects of *adat*.[8]

The coexistence between state law and *adat* in the archipelago—in its many expressions, including Islamic customs—has enabled the application of the motto '*Bhinneka Tunggal Ika'* (Unity in Diversity) and built constitutionally recognised plurality as a bridging tool to overcome

[4] Mary P. Callahan, "Myanmar in 2017: Crises of Ethnic Pluralism Set Transitions Back," *Southeast Asian Affairs*, (2018): 243–64, https://www.jstor.org/stable/26492780.
[5] Sihol Tambunan, "Adat and Religious Tolerance: Ethnophilosophy Perspective," *Journal of Indonesian Social Sciences and Humanities* 8, no. 2 (2018): 89-99, https://doi.org/10.14203/jissh.v8i2.135.
[6] Jamie S. Davidson and David Henley, eds., *The Revival of Tradition in Indonesian Politics: The Development of Adat from Colonialism to Indigenism* (London: Routledge, 2007).
[7] Kurnia Warman, Saldi Isra and Hilaire Tegnan, "Enhancing Legal Pluralism: The Role of Adat and Islamic Laws Within the Indonesian Legal System," *Journal of Legal, Ethical and Regulatory Issues* 21, no. 3 (2018), https://www.abacademies.org/articles/enhancing-legal-pluralism-the-role-of-adat-and-islamic-laws-within-the-indonesian-legal-system-7242.html.
[8] Ibid.

the potentially negative consequences that can arise from such a heterogenous society. While not without its detractors (in particular at the beginning of colonial times, when little knowledge of local customs and rules was still pervasive in the Dutch administration, as well as in more recent times, with continued fragmentation of potential solutions even within the framework of local policies), *adatrecht* and the historical efforts to institutionalise customary law have brought recognition and validation of the heterogeneity of society, including over smaller, localised forms of governance, such as villages and sultanates. Invoking *adat* has been deemed an inevitable reaction after colonialism and then the centralising powers in the post-colonial periods under Presidents Sukarno (1945-1967) and Suharto (1967-1998).[9] *Adat* has been veiled with positive connotations of folkloristic revival and empowerment of indigenous groups, a romantic expression of the *Volksgeist*, the spirit of the people, and from which one would validate local forms of governance and self-determination.[10] In the later sections, this article also explores *adat* in its more divisive forms and as an expression of the politics of difference, bringing examples of the application of Islamic law and of land governance by indigenous communities. The ensemble of these discussions will lead to preliminary conclusions on the merits of legal pluralism as a tool to foster more harmonious and effective intercultural and interreligious relations of different groups within countries.

Historical and Legal Underpinnings

Indonesian identity stretches in multiple directions.[11] Indigenous kingdoms ruled the archipelago independently with their own customs, while at the same time maritime relations, commerce, and the exchanges between lowland and upland communities created networks across the islands and their societies. Influences from the Middle East, India, and China, and later from Dutch colonisation have been critical in shifting indigenous socio-religious patterns and subsequently in shaping language, religion, culture, social, and economic affiliations.[12] In this context, 'the identity of each individual inhabitant of the archipelago was and is constituted by

[9] David Bourchier, "The Romance of Adat in the Indonesian Political Imagination and the Current Revival," in *The Revival of Tradition in Indonesian Politics,* eds., Jamie S. Davidson and David Henley (New York: Routledge, 2007), 113-129.
[10] Ibid.
[11] Johan Meuleman, "Between Unity and Diversity: The Construction of the Indonesian Nation," *European Journal of East Asian Studies* 5, no. 1 (2006): 45-69, https://doi.org/10.1163/157006106777998115.
[12] Ibid.

multiple references of local, regional, national and transnational dimensions and to racial, linguistic, religious and cultural communities'.[13]

In colonial times, the Dutch administration established a dualistic system,[14] with different laws and courts for Europeans and non-Europeans. For the former, legislation and ordonnances that were applied had to be in 'concordance', i.e. aligned, with those in the home country. The indigenous population of the Indonesian territory, including sizable minorities—such as the Chinese—were subject to their own customs and rules, as long as those were not significantly in conflict with "generally recognised principles of equity and justice".[15] Customs and separate rules were often under criticism, in particular at the beginning of the Dutch colonial times, when limited knowledge of the culture, language, and indeed customs of the local population was considered an impediment to effective administration, often accompanied by condescending attitudes of the colonials versus the indigenous people. This began to change with the 'discovery' of *adat* in legal scholarship, the growing body of work looking at *adatrecht* as a separate discipline, its conceptual similarities with the German Historical School of Jurisprudence which saw the law as the expression of national consciousness rather than as a rational discovery from deductive processes, and ultimately with the growing volume of research and influence of the Leiden School. Scholars at Leiden such as Van Vollenhoven and his students based their work on ethnological and anthropological research in Indonesia in and after 1850, with an emphasis on local traditions such as the rights to soils, family law, inheritance law and village governance. They were influential in the 1901 introduction of measures for ethical politics by the Dutch administration, in which *adat* was recognised as a means to protect the indigenous population from the more exploitative expressions of colonialism. For Van Vollenhoven, *adat* represented the totality of the customs, where there was no clear separation between the legal application of *adat* and other elements of *adat*, such its religious or cultural connotations. In the context of the debates about the legal reforms in Indonesia, Van Vollenhoven vehemently opposed the Dutch government's intentions to abolish *adat* law, giving weight to the principle of non-interference with native customs and institutions. Yet, *adat* law was also considered inadequate to respond to the demands of a

[13] Ibid., 48.
[14] Cornelis Fasseur, "Colonial Dilemma: Van Vollenhoven and the Struggle Between Adat Law and Western Law in Indonesia," in *The Revival of Tradition in Indonesian Politics*, eds., Jamie S. Davidson and David Henley (New York: Routledge, 2007), 50-67.
[15] Ibid., 50.

modernising Indonesia, in particular with the growing urbanisation trends in Java, or in answer to concerns centred around the interactions between *adat* and Islamic law.

Centrality and Unity

A cohesive national identity within the geographical boundaries of current Indonesia is a recent construct, reflecting the gradual development of Indonesian nationalism during and after colonial times. There have been multiple reasons for the gradual nationalistic revival in Indonesia: on the one hand, in colonial times, there were deliberate attempts to shift religious and cultural canons, including in respect of the role of Islam and in local governance, towards *adat*, relegating them therefore to a secondary and more marginal role beneath state law.[16] On the other hand, in particular after the opening of the Suez Canal and steam-ship transportation, an increasing number of Indonesians started to travel to the Middle East and to Europe for religious or educational purposes, simultaneously being exposed to other cultures, and finding their unique sense of 'Indonesian' identity when confronted with the 'other'. This type of "transnational contacts have been fundamental in the gradual growth of a feeling of national unity among inhabitants of such diverse parts of the colony".[17]

The compromise in the early years over the nature of the new post-colonial state and the role of religions in general and Islam in particular, converged towards a system in which the importance of religion was recognised, yet Islam would not be granted a predominant role over other religions. Specific references to Shari'a—Islamic law—were removed from the later versions of the new constitution. This compromise saw the new Indonesian state based on monotheism - the *Belief in the Almighty God*. This is the first of the five pillars of the constitutionally recognised Pancasila, from the Sanskrit, *pañca* (five) and *sīla* (principles). It recognises the five most important religions in the country: Islam, Christianity, Buddhism, Hinduism, and Confucianism. The other principles of the Pancasila are: a just and civilised humanity; the unity of Indonesia; democracy guided by the inner wisdom in the unanimity arising from deliberations among representatives; and social justice for the people of Indonesia. While scholars have considered these principles as political, philosophical, and social aspirations,[18] not always reflected in the practice of political life, they do

[16] Meuleman, "Between Unity and Diversity."
[17] Michael Francis Laffan, *Islamic Nationhood and Colonial Indonesia; The Umma Below the Winds* (London: Routledge Curzon, 2003), quoted in Meuleman, "Between Unity and Diversity", 50.
[18] Meuleman, "Between Unity and Diversity."

have constitutional significance, in that the 1945 constitution makes the Pancasila the fundamental, non-sectarian principles of the independent Indonesian state. The constitution article 28B section 2 stresses that 'the state recognises and respects traditional communities along with their customary rights', highlighting the importance of religious and cultural freedoms, paving the way for religious pluralism within a Muslim-majority population, as well as for the practice of legal pluralism in Indonesia.[19] In the new order, religious considerations were relegated to the cultural rather than the political realm. Differences were expressed in their folkloristic and symbolic meaning, but devoid of any political or institutional powers, such as in the representation of unity in the theme park *Taman Mini Indonesia Indah* in Jakarta. The choice of official language for the new independent state was also a symbol of wholeness. Bahasa Indonesia (literally, language Indonesia), a standardised form of Malay (Bahasa Melayu), traditionally used as the lingua franca in formal administrative and ceremonial functions as well as in trade, was given more weight than any of the local languages, including the widely spoken Javanese.

Tension between centrality and localism, authoritarianism and power-sharing, remained common occurrences in independent Indonesia. In the Sukarno's years, for example, his push towards 'guided democracy' was justified by recurring crises in the early years after independence.[20] For Sukarno, western democratic models could not be easily absorbed in the Indonesia context, suggesting that the country needed a system 'in harmony with the soul of the Indonesian people', and where 'all members of the family' sit around the same table for their eating, drinking, and working.[21] In the name of peace and national unity, Sukarno sought to reinforce decision-making through consensus and cooperation among cabinet members, as well as through seeking advice from stakeholders representing groups whose voice was considered important for government, such as women's groups, regional representatives, and members of the armed forces. The concept of *gotong rojong* (cooperation, consensus-seeking) underscores the importance of mutually beneficial agreements and negotiations to arrive at a decision-making which would account for Indonesia's idiosyncrasies in a way that majoritarian democracy, in Sukarno's words, could not. His vision of *gotong rojong* was not, however, the traditionalist

[19] Warman, Isra, and Tegnan, "Enhancing Legal Pluralism."
[20] Jonathan R. Stromseth, *Rivalry and Response: Assessing Great Power Dynamics in Southeast Asia* (Washington D.C: Brookings Institution Press, 2021).
[21] Justus M.van der Kroef, "Guided Democracy in Indonesia," *Far Eastern Survey, Institute of Pacific Relations* 26, no. 8 (1957): 113-124, https://doi.org/10.2307/3024455.

romantic vision of peaceful village life, but a concept highlighting the need for reciprocal support and cooperation in order to arrive at unification and counter tendencies of divisive politics.

In administrative matters, the introduction of the Law 1 on decentralisation in 1957—which was originally intended to transfer some powers to the provinces and regulate nominations and fiscal transfers—was eventually repealed by Sukarno, who saw the emergence of several political and opposition groups of Islamic and of communist nature as potential threats to the stability of the country. The abolition of *adat* courts in the early 1950s also reinforced the process of legal unification, in an attempt to consolidate the powers and the procedures of all civil courts, a decision which was based upon the need to seek legal certainty, to build transparency and a fairer system. Despite these developments, the studies of *adat* continued in Indonesian universities, with the intent to promote legal changes to uphold a living law which best reflected Indonesia's spirit, its culture and its needs, including those of economic development and modernisation. *Adat* democracy and Pancasila could then be considered as the unifying spirit for the whole country, representing the union between the government and the people.[22] This was an important, albeit demagogical, message which sought to engage the population against the foreign colonial past on the one hand, while also justifying repression and centralisation of powers on the other.

In the years under Suharto, the unifying principles of the *old order* remained, yet his *new order* focused on the increasing centralisation of political and economic powers, which created stability and sustained economic growth but also constrained political expression and a fairer redistribution of wealth and of income from natural resources, outside of the bounds of the military elite. The result was a "remarkable political and social stability, which favoured economic development but left little room for political freedom or intellectual dynamism".[23] These elements of both repression and centralisation introduce valid questions as to whether unity among such diverse nations in Indonesia was a result of a sincere sense of belonging or of authoritarianism. It also created a situation in which the repressed political, cultural, and religious voices translated into grievances and resentment, which led to the resurgence of localism and identity politics as soon as Suharto resigned in 1998.[24]

[22] Bourchier, "The Romance of Adat."
[23] Meuleman, "Between Unity and Diversity," 55.
[24] Bourchier, "The Romance of Adat."

ADATRECHT: REFORMASI, DIVERSITY AND ITS MEANINGS

With the end of Suharto's long period in government, a series of reforms started, which focused on the resurgence and application of procedures in support of decentralisation. The Law 22 of 1999 on Regional Autonomy and Law 25 of 1999 on the Fiscal Balance between the central government and the provinces were introduced to guide regional administrative and fiscal autonomy processes. The implementation of this law saw the rebuilding of traditional village governance structures with direct competences for their economic, legal, political, environmental, and social affairs. Furthermore, the restrictions on the establishment of new political parties were abolished and a number of new institutions of democratic governance were set up. The period of *reformasi*, which continues today, saw the emergence of premodern sources of cultural, linguistic, ethnic, and religious forms of singularity and identification, based on *masyarakat adat* (*adat* communities), calling for new or re-introduced forms of local governance (*hukum adat*).[25] The first 1999 Congress of the Indigenous People of the Archipelago define *adat* communities as "social groups that have ancestral origins in a specific geographical region, along with possessing a value system, ideology, economy, politics, culture, society and territory of their own". Furthermore, the Alliance for Indigenous People, formed as an umbrella organisation to advance the issue of indigenous people, further added the concept of sovereignty over their land and natural resources to the definition of *masyarakat adat,* an important addition for its legal implications over different interpretations of property rights.

Adat can capture both concrete and abstract meanings. In its concrete sense, *adat* describes specific practices and institutions. Here, the dynamic nature of *adat* directly reflects the interaction between the law, legal and non-legal institutions, as well as social factors. In its more abstract connotations, *adat* represents a complex web of rights and obligations that are unique to Indonesia, in which history, land governance, and the law converge in a framework that finds its validation through inherited rights[26] and the value attributed to the concept of 'place', seen as a symbol of the symbiotic relationship between local communities and natural resources and an integral part of heritage and shared emotions.[27] Place, ancestry, and control over territory and its natural

[25] David Henley and Jamie S. Davidson, "Introduction: Radical Conservatism – The Protean Politics of Adat," in *The Revival of Tradition in Indonesian Politics,* eds., Jamie S. Davidson and David Henley (New York: Routledge, 2007),1-49.
[26] Ibid.
[27] Mark Sagoff, *The Economy of the Earth: Philosophy, Law and the Environment,* 2nd ed (New York: Cambridge University Press, 2008).

resources led both to a movement towards democratic forms of village government, as well as to more violent forms of empowerment of communities that led to conflict. Religious and ethnic diversity were present in these conflicts, but they were arguably not the only motivating forces but important variables in a broader context of institutional and political transformations.[28] For Davidson and Henley, *adat* revivalism can be seen as both a peaceful application of the politics of pluralism, as well as a divisive and reactionary movement. For Van Vollohoven, *adat* is intrinsically linked to customs and law. Scholars such as Taufik Abdullah explored *adat* as the foundations of societyÑs structural systems, in which local customs are embedded, drawing important parallels between sociology and the law, based upon his prolific research on the Minangkabau of West Sumatra. Those are critical views that underpin the importance of socio-cultural interactions in establishing patterns of behavior upon which to build ethical and legal considerations.[29] This contrasts significantly with legal positivism, which would have instead excluded social, cultural, and moral considerations. In former colonial and current post-colonial societies, legal pluralism built through customary law is key to re-addressing institutional imbalances between formal and non-dominant systems of law.

ADAT IN PRACTICE: ISLAM AND LAND GOVERNANCE

During the Suharto's New Order, there was a deliberate attempt to unarm political parties based on any religions, including Islam. Away from mainstream political life and direct decision-making, Muslim activists focused on educational, training, and cultural activities, and this period saw the growing of significant numbers of madrasas and Islamic institutes of higher education. For the government, 'religion should provide the indispensable spiritual and moral framework for economic developmentÑin addition to a way to counteract the growth of the communist party. From the late 1980s and into 1990s, a series of reforms started giving more importance to Islam, including the introduction of Islamic Courts, the reinforcing of the role of the Ikatan Cendekiawan Muslim Se-Indonesia (ICMI—All-Indonesian League of Muslim Intellectuals) and SuharnoÑs pilgrimage to Mecca.

[28] Meuleman, "Between Unity and Diversity."
[29] Renske Biezeveld, "The Many Roles of Adat in West Sumatra," in *The Revival of Tradition in Indonesian Politics,* eds., Jamie S. Davidson and David Henley (New York: Routledge, 2007), 203-223.

In post-independence Indonesia, Islamic scholars such as Hassan, Chalil, and Hasbi sought to create a system that could reflect the idiosyncratic challenges faced by Muslim communities in the country. In different ways, they sought to rethink the role of religion and its place in society,[30] leading towards a very specific Indonesian *fiqh* (jurisprudence). Building from these premises, Hazairin proposed the creation of new National School of Law dedicated to developing a modern Indonesian Muslim jurisprudence that would reflect the cultural differences, based on his own ethnographic studies of *adat*.[31] This would, for example, exclude norms of Islamic law that would not be naturally applicable in the Indonesian context. *Adat* in this context could inform the contemporary debate in jurisprudence, in order to find more creative avenues that better reflected the history and culture of Indonesia, for instance in inheritance matters.

In the region of West Sumatra, for the most part, the Muslim Minangkabau group represent quite a homogenous population with a strong separate ethnic identity. Their governance is organised on the basis of *nagari* (villages), which are further subdivided into matrilineal clans. Different villages may have differing expressions of *adat*, for example in the execution of certain rituals, the details of which depends on the age of the villagers, the wealth of the settlement, and whether the existing social structures are more or less hierarchical. With time, additional layers of *adat* have developed, in some cases creating more convergence of customs across villages, in a way that increased consistency in the application of the law, for example before national courts. In this region, the position of Islam has been long debated, in order to find ways to reconcile Islamic precepts and Minangkabau customs. The role of women, for instance, has challenged the discussion over a potential order of prioritisation between Shari‘a and *adat*, in particular with respect to the matrilineal kinship system, according to which descent and inheritance are organised along female lines. While matrilineal lines did not necessarily translate in more powerful roles overall in society, women (especially older women) were considered the head of the family and had a proactive role in conflict resolution within the community. When looking through the lenses of Islam, or even from a more conservative European perspective, the fluidity of the application of *adat* has been considered to weaken the predictability of the law. In this context, the gradual introduction of more conservative Islamic norms in the region (in regulating clothing for women

[30] R. Michael Feener, “Muslim Legal Thought in Modern Indonesia: Introduction and Overview,” in *Islamic Law in Contemporary Indonesia: Ideas and Institutions*, eds., R. Michael Feener and Mark E. Cammack (Cambridge: Harvard University Press, 2007), 14-25.
[31] Feener, “Muslim Legal Thought in Modern Indonesia.”

in schools and public offices) could be seen as a way to reinforce the need for normative certainty, as well as to translate the growing cultural, religious, and educational importance of Islam in people's private and public lives into law.

Further north-west, in the autonomous province of Aceh, the developments after the 2004 tsunami paved the way for different levels of reconstruction: physical, with the rebuilding of infrastructure; as well as spiritual, with renewed emphasis on religion and faith as the pillar of social cohesion. While Aceh has traditionally been the gateway of Islam into the rest of the Indonesian territory, decentralisation allowed Islam to play a stronger role, owing to a growing number of Islamic political and educational institutions that sought to promote a new leadership to uphold the socio-economic needs of the local population, in an almost reactive manner against political and financial interferences coming from abroad. The later introduction of Shari'a in Aceh was explained as being a modernist—rather than a reactionary—force, and one that was needed in order to respond to changes in society and to bring valuable and positive social transformation for the people of Aceh in the sphere of education, politics and medicine. The introduction of Shari'a could also be explained through its political lenses, in a context of sectorial turbulence, and as a compromise against separatist tendencies in the province. This totalising expression of Islam encapsulated both the individual and the public sphere. In this sense, the process of *da'wa*—embracing and disseminating the message of Islam—has brought Islamic law at par with, if not in a priority stance versus, *adat* in the Aceh province.

In addition to its religious and cultural connotations, *adat* has also been instrumental in the management of land and natural resources. The environmental dimension of *adat* takes its roots from the recognition that indigenous people—as repositories of traditional knowledge—are not only critical for the preservation of cultural identity, but that these same elements of traditionalism and indigenism translate into sustainable ways to protect the environment, reflecting the view that local communities live in harmony with nature and as such they are the best stewards of the land they live in. With the promises of regional autonomy and decentralisation also came the hope of reaching—through *adat*—better and fairer distribution of the benefits from the exploitation of natural resources in the country.

Empowerment towards forms of self-determination and autonomy in the name of *adat* has been a response from the continuous exploitation of natural resources, illegal logging, and the intensification of agriculture. In some cases, it has also been a reactionary movement against the

territorial advancement of poorer migrants into protected forest areas; and against the agrarian reform of 1960 and the Basic Forestry Law of 1967, which de-facto legalised land-grabbing by the state. Despite the connotations of communities as rural and remote, *adat* in environmental governance has actually been a modernising influence, for example through digitalisation, as indigenous communities connected with one another around the world, sharing similar characteristics and responses to local governance. "International indigenism" has helped voice the injustices and exploitations that indigenous populations have suffered, giving local populations an international forum to raise their concerns as well as to attract much needed international financial support. Through *adat*, in post 1998 Indonesia, these voices found not only a mode of expression of cultural and anthropological value, but also the legal means for the realisation of change in local governance. The 1999 first Congress of Indigenous People of the Archipelago gave further validation to these voices. Participants, later organised in umbrella groups, sought to reaffirm the rights of indigenous populations, to rebalance the way they were seen by rejecting derogatory terms, to re-establish local sovereignty and to regain access to and benefit more equally from the natural resources (soil, water, forest) of their ancestral land. The *masyarakat adat* sought to regain their traditional roles and fought against the historical expropriation of land or unjust resettlements (such as the communities in central Sulawesi) in order to bring ownership of land and of natural resources back at village or community level. In 2001, Papua's new special autonomy (*Otsus*) was seen as a way to recalibrate the distribution of wealth and revenues from forests between the province itself and the central government, in a way that would guarantee the sustainable development and resilience of livelihoods of the forest people.[32] *Otsus* was considered a 'reconciliation tool' that would empower local communities to be in the driving seat of their development pathway and to establish their resilience, by becoming directly involved in decision-making. It is today contested whether *otsus* and *adat* for Papua has resulted in less or more deforestation, as the official statistics show that legal logging decreased but volumes of illegally exported timber increased.[33] Critics have pointed out that self-determination in land management

[32] Hidayat Alhamid, Chris Ballard and Peter Kanowski, "Forests for the People? Special Autonomy, Community Forestry Cooperatives and the Apparent Return of Customary Rights in Papua," in *Community, Environment and Local Governance in Indonesia: Locating the Commonweal,* eds., Carol Warren and John F. McCarthy (New York: Routledge, 2009), 145-163.

[33] Ibid.

and environmental matters actually resulted in local communities being more exposed to the more exploitative practices of corporate powers, in particular of illegal loggers.

The process of reclaiming land and resources did not always happen peacefully, though. As communities varied in size and geographical outreach, disputes arose as to the meaning and definition of *adat* itself, the actual ownership of land, its value, and the potential for sharing revenue generated from the use and sale of natural resources from the land in question. Sectarian violence in the name of *adat* reinforced group membership and identity politics, with the exclusion of certain groups, such as migrants, from the benefits of self-governance. Violence in the Moluccas and between the Dayaks and the migrant groups of the Madurese in West Kalimantan was an expression of identity politics based on the rectification of past torts and grievances of varying nature, which inevitably included certain groups and excluded others, who then become the victims of further violence, destitution, and marginalisation.

Concluding Remarks

In a complex, heterogenous, and multilayered society such as Indonesia, upholding collective rights through *adat* will in part build elements of harmony but will also present tensions, moral ambiguities, and dilemmas. While customary systems are dynamic and closer to being the societal expression of living law, there are concerns as to whether *adat* would further marginalise migrants and other underserved groups and communities, or whether it would de facto grant more powers (and resources) to those stakeholders, such as community chiefs, who have already a more powerful and established role in society. It can lead to a sustained struggle between state and nonstate justice actors as they seek legitimacy, resources, and authority. Legal pluralism challenges the state's claim to a monopoly on legitimate resolution of legal disputes as well as the ideal of uniform application of the law. It enables participants to select dispute resolution forums based on accessibility, efficiency, legitimacy, jurisdiction, and cost. In contexts such as Indonesia, in key trials and disputes, courts tend to prefer the application of national law in order to ensure transparency and egality before the law and national unity. A way in which national law and *adat* could come together and ensure both fluidity and predictability, is through a systematic application of legal precedent, a model advanced by Leiden scholar Ter Haar, whereby verdicts made within the same jurisdiction and for similar cases could then be used as future benchmarks, gradually

building a case law which could have then supported the important link between *adat* as customs and *adat* as law.[34]

This article has presented a critical analysis of the merits of legal pluralism in Indonesia. While there are also negative aspects such as the continued potential for exploitation of communities by illegal corporates, allowing multiple dimensions of legal and institutional cover can be the most inclusive option, even if it is not the most 'perfect' option. This article illustrates that legal pluralism could have the potential to represent a bridge among different heritages also in other contexts similar to the Indonesian one, with the coexistence of several ethnic groups and the presence of both local and colonial legal frameworks. Legal pluralism can positively influence communities' problem-solving through responses that are based on values. As such, it offers a much needed conceptual and empirical alternative to the positivist view of an amoral law.[35] Ongoing as well as additional field research that is being undertaken by this author will further test the merits of *adat* and of alternatives to *adat*—including their development within the broader frameworks of procedural and substantive rights—in the spheres of climate action and environmental management as tools to uphold key principles of international environment law, including on sustainable development and the right to free, prior and informed consent (FPIC).

[34] Peter Burns, "Custom, That Is before All Law," in *The Revival of Tradition in Indonesian Politics,* eds., Jamie S. Davidson and David Henley (New York: Routledge, 2007), 68-86.
[35] Swenson, "Legal Pluralism in Theory and Practice."

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