

Decentralisation and village governance in Indonesia: the return to the *nagari* and the 2014 Village Law

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This article looks at the work of Franz and Keebet von Benda-Beckmann on decentralisation and village governance in Indonesia.¹ It discusses the main findings of their *magnum opus* ‘Political and Legal Transformations of an Indonesian Polity: The *Nagari* from Colonisation to Decentralisation’. Compared to other regions, West Sumatra presents a unique case, as it translated the post-Suharto decentralisation into a return to a traditional customary (*adat*) government structure – the *nagari*. How can we explain such an unusual turn, which happened nowhere else in Indonesia? This question is relevant to current political debates in Indonesia following the enactment of the 2014 Village Law. That Law explicitly presents the option for a return to *adat* structures in other regions as well, while granting villages more autonomy. Our central question is whether the same factors that promoted the ‘return to the *nagari*’ are likely to facilitate a similar process elsewhere in Indonesia. What can practitioners, policy-makers and researchers engaged in the latest wave of village governance transformations in Indonesia learn from the experiences in West Sumatra?

Keywords: decentralisation; Indonesia; 2014 Village Law; customary institutions; context

Introduction

Since the 1990s, decentralisation took off worldwide as part of a neo-liberal agenda promoted by international institutions as the World Bank, the International Monetary Fund (IMF) and the United Nations Development Programme (UNDP). A particularly dramatic case of decentralisation – described by one World Bank official as a ‘Big Bang’ – took place in Indonesia after the fall of Suharto, who had ruled the country in a centralised, authoritarian manner for more than 30 years. In 1999, just one year after the regime change and under strong political pressure from reformers, two laws on decentralisation were enacted (22/1999 and 25/1999). They granted a high degree of autonomy to the districts and subsidiary authority to the provinces. The central government would only retain powers in the field of monetary matters, defence, foreign affairs, justice and religion.

The result in practice was not as sweeping as it looked on paper, but the new system was nonetheless far removed from the centralised structure of the Suharto regime. The centre of governmental gravity moved considerably downward and many Jakarta-watchers followed suit (Schulte Nordholt and Van Klinken 2007). Yet, few looked beyond provinces, districts, and towns to see what happened at the village level.

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Franz and Keebet von Benda-Beckmann were the main exception. Their effort led to the *magnum opus* ‘Political and Legal Transformations of an Indonesian Polity: The nagari from Colonisation to Decentralisation’ (F. von Benda-Beckmann and K. von Benda-Beckmann 2013). This unique study provides an in-depth and long-term analysis of village government and the different actors shaping it under changing governance regimes. It looks at all levels of government, but always relates what it finds there to what actually occurred in the villages of West Sumatra.² Regional autonomy provided provincial and district governments the freedom to implement new legislation concerning local governance according to their own style and culture, and the Minangkabau of West Sumatra used this opportunity to the full.

The book is the crown on a lifelong interest in village governance, property relations and legal pluralism. These three subjects cannot be considered separately and run like a common thread through the work of the von Benda-Beckmanns. In the 1970s, Franz started with research in West Sumatra that focused on property relationships (F. von Benda-Beckmann 1979), whereas Keebet concentrated on village justice and state courts in the same region (K. von Benda-Beckmann 1984). They continued combining these themes wherever they went, which resulted in a long list of publications. The opportunity they had in the 1980s to do field research in Ambon, in the Moluccas, further contributed to their insights into Indonesian local government, as it enabled them to compare the two regions (F. von Benda-Beckmann and K. von Benda-Beckmann 1994).

In 2001, the von Benda-Beckmanns returned to West Sumatra. Feeling the atmosphere of change and listening to the debates about decentralisation they seized the opportunity to conduct a study with a truly long time span: they started an inquiry into the transformations of local governance after the start of the decentralisation process and followed the developments for over a decade. In 2013, just after Franz had passed away, the results were published in the book mentioned above.

The present article takes as its point of departure ‘Political and Legal Transformations of an Indonesian Polity’, which comprises a major part of Franz’s research in Indonesia. Instead of presenting a review (Hadiprayitno 2014; Isra 2014) or a critique, we summarise and use its findings to look for answers to two questions about decentralisation, law and governance in Indonesia. The first considers the findings of the von Benda-Beckmanns in a national perspective. What are the main characteristics of Minangkabau village governance and is the *nagari* a model for village governance that can be applied in other parts of Indonesia? To answer this question, we will make comparisons between West Sumatra and other regions – notably Sumba in the province of East Nusa Tenggara, which has been the focus of research of one of the authors since the 1980s (Vel 2008). The second question concerns the new Indonesian Village Law (6/2014) that was promulgated in January 2014. This Law opens up opportunities for change that seem modelled on what actually happened in West Sumatra. It allows for the return to – or recreation of – a village model rooted in *adat*, which is potentially better embedded in local social conditions than the Java-centred model imposed uniformly throughout Indonesia by the New Order’s Village Law of 1979. Particularly relevant here is the last part of the new Village Law, which deals with the ‘*desa adat*’, where the drafters were reportedly inspired by the example of the *nagari* of West Sumatra.³ According to Article 96, in relevant cases ‘the government, provincial government, and the district/municipal government regulate an *adat* law community and establish it as an Adat Village (*desa adat*)’. The von Benda-Beckmanns’ book on village governance could not have been better timed in this respect, and our question is accordingly what researchers, practitioners

and policy-makers engaged in implementing this new law can learn from their findings?

Characteristics of changing village governance in West Sumatra

Compared with the effects of the post-Suharto decentralisation on other Indonesian areas, West Sumatra presents a unique case. The Minangkabau translated the new opportunities into a return to the past, to what might seem an old-fashioned customary governmental structure. Four major factors account for this unusual result: the strength of customary institutions; the resilience of the existing structures despite central government efforts at administrative fragmentation; several push factors that helped restoring the nagari; and support from higher government levels and religious leaders. We will start by considering these factors in some detail.

The strength of customary institutions

When in the 1970s the von Benda-Beckmanns conducted research in West Sumatra, villages were just settling back into the colonial indirect rule pattern that had existed for many decades before the Japanese occupation, national revolution and a West Sumatran rebellion interfered with it. Villages were called *nagari*; they were divided into approximately seven wards, and three to four times larger than the Javanese *desa*. The *nagari* were both territorial and social units, in which the *nagari* community regulated land tenure, property, and social relations. Communal land property and communal inheritance rules along matrilineal lines were important characteristics of this system. Originally these customary institutions were adapted to the agrarian system of wet rice and cash crop cultivation, safeguarding the availability of labour and land for rice cultivation, rules of distribution within the *nagari* and preventing alienation of the *nagari*'s natural resources (F. von Benda-Beckmann and K. von Benda-Beckmann 1994). Later, the complex of customary institutions became the foundation for communal claims to land that was appropriated by the state for plantations or mining. Keeping up the old structures of the *nagari* with its assets (*pusako*) and common lands (*ulayat*) thus supported the contemporary economic interests of the Minangkabau versus the central state.

The backbone of the *nagari* consisted of several lineages and sub-lineages, which administered the lineage land. The administration was dualistic, with a 'state' side – represented in the mayor, the village council, the village council of representatives and the village *adat* council. The *adat* councils (not to be confused with the village *adat* council) consisted of the lineage heads. Although not an official part of the village administration, they administered the village commons and often competed with the mayor when it concerned decision-making in disputes over lineage land (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 117–119). This was a crucial mechanism of checks and balances which could prevent elite appropriation of public wealth.

Besides having these strong traditional customary institutions, the *nagari* turned out to be able to adapt to new demands of representative government as well after they were reinstated. In the period covered by the von Benda-Beckmanns' research, *adat* leaders were always represented in the village parliament and many mayors were at the same time *adat* leaders. Apparently, most of them managed to divide their respective functions in this respect (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 435). Over time, the state apparatus expanded into the *nagari* through the establishment of its own municipal administration, schools, health centres, police, extension services and

cooperatives. The hybridisation of political and economic structures indicates how ‘the nagari evolved into socio-political spaces in which village and state structures and personnel merged’ (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 423). Current election rules support free and fair elections by the entire adult *nagari* population. Altogether, *nagari* have become more democratic than they were ever before (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 433). Newly established religious institutions have further completed the triangle of state-*adat*-religion.

Resilience despite central government efforts at administrative fragmentation

Changing policies of the national government affected the autonomy of village governments and their claims on customary, communal property. Characteristic for the authoritarian national regime in the period 1965–1998 was the attempt to progressively subordinate villages to higher levels of government. This policy extended to the *adat*-side of government. In the context of anti-communist activities in 1965 and under the pressure of the army, the Association of Minangkabau Adat Councils (LKAAM) was established as an umbrella organisation for controlling *adat* institutions. Their ‘main function was to cleanse village governments of communists and replace them with “innocent” clan members’ (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 116). An important consequence of the increasing state control over *adat* councils was that the latter lost much of their legitimacy. Through Presidential Decree 32/1979 on the Conversion of ‘Western Rights’ into State Land, the state appropriated village commons by determining that land which had been leased out to private companies would not return to its *adat* status after the lease had expired, but would become state land instead (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 123).

A decisive step towards centralisation was the enactment of Law 5/1979. This statute introduced a uniform system of village government across Indonesia, using the Javanese *desa* structure as a model. The means to convince provinces to collaborate were financial: development grants from the central government were provided to villages irrespective of their size, which meant in the case of West Sumatra that splitting the *nagari* multiplied their funding by a factor of seven (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 130).

The administrative consequence of splitting the *nagari* was that the jurisdiction of the *adat* council no longer corresponded to the village territory. To overcome this problem, the West Sumatra provincial government decided to formalise the informal: it declared the *nagari* a special ‘*adat* law community’ under the authority of the *adat* council (Provincial Regulations 7/1981 and 13/1983). Except for deciding disputes involving *adat*, these councils were officially charged with administering the ‘*nagari* wealth’ – most importantly the administration of the *nagari* commons. Nonetheless, their authority declined relative to the village heads, who administered increasingly large funds from the central government for development projects.

Moreover, in practice large parts of the commons were administered by the Department of Forestry and none of the revenues went to the *adat* councils. This mismatch in state and *adat* authority made land management a complex affair (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 133–136). In the 1990s, ‘it was asserted that the *desa* had destroyed the *nagari*, causing disorientation that robbed all content from traditional symbolic forms of *adat* authority’ (Zakaria 2000). According to the von Benda-Beckmanns, this was an overstatement. No one would disagree that the shift to the *desa* system had caused serious problems and that land issues had become more complex due

to the increasing role of the state in the village and the many legal changes, (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 149–152). However, adat showed remarkable resilience throughout the period after 1979 and ‘adat logic dominated not only among villagers but often within courts and even the administration as well’ (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 151).

Push factors in restoring the nagari

The general feeling of discontent helps explain the positive response to the 1999 Decentralisation Laws in West Sumatra, when the province quickly adapted its structures to the new situation (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 163). The process did not always proceed smoothly. Just as in other provinces, it was accompanied by the splitting of districts, by civil society taking action against corrupt politicians, and by conflicts between the province, districts and the national government about natural resource control (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 166–175). Yet, on balance the process of decentralisation has been remarkably successful in West Sumatra (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 182).

The issue of a return to the *nagari* was raised even before the Decentralisation Laws were passed: in 1998, Governor Muchlis Ibrahim publicly launched the idea of restoring the *nagari*. He was wise enough to also commission an inquiry to test how much support he could expect for such a step. Perhaps surprisingly, the results made clear that such support was not overwhelming, as many villagers valued the proximity of the *desa* government and found that public infrastructure had improved considerably under the *desa* administration. At the same time, the report found that many villagers complained that ‘adat had been destroyed’. Reinstalling the *nagari*, these villagers argued, could restore *adat*. However, few people had a clear idea what a *nagari* actually meant, and young intellectuals warned against returning to ‘backward’ institutions of the past (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 189).

In the next two years, public opinion turned around, and support for the return to the *nagari* became more or less consensus. According to the von Benda-Beckmanns (2013, 189), this had little to do with new insights. It was foremost the result from a process that had passed the point of no return. The way the media propagated the return to the *nagari*, combined with hopes that this would somehow resolve all problems, changed the project from a top-down initiative into one ‘owned’ by the common Minangkabau. Perhaps the fact that few understood what a *nagari* meant in practice reinforced the zeal with which they pursued the new form of government. This equally applied to many individual governors and district heads, who continued to be the main drivers of the process.

Another push factor was the presence of foreign donors and NGOs which engaged in capacity building for decentralisation as an administrative process. The former were heavily involved in the decentralisation process anyway, and some of them took up a role in the *nagari* project as well. Their influence varied considerably and many of their actions were not particularly effective, but in an indirect way they contributed to the project by bringing together stakeholders such as mayors, *adat* council members, district heads and others. The networks that were thus established considerably smoothed the project. NGOs at several levels provided important input to the debates. Notably absent was the indigenous peoples movement led by AMAN (*Aliansi Masyarakat Adat Nusantara*, National Alliance of Adat Communities), which played an important role in the political debates about decentralisation in many parts of Indonesia, but was hardly active

in West Sumatra (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 429). The most obvious explanation is that *adat* in West Sumatra has always remained so strong that there was no need for an organisation like AMAN to champion its interests.

A major precondition for the return to the *nagari* to succeed was the introduction in 2005 of a system of government financing that no longer made it attractive to stick to the *desa* as a unit. Before 2005, most *desa* obtained the bulk of their income from financial support from the national, district and provincial government and in the shape of projects financed with special development funds (Dana Alokasi Khusus (DAK)). The former was usually sufficient only for routine expenditures (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 433), the latter are earmarked. There were other sources of funding, own income from taxes, levies and royalties from commons and markets, and gifts and contributions from third parties (for example from emigrants to their home village), but these seldom outweighed the importance from the first two (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 433). With the implementation of GR 72/2005, all *desa* became entitled to receive a village fund grant from the district government, and the regulation (art. 68) stipulated that at least 10% of the regional transfer budget should be spent on this village fund allocation (Alokasi Dana Desa (ADD)). The distribution of ADD among units of local government became proportional. *Nagari* with a size larger than the previous *desa* they included would receive a proportional higher amount. However, reliance on increasing amounts of ADD means that the autonomy of the *nagari* remained a relative matter.

And finally, Minangkabau emigrants played an important role in the process. The Minangkabau people are renowned for their high level of education and good connections to government networks. Whereas some 4.5 million people reside in the province, around 1.5 million Minangkabau live in other parts of Indonesia, and many of them occupy influential positions. The *nagari* and its *ulayat* land are key symbols of Minangkabau ethnic identity in areas where the emigrants reside among other ethnic groups. Especially these Minangkabau regarded the New Order's imposition of the *desa* as an act of reprehensible standardisation or even as Javanese colonialism. The return to the *nagari* thus became a way of restoring ethnic pride (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 382).

Support from higher government levels and religious leaders

Some important issues had to be regulated by the provincial and the district governments, which played a pioneering role in providing legislation for new village structures. For example, the relation between the mayor and village parliament with the *adat* council, and the related question who would be in charge of managing the *nagari* commons, required district or even provincial regulation (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 190–192). The support of West Sumatra higher government levels for the return to the *nagari* was, therefore, indispensable.

Law 22/1999 opened the possibility to adapt the name for a village from the uniform *desa* to the name that was customarily given to this government unit in the region concerned. It also defined the standard arrangement of village institutions, but indicated that further adaptations would be facilitated by central government guidelines (*pedoman*) and district regulations. However, these government guidelines were not yet in place. The province of West Sumatra was well aware of its lack of authority in this field, but nonetheless drafted a Framework Regulation on Village Government (9/2000) (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 192–193). This regulation was to define

the course of the process by deciding some important questions regarding the form, structure and boundaries of *nagari*. The province thus became the main driver of the process, without any formal power. Such a development was of course only possible because the districts were willing to go along, but it is highly unlikely that on their own the latter would have acted as decisively.

The process was further facilitated by the special relation between *adat* and religion in West Sumatra. This relation has always amazed anthropologists, because the Minangkabau people combine an *adat* system of matrilineal and matrilineal inheritance with Islam, whereas common Islamic doctrine is based on a patrilineal, patrilineal society. What happened was that the renewed emphasis on *adat* in West Sumatra was accompanied by a renewed emphasis on Islam, but this remained limited to the legal-moral sphere and had no effects on the structure of governance (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 424). The traditional balance between *adat* and religion turned out to have deep roots, which prevented a conflict along these lines. The main reason that Islam did not become a force for change towards a more patrilineal system is that this would destroy the matrilineal system. Deeply rooted in localities this system constitutes the core of Minangkabau identity and replacing it is the last thing most Minangkabau would wish to happen (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 418–419). As a result, the return to the *nagari* was also supported by religious authorities.

Resistance and conflict

Further steps towards realising the *nagari* were mainly left to the *nagari* to be. This meant that they could themselves determine who would be the interim mayor, how the debates about representation and other matters were conducted, but also how the elections were organised. While on the one hand this freedom allowed for maximum flexibility and ‘ownership’, it did have exclusionary effects in some places where migrants were prevented from participating in the process (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 224).

Adat leaders often took the lead in the reunification process of *desa* into a *nagari*, even if in the end it was up to the district to approve of the new unity (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 433). The return to the *nagari* went relatively smoothly because in most cases it was possible to return to the original boundaries. Nonetheless, changes in number and constellation of the population made several *desa* reluctant to go along and some serious controversies regarding the establishment of new *nagari* emerged. *Desa* with a migrant majority felt little inclination to once again become subservient to the *nagari* they originally belonged to. If these immigrants were sufficient in number, ingenious constructions allowed them to form their own *nagari* in conformity with the *adat* rules, but conflicts ensued in cases where this was not possible or where the *adat* council resisted such a development. This demonstrates the power *adat* still wields, at least as a source of authority, for only seldom did reluctant *desa* get their way. Within villages, some inhabitants resisted the renewed emphasis on *adat*, as it reduced the status they had gained under the *desa* system, but seldom to any effect (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 220).

A major issue of controversy in the transition process was the management of the *nagari* wealth. It was not only a matter internal to the *nagari* – between mayor and village parliament on the one hand and the *adat* council on the other – but also one between the *nagari* and the district, and between West Sumatra and the central government. The latter was particularly acrimonious, as the central government refused to go along with

the demand that communal land would return to the *adat* regime after a long lease to a plantation or mining company had expired. The National Land Agency insisted that communal *adat* land had been ‘released’ from this status before it could be leased out under a state law regime, and that upon the expiration of the term the land would automatically become state land. After a protracted struggle, West Sumatra enacted Provincial Regulation 16/2008, which contained the ambiguous phrase that ‘after expiration of state-derived use rights, the land reverts back to its earlier status’. This phrasing is at odds with Minister of Agrarian Affairs’ Regulation 5/1999, which defines as a condition for recognition of rights to communal land that it has never been leased out under a state law regime. In short, the dispute has not been resolved and this contest will continue (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 356).

There was also conflict of interest between the *nagari* and the district. State officials and the district parliament usually supported plantation companies because they depended on revenues from the companies for their own income. For example, in 2000, the government of Pasaman district received nearly 58% of its total budget from oil palm companies (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 309). Under such political-economic conditions, district governments often refused to give up the income from leasing out land or other natural resources for exploitation. It seems that whether this issue gets resolved varies from case to case. Conflicts about the control of income from market exploitation have usually ended in favour of the district government. Likewise, *nagari* had to accept that they hold only subsidiary powers of taxation and thus depend on the district for how much income they obtain in this manner (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 292).

In some cases, district heads demonstrated a profound distrust of *adat* leaders, whom they found poorly educated and more concerned with their private wealth than with the common good (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 198). This has resulted in efforts to reinforce the position of the mayor and the village parliament vis-à-vis the *adat* council and partly as a result the *adat* councils have usually lost their control of the village commons.⁴

What makes West Sumatra special?

Why did the Decentralisation Law of 1999 lead to reinstalling ‘updated’ customary forms of village government in West Sumatra, and why did that not happen in other regions? An obvious answer is that West Sumatra strongly adheres to its *adat*, but so do some other regions.

The first explanation is that in many parts of Indonesia, old *adat* structures had ceased to exist. In some places, the effects of Village Law 5/1979 have been far more destructive than in West Sumatra. A case to illustrate this point is Rejang Lebong in the province of Bengkulu (South Sumatra), where the authority of the *marga*, a supra-*desa* institution under a *pasirah* created by the Dutch in 1860, eroded in a long process that already started under the Dutch (Galizia 1996). After independence, the powers of the *pasirah* were taken away one after the other, which caused the last *pasirah* under the New Order to become thoroughly corrupt. Few locals, therefore, resented the abolition of the *marga* and the *pasirah* by the 1979 Village Law – until it turned out that with the *marga* its commons had disappeared as well. These had been transferred to the central state instead of to the *desa*. The *desa* had virtually no remaining sources of income, which undermined the position of the *desa* head. Over time, many locals moreover started to resent the loss of *adat* as a source of social cohesion. Even the central government became worried by the

developments and tried in vain to reinstall *adat* by new institutions. Arguably, a return to the *marga* after 1999 could have reopened the debates about the ownership of the village commons, but there were no viable *marga* or potential *pasirah* anymore to return to.⁵

A second explanation is that in many places, there is no mismatch between *adat* and village territory like there was in West Sumatra after the implementation of the 1979 Village Law. An example can be found on Sumba, in East Nusa Tenggara. Just as in West Sumatra, *adat* plays an important role in daily life and land governance. In Sumba, the traditional social division is not in *nagari* but in relatively autonomous patri-lineages (*kabihu*). Powerful lineages could extend their territory of influence and access to labour by marriage alliances with other lineages. The colonial government selected some among these powerful lineage heads to become 'raja' in the colonial system of indirect rule. Their territory, the *swapraja*, comprised *adat* land of several lineages.

Due to national policy for unifying local governance structures, the *swapraja* in Sumba were replaced by *kecamatan* in 1962 (Kapita 1976, 73). Subsequent division of the *kecamatan* into *desa* reduced the variety in lineages included in the smallest government unit. Instead of causing problems, the *desa* system avoided conflicts between competing clans that had been put together into a single government unit by the colonial administration. Another explanatory factor is that in Sumba, the tension between the state government institutions and *adat* institutions is far less pronounced than in West Sumatra. Although some Minangkabau hold double positions, the *adat* and state governance institutions are parallel authority structures. In Sumba, those authorities are often merged, because many of the higher rank state officials belong to the local *adat* elites (Vel 2008).⁶

That Sumba did seize other opportunities offered by the Decentralisation Law of 1999 confirms that the continuation of the *desa* structure was not caused by a lack of entrepreneurial spirit of the governing elites. The district governments on this island depend for more than 90% of their income on transfers from the national government. The best strategy for Sumba's local governments was to split up districts into smaller units (Vel 2007). This phenomenon could be found all over Indonesia (Aragon 2007; Schulte Nordholt and Van Klinken 2007).⁷ The splitting campaign took a long time (also due to a lack of money for bribing the relevant officials), but eventually it succeeded in 2007, when West Sumba was divided into three new districts. Due to the formula of fiscal redistribution, the net benefit resulting from the new situation was a roughly 300% increase in government budget for the same area. This success was followed by new divisions: sub-districts were split into two, and even many *desa* were split, in order to direct village funds from the central government to the own constituency. In some cases, splitting could also help resolve elite rivalries or depose a corrupt village head (Wetterberg, Dharmawan, and Jellema 2013, 93).

The third explanation is that the 'return to the *nagari*' was a response to specific characteristics which were only present in West Sumatra.⁸ In the single non-Minangkabau area of West Sumatra, the Mentawai Islands, decentralisation was considered as an opportunity to 'liberate themselves from what they saw as cultural repression and political colonisation by the mainland Minangkabau people' (Eindhoven 2007, 69). In resource-rich areas, which in terms of economic development are similar to West Sumatra, the most prominent issues of decentralisation were substantially different from the 'return to the *nagari*' pattern. In Central Kalimantan, where decentralisation policies required corporate interests in the logging sector to start co-operating with local strongmen, and administrative and village elites, the exercise of public power over nature was the main issue (McCarthy 2007, 153). In the ethnically diverse province of West Kalimantan restoring peace after the violent conflicts in 1997 and 1999 dominated the agenda, and led to

questions on how decentralisation could contribute to this aim (Tanasaldy 2007). In Bali, decentralisation policies became part of the on-going discussion on how the Balinese could remain in charge of preserving their culture, religion and environment, while continuing to draw profits from a tourism industry increasingly based on investments from Jakarta. Here, decentralisation was partly seen as a threat, because it fragmented political power against the central state (Schulte Nordholt 2007, 389).

In short, splitting districts and provinces was attractive anywhere in Indonesia because of the financial benefits it conferred, but other responses depended on the particular circumstances of the localities involved.

The next section will consider whether the new Village Law brings any change to this situation and what we can learn about it with the analysis of West Sumatra by the von Benda-Beckmanns in mind.

Looking from West Sumatra at the 2014 Village Law

The new Village Law (6/2014) presents two major novelties: it provides for a substantial increase in the flow of funds to the village treasury (up to five times as much) and it opens the possibility to villages to opt for the status of *desa adat*. We will concentrate on the last issue, but first we will address the new financial scheme, as this is of relevance for the choice to become a *desa adat*.

Increase in village funds and reciprocal paper work

Article 72 of the Village Law stipulates that villages are not only entitled to their share of ADD, which is 10% of the block grants provided to the districts, but on top of that will receive an annual grant, the Village Fund (Dana Desa (DD)), from the national government's budget. The total size of DD will also be 10% of regional transfers, and it is additional to ADD funds.⁹ This means a huge increase of the village budgets. In December 2014, the Jokowi Government raised the national budget allocation for the Village Fund for 2015 to 20 trillion IDR, or almost US\$20,000 per village, which according to the Minister of Finance is still only 1.5% of the regional transfer budget.¹⁰ The reason why the full 10% will not be released this year is that it will take time before all procedures are in place and villages have the capacity to receive, process and report about these funds in a professional way. The village governments need to include their financial plans in the five-year village planning documents and before the village parliaments have approved no money will be released.¹¹

Controls at higher levels have been put into place as well. The flow of money from the national government allocated for the villages runs from the national treasury to the treasury of the districts and municipalities, by-passing the provincial level. The districts channel the funds to the villages, 'within seven days' according to Government Regulation (GR) 60/2014 (Art. 16). However, before the money will be released to the district level, a number of legal documents must be submitted to higher levels of government: (a) a budget that is approved by the district parliament, and (b) a district regulation specifying the division of the village fund among the district's villages. The latter is not a free allocation, but should be calculated using a formula weighing factors including size of the village population, size of the village territory and extent of poverty (for which at village level the percentage of villagers with a Social Security Card is used as a proxy). Finally, there is a factor prioritising allocation to remote and isolated villages, by including measures

concerning basic service delivery, transportation facilities and the condition of infrastructure and communication (Art. 12(6)).

Once the flow of funds starts running down, the reporting process will produce a counter flow of paperwork running up. Twice a year the village head has to submit a financial report explaining how his government has spent the village fund. There are four categories of expenditures: (a) costs of village government, (b) village development and construction, (c) community empowerment, and (d) social purposes (Art. 19(1)). Art. 80 of the Village Law stipulates how planning and setting priorities in villages should take place in a process of deliberation including the 'village society'. However, GR 60/2014's Article 21 indicates that the main priorities will be determined by the Village Minister. These are further elaborated by the technical ministries in the form of guidelines (*pedoman*) (Art. 21 and 22). The district government should provide technical instructions, detailing how the guidelines should be implemented in the local context. This procedure severely limits the village autonomy in deciding on spending the village budget.

The reporting process continues to the next level when the district government makes a compilation of the village financial reports to account for the way the DD funds have been spent in the district. This report is to be submitted to the Minister of Finance, with copies to the Province and several Ministries. The next transfer of money – from the central government to the district and from the district to the village – depends on the approval of the previous period's reports (Art. 25). This procedure clearly limits the opportunity for embezzling village funds. However, another consequence is that the whole system depends on its weakest link, because the district can only account to the Minister of Finance when all village reports have been approved and handed in. This is a threatening perspective for areas with low levels of education and poor administrative capacity. Whereas the allocation formula might prioritise these disadvantaged areas, the administrative prerequisites for keeping the flow of funds running will be hard to meet.

Who wants to be a desa adat?

The complexity of the system mentioned above is relevant for the question whether it is attractive for villages to opt for the status of *desa adat*. From the perspective of the *desa*, the autonomy promised by the Village Law is limited by the priorities determined at higher levels of government and by extensive bureaucratic procedures. Villages are dependent on the district for approval of their reports and for guidance in dealing with bureaucratic requirements. This makes it attractive to secure other sources of funding than the Village Fund, which can be spent according to local preferences. Becoming a *desa adat* may provide a way to obtain these when it opens options for earning village income from exploitation or lease of the commons. From the perspective of the district government, this choice is less attractive, because it will need all its energy to install the mechanisms for making the new funding scheme run well. Having to deal with *desa* who want to become *desa adat* will only further complicate their work.

How can a village change into a *desa adat*? Chapter XIII of the Village Law explains that the central, provincial and district government together 'assess an *adat* law community and establish it as a *desa adat*'. This is done by a district regulation (Art. 98(1)). The requirements for becoming a *desa adat* are similar to those defined in Minister of Agrarian Affairs' Regulation 5/1999: the *adat* community and its traditional rights must still be 'alive', they will be considered in relation to how the community has developed, and they must be in conformity with the principle of the Indonesian unitary state. In addition, there must be a feeling of community, there must be *adat* institutions, *adat* norms and '*adat*

wealth' or '*adat* objects'. The puzzling statement that 'they will be considered in relation to how the community has developed' is explained as meaning that they must be recognised based on the prevailing laws. This seems to indicate that the community must either have been recognised on the basis of Minister of Agrarian Affairs' Regulation 5/1999 or on the basis of another sectoral regulation, which is a condition hardly any *adat* group in Indonesia meets at present (Bedner and Van Huis 2008). The additional requirement that the contents of their norms may not go against human rights may be less difficult to meet. Still, it seems illogical that Articles 96–98 offer no basis for an independent assessment, so for the time being we will assume that a *desa* may try to become a *desa adat* on the basis of the Village Law only.

This points to another fundamental difference between the case of West Sumatra and the procedure for establishing a *desa adat*. In West Sumatra, the return to the *nagari* concerned a collective process initiated by the province and involving all villages. In practice, the only possibility for a village to opt out of the *nagari* scheme was to become part of a municipality, as a *kelurahan*. By contrast, the Village Law allows *desa* and *desa adat* to exist alongside each other, even within a single district. The status of a village can also be changed from a *desa* into a *desa adat* and vice-versa. According to Article 100, the initiative for obtaining the status of *desa adat* is to be taken by the community concerned. This reduces the chances for a collective process developing its own dynamics as it occurred in West Sumatra the way the von Benda-Beckmanns described. Yet, swift changes from one status to the other are not to be expected.¹² Becoming a *desa* or a *desa adat* is a complex matter and the current process of implementing the Village Law will define the status of a village for a long period.

Another important difference with the *nagari* is the composition of the village government. In West Sumatra, the village government has a hybrid format, with the *adat* council and some other institutions added to the democratically elected mayor and village parliament. The presence of religious institutions and ideological influence has further contributed to a balance of powers within the *nagari*. This is not the format for *desa adat*. Articles 107–111 of the Village Law provide for a full return to the *adat* system, without putting into place clear safeguards for democratic procedures. The hybrid system in place in West Sumatra can be attained in another way, as Article 95 opens the possibility to establish a 'village *adat* institution'. As a result, a village does not have to become a full *desa adat* in order to establish a role for *adat* in village government. Many villages that have been organised for decades now on the basis of the national law may opt for Article 95 instead of making the U-turn into a *desa adat*.

Given the complexities involved in creating *desa adat*, the benefits should be considerable before a village even starts considering the effort. For some individual villages, the wish to maintain and reinforce their *adat* may be sufficient, with the restoration being an identity marker for the community involved, but in most cases this will probably not be enough. The key provision is Article 103 under b, which attributes *desa adat* the authority to manage their commons, based on their 'right of origin' (*hak asal-usul*). This indeed provides a good reason for wishing to become a *desa adat*. AMAN (the National Association of Indigenous Communities) expects that all villages located in forest areas will try to register as *desa adat* because this will support their claims on forest land. Put more generally, the higher the value of the land, the more attractive it is to villages to become a *desa adat*. And here we may learn from West Sumatra, which has demonstrated how difficult it is to obtain recognition of the status of land already used for commercial purposes as still belonging to the commons. Becoming a *desa adat* is not more than a single step towards getting recognition of ownership over the commons. Whether many villages are

willing and able to make that step given all the hurdles involved is highly uncertain. If we look at the experiences with *adat* law communities that tried to obtain recognition based on Minister of Agrarian Affairs' Regulation 5/1999, the prospects are not very positive.

Conclusion

The work of Franz and Keebet von Benda-Beckmann on village government in West Sumatra is unmatched in its length, breadth and depth. No other scholar working on Indonesia has ever produced a book like 'The Political and Legal Transformation' and it is unlikely that anyone will ever match it. Since this article focused on the village government side of the book, it has failed to do justice to what the study has to offer on the related subjects of dispute settlement, property relations, inheritance and religion. Nonetheless, we hope to have made clear that 'The Political and Legal Transformation' is of particular relevance for the research that will be conducted in the coming years on the formation of *desa adat* based on the enactment of the new Village Law in 2014.

Seen from a national perspective, the 'return to the *nagari*' presents a highly atypical case of how a region seized the new legal repertoire pertaining to village organisation and relations with the state for its own purpose. West Sumatra restored the *nagari* as the basic village structure and managed to safeguard this institution as the central component of the social and legal complex of *pusako-nagari-ulayat* in which for centuries the Minangkabau have organised their social and property relations. If one takes into account its idiosyncratic character, it is strange that 'the return to the *nagari* became a prime example nationwide of successful decentralisation at the lowest level of administration' (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 4).

Our preliminary conclusions about the potential of the new Village Law to set into motion processes similar to the 'return to the *nagari*' are sceptical. It seems to us that the process in West Sumatra was unique and will never be replicated. The fact that other regions did not seize the opportunities for restoring older village government structures after the decentralisation process started in 1999 points in the same direction. The combination of a mismatch between administrative and *adat* governance structures, an entrepreneurial governor taking the initiative, the importance of the *nagari* as an identity marker and the continued existence of viable *adat* structures were among the many factors that produced a most remarkable return to the centuries' old path of slow evolution of village institutions.

In summary, the main lesson of the von Benda-Beckmanns' book for the implementation of the 2014 Village Law is that the return to the *nagari* can only be understood as the product of a long and very specific historical process in Minangkabau. It was stimulated by a rare convergence of push factors for the return to the *nagari*: a well-established tradition of an elaborate set of customary institutions; the communal economic interests of keeping rights to the communal land; the support of well-educated and well-connected Minangkabau emigrants; the quality of the *nagari* as a symbol for ethnic pride; the capacity to cause an *adat*-hype; and the positive cooperation from government officials at every strategic level of administration. What we can also learn from the book is that the return to the *nagari* has never been designed as a strategy for bringing government services closer to the poor and disadvantaged, as was the goal in many campaigns for splitting districts in other areas. Rather than studying the return to the *nagari* as a process of decentralisation, the von Benda-Beckmanns chose to do something else: to analyse it as part of the continuing story of balancing 'the eternally contested and dynamic relations between

Minangkabau *adat*, Islam and state law and authority' (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 6).

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Notes

1. When writing about Franz von Benda-Beckmann's work on village government, one automatically writes about the work by his wife Keebet as well, because they have always co-authored the articles on this subject. We will, therefore, not try to make an artificial distinction between their respective contributions to this field.
2. West Sumatra refers to the mainland area of this province, the region inhabited by the Minangkabau people, excluding the Mentawai islands that officially also belong to this province but have a very different social and government structure.
3. Personal communication from Yando Zakaria, member of the Parliament's Expert Team for drafting the Village Law (15 November 2014).
4. It was the province to first suggest in the Elucidation to its Framework Regulation on Village Government that the *nagari* wealth should be administered by the village government, and not by the *adat* council (F. von Benda-Beckmann and K. von Benda-Beckmann 2013, 195). Ironically, the return to the *nagari* thus decreased the powers of the *adat* council, at least nominally.
5. On the same issue, see also Antlöv (2003).
6. The historical background is that in the first half of the twentieth century, when missionaries established the first schools on the island, they selected the sons of the nobility for higher education. The government recruited administrators among these elite sons for governing the island. The consequence was that there was no conflict of interests between state and *adat*, as long as the Sumbanese government officials were able to channel the benefits from the state to their home constituencies. Recognition of *adat* claims to land never was a problem as long as the highest government officials belonged to the landed *adat* elites themselves. If land conflicts occurred, it was not a matter of state land versus *adat* land, but rather a conflict between two *adat* claimants.
7. Schulte Nordholt and Van Klinken (2007, 19) conclude that the demands of localist identity movements were often based on flimsy historical arguments, and that the real objective was to increase the number of jobs in the bureaucracy for the campaigners' ethnic constituency.
8. These very specific circumstances at a particular moment in time can be regarded and analysed as a specific conjuncture: "the set of elements, processes, and relations that shaped people's lives at this time and place, and the political challenges that arise from that location" (Li 2014, 4).
9. This is stipulated in the elucidation of article 72 – 2 of Law 6/2014.
10. <http://finance.detik.com/read/2014/12/24/191301/2787058/4/jokowi-naikkan-dana-desa-122-jadi-rp-20-triliun-di-2015> (last accessed 20-8-2015).
11. Article 20 of Government Regulation 60/2014.
12. See Art. 28 GR 43/2014.

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