Report of the Conference 'Adat law 100 years on: towards a new interpretation?'

National Museum of Ethnology Leiden | 22-24 May 2017

Organized by The Van Vollenhoven Institute for Law, Governance and Society (VVI) and KITLV/Royal Netherlands Institute of Southeast Asian and Caribbean Studies. With support of the Adatrechtfonds, Vereniging KITLV, Leiden University Fund (LUF), Asian Modernities and Traditions of Leiden University (AMT) and the Van Vollenhoven Institute (VVI).

Van Vollenhoven Institute for Law, Governance & Society
KITLV
Universiteit Leiden

Colophon

Authors:
Jacqueline Vel and Willem van der Muur

Reporters of sessions:
Micah Fisher, Ratna Saptari, Zhe Yu Lee and Djulianti van de Ven

Design:
Paul Oram

Suggested citation:
Vel, J.A.C. and W. van der Muur (2017)
'Adat law 100 years on: towards a new interpretation?'
Report of the International Adat Conference 22-24 May 2017,
Leiden: Van Vollenhoven Institute, Leiden University.
Available from: http://www.kitlv.nl/conference-adat-law-100-year

Leiden. 24 August 2017.

Table of Contents

Introduction

Conference 'Adat law 100 years on: towards a new interpretation?'
22-24 May 2017, National Museum of Ethnology, Leiden

This international conference focused on adat law in Indonesia a century after the Adat Law Foundation (Adatrechtstichting) was set up in Leiden by the famous professors Van Vollenhoven and Snouck Hurgronje. In the decades that followed the Adat Law Foundation published dozens of studies on adat law based on one of the largest research projects ever conducted from the Law Faculty of Leiden University.

On 22 May more than a hundred researchers, professionals, students and other interested people attended the Seminar that opened the Conference. Among them were many Indonesian academics who felt as if making their 'pilgrimage to the sacred source of adat law' in Leiden. Although this comment refers to the long history of adat studies in Leiden, the conference actually was mostly about adat in Indonesia today, tomorrow, and the day after tomorrow. Ambassador Puja of the Republic of Indonesia stressed in his opening speech how adat is still very important in identity matters: 'Until the end of my life I will always have my adat and it cannot be separated from who I am.' He added that in his home island Bali, one of the most serious reprimands the elders can give is saying 'tidak tahu adat,' which is synonymous to having no self respect nor respect for one's ancestors. Ambassador Puja stated that he believes adat will remain relevant for centuries to come.

In national Indonesian policy there has been a move towards recognition of land rights of adat communities, but that policy is not without challenges. Development projects put land under pressure, due to national policy priorities for producing food and energy. Land issues across Indonesia have resulted in thousands of conflicts and millions of hectares of disputed lands. These conflicts involve forest areas, mining, plantation, and infrastructure development priorities. Although land underpins economic development for Indonesia, in December 2016, for the first time in Indonesian history, the national government recognized the land rights of nine adat communities from various parts of the country. Additionally, 12.7 million hectares of state forest are scheduled for social forestry. But how will it work out in practice?

On the second and third day of the conference 45 participants attended the closed workshop in which researchers from Indonesia, the Netherlands, the United States, Malaysia, Japan, United Kingdom, Germany, Poland, Italy, and Australia presented their research. The conference themes included adat in relation to religion, land, representation, local politics, women, and family- and inheritance law. The last panel critically discussed adat teaching and how its content and style can be updated. The panels illustrated that analyzing the current use and meaning of adat law requires an approach that also takes account of social, economic and political contexts. In the full report that you can find here (available by the end of August), there is a detailed overview of the keynotes and the topics and findings of the panel sessions. The report ends with conclusions and follow up suggestions, among which three special issues of academic journals and the next conference in Indonesia.

This conference was organized by The Van Vollenhoven Institute for Law, Governance and Society (VVI) and KITLV/Royal Netherlands Institute of Southeast Asian and Caribbean Studies. We thank the following institutions for their financial contributions: the Adatrechtfonds, Vereniging KITLV, Leiden University Fund (LUF), Asian Modernities and Traditions of Leiden University (AMT) and the Van Vollenhoven Institute (VVI). We also thank all presenters who have made this conference a success.

Program Day 1

Venue: Main room, National Museum of Ethnology, Leiden
22 May 2017 | 13.30 – 17.00

Professor Adriaan Bedner of the Van Vollenhoven Institute opened the Conference.
In the first session four speakers presented a short introduction.

The Dean of Leiden Law school, Professor Joanne van der Leun took the opportunity to welcome participants and shared about the programs of the Law School of Leiden University. The University celebrates 2017 as the Leiden Asia Year with activities – like this conference – showing how the University has become one of the world's leading knowledge hubs on Asia, covering research, teaching, collections and expertise. In this conference the long history of the study of adat law in Indonesia beginning with the work of famous Leiden professors Van Vollenhoven and Snouck-Hurgronje is central. Exactly 100 years ago they founded the adat law foundation. In the decades that followed, the foundation would issue dozens of publications on adat law, as a result of one of the largest research projects ever carried out by the law faculty. Today, adat law is important for collective land rights in Indonesia, but it is also a major area of contestation.

Leiden University's collaboration with Indonesia has expanded considerably over the past few years and will continue to do so in the future. The Dean noted that in the Law School's media impact analysis of April-May 2017, Indonesia ranked highest among all foreign countries regarding social media postings, and surmised that this Adat Conference must have been one reason behind this trend. The Law School has many engagements with Indonesia, in research and joint projects. In studying law, socio-legal research has become more relevant in the Netherlands and Indonesia, and also around the world. The Van Vollenhoven Institute in particular is committed to this research approach, which is also apparent from the program of this conference.

The Director of the Van Vollenhoven Institute, Professor Jan Michiel Otto welcomed the special guests, participants, and thanked the organizers and funders. Jan Michiel Otto began by highlighting the many Indonesian academics that are making their 'pilgrimage to the sacred source of adat law' in Leiden. Although this comment goes back to the long history of adat studies in Leiden, this conference is about the concerns about Indonesia today, tomorrow, and the day after tomorrow. Prof. Otto raised some key issues of the conference. Are the concepts of adat law, rulings, and writings outdated? Has the time come to invent other terms and other procedures? He responded to these questions, stating that we don't know the answer, but we do know that it should be a knowledge based discussion. Adat is a difficult area to study as it requires patience, demands understanding complexity, and compels lengthy time in the field. The approach requires patience, careful learning of the language, and winning the trust of the community. Looking back to history, the first adat law manual was printed and distributed in 1910. Is it still relevant, wholly or in part? One compelling Article in that document states that the less obvious someone is doing research, the better. Prof. Otto calls to the audience questioning whether we still agree with this statement, also the younger generation of scholars?

Ambassador of the Republic of Indonesia, H.E. I Gusti Agung Wesaka Puja, began by thanking the great expertise in the room, stating that this forum is like 'going back to the future.' Adat has a deep meaning for him, being a Balinese. 'Until the end of my life I will always have my adat and it cannot be separated from who I am.' He added that one of the most serious reprimands the elders in his home island Bali can give is saying *'tidak tahu adat,'* which is synonymous to having no self respect nor respect for one's ancestors. Ambassador Puja stated that he believes adat will remain relevant for centuries to come. Although adat helps to live in harmony, the other side of the coin is that violating adat law can have serious social consequences. In Bali especially, adat is also confronting the many changes associated with globalization. The question of adat is saddled between

the issues of adaptation and assimilation, which are key issues facing communities across Indonesia. Legal recognition of adat communities and their land rights is an option enabled by formal state law. The current move to recognition is not without challenges however. Economic development projects put land under pressure, due to national priorities of food and energy. Land issues across Indonesia have resulted in thousands of conflicts and millions of hectares of disputed lands. These conflicts involve forest or former forest areas, mining, plantation, and infrastructure development priorities. Although land underpins economic development for Indonesia, in December 2016, for the first time in Indonesian history, the national government recognized the land rights of nine adat communities from various parts of the country. Additionally, 12.7 million hectares of state forest are scheduled for social forestry.

The Republic of Indonesia's efforts to recognize adat communities' rights will continue to face the challenges of globalization, mediated through our national laws and our regional autonomy. How adat law is upheld is important for the future of Indonesia. Ambassador Puja concluded by calling to the numerous experts in the room to look back while moving to the future, addressing pressing policy issues pertaining to adat in the wider academic perspective.

Adriaan Bedner, Professor of Law and Society in Indonesia (VVI/KITLV) raised the central question about the position of adat in Indonesian land law: where are we heading? The majority of the papers presented in the conference are connected to land and natural resource issues. Although adat runs through all aspects of life for people across Indonesia, the primacy between adat and land is by no means remarkable. Land and access to land continue to be the central issue in relation to adat law for people across Indonesia. This was not the case 25 years ago. The discussion then was about adat and criminal law, and in relation to adat and the state. Adat was a symbol of a harmonious society in the face of repression then. Today, changing the political system into a democratic one also changes the meaning of adat entirely. The unique diversity of Indonesia in the context of these current land changes has resulted in adat becoming something local that can stand against the large development agenda of the state.

In the past, Van Vollenhoven attacked the unfair land policies in Batavia's bureau laws. The main difference now is that the laws favored by Indonesia's capitalists are even worse. Van Vollenhoven, contrary to critiques by Peter Burns, sought to protect Indonesian land rights. Today, it should be questioned whether adat could serve as an effective defense against current land policies has changed. After independence in 1945, nation building no longer formed the logical locus of resistance. Indeed the movement after independence among scholars of the 1950s sought to replace adat law with national law. In the 1960s the Basic Agrarian Law (BAL) was not interested in adat and focused on the limits of landholdings rather than the rights of avail. The BAL rather introduced a western system of land rights with the option that adat land claims could always be over-ridden by national interests. There was a belief at that time that adat rights would soon disappear. However, in 1965-66, land reform was scrapped altogether, leading to large scale deforestation and massive encroachment from outsiders. The killing of communists and anyone interested in land reform removed an entire generation of resistance and silenced the voices of land reform. Adat, therefore, became only folklore. The aim of the New Order government was to modernize and give individual land titles administered by the state. But this did not quite work because it did not correspond to rights in practice. Over the years centralistic policies led to resentment and once the State faltered a huge backlash ensued. But it is surprising that they went to adat. Why had adat become so attractive? One explanation is that it resonated with the long repressed regional identities. It was the *Bhinneka* versus the *Tunggal*. Land policies then became the target of resistance. A second reason is that in the absence of a leftist discourse for land reform adat became a convenient rallying cry. Third, the national adat organization AMAN was effective in going against the individualizing policies of the Indonesian state. With this historical backdrop Bedner asked: Does the concept of adat as developed 100 years ago still holds the same relevance? His answer is 'not really' because very few communities still fit those old terminologies. Successes of campaigns for state recognition are unsurprisingly limited, and worse, adat can seem like a dead end for the practice of implementing land policies. More worrisome is that adat seems unfair for peasants. Against these pessimistic conclusions, Bedner does believe that there is reason for optimism as well. A recent 2016 regulation on communal land rights presents a great idea, but it still has little support. Another promising development for protecting the land rights of villagers based on adat law is through a link with the 2014 Village Law. Bedner ended by stating that he was eager to hear what participants can share on these issues in the following days of the conference.

The second part of the afternoon addressed the academic debate about the concept, use and present relevance of adat.

David Henley, Professor of Contemporary Indonesia Studies at Leiden University, recalled some of the main conclusions of the book he published with Jamie Davidson a decade ago entitled 'The Revival of Tradition in Indonesian Politics.' That edited volume dealt with adat politics rather than adat law. The politics of revival discusses three main usages of the term adat. The first is a way of referring to communities rather than to governance institutions and rules imposed by the state. Second is that adat ties together history, land, and law. The adat rights were historical rights rather than acts of government. The third is that adat was a shorthand for a set of conservative social ideals related to authenticity, community, harmony, and justice. In the book, the historical aspects sought to explain the anomaly of justice. This is where colonial scholarship was implicated, contributing to the idea that adat is some sort of homegrown alternative to western law and bureaucracy. Most of the book however dealt with recent developments, especially on the turn of the century masyarakat adat movement, which 'often billed itself more as part of the international movement for rights of indigenous peoples, rather than as heir to any kind of domestic legal tradition.' The conclusion of the book examined achievements and shortcomings and concluded that it was a mixed picture. Calls by masyarakat adat activists at that time were for a restitution of land, and the book applauded cases that had secured recognition. But the book also raised negative aspects especially around arguments on adat and indigeneity that justified violence. Only a fraction of Indonesians seemed to be involved in adat communities and warned that the hierarchical character creates the potential to subvert democracy. More controversially they claimed that revival was showing signs of fatigue as expectations seemed exaggerated. Some activists fifteen years ago were saying the most virulent adat was only desirable by default until state law is in a position to take over.

Has state law really changed to take over in a way from customary law? Henley argues that it surely has not. Rule of law remains weak and in land rights, it is irrelevant. Since the 1990s rural and urban land certification is only about a third, and two-thirds are undocumented and uncertified. This continues to be the case, people managing land without the law or the state. This is not only the case in rural areas but urban gangs show that preman, while they extort, also serve to maintain security and order, providing means of conflict resolution and performing charity. There is also a sense that the preman represent, perhaps, the new adat authorities of the 21st century. Henley does acknowledge that it was a mistake to think that adat would recede. Rather, the adat movement AMAN has gone from strength to strength. The number of self-proclaimed adat communities has tripled, encompassing 17 million people, a huge number albeit not necessarily by total population. At the level of national politics adat revival proved more enduring than Henley and Davidson expected 10 years ago. National presidential election candidate Prabowo almost became president on the strength of anti-democratic positions through the adat ideals of authenticity, harmony, community, and justice. The passage of new laws and the influence on the village law of 2014 are all cases in point. In conclusion adat seems more than a substitute for state law and state authority, and the revival of adat law is not over yet.

Prof. em. Keebet von Benda-Beckmann (Max Planck Institute for Social Anthropology, Halle/Saale, Germany) addressed the value of Van Vollenhoven's analyses in light of current struggles over resources. Keebet von Benda explained that Van Vollenhoven's work on customary law in the Dutch East Indies stemmed from his concern about the ways the colonial government dealt with it. In his eyes the government ignored its previous promises, laid down in treaties and laws, to recognize authority structures and land titles. By doing so, the government acted illegally and this had disastrous effects for local populations, who were unduly expropriated. To counter these tendencies, he began to study the large and very diverse body of reports, books, court cases, and official documents of various sorts. He became convinced that the only way to protect the local population from expropriation and to guarantee them a decent life, was to understand the local laws in their own terms. He also began to see patterns of commonality and difference among the various legal orders within the archipelago, and to develop a way to order and compare these legal orders. For the study of individual sets of rules and regulations the vernacular terminology might be the most appropriate, but for comparison this would not suffice. Therefore he developed some new concepts that Keebet von Benda discussed in this presentation.

Keebet and Franz von Benda-Beckmann have offered a counter-narrative to Davidson and Henley's critical statements on adat in the article 'Myths and stereotypes about adat law' published in 2011. One of the main arguments is that the critique of colonial scholarship is misconceived in important ways, which hampers a proper understanding of the current revitalization of adat in Indonesia. Firstly, it has been largely based on a legalistic conception of 'law' and 'customary law.' Secondly, the critique tends to make selective generalizations from interpretations of adat in specific contexts, that is, political rhetoric, administrative and court decisions, and legal debates on the character and status of adat and adat law. It does not sufficiently consider what such interpretations might mean beyond these specific contexts. Critics have underrated the agency of local people and their intellectual and political leaders and overrated the actual significance of colonial legal constructions of adat or adat law on the legal life of the population. In the third place, the major points of critique of the Adat Law School's descriptions of adat law and its significance in legal politics and administration are largely anachronistic. Finally, critics have chosen the wrong target for their deconstructions. Keebet von Benda argued against the critique that adat was an entirely colonial creation. In some regions the colonial administration had intervened more actively and forcefully than in others. And the colonial interpretations were more important in contexts such as courts than in others, such as inheritance practices, where other influences may have been more important. To claim that it was all a creation of the government overrates the agency of the administration and underrates the agency of local actors. Van Vollenhoven's framework and careful comparative analyses showed where, in which context, and by whom changes were generated.

To what extent is Van Vollenhoven's work still relevant? One answer is that his approach warns against simplification of adat that is used for strategic convenience. In the new, transnational conceptual framework of indigenous people's rights the emphasis is on territory and the existence of age old, unchanged, local governance structures, which are the basis of claims to the contested land. Whereas Van Vollenhoven had pointed at the living, changing nature of adat, and at the core mechanisms of community governance, now tradition and continuity are emphasized to legitimate claims to land. That ignores the actual changes in adat and its use in real life.

In the third part of the afternoon three speakers presented different views on adat: a development practitioner using adat communities as target groups for development programs; a human rights activist connecting protection and recognition of adat rights to international human rights; and a critical social scientist highlighting the importance of framing for understanding strategic use of adat.

In her presentation entitled 'Adat communities and human rights: Is there any progress?' Sandra Moniaga (Commissioner of the National Commission on Human Rights of the Republic of Indonesia (Komnas HAM-RI)) particularly focused on the relation between the state and local adat communities with regard to customary land disputes. The National Commission on Human Rights in Indonesia (Komnas HAM) conducted a national inquiry to gather information from indigenous communities, government institutions, companies and other relevant parties in an effort to map out indicated human rights violations and possible solutions for the country's rampant customary land disputes. This extensive study has found that the absence of formal recognition by the State with regard to indigenous communities and their customary lands remains the root cause of customary land disputes, a problem that has seen a surge over the past few decades. The absence of state recognition counts among the five root causes of human rights violations against indigenous communities throughout the archipelago. Sandra Moniaga showed that there was still a vast amount of forest land from Aceh to Papua where overlapping claims between local adat communities, State and private companies, existed. Conditions where local communities were not able to have access to these lands were to a large extent maintained and strengthened by the absence of formal recognition by the State with regard to indigenous communities rights to customary lands. Three cases (from North Sumatera, West Sumbawa and South Kalimantan) were used as illustrations of this situation particularly because the land had become part of the concessions given to private companies. Although the Indonesian government had introduced various decrees acknowledging the rights of adat communities to certain areas of land, the priority given to large scale economic enterprises and the contradictory interests of the various government ministries have undermined this initial policy. Furthermore, the different perceptions of various actors including the adat communities themselves and several civil society organizations - all contributed to the arduous struggle towards social justice for those affected by the changes in the rights of the local communities to customary and forest land.

Lily Hoo (World Bank Jakarta), presenting her paper on 'Indigenous peoples and social development in Indonesia' – highlighted the position of the World Bank in dealing with these issues. For the World Bank engaging with adat communities is a new development within the context of Indonesia's development priorities, and the country's global climate change commitments and national policy responses. The World Bank is designing new projects for strengthening government and community institutions in ways that support climate change resilient communities, particularly through sustainable natural resource management and strengthened indigenous community livelihoods. Lily Hoo argued that particularly with regard to the implementation of the Village Law the need for a greater understanding of indigenous peoples' institutions, participation and challenges has increased. Furthermore, because poverty levels in forest areas are estimated to be double that of the national average, and many of the people living in these areas are indigenous peoples the World Bank in Indonesia is currently considering effective approaches to support these indigenous groups in current and future programs. Attempts are made, among others to decentralize forest management, to underline the inclusion of Indigenous Peoples and Local Communities (IPLC) in forest management and to promote sustainable landscape management in forest areas. All these commitments would be based on Free, Prior and Informed Consent (FPIC) of indigenous peoples affected by development investment projects. Furthermore the need for a good coordination between a proper understanding of the political economy and the political will by policy makers at various levels, are main challenges faced to make these strategies bring positive outcomes for human development. Another challenge for implementing these policies is how to identify and demarcate specific adat communities which will touch upon issues of exclusion.

Jacqueline Vel (Van Vollenhoven Institute/KITLV) presented 'Adat and inequality: Six ways of framing adat in Sumba' based on the paper she wrote with Stepanus Makabombu. She examined the multiple interpretations of the meaning of adat, as various actors are involved using different framings which reflect the different interests at stake. She presented six different modes of framing. First, adat as opposed to a world religion. In the case of Sumba adat cannot be separated from the local religion and adat rituals often violated the norms of the Christian religion. Recently a journalist portrayed adat in Sumba as cause and justification of human right violations, pointing at the continuing existence of slaves and the justifications for that practice derived from adat. Thirdly the colonial government depicted adat as an appropriate instrument of indirect rule, but also currently local elites justify their leadership with adat discourse. A fourth framing has been used by anthropologists who see adat as a category of analysis and concentrate on adat as a fascinating expression of local culture. A rather different perspective is adat as an instrument of protest, as used by AMAN related activists, but also by local land owners who are trying to get compensation for their expropriated lands. Finally, the last framing refers to the perceptions of poor families and what the consequences are for those families when certain adat rituals are practiced and become part of their daily lives. Vel and Makambombu found in their field research on household vulnerability and food insecurity in East Sumba that adat obligations were a major source of household crisis: adat as a burden for the poor. For policy debates, each framing leads to a different conclusion about whether adat should be supported or that policies rather be based on a more democratic and inclusive normative system. On a theoretical level a discussion about ways of framing adat links to the debate in anthropology on indigenous groups, between proponents of essentialism and of social constructionism. That debate also underscores the difference between activist and academic anthropology, with the former intended at protecting the rights of indigenous peoples, whereas the latter tries to understand indigenous identities as products of positioning and the articulation of local and global discourses and dynamics. Essentialists depict the adat communities as static and monolithic, whereas a constructionist approach emphasizes social differentiation in the community and highlights changes. Taken one step further, strategic essentialism exaggerates the characteristics that are most relevant for supporting arguments in advocacy at the cost of credibility. On the other hand, the next step for constructivists is deconstructing adat and adat communities, at the cost of arguments for the good cause of protecting rights of poor and vulnerable groups in society. Jacqueline Vel ended with questions for the discussion in this conference: How does our analysis of adat (law) change if we include attention for internal differentiation within adat communities, and interests of non-elites? How to conduct sound academic research on adat without hurting the cause of activist struggles that benefit the poor or discriminated?

Program Day 2-3

Venue: Pavilion, National Museum of Ethnology, Leiden
23-24 May 2017 | 9.00 – 17.00

During the second and third day of the conference there were six panels in which researchers presented their papers in closed sessions.

Panel 1: Adat law and religion
Chair: Adriaan Bedner

Since researchers began to systematically study adat law in the late 19th century, the relationship between adat law and religion has been a focal point of attention. In the early days of adat law studies, adat law and religious law were perceived as distinct legal domains. In the context of contemporary Indonesia – a modern nation-state deeply embedded in a globalized world – studying adat law and religion might be even more in place. Rather than viewing adat law and religion as separate legal orders, an increasing body of literature approaches the two as intertwined or as complementary to one another. Yet, religious norms and values have steadily become more present in both the public and private sphere in Indonesia during the last few decades. This panel addressed the complex relationship between adat law and religion. Questions: In which circumstances have adat law and religion been mutually supportive, and to the benefit of whom? Is the gap between adat law and religious law increasing, so as that they are becoming contesting systems? If so, why?

Arskal Salim (Hidayatullah State Islamic University, Jakarta) presented his paper entitled 'Adat and Islamic Qanun in contemporary Aceh: Coexistence or Contestation?' in which he explores the changing and the restored expression of adat under the current official implementation of Islamic Qanun in contemporary Aceh. As a region deeply rooted in Islamic traditions going back several centuries, Aceh was determined to carry its virtual autonomy with regards to its distinct culture and identity into the newly founded Republic of Indonesia in 1945. However, since now Aceh is granted to officially implement sharia rules in a number of social aspects, it begs a question about the extent to which adat would have equally played an extensive role in public life. Prof. Salim discussed how adat and Islam in Aceh, which were essentially undistinguished at the outset, have now been revived as officially separate entities, with each having been afforded its own socio-legal structure. Are adat and Islam mutually co-existing or contesting one another? Salim's paper shows that both adat and Islam are socially and politically acknowledged in the Aceh's public sphere. However, the level of recognition they both received is quite different, for not saying unequal. In term of institutions and regulations, Islamic sharia has more official status and a wider outreach. Adat institutions have limited jurisdiction and often have less legal certainty. Many have thought that Islamic sharia unifies the Acehnese Muslim regardless where they live in different districts. On the other hand, it is suspected that adat compartmentalizes people according to which community they belong to. Because of this basis, it is often found in almost all Aceh's regulations that adat applies so long as it does not contradict Islamic sharia. Would this lead to the subordination of adat to Islamic sharia? The fact demonstrates that this is not necessarily the case. In terms of social and legal processes, adat appears to continuously influence many social aspects of the Aceh communities. Despite the amount of Islamic Qanun legislation and the increasing jurisdiction of the Sharia Court in Aceh, several local developments indicate that all these remain contested by adat concepts and processes. Firstly, even though the 1991 state-endorsed Compilation of Islamic Law (KHI, Kompilasi Hukum Islam) has been the official reference for settling family disputes at courts, village religious leaders still rely on the legal opinions of traditional Shafi`i jurisprudence to resolve the family law cases. Secondly, despite the fact that legal procedures and sanctions

should be carried out according to formal legal procedures and by the legal officials stipulated in the Qanun, non-formal methods and adat sanctions as directed by local leaders often counter these, and these non-formal methods frequently lead to effective resolution of disputes. And thirdly, most Qanuns stipulate that the first step should be to settle disputes at the village level. This shows that dispute resolution based on adat can, in some ways, be more important than a formal legal mechanism at courtrooms. In other words, people with disputes have the opportunity to choose a legal process at their own preference.

Bowo Sugiarto (Tilburg University) presented a paper entitled 'The Nexus Between Adat, Religion and Politics: The Sanctification of Balinese Hindus' Sacred Places and Areas.' The focus of his presentation was on how Balinese Hindus sanctify sacred places, especially in light of the development of tourist infrastructures. To many, this has been perceived as contributing to the defilement of sacred spaces and hence poses a threat to *sekala* or the corporeal realm, which must be kept in harmony with *niskala* or the non-corporeal realm. He began his presentation by highlighting the difference between sacred areas and sacred places with the former considered as 'natural' while the latter as 'manmade.' Hence, sacred places are constantly in need of ritual purification, to be transformed as appropriate venues for the divine. They must be kept religiously pure and strict rules regarding their use must be followed. At the same time, every place in Bali is ritualized to some extent (not only temples and houses). Given the majority status of Hinduism in Bali, it comes at no surprise that there is political recognition of these practices, which have been inscribed in various regulations at the provincial level such as Regulation on Customary Village 6/1986 and 3/2001 as well as Regulation on Spatial Planning 3/2005 and 16/2009. These pieces of legislation contained Hindu references such as *wisama* and a legal challenge was filed against the latest spatial planning regulation on the basis that the national justice system does not recognize religious concepts and terms. However, the Supreme Court ruled that such provisions did not violate any national law. Sugianto's conclusion was that adat and religion in this Balinese case are mutually supporting and legitimized by the state given the tight link between provincial and sub-provincial politics and ritual practices.

Simona Sienkiwicz (Jagiellonian University, Krakow) presented a paper entitled 'Between adat and religion-dualistic systems or homogenous structure? A Study from Maluku, Eastern Indonesia.' She began by commenting about Indonesia's religious diversity given that around 700 religions/belief systems are practiced in the country while only 6 are officially recognized by the government. Hence, it comes as no surprise that every island in Indonesia has different meanings of adat. Her study of Maluku exemplifies how local customs have changed over time with the influence of both Islam and Christianity. She noted how colonizers wanted to completely overhaul local practices to change longstanding animistic religious structures beginning in the 16th century, but this did not occur. Instead, hybridization occurred. One example of this is the practice in Maluku of *sahada,* which does not only consist of praying to God, but also to ancestors. Another example is *sasi gereja,* which is a ritual that can be characterized as constituted by Christian practices brought by Dutch colonists being transposed into ancestral spiritual practices. At the same time, there have been many attempts from the colonial era to reduce superstitious practices and impose the adherence to religious doctrine. This can be seen with the devaluation of the *pela* system, which is constituted by practices relating to participation in major social initiatives, hospitality, brotherhood and mutual help. Nevertheless, while the metaphysical meaning of these practices have weakened especially in recent years, their contribution to maintaining cultural identity remains robust. Ms Sienkiwicz finished her presentation by concluding that despite a history of hybridization, adat and religion are quite antipathic in Maluku, and that tension has led to many instances of conflict in recent years since the end of the New Order era.

Syaifudin Zuhri (Humboldt Universitat, Berlin) presented a paper entitled 'Modernisation of Islamic Adat Law in Contemporary Bali, Indonesia.' This paper attempts to call attention to how the Muslim minority population in Bali has invoked adat in recent years to revive specific practices and secure economic resources. It provides a counterweight to studies on Bali adat that have focused on *pakraman* institutions that are Hindu-centred. Zuhri looks at the case study of Candikuning 2 in Tabanan district and how its historical evolution over time has brought about the formal codification of Islamic adat laws. It was initially established as Candikuning at the end of the 19th century when Hindu and Muslim populations were not formally separated. As the number of people increased and in line with Dutch colonial policies, an offshoot village named Kampung Islam Candikuning was established specifically for the Muslim population. Another significant moment was the reorganization of the two villages into six *dusun* in 1979. This resulted in the formation of Candikuning 2 and institutionalized an explicit spatial border between it and Candikuning 1 (the Hindu *dusun*). However, after years of cultural and religious marginalization and economic insecurity felt by the Muslim population, it was only in 2004 when Desa Adat Kampung Islam Candikuning 2 was established. Zuhri pointed out that the revitalization of Muslim adat can be mainly attributed to the return of the first generation of young villagers who received higher education training in Java and Lombok. They have instituted links to the national Muslim organizations such as Nahdlatul Watha, Nadlatul Ulama as well as with the Islamic political party, Partai Keadilan Sejahtera. The dusun is divided into 6 coordinating bodies/houses of worship or banjar, borrowing concepts from adat systems of Balinese Hindu villages regarding the spatial distribution of temples. In this vein, many Hindu concepts are used to explain Muslim laws such as *awig-awig* and *pararem* and to follow official regulations of establishing desa adat. This case study demonstrates how the revival of Muslim adat to achieve cultural autonomy requires the modernization and institutionalization of practices into formal law on the basis of adopting and modifying dominant Hindu governance systems. However, official recognition by the Majelis Desa Pakraman has not occurred.

Erica Larson (Boston University) presented a paper entitled 'Calling on Adat for Protection of the (Christian) Minahasan Homeland.' Her presentation looks at how Protestant paramilitary militias that operated during the early 2000s have rebranded themselves as adat groups and have been given legal recognition as civil society *(ormas)* organizations. The paper is in conversation with broader debates regarding citizenship and pluralism in North Sulawesi, especially given the ubiquity of normative discourses of co-existence amongst government and civil society actors in this part of Indonesia. Erica Larson raised the example of Milisi Wareney, one such organisation that aims to guard against both internal and external threats and in doing so, strengthens the narrative that the Minahasan were never carriers of Islam given the claim that their ancestors never became *walisongo*. Hence, one of their central aims is to keep Muslims out of their communities and reinforce the link between Minahasan identity and Christianity on the basis on adat. Interestingly, it was mentioned that there are no official links between such organizations and churches, but some pastors have been centrally involved in these groups. At the same time, there are other Minahasan adat groups such as Brigade Maguni Indonesia and Aliansi Makapetor who practice pre-Christian adat and/or have goals to promote religious harmony and the Pancasila national ideology. Nevertheless, they also are vocal about 'outside' threats to local tolerance (i.e. Muslim majority in the rest of the country), implicitly characterizing the increasing Muslim presence in Manado and North Sulawesi as 'foreign.' Overall, Erica Larson's presentation clearly demonstrates the inherent ambiguity of the meaning of adat and how it has been deployed in multifaceted ways to articulate specific identities that may or may not promote healthy interreligious relations given that a exclusivist notion of adat seems to dominate in this part of Indonesia.

Jan Michiel Otto (VVI, Leiden University) served as the discussant for this panel. He began by commenting how Cornelius Van Vollenhoven would have been both 'happy' and 'sad' at these presentations. He commented that all stories talk about varying trajectories of the erosion, mixing and resurgence of adat law, but lamented that a robust legal basis for the promotion of harmony across the country is lacking. He noted that the presentations identified endless varieties of adat, from puritan, aggressive and militant manifestations to those that are moderate, inclusive and peaceful. In addition, the papers demonstrate that gaps exist between prescribed and lived norms whether justified on the basis of adat or religion or an overlap between the two cultural systems. On one level, this suggests that a bottom-up approach that allows for the dynamic interplay of adat and religious norms could be an approach to promote peace and social cohesion. Finally, Professor Otto emphasized that currently, the political dimension of adat and religion has become more prominent in terms of how adopted norms are closely linked to legitimate political authority and control as well as how threats and violence manifest themselves. He contrasted this with how classical anthropological research focus on village-level studies of everyday life that were much more common 20 years ago.

Panel 2: Adat communities and land dispossession
Chair: Willem van der Muur

Since Indonesia's democratic turn, the resurgence of adat law in the public discourse has primarily manifested itself in the form of claims to land rights. Responding to the injustices of land dispossession by the state and plantation companies, the legitimacy of claiming adat community rights has grown significantly in the last several decades. The most recent landmark development was the formal recognition of a number of adat communities and their land rights, personally granted by Indonesian president Joko Widodo. While this development was hailed as an important momentum for the welfare of rural communities, many questions remain about the further implications of such recognition. One concern is that the focus on the culturally distinct adat communities might exclude other groups who do not qualify as such. This panel focuses on the different dimensions of land disputes and looks at the outcomes of processes in which the issue of adat communities features prominently. It moreover aims to explore the implications of the formal recognition of adat land rights. The most important question is: Does adat law and formal recognition of adat rights provide protection and an antidote to dispossession in the modern era?

Kathryn Robinson (Anthropology, College of Asia and The Pacific, Australian National University) presented her paper entitled 'Can formalization of adat law protect community rights? The case of the Orang Asli Sorowako and the Dongi' in which she posed the main question of this panel: Does adat law and formal recognition of adat rights provide protection and an antidote to dispossession in the modern era? The case that she observed for over 30 years is located in South-Sulawesi. It shows how various groups with different histories of land dispossession had varying experiences with seeking justice.

It was on the Sorowako people's ancestral land that the mining company PT INCO was established in the 1980s. The state ignored the land rights that the Sorowako had as indigenous peoples. Forced land dispossession then threatened their livelihood. For the Sorowako this forced dispossession became a reason to identify as indigenous peoples and express their claims for compensation in terms of adat rights. In the course of time, the mining company paid the people some money, and doubled the amount after protests and interference by lawyers. Only people registered as land owner received a small amount of money, which was not enough to compensate for their loss of income and land. Meanwhile, the government did not support the Sorowako's claims and never recognized their adat rights.

In the period after *Reformasi* there was new hope. Would there be retrospective recognition of those already dispossessed and therefore no longer able to conduct forest-based livelihoods? The answer to the Sorowako was: no. Other groups emerged on the scene that also asked for recognition of their rights. The national political demand for the recognition of adat rights, spearheaded by AMAN, has highlighted the rights of people whose livelihoods depend on land held under customary 'title' and also paved the way for formal recognition of rights; most notably the Constitutional Court decision (no 35 of 2012) acknowledging a constitutional basis to rights of masyarakat hukum adat living in the forest zone. Following from that decision, Komnasham conducted an inquiry into indigenous peoples in the national forest. However, the report of that inquiry further effaced the customary rights of the Orang Ali Sorowako: in regard to the Sorowako Nickel project the report ignored their historic struggle and promoted of the rights of another identity group, the Dongi.

An underlying issue is the apparent lack of clarity in the definition of indigenous peoples. People who wish to claim their rights using this rhetoric engage in a performance of the theme of 'indigeneity' as defined by those who have the power to decide about recognition. Those who perform best have the biggest chance of success. The consequence is that recognition of one 'adat' community and their adat -based rights (especially if not clearly defined) can also lead to the erasure of the claims of others. Prof. Robinson proposed to see adat-derived rights as but one kind in a bundle of rights that can exist in relation to land. Indeed adat systems of recognition of rights encode this practice: residual but not exclusionary rights in fallowing land, especially when trees have been planted; individual rights of exploitation of resources in the forest estate without alienating the commons.

Riwanto Tirtosudarmo (Research Center for Society and Cultural Studies at the Indonesian Institute of Sciences (LIPI)) presented his paper entitled 'The insurgency of Adat: An impediment to Indonesia as a common project?'

Riwanto proposed a constructive dialogue on adat and politics in which he refers to Benedict Anderson's 1999 critical speech that Indonesia should be seen as a common project, a project for every Indonesian without any exceptions. Such a common project precludes the very essence of adat communities based on the idea of exclusiveness. Instead of centering attention on adat, he argued, social justice for marginalized individuals and groups should be the focus of prime policy.

Riwanto argued that the discourse on adat as both a legal system and as an imaging of exclusive communities is inherited from colonial times, and continued after Indonesia proclaimed its independence. The Indonesian political elites were mostly trained under the Dutch education system no doubt some of them, like Supomo, had been the disciples of van Vollenhoven. It was Supomo and others, who were deeply inspired by the idea of adat as the only indigenous organizing principle that should be included within the State Constitution.

To investigate whether this principle is in accordance with current realities, a LIPI research team with Riwanto conducted field work among three adat communities: Baduy (Banten Province), Samin (Central Java Province) and Orang Rimba (Jambi Province). Only the Baduy fit with all the criteria that the legal system posed for recognition of adat rights. The Samin and Orang Rimba do not have fixed boundaries of their territories and have been migrating since there were problems with land dispossession. What they have in common is that it concerns marginalized groups, who either have lost their lands or are enclosed within a fixed and limited territory that does not allow expansion that population growth would require. Riwanto also found that identification as adat communities in these cases came from outside rather than from inside the communities. Moreover, claiming adat rights has been politicized by actors outside the communities, for example when adat communities were mobilized to support Jokowi in the presidential campaign which provided a further avenue for the adat advocates to pressure the government to recognize their adat rights, such as their customary right to control their forests.

Riwanto concluded his paper with a plea to make the realization of social justice for all citizens as promised with the proclamation of Indonesian Independence the main agenda for all progressive elements in Indonesia. 'In this effort, Bryan S Turner's (2001) idea of shifting the conceptualization of citizenship from the Marshallian paradigm of social citizenship that is based on 'legal, political and social' rights into new rights that are global, namely 'environmental, aboriginal and cultural' rights, might be a good start to discuss this very important matter.'

Ahmad Dhiaulhaq (Crawford School of Public Policy, Australian National University) presented a paper entitled 'Adat and non-adat claims in industrial plantation conflicts in Sumatra: Conditions, opportunities and challenges.'

In the context of his PhD research on politics, institutions and power in conflict resolution in Indonesia's oil palm and forestry plantation sectors, Ahmad compared two cases of community land claims, one based on adat claims, the other on distributional justice arguments. He posed three questions: How do the different sorts of claim making affect the conflict dynamics and resolution process? How do political economic context at local, national and international level facilitate or constrain the two different claims? What are the outcomes?

Both cases, in Jambi and Riau, involved communities whose land was dispossessed by pulpwood plantation companies. Both companies are subsidiaries of the same business conglomerate. The conflicts have attracted wide media attention, both nationally and internationally, which make the cases rather specific and not representative for all cases of land dispossession. The Kedatukan Rajo Melayu community in Riau self identifies as adat community since the conflict started 20 years ago. The community is ethnically homogeneous and smaller compared to the community in Jambi. The latter consists of an ethnically mixed population who identify themselves as farmers in search of agrarian justice. The conflict in Jambi is twelve years old, but more intense, especially after one person was killed in a demonstration.

In both cases the claims were not brought to court but instead settled through mediation. Ahmad explained that the interest-based mediation process tries to reconcile parties' interest, but does not address changing the structural problems underlying the conflicts. It only works when the power relations and negotiation capacity between the company and the community are not too unequal. In these cases involvement of international NGOs like Greenpeace strengthened the communities' negotiating power. In the Riau case contesting territorial claims weakened the adat arguments, when one dissenting adat leader did not want to sign the adat territory map. The settlements in both cases resulted in use rights for part of the land that was claimed inside the concession, and a benefit sharing *(kemitraan)* arrangement.

Ahmad concluded that the use of adat or non-adat claims only partly explains to what degree a community is able to re-claim its land rights expropriated by plantation developers. Internal organization, the ability to build alliance and resource mobilization improves a community's bargaining position. Transnational campaigns, market and donor pressure and international regulatory norms provided leverage for community struggle. These factors put pressure on a company to address the conflicts. An agrarian justice frame tends to be more inclusive, facilitating broader coalitions, because people do not unite over (exclusive) indigenous rights.

Sri Hajati (Faculty of Law, Airlangga University) presented a paper entitled 'Exchange of land as one of models of sustaining the existence of land under Adat law.'

Land matters in Indonesia have become a big source of conflict. Part of those conflicts involve claims about indigenous rights over customary land and *ulayat* (indigenous) rights. These conflicts emerged since the New Order regime prioritized economic growth based on large-scale industry. Land acquisitions have been increasing, because industrialization requires large areas of available lands.

According to Sri Hajati, the arrangements pertaining to ulayat rights are scattered sporadically in different laws and regulations in Indonesia, and are still confined to the scope of recognizing and respecting such rights of adat law communities. She argued that a main problem is that formal recognition is never implemented, resulting in no protection of adat rights under the law. The lack of clarity in defining the scope of ulayat rights often becomes a source of conflict. If a dispute takes place between the government and an adat law community or between a company and an adat law community, the adat law community will have a hard time claiming their adat land rights because there is often no support and repudiation of their rights. In such cases the adat community will be ripped off the land that was the source of their livelihood. Sri Hajati coins a possible way out of this policy dilemma of on the one hand providing land for economic projects and on the other hand taking care that adat communities are not completely dispossessed: it could be by applying *'ruilslag.'* Ruilslag *(tukar guling)* means exchange of assets, and could be a possible means by which adat law communities maintain access to land usage that will enable them to continue to sustain their livelihood through land based activities. *Ruilslag* is usually practiced by government agencies and project developers, in an arrangement in which the value of land is measured in economic terms. Because adat communities value the historical and cultural link to the specific land of their ancestors it is questionable whether such exchange of land is a suitable option for settling conflicts about adat land claims. Another point concerns the question who is in charge of assessing the value of land? There is a large power inequality between the company/government agency and the adat community. In recent cases some community representatives would not sign the agreement, because the value of land given as compensation is too low. The industrial sector is still leading and the only thing adat communities can do is refuse to cooperate.

Discussant Lily Hoo (World Bank) commented that it is important for the World Bank to help the government of Indonesia with these issues about land rights and the World Bank has some ongoing projects on this matter. The questions Lily Hoo asks in regarding to the presentations given by the speakers are: Does it always have to end tragically before the central government steps in? Is there a way to set it on the agenda of the central government?

Panel 3: Adat communities and representation: adat engineering and framing
Chair: Sandra Moniaga

In recent years a true 'adat community industry' has emerged in Indonesia. Throughout the country there are countless local and regional organizations that are involved in the advocacy of the rights of adat communities. They have initiated advocacy campaigns, participatory mapping activities and lawmaking projects all geared towards the protection of adat communities. In some instances external organizations have played an active role in disputes by helping communities to frame their claims in terms of adat rights. In Jakarta, several civil society organizations operate as mediators between high-level government departments and adat communities. All of these developments pose serious questions with regard to representation. This panel delves into these questions and seeks to address the major challenges of the representation of adat communities. How do NGOs approach adat communities and how do they deal with the different interests of the community members? Where are the voices of the community in the drafting of adat legislation? Why can adat claims actually lead to internal conflicts within communities?

Willem van de Muur (Van Vollenhoven Institute, Leiden University) and Micah Fisher (University of Hawaii at Manoa) gave a joint presentation based on their papers entitled 'The advocacy movement of indigenous community rights in Indonesia: Realizing rural justice or business as usual' and 'Through the Looking Glass of the Adat Movement: A Land and Livelihoods Perspective from Kajang' respectively.

Willem provided the broader context of how diverse groups across the country that have struggled for the interests of *masyarakat adat* have historically been an oppositional force against New Order policies. However, the confrontational character of these movements has recently transitioned into focusing more on dialogue with various state actors as well as obtaining concrete results such as recognition of adat land tenure. Willem notes that the Constitutional Court decision no. 35 of 2012 has led to the establishment 358 'legal products' at the national and sub-national level and has called into question state control over 70% of Indonesia's land. However, the bill concerning adat communities has not been officially enacted yet. If the Draft Bill on Indigenous Peoples (RUU MA) will be passed it could resolve 80 percent of the existing land disputes according to the former Secretary General of AMAN, Abdon Nabanban. Nevertheless, the first official allocation and recognition of adat land tenure occurred in December 2016 with a ceremony at the Presidential Palace in Jakarta, highlighting the strong political will that exists at the highest level.

The presentation of Willem and Micah then focused on the consequences of legal recognition of adat communities and their land rights. Social movement advocacy and state policies have in recent years put much emphasis on the importance of such legal recognition, but what happens afterwards? Does it lead to fairer land governance? Willem and Micah examined this issue through the lens of one of these communities, namely the Kajang Ammatoa community from South-Sulawesi. Over the past few years, the Kajang Ammatoa community has repeatedly been described as the best-case scenario for recognition and forest protection. In November 2015, the Kajang Ammatoa were officially recognized as an adat community through a district regulation. It was hailed as an important victory, given that it was the first community that was granted such recognition since the 2013 Constitutional Court decision that ruled on the separation of adat and state forest.

Micah Fisher discussed how the actual spatial extent of the land that was recognized was limited. The area consists only of 314 hectares of limited production forest and has been designated by the community as sacred forest (i.e. no use permitted). Micah showed a different perspective on the relevance of this case of recognition of adat land rights, by putting the case in a historical context of land use change in Kajang. He mentioned

how this community's land has a history of rubber monoculture production both in the form of plantations (i.e. London Sumatra company) as well as small holder cultivation (plasma schemes). Besides, there has always been rice and corn production, but community internal conflicts have weakened traditional communal tenure arrangements. When rubber prices became volatile, community members introduced black pepper production. The high profits earned with that crop have led to higher rates of land transactions. Some Kajang community members have migrated to southeast Sulawesi and have converted and opened up existing forest land for agricultural development. Hence, the full story of the Kajang case is both one of success with regards recognition of adat land rights – be it for a very limited area – and one of economic success of some community members, especially community leaders.

Willem and Micah assessed at the direct effects of recognition asking whether it provided more land for the indigenous community and a fairer distribution of access to land? The answer in this case is simply no, the regulation only granted the community collective ownership rights to a small plot of forest that needs to be strictly preserved. Hence, no new land is distributed among the community. Second, they found that handing over the tasks of land and resource management to the community increases the possibilities for elite capture. The findings in this case question the causal link between formal recognition of adat land rights and the government's policy goals of social justice and environmental sustainability.

Laure d'Hondt (Van Vollenhoven Institute, Leiden University) presented a paper entitled 'Transforming adat identity and how adat-based claims can trigger conflict within communities' which highlights context factors conducive for generating local adat discourses and claims. The paper is about how the existence of mining industry has triggered claims of the local population, part of which are adat claims. A complicating factor in this case is the ethnically heterogeneous region. The case study concerned the community of Kao-Malifut in North Maluku. The district government there promotes a single, inclusive district-adat identity as a way to reduce religious conflict between Christians and Muslims, but also to reduce poverty and land conflict. Laure presented the historical context of her case study to explain how tensions between the Muslim Makian community and the predominantly Christian Kao have developed. The Makian migrated to the Kao region in the 1970s to escape from volcanic eruptions on Makian Island. In the following years, they became more economically successful than the locals. Tensions were exacerbated by the subsequent presence of mining operations. The contested nature of the exploitation of mining resources involved issues of cultural identity, the availability of job opportunities and the distribution of a Corporate Social Responsibility fund. These tensions culminated in a period of violent conflict in 1999, wherein competition between the two groups for jobs and land were characterized by religious undertones. When the mining operation closed down after the violence, the conflict between the two groups faded.

However, a next mining conflict took place in 2003 when a NGO coalition protested against open-pit operations in a protected forest area. This marked the beginning of community leaders explicitly invoking adat to advocate for compensation and justice, especially those belonging to the Pagu tribe who is a sub-group of the Kao. However, the salience of using adat as a basis of opposing adat was not robust. Given that Christianity has become dominant, many informants said that adat practices and identities have become weak. Many also pointed to the potential of adat to reignite tensions between different ethnic groups and that the direct link of adat to land is unclear. In addition, despite the fact that AMAN has a local presence, many young men perceive its advocacy activities as being justified only on the basis of reconstituting a pre-modern identity. Nevertheless, the new leader of the Pagu community, Ibu Ida, aided by AMAN remained committed to make claims against the mining company by proving customary ownership of occupied lands. Laure d'Hondt concluded by suggesting that deploying adat might be helpful in terms of making claims against an external party, but invoking such vocabularies internally within a community, complicates its usefulness. Notwithstanding, who represents an adat community as well as who is included in such a community are very much open questions. In addition, Laure noted that adat remains a sensitive discussion issue and she echoed Jacqueline Vel's point made the day before of finding a balance between criticizing adat while ensuring that its deployment can also catalyze positive benefits for local communities.

Yance Arizona (Van Vollenhoven Institute, Leiden University) presented a paper titled 'Being Masyarakat Adat, Becoming Citizens: The articulation of indigenous identity of the To Marena in Central Sulawesi.' His presentation focused on the To Marena community living in Sigi District in Central Sulawesi and how they have used adat to defend their interests, especially in terms of access to land. He argued that adat is not necessarily always conservative and only used to defend old rights. By contrast, this case constitutes an experiment of collaboration between many NGOs and the local population to construct a new, inclusive adat community as a way of obtaining land tenure security and access to state services, hence the expression 'being masyarakat adat as a progressive way of becoming Indonesian citizens.' The case in this study is also one of President Jokowi's pilot projects of agrarian reform. Yance's presentation attempted to illustrate the saliency of Tania Li's constructivist understanding of adat in that its articulation is not natural nor inevitable but rather invented, adopted or imposed from the 'outside.'

The paper explains that To Marena refers to people living in the Marena land, and is not an ethnic category. They have no traditional political or governance institutions. Yance provided the historical context of how the area transformed from open grazing land in the 1930s to have its status changed, from being parts of different villages during the period of 1977-1999 to becoming the territory of one village by itself under the new Village Law of 2014. Part of the Marena area became contested when it was turned into a clove plantation in the 1970s, whereas another major part was included in the Lore Lindu National Park in 1982. It was finally in 2005 that the To Marena community, with the help of NGOs, began to systematically claim land on the basis of adat, which initially led to proposals for co-management and collaborative planning of forested areas within the national park. However, many felt this was not sufficient and in 2014, a formal Marena village was established. Subsequently, the territory was excised out of the national park on the basis of Constitutional Court Decision no.35 in 2013 which rules that adat forest must be released from state forests, followed up by a district head decree. Finally their rights were recognized by Ministerial Decree, as announced in the AMAN congress in 2016.

Yance concluded that adat has become the backbone for community claim-making and will continue to be used to gain entitlements from the state while also strengthening the ideal of Indonesian citizenship. The To Marena – or the NGOs helping them – have been able to align with the standards set out by national government with regards to the definitions of an adat community and which have been recognized by various government agencies at different levels. In this vein, Yance argued that this case study demonstrates that adat is not invoked to achieve the ideal of a past polity, but rather contributes to a dynamic of continuous becoming. Nevertheless, this focus on achieving recognition as an adat community risks diverting attention away and obscuring potential inequitable arrangements with regards to how resource entitlements are distributed internally.

Muki Wicaksono (Epistema Institute) presented a paper entitled 'Beyond the Legal Text Recognition of Adat Forests in Kerinci District.' This papers shows how good collaboration between adat communities, NGOs and various government institutions can lead to secure access to forest areas for the community members.

The first period in which adat forests became registered in Kerinci started in 1992, when these adat forests were designed as buffer zones between the Kerinci Seblat National Park and the land outside the park. The World Bank and World Wild Life Fund collaborated with local NGOs and the local government to find sustainable ways of combining conservation and development. Since then 7 adat forests have been enacted by a decree of the Kerinci district head, whereas three other adat forests are still in the process of such recognition.

After the adat forests had been officially registered (gazettement) the adat community obtained the right to manage the forest according to its own rules. In Kerinci, adat communities institutionalized cooperation with the village government through Adat Forests Management Groups (Kelompok Pengelola Hutan Adat); secondly, they codified their adat laws related to forest access and management and subsequently these rules were enacted as part of village regulations on adat forest management *(perdes).* Muki's local informants said that they felt that formal village regulations strengthened their position in preserving water, trees and bambu from illegal loggers, mostly from outside the community. Apart from supporting adat communities directly, national NGOs like Epistema and HuMa have also stimulated the legal security for indigenous peoples by preparing draft regulations for the Minister of Environment and Forestry. In 2015 this resulted in a Ministerial Regulation (no 32/2015) on Titled Forests, which increases the options for recognition of adat forests. Based on this decree four of the ten adat forests in Kerinci were among the nine cases that received recognition of their adat forests from President Jokowi in December 2016.

Despite these successes transforming state forests into recognized adat forests remains complicated. One reason is the conflict of interest between various directorates within the Ministry of Environment and Forestry which causes resistence to the process of handing over forests areas to adat communities. Another constraining factor that Minister's Regulation 32/2015 mandates that local regulations must also be aligned with regional decrees. Given that the establishment of adat forests has become a priority in President Jokowi's nawacita political programme, the stakes are high with regards to whether local and regional governments will grant the recognition of adat communities.

Jacqueline Vel (Van Vollenhoven Institute/KITLV) served as discussant for this panel. Most broadly, she noted that the relationship between state law and adat as two separate normative systems has significantly evolved over the last 20 years to a situation in which the state is no longer the greatest enemy of adat communities. One of the clearest manifestations of this phenomenon is how AMAN has become a major political force across the country. Hence, it comes at no surprise that all the cases that were presented during this panel demonstrate the crucial role that non-governmental organizations play in representing indigenous peoples in terms of claim-making. The first two presentations speak critically about NGO's representation role, paying attention to contrasting interests between national NGOs and local communities. Next, Yance Arizona's case was the most a-typical adat community presented in this conference: constructed with the help of many NGOs as showcase of a progressive strategy for obtaining land tenure security and access to state services while collaborating harmoniously with the government. Subsequently, Jacqueline characterized the last two papers as containing an explicit prescriptive argument calling for 'adat' to be recognized in state law. One example of this would be for desa regulations to recognize adat laws. She commented how these two papers express a high degree of confidence in the power of sub-national legislation as a vehicle to end land conflicts and obtain justice. Laure d'Hondt's paper showed how local actors – outside the show case areas - have been very pragmatic about adat issues. They seem more driven by the fact that adat claims are strategic assets for obtaining financial benefits for a mining company. All presentations together indicate the importance of paying attention to the role of NGO's and to be critical about their claims that they represent the local people.

Panel 4: Adat institutions and local politics
Chair: Surya Tjandra

Since the fall of the New Order there has been a new focus on local and regional identity in Indonesia. Shortly after reformasi began, regional autonomy laws were implemented and the country quickly became highly decentralized. The locus of political power made an important shift towards the regional level. These developments provided the space for a new articulation on the distinct cultural and political identity of Indonesia's many ethnic groups. This panel looks at the role of adat institutions – in the broadest sense – and their role in regional and local politics. The panel will furthermore shed light on the current relationship between adat institutions and formal government institutions in Indonesia's fast changing rural districts. The following questions will be addressed: What is the role of adat and adat law in regional politics in Indonesia's various regions? What have been the developments regarding 'desa adat' since the enactment of the 2014 Village law?

Tody Samitha (Lecturer of Adat Law at the Faculty of Law of Universitas Gadjah Mada) – 2 years of the Village Act: Are there any odds remaining for the establishment of 'Adat village'? This presentation addressed the question regarding the *desa adat* developments since the enactment of the 2014 Village Law (no 6/2014). That law has created the option for villages to change their status into *desa adat,* which would be a way to strengthen identity and autonomy of adat communities. Three years after the enactment, only 97 villages from 2 districts have been established as desa adat through district regulation. Tody's legal analysis of the reasons why this number is so small (compared to the total of 74,500 villages in the country) has three main arguments. First is the obscurity and contradiction among several provisions in the 2014 village law. For example, the formal procedure to establish a *desa adat* starts with an 'inventory process' in a village which already has a village code – but no adat community has such a written code. Another procedural requirement is that the adat institutions, the position and term of service of the village head are already stipulated in a provincial regulation. With all these requirements it becomes unclear what the significance is of adat self-regulation? Second, the implementation of the Village Law is difficult as long as there is no ministerial regulation concerning desa adat that indicates the bureaucracy how to take action. Furthermore, right after the enactment of the village law the term to establish an adat village was set on the first of January 2015. That limit left less than a year for completing the legal process. The district head has the authority for granting *desa adat* status, which responds to but also results in wide regional variety. A third impediment to establishing *desa adat* is the 'One Area, One Village' policy. This policy only recognizes one village in one area, which makes it hard to choose especially in areas where desa adat has existed side by side with administrative villages like in Bali. The policy forces that the two functions, self-government and self-governing community, are combined; but in practice communities often prefer the separation of administrative tasks and self-government. Apart from these formal legal problems the implementation process is also slow because recognition of desa adat or adat law communities is not the priority of the district legislative program.

Elizabeth Taruli Lestari Lubis (Faculty of Law, University of Indonesia, Jakarta; junior Researcher ISSP) presented 'The Tana Samawa Adat Institution and the Awakening of the Sumbawa Sultanate.' The paper describes a case in which adat institutions have been created by politicians at the district level in support of various objectives. Adat institutions in Sumbawa were not regulated and there was no fixed form of institution; also the former Sumbawa Sultanate had ended in 1958. However, in 2007 the district parliament issued a regional regulation about adat institutions in the area, that gave official status to a supra local adat organization that had started to emerge since 1996. According to AMAN there are at least 10 adat communities in this district.

Elizabeth explains how Sumbawa has been experiencing a revival of local identity in the last decade, driven by local elites and bureaucrats together. When in 2005 a descendant of the former Sultan of Sumbawa, Daeng Ewan, wanted to run as candidate in district head elections, his aristocratic background was not sufficient to take part in the elections. He did not get the required support of political parties. Then he designed a strategy for obtaining a local power position by using adat. Daeng Ewan claimed that after he had retired as banker and director of Bumi Daya Bank in Jakarta the 'people of Sumbawa called him to establish an adat institution.' In 2010 he was crowned as Sultan Sumbawa XVII in a ceremony arranged by the Sumbawa District government. Subsequently, a district regulation of the Sumbawa Parliament formally established a new adat institution, the Tana Samawa Adat Institution (LATS), that recognized only Tau Samawa, people from Sumbawa Island, and no other indigenous communities. Tau Samawa is a constructed all island identity which in practice refers to all subordinates of the Sultan. According to the new Sultan, the LATS aims at making Sumbawa a religious, democratic and modern society. The seats in the LATS are occupied by local elites, combining aristocracy with high level bureaucrats. The power of the Sultan is that he can issue adat recommendations (through LATS) warning people to 'maintain the values of Sumbawa communities.' The board members of the LATS represent bureaucratic power through the offices they occupy in the government. Meanwhile, as Elizabeth explained, the LATS and the Sultan do not have influence on everyone in daily life, especially because the Sultan still resides in Jakarta.

Veronika Kusumaryati (PhD candidate at the Department of Anthropology at Harvard University) presented her paper entitled 'Adat Institutionalization and the Quest for Independence in West Papua.' This paper emphasizes how articulation of adat claims and institutions emerges in very specific political contexts. Veronika argues that unlike in other parts of Indonesia, the discussion of adat and adat institutionalization in West Papua has not centered around the relation between community, territoriality and governance, but should be understood most of all in terms of Papua's relation with the Indonesian state. She asks: 'In a place where the idea of Indonesia's sovereignty is contested, how do we understand the dynamics and complexities of adat and adat institutions?' Her paper analyses how adat has been used by different parties to advance their political and cultural interests. In her overview of historical developments around adat institutions two organizations stand out. The first is the Customary Community Institution of Irian Jaya (LMA) that was founded in 1984. That was during the high times of the New Order regime that had chosen Papua as a major transmigration destiny and area for economic development by exploitation of natural resources. Papuans were anxious about the increasing role of Indonesian transmigrants in Papuan political, economic and cultural sphere. The LMA was founded in collaboration with Indonesian government and army officials and served as 'a platform to communicate people's development interests and needs to the provincial government of Irian Jaya' with the hope that it would help mitigating the tensions. By contrast, the Adat Council of Papua (DAP) has been directed at representing the interests, demands and sovereignty of the Papuan indigenous peoples with regard to land, territory and population. Concretely they defend the interests of the indigenous Papuan population against dispossession actions of mining, plantation and timber companies and regional governments. Veronika explains that in the eyes of the Indonesian government and security forces DAP is a separatist organization. Apart from these overarching organizations Veronika also mentions the local adat institutions that five Papuan ethnic groups residing around the Freeport mining company's area created in the 1990s in order to access the company's community development funds. Veronika's paper is a clear illustration of how adat institutions are being created for political and pragmatic reasons of various actors, ranging from forging political stability and social development, to demanding sovereignty or compensation payments from companies.

Longgina Novadona Bayo presented a paper entitled 'Adat and Local Regimes in Indonesia: A Case Study of the Shifting Role of Adat in Three Regions' Democratic Development.' This paper asks whether the involvement of adat (as an informal institution) in the democratization process helps or hinders democracy at the local level, as well as the conditions in which adat can influence the shaping of local democracy. Adat serves not only as a strong symbol of identity, but also as a significant resource for political contestation. As such, the understanding of tradition (as a concrete manifestation of adat) in this paper follows a constructionist paradigm in which traditions are conceptualized as resources and used strategically by specific community members. Nova links adat revitalization, adat articulation, and local democracy as central concepts in her study of adat and local regimes. In her field work in three areas in Indonesia she investigated how local elites articulate adat as an 'ideational resource' of power. They position adat as the most important mechanism and value in society, as something that must be obeyed by all members of society. In Tana Toraja the traditional elites position adat as a medium for promoting pride and a symbol of unity, implicitly supporting the local cast system. This promotion is performed through ritual events in which slaughtering buffaloes signify status and wealth. Politicians organize or contribute to such adat rituals as efforts to obtain influence over the adat leader who represents a large constituency of potential voters in district elections. In North Lombok Nova found that NGOs have been the main actors in producing an adat discourse. AMAN supported revitalization of adat in Lombok as part of its national campaign. However, the local debate centered around traditional class issues. The Council for Sasak Custom (MAS) is the institution that promoted maintaining class distinctions arguing that is an unique Sasak value deserving recognition, and even proposing that only nobility could qualify as candidate in democratic elections. MAS found opposition in a religious organization arguing for Islamic values, and in the Anti-Nobility Movement (GAM). The case in Jayapura in Papua shows how the elites are capable of articulating adat and using adat as a symbol of identity and struggle against migrants in local elections. Meanwhile the growing political importance of adat has also led to more contestation between various indigenous groups. In summary, Nova argues that the process of articulating tradition and adat has created, maintained, and justified inequality in local communities – even though the liberal democracy values promoted by the State emphasize equality as a central value of democracy.

Nur Nanung Widiyanto (PhD candidate Inter-Religious and Cultural Studies, Gadjah Mada University) presented a paper entitled 'Placing identity on the market: The Role of Cultural Tourism on Indigenous Group's Social Movement and Adat Law Establishment in West Java, Indonesia.' Previous presentations have shown that there are legal options available in Indonesia for state recognition of adat communities and their land rights, but that so far such recognition is hard to accomplish. In this paper Nur discusses whether development of the tourism sector might be an alternative way for adat communities to obtain recognition of their cultural identity and a stronger position regarding their tenure security. He has chosen the Kasepuhan Banten Kidul in Sukabumi, West Java as case study of an adat community that is a minority group in the district where they reside. The reasons for self-identification as adat community include claims concerning land against the Halimun Salak National Park, the desire to practice their own version of Islam – which outsiders often think should be 'purified'– and to maintain their system of traditional agricultural activities. In the early 2000s a few community leaders actively engaged with AMAN for advocating freedom to practice traditional religion and to gain legal recognition for their customary land. Coincidently, after the establishment of micro-hydroelectric power in the 2000s another national NGO stimulated increasing numbers of tourists to pay a visit to the area. This Kasepuhan community then decided to leave AMAN's confrontational strategy and opted for the accommodative strategy by focusing on cultural tourism. Nur characterized their discourse with the quote of a community leader, saying 'We are not promoting tourism, we are maintaining our culture and tradition. But if people come as a tourist, they are welcome.' The main annual event, *seren tahun,* has become a popular attraction for tourists from Jakarta. It is promoted through the Internet, social media and announcements in government offices. Now that the community's traditional religious rituals are redefined as cultural performances for tourists, they are no longer violating government policy. Moreover, with the district government supporting the development of tourism, the Kasepuhan community has been granted legal permission to live in the national park area.

Panel 5: Adat law, women rights and family (inheritance) law
Chair: Herlambang Wiratraman

How alive is the living law among Indonesia's highly diverse ethnic and cultural groups in the vast amount of regions in the archipelago? What is the current role of adat law in day-to-day situations for Indonesian families living in the countryside? How are customary rules regarding private civil matters incorporated into Indonesia's formal legal system? How does the judiciary approach highly controversial customary issues such as child marriage? This panel will address these urging questions by looking into some of the most important domains of adat law in the field of civil matters: family law and inheritance law. In this panel we will moreover take a closer look at adat law and the rights of women. The position of women is an issue that has long been understudied by adat law researchers, perhaps with the sole exception of studies from the Minangkabau region.

Sulistyowati Irianto (Professor of Legal Anthropology at the Faculty of Law, University of Indonesia (UI)) presented her paper entitled 'Adat Law in Legal Pluralism Perspective: Inheritance Dispute Case and Gender Justice.' She focused primarily on the relation between adat, religious and state laws, linking it to gender justice discourse. She argued that inheritance disputes as handled in civil courts of law provide a window through which we can understand the contesting, negotiating, and balancing act between interpretations of these different laws. Based on the analysis of 169 decisions of the Supreme Court regarding inheritance cases by Muslim and non-Muslim families executed from 2000-2009, the study found various inconsistencies and contradictions in the patterns of procedures and decisions made in these inheritance cases, regarding the position of the wife, the daughter and conditions within polygamous marriages. In addition to the court decisions, the study was also based on research conducted in two locations: Depok and Cianjur, both located in West Java. Though the majority of the population in the two cities are Muslim, inheritance disputes in the two regions are settled in different ways. Women in Kukusan village in Depok preferred to resolve inheritance cases through family mediation usually led by a male family member. Meanwhile, among people in some villages in Cianjur, the settlement of inheritance cases is mostly carried out with mediation of the local ulama. Apart from the different procedures in which these inheritance cases are mediated, the final result of these mediations may also be different, involving either exclusion or protection of the inheritance rights of widows/wives and their daughters, as different actors or stake holders have been involved in these adjudications. Nevertheless, it was also pointed out that the role of women in the determination and settlement of these inheritance practices remains limited and peripheral.

Mina Elfira (Associate Professor at Postgraduate Program of Southeast Asian Studies, Faculty of Humanities, Universitas Indonesia), presented her paper entitled '"Minangisation" of the practice of Islamic laws and Indonesian State Policies in Contemporary Minangkabau Women's Daily Lives' based on research conducted among Minangkabau women in West Sumatra. She examined the interconnection between adat, Islamic and state laws and how Minangkabau women have dealt with these laws in daily life. By introducing the term 'Minangisation' she highlighted the agency of Minangkabau women as they try to maximize the advantages that can be gained by utilizing their ambivalent roles as both agents of change and defenders of adat, of the practice of Islamic laws and of Indonesian state policies. The notion of *'kepala keluarga'* or family head, which usually is associated with men, is reinterpreted by Minangkabau women through strategies which involve listing their husbands or eldest sons as family heads or official owners of their land in the official documents, although the women are still the *de facto* leaders and decision makers of their households. Therefore adat is instrumentally used to negotiate, contest and modify the practice of Islamic and Indonesian state laws in their daily lives.

Sita van Bemmelen (PhD, Independent Researcher) and Mies Grijns (External PhD candidate at the Van Vollenhoven Institute) discuss the debates and policies on child marriage since the early 19th century until today. The stakeholders involved are the colonial and Indonesian state, the Indonesian bureaucratic elite, Muslim religious leadership, and the Indonesian women's movement. While until around 1925 child marriage was primarily framed as custom or adat by the colonial state and the Indonesia bureaucratic elite, the Muslim interpretation as a religiously accepted practice gained the upper hand. This has made it difficult for the state in the colonial and post-independence periods to issue regulations abolishing the practice until today. After remaining dormant since the 1974 Marriage Law, the issue has been revived after Reformasi. The recent framing of children as individuals with their own rights, preceded by the framing of women as rights holders, has provided a powerful tool for human rights and women's rights activists to counter the opposition of conservative Muslims, that only accept 'akil baligh,' or physical (and some mental) maturity as the condition to be ready for marriage. This led to a guideline (fatwa) formulated at the First Indonesian Women Ulama's Congress stressing the harmful nature of underage marriage.

Despite the recurrent theme of deadlock in the debates so far, the incidence of child marriage has decreased in the past 100 years. While in the early 20th century the accepted *maximum* age for first marriage for girls was 15, this has been promulgated as under the *minimum* age of 16 in the 1974 marriage law. The social and economic reasons for child marriage have also changed. Whereas in the past child marriages were mainly arranged by parents for economic and status reasons, the agency of young adolescents is an important factor behind child marriage today. Recent research has found, however, that poverty still contributes to it as well. Child marriage leads to limited access to education, health care, and proper work, all of which impact on a family's livelihood.

The paper of Ida Ayu Grhramtika Saitya (Junior Researcher at Kompas Daily) focused on the shifting status of women in Balinese adat law. It highlighted the tensions and disjuncture between Balinese adat law and Hindu-based inheritance law. Many gender activists and academicians together with some Hindu and adat leaders look at the *Manawa Dharmasastra* (which is part of Hindu-based law) as a basis for the equal status between men and women. Since Balinese adat law was considered to be patriarchal and therefore discriminatory towards Balinese women particularly regarding their rights to inheritance, these different social actors campaigned for the reinterpretation of Balinese adat as being strongly shaped by Hindu-based law. The campaign to highlight the influence of what was considered to be the more gender-equal Hindu-based law led to a general assembly (Pasamuhan Agung) of the adat villages (desa pakraman) which resulted in a revolutionary change in Balinese adat law, in that Balinese women could get inheritance despite the fact that it was still smaller compared to what men get.

Arfiansyah (PhD candidate at Leiden Institute for Area Studies (LIAS) could not be present at the conference but wrote a paper addressing the issue how *Adat* and the state *Sharia* in Gayo, Aceh mutually complement each other. The complementarity is evoked by focusing on the *adat* and state sharia laws regarding public morality and adultery. Aceh is a highly interesting case because it is the only province in Indonesia implementing legal pluralism where three laws are enforced at once: Indonesian civil and criminal law, the state sharia, and adat law. Public morality framed within the Gayonese concept of *Sumang* (Shame) regulates social interaction between genders and people of different ages. Although adat law has from early on been imbued with Islamic teachings, it was only after the introduction of the state sharia that public morality became regulated by two different institutions namely the *Adat* institution and *adat* court that had a more cultural approach; and the Sharia Agency and *Mahkamah Syari'iyah* that have a state power approach. Nevertheless the two have become complementary to each other. Extramarital sex cases for instance, face punishment from two different

institutions. The adat institution will apply temporary expulsion from the community, whereas based on the Sharia Law, the state would then apply sharia punishment by flogging the committers in public. In this way the offenders are expected to be more humiliated, as they are exposed to a larger group of people than their own village members. Afterwards they are expelled permanently from the community. Therefore although these two institutions may be seen as representing two different types of laws, in practice they become part of an integrated legal system.

Victor Imanuel Nalle (Faculty of Law, Darma Cendika Catholic University) wrote a paper entitled 'Changing Adat Inheritance Law.' Viktor's paper highlights that inheritance is a matter of legal pluralism in Indonesia. In practice adat inheritance rules are very strong in some areas, and Islamic law rules in others. Meanwhile the 1945 Constitution opens two options for deciding which rules prevail in case of dispute: either to respect adat law, or to allow for changes from traditional inheritance rules. Both options are based on Article 28I par. 3 which states that state should respect cultural identities and rights of traditional communities in accordance with the 'development of the times and civilizations.' Viktor argues that it all depends on the definition of criteria for 'the development of times and civilizations' whether state law or religious law can prevail over adat law. To find out about those criteria he investigated judgements of the Supreme Court in inheritance cases. He found that the judgments awarded daughters the right to inherit although it was contrary with the principle of adat inheritance law, especially in patrilineal communities. The judgments used the perspective of human rights to criticize inequality between men and women in adat inheritance law. Furthermore, the Supreme Court considered the hegemony of a patriarchal perspective on inheritance law, and reviewed adat inheritance law based on the general principles of law, especially human rights. Consequently, the judges have been gradually softening the substance of adat law, especially on inheritance disputes that involved women. If the court examines an inheritance dispute in a community that still use the adat inheritance law, the judge should know the meaning of the various institutions in the adat inheritance law comprehensively to be able to decide what is just and fair. In addition, judges need to account for how they interpret the criteria of 'in line with the times and civilizations' when their judgement implies changing the adat inheritance law. The paper concludes that Supreme Court judgments have become an instrument to change adat inheritance law. Changes to adat inheritance law are effective when there is a dispute of inheritance in the judiciary, but of course most inheritance disputes never reach the court, so the changes will only slowly effect daily practices.

Panel 6: Adat law in courts and legal education
Chair: Sulistyowati Irianto

For decades the approach towards adat law in legal education in Indonesia has hardly changed. Until this day, students are obliged to read the work of colonial scholars such as Van Vollenhoven and Ter Haar, while rarely having to deal with the issues of adat law in an increasingly complex modern world. As a result, present day legislators, judges and law enforcers are equipped with a highly outdated set of legal concepts of adat law that is essentially the same as a century ago. This panel looked at the present day legitimacy of adat law, by focusing on a) the approach towards adat law in law schools and b) the application of adat law by courts. This panel also addressed the phenomenon of adat courts and looked at how these are integrated into the formal judicial system. Questions are: How are the current complexities of adat law in Indonesia addressed in legal training? How do courts apply adat law in their decision-making and what is their attitude towards informal adat courts?

Herlambang Wiratraman (Executive Director of Center of Human Rights Law Studies, Faculty of Law, Airlangga) presented a paper entitled 'Adat Courts in Indonesia's Judicial System: A Constitutional Pluralism Analysis.' Herlambang discussed whether and how adat courts have been integrated in the formal judicial system of Indonesia. Following a constitutional pluralism analysis, this paper asked to what extent the Indonesian constitutional law system recognises the role of adat courts. How does the adat court system relate to state's judicial system in practice, and is the adat court able to protect adat rights effectively? Or do adat communities prefer the formal judicial system in seeking their justice? And what are the challenges when using a 'plural court system' for protecting traditional rights or other collective indigenous peoples rights in Indonesia's decentralised politics? Herlambang explained that the colonial government had recognized adat courts as the judiciary for indigenous peoples, because the Dutch realized that they could not solve all the problems faced by the citizens of the Dutch East Indies by themselves. Therefore they made a classification, which divided the population into three categories: Europeans, Natives and People of other Asian descent. Each group of citizens had their own judiciary to apply to. The position of the Adat Court, similar to the Village Court at the time, was a judicial trial carried out by the village judges within the jurisdiction of the governor. This court was authorized to adjudicate minor cases which are customary affairs or village affairs, such as land disputes, irrigation conflicts, marriage, dowry, divorce, adat status and other cases concerning indigenous peoples. During colonial times the recognition of adat courts was a matter of pragmatic efficiency and racism. After Independence the Adat courts were abolished because they reminded of racist colonial policies. Additionally there was little support for adat in general because of its power to contribute to fragmentation of the new nation, when seeking one national identity had more policy priority. Nowadays Adat courts are seen as judicial institutions that could improve access to justice and play a role in defending the rights of adat communities. Herlambang argued for constitutionalizing adat courts, which does not mean formalization, or even structuring the adat court under state formal judicial system. Rather such legal recognition is aimed at protection, especially to exercise fundamental values of social significance. He added that constitutionalizing also implies a shift from the old paradigm of 'integralistic state' to 'constitutionalism state.' He concluded with stating that the discussion should not only be about how adat courts could successfully coexist with or be integrated in the constitutional system or state judicial system. Instead evaluations should consider the effectiveness of the court itself in a plural legal system.

Budi Suharyanto (researcher at Supreme Court/Mahkamah Agung RI) – presented a paper entitled 'Problems of adat absorption by the court and the effect for national criminal law reform.' Budi's paper addressed a problem that is very relevant in the daily core business of the Supreme Court. Indonesia's Criminal Code is being revised and one of the controversial questions is whether adat criminal law should be integrated in the new revised Criminal Code? If so, how should this be done and how will judges be able to select the relevant adat law? This development poses serious risks with regard to legal certainty. How do you determine which adat rule is applicable and when can this be a legal basis for criminal prosecution?

Budi presented his legal analysis about how the state legal system includes provisions about applying adat law in criminal cases. The result is an overview of dispersed provisions which do not provide a clear guidance for judges. The draft Criminal Code does not improve this situation because its article 2 section (2) states that 'the enactment of the law which exists in the community (...) [should be] in accordance with the values that are contained in the Pancasila, human rights, and the principles of general law recognized by the community of nations.' The definition of 'law that exists in the community' is not clear. One way of finding out how Supreme Court judges have dealt with the role of adat in criminal cases would be to conduct a systematic research covering the jurisprudence available in the Supreme Courts archive. That would be the important reality check in the process of assessing the draft Criminal Code.

Rikardo Simarmata (Lecturer at Faculty of law, University of Gadjah Mada) presented his paper entitled 'The current development of scientific study of adat law and its ability to adequately explain reality.' Rikardo started with stating that in Indonesia adat law courses are seen as boring and outdated. 'We are still taught the same principles as adat from colonial times, as if nothing has changed. We need to have an adat law curriculum that is more dynamic and more up to date to current times.' His paper analysed the reasons why this situation has occurred and suggests how it should be changed. In the early 20th century, Cornelis Van Vollenhoven managed to systematize the enormous and diverse ethnographic data concerning adat, putting them into a determined classification of topics. The classified topics are the social organization of adat law community, law of persons, law of kinship, law of marriage, law of inheritance, land law, and the law of delicts. The work has enabled people to learn adat law in its systematic and structured shape instead of as ethnographic data. This systematisation lifted adat law to an analytical level that enabled scholars to regard adat law as a legal system, and to define their academic research as the Modern Study of Adat Law (Ilmu Pengetahuan Hukum Adat Modern). Consequently, the adat law system could be approached through the perspective of jurisprudence. The academic adat studies in law faculties developed a positivistic or doctrinal view that does not approach adat law empirically, but from theoretical and normative sides. The consequence was that researchers who collected field data about local communities' perceptions and practices concerning adat subsequently analysed these data by applying universal concepts and principles of adat law to the research topics. Hence, they explained the adat reality through their formalistic framework. That approach failed to notice changes that occur to adat in reality. Rikardo mentions two examples of change. First, the definition of adat law itself which does not seem exclusively linked to adat communities any more, but is evolving in the direction of local, informal law, in which elements of adat law and state law are mixed. Second is the observation that the central concept of right of avail *(hak ulayat)* seems to have little present day relevance when it is perceived strictly as defined by the criteria that Van Vollenhoven used. Instead, there are now more variations of communal land, selling communal land is no longer strictly forbidden, and in some areas there are informal communal arrangements for land that is individually owned. Nowadays, outside universities, adat is a hot issue, adat communities are facing real life problems, and there are many state or government policies and laws concerning adat or adat law. It is therefore very urgent to reduce the dominant influence of positivistic approach to adat law study, and to create intensive collaboration between adat law scholars and social scientists.

Joeni Arianto Kuraniawan (Legal Aid Clinic of the Airlangga University, Faculty of Law; PhD candidate at the Law Faculty, University of Pisa) presented his paper entitled 'The Role of Adat Law in the Tenurial Conflict Involving Adat Communities in Indonesia. A Lesson from the Conflict between the Sedulur Sikep Community and the Cement Industries in Central Java.' Joeni continued the discussion about university curricula concerning adat law. His own experience as student and lecturer in Surabaya shows that the paradigm, the style and the literature used in adat law classes is very outdated. Meanwhile it seems that relevant adat research is mostly done outside the university by researchers working for NGOs. In his research among the Sedulur Sikep community in Central Java, he found that principles of adat law in land and tenurial matters were being still used by this community as the basis of their movement in defending their land against the establishment of a cement industry. One of those principles is that this community perceives the Kendeng mountain were the cement industry is planned as 'their mother,' an idea that is at the heart of their adat land law. The evolving struggle for power over local resources makes use of adat discourse to combat the perspective on land that spatial planners and cement company officials have in mind. Such modern deployment of adat should be part of the curriculum in adat law classes to educate lawyers and legal researchers who engage with defending the rights of (adat) communities.

Final session

Comments about the Adat Law Conference and suggestions for follow up

At the end of the conference all participants were invited to make their comments. The list below gathers the comments per theme:

1. This conference was the best short course in adat law!

- I think I understand adat law more now and I have a greater respect for the researchers. I can imagine the difficulties and challenges you are facing. In your research you have to face tensions, there is symbiotic mutualism between various contradictions. We talk about living law or the law of the people. Some of you also see it as a powerful weapon to fight against the oppressor. Those are fascinating points.
- This was a wonderful moment for me. I'm an anthropologist but I've never been involved with adat. That's strange. I thought it would be boring but I found many points of interest.

2. VVI as the international center for studying adat law

- I appreciate the conference. I think VVI is an important institution to take the leadership in the debate about adat law in the Netherlands and elsewhere. This is part of the history and should be continued from here.
- Also happy to learn at this conference about other Indonesian and international scholars working on the issue.
- The Asian studies associated with VVI and at ANU in Australia is really under attack. Following this interdisciplinary approach and the deep commitment to what we study, this conference has shown to me how adat in Indonesia is gaining importance in a wider arena.
- Few people in the UK know where Indonesia is. Attending this conference has made my PhD easier and harder. Easier because I have new contacts but I also now realize that I nearly didn't come to the session on adat law and religion. Fortunately, I quickly realized it is very closely intertwined. The issue about adat and adat law has broadened my horizons and my brain hurts.
- Being in the US and West Papua I am refreshed to hear all the experiences from activism and academic engagement. It should be maintained because activists are rarely in dialogue with academics. Also while in the field it is important to keep these discussions going.

3. New adat scholarship

- There are young promising scholars paying attention to adat law studies. I don't feel so alone.
- This forum helps to inspire young scholars to continue the legacy of adat law studies in new directions. It's not about old things but about new possibilities and issues.
- As a new student of adat law, I want to examine its outlook. The world is changing and how the community of research can respond to the new developments helps me to learn new things. For example religious extremism and all the changing contexts, that's important.
- My background is political science. I am not specifically studying adat law. However, I teach on local politics, and we think about how adat and local politics are linked. This has helped me to think about how to put adat regime in local democratization processes. The government or state way is based on universal values of democratization. We have direct local elections, yes, but adat is used by local leaders as a tool to gain power.

4. Adat is always context specific

- New perspectives to adat law. Particular communities are important for constructing adat law. Regulations cannot see the realities of the current social conditions for example in Sumbawa.
- The conference made me realize the importance of the context of adat and understand more about it with comparison to other cases.
- On the one hand adat law is used as a line of defense against the state, on the other hand adat law comprises the norms and social order that are practiced in society. This creates all sorts of problems.

5. Adat law and religion

- We realize the importance of adat, religion, and the connectivity between them. We always address the tension between state law, but the religious dimension is really important. I am from an Islamic university so I think it's important to think about including the religious based institutions that are closely connected with adat law [more in the next conference].
- If I was thinking of anything lacking, that would be attention to shariah, which is the contemporary discourse. Working on the ground as an anthropologist, it is really hard to say what is adat and islam. If you're Bugis you're a muslim, that's a piece.

6. Adat, inequality and identity politics in present day Indonesia

- Whether you like it or not, adat has become a very important phenomenon in Indonesia. It's important and we really need to look at it, aside from religion. With so much identity politics we need to give more attention to the source of identity politics, and in my view it is also related to adat. I will continue my research about this.
- Adat is also about ethnicity, politics, discrimination, and many other things.
- Adat and adat law are different and adat can be used to defend local interests. We need to be careful for not excluding other groups.
- Adat law is extremely useful to understand people's lives in Indonesia. It helps you understand them and to have discussions about what is really important. It helps enrich your life as a scholar and as a person. But understanding things doesn't mean I am in favor of strengthening adat law or adat institutions. I want to look into inequalities that are a part of adat law which seem to be revived by new adat institutions. Those are my concerns and interests.

7. Reflections on developments in/of the adat movement

- Coming from a background of working with empowering indigenous groups in the social movement and working with law reform processes, I think that some of the presentations are a reflection of what we've been doing for years. I appreciate that. It helps us to learn about the good things. I don't agree with some of the critical views, but they can be used to improve the work of the social movement and also the law reform process. That has enriched my knowledge and helped me to understand better.
- When you're talking about adat what are you talking about? What is the framing and entry point of analysis? Making the answers to these questions explicit helps us to learn a lot as well.
- The variety of papers during this conference has helped in understanding the discourses (plural) of adat.
- What happens after legal recognition of adat communities/land rights has been successful?
- Where and to which extent has adat become a vehicle for right wing populism?
- If AMAN has turned into a national organization that is very close to and cooperating with the national government, who or what has now become the target of the social movement (replacing the exploitative and oppressing government)?

8. Methodology of adat research and interdisciplinarity

Studying adat involves many other disciplines than law. Some participants who have been doing research on other subjects, like how multicultural societies coexist in peace, or tourism development, or strategies in regional election campaigns, or household vulnerability and food insecurity, or child marriage, found as a result that adat is a very relevant factor in their research.

- So many disciplines and topics but many of the issues deal with similar issues – who has a say? Power and democracy is central to the discussions.
- Many different aspects of life involve adat. It's about families, courts, dispute settlements, and many other issues.
- The conference was very helpful. I'm an anthropologist. I am interested in methodological issues. Papua for example – sovereignty issue and kinship system. We want to discuss better about how adat law should be understood in terms of kinship.
- We usually begin from various cases, but I started with focusing on the text of the law. Others focus on interviews. How can we combine various methods from different disciplines?
- Another big question remains: How do we put adat next to the other legal systems in Indonesia to help the needs of legal certainty? I don't know how to deal with that, how to find a way forward. Maybe the legal pluralism discussions should get more attention?
- I thought this was business of historians and anthropologists but now I learned about different contexts and methodologies and realize that this should be approached from many contexts, perspectives, and disciplines. This will help with my future research and help me to engage with others.
- Comparative and inter-disciplinary approaches are needed for the study of adat.

9. Adat teaching and the fossilization of adat ('the death of adat').

- We need a new interpretation of adat law. A lot of them are copy paste of Ter Haar and Van Vollenhoven. Not all of their books are translated into Bahasa. Some of them are still only in Dutch.
- We are looking to defossilize adat. Interested in better understanding how adat functions today.
- Including defossilizing the staff that teaches adat law in universities. Now many lectures in law faculties have activist background and could help make the curriculum change.
- I will integrate adat law in my courses, and look into legal drafting and to integrate it in other courses. Not just limited to adat classes but also integrate it in other classes.
- Adat law is basically the common law of Indonesia's civil law system. Perhaps we can introduce a Socratic approach to teaching, and engage the student in debates this way. More than reading and relate it to what's happening outside the university.
- Researchers on adat law and adat communities, for me as an adat law scholar, the most obvious benefit is updating my knowledge on adat law today. You all have such important research that helps me to update my adat law subject in my class. This topic and conference should be a regular forum.
- Also for teaching anthropology: I'm an anthropologist but I've never been involved with adat. In my teaching I always talk about categories of practice: how do people use adat in daily life, politics, etc.? But also as categories of analysis. I can show in my teaching that this is a category of practice, and how we analyze it. Secondly, how do you deal with international conventions of human rights, and cultural relativism. In research, we see adat from the perspective of scholars and also as activists, and we learn to deal with it in different ways. Trying to find a balance between sound academic analysis and support for marginalized groups is hard. But also to get away from essentialism.
- Political science (at UGM): In our department we are thinking about how to incorporate the adat regime and how it can be accommodated in the local political systems and how we see its relation with democratization.

Follow up activities, suggested by the participants

A. Next opportunities for meeting each other:

- On 6 and 7 September 2017 there will be an Indonesia-Australia-Netherlands conference on socio-legal studies at UGM, Yogyakarta. The theme will be 'Legal Reform in Indonesia: Towards Justice.' http://conference.law.ugm.ac.id
- There should be an association with an annual conference where this adat conference we had today could fit in and could be pursued in an effective way.
- In January there will be the Indonesia-Netherlands Legal update. We will look at collaboration, and I never thought of adat as a topic, but some of the participants today actually have met in the framework of such a program.

B. Follow up workshop/conference: (Yance, Sandra, Riwanto, Rikardo, Herlambang)

- We need a follow up workshop on 'Adat movement and democratization.'
- We should think about a similar conference in Indonesia to have more people in the social movement and law reform movement participate. I think we already have the host and we should discuss that in the follow up.
- There have already been two symposia of adat law movement and reform in Indonesia, and the follow up of this Leiden conference could be the third. But we have to show that it is advancing to new areas, and we should include new participants. Compared to the previous symposia new elements would be a part on methodology and one on teaching about adat. Co-organisation is important, not just Epistema and Huma.

C. Publications

Lily Hoo: I think it would be great if we can have some kind of repository of 'curated' adat related research. It would be very helpful for me (and for my colleagues in WB) if we can have access to such kind of repository to help us in our analysis. I would also be useful to have access to experts that can help peer review our works.

Jacqueline: we will first have to screen the papers to see whether they can be reworked into versions that can be published in international peer reviewed journals. Kathryn offers to mentor some young scholars who want to revise their papers for international publications.

- Kathryn Robinson: We publish the Asia-Pacific Journal of Anthropology (see a very recent article as example: http://www.tandfonline.com/doi/full/10.1080/14442213.2016.1268198). There are too many papers in this conference to get them in one volume but for anthropologically focused papers it would be great to bring them together. This journal also has an E-Press option with free downloads.
- Many panels, many audiences. We could think of several special issues, but the conference organizers would need help of colleagues present here who would be willing to act as guest editors. Jacqueline discussed this with Arskal Salim who is interested in publishing about the panels on religion (panel 1 and 5).
- Papers on teaching of adat are directed at an Indonesian audience and therefore should be published in Indonesian. Who will take the lead in this?
- Tody Sasmitha (editor in chief of the Jurnal Mimbar Hukum (of the Faculty of Law, UGM) (https://jurnal.ugm.ac.id/jmh/index): I would like to see people publishing papers in this journal. We have a slot for 7 English articles.
- Nova: In our department of political science at UGM, we have the Power, Conflict and Democracy international journal (http://pcd.ugm.ac.id/?page_id=105) (Editor in chief is Nico Warouw). Maybe the panel on adat and local politics could be published in this journal.
- Laure: Would it be an idea to make a new 'Journal of Adat?' I think this conference shows how dynamic adat is. Calls for a continuous education, based on a bundle of approaches and topics. If there is enthusiasm to publish on various topics.
- Ratna: Among Indonesian anthropologists the topic of culture (UU *Kebudayaan* for example) is a very relevant context to bring up an interdisciplinary approach to adat. However, many see kebudayaan as an essentialist thing, so propagating new adat studies has to overcome such resistance.

D. On line forum on adat studies

- Ahmad: In addition to publishing it would also be good to have a platform to continue the conversation. Something internet based. There is a tool online that can help us with that communication. Whatsapp, or digital newsletter. We would need a good moderator however.

E. Collaboration between the Supreme Court, university researchers, policy makers and villagers on adat:

- The courts are also producing knowledge on adat law. The Supreme Court (MA) has published 2 million decisions. If researchers and NGOs could cooperate with MA's research department (Litbang) to index decisions and analyze them together, we could make better use of this existing jurisprudence. And then make it accessible to judges in regional courts and everyone involved in research on these issues.
- The life of adat law depends also on policy makers and social activists. We need more collaboration between people in the villages, and also with those in campus, and in offices. Kantor, Kampus, Kampung.
- Bridging the gap between field and policy.

F. New course materials for adat teaching (Rikardo, Tody, Ibu Sulis, Joeni, Nova, Ratna)

- To turn the information and analysis from this conference into course materials and references for the adat law courses in Indonesian universities. Most of the findings come from research with a social science background. Then the question is how to use it going forward?

Van Vollenhoven Institute
for Law, Governance & Society

Universiteit
Leiden