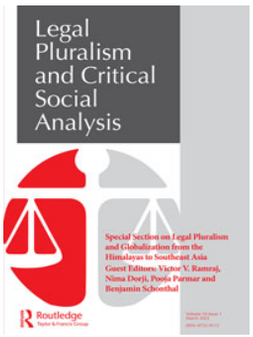

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Trajectories of legal entanglement examples from Indonesia, Nepal, and Thailand

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ABSTRACT

Globalization comes with law and law comes with actors. The manner in which law travels is rarely a matter of straightforward reception, but involves processes of translation, adjustment, and capturing by a diverse range of actors. This paper looks at some systemic features of legal pluralism to pursue two aims. One is to show that Southeast Asia has centuries long histories in which religious and secular laws have become entangled with local legal orders. These histories show a multitude of trajectories depending on specific political constellations from the time of introduction onwards. The trajectories are also a result of degrees to which introduced law was (in)compatible with locally existing laws. A second aim is to highlight how intensified globalization has brought new actors on the stage. The dynamic negotiation and translating processes that occur generate shifting legal landscapes with new entanglements. Such shifting plural legal orders form the conditions under which people pursue their interests.

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1. Introduction

Globalization comes with law and law comes with actors. Law is a traveling model (Behrends, Park, and Rottenburg 2014). The manner in which law travels is rarely a matter of straightforward reception, but often involves processes of discursive translation, adjustment, negotiation. In the process, law may be captured by a diverse range of actors: internationally operating religious and civil authorities, personnel of international courts and arbitration institutes, development workers and companies; further: national and local administrators and traditional authorities; and perhaps most importantly: local actors as addressees of such laws and policies or in their pursuit to hold powerful actors responsible for infringed harm. This article looks at some systemic and institutional features of legal pluralism in pursuit of two aims. One is to show that Southeast Asia have long histories in which external religious and secular laws over the centuries have become entangled with local legal orders.[1] These histories show a multitude of trajectories depending on specific political constellations from the time of introduction onwards. The trajectories are

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also a result of degrees of (in)compatibility with locally existing laws, as examples from Indonesia and Thailand demonstrate.

A second aim is to highlight how intensified globalization has brought new actors on the stage together with their national law as well as international, and transnational law, and new forms of regulation. In interactions with actors operating on the basis of their national and local laws, dynamic translation, negotiation, and adjustment occurs. Examples from irrigation projects in Nepal, and Indonesia's constitutional reforms that turned a highly centralized into a decentralized state, serve to show how various actors draw on their understanding of the relevant component sets of law and create thereby new entanglements. The implications of this go far beyond the issues for which the policies and programs were made.

Negotiation and translating processes thus generate shifting legal landscapes with new entanglements.[2] These processes are marred by fragmentation, exacerbated by legal authorities unwilling or incapable to secure legal coherence. Such shifting plural legal orders form the conditions under which local people pursue their interests. How they do this and choose from among the available sets of law depends on their knowledge of such regulations, on the trust in these and the related authorities, on power relationships, and inequalities, and on available material resources. The paper starts with a brief overview of some of the issues and insight in the studies of legal pluralism that in various disciplines have emerged since the 1970s. Then follows a discussion of concrete examples that highlight long trajectories of legal entanglements and the impact of shifting legal landscapes on local interaction. Most of the examples discuss are derived from my own fieldwork in West Sumatra that I have conducted since the mid-nineteen seventies, and from a research project on law and water resources in Nepal of the Ford Foundation, in which I was involved during the 1990s.

2. Issues of legal pluralism

When scholars, primarily anthropologists of law, first began to discuss the concept of legal pluralism and its implications in the 1970s, they did so on the basis of the co-existence of religious laws, customary laws, and colonial laws that had been a result of commerce, conquest, colonization, and proselytism through religious and ritual networks, more often than not in combination, and with or without formalization by state law. Scholars with a more normative take on legal pluralism, focus on official legal pluralism as it is acknowledged by state law, and the extent to which parts of other legal orders might be acknowledged.

With the current intensifying economic and legal globalization, anthropologists and other scholars began to study law and governance, and the involvement of many new actors in introducing new law.[3] Research on supply and production chains has revealed that actors engaged in export have to deal with standards and regulations of the countries through which the products pass on their way to completion. In Southeast Asia, where much of this cheap production takes place, many producers are confronted with such chains of regulations. For example, Gillespie (2013), with examples from Vietnam, shows that such transnational production chains within East and Southeast Asia rely on a mix of instruments, thereby bypassing legal

institutions and avoiding recourse to official law. This stands in stark contrast to production chains in which European or US firms are involved in which law and legal institutions are dominant.[4]

Scholars of comparative and constitutional law have also become aware that the increasing body of international and transnational law has deeply pluralizing effects on national legal orders. Southeast Asia has many pluralist constitutions evoking lively debates about the extent to which plurality is to be respected by law.[5] These studies show that plural landscapes have changed, unequally affecting different sectors of the population. Large numbers of specialized laws have been introduced for specific social fields such as water management, forestry, mining, business and banking, or labor relations. Transnational private law may also be a conduit through which new legal ideas can be communicated, as Robert Wai (2005, 483) argues. Various "accepted legal practices" also may contribute to legal complexity.[6] Further, contracts of transnational companies and conditionalities that international agencies impose on borrowing states come to co-exist with already existing plural legal orders. These often contain clauses that stipulate arbitration in case of a dispute, thus bypassing regular courts that, as these are deemed to fall short of international standards (Black and Bell 2011, 289).

A related strand of scholarship, that uses the term regulatory pluralism, highlights forms of governance that employ a mix of regulatory instruments, including not only state regulations and policies, and self-regulation, but also design, performance and process standards, economic incentives, information strategies, and intensive cooperation. Regulatory pluralism is premised on the idea that a mix of very diverse regulatory instruments, if carefully selected and sequenced, is more likely to facilitate successful outcomes than mere state regulation and legal procedures (Gunningham and Sinclair 1999). The idea is that the relevant stakeholders, such as government actors, citizens and civic institutions may together generate governance structures for complex issues.[7] This requires prioritizing and trade-offs that are negotiated in regulatory networks (Lodhia, Martin, and Rice 2020, 418-9). An important question is, whose interests are prioritized in constellations of stakeholders in which power positions are unequally distributed. Critics of this approach question whether such alternative forms of regulation are indeed more responsive and effective (Thornthwaite and O'Neill 2021). Though this body of literature deals with various forms of law, the primary interest is how order is generated and in how aims are most successfully reached.

Furthermore, development organizations, when they began paying attention to government and rule of law issues, introduced programs to combat corruption and weak government. Many development agencies opted for bypassing incompetent or corrupt government agencies. Tania Li (2009, 241–44) pointed out that the "bypass model" has the adverse effect as to weaken local government, because it draws talented administrators away from government. This model also contributes to the plural legal order, because the addressees of the programs have to deal with the project law of the programs as well as with their national law (Quarles van Ufford and Roth 2003; Weilenmann 2005; Li 2009). Transnational funding may also have additional effects on the legal landscape. Foundations that provide the grants are particularly effective in setting the conditions and implementing their ideas when

they create "organizational fields", connecting a large number of organizations. In this process they change recipient organizations, as Bartley (2007) demonstrated for forest certification in Indonesia.

Less discussed are sources of (emerging) regulations from below, such as regulation that emerges not by legislative bodies or contracts, but by means of "legal trouble", that is, public criticism by legal scholars in various arenas in order to enforce legal change (Baehr 1998).[8] And with broadening access to internet, new regulations may be generated by "flash regulation" and "blogstorm" to enforce actors to comply with the rules as formulated by the blogstorm with the aim that this will become official law (Ammori 2005). All of these new laws introduce conceptual frameworks that are often incompatible with the legal orders of the recipient countries. Overburdened, often incompetent legal administrators have to come to grips with this mass of new law. The result is that globalizing law has generated a considerable degree of legal fragmentation rather than the intended unification. "Ego-sectoralism", that is, the tendency of departments to make their own regulations without communicating or cooperating with other departments, and power struggles among ministries enhance the pluralizing effects of legal fragmentation.[9] Specific legal regimes are intended for the addressees only and affect only clearly defined sets or broad sets of actors.[10] Thus, transnational business regulations and bankruptcy regulations generally affect the rural population only marginally if at all. Product standards are meant for those involved in the relevant export production only. On the other hand, forestry and mining regulations affect transnational companies, a range of regional and local intermediaries, as well as marginal groups in resource-rich regions. This plurality of laws for different specified sectors of socio-economic life, entailed in state law, is referred to as legal fragmentation. However, as Robert Wai reminds us for business regulation, there usually is "significant overlap both in membership and subject matter" among the sets of regulations, which reduces the separation and fragmentation, and enhances legal pluralism (Wai 2005, 477). Under such conditions, people often have to choose from among the fragmented and often contradictory sets of regulations that characteristically stand "in a dynamic competitive relationship to each other" (Vanderlinden 1989, 151).

An institutional and systemic take on legal developments also shows that there is not only fragmentation, but that new legal linkages are being created. This may happen when the legislator creates hybrid laws;[11] by regulatory techniques within transnational production regimes; by institutions that are set up to navigate diverse sets of laws; or by citizens negotiating claims for recognition. For example, Indonesian bankruptcy law is a combination of US law and Indonesian, Dutch based law (Black and Bell 2011, 287; Newton 2002, 35; Mahy 2013, 405–22). Company law and Chinese practices are often combined in Chinese business (Mahy 2013, 418).[12] Besides, in Indonesia Islamic law and state law have become more closely linked by the issuing of the Compilation of Islamic law, which is the official interpretation of Islamic law to be applied by religious courts and state institutions. It entails some adjustments to the Indonesian context. In addition, as in other countries in Southeast Asia, since 2007, the Indonesian Syariah Supervisory Board is officially enabled to advise directors of companies that adhere to Islamic business principles and to monitor company activities (Mahy 2013, 416–7). New linkages are also made from

below, by members of marginalized and dispossessed communities in their attempts to legalize land titles by putting together pieces of evidence that might eventually establish a relatively secure title. These incrementing processes require strategic negotiation with a broad array of actors and institutions that often create new "organizational fields" (Bartley 2007; see also Lund 2020). Some indigenous groups are supported by NGOs to use new "counter-mapping" techniques (see See Tilley 2020; Radjawali, Pye, and Flitner 2017; de Vos 2018). These are helpful to garner support in their struggle for recognition and control over land and forest on the basis of international law. Though success of Indigenous groups in Southeast Asia is limited, by linking forestry, land, and Indigenous rights, their land claims are now based on a combination of very diverse legal regulations that used to represent separate social fields (Li 2000; Bakker 2009; Bakker and Moniaga 2010; Radjawali, Pye, and Flitner 2017).

This body of literature suggests that legal pluralism is and has been the rule, not the exception. Studies on globalization, often with a focus on supply chains, environmental issues and forestry, attest to the importance of such entanglements. The literature also shows that the recent intensified globalization brings new fragmentations and entanglements. While many studies pay attention to the specific contexts in which plural legal orders work out, they do not always inquire how these contexts have emerged. I suggest that the entanglements develop in specific dynamic relationships and that the long trajectories of entanglement deserve more attention because they affect the current social and political contexts in which people operate today.

3. Historical trajectories of entangling laws

Legal pluralism in Southeast Asia is characterized by the consecutive introduction of various colonial laws and a range of religious traditions that in various ways became entangled with indigenous laws (See Neo and Son 2019, 2; Black and Bell 2011). This section discusses recursive processes by which specific historical trajectories of social and political conditions have shaped current entanglements of religious law with customary and state law. The main examples in this section concern two regions in Indonesia, Islamic Ambon and West Sumatra, with equally long yet distinct histories of legal pluralism. A brief example from Northern Thailand serves to show the impact of demographic changes and related shifts in attitudes towards responsibility for harm on its plural legal order.

When Franz von Benda-Beckmann and I did research in the mid-1980s on local forms of social security among Muslims on the northern coast of the Moluccan Island of Ambon, in Eastern Indonesia, we were struck by the deep entanglement of Islamic law with local customary law, called *adat* (von Benda-Beckmann and von Benda-Beckmann 2007). People told us that they followed both Islamic and *adat* rules of inheritance. They explained that sons and daughters both inherited with equal shares of the estate from their fathers and mothers alike. As for the payment of the *zakat fithra*, the religious alms to be paid at the end of the fasting month to people in need, most distrusted state *zakat* funds, and paid directly to needy persons, preferably from among their relatives. And during the first three years of

a child's life its *zakat fithra* was paid to the traditional midwife, a category unknown in official Islamic law. It turned out that only religious leaders and some higher educated persons knew that these practices were not entirely according to the official Islamic rules. Most people were convinced that they followed the rules of Islam and were surprised to hear this was not the case. They did distinguish Islamic law from *adat* law in general, but usually made no clear distinction between the two bodies of law in matters of inheritance or *zakat fithra*. In these fields *adat* and Islamic law had become intrinsically entangled, while state law was sidelined by lack of trust.

This entanglement contrasted starkly with the situation we had encountered when studying Minangkabau social organization in West Sumatra (F. von Benda-Beckmann 1979; von Benda-Beckmann and von Benda-Beckmann 2013). The Minangkabau make a clear distinction between Islamic law and their *adat* in matters of property and inheritance. Though devout Muslims, they are adamant that inheritance patterns follow *adat* rules of matrilineal descent, by which family property is inherited through the mother's line and women get the use rights to such land. In the past, all privately owned property of a man also devolved according to matrilineal principles to his sisters' children. Due to the development of nuclear families and modern residence patterns, but also under the influence of Islam, inheritance practices have changed. Inherited property still follows the rules of matrilineal descent, but a man's privately acquired property today devolves to his sons and daughters in equal shares. This is generally seen as a change within *adat* law. In rural areas, even religious leaders follow these *adat* rules.

Clearly, transnational religious law had been adopted in very diverse ways and to different degrees in the two regions. Two factors contributed to these differences in particular. One was the degree of compatibility or incompatibility of the external, Islamic, law with local *adat*. The Minangkabau rules of matrilineal descent and property relations, especially those concerning the relationships between a man and his children, were far less compatible with Islamic law than the Ambonese rules of bilateral descent and property relations.

A second factor was that Islam played different political roles in the two regions in the mobilization of opposition against colonial power in earlier history. In the past, interregional traders and expanding principalities had brought Hindu, Buddhist, and Islamic religious tenets to Minangkabau, which were to various degrees incorporated into their local *adat* and religious practices. As far as we know this had not affected constitutional rules of authority, decision making and property relations. But at the beginning of the 19th century, a fundamentalist movement from Aceh tried to establish an Islamic theocracy in Minangkabau. In the civil war that followed, conservative *adat* minded factions won, albeit with Dutch backing. The Minangkabau paid for this support with incorporation into the Dutch colonial state. The Dutch did not keep their promise to refrain from interfering with village-internal matters. Thus, over time *adat* law and *adat* constitutions became deeply entangled with Dutch colonial law and the entanglement with state law remained so after Independence. Ideologically, though not in practice, the relationship between *adat* and Islamic law has remained strictly separate.

The history of entanglement of *adat*, Islam and Dutch colonial law on Ambon is markedly different. It started in the 17th century, when Moslems on the northern

coast were fighting Ternate and Tidore, Portuguese, and Dutch occupation, and were finally incorporated into the Dutch East Indies. They held on to their Islamic traditions and law, which was not, as for the Minangkabau, incompatible with their *adat*. To keep them under close surveillance, the Dutch forced the population to resettle from the mountains to the coast, and introduced a new structure of village government, combining it with older principles of *adat*. Resented at first, over time these institutions were interpreted as *adat* which in turn became entangled with new colonial laws, a process that has occurred in other parts of the world as well.[13] By the end of the 20th century, this repeatedly adapted version of *adat* was strictly distinguished from state law and its rules of village government.

The result of these political histories is that both Minangkabau and Islamic Ambonese people are subject to three entangled normative orders, each of which may be internally plural: the laws of the state - including regional and local regulations - Islamic law, and adat law. However, the relationship between *adat* and Islam is far more relaxed on Ambon than in Minangkabau. On Ambon, distinctions between these two bodies of law are not subject to political contestation, while for the Minangkabau the relationship between *adat* and Islam is still politically contentious. To some extent changes were enforced by the government, but local actors on their side also took an active part in reconfiguring the relationships.

The literature on entanglement has a strong focus on changes in customary law. But religious law may also be deeply and controversially entangled with state law. Besides, various versions of religious law may co-exist. David and Jaruwan Engel, discussing the relationship of religion, local law, and state law, have shown that among Buddhist Lana in Northern Thailand, traditional Buddhist tenets were premised on extended notions of personhood that included the local community and its spirits (Engel and Engel 2010). This relationship has changed under the influence of internal rural-urban migration and urbanization where people were confronted with a form of Buddhism propagated by government and the Thai King that is predicated on a more individualized notion of personhood. Separation from their home communities and this new form of Buddhism affected people's view of causation and responsibility for injuries and the possibilities and impossibilities of using state courts to seek redress. Here, too, processes of entanglements occurred in specific social and political histories. Injured migrants were key-actors in the recent reconfiguration of legal pluralism.

These examples suggest that traveling models of law, whether secular or religious, are part of historical trajectories of globalization. They typically become entangled with locally existing laws, and the way this happens depends on specific political and social processes of the time and place and by a great variety of actors. The example of Ambon also shows that this is a recursive process, by which local interpretations are successively confronted with new rules or new interpretations of external laws and older varieties of external law may become interpreted as part of customary law. Thus, processes of entanglement that we are experiencing today are not new, but are formed by their respective histories. However, as we shall see in the following sections, the degree to which and the scale on which this is happening today is new, and includes new sets of actors.

4. New globalizing actors

With decolonization after the second World War, globalizing law was no longer primarily driven by colonial empires, though the laws of most former colonies built on their respective colonial laws. Among the new law-generating actors, bilateral, international and transnational development agencies played a prominent role. Initially, they were primarily concerned with technical aid, such as projects for infrastructure, irrigation and forestry, or health and education. Towards the end of the century new issues arose that brought new actors on stage. Asia's financial crisis of 1997-1998 generated frantic activity among international financial organizations and development agencies. Arbitration had become a favored mode of dispute resolution in transnational commerce, but also a way to bypass state courts and their laws. Development agencies turned to new issues that until then were seen as "political" and therefore did not fall within their ambit. They had learned that technical problems always implied social and legal issues, and development cooperation expanded accordingly to legal institutions, rule of law, alternative dispute resolution, and human rights. This expansion brought a broad range of new transnational actors on stage that began to affect constellations of legal pluralism.

This section first presents an example of the adverse legal and social consequences of a technical development program in Nepal. This is to highlight that neglecting the fact that technical designs have social and legal implications beyond the confines of the program itself, and that these implications may not have been envisaged by the designers. It required new actors to put the needs of women on the agenda. Then follow two examples of an expanded understanding of development cooperation in Indonesia. One concerns decentralization policies in West Sumatra; the other discusses the fights of indigenous groups against encroaching mining, logging, and plantation companies.

a. Irrigation improvement in Nepal

In the 1990s development agencies were active in improving irrigation systems in the foothills of the Nepalese Himalaya. However, they did so without paying attention to the regulatory aspects of technological designs. As a result, such development projects often unexpectedly met with strong opposition from local elites with privileged access rights to water. These persons resented that the very new design of intakes and water distribution to improve the overall availability of irrigation water would deprive them from their privileged right of access. Internal regulations of the development programs also prevented the designers from paying attention to multiple water use, because their task concerned irrigation and not drinking water. Irrigation was seen as a man's activity, and development agents therefore typically cooperated with local men only. Thus, while the projects were participatory to the extent that male irrigators were included, women did not participate in the designing. Yet women were responsible for drinking and household water throughout the year and not only during the rainy season. Thus, the very technical design that would improve the overall availability of irrigation water during the rainy season, undermined privileged access to irrigation water for some, and in some cases worsened women's

access to household water during the dry season. Women's needs were simply not heeded by the projects. It took Nepalese and international Human Rights activists and researchers focusing on gender to point out the implications for women of technical designs (Pradhan, von Benda-Beckmann, and von Benda-Beckmann 2000; Lahiri-Dutt 2006). The lesson was slowly sinking in that what were taken as mere technical solutions for narrowly defined problems were in fact broader social and legal problems requiring careful grafting with a keen eye for inequality, and consideration of state law, the internal rules of the development agencies, the local normative order and often human rights to ensure that designs be suitable for all sectors of a community (Roth, Boelens, and Zwarteveen 2015).

b. Transnational actors and constitutional reforms in West Sumatra

When the Suharto regime fell in 1998, Indonesia initiated not only economic and financial change, but also constitutional reforms. At the national level, a myriad of development agencies from Europe, the USA and Australia engaging with various state departments began to promote their particular priorities, models of decentralization, and laws (Arnscheidt, van Rooij and Otto 2008). Many of these law-and-policy merchants operated with a remarkable lack of mutual coordination and relevant knowledge. Well-aware of the economic advantages of introducing the national laws and policies of their respective donor country, they acted in fierce competition for legal dominance over each other. This rendered the reformation process extremely complex, contributing substantially to legal fragmentation and internal differentiation.

The major constitutional reform concerned decentralization. It had become the shared conviction of international and bilateral development agencies that decentralization was the best democratic model to ensure citizen's participation and would bring government closer to the public, but there was no consensus on the level at which autonomy was to be located. All external actors involved in the process argued unanimously that provinces would be the most viable level of decentralization. However, viability of autonomous provinces turned out to be the very reason why President Megawati Sukarnoputri feared that resource-rich provinces would take this as an invitation for secession. The secession wars that her father quelled in the 1950s stood still sharply in her memory, and Aceh and Papua were calling for more autonomy or even independence, following the example of Timor Leste. Autonomy was therefore put with the districts. Provinces were allocated a mere coordinating role, though in recent years some of the powers have been reallocated to Provinces.

The responses to the national policies were extremely diverse, even within one single province, as for example in West Sumatra (von Benda-Beckmann and von Benda-Beckmann 2013). While the basic laws were enacted in 1999, it took considerable time before the implementation regulations were in place. In this chaotic time people began successfully to make claims in court on the basis of international Human Rights laws that Indonesia had not yet signed, an example of "legal trouble" as a source of emerging law from below (Baehr 1998). In West Sumatra, an active governor and some district heads immediately began to devise new district and village government structures. A range of development agencies offered their services

to help districts, municipalities, and villages to implement decentralization policies, or to train people in mediation techniques. In contrast to most development agencies, the German Technical Cooperation Agency (GTZ)[14] had established a trusted relationship in the region, dating back to a regional development program in the 1970s. Initially regarded with considerable suspicion, they had developed intimate knowledge of the region and built up a relationship of trust with the regional government, which enabled them to offer appropriate support. Unfortunately, support for villages to implement decentralized government happened at a time when the German government was adopting new policies, by which support was to be shifted to regions of Indonesia where ethnic conflict and violent struggles over natural resources were rampant. The training programs for local governance were to be the last ones in the region, and with a stroke of the pen the stable basis for fruitful cooperation, carefully built up over more than 25 years, was dismantled. Though the representatives of GTZ in West Sumatra were highly motivated to continue their work that promised so much success, they were bound by the regulations of their organization, which failed to appreciate that only long-term involvement allowed development agencies to design appropriate translation of decentralization models.

Other international agencies also sponsored programs for good governance for district officers and members of village government. Most of them financed only a few training sessions. Though the quality was often high enough, such hit and run sessions alone would have had little impact. However, donor agencies all employed the same handful of Minangkabau organizations to conduct the actual training. These trainers became quite skilled in adjusting to the priorities of the respective donor agencies, each with different interpretations of what democracy and good governance entailed and how it was to be established. They translated the conceptions into a body of knowledge suitable to the needs of the participants. Often, the same village officials were invited for each of these programs where they would meet each other time and again to discuss their problems and possible solutions. Thus, in the carousel of donor agencies with their diverse and often changing preoccupations, trainers and participants secured a certain degree of continuity that the funders had neither intended nor even envisioned. The sessions also were a conduit for the formation of horizontal connections amongst members of district and village governments that were unheard of under Suharto's autocratic regime that relied exclusively on vertical connections. Through these connections, problems and solutions were discussed that contributed to the ways in which local autonomy and good governance came to be understood in different parts of the country.

Among the major issues was the role *adat* might play in local government. West Sumatra was the first region in which *adat* regained purchase, in the first place to stake claims to land that had been expropriated in the past. In colonial times misrepresentation of land rights, based on the western distinction between public and private law that was unknown in *adat* law, had served to legitimize dispossession of land that was then turned over to plantation, logging and mining companies. And since Independence, much land had been expropriated under terms illegal according to both state law and *adat* law. Under Suharto's authoritarian and highly centralized regime, villages had lost control over their natural resources. Interest in and knowledge of these local laws therefore seemed to have all but disappeared.

But with the prospect of decentralization *adat* revitalized as a means to recapture control over village property. Others viewed *adat* with more skepticism and had little trust in *adat* authorities. The issue was emotionally controversially debated. Trainers of the Minangkabau civil organizations that carried out the programs stimulated such debates during their training sessions.

Apart from the projects to strengthen local government, some development agencies wanted to introduce mediation as an alternative for state courts. These projects, too, sometimes showed an amazing lack of local knowledge of the longstanding Minangkabau tradition of mediation. Traditionally, Minangkabau trusted authorities to be impartial because they had a sound knowledge of local conditions, the parties, and the case, and because they were good listeners. Oblique ways of communicating the goals was a prerequisite for success (K. von Benda-Beckmann 2020, 140). Instead the programs introduced a very direct mode of mediation by mediators that could only be impartial if they had no ties to the parties, which local people found highly uncomfortable. The idea was also to work with people that were not tainted with the widespread corruption of the Suharto era, nor with the "feudalism" they associated with *adat*. To accomplish this goal, people were to be trained that were neither *adat* authorities nor had a past in village government. Unfortunately, the program designers did not realize that such trainees would lack the standing that local people considered important successful mediation.

With the exception of GTZ, international agencies involved in the process shared the skepticism about Minangkabau's assumed reactionary and feudal *adat*, but lacked the knowledge of what *adat* might mean in practice within the specific localities. Minangkabau NGOs together with local authorities and participants of the programs offered, selected elements offered in the interaction with the various agencies, but adjusted them to their needs and wishes, leaving out what they did not find agreeable.

5. Adat communities and the struggle for resources

While there was widespread consensus in West Sumatra that *adat* was to play an important role in government and land issues, in other regions, with abundant natural resources and often diverse populations, the role of *adat* was strongly contested. There were violent struggles over natural resources among local populations and national and transnational companies, and among dominant and other ethnic and migrant groups (Li 2000; Bakker 2009; Warren and McCarthy 2009; Lucas and Warren 2013; Lund 2020). For these problems a diverse set of transnational actors became important: environmental organizations and human rights organizations, in particular those propagating indigenous rights. Under the Suharto regime, nomadic groups and shifting cultivators had been labeled as backward, "isolated people" (*masyarakat terasing*), who needed to be settled and modernized (Tilley 2020, 7). Their living space was severely contracted by encroachment of the mining, logging, and plantation industry. With the reforms, they could openly call for their rights without fear for persecution. The terminology of the United Nations Declaration on the Rights of Indigenous Peoples changed the debate. Linking rights to land and forests with human rights enabled putting their problems and interests on the national and international agenda.

However, the struggle for recognition had been hampered by a colonial legacy. In the beginning of the 20th century, scholars critical of land dispossessions by the colonial government had argued that many local communities were in fact legal, "*adat* law communities" (Dutch *adatrechtsgemeenschap*, Ind. *masyarakat hukum adat*) with their own law. These legal orders did not make a distinction between public and private law and land rights were inadequately translated into Dutch private law concepts of ownership. Such misconception not only rendered dispossessions legal in terms of colonial law, though illegal according to *adat*; it also changed internal relationships of local communities with their leaders. In the current struggles for land claims and recognition of *adat* law, both the transnational framework of indigenous rights and these old concepts are used (Bakker and Moniaga 2010, 198–99; Bedner and Van Huis 2008). The problem is that they do not fit together. In contrast to the international concept of Indigenous community, the Indonesian concepts include not only groups of people that live in closed and isolated communities but also communities that do not identify as Indigenous. The latter communities do not operate on the basis of Indigenous rights but are comfortable with the terms *masyarakat adat* or *masyarakat hukum adat* to strengthen their land claims and their claims for recognition of their *adat* law. In addition, even among those that are involved in Indigenous rights claims many criticize that the Indigenous rights framework puts too much emphasis on rights, whereas local meanings tend to give priority to spiritual relations and obligations of human beings towards the forest and land (Tan 2004, 191). Such translation process of an international legal concept to fit local situations occur in many parts of the world (Merry 2009). Benjamin Lawrence discusses an example from Cambodia in this special issue. But in the Indonesian context the process is especially complicated due to the fact that the framework of indigenous rights interferes with Indonesian legal concepts that were coined for a colonial context, and that are now deployed for current land contestations that include but are not exclusive for the kind of communities for which the indigenous rights framework was designed.

The struggle over the role of *adat* in control over land is aggravated by the powerful National Land Agency and the Department of Forestry that have, in spite of the legislation on regional autonomy, consistently obstructed devolvement of authority to local authorities. Lack of cooperation amongst the relevant departments make it even more difficult to get adat land titles acknowledged in practice (Merry 2009). Different departments also extend overlapping concessions, an issue that is not specific for Indonesia, as Banjamin Lawrence shows in this special issue. Transnational mining and logging companies and oil plantations use this legal limbo to strike deals with regional authorities, and to insist on their concessions against local groups. Many local groups are fighting back with incrementing strategies that include the label of Indigeneity and the support of regional, national, and international Indigenous rights organizations. To be sure, this requires jamming local legal relationships to the natural environment into international legal categories that, according to proponents of indigenous claims, misrepresent the very meaning local communities give to their natural environment, a process strikingly similar to what happened in colonial times. Male leaders controlled access to state agencies and techniques for providing evidence of land titles, which increased their internal power.

To some extent this still is the case. However, some have argued that relevant knowledge is accessible through internet, and counter-mapping has become easier by means of easily accessible and cheap techniques. This broadens the range of actors involved in entangling processes, and somewhat lessens the privileged position of leaders (Radjawali, Pye, and Flitner 2017).

6. Concluding remarks

Law globalizes in processes that vary according to different political constellations and trajectories in which actors make choices from among available legal orders, while differing in interest, in degrees of knowledge and resources, ideas of trust, and in diverse power relations. Looking at long-term trajectories of entanglement shows that the way external law works out depends on the historical and political context of the locality in which it was introduced. The histories of entanglement of local law with religious tenets in Indonesia and Thailand are cases in point. The working of external law also depends on the degree to which the external law is compatible or incompatible with local law as the comparison between Ambon and West Sumatra suggests. The examples further imply that expecting a straight path from traditional law to unified law is misconceived. Long-term processes reveal that state law may be captured at one stage and made into customary law, as happened on Ambon. Customary law may seem to have all but disappeared at one point of time, as in West Sumatra by the late 1990s, but may re-emerge and regain purchase for local actors if political and social circumstances change.

Paying attention to systemic features of legal pluralism with a special eye for actors offers particularly valuable insight into processes of legal change under intensifying globalization. Various sets of actors introduce law for specific, but often overlapping issues and socio-economic sectors that affect only certain parts of a population in processes of translation, adjustment, and capturing. But un-coordinated and uninformed engagement of transnational actors tends to both fragment and pluralize the legal landscape that is intended to be rendered more coherent. Land-dispossessions in Indonesia are particularly telling examples, showing that fights about land are carried out on the basis of an abundance of law, that includes *adat*, private and public state law, and international environmental and human rights law, each of which entails fundamentally different concepts for relationships to the material world. An important factor for incompatibility is that local land titles are embedded in broader legal constellations and socio-political and religious environments that differ from environments of the state's property regime with its distinction between private and public law, a distinction unknown in local legal orders. Besides, sets of regulations that at one stage may have been coupled, may become separated, to be linked again in new ways and often with new sets of law at a later point in time. Since the Indonesian reforms, the links between land rights and *adat* that to a large extent were de-coupled under Suharto, have been strengthened. However, at the same time new linkages are forged with constitutional law, international and national environmental law, and human rights. Actors engaged in natural resource management typically face many and often contradicting sets of regulations, interpretations, and powerful corporations, often with illegal titles. Fights over land and

livelihood are therefore incrementing processes, carried out in shifting plural legal landscapes in which a multitude of actors operate. These actors refer to variegated sets of regulatory orders that stand in dynamic and contested relationships, and that may include *adat*, a multitude of law issued at regional, provincial, national, and international and transnational law level, and law beyond the reach of any legislator.

A focus on multiple institutional contexts in which actors operate further reveals processes of fragmentation and pluralization. This is in part due to complex legal landscapes, in which actors at many levels engage in linking and decoupling sets of law as the examples of struggles over natural resources in Indonesia and Nepal suggest. Transnational or national actors cannot simply impose their law and policies on a local population, but need to establish trust and acquire knowledge of the locally existing legal constellations to be successful. The process entails negotiation and translation work at many levels, in which intermediary actors play an important role, as we saw for the training sessions in West Sumatra. Looking at the agency of the addressees of Indonesian natural resource policies reveals ways by which, despite great power differences, the plural legal orders may offer some options on the long way towards recognition of their claims.

Together, the examples suggest that concrete outcomes of traveling models, whether along commercial roads, by development cooperation or Indigenous rights advocacy, or through large-scale constitutional reforms, may differ substantially from what transnational or national actors intended, and depend on the actors involved in the process. The skill to navigate the fragmented and entangled legal world is an important indicator for success.

Notes

1. See for official legal pluralism in Southeast Asia, Hooker 1975; 1978; Harding 2001, 2015. See also Schonthal in this special issue.
2. The term entanglement resembles the concept of legal pluralism. Legal pluralism refers to the co-existence of legal orders in general and in different constellations; entanglement is an aspect of legal pluralism that highlights the mutual constitution and interrelatedness of legal orders and the actors that draw on various available sets of law.
3. See for the anthropological background of global legal pluralism, K. von Benda-Beckmann and Turner, 2020.
4. See also Turner 2016 for legal pluralism in supply chains of Moroccan argan oil.
5. See Harding in this volume. For Indonesia, see Butt and Lindsey 2012; Neo and Son 2019, 2–4: Black and Bell 2011, 293; Wiratraman and Shah 2019.
6. Mahy (2013, 405) discusses practices that are followed by participants and tend to acquire a legal-like status.
7. See e.g., Gunningham and Sinclair 1999; Parker 2008; van Rooij, Stern and Fürst 2016; Thornwaite and O'Neill 2021; Lodhia, Martin, and Rice 2020, Coglianese 1996; 2021.
8. Van Rooij et al (2014, 8) reports a similar dynamic of regulatory pluralism in China in the form of "'regulation by escalation'[…] where non-state actors can only become effective if they escalate the level of social unrest."
9. For ego-sectoralism see Arnscheidt 2003,54; Kouwagam, 2020. See Black and Bell 2011, 274; Bakker and Moniaga 2010 for interdepartmental strife. See for comparable issues in Bhutan, Curran in this volume.
10. For this, Vanderlinden and Gilissen 1972 used the term 'legal plurality'.
11. See for hybrid laws in Southeast Asia, Harding 2001.

12. See Gillespie 2013 for differences in hybrid forms of regulation between European and USA based transnational production companies that rely on explicit rules and formal legal instruments, and intra-Asian ones that use other modes of ordering.
13. See for similar processes in Mexico, Nuijten 1997.
14. In 2011 the agency was merged with two other development agencies into the German Corporation for International Cooperation GIZ.

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