

The Concept of Adat and Adat Revivalism in Post-Suharto Indonesia

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1. Legal Pluralism and “Adat”

As Prof. Irianto has already mentioned in the paper, legal anthropology and the concept of legal pluralism have practical meanings in Indonesia today, for better understanding of a deeply pluralistic society. The possibility of meeting the practical needs is now being explored, for example through the activities of various NGOs. However, it is difficult to deny that some obstacles do exist. The complexity about applying legal pluralism is that “*adat*”, which have been the main subject of study for legal anthropologists, have multiple meanings and conflicting implications. I would like to provide some supplementary explanations on the historical background of the concept “*adat*”, along with the problems giving rise after the end of the Suharto regime. And after that, I will move on to put forward some points for discussion.

I would begin by briefly summarizing Prof. Irianto’s argument, focusing on the meaning of legal anthropology and legal pluralism in contemporary Indonesia. In the second part, some additional explanations on the word *adat* will be offered. The concept of *adat* has become quite complicated, as it has been interpreted in several ways throughout Indonesian history, reflecting the social situation of each period. Some aspects of *adat* were highly praised, while others were handled with careful manners. After the fall of the New Order regime in 1998, the so-called “*reformasi*” (reformation) era began, and simultaneously the contained elements of *adat* began to surface, which came to be called “*adat revivalism*”.

Next, case studies from the field site would be examined. Through these cases, we could observe how *adat* is being invoked as a strong source of justification in the post-Suharto era. One is the development of ADR in Indonesia, as also mentioned in the presentation, which includes the re-evaluation of traditional ways of dispute resolution based on *adat*. It could be seen as an attempt to place *adat* inside the national legal system, although in practice there are other elements giving effect to these processes. The other is the long-standing land conflict cases in East Sumatra, which could be traced back into the colonial era. The recent change of strategy in dealing with the matter would be discussed here.

2. What is “Adat”?

As already mentioned, legal anthropology and the framework of legal pluralism are facing practical demands, on how to deal with social diversity in Indonesia. With a population of over 230 million, 300 ethnic groups, and several religions and beliefs, pluralism of norms have always been a matter of concern in this country. Because of these facts, the importance of legal anthropology and legal pluralism are highly recognized as to become a studying subject in universities. Various NGOs are working to make use of the framework, for example on the issues of human rights, namely indigenous peoples’ rights or women’s rights, or reviving community-based methods of conflict resolution.

Regarding the unique characteristic of legal pluralism in Indonesia, it is worth emphasizing that it has “adat” as one of its core elements. And some activities of NGOs have their base on the respect toward the adat law. In national resource conflicts, HuMA provides legal aid for so-called “adat communities”.

Although the respect for adat is meaningful, it is also facing some difficulties, which could be considered as emerging obstacles also for applying legal pluralism. The Indonesian word “adat”, which is often translated as “custom” or “customary law”, has conflicting implications, and in some situation becomes the trigger for certain kind of problems. Building in the history of the studies of legal anthropology and legal pluralism discussed by Prof. Irianto, what follow is the supplemental descriptions of the concept of adat, and so-called “adat revivalism” in post Suharto-era¹⁾. What is adat? And in what sense is it being revived?

2.1. Several Implications and Historical Background

Adat is often considered to be one of the three major elements of legal plurality in Indonesia, consisting of national law, Islamic law, and adat law. In Indonesian law, adat, Islam, and the positive law of statutes are each considered to be the sources of law. And there is a wide range of usage within the word adat.

Adat can refer to custom, tradition, ritual, appropriate behavior, and rules or practices of social life. For example, in daily conversations, “adat of Java” could mean the Javanese people’s way of doing things in general. If they say “clothes of adat”, it would mean traditionally appropriate kind of clothing, used in rituals or ceremonies. Ethnic groups, approximately 300 of them, are normally supposed to be the bearers of adat. In Indonesia, it is an accepted routine to ask each other about which ethnic group they belong to.

Adat can mean everything, and because of that, have been the point of departure for

1) On the concept of adat, see [Bowen 2003], [Burns 2004]. On adat revivalism, see [Henley and Davidson 2007].

anthropologists, and legal anthropologists have accumulated vast data on the change and continuity of adat, and its relationship with Islamic law or state law.

Adat was first established as a subject of academic research in the early 20th century, by a Dutch legal scholar Cornelis van Vollenhoven, from the Leiden University. Initially adat was not considered to be the equivalent of the law in the mainland. Van Vollenhoven divided the archipelago of Dutch Indies into 19 legal regions, and with his fellow scholars worked on the codification of adat, producing as much as 45 volumes.

This can be said as the birth of adat law, not inferior to its European counterpart. This codification process is understood to be not so much of a colonial invention, but expressions and proverbs made into rules. After a hot controversy carried out in the 1920s, the Leiden school lead by van Vollenhoven formulated the concept of adat, to eventually overturn the generally accepted notion that the mere customs of the colony could not be considered as a form of law.

This controversy is called the Leiden-Utrecht Controversy, since the Leiden school's opponent was in Utrecht. What was at issue? It was the project of legal unification throughout the Dutch East Indies, which was underway at that period. Until then, different system of law was applied to the residents, in accord with racial distinction, whether they were Europeans, or foreign Orientals, those with Arab or Chinese origin namely, or natives. To put an end to this complexity, the project for the unified law of the Dutch East Indies was proposed in the 1920s.

Van Vollenhoven strongly opposed this project, arguing that the diversity of adat in various regions should be taken into consideration, before getting into nearly impossible task of designing law applicable everywhere. In the end, the project of legal unification was abandoned, and adat law came to be widely recognized as the law of the Indies.

After the official recognition of adat in 1920s, the influence of Leiden school continued, the concept of adat gradually developed into a symbol of anti-colonialism movement. Especially under "Guided Democracy" of President Sukarno, the idea of *gotong-royong*, meaning mutual aid, and *musyawarah*, meaning unanimous agreement reached after thorough discussion, was emphasized as part of Indonesian tradition.

Adat had the implication of regional diversity, and at the beginning of guided democracy, it provided the risk for disassembling of the newly born Republic. So a legal scholar, trained in adat law at Leiden University, introduced the ideas of adat, more to focus on the shared characteristic than on the local diversity. For example, in the article of 1960 Basic Land Law enacted two years later, respect toward adat rights is included.

Therefore, it could be said that adat law initially recognized by van Vollenhoven, found its place within the Republic of Indonesia, via Indonesian scholars educated in the Netherlands. The vocabularies derived from adat law worked to support national unity.

The New Order took a strict approach to nation-building. While Indonesia's cultural diversity

was acknowledged, no political rights were allowed. Efforts were carried out to limit adat to domains of marriage customs, kinship and art. A famous example is the theme park called *Taman Mini Indonesia Indah*, or the “Beautiful Indonesia in Miniature”, in Jakarta, reducing local cultures to a spectacle of “adat houses” and “adat costumes”.

Adat was certainly not a basis for resolving disputes, or regulating land use. Claims for land rights by village heads or others were subject to intimidation or detention. Local interests were placed lesser value than development purposes. This situation of land appropriation by the state provides the ground for the explosion of indigenous land claims now.

Some part of adat considered useful for development would be protected and promoted, for example in setting of Bali. Balinese art and dancing would be protected, but the priority would be on building large-scale tourist resort. Resort complex located near ritual sites and unwanted non-Balinese migrants attracted by economic opportunities lead to campaigns against the tourism projects. In Bali during the late New Order, adat was becoming part of a Balinese resistance.

2.2. Adat Revivalism in Post- Suharto Era

The fall of the Suharto regime, in the year 1998, was followed by a rapid decentralization movement, bringing major impact on various areas of society. The most direct change involved the larger role given for local governments, along with the weakening of presidential power. Simultaneously, movements to “evacuate” adat from the danger of disappearing in the midst of modernization and globalization grew stronger in many regions of the country. Attempts to place it at the basis of regional autonomy are taking place, backed up by the amendments of the Constitution in 1998, adding the word respect for “*masyarakat adat*”, or adat community. Adat, which had been contained in touristic exhibitions are now being revived to recover its holistic nature.

To give some details about what is happening, traditional village borders, instead of administrative borders drawn by the central government are on the way of being revived in Sulawesi. Attempts to re-define adat by indigenous groups, to find out again what it was like, could be described as one part of the post-Suharto adat revivalism. The call for protecting minority rights of indigenous people, in national resource conflicts is another example. Adat is, in a sense, now becoming a vehicle for peoples’ voices against state control, repressed for more than 30 years under the New Order.

However, we have to look at not only the bright side of it. John Bowen, an anthropologist, described this reformation era as “unguided chaos”, as compared with Sukarno’s “guided democracy” and the New Order under Suharto.

There are ethnic groups in Indonesia now demanding the right to implement elements of adat, sometimes violently. Self-empowering movement among the marginalized ethnic group, for

example the Dayaks of West Kalimantan, have led to violence against migrants from other provinces. In the name of adat, more than a hundred thousand Madurese people were expelled from their homes in 2001. In this region, violence is said to have strengthened communal bonds and ethnic identities, adat-oriented and ethnic NGOs also taking part in it. The term “indigenous peoples” is in itself problematic, as it would include a large part of the population, with a few exceptions such as those with Chinese origin.

And in Bali, atmosphere of xenophobia is getting strong, resulting in the reviving of customary regulations, for example forbidding the sale of land to outsiders, or not allowing people to live in the village if they do not take part in its Hindu religious life. They have also rejected development projects.

To add to it, in Sulawesi and Flores, farmers have challenged the legitimacy of national park boundaries. These are just a few out of many examples. Here we could see adat associated not only with activism, but protest and violent conflict. This is not to suggest that the adat rights claimed by adat communities are merely invented traditions. So, to what extent can “adat communities” be said to exist in Indonesia, and to what extent do those who claim to speak for them, really represent their members?

2.3. The Concept of Adat

Like many key concepts, adat has many meanings. In regard with this, David Henley and Jamie Davidson uses the term “The protean politics of adat” [Henley and Davidson 2007]. The informal, uncodified character of most adat, and the idealization of order and stability, makes it easy to be manipulated politically.

First, it was legal pluralism under colonial rule. After the triumph of the adat law school led by van Vollenhoven, different ethnic groups were supposed to be governed according to their own diverse laws and customs. Then, under Sukarno’s Guided Democracy and especially Suharto’s New Order, adat became the ideology for supporting national unity. Invoking on ideas such as mutual aid and unanimous agreement, obedience to authority was assured. While adat rights and institutions at the local level were constrained by legislation, at the national level, the idea of an adat-based “collectivism” provided a way of promoting obedience. It also gave place for adat as traditional culture for exhibition,

And now, after the fall of New Order, political renaissance of adat could be observed in many areas of the country. It has become a vehicle for environmentalist as well as collectivist ideals. It has resulted in exclusion of the outsider. Now, what about the legal aspects? Let us now look at the expression of adat in the legal domain.

3. “Protean” Expression of adat

Although we have already referred to adat in local politics or in violent conflicts, ongoing discussions about the legal aspect of adat also deserves attention. In this section, two cases will be examined: the development of ADR in Indonesia and land conflicts in the eastern coast of Sumatra Island. The concept of adat is at issue in both of these cases.

3.1. Case 1: ADR

As movements of ADR spread worldwide, traditional ways of dispute resolution or customary law have gained positive value, Indonesia being no exception. The spread of ADR by legal aid is giving customary law a new practical position.

Since Indonesia already has its own statutes such as the Penal Code or the Civil Code, legal aid started around the period of economic crisis in 1997 [Shimada 2002]. Lead by international institutions such as the World Bank, plans toward legal reform were prepared. Reform projects in various areas were carried out, including Amendments of the Constitution and the Penal Code. ADR is also one of the main goals of legal reform.

By introducing ADR, according to the official explanation, adat is supposed to become a legal resource. In line with the recent re-evaluation of traditional conflict resolution has already been discussed by Prof. Irianto, a report published before the legal reform places adat as “traditional ADR” [Budiarto et al. 1997]. Emphasize is on the study of the present situation of adat as “living law”, and to make use of it.

In 1999, law on ADR was enacted. This “Law on Arbitration and Alternative Dispute Resolution No.30/1999” specifies the concept of arbitration, along with the procedures [Gautama 1999]. Indonesian Arbitration Institute (*Badan Arbitrase Nasional Indonesia*) was established to deal with commercial arbitration. Offices were set in 7 cities including Jakarta, Bali, and Surabaya, information offered in English websites to attract foreign companies.

Although this is just a part of the development of ADR, while the official explanation about the introduction of ADR relies on adat, the core of the ADR law in 1999 is arbitration. This situation could also be seen in the district court level. The fieldwork was carried out mainly at the Medan District Court, located in the city of Medan, North Sumatra. The judges working there have been to official seminars on ADR, and they show full approval. However, they turn skeptical once it comes to actual role ADR could have. The reason could be summarized in the disputing parties’ attitude to prefer decisions. They have already did their best at negotiating before filing the lawsuit, which means there are no more possibility for mediation. In cities or in villages, according to the judges, people come to court to get their judgment delivered.

In the eyes of the disputing parties, for many of them not familiar with large companies or

ADR theory, the originality of adat or its aim is not easy to grasp. They continue to negotiate before or after coming to court, and large part of conflicts are settled by withdrawing the case or permanently stopping the procedure. Using the adat as traditional ADR, as suggested in the legal reform policy, has not gained wide recognition. At the district court level, adat is considered “not to be here”, and they lack the specific methods for conflict resolution.

The weakening of adat as a result of urbanization and modernization has been pointed out by anthropologists. However, regardless of its limitations, relatively new terms such as “win-win solution” and the ideas of adat focusing on negotiation are gaining popularity simultaneously. The development of ADR in Indonesia is affected by economic factors, the improvement of the investment climate. The vocabularies of adat are invoked here, to reduce the strangeness the new word ADR carries with it. In that sense, adat is “not here”, but nevertheless meaningful, and it exists “somewhere”.

3.2. Case 2: Land Conflicts in East Sumatra

The land conflicts in East Sumatra are closely related to the history of Tobacco plantations in this area. The east coast of Sumatra Island was a major center for tobacco production in the beginning of 20th Century; tobacco leaves being exported to Europe and bringing large profit for the plantation company.

The production of tobacco was made possible by leasing land from the sultan of the Deli Sultanate, who ruled Medan and surrounding areas from the 17th to 19th century. Since the population in East Sumatra was too scarce to provide sufficient labor, mainly immigrants from Java became plantation workers. Instead of job opportunities, Melayu residents living near the plantation received the right to plant rice after cultivation of tobacco, under certain conditions.

For the indigenous Melayu residents, rights to use the land within the tobacco plantation were given, under certain conditions. With agricultural technique of the time, tobacco could not be planted on the same field after harvest because of soil exhaustion. Tobacco had to wait for 7 years, and during this period Melayu farmers were allowed to grow rice once. Also some compensation money was provided for land lease.

However, tobacco production dropped after 1930, commercial crops gradually shifting to sugar cane, rubber, and oil palm. There were no idle plots of land, which broke down the system of land use for the Melayu farmers. The atmosphere of uncertainty and disorder strengthened, with the beginning of Japanese Occupation in 1942 followed by the independence of the Republic of Indonesia. In the 1950s, so-called “plantation squatting” became a serious problem.

By the Basic Agrarian Law of 1960, plantation sites were nationalized in principle and state-owned plantation companies took over. Claims for land rights were strictly controlled, all the unregistered land were supposed to be owned by the state and used for public purposes.

However, some land no longer cultivated was resold to become housing complex or factories. Indigenous peoples' organizations were continually involved in this dispute, making claims for rights based on *adat* by demonstrations or squatting.

This long-standing land conflict is also taking a new turn in the post-Suharto era. Recently, we could observe some change in situation, a move toward official recognition of adat rights, along with the former sultanates beginning to taking part in the conflict, claiming the status of the original owner of the plantation site.

First, Supreme Court decision in 2006 recognized adat rights of Malay farmers within the plantation, to some degree at least. It was not to give the title of the land to the farmers, but respecting adat rights to cultivate plots of land not used for commercial crops. This decision could be said to be a major achievement for Malay people.

Former sultanate of Deli, which has been officially abolished after independence, is claiming rights for land in cooperation with indigenous people's organization. A number of lawsuits have been filed by descendants of the Deli Sultanate. They have introduced new perspectives into the conflict. In sum, now the problem is not the nationalization of the plantation land itself. Rather, the problem as they see it is that the land had been re-sold to land developers in recent years, without the permission of the former sultan, who is the official owner of the land. In the course of their argument, adat of Malay people retreats into background, the main issue being the validity of "sultanate concessions", or land lease by the sultanate.

With these case studies in mind, now I will move on to put forward some points for discussion, in regard with Prof. Irianto's argument. The focus will be on three points: first on the relationship between legal pluralism and adat revivalism, then on the concept of adat, and the meaning of using the legal framework to explain the ongoing transition.

4. Points for Discussion

Here we could pose some unanswered questions regarding legal pluralism and adat revivalism in Indonesia. Legal pluralism is more than just "a harmony ideology" [Nader 2002], of course, but when we take into account the conflict at hand, the word "respect for adat" is obviously not a simple task.

Using the framework of legal pluralism, how could we face with the issues raised by adat revivalism in post-Suharto era? Adat at times may work to justify violent measures for immigrants next door in the case of Bali or Kalimantan. In ADR, vocabularies of adat such as "*musyawarah mufakat*", unanimous agreement reached after through discussion, are mixed up with the new word "win-win solution", obscuring the initial motive to catch up with the international standards to meet the needs of foreign investors. These issues could be considered as exceptions, and the

aim of my question is not to limit legal pluralism to “academic circumstances“, but some more explanation on these points might lead us to a better understanding of today’s argument. Should we try to distinguish the good adat from the bad? Is it for or against legal pluralism?

This leads to the second point, on the concept of adat, the concept of adat and its future. Is “Indonesian adat” possible? As mentioned earlier, adat has a strong connotation of locality, and is often associated with ethnic groups such as Java, Bali, or Batak. Although this association has its root in the history of Indonesia, this character tends to strengthen the border of ethnic groups, resulting in exclusion of others within the same country. Thus the effort to make it an integrating logic was required after the independence of the Indonesian Republic, putting emphasis on “*gotong-royong*”, or mutual aid as Indonesian ethos. Then, the discussion would then get into how this “Indonesian adat” could be developed in the future. Is it against democratization and regional autonomy?

The last point is the meaning of using the legal framework to explain the ongoing social change. There is a tendency to explain adat and recent reviving of it not as legal phenomenon, but as social, cultural, political, and so on. It is not only the legal anthropologist taking interest in adat, and according to them, adat is not so much about law but more about local politics, or ethnic identity, to name a few. Come to think of it, considering almost myriad implication of adat, it could be said that the aspect of adat as a social norm, or regulation is just “one of them”. So, what is the advantage of utilizing the word “law”? This is not an easy question, but nevertheless unavoidable to make clear the scope of legal pluralism in contemporary world.

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