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Towards an epistemological decolonization of legal pluralism: The case of Indonesia

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Abstract

This paper ascertains the relevance of decolonial scholar Mahmood Mamdani's point concerning the continuing influence of colonial constructions of permanent minorities in postcolonial states for analyses of the socio-political dimensions of culture- and religion-based legal pluralism in Indonesia. Authoritarian centralism paired to extractivist state policies motivated Indonesian activists since the mid-1980s to revitalise the colonial constructs of distinct native customary law communities and their respective commons. The collapse of the Suharto regime in 1998 and the ensuing decentralisation and democratisation process supported by the Breton Woods institutions, finally provided opportunity to successfully push for greater legal accommodation of local customary norms and institutions that has run parallel to the rapidly increasing legal accommodation of shari'a law, giving boost to the longstanding opposition between customary and Islamic law in Indonesia with roots in the colonial past. These developments warrant a decolonial reappraisal of the epistemological foundations of colonial legal pluralism.

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Key words

Decolonisation; Indonesia; customary law; legal pluralism; permanent minorities

Resumen

En este artículo se examina la relevancia del argumento del académico descolonial Mahmood Mamdani sobre la influencia que siguen teniendo las construcciones coloniales de minorías permanentes en los Estados poscoloniales para el análisis de las dimensiones sociopolíticas del pluralismo jurídico basado en la cultura y la religión en Indonesia. El centralismo autoritario, unido a las políticas estatales extractivistas, motivó a los activistas indonesios, desde mediados de la década de 1980, a revitalizar las construcciones coloniales de comunidades nativas de derecho consuetudinario diferenciadas y sus respectivos bienes comunes. La caída del régimen de Suharto en 1998 y el consiguiente proceso de descentralización y democratización, apoyado por las instituciones de Breton Woods, brindaron por fin la oportunidad de impulsar con éxito una mayor adaptación jurídica de las normas e instituciones consuetudinarias locales, lo cual ha ido en paralelo a la creciente adaptación jurídica de la *sharía*, dando un impulso a la antigua oposición entre el derecho consuetudinario y el islámico en Indonesia, que hunde sus raíces en el pasado colonial. Estos acontecimientos justifican una reevaluación decolonial de los fundamentos epistemológicos del pluralismo jurídico colonial.

Palabras clave

Descolonización; Indonesia; derecho consuetudinario; pluralismo jurídico; minorías permanentes

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1. What is at issue with legal pluralism?

In his 2009 Herbert L Bernstein Memorial Lecture in International and Comparative Law at Duke University Law School, William Twining ascertained that the term 'pluralism' is often associated with 'multiculturalism,' in opposition to 'assimilation'. Whereas the former calls for some accommodation in state policy and law of the plurality of norms, values, and institutions of different ethnic, cultural, or religious groups in a certain society, assimilation implies suppression of such a plurality and adoption of the normativity of the majority (Mamdani 1996/2018, xii-xiii). Multiculturalism, so Twining, thus often amounts to some degree of legal pluralism, whereas assimilation implies governance through unified law (Twining 2010, 473-477; Kymlicka 2010, 36-37). Legal pluralism hence seems to imply democratisation, whereas the rule of unified law would amount to some degree of internal colonisation.

As "culture" is but an umbrella term for a whole range of different "social fields", like religion, custom, trade, medicine, cuisine, games, agriculture, hunting, etc., that generate their own norms, rules and regimens, often but not necessarily always in interaction with the field of the legal (e.g., Moore 1973, 720-722, 744; Bourdieu 1987), normative pluralism is integral to culturally homogenous societies as much as to multicultural ones. Therefore, the distinction between "normative pluralism" and "legal pluralism" becomes pertinent here, with the former being the wider category and the latter a register of the former. In other words, "normative pluralism" applies to a plurality of local, national or transnational, non-institutionalised or nonstate "culture-," "custom-," or "religion-based" normative orders within a certain state, whereas "legal pluralism" refers to a plurality of local, national, international, or transnational, state-recognised and/or state-regulated ones (Twining 2010, 475-478; see also Ramstedt 2023, 86).

In 1995, the 28th General Conference of UNESCO in Paris proclaimed 'tolerance' as the antidote to the rise of ethno-nationalism, religious extremism, racism, discrimination and violence against minorities and vulnerable groups all around the world. UNESCO member states were exhorted to implement appropriate legislation and law enforcement (*DoPoT* 1995, 9-10). The growth of discrimination and violence against "others" was taking place in the midst of a major transformation of societies all around the globe into "super-diverse" societies (Vertovec 2007, 1025, 1039), due to "more people now migrating from more places" because of professional employment, war, genocides, political dissent, natural catastrophes, etc., and the globalisation of cultural and religious trends through digital media, tourism, etc., engendering a rapid "diversification of diversity" (Almeida 2022, 3-9).

After 9/11, the 2004 Madrid train bombings, 7/7, the November 2015 Paris attacks, etc., discrimination and violence against minorities increased and multiculturalist state policies came under attack in all Western liberal democracies, particularly in Europe. In 2010, German Chancellor Angela Merkel, publicly proclaimed multiculturalism a policy failure and advocated a return to a German "*Leitkultur*." Her statement was soon echoed by British Prime Minister David Cameron and French President Nicolas Sarkozy (Chin 2017, 1-3,12-18, 237-238, 281-304; Vertovec and Wessendorf 2010, 1, 4-6; Kymlicka 2010, 32-33). Steven Vertovec interpreted this as a backlash against state-regulated multiculturalism and its alleged shortcomings–societal fragmentation through the emergence of "parallel societies," the rise of inter-ethnic tensions, the growth of religious

and political extremism, racism, and terrorism, along with ubiquitous forms of migrant in-group human rights violations, juvenile delinquency, etc. (Vertovec 2010, 83-86; Vertovec and Wessendorf 2010, 6-18). In the UK, spokespersons of minorities had long criticised the imposition of state-defined blanket identities that would ignore internal divisions in migrant communities. International scholars agreed that state-regulated multiculturalism had facilitated the proliferation of essentialist primordial identities that would subvert the emancipatory impulse of liberal multiculturalism (Vertovec 2010, 83; Banakar 2010, 15; 2015, 133-137, 155; Kymlicka 2015, 219; Chin 2017, 265-280).

Decolonial scholar Mahmood Mamdani drew attention to the difference between modern Western nation states and states in the Global South in how they deal with "permanent minorities." Since the 19th century, Western nation states have tended to discourage the legal and political accommodation of minority groups, embracing instead varying degrees of tolerance vis-a-vis "non-threatening" communities and violent suppression of "threatening" ones. Conversely, Western international policies and associated legal frameworks have encouraged the legal fixation and political recognition of minority groups in postcolonial societies in the Global South (Mamdani 2020, 2, 5-9). The different treatment of minority in the Global North and the Global South has become particularly pronounced since the 1990s.

According to Mamdani, the epistemological foundations for the organisation of permanent minorities in postcolonial societies were scientifically formed in the mid-19th century, when the British and Dutch colonial powers recognised that they could not assimilate local elites through direct rule, due to fierce resistance (Mamdani 2012, 1, 8-9, 43-44). Cases in point were the 1825-1830 Java War, the 1857 Sepoy Mutiny in India, the 1865 Morant Bay Rebellion in Jamaica, the 1873-1904 Aceh War in North Sumatra, and the 1881-1898 al-Mahdiyya Rebellion in Sudan (Carey 2008, 505-655; Mamdani 2020, 2, 8, 34, 65). Both colonial powers then began to establish plural regimes of "indirect rule," based on classifying "native" populations in different cultural categories with the help of a new colonial science–ethnography. Whereas European populations in the colonies were treated as citizens and as such participated in the modern cosmopolitan culture of the urban centres, natives were regarded as colonial subjects, "pinned down, localized, thrown out of civilization as an outcaste, confined to custom, and then defined as its product" (Mamdani 2012, 2-3).

Indirect rule moreover served to prevent the rise of native majority groups who would be able to threaten the power and authority of the European colonisers, and to impede native market-based labour and trade mobility for the benefit of continuous cheap native labour (including forms of corvée labour) and of retaining European market dominance (Mamdani 2012, 11, 30, 44-46, 75, 105; 1996/2018, 16-17, 60, 95, 146, 286-287; 2020, 3). Colonial "indirect rule," linked to multiculturalist and legal pluralist arrangements, was thus a form of "decentralised despotism" (Mamdani 1996/2018, 109-127, 286-287), proving Boaventura de Sousa Santos' point that "(…) there is nothing inherently good, progressive, or emancipatory about legal pluralism" (Santos 2020, 101).

Once colonised societies attained independence, usually in the form of multiethnic and multicultural states, they would wrestle over who would become the majority group that defined the new polity (Mamdani 2020, 3-5, 328). The winners continued to be wary of rival communities and frequently established authoritarian regimes to quell potential

or actual internal opposition. This in turn provoked the rise of local pro-democracy movements that became ever more vocal from the mid-1980s onwards (Anghie 2000, 196-215; Rajagopal 2003, 98-113; Pahuja 2011).

At the end of the Cold War, the Breton Woods institutions turned away from the long-cherished principles of state centralism and legal unification that had backed centralist autocracies in the Global South (Eaton *et al.* 2011, xiii-xvii). Both IMF and World Bank started to respond to fundamental issues voiced by local pro-democracy movements, by pushing for governance reforms in Asia and Africa. These reforms sought to bring about intra-state decentralisation and diversification of power to foster democratisation and sustainable development. However, local movements often used the reforms to advocate for (greater) legal accommodation of hitherto marginalised ethnic and religious norms and institutions, usually to the detriment of democratisation and associated efforts to entrench the rule of law (Davidheiser 2007; Ribot *et al.* 2008, 3). This has raised doubts about the democratising potential of decentralisation and legal pluralism.

2. What is the issue with legal pluralism in contemporary Indonesia?

A case in point is the Indonesian decentralisation process that commenced in 1999 with the support of the Breton Woods institutions and international donor agencies (McGillivray and Morrissey 1999, 11-21). Involving a profound law and governance reform, its democratising impetus encouraged local movements to push for the juridification of local customary institutions and greater legal accommodation of *shari'a* law–both with increasing success. This, along with the law import accompanying the decentralisation process, has greatly "strengthened" the "weak" postcolonial Indonesian legal pluralism with roots in the colonial past.[1]

Decentralisation was instigated by interim-President BJ Habibie in the wake of President Suharto's abdication that had been brought about by national mass demonstrations, following the disastrous local ramifications of the 1997/8 Asian Financial Crisis, and international pressure against the atrocities perpetrated by Suharto's regime to quell public criticism. As Indonesia's economy was crumbling, Suharto's thirty year-long single-party rule, which had centralised all political and economic power in the president, was openly debunked as a particularly repressive form of crony-capitalism (Basri 1999, 27-28; Klinken 1999, 61-63; 22, 5). Decentralisation was thenceforth geared towards dismantling the ubiquitous remnants of Suharto's version of integralist statism (Butt and Lindsey 2012, 15, 19-23), moored in:

- Political patriarchy (*bapakisme*), inspired by traditional Javanese culture and Japanese and German fascism. It cast the state as a family and the president as the "Father of the Nation" with near unlimited powers over all other state institutions, including the judiciary famous for being unabashedly corrupt and in collusion with the regime (Liddle 1996, 86; Butt and Lindsey 2011, 189-191; Boulcher 2015, xvi, 44, 156);

[1] See John Griffiths' distinction between "weak" and "strong" legal pluralism. Whereas the former implies that state-recognised nonstate legal orders are clearly subordinate to and depended on the authority of the central government, the latter refers to state-recognised nonstate legal orders with an authority largely independent from and maybe even opposed to the state (Griffiths 1986, 5-8).

- National unity and national security, standard themes of regime rhetoric that served Suharto as historical legitimation for the elimination of political opponents commonly cast as religiously, ethnically, or politically motivated "separatists" or "communists" with either subnational or transnational loyalties (Tan 2012, 55-62; Bourchier 2015, 191);
- Consensus-based governance modelled on the unanimous decision-making procedures in Indonesia's customary village communities. It commonly served as a pretext for the regime to frame political opposition as divisive and to suppress it with military and state-backed paramilitary forces (Barker 2001; Honna 2001; Bourchier 2015, 1, 151, 183, 187; Ramstedt 2025, 91-93);
- The twofold function of the Indonesian Armed Forces (*dwifungsi*) combining the task of national defence with military involvement in social, business, and political affairs. It provided the military and their associated paramilitary groups with access to vast economic assets and financial resources (Mietzner and Misol 2012, 105; Boulcher 2015, 157-161, 176, 210; Sebastian *et al.* 2018, 50-53);
- Religionism, entailing citizens' mandatory affiliation with one of five state-recognised and heavily state-supervised religious constituencies (Islam, Protestantism, Catholicism, Hinduism, Buddhism).[2] It allowed the regime to exercise tight control over political Islam, ethnic spiritual traditions, and heterodox religious movements espousing millenarian ideas detrimental to the ideological state foundation (Ropi 2016, 179-180, 199-204; Ramstedt 2019a; 266-268, 273-276);
- National development involving the development of a national "(…) license scheme that forced everyone with a business idea to obtain a more or less costly (state) license as a prerequisite to realising it" (Ramstedt 2012b, 3). This scheme served to secure revenue for Suharto's family and clients. With low respect for local customary law and commons, it encouraged the implementation of extractivist projects and land grabbing (Liddle 1996, 96, 106-107, 187, 210, 258; Moertopo 1972/1997; Raharjo 1981/1997; Ramstedt 2012b, 1-4; 2017, 56).

The law reform accompanying decentralisation involved four constitutional amendments between 1999 and 2002 that strengthened democratisation through the adoption of an expansive catalogue of human rights and the devolution of a high degree of administrative, fiscal and legislative power to the regions (Aspinall and Fealy 2003; Butt and Lindsey 2012, vii, 7, 20-23; Ramstedt 2019b, 314). It thereby addressed and rectified many of the public grievances. However, increasing democratisation also lifted the lid off hitherto suppressed political aspirations of conservative Muslims, non-Islamic religious elites, and new and old ethnic leaders, spurring vocal politics of recognition amid violent inter-ethnic and inter-religious conflicts that accompanied the first years of decentralisation (Ramstedt 2019b, 310-312).

[2] In 2000, President Abdurahman Wahid, through Presidential Decree No. 6 from 2000, abolished Suharto's Presidential Instruction No. 14 from 1967 on the Restrictions of Chinese Religion, Belief and Culture which had suppressed Indonesia's first President Sukarno's recognition of Confucianism (*Agama Khong Hucu*) through Law No. 1/PNPS/1965.

2.1. The Indonesian customary law movement

Local movements across the archipelago, coordinated and supported by the "Alliance of Customary Communities in the Archipelago (*Aliansi Masyarakat Adat Nusantara*, *AMAN*)," founded in 1999 by leaders of twelve ethnic groups in Jakarta, began to push for the juridification of local customary law systems to discontinue land grabbing by the state and foreign investors, the disenfranchising of local citizens through relentless–under Suharto frequently state-orchestrated–in-migration of national citizens from other islands, and the suppression of ethnic and/or local mystical traditions by state-backed bodies of religious orthodoxies. *AMAN*'s group membership rapidly grew from twelve to 776 communities in 2009, 2,304 communities in 2018, and 2,449 communities in 2023, encompassing some 20 million individual members from among Indonesia's total population of 284,440,000 people (Jong 2023, *Statistik Indonesia* 2025, 123).

Aligning itself with international indigenous rights organisations, such as the Asia Indigenous Peoples Pact (AIPP), the International Working Group of Indigenous Affairs (IWGIA), and the Indigenous Peoples Caucus (Moniaga 2007, 275-285; Sangaji 2007, 320; Arizona and Cahyadi 2013, 49; Ramstedt 2017, 59), *AMAN* obtained substantial support from international donor agencies, such as Ford Foundation and Packard Foundation, and the World Bank (see Newsroom 2023, Walhi 2023). Between 2012 and 2016 alone, *AMAN* received over ten million USD. In 2017, the World Bank, inaugurated a new multi-million-dollar project to aid Indonesian forest-dependent communities (Muur 2019, 87, 90-91; Jong 2023). As a well-funded organisation, *AMAN* gained some influence in national politics. Several *AMAN*-related politicians were elected to office in the 2014 and 2019 national elections (see AMAN n.d.).

For its legal struggle, *AMAN* revived the colonial understanding of "customary or *adat* communities (*masyarakat adat*)" as "autonomous communities governed by customary law and customary institutions." *AMAN* thereby followed the conceptual framework of its predecessor activist organisation, the Indonesian Network of Indigenous Peoples' Rights Defenders (*Jaringan Pembelaan Hak-Hak Masyarakat Adat*, *JAPHAMA*), founded in 1993. The definition of *adat* communities espoused by *JAPHAMA* and *AMAN* stands in opposition to the official usage of the colonial concept in postcolonial Indonesia. Under the heading of *adat* community (*masyarakat adat*), the Indonesian state distinguishes between "traditional communities (*masyarakat tradisional*)" and "*adat* law or customary law communities (*masyarakat hukum adat*)," reserving *AMAN*'s definition of *adat* community for *adat* law communities. Only the latter are entitled to a varying degree of judicial autonomy. Not every *adat* community is thus recognised as a customary law community by the state, and the formal criteria for recognition remain unspecified in law. *AMAN*'s foremost goal is to achieve state-recognition of all *adat* communities as *adat* law communities. Only the latter status includes collective sovereignty over the traditional commons. In the international outreach, *AMAN* equates *adat* communities with "indigenous communities" (Ramstedt 2009, 344, 358; 2017, 56-60; 2019b, 317-318; Dewan Perwakilan Rakyat 2017, 2, 10-11; Muur 2019, 13-14, 23, 43-45, 76, 88).[3]

[3] Even though Indonesia voted in favour of the adoption of the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the state has never recognised "indigenous peoples" in its territories because aside from the comparatively small number of Indonesians with a "foreign ethnic," that

By 2023, *AMAN* had secured major policy victories. Having mapped over 20.7 million hectares of so-called *adat* land, a key step in securing land tenure and preventing land grabbing, *AMAN* helped bring about the inclusion of *adat* land maps into the One Map Initiative at the Local Level.[4] *AMAN* had also successfully lobbied for state recognition of so-called *adat* forests. Indonesian Supreme Court issued Ruling No. 35 on Adat Forests from 2012 conceded that the Forestry Law No. 41 from 1999, which already recognised *adat* forests as such but still designated them as state forests (Art. 1/6), was an infringement of the legitimate rights of customary law communities and thus a form of constitutional violation. Instead, *adat* forests should be separated out from state forests (Arizona and Cohen 2024, 180; *Statistik Indonesia* 2025, 330). Altogether 159 pro-customary rights laws have by now been issued in provincial and district jurisdictions (Jong 2023).[5]

The earliest regional regulations legally empowering local customary institutions, including customary judicial tribunals, were issued in Bali, West Sumatra, Aceh, and South Sulawesi. Recently, the Province of South Kalimantan followed suit. Applications from other parts of Indonesia are currently under review.

2.2. The Balinese case

The newspaper *Nusa Bali* from January 25, 2025, reported that 1,500 customary villages (*desa adat*) are currently recognised in Bali, based on Balinese Provincial Regulation No. 4 on Customary Villages from 2019 (BPR No. 4/2019) that replaced BPR No. 3 on Customary Villages from 2001 and 2003. The regulation defines *desa adat* as individual jurisdictions upholding the three principles of the reconstructed Hindu-Balinese "Three Causes of Wellbeing" (*Tri Hita Karana*) philosophy: harmony with the deities, harmony among humans, and harmony with nature (Ramstedt 2009, 345-350; 2014, 61-68). Geared towards preserving or restoring purity or sacredness of life, the ocean, springs, forests, humans, and nature in general (*Sad Kerthi*), BPR No. 4/2019 thus confirms and exceeds BPR No. 16/2009 (Art. 1.40-41, 1.64-69, 44.1-12, 50.1-3) on Spatial Planning seeking to protect not only the sanctity of Balinese Hindu temples, but also that of natural areas traditionally revered as sacred by the Hindu-Balinese population, like mountains, lakes, springs, certain coastlines, or the ocean (Ramstedt 2014, 74).

According to BPR No. 4/2019, the sacred space of each Balinese customary village is constituted by three distinct village temples (*Kahyangan Tiga*): the ancestor temple, the village assembly temple, and the death temple. Customary village membership (*krama desa*) entailing local citizen rights is predicated upon patrilineal descent from the village ancestors, adherence to the Balinese Hindu tradition, official registration with the customary village administration and regular participation in the ritual labour at the three village temples (Ramstedt 2009, 345-346). Apart from the *krama desa*, a customary village community might also host Balinese "guest residents" (*krama tamiu*) who are Hindu Balinese registered as local citizens (*krama desa*) in another Balinese customary

is, a Chinese, Indian, Middle Eastern, and European background, the vast majority of citizens are members of ethnic groups that are all indigenous to the archipelago (Ramstedt 2019b, 317).

[4] See https://wri-indonesia.org/en/initiatives/one-map-initiative-local-levelinisiatif-satu-peta-di-tingkat-tapak

[5] See www.aman.or.id

village. Customary villages may furthermore accommodate "guests" (*tamiu*), considered to dwell in the village only temporarily, like Indonesian nationals from other islands or Westerners leasing a piece of land. Each customary village must have a written village constitution (*awig-awig*) containing the different regulations for the different categories of residents. Most *desa adat* communities already had written *awig-awig* prior to their juridification. These only needed re-editing according to the standard template. Newly constituted customary village communities, however, which had formed in a rush to the new resources provided by the Balinese regulations recognising local *adat* villages– called the flowering (*pemekaran*) of new customary villages–, had to compile a completely new village constitution (Ramstedt 2009, 346-347; 2014, 73).

The regulation further specifies that each *desa adat* administration team is to be headed by a *kelian adat*, elected according to local custom. Each *desa adat* must have a judicial institution (*kerta*) with the authority to adjudicate material and spiritual transgressions against deities, humans and the land. The "Three Causes of Wellbeing" are guarded by a kind of village police (*pacalang*), armed with the Balinese traditional dagger (*keris*) and obliged to also assist state police in cases beyond customary village jurisdiction (Ramstedt 2009, 349). Each customary village must furthermore have an expert body managing the economic resources of the customary village. It is to operate on local customary law as well as modern management techniques to ensure local prosperity. Lastly, each customary village must have a micro banking institution (Seibel 2008; Ramstedt 2009, 347), a stipulation which confirms BPR No. 3 from 2017.

During my long-term research in Bali (involving extensive and immersive participation in village temple ceremonies, judicial tribunal gatherings, customary law trainings for customary village elders, and customary law seminars for jurists and administrators, along with repeated in-depth interlocution with Balinese customary law experts and trainers, lawyers, customary village heads, and priests), I ascertained that the activism for the juridification of local customary law was motivated above all by large-scale exploitation and frequent desacralisation of natural and cultural environments in form of tourist mega-projects largely benefitting Suharto's family and "clients." Moreover, juridified customary villlages promised to constitute a bulwark against in-migration from other islands, constraining economic competition from newcomers and guarding against Muslim and Christian attempts at proselytising. Finally, juridification helped protect a magical worldview Suharto's religious policies had sought to eradicate (Ramstedt 2009, 330-342; 2012a, 3-4; 2014, 74).

However, juridification exclusively benefits members of local *krama desa*, as only they enjoy full local citizen rights. Muslim, Buddhist, or Christian Indonesians, non-Balinese Indonesians, and even Balinese who have converted to Christianity, Buddhism or an Indian neo-Hindu sect disdainful of Balinese traditional ritualism are highly disadvantaged under *adat*. Moreover, the rule of local customary law has a gender bias, because Balinese Hindu women who enjoy local citizen rights through marriage with a patrilineal descendant from one of the village founders are subject to the customary division of labour and duties. Representation in the *desa adat* assembly and access to functions in the customary village administration, etc., are usually the prerogative of the husband. Wives are mainly responsible for the time-consuming preparation of ritual offerings for worship at the village temples. Unmarried Hindu Balinese men and

women, or couples without children do not have a say in village affairs nor access to the economic benefits from the local micro banking institutions (Ramstedt 2009, 330, 361; 2014, 74-75; 2019b, 323-324).

It is therefore fair to say that non-members as well as structurally "weaker" members of local *krama desa* live under a kind of decentralised despotism. In the name of *adat* law, new and old elites have reasserted their power at the local level, to the detriment of various kinds of disenfranchised residents (Klinken 2002; 2007). By strengthening, fixing, and standardising customary village constitutions and the functions, competencies, and procedures of customary village administration teams, local check-and-balances that still existed under Suharto are not easily available any longer. Formerly, decisions made by village elders could be reversed by appeals to state institutions, such as secular law courts, regional branch offices of Indonesian ministries, or local battalions, and by divine judgment revealed through trance to village mediums and priests (Ramstedt 2013, 120; see also Fitzpatrick 1984, 23-24).

Lastly, current legal accommodation of Balinese village customary law mirrors the colonial policy of "Balinisation (*Baliseering*)," a kind of retraditionalisation strategy that sought to turn Balinese villages into idealised, autonomous "village republics (*dorpsrepublieken*)" under colonial care, protected against aesthetic, religious, and political interference from the outside, including the pan-Indonesian nationalist movement (Schulte Nordholt 1996, 240-243; Ramstedt 2009, 355; Pageh *et al.* 2021).

2.3. The case of West Sumatra

Likewise in West Sumatra, colonial policies strengthened Minangkabau customary villages (*nagari*) against reform-Islam rivalling Dutch colonial interests. During and after the *Padri* War (1821-1838), the Dutch supported local *adat* leaders to weaken the influence of the Islamic reformers (Benda-Beckmann and Benda-Beckmann 2013, 67-98). After independence, the *nagari* fell into decline. The institution was maintained, though, due to incomplete legal unification under the presidencies of Sukarno and Suharto and local resistance against centralist policies, in-migration from other parts of the country, and land grabbing that finally encouraged broad support of the "return to the *nagari*" after Suharto's downfall (Benda-Beckmann and Benda-Beckmann 2009, 311-312; 2013, 7, 151-155).

Local citizenship, i.e., full membership in the *nagari*, was traditionally defined by actual or putative matrilineal descent from one of the foundational matrilineages. Citizens of a given *nagari* settling permanently in another *nagari* had to be "adopted" by a local "parent" matrilineage through whom they would have access to *adat* land. Non-Minangkabau migrants could also settle in a *nagari* through incorporation into a "patron" matrilineage, without recognition of any putative genealogical ties. Under Suharto's transmigration programme–an instrument of population redistribution geared towards solving Indonesia's welfare problems and furthering national integration–poor peasants from overpopulated islands were encouraged to settle in less populated ones, like Sumatra for instance (Tirtosudarmo 2013, 6-16). "The regional governments, whose lands were designated as receiving areas (…) were basically passive participants in the planning and implementation processes" (Tirtosudarmo 2013, 2), and the transmigrant newcomers were usually deeply resented for their lack of

knowledge of local customs and customary law (Tirtosudarmo 2013, 17-47). With the revitalisation of the *nagari* as customary law communities through successive West Sumatran provincial regulations between 2000 and 2018, these newcomers are again excluded from economic and political decision-making in the customary areas they have been living in. Because the revitalisation of the *nagari* entailed, to some extent, the revitalisation of traditional social hierarchies, the return to the *nagari* has also not been welcomed by all Minangkabau (Benda-Beckmann and Benda-Beckmann 2009, 293-297; 2013, 52-53; 2013, 49-50; Ramstedt 2019b, 325-326).

The juridification of the *nagari* does serve as a protection of traditional matrilineal descent and inheritance against the increasing legal accommodation of Islam in West Sumatra. So far, 54 regional regulations were issued that strengthened *shari'a* law in all areas of Minangkabau life beyond *nagari* affairs. Contemporary West Sumatran Islamic organisation, like the *Padri* Alliance (*Alliansi Padri*), seek to enforce an Islamic dress code, eradicate worldly vice, like gambling, and guard against Islamic heterodoxies, like Ahmadiyya or Shi'a (Buehler 2016, 176-177). This suggests tension between pro-*adat* and pro-Islam activists in the region.

2.4. Islamisation by law

The highest concentration of *shari'a* regulations can be found in West Java, West Sumatra, South Sulawesi, South Kalimantan, East Java, and Aceh (Buehler 2016, 2, 11, 174; Isnadi 2023). To date, throughout Indonesia, more than 700 *shari'a* regulations have been issued. Islamic norms are furthermore accommodated in the Indonesian Constitution and in national law (Boland 1971, Ramstedt 2012a, Kurnia 2018, Purwaningsih 2019, Isnadi 2023, Harsono 2024). In earlier publications building on my research on the legal accommodation of Islamic norms and institutions in postcolonial Indonesia, I mentioned that contrary to rising Islamisation by law Islamic political parties have never scored an electoral victory in the national political arena (Ramstedt 2012a). They have been relatively successful only in regions with large Muslim constituencies, like in the afore-mentioned six provinces.

In 1945, legal accommodation of Islam had been significantly restrained by the representatives of secular nationalism and socialism within the body drafting the constitution in preparation for Indonesian Independence (Boland 1971, 25-39, 164-174). Under the presidency of Sukarno and the first two decades of Suharto's rule, the state continued this policy of restraint, not the least because of the danger of separatism the Darul Islam movement (1949 to 1965) had posed to Indonesian unity (Ramage 1995, 19-39). Legal recognition of Islamic norms and institutions only started to gain ground from 1989 onwards, when Suharto shifted his power base to the increasingly affluent and vocal Indonesian Muslim middle class. Strengthening Islamic educational and legal institutions and giving the latter greater judicial authority, Suharto still did not give leaders of political Islam access to posts in regional and national government, though. With decentralisation, Indonesian conservative Muslims finally pushed for positions in the government and greater legal accommodation of Islam (Ramstedt 2012a; 2019a, 270-275; 2019b, 319-329; Buehler 2016).

2.5. The case of Aceh

Like the Province of West Sumatra, the Special Autonomous Region of Aceh has issued both *shari'a* and *adat* legislation. Prior to the issuance of Acehnese Regional Regulations No. 9 from 2008 on Fostering and Maintaining the Life of Customs and Traditions and No. 10 from 2008 on Customary Institutions, Law No. 44 from 1999, Law No. 18 from 2001, and Law No. 11 from 2006 had already provided the foundation for a far-reaching legal accommodation of *shari'a* law. These laws were then followed up with 24 *shari'a* regulations, the most important being *Qanun* No. 7 from 2013 on Criminal Law which stipulates drastic corporeal punishment, including cane strokes, for crimes, such as drinking alcohol, gambling, prostitution, adultery, rape, sexual harassment, or sexual perversion (Ramstedt 2012a; 2019b, 5; Buehler 2016, 152-153, 161). The regional regulations on *adat* institutions stipulate that local customary law tribunals must not go against principles of *shari'a* law when adjudicating *adat* conflicts.

2.6. The case of South Sulawesi

In the Province of South Sulawesi, in which most districts have a Muslim majority, 47 *shari'a* regulations have been issued since 2003. They have enforced an Islamic lifestyle on the local populations, regardless of individual convictions (Ramstedt 2012a, 9; Kurnia 2018). The predominantly Christian Sa'dan Toraja inhabiting the mountainous area of South Sulawesi have striven for greater administrative and cultural autonomy from the Muslim lowlands of the province since Independence. When the Darul Islam kept the lowlands of South Sulawesi in its grip between 1950 and 1965, the Toraja grew increasingly wary of Islamic and Bugis encroachment and demanded a district of their own, Tana Toraja, a request granted in 1959 (Ramstedt 2004, 198-200; Roth 2004, 161-176; 2007, 121-125; Jong 2009, 260-262, 272-273).

From the 1980s onwards, Tana Toraja was developed as a destination for cultural tourism and experienced almost two decades of folklorisation and commercialisation of local culture. Such depoliticization of local *adat* engendered a weakening of customary institutions (Ramstedt 2004, 213; Jong 2009, 256, 271). Decentralisation engulfed Toraja elders in a tangle of local identity politics–further incinerated by continuous mass violence between Christians and Muslims that had broken out in the Province of Central Sulawesi–which eventually led to the division of Tana Toraja into the districts of North and South Toraja, based on Law No. 28 from 2008. The southern district covers the former Kingdom of Sangalla with a highly stratified social organisation. The northern district is more remote and much less hierarchically structured (Ramstedt 2004, 187-188; Roth 2007, 140-144; Jong 2009, 264-265).

Both districts have claimed recognition of local customary law communities. Toraja customary law activism had acquired momentum in 1999, when a woman from the Sa'dan Toraja had been elected to the helm of *AMAN*. Leaders from the area of Sangalla soon obtained recognition of southern Toraja customary villages through Tana Toraja Regional Regulation No. 2 from 2001 on the *Lembang* which it defined as a "political and administrative unit which (…) covers a geographical area of a group of people that since generations have a common ancestral origin and share a socio-cultural set of laws and values as well as a traditional form of government organization" (Jong 2009, 257, 277). The head of the *lembang* administrative body is to be elected by the *lembang* citizenry.

However, according to *adat* only members of the upper strata of Sangalla's traditionally four-tiered societal organisation are eligible candidates. During my fieldwork in Tana Toraja, I could ascertain that the efforts of getting the *lembang* recognised as a customary law community gave boost to local political conflicts and powerplay. After the issuance of the 2001 *lembang* regulation, critics pointed out that it encouraged re-feudalisation rather than democratisation. Tana Toraja Regional Regulation No. 3 from 2015 answered some points of the critique, stipulating that the *lembang* council should comprise democratically elected representatives of local women and youth, along with local public figures, customary law experts, and representatives of professional groups. Moreover, the poorer strata of Toraja society should also be actively involved in local decision-making (Jong 2009, 277-281; Ramstedt 2019b, 326-327).

District of North Toraja Regulation No. 1 from 2019 on the Recognition and Protection of the Rights of Customary Law Communities (Art. 1.7-9) provided a legal framework for the recognition of local customary law communities in the more remote part of Tana Toraja. Here, a customary law community is defined as a group of lineages that originate from a common ancestral house (*tongkonan*), who has a customary legal order, customary governance institutions and a strong bond with the local land and its natural resources. The *tongkonan* has authority over local resource (land, forest) management, and its head is to be elected from among the *adat* elders (Art. 17.1-3). (Art. 24.1-2).

2.7. The case of South Kalimantan

South Kalimantan Provincial Regulation No. 2 from 2023 on the Recognition and Protection of Customary Law Communities took Kotabaru Regional Regulation No. 17 from 2017 on Dayak Customary Institutions to a higher level in that it addresses not only customary institutions and local culture but also customary stewardship of land and forests (Art. 1.9, 1.16, 1.20, 16.1-3, 17.1-3, 18.1-2, 19.1f). It needs to be noted, though, that the issuance of 38 *shari'a* regulations in the province marks it as one with a Muslim majority population, where a Court of Islamic Affairs was already established under the Dutch in 1937 (Boland 1971, 173; Kurnia 2018).

2.8. Conclusion

The rise of human rights infringements–violence against religious minorities and adherents of Islamic heterodoxies, repression of individual freedom of religion, structural discrimination of women, police harassment and public flogging of persons of LGBTIQ identity–accompanying the increasing legal accommodation of Islam in post-Suharto Indonesia has received broad international attention (Ramstedt 2012a, 19-21; 2019b, 312, 321; Harsono 2024; Ilga Foundation 2025). The ills engendered by the juridification of customary law communities–rigidification of formerly flexible *adat* law traditions, constraint of national citizenship rights through local citizenship entitlements, re-feudalisation and emergence of new local elites that hamper democratisation, concomitant development of new forms of collusion, corruption and nepotism that limit access to local economic and political resources–have aroused far less international concern. The recognition of Indonesian customary law communities has in fact entailed a revitalisation of aspects of colonial decentralised despotism (Mamdani 1996/2018, 25-34). It thereby attests to the continuation of a "colonial matrix of power" (Quijano 2014). What is more, the supporters of Islamic law and customary law activists

seem to have been locked into opposite positions, which is arguably another heritage from the colonial past.

3. Towards an epistemological unmaking of permanent minorities in Indonesia

To unmake permanently fixed minorities in Indonesia, Mamdani advises us to trace their conceptual fixation back to 18th and 19th century European organicist thought (Mamdani 2020, 18-23, 36, 335), a "(…) tradition of thinking about human societies as harmonious wholes, bound together by the force of custom and tradition" (Bourchier 2019, 600). A main protagonist of organicism was the German philosopher Johann Gottfried Herder. His idea of the "people's spirit (*Volksgeist*)," shaped by the respective people's historical development in a certain environment and expressed through that people's language, customs, cultural traditions, and collective memories, was transposed into legal thinking by Friedrich Carl von Savigny (1779-1861), the founder of the German Historicist School of Jurisprudence. For Savigny, justice–like language, culture, etc.–organically emanates from the *Volksgeist* and manifests most strongly in customary law (Savigny 1840, v-vi, 4-12, 21-23, 54-110, 131-133, 137; Niedostadek 2014; Bourchier 2015, 12-14; Wulf 2018, 3, 11-16).

The Dutch legal philosopher-cum-politician Johan Rudolf Thorbeke (1798-1872) translated Savigny's jurisprudential ideas into contemporary Dutch legal debates and inspired both the fledgling Dutch customary law research and the choice of the Dutch colonial government for promoting legal pluralism rather than legal unification in the Netherlands Indies. It was Cornelis van Vollenhoven (1874-1933) who later defined the term "customary law community" in the spirit of Savigny. Van Vollenhoven was instrumental in the colonial government's choice to retain and further develop legal pluralist arrangements in the early 20th century Netherlands Indies. An empiricist himself, he admired Jacob Grimm's encyclopaedic studies of German customs, language, and folk law. Grimm, who had been a student of Savigny and a member of the German Historicist School of Jurisprudence, became a model for Van Vollenhoven's documentation of customary law in the archipelago (Heusler and Rübner 1956, viii, xviii-xix; Henley and Davidson 2007, 33-34). One of his most influential students, Barend ter Haar provided the methodological blueprint for the current revitalisation of *adat* law in Indonesia (Utama *et al.* 2024, 3).

4. The creation of decentralised despotism in the Netherlands Indies

In 1820, the Dutch government commissioned Thorbeke to study law codes at universities in post-Napoleon German states. In Berlin, Thorbeke met with Savigny and published his reflection on Savigny's thought under the title, *On the Essence and Organic Character of History* (1824). In 1830, Thorbeke became Professor at Leiden University, where he developed his ideas of Dutch political citizenship that excluded non-European colonial subjects from the colonial citizenry on cultural, religious, and racial grounds (Verheijen 2021, 471). Thorbeke had the opportunity to implement his ideas, when in 1848 he became head of the Committee for the Revision of the Dutch Constitution and a year later Minister of the Interior (Blok and Molhuysen 1918, 1309-1326; Kossmann 1987, 306-341).

The 1848 constitutional reforms required the legal structure of the colonial government of the Netherlands Indies to be brought under the new constitutional framework, making the Dutch Crown and Parliament the central actors in colonial governance. The "native" population and local elites in the Netherlands Indies had no role in the constitutional system established by the 1848 reforms. The 1854 Netherlands Indies Colonial Act and follow-up regulations promulgated a tripartite racial classification of the population of the Netherlands Indies into Europeans, natives, and foreign Orientals (Verheijen 2021, 448-467). Only Europeans were treated as citizens, governed by the Dutch civil (*Burgerlijk Rechtsvordering*) and criminal code (*Strafvordering*), whereas natives and foreign Orientals Europeans were regarded as colonial subjects. The former were governed by a separate code, the *Indisch Reglement* from 1848 (Lev 1985, 61), and the latter, i.e., people of Chinese, Hadrami, Indian, Turkish, Persian, etc., descent, were adjudicated according to their respective customary laws. Interracial commerce was regulated according to Dutch law. Many foreign Orientals came from families that had lived and traded for several generations in the archipelago and were thus not necessarily seen as foreign by their native neighbours (*SvhKdN* 1883, 267; *EvNI* 1917, 483; Furnivall 1939/1967, 157, 24; Ramstedt 2018, 269; Verheijen 2021, 453, 469). The new regulation now turned them into "foreigners" and posited them racially against "the natives."

From the segregation of the population in the Indies followed the establishment of a plurality of parallel courts administering different kinds of justice to the different ethnic groups. Rural district courts (*landraden*) handled the claims and crimes of natives based on the *Indisch Reglement*, a kind of procedural law for natives (Logemann 1958, 314; Lev 1985, 61). A high-level Dutch administrator presided over the sessions at the native courts, where native aristocrats and customary law specialists had a major say in the judgment. Leaders of local Islamic and Chinese communities served as advisers on their respective customs (Lev 1985, 59-60; Ravensbergen 2019, 159).

In 1902, Leiden University became the sole institution for educating colonial administrators, inter alia in customary or *adat* law (Prager 2002, 446, Ravensbergen 2019, 167). The first Dutch scholar to use the term *adat* law as a generic concept for all Indonesian customary law systems was Christiaan Snouck Hurgronje (1857-1936), an Arabist who in the mid-1880s had formally converted to Islam to do research on the Indonesian Muslim community in the Al Haramayn (Snouck Hurgronje 1894, xi-xxiii; Locher-Scholten 1994, 107-108; Doel 2021, 7, 49-98, 480; Witkam 2022, 2, 76-88). In 1889, Snouck Hugronje was made adviser on indigenous and Islamic affairs to the colonial government in the Indies against the backdrop of the ongoing Aceh War. Two years later, he was appointed as Official Adviser on Colonial Affairs to the Dutch Government (Witkam 2022, 88-89).

The Arabic term *adat* had originally been introduced to the archipelago by Islamic merchants and referred to all customs that could not be integrated into Islamic law (*EvNI* 1919, 530-531; Lukito 1997, 208-209; Engelenhoven 2021, 696, 699). Local proponents of Middle Eastern reform-Islam seeking to purify religious law from all traces of *adat* became ever more influential at the beginning of the 19th century, particularly in Sumatra. After the Dutch had defeated the reformers (*Padri*) in West Sumatra, they further constrained their influence by empowering local customary law chiefs wary of the Islamisation of their tradition. In 1873, the Dutch attacked the Sultanate of Aceh, a

powerful commercial centre that had successfully played off the different European colonial powers in the region against each other. Learning from the West Sumatran experience, Snouck Hurgronje recommended to use influential Acehnese *adat* law chiefs as allies against the proponents of reform-Islam to attain victory in Aceh. He consequently defined *adat* in stark opposition to Islamic law (Snouck Hurgronje 1894, 23-48, 120, 219, 307, 349, 366; Maaten 1948, 70-78, 95, 261-278; Ricklefs 2001, 182-189; Federspiel 2007, 104-105; Feener 2013, 22; Doel 2021, 149-153; Witkam 2022, 90).

In 1907, Snouck Hurgronje received a professorship at Leiden University, where he also served as an examiner in the programme for colonial administrators. He found in the much younger Van Vollenhoven a congenial supporter of his *adat* policies (Fasseur 1994, 390-391; Doel 2021, 309-316). Van Vollenhoven himself had visited the Indies only briefly in 1907 and 1932 (Holleman 1975, 10). His interest in Indonesian customary law had been roused by his professor at Leiden University law school, Jacques Oppenheim. In 1893, Oppenheim had given his inaugural speech on 'The Theory of the Organic State and Its Value for Our Time,' in which he had praised the intellectual merits of the German Historicist School of Jurisprudence (Bourchier 2015, 18-19). In 1897, Van Vollenhoven became private secretary to the Dutch parliamentarian and Sumatran planter J. Th. Cremer who shortly afterwards was appointed as Minister of Colonial Affairs (Fasseur 1994, 325-362). Until 1901, Van Vollenhoven held the position of Deputy Commissioner at the Ministry of Colonial Affairs, where he further developed his interest in the "living law" of the Indies (Holleman 1981, xii). He would soon, like Savigny, advocate for policies supporting plural folk law ("*volksrecht*"), and not lawyer's law ("*Juristenrecht*") (Nilsson 2007, 10, 16; Bourchier 2015, 23; 2019, 606). In 1901, Van Vollenhoven succeeded Pieter A. van der Lith, another proponent of German organicist jurisprudence, as Chair of Mohammedan Law, Constitutional Law and Institutions of the Realm in Leiden. Van Vollenhoven immediately abolished Islamic law from his research portfolio and replaced it with *adat* law. The fact that the Aceh War was still far from being settled made him turn his attention first to the Acehnese *adat* law system (Holleman 1981, xiii; Otto and Pompe 1989, 234; Burns 1999, 3-4, 320; Bourchier 2015, 22). In 1909, Van Vollenhoven initiated the establishment of a Customary Law Commission at the Colonial Institute in The Hague, to which Snouck Hurgronje was appointed as chair (Sonius 1981, lvii). In the same year, the first school for the training of native legal experts in colonial service (*Rechtsschool*) was established in Batavia. In 1920, the *Rechtsschool* from 1909 was replaced by an upgraded institution (*Bataaviasche Rechtshogeschool*), which opened in 1928 (Moeliono 2020, 281).

In 1921, the Commission of Constitutional Reform within the Ministry of the Colonies appointed Van Vollenhoven's old professor Oppenheim as head of a committee tasked with the drafting of a separate constitution for the Indies. The committee included Snouck Hurgronje and Van Vollenhoven. Their influence led to a pluralisation of the racial categorisation of "the natives," expressed in the creation of new administrative units on the islands beyond Java which were based on the nineteen *adat* law circles (*volksrechtskringen*) Van Vollenhoven and his students had identified in their customary law research. Van Vollenhoven taught that all native communities in the archipelago, while culturally distinct, were instantiations of a pan-Indonesian *adat* law system. Native communities consisted of different autonomous *adat* law communities (*adatrechtsgemeenschappen)* with a collective right to allocate land and water use

(*beschikkingsrecht*) to its members. Van Vollenhoven identified native customary law communities at various levels: village customary law communities, supra-regional lineage customary law communities, customary irrigation law communities, and so forth. The different customary law communities were again grouped into the nineteen *adat* law circle (Holleman 1981, 41-44; Burns 1999, 17, 31-33, 223-239). Emulating Jakob Grimm, who had published his compilation of *The German Legal Antiquities* (*Die Deutschen Rechtsalthertümer*) in 1828 (Rau 2014), Van Vollenhoven catalogued and analysed a plethora of sources, including Indonesian folklore, and directly supervised 67 PhD dissertations (Otto and Pompe 1989, 243, 249; Bourchier 2015, 21-23). The results of Van Vollenhoven's *adat* law project appeared in the *Adatrechtbundels* collection, a series of articles on different Indonesian customary law systems published in addition to the *Pandecten van het Adatrecht* (Ellen 1976, 312-317; Prager 2002, 446; Vermeulen 2002, 96-97; Velde 2002, 650-656, 665).

One of Van Vollenhoven's most influential students, Barend ter Haar, was appointed as Professor for *Adat* Law at the *Rechtshogeschool* in 1928, where he taught until 1939. Previously, Ter Haar had served at various *landraden* in Java and then directly under the Director of Justice (Lev 1985, 68; Burns 1999, 246). This hands-on experience led him to advocate for the transformation of *adat* law into positive colonial law. His approach to *adat* law was to greatly influence university courses and research on local customary law in postcolonial Indonesia (Haar 1915, 1-3, 101; Ossenbruggen 1940-1941, 214-221; Burns 1999, 246-247, 253; Utama *et al.* 2024, 11).

In 1931, the colonial government abolished the independent Islamic courts (*Staatsblad No. 53*), replacing them with so-called *penghulu* courts, where native experts on Islam (*penghulu*) operated as salaried colonial officials. A year later, *penghulu* were prohibited to assist in Muslim Minangkabau and Batak marriages (see *Staatsblad No. 482*, *Art. 4*, *Paragraph 2B*) to not interfere with the respective *adat* traditions. A further regulation (*Staatsblad 116*) stipulated that disputes over inheritance should no longer be settled according to Islamic but to *adat* law (Lukito 1997, 209-210; Burns 1999, 211-214).

In 1939, the Javanese aristocrat Raden Soepomo, another former student of Van Vollenhoven, inherited Ter Haar's chair at the *Rechtshogeschool* (Ossenbruggen 1940-1941, 214-224; Holleman 1981, xxxix, xlix). Proud of the longstanding Hindu-Buddhist culture of ancient Java, Soepomo was strongly opposed to Islam (Ramstedt 2019a, 270). Van Vollenhoven's argument that "The destruction of *adat* law will not pave the way for our codified law, but for social chaos and Islam" (Holleman 1981, 122; Lev 1985, 66), had therefore landed well with him (Ramstedt 2013, 113-114; see also Ellen 1976, 320).

5. Islam and *Adat* under Japanese occupation

In 1942, the Japanese occupation government removed all Dutch from the colonial administration, replacing them with native aristocrats joined and supervised by Japanese officers (Benda 1956, 541-560; Lev 1973, 5, 8; Rohmadi and Warto 2019, 175). A new Office for Religious Affairs (*Shumbu*) tasked with dissociating Indonesian Muslims from the radical Indonesian nationalist movement (Benda 1956, 554-556), was matched with a Committee on *Adat* and Traditional Governance which included future President Soekarno and Soepomo (Lev 1973, 6, 9-11; Bourchier 2019, 606-607).

Shortly before Japan's capitulation, the Japanese occupation force established an Investigative Body for Preparatory Efforts for Indonesian Independence. Soepomo was appointed as leader of the expert sub-committee tasked with drafting a basic law for the future independent nation state. Inspired by Japanese and German fascist ideas, Soepomo promoted Van Vollenhoven's notion of *adat* law as a common denominator of all ethnic communities in Indonesia, and thus as the normative foundation of the Indonesian nation. The Basic Law, which was eventually promulgated by Sukarno on August 18, 1945, was a compromise, though, including both *adat* and Islamic principles, along with some human rights and the principle of judicial independence (Benda 1956, 541; Boland 1971, 16; Bourchier 2015, 69; 2019, 598, 608-609). Islamic influence was manifest in the first of the Five State Principles (*Panca Sila*), contained in the Preamble of the Basic Law–Belief in the One and Only God. An abstract notion of *adat* guided the understanding of the principle of Democracy as being based on unanimous decision-making, guided by wisdom in the deliberations of the people's representatives (Boland 1971, 25-38, 243-244; Lev 1973, 13; Burns 1999, 298-300; Nilsson 2007, 18-19; Bourchier 2015, 69-77; 2019, 609).

6. Diverging notions of customary law in post-colonial Indonesia

Japan's capitulation was followed by "two brief but bloody attempts at colonial reconquest" on the part of the Dutch (Benda 1965, 1061), who quickly installed puppet states in the areas, in which they succeeded in re-establishing their supremacy (Kroef 1950, 88-89). In 1950, however, the Republic of Indonesia finally received international recognition as a fully independent unitary nation state (Benda 1965, 1061; Ricklefs 2001, 262-284).

A thorough Indonesianisation process ensued which included the repatriation to the Netherlands of an estimated number of 241,000 Dutch citizens between 1950 and 1963 (2022, 375-376). In 1950, Muhammad Muhsin Djojodigoeno, Professor of Law at Gajah Mada University in Yogyakarta, criticised Ter Haar's attempts to codify *adat* law because the highly context-sensitive customary conflict resolution mechanisms would necessitate that *adat* law stays flexible. Djojodigoeno furthermore exhorted Indonesian jurists to identify elements of local *adat* law suitable to be accommodated in Indonesia's new national law and legal procedure (Hadikusuma 1992, 21; Sulastriyono and Pradhani 2018, 453-459). Indonesian efforts of changing the colonial court system had already begun in 1946. Local pro-Dutch aristocrats had been stripped of their governmental and judicial functions. The judicial innovations of the Japanese Occupation were largely kept, though (Lev 1973, 13; Ramstedt 2013, 115). However, *adat* law had clearly come under suspicion (Utama *et al.* 2024, 2), even though it still served as a nationalist emblem of autochthony and as a conceptual means to hold political Islam at bay.

In 1951, a new law did confirm the Islamic courts as a separate judicial institution, yet with only very limited authority (Lukito 1997, 213). In 1953, the Ministry of Justice replaced most of the customary courts maintained by the Dutch with state courts. In 1955, the Indonesian Supreme Court challenged the customary patterns of inheritance, following Minister of the Interior Hazairin's view that modern Indonesian inheritance law should prioritise a bilateral rather than a unilateral inheritance pattern, common throughout the archipelago. Hazairin furthermore argued for the legal accommodation of an interpretation of Islamic law that respects non-Arabic social contexts and social

change, thereby seeking to alleviate the tension between *adat* and Islam (Hadikusuma 1992, 99; Azharuddin and Tanjung 2022, 164-166). Acknowledging the Belief in the One Almighty God as the ontological base of the Indonesian state, Soediman Kartohadiprodjo, a professor of law at Universitas Indonesia in Jakarta, argued that God, rather than the people's spirit, is the basis of law (Moeliono 2020, 285).

The Basic Agrarian Law (BAL) from 1960 was the first attempt at legal unification. It recognised living *adat* law only, if the latter does not conflict with the interests of the state. However, stipulating that land owned by aristocratic landowners, *adat* chiefs, and rich Muslim merchants should be given to the tenants who cultivate it, the law caused landowners to switch their allegiance from Sukarno, who increasingly relied on the Indonesian Communist Party, to the conservative and decidedly anti-Communist military circle around General Suharto (Lev 1973, 16-31; Fitzpatrick 1997, 172-188; Lukito 1997, 212-213; Ricklefs 2001, 332-338; Ramstedt 2013, 115-116).

General Suharto, responsible for the quick suppression of the alleged Communist coup d'etat from September 30/October 1, 1965, ascended to presidency in 1967. His subsequent crack-down on true and alleged Communists helped Indonesia to attain US support and to achieve a remarkable degree of economic progress. Suharto's regime launched a countrywide Five State Principles education campaign in the mid-1970s, resulting in a thorough ideological streamlining of the country, accompanied by an increasing weakening of the authority of the Islamic courts (Bourchier 2015, 71, 187-188; 2019, 611). The tight control over the judiciary that had been put in place by Sukarno through Law No. 19 from 1964 was continued (Butt and Lindsey 2011, 204-206). Indonesia's plethora of indigenous traditions were reframed as mere cultural resources of a modern, essentially future-oriented secular nation (Foulcher 1990, 304-311; Ramstedt 2005, 212-215). In 1975, Gadjah Mada University in Yogyakarta organised a national seminar on *adat* law, where it was concluded that some *adat* norms and institutions should be accommodated in national law, albeit in a modernised form (Hadikusuma 1992, 32, 103-104).

In the early 1990s, both customary law and *shari'a* law activists began to reassert themselves. Due to the fact that Indonesian activists' notions of *adat* law were–and still are–influenced by Indonesian university courses on customary law that continued–and still do–to rely on colonial texts, interpreted "(…) according to civil law framework and treated as codes of law" (Utama *et al.* 2024, 3, 12-16), they conceptually empowered the identification and juridification of plural permanent minorities, rather than epistemologically unmaking them. In recent years, an Indonesian Dutch academic research team has been promoting socio-legal approaches in Indonesian legal training and research about *adat* law. The team argues that "Students need to understand *adat* not as a singular concept, but as multiple ideas interpreted differently by parties with different interests" (Utama *et al.* 2024, 19). Students also need "(…) to explore how long-term and extensive migration, commoditization, forest designation, and permit issuance have altered the meaning and applicability of (…)" the concept of *adat* land, and "(…) how *adat* law communities have adapted and reinterpreted this concept when facing encroachments on communal land by granting land rights to corporations" (Utama *et al.* 2024, 18).

Current efforts by Indonesian scholars to epistemologically unmake not permanent minorities but the ideological opposition between Islam and *adat* include attempts to revive Hazairin's ideas on the matter. Teguh Prawiro, a lecturer at the liberal Muslim National Islamic Universal Syarif Hidayatullah in Jakarta, recently referenced Hazairin, when arguing that, if one had an open conception of Islamic law that allowed for a dialectical relationship with *adat*, it would be justified to speak of a uniquely Indonesian school of Islamic law (Prawiro 2020, 139-151).

Lastly, there are sparse attempts to revitalise approaches to *adat* law from the early decolonisation period. They include the writings of the legal theoretician Bernard Arief Sidharta from Parahyangan Catholic University in Bandung (Moeliono 2020, 279, 284-287) and of Bono Budi Priambodo, Assistant Professor of *Adat* and Islamic law at the *Universitas Indonesia* in Jakarta. Both scholars reaffirm *adat* as the spiritual repository of the norms and values of the entire Indonesian people (Priambodo 2018, 158). In a similar vein, Boedi Harsono, Professor of Agrarian Law at Trisakti University in Jakarta, described the traditional *adat* lands as the commons of the Indonesian nation, managed by the state (Harsono 2003).

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