

# “Adat is based on Sharia, Sharia is based on Koran”

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The role of Islam within the legal orders of two  
Sumatran societies: a case study of Aceh and the  
Minangkabau

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Foto of Minangkabau house and Masjid taken from: <https://s-media-cache-ak0.pinimg.com/564x/72/cb/d6/72cbd697c62656fa8fcf2220c172a3b8.jpg>

## ABSTRACT

The Minangkabau of West Sumatra and the autonomous region of Aceh in the North of Sumatra share a complex identity in which Islam plays a large part. Islam is a marker of regional identity for both regions. Both cultures are dynamic battlegrounds of multiple worldviews, where state, Islam and *adat* (traditional law and customs) combine to create unique societies. While Islam is a form of rebellion and symbol of autonomy for Aceh, it is a symbol of tradition for the matrilineal Minangkabau. The central government of Aceh shows its unique situation as an autonomous region and its perceived right to statehood through the formalization of Islamic law. The Minangkabau in turn perceive Islam as one aspect of Minangkabau identity. They strengthen Islamic law in order to strengthen the Islamic morality that is important to Minangkabau *adat*. While in Aceh, Islam is to replace or become their *adat*, for the Minangkabau its role is to strengthen *adat*. In both societies we find that the power of Islamic laws to change local customs remains limited however. Islam, despite its increasing power and influence, remains one of a number of legal influences and is far from uniform or monolithic.

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## INTRODUCTION

Indonesia, despite being home to the largest Muslim population in the world, is a religiously diverse and secular country. The archipelago is home to a vast array of different religions, cultures. This diverse array of cultures hosts a large body of local traditions and customs. These local traditions are referred to as adat, a term from Arabic that encompasses a complex mix of traditional law, culture and traditions (von Benda-Beckmann & von Benda-Beckmann, 2013). This adat interacts and is influenced by religion and the civil law of the Indonesian government. These differing cultures mean that the culture of one part of Indonesia can be vastly different than another area. This results in a dizzying variety of different types of adat. The local laws and customs come from a wide range of sources including adat (traditional law), Islamic law, and civil law. This means that the line between adat, religious law and civil law is often not clearly defined. The intersection between these creates a wide range of different legal pluralities in which the influence of Islamic law differs from time to time and from place to place in Indonesia. Within an Islamic revival in both Indonesia and in the rest of the Muslim world we find that the diversity of Islamic practices far outweighs its unity as traditions of sharia law adapt to local customs (Lapidus, 2002).

Within the vast range of Indonesian ethnic groups the Minangkabau and Acehnese of Sumatra are quite close, both geographically and culturally. Both Minangkabau and Acehnese society are influenced by Islam and the religion plays an important role in their culture. The most popular local wisdom of Aceh in this regards is “hukom ngeun adat lagee zat ngeun sifet” [the relation of Islam to Acehnese culture/tradition is like the relation of an entity to its descriptive attributes] (Anshori, 2012). This is similar to what is known in Minangkabau as “adat basandi syara’, syara’ basandi kitabullah” [Islam is based on Sharia and Sharia is based on the Quran] (von Benda-Beckmann, 2012). Generally, it means that Islam and adat are inseparable, and indeed acceptance of adat is considered as part of local religious tradition (Srimulyani 2010). These statements identify a hierarchical structure where Islam is at the base of adat culture. Despite this seemingly similar view of Islam however the influence of Islam on their legal pluralistic societies has been very different. Both societies have had their laws and politics influenced by Islam but this influence has panned out in markedly different ways.

Adat and religious law act within the confines of Indonesian civil law. This civil law came into being under Dutch colonial rule which needed a law system to preside over diverse parts of the archipelago. The Dutch found that this uniform law imported from the Netherlands was difficult to implement in a country as legally diverse as Indonesia (von Benda-Beckmann & von Benda-Beckmann, 2012A). This led to the Dutch relegating substantial power to local law based on adat. After independence, the country of Indonesia tried to enact a stronger centralized law based in large part on the Dutch law. In recent years however, following Reformasi law has shifted towards decentralization. As a result a more pluralistic form of law and politics has once again evolved. This has allowed for local law to draw from a wide variety of sources. (von Benda-Beckmann & von Benda-Beckmann, 2013)

This Indonesian civil law means that Indonesia is officially secular. Despite its secular nature however, atheism is not a recognized choice for its citizens. In attempting to bring together a diverse archipelago, the first President, Sukarno, created a philosophy called Pancasila, meaning five principles in Javanese (Ward, 2013). These five principals are belief in one god, just and civilized humanity, the unity of Indonesia, Democracy guided by the inner wisdom in the unanimity arising out

of deliberations amongst representatives, and social justice for all Indonesians. Pancasila rose largely out of a compromise between different Indonesian groups, namely nationalists, Muslims and Christians. While the official wording eventually chose the word Tuhan in place of Allah for describing belief in god the influence of the Islamist groups of the time is undeniable (Ward, 2013). The second president Suharto (1967-1998) placed a great emphasis on Pancasila. He said it was a method to reach the perfect life with your fellow man and god (Ward, 2013). Suharto also instituted Pancasila classes that everyone from school student to grown men had to attend. (Ward, 2013) Article 29 of the Indonesian constitution states that 1. The State shall be based upon the belief in the One and Only God. 2. The State guarantees all persons the freedom of worship, each according to his/her own religion or belief. (Republic of Indonesia, 1989) This means that while there is freedom of worship the state is still based on belief in one god and elements contrary to the state could be seen as dangerous. Because of this perceived religious freedom in the constitution Muslim leaders criticized Sukarno's Pancasila as too inclusive, and for prioritizing religious pluralism over the centrality of the Quran for Indonesia's Muslim-majority population. Some advocated a much more explicit and politically central role for Islam than that allowed under Pancasila (Ward, 2013). While the first president Sukarno clearly advocated for religious pluralism the second president Suharto switched within his rule from staunch supporter of Pancasila as state ideology to using Islam as a political force with the creation of the Indonesian Association of Muslim Intellectuals while still allowing them relatively little power in actual politics (Ward, 2013). This outward Islamic identity was reflected in both politics (such as the 1989 law increasing power for Islamic courts) and personal life (Suharto undertook the haj, and his wife more prominently wore the Islamic female veil) (Ward, 2013). Despite this show of Islamic faith however, Pancasila remained the main ideology of the new order regime and was the legitimizing force behind its policies. (Ward, 2013)

The realms of tradition, religion and modernity have long been in conflict under the legal system of Indonesia. After state sponsored modernity in the form of civil law with at its basis Pancasila, the Reformasi has once again allowed a new balance to form between tradition (adat), religion and state. This new found freedom has seen Islam play a prominent role in the shifting legal pluralism of both the Minangkabau and the autonomous region of Aceh. Islam's role for the new legal order in Minangkabau and Aceh is far from uniform however, despite close geographic and cultural ties. The question of how Islam adapts to and influences the pluralistic legal orders of Aceh and the Minangkabau is relevant for understanding the evolution of a newly decentralized Indonesia within an Islamic context.

## PROBLEM STATEMENT AND RESEARCH QUESTION

Religious, adat and civil law are not completely independent in Indonesia. These three elements of law interact with and influence each other. The former president, Yudhoyono, capitulated to pressure from hardline Islamist groups and issued an anti-Ahmadiyah decree in June 2008 (Ward, 2013). This is in direct contradiction to Pancasila which guarantees freedom of worship, especially to mono-theists such as the Ahmadiyah. The Minangkabau and Acehnese themselves are subject to this same influence of religion on adat and civil law. The Acehnese and Minangkabau both see Islam as central to their tradition or adat, but both are also part of extremely diverse Indonesia that is influenced by and influences the nature of law and politics in both these Sumatran societies. What is the influence of Islam on the legal order of these two Sumatran societies?

Despite the differences between the different forms of adat in Indonesia and the differing influence Islam can have within this triangle, this is a subject that is under-researched. The influence of Islam, which is a commonality across many Indonesian cultures within the adat, Islam civil law triangle can be very different. In the case of the Minangkabau and Acehnese of Sumatra, two closely related cultures, both culturally and geographically, the influence of Islam within the legal pluralism triangle appears to be very different. Previous research has pointed to these similarities and differences and indeed even the two ethnic groups themselves are keenly aware of the differences between them regarding questions of faith and how this influences their legal system. Academic research comparing the influence of Islam on these two group's legal pluralism triangle of adat law, Islamic law and civil law is lacking however. With the two groups and researchers specializing in them so keenly aware of each other's situation comparison of these two situations would benefit the understanding of how exactly Islam can influence a legally pluralistic society in two very different ways. Both the Minangkabau and Acehnese see Islam as central to their legal and social order yet the influence the religion exerts on their legal worldview is still very different. Study of two different paths Islam can take when adapting to and influencing two newly legally pluralistic societies can help to understand how Islam can both adapt to and change its surroundings when given a place of increased legal prominence.

## RESEARCH QUESTION

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The central research question is: What role does Islam play within the plural legal orders of the Minangkabau and Aceh? In order to answer this question I have formulated several sub-questions. The first sub-question is how the history of Islam and legal pluralism compares between the Minangkabau and Aceh. The second sub-question is: What form does the legal pluralism triangle of adat, Islam and state take for the autonomous region of Aceh and the Minangkabau following new freedom for legal pluralism? The third sub-question is: What role does Islam play within lawmaking in both societies? The questions will both examine the two societies individually as well as compare the role of religion in legal decision making across both cultures.

## IDENTITY AND LEGAL PLURALISM

Legal pluralism is the presence of a number of different legal traditions within a given sovereign territory. Legal pluralism can be seen as the opposite of legal centralism, which is an ideology where one force or tradition has monopoly over law making within its sovereign space (Turner & Arslan 2013). Under conditions of legal pluralism, identification processes are extremely complex, because each of the respective legal orders operates with different identity categories to which specific rights and obligations are attached (von Benda Beckmann and von Benda-Beckmann 2012). Legal systems operate with classifications to which certain rights and obligations are attached. The link these classifications have with power means they carry social consequences that go far beyond the original realm of law (Von Benda-Beckmann & Von Benda-Beckmann, 2012). In the case of an Acehnese or Minangkabau individual their identity binds them with 3 sets of classifications and three sets of laws. They are affected by the adat [described by Henley and Davidson {2008} as the generic term derived from Arabic language for describing a variety of local customary practices and tradition but also referring to laws or dispute regulation systems of a particular culture] of the Minangkabau or Aceh, sharia law by being Muslim and the civil law of indonesia by virtue of being a citizen of that country. Citizens may choose to act somewhere in between these plural legal orders and these orders may even influence each other through longterm contact (von Benda-Beckmann & von Benda-Beckmann, 2012). In some cases a legal order must be chosen for a specific action or case however because different codes of law that make up a system are not in agreement. In everyday interaction, identification with one of the legal categories or regulations for some specific purpose, e.g. marriage, inheritance, political rights, usually remains limited to that specific context of interaction (von Benda-Beckmann & von Benda-Beckmann, 2012). In plural legal systems where the different legal systems carry with them a worldview that goes far beyond particular rules a choice in legal system has far reaching consequences for the identification with that worldview (von Benda-Beckmann & von Benda-Beckmann, 2012). Thus the choice of legal orders and how a society or individual navigates and chooses withing this complex system has far reaching repercussions for the world view of those living in a legaly pluralistic society.

In the case of the two most prominent cultures of Sumatra: the Acehnese and the Minangkabau the question of identity and legal pluralism is a relevant one. In both Aceh and among the Minangkabau of west sumatra there is complex legal tradition in place where civil law, religious law and traditional law interact and influence each other. These cultures have the choice to forum shop. Forum shopping is the ability of members of a group to select among overlapping institutions in deciding which (if any) to petition in trying to resolve their conflicts. This choice for legal system can depend on where the outcome is most favorable (Busch, 2007). In the case of cultures such as the Minangkabau and Aceh each legal system carries with it a certain world view, these world view influences the individual and the society in legal decision making. This makes the question of the influence of Islam on the the legal order of the Minangkabau and Aceh a far reaching question. The case of forum shopping is especially interesting because of the worldview each forum carries with it. In cases such as the triangle of adat and Islam and the state, identification within a time and space bound interaction context is often treated as a choice for and identification with the whole system, *a pars pro toto*. (von Benda-Beckmann & von Benda-Beckmann, 2012) In such cases the issue of court jurisdiction can have a high symbolic political value that may have consequences out of court and into realms of such as politics, identity and worldview. This means that multiple legal influences have far reaching consequences for indentity and worldview of those involved.

## BACKGROUND OF THE MINANGKABAU AND ACEH

### THE MINANGKABAU

The role of Islam in Minangkabau culture has always been interesting. The Minangkabau, Muslims since the 16<sup>th</sup> century, live in West Sumatra. Their customs and adat prescribe a matrilineal inheritance law while Islam is decidedly patrilineal. The Minangkabau are the most populous matrilineal descending ethnicity in the world (von Benda-Beckmann & Von Benda-Beckmann, 2013). The Minangkabau have long lived under a system of three laws: religion, adat, and state. In the 16<sup>th</sup> century records indicate that the Minangkabau had three kings: King of the World (Radja Alam), the King of adat (Radja adat), and the King of Religion (Radja Ibadat); together they were called the Radja Tigo Selo (Kings of the Three Seats). (Abdullah 1966). The king of religion was the masculine force. The king of adat, regardless of whether it was a female or male (both were possible), grew their hair long and enforced the feminine force. The power relations between religion, adat and state have been an important factor of Minangkabau life and politics throughout their history and still influence legal pluralism in the region and people today.

### HISTORY

The Minangkabau have had a long history of a mixing of cultures and rulers that has led to the interesting relation of state law, adat and Islam we see today. The Minangkabau are the largest matrilineal descending ethnic group in the world. This is an interesting and almost unique phenomenon among Muslim societies.

The relationship between adat and Islam started with the conversion of the Minangkabau in the 16<sup>th</sup> century to Islam and following the arrival of Sufi missionaries and Muslim traders (Lapidus, 2012). Even after the arrival of and mass conversion to Islam, the traditional way of life including communal housing and matrilineal relationships remained strong. The Minangkabau had largely converted to sufi orders which subscribed to mystical interpretations of the Islam rather than stricter ones who took a more hardline approach (Lapidus, 2012). This allowed previous practice of Animism to remain strongly entrenched in the culture. The flexibility of the sufi Islamic interpretation also allowed Minangkabau society to add its new Islamic identity to its traditional matrilineal identity. Minangkabau villages were defined in matrilineal terms. The village community organized into a *nagari*, was a grouping of a number of clans led by chieftans. These *nagari* were then further organized into an *alara* led by a king (Lapidus, 2012). Islam led a male oriented counter movement. In contrast to these communal houses grouped along matrilineal lines, an Islamic men's alternative developed *sara*, developed. *Saura*, young men's houses, acted as (quranic) schools and were the meeting places of the sufi brotherhoods (Lapidus, 2012).

These seemingly incompatible forms of tradition, Islamic and adat have been at odds in Minangkabau society. In Islamic jurisprudence inheritance, child custody and residence were strictly patrilineal and patrilocal (that is to say the female moves out of the house to live near the husband's family). In Minangkabau society however the normal form of residence was large communal houses that were passed down from female generation to generation. This conflict of cultures came to a head during a period of great change for the Minangkabau in the 18<sup>th</sup> century. As the traditional forms of agriculture changed from rice farming to coffee farming and the price of spices and gold collapsed the communal culture of the Minangkabau faced a great strain (Cribb, 2010). As some farmers began

faring better than others the appeal of a more individualistic worldview than the communal adat system may have appealed to the locals, they found this individualism in Islam (Salim, 2013).

Out of this period of change an Islamic reformer emerged, Tuanku Nan Tua. He advocated a greater reliance on Islam than on tradition and a greater observance of sharia in the realms of inheritance or family matters. His message was wisely directed at a new merchant and peasant class that found itself outside the traditional way of communal Minangkabau life and thus without a clear worldview (Salim, 2013). This reform movement eventually led to a civil war in 1803 when pilgrims influenced by the form of Islam practiced in Mecca began to preach in the coffee-producing towns. They called for an Islamic society of high morality and the banning things considered *haram* (Abdullah, 1966). While Nan Tua advocated non-violence his followers did not and threatened to destroy the *nagari* structure to bring about sharia law, they also burned the traditional sufi influenced Muslim schools (Salim 2013). While some of the chieftans agreed with the Islamist demands, especially those in coastal areas of heavy trading, many did not. These chiefs collectively asked the Dutch to intercede leading to an extensive war known as the Padri war that lasted from 1819-1839 and ended in Dutch rule over the province. A subsequent attempt by the Islamists (who had joined forces with adat elements) to combat Dutch rule was eventually crushed in 1845 (Cribb, 2010). With the help of the Dutch, the traditional elements of Minangkabau society, the proponents of adat, had won the war although real power lay with the Dutch. As a result of this struggle stricter interpretations of Islamic thinking had gained a foothold among this matrilineal society that would leave a mark on the legal order however (Cribb, 2010).

The incorporation of the Minangkabau into the colony of the Dutch East Indies made the legal order even more complex. The colonial legal system was based on a strict distinction between three categories of citizens: European, Indigenous and Foreign Oriental (which included Chinese, Indians and Arabs) (Cribb 2010). The Indigenous were largely covered by adat law, which the civil legal code recognized as valid under most conditions (von Benda-Beckmann & von Benda-Beckmann 2013). Slowly however the adat law was replaced with Dutch civil law for important cases, and while the communal ownership of property was recognized the men were recorded in the Colonial records as the owners and not the women (von Benda-Beckmann & von Benda-Beckmann, 2013). While the Dutch recognized the complex adat system they clearly wished for a more centralized form of government. Dutch attempts to limit the number of village heads were unsuccessful with a resulting discrepancy between who was considered the leader under Dutch recognized adat law and local adat law (Cribb 2010).

Following Indonesian independence, the leadership of Sukarno and Suharto would see the triad of civil, religious and adat law change many times as power shifted between these influences. While both presidents attempted to create a strong centralized government adat and Islamic law remained an important factor in Minangkabau life. Civil law gained a much stronger role as the legal arm of the Pancasila doctrine, particularly under the new order government of Suharto (von Benda-Beckmann & von Benda-Beckmann, 2013).

## ACEH

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Aceh is a region of Indonesia that is famous for its strict adherence to Islamic laws. The region of Aceh was historically the first in the region to embrace Islam and the religion has been an important part of the local culture since the time of the first Acehnese sultans (Milallos, 2007). Under Aceh's sultanates, Islamic law and *adat* co-existed very closely and at times were hardly distinguished. This led to the widely known Acehnese aphorism suggesting the close relationship between *shari'a* and

*adat: "hukom ngon adat, lagee zat ngon sifeut* [the relationship between *shari'a* and *adat* is similar to the link between the substance of something and its characteristic]" (Salim, 2010). Aceh, priding itself as the 'Verandah of Mecca' (Serambi Mekkah), has always been more devoutly Islamic compared with the rest of Indonesia (Milallos, 2007). In Aceh *adat* has always been strongly influenced by Islam with such saying as "seubakhe-bakhe ureng Aceh, wate geuteuehnan Allah nan Nabi teuiem atauwa seungap" (Acehnese people, even the foolish ones, would be silent when the names of their God and His Prophet are cited or stated), and "han teupeh bak tajak, han teupeh bak tawoe, sabei keudroe-droe ta mita bahagia" or "han teupehbak tajak han teupeh bak tawoe saboeh nangroe Tuhan Peulara" (religious values and tenets have been extensively penetrating the social and cultural aspects of Aceh) being commonplace. (Anshori, 2012) This special position of perceived local piety, has contributed to a history of independence movements in Aceh against both the colonial dutch government and the subsequent Indonesian government. Aceh is a region with a strong feeling of independence which manifests itself in a strong reliance on Islamic law when possible. This has resulted in Islam being a political force in Aceh. It has shaped an identity characterized by a long collective history of rebellion against foreign oppression and repression under the banner of sharia law (Millalos, 2007).

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#### HISTORY:

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Islam arrived in Aceh around 1250 and was the region of Indonesia where the spread of Islam began. By the sixteenth and seventeenth centuries, Aceh had attained a period of imperial greatness marked by its political and spiritual dominance in the region. By 1590 it was known as "the intellectual and spiritual centre of Islam in the Malay world" (Milallos, 2007). In addition to its strongly islamic nature the region of Aceh has also held a widespread will for independence under both colonial Dutch and Indonesian rule. The war of faith, "holy war of the faith" (militant jihad or Prang Sabil), is prominent in Acehnese history. It was first pursued by Acehnese Sultans in the sixteenth and seventeenth centuries against the Portuguese in Melaka, the Dutch from 1873 to 1930s, the Japanese from 1941 to 1945, and against the Indonesian government seen as a form of Javanese secular oppression starting 1945 to the present. Islamic or sharia law has always been a form of protest for the people of Aceh against foreign occupation (Anshori, 2012).

In the 17<sup>th</sup> century until Dutch colonization, the era of the Acehnese sultans, formal law was in the hands of qadi, Islamic religious scholars. These decided on a case by case basis on the basis of sharia law, with the Hadi Maja, a codified book of Acehnese *adat* based on sharia serving as the basis of these rulings (Anshori, 2012). The highest of such qadi's was the *Qadhi Malikul Adil* who was advisor to the sultan of Aceh Darussalam (itself a title inspired by Middle Eastern Muslim kingdoms) (Srimulyani, 2010). It was these same religious leaders who eventually led the charge against the Dutch, and indeed this struggle was framed as one of Islam vs infidel not one of defending Aceh (Aspinall, 2007). Within this worldview, Muslims in Aceh found it difficult to see Muslims elsewhere in the archipelago working together with the Dutch as the same kind of Muslim, further increasing the view of the Acehnese islam and it's mouthpieces. This high standing of religious leaders has proved to be influential in political concerns continuing until the modern day. Following this trend the Darul Islam and Tentara Islam Indonesia (DI/TII) rebelled against the Indonesian government for an Islamic nation following the introduction of Pancasila instead of Islam as the national ideology (Srimulyani, 2010). These Islamic sentiments were found all across Indonesia but gained the most power in already independent thinking Aceh (Aspinall, 2007). Starting in 1976 these movements gave rise to the *Gerakan Aceh Merdeka* or GAM, *Gerakan Aceh Merdeka* roughly translates as the Free Aceh Movement. The goals were roughly the same as the previous islamic movements that had

resisted Indonesian rule in favor of Islamic Acehnese nationalism but with the increased sense of urgency that the discovery of large oil deposits in acehnese waters discovered in 1976 brought with it (Kingsbury, 2007). The idealogie of the movement was different than the previous Islamic movements however, despite clear Islamic influences and being labeled as an islamic organization by the Indonesian government , GAM is a nationalist organisation the political goals of which are explicitly based on territory rather than religion (Kingsbury, 2007). The already independent streak of Aceh throughout history was strengthened by the threat of losing resources in their territory to a foreign occupier, Indonesia, this was used by the GAM to great effect and started an insurgency in Aceh which lasted until 2005 and saw almost all of Aceh under insurgent control atleast once during the conflict (Srimulyani, 2010). During the conflict, Islam played a large role in the conflict. The GAM chose to either emphasise or downplay the Islamic nature of the conflict depending on the audience they were speaking to (Aspinall, 2007). The Indonesian government, traditionally seen as strongly opposed to Islamism (one of the reasons for the conflict), blamed the insurgents for being secular and hostile to traditional islam after they began to implement shari'a in Aceh (Aspinall, 2007). The GAM responded to such attempts as useless in 2002 saying that 'Islamic shari'a is already deeply rooted [lit: like blood and flesh] in the Acehnese nation. We have a total (kaffah) Islamic shari'a, while what the outsiders offer is only its skin' (Aspinall, 2007). When the conflict came to an end in 2005 following military losses by the insurgents and the 2004 tsunami which did great damage to the province, peace talks between Indonesia and the GAM began under direction of western powers. The result of these peace talks was besides an increased autonomy for Aceh, an institutionalized shariah law in the province as an essential part of local autonomy.

## LEGAL PLURALISM TRIANGLE

### MINANGKABAU

Today adat law, civil law and religious law all play a role in Minangkabau culture. Following the fall of the Suharto regime, the resulting “big bang decentralization” allowed for the many different legal systems to once again exert their influence on the Minangkabau culture. Once again the government regained the more decentralized style it had under and before Dutch rule. Following the 1997 fall of Suharto’s new order regime, Minangkabau activism only increased the influence of adat law. For the Minangkabau adat has always been strongly linked with the organizational structure of a village through the nagari and inheritance related to this. In more personal matters such as divorce Islamic law is the primary court through which settlements are reached.

#### State

Minangkabau society has an interesting relationship with the idea of state. Following the big bang decentralization, the Nagari once again gained prominence as the lowest building block of Minangkabau administration (von Benda-Beckmann & von Benda-Beckmann, 2013). This village structure based on matrilineal adat law became the central building block of Minangkabau local governance. This Nagari system was the traditional system of grouping a number of clans under a group of village elders. Under the attempted centralization of the Minangkabau these Nagari systems had been split up into smaller local village governments called *desa*. These *desa* were to be the new smallest form of government in a centralized Indonesia, this resulted in the 543 nagari being turned into 3,516 desa. This number eventually stabilized at around 1,700 as desa that were not economically viable were combined into larger areas (von Benda-Beckmann & von Benda-Beckmann, 2013). These desa were disastrous for the adat laws of the Minangkabau however. It generally coincided with a perceived interest by the Suharto regime towards centralization a reduction in adat, and a replacement of adat by state approved Islam. (von Benda-Beckmann and von Benda-Beckmann, 2013) Since the desa and nagari did not correspond in area, this left the traditional unit of adat decision making, the nagari, in a power vacuum. In 1983 the nagari was recognized as an ‘adat law community’ and the adat council was recognized for the first time since independence. The desa remained however and this resulted in adat leaders living in very different desa’s than the nagari they had decision making power over (von Benda-Beckmann & von Benda-Beckmann, 2013). This resulted in antagonism between desa government and nagari government as effective local adat government proved impossible. By the 1990’s this had resulted in the death of adat as a form of Minangkabau decision making. Many adat council’s remained vacant and communal adat houses were dilapidated while desa government structures remained well maintained (von Benda-Beckmann and von Benda-Beckmann, 2013). The Minangkabau had at this point been forcibly removed from a plural legal system towards a monopoly of power based on the new order government. While the formal legal structure of adat governance, the nagari had been drastically changed and the adat council’s remained empty, adat still had a profound influence on Minangkabau life. Even under the desa system, decisions were often made with tradition in mind. adat decision making remained a huge influence on local governance in Minangkabau society. The state could destroy the formal institutions of adat but not its influence on Minangkabau society (von Benda-Beckmann and von Benda-Beckmann, 2013).

The return to a nagari system with government approval under the 'big-bang decentralization' resulted in a unification of the adat and civil institutions. While adat had never disappeared, its formal power had been reduced considerably. This changed under a new nagari system. With the central government building block once again being the same as the central adat building block the two systems overlapped and adat power became more closely tied to state power.

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## ISLAM

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The rise of centralization in the 1980's and the decentralization in the 1990's in Indonesia besides being a struggle between the powers of adat and state had a third crucial player, Islam, the traditional religion of the Minangkabau. The centralization of government and increase in power of civil institutions in favor of adat courts resulted in an increase in formal power for Islamic courts. Suharto, eager to unify Indonesia, had chosen Islam, the religion of a vast majority of Indonesians as an alternate source of power.

Until the late 1980's only civil courts could decide in inheritance cases. These courts often decided on the basis of adat law despite not being formally recognized as adat courts under Minangkabau tradition. The central government attempted to counteract this with an increase in the power of Islamic law. In the late 1980's and early 1990's religious courts were allowed to preside for the first time in inheritance cases (von Benda-Beckmann & von Benda-Beckmann & Griffiths, 2012). It also further codified the official state guidelines for Islamic law decision making in the Compilation of Islamic Law. This compilation proved unpopular with traditional Islamic scholars as it made concessions towards both traditional Indonesian family law and state law (von Benda-Beckmann & von Benda-Beckmann, 2013). Despite increased power for Islamic courts they remained unpopular for the Minangkabau people. And in the 20 years following the 1989 decision only 1 percent of inheritance cases would be decided by Islamic courts despite further laws increasing the Islamic courts power (von Benda-Beckmann & von Benda-Beckmann, 2013). Inheritance remained firmly within the power of the civil courts who decided inheritance along the lines of adat. The only cases that were decided by Islamic courts were those of divorce and division of property and rules for maintaining children. Today this division is maintained and Islamic scholars show great affinity for adat law when deciding inheritance (von Benda-Beckmann & von Benda-Beckmann, 2013).

Given the close relationship between adat, Islam and state in Minangkabau society, it is no surprise that with the increased prominence of the nagari as a building block of Minangkabau governance the role of Islam changed once again. Following the traditional Minangkabau belief that 'adat was based on the Shari'a and the Shari'a on the Koran', ABS-SBK, it is logical that if the status of adat in relation to central government changes so should the status of sharia. (von Benda-Beckmann & von Benda-Beckmann, 2012) The back to the nagari movement was now competing with the back to sarau movement, sarau being the traditional men's houses for unmarried Minangkabau men who were through Islamic rules unable to stay in their traditional matrilineal homes (Von Benda-Beckmann and von Benda-Beckmann, 2012). Islam had trouble gaining the power in local government that adat had gained; it did not come with a plan on how to handle the decentralization as adat had with its set relations of land division and organization that had existed before centralization. Islam instead focused on saving Minangkabau morality, which via ABS-SBK was the same as Islamic morality. It sought to tackle societal illness in Minangkabau society such as pornography, gambling, drug abuse and indecent clothing for women (Von Benda-Beckmann & von Benda-Beckmann, 2012). As noted by von Benda-Beckmann (2013) and Lyn Parker (2008) the Islamic nature of the Minangkabau has become more prominent in recent years. Villages, districts, and municipalities joined in this regulating race, enacting numerous dress codes and limitation of freedom of movement for women

(von Benda-Beckmann & von Benda-Beckmann, 2012). This greater sense of Islamic morality in modern Minangkabau culture includes laws that limit the ability of women to be on the streets at night if unaccompanied by a man in Padang municipality. Government has also taken steps to ensure the clothing of women is sufficiently Islamic the school uniform of Minangkabau girls is a jilbab (head scarf completely covering the hair). This extends to professional life with the official uniform of government officials also including a jilbab. In fact as noted in 2009, the vast majority of women in villages wore the jilbab (von Benda-Beckmann & von Benda-Beckmann, 2013). So prominent is the “Islamic dress” that several villages have instituted laws requiring traditional tribal dress for adat ceremonies such as weddings, funerals and the instillation of adat officials (Benda-Beckmann 2013) instead of the ubiquitous jilbab that currently dominates Minangkabau life. Islam as a political and legal force has grown in Minangkabau society. In fact, According to the Indonesian government, in January 2010 there were 82 local Islamic regulations, excluding those of Aceh (where sharia has been formally introduced), 21 of which were in force in ten districts of West Sumatra where the Minangkabau live although other numbers suggest that there were 160 local Islamic regulations in 2009, of which 40 had been passed in West Sumatra. One thing is certain however, aside from Aceh, the Mingangkabau dominated province of West Sumatra had passed the most Islamic regulations of all provinces in Indonesia (Salim 2015). Islam plays a prominent role in in modern Minangkabau legal orders.

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## ADAT

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Following the 1997 fall of Suharto’s new order regime Minangkabau activism only increased the influence of adat law. For the Minangkabau adat has always been strongly linked with the organizational structure of a village through the nagari and inheritance was always linked to this village structure. In more personal matters such as divorce Islamic law is the primary court through which settlements are reached. Decentralization during the period known as the Reformasi since 1998 has seen a surge of Minangkabau pride resulting in an increased prominence for the nagari in local politics in west Sumatra. nagari as a structure were always the center of matrilineal Minangkabau adat life and perhaps surprisingly recent years have seen a growth in the prominence of adat decision making among the Minangkabau. This has resulted in adat courts being the most prominent decision making tools for the Minangkabau. The nagari as new center of Minangkabau local governance has resulted in an increased prominence for adat traditions.

While the formal power of adat institutions has grown in adat society, its role in the personal lives of Minangkabau is a much less clear story. With adat’s formal power restored through the reintroduction of nagari and adat councils its power has waned in other less formal areas (von Benda-Beckmann & von Benda-Beckmann, 2013). Adat has made huge inroads to play a more important part in local government for the Minangkabau often replacing the civil institutions created to replace it in the 70’s and 80’s (von Benda-Beckmann & von Benda-Beckmann, 2013). Despite its formal recognition however the traditions associated with adat have become less prominent. This is due to adat’s traditional relationship with Islam. The previously discussed ABS-SBK not only implies that adat is influenced by Islam, but also a hierarchical relationship. adat comes from sharia and sharia comes from the Koran. Koran and sharia is placed above adat in this case. Islamic morality is thus also automatically Minangkabau morality. This can be clearly seen with the cases of adat courts requiring traditional adat dress (which often does not completely cover the hair) to their meetings lest women come to them in “Islamic dress” (von Benda-Beckmann & von Benda-Beckmann, 2013).

The all-pervasive adat of Minangkabau culture that even when formal adat institutions remained vacant, remained the basis of legal jurisprudence appears to be on the fall. Minangkabau adat has

gained an increased role in local politics. The nagari government with its adat courts is in control of local politics. Adat has largely removed the centralized state from its traditional position of power. In terms of traditional customs however it has lost ground to Islam.

## CONCLUSIONS ON LEGAL PLURALISM FOR THE MINANGKABAU:

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Following the fall of the new order the legal pluralism of Minangkabau society has increased manifold. Active movements for a return to custom have resulted in an increased reliance on traditional communal matrilineal inheritance laws. This does not fully cover the whole picture however. In personal life an increased reliance on Islam is present. Islamic clothing for women is part of the official government uniform in schools and public buildings. Women have also been limited in their opportunities including (largely symbolic) rules limiting travel at night and few women in high offices in the newly powerful local nagari governments. Thus we see that while adat laws have regained power in the public sphere with regard to structure of society, Islam is on the rise and is pervading traditionally adat spheres of life. Thus while the matrilineal descent has been given an increased prominence in Minangkabau life in recent years following decentralization the patriarchal aspects of personal life and decision making have also become more prominent. We can see that the decentralization has allowed both the matriarchal adat law and patriarchal sharia law to flourish. These two legal powers have always been in conflict in Minangkabau life and as the central government has increasingly allowed decentralization these powers have again struggled to form a harmony between legal powers that is typical of Minangkabau history and public life.

## ACEH

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Aceh is a legally pluralistic region within Indonesia. It has throughout its history seen the influences of adat, Islam and the state grow and wane. Tradition, religion, and the struggle between foreign and local state government has created an interesting triangle of sources and inspiration for legal law.

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### STATE

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The influence of state on Acehenese legal pluralism is undeniable. The history of Aceh is filled with rebellion against foreign imposed ideas of statehood. Aceh has a history of making attempts at foreign control difficult. The Indonesian government has historically had a difficult time controlling the region and it has largely been independent until the 2005 agreement when the insurgents agreed to being an autonomous region of Indonesia.

Despite the large islamic influence on Aceh society, the movement responsible for the insurgency and subsequent autonomous region the GAM, is one based on statehood. The idea of a democratic statehood is one that is foreign to traditional Acehnese thought. It is a concept that may have been borrowed from the civil law that Indonesia enforced on Aceh or even further back to the idea of Dutch civil law from which indonesian civil law was formed.

Aceh as an autonomous region is infact what may be called an Islamic republic. As with any republic the role of the state is undeniable. The nature of a republic as an essentially unislamic form of government, according to the Quran and traditional Islamic thought, makes the influence of Islam on the triangle of legal pluralism in Aceh interesting. The idea of statehood is essential to the Acehnese identity, which in large part is based on not being part of another state (be it Indonesia or the Dutch colonial government).

In Aceh, the state is the protector of both the Islamic and adat forms of governance and legality as well as the protector of democracy, an ideology foreign to traditional Acehnese thought and rule.

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## ISLAM

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Following the implementation of Shariah law in Aceh the status of Islam has changed in Aceh. While Aceh as a region was always seen as a devout area of the Archipelago, it now had official standing in court of law. This started in 2002 as an attempt to appease rebels by the Indonesian government (even though as stated before the GAM itself did not want Sharia law in any official form). In 2002 the government besides giving the province a large amount of autonomy and control over its natural resources also allowed for enforcing of sharia law regarding gambling and alcohol consumption, adultery and immoral relations with the opposite sex, and regulation of beauty salons and resorts as well as employment of public lashing as punishment for Syariah infractions (Millalos, 2007). In the 2005 agreement between insurgents and the central government the official status of Sharia law in the province was again stressed. In 2006 the Mahkamah Syariah, sharia courts, gained even greater power by stipulating that this court has authority over all cases on family, criminal and civil law involving Muslims (Millalos, 2007). To monitor these Sharia infractions the provincial government had instated the Wilayatul Hisbah (WH), or religious police, in 2004. The amount of land disputes following the aftermath and the WH's interpretation that they were allowed to decide in such matters allowed the Mahkamah Syariah to become the supreme legal authority in the province (Salim, 2010). This also presented a problem for the newly powerful Sharia authorities however, they were almost from the start overencumbered to deal with the enormous caseload. This caused people to appeal to village authorities to deal with their cases. Here the rich tradition of adat law which had existed in Aceh came to a new prominence right at the time that sharia law had been granted official status. This legal pluralism and adat law has legal basis as the Helsinki agreement signed between the republic of indonesia and Aceh has explicit provisions to allow for state law pluralism (Salim, 2010). This pluralism of law is infact seen as strengthening the legitimacy of Sharia courts in Aceh as the idea of uniform single law is a foreign concept to the peoples of Islamic South East asia (Salim, 2010). In post-Helsinki agreement Aceh, the Sharia courts have rapidly gained jurisdiction over a wide variety of different civil disputes automatically if both parties are Muslim. Recently Aceh announced plans to include criminal court cases such as theft, rape and murder under the sharia court of law. This was already guaranteed by ruling but in practice had not yet taken place.

In Aceh as in other regions of Islamic Indonesia one of the strongest markers of islamic identity is the female veil. Under the Islamic law in place in Aceh the Jilbab, already commonplace in the province became legally enforced by religious police. Although what is considered islamic dress differs from area to area and even within an area among demographics it is cumpulsory in Aceh. There have been numerous cases of women being apprehended for wearing too tight fitting clothes, not covering their hair or otherwise "un-islamic" clothing (Milalos, 2007). There is no clear definition of what constitutes correct islamic dress however. This creates an interesting form of legal pluralism where officially sanctioned sharia law is in essence relying on *adat*, tradition to point out what is correct clothing and what is not, the only difference being that the religious courts have now gained the authority from the civil courts to require it.

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## ADAT

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Adat in Aceh is a subtle player in the politics of legal pluralism. Adat means tradition and as with practically every culture on earth, Aceh has a rich tradition on which to refer when looking for norms

and values. The adat of Aceh is undeniably linked to Islam, “hukom ngeun **adat** lagee zat ngeun sifet”, a traditional Acehnese saying means that the the relation of Islam to adat is like the relation of an entity to its descriptive attributes. Adat is Islam and Islam is adat in the Acehnese view. The legal pluralism of Aceh is more complex than this however. Adat is also a set of tradition and dress and comprises the rules of village life. Courts in aceh have always decided cases based on Malay traditions and Islamic principles (Salim, 2010).

## CONCLUSIONS ON LEGAL PLURALISM IN ACEH:

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Aceh presents an interesting example for legal pluralism in Indonesia. As a society which has a long history of fighting foreign oppression under the banner of Islam it has always had a problem bowing to imposed civil authority. Under the present situation of increasing power for islamic courts the chance arises for the Aceh to govern a society that has always seen itself as the “veranda of Mecca” in an islamic way. Where in Aceh Islam has long been a rallying cry against foreign secular forces it is now quickly becoming the status quo. The symbolism of Islam and Sharia law in particular is no less important now than then. As one of the pillars of Acehnese autonomy sharia is a symbol of defiance against Indonesian imperialism and successful management under their different preferred system of law is a powerful symbol of successful management of this newly autonomous region.

## CASE STUDIES ON THE RELATIONSHIP BETWEEN ISLAMIC, ADAT AND STATE LAW

Within the world of adat, state and Islam the role of Islam is prominent. Its influence extends not only to Islamic law but Islam itself is a broad worldview that also encompasses matters of personal piety and morality. Despite this extremely broad idea of what is Islamic, Islam plays a definite role in legal life and personal piety across many Indonesian societies such as the region of Aceh and the Minangkabau in Sumatra. Across these societies Islam is not a uniform idea, even within one region individual people or groups may view the role of Islam in their worldview as very different. Islamic law plays a definite role in the legal world in both regions but the personal morality espoused by Islam also plays a role in the individuals of both societies. The resulting worldview has resulted in Islamic regulations in both societies being common and Islam playing a role in many aspects of everyday life as diverse as inheritance or clothing.

Influence of Islam on women's clothing and inheritance will be examined for the legal situation of both the Minangkabau and Aceh. Islam has had an influence on both female clothing and inheritance in the two regions, its success in influencing or replacing adat or state law in these two legal battlefields is vastly different across cases or regions however.

### HIJAB

The Hijab is the traditional covering for the hair and neck that is worn by Muslim women (Merriam Webster). It comes from the Arabic word *hijāb*, which refers to a cover, screen or veil. Throughout the Muslim world it refers to various types of coverings for women, which have varying names and extremities of covering according to culture. In Indonesia the veil covering the hair is commonly referred to as the jilbab. This Jilbab, a veil covering the neck and hair, has historically competed with various other local forms of headress that were existed in the Indonesian archipelago. The female headdress is often seen as a symbol of outward piety (Hamdani, 2009). As such it has been encoded in local state law as a formalization of correct Islamic dress in both Aceh and Minangkabau (Hamdani, 2009)(Millalos, 2007).

### MINANGKABAU

The Minangkabau dominated province of West Sumatra had passed over 40 Islamic regulations in 2009 throughout various localities and levels of government. This was the highest number of any province besides Aceh (Salim 2015). Many of these regulations are regulations regarding Islamic dress, particularly for women. The increased prominence can be seen across the province in the uniform for schoolchildren and government workers. Islamic the school uniform of Minangkabau girls in West Sumatra is a jilbab. The official uniform of female government officials also includes a jilbab. These regulations generally fit within the greater freedom of local governments to decide local identity. The current Islamic movement has utilized the same opportunities for strengthening local identity presented to local adat powers by Reformasi regional autonomy since 2001 (Hamdani, 2009). This has resulted in numerous sharia influenced by laws that enforce Islamic morality on a local scale. Chief among these morality by laws in Western Sumatra are laws regarding Islamic dress.

The case of the formalization of Islamic dress in regulation can be clearly seen in Padang. Padang has attracted significant attention for its move towards formalization of Islamic dress for women. This

attention is primarily due to Padang's nature as the capital and largest city of the province and the significant non-Minangkabau and even non-Muslim population within the city (Hamdani, 2009). Padang followed the trend of many localities in the Minangkabau homeland of Western Sumatra in instituting several laws regarding Islamic dress.

These laws regarding Islamic dress are broadly divided into two categories, *Perda* which means a regional act and a *surat himbauan* or call to action. These Perda's are not unique to west Sumatra, also being found in western java and south Sulawesi however the sheer number of acts in West Sumatra shows that there is a definite trend in choosing for this formalization of Islamic attire across the Minangkabau homeland (Hamdani, 2009).

The Perda's in Padang attracted criticism in several Jakarta based journals. One must keep in mind when considering this criticism that these perda's are not only an act of religious observance but also an act of regional autonomy. The Perda's are a regional act allowed by the Reformasi to grant greater autonomy to regions of the archipelago. The main criticism of the perda's came because they are both obligatory and recommended. The policy recommends that compliance be voluntary, but its articles clearly use the words 'oblige' (mewajibkan) and 'obliged' (diwajibkan) as if Islamic dress were legally mandatory for women (Hamdani, 2009). This is where the policy clearly differs from regional acts in other states, they only encouraged Islamic dress for women.

Within the case of Padang the local acts for Islamic dress are based within a broader movement of Islamic morality. These have primarily been directed at schools and include *Wirid remaja* 'teenage gatherings for ritual activities'), an intensive program of *didikan subuh* (a dawn religious class), an anti-togel campaign (anti-illegal gambling), an anti-drug (*narkoba*) movement, and encouraging Islamic attire (*busana Muslim*). While the gambling and drug related campaigns are directed towards all students, those encouraging Islamic attire and religious classes are directed at Muslim students, the majority of which are Minangkabau. Even so, the final regulation states that non-Muslim students should 'adjust' (menyesuaikan diri) to Muslim dress by wearing baju kurung for girls and long pants for boys (Hamdani, 2009). The regulation however did little to change the dress of Mingangkabau students, because no new Islamic dress is defined. The national regulation for school attire already defines an Islamic and secular uniform whereby the Islamic uniform is a headscarf, a long-sleeved shirt and a long skirt. Non Muslim students modify this model by leaving out the headscarf. Headscarves, while only required on Friday, to show local identity, are commonly worn all days of the week (Hamdani, 2009).

The mayor of Padang for the most part positively received for his actions locally. His arguments for the acts included improving morality in school children and that Islamic dress would prevent sexual harassment. He concluded that that sexual harassment occurs because the aurat (part of the body considered as private according to Islamic Shariah) is flaunted: this invites harassment (Hamdani, 2009). The policy did little to change actual standards of dress as most female students already wore the veil on a daily basis. The act was widely supported by local schools with one school stating that "those who wear tight shirts or short skirts [hemmed above the knees] will have their grades reduced by fifty points from a maximum of 100 points" (Hamdani, 2009). Many school principals argued that the decision was made because the jilbab is part of traditional Minangkabau dress, not Islamic clothing, and that its adoption is a logical next step within the revival of adat and the return to the surau movement (Parker, 2008). Those few women who did not wear a jilbab outside school feel considerable pressure to say that they intend to wear it one day, and to nominate that time when they will "grow up" and do so (Parker, 2008).

The approach of Padang is typical of the Minangkabau style of showing the unity between adat and Islam. Adat comes from Sharia. Adat morality is based on sharia morality. The acts in Padang were not new, across west Sumatra, required or recommended veiling in schools and government workplaces was common (von Benda-Beckmann & von Benda-Beckmann, 2013). As well as billboard signs recommending the covering of ones aurat and recommending a moral Islamic life, these signs were most often payed for by the regional government (Hamdani, 2009). It appears the Minangkabau of west Sumatra have used the regional power granted to them by the Reformasi to formalize in law the Islamic nature of the region, particularly when it comes to Islamic morality.

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## ACEH

The autonomous region of Aceh has passed the most Islamic regulations of any local government in Indonesia (Salim, 2015). Its identity has always been greatly shaped by Islamic teachings and with huge autonomy given to the region after the peace deals with the Indonesian government the amount of regulations based on Islamic law is the highest in the nation (Millalos, 2007). These regulations are under the control of the State Shari'a Agency (Dinas Syariat Islam/DSI) who together with the Ulama council, the religious courts and the sharia police seek to ensure that the region is sufficiently Islamic (Feener, 2012).

As in many areas of Indonesia, Islamic regulations in Aceh while based in a broad goal of greater morality have placed a great importance on targetting women to encourage islamic dress (Taylor, 2015). These laws also allowed Aceh to enforce aspects of Syariah, most notably the qanun banning gambling and alcohol consumption, adultery and immoral relations with the opposite sex, those regulating beauty salons, hotels and resorts, the employment of public lashing as punishment for Syariah infractions. These *qanuns* are mandatory (Millalos, 2007). This means that in contrast to many other regions of Indonesia which encourage Islamic dress through call to actions, in Aceh it is mandatory. Females found to be in violation of modesty laws can be fined. This task lies with the Sharia police or *Wilayatul Hisbah*, who are the principal enforcers of morality regulations against gambling, unmodest dress and even adultery (Taylor, 2015).

As in the Minangkabau region of west Sumatra, the Islamic influence is felt strongly in the local school system. As in many regions of Indonesia, historically education was handled by religious schooling. Secular schooling, first introduced by the dutch, was the main form of schooling under the New order regime however (Srimulyani, 2013). As part of the peace agreement in the Aceh conflict Aceh would be allowed to implement Islamic education. This means that currently the From a curriculum point of view, there are virtually no differences between the Islamic madrasah and the secular sekolah in Aceh (Srimulyani, 2013). This change in focus can also be seen in the uniform of students in Aceh. Where in the 1990's the uniform for state schools did not include a jilbab, after the formalization of Islamic law in Aceh the uniforms of Islamic and Secular schools are not distinguished by uniform (Srimulyani, 2013). In aceh the *pendidikan Islami* (Islamic education) policy applied within the framework of local autonomy has formalized Islam within the education system.

The actual implementation of the jilbab laws in Aceh has been quite ambiguous however. While Islam prescribes modest dress for both sexes, in practice almost only women have been targetted by the Sharia police. Many women are apprehended in razia operations on businesses or were apprehended along highways for failing to wear the jilbab or wearing clothes that were too tight. The majority of these women were in the category of under 30. Yet despite these women being apprehended for immodest dress, there is no defined standard of what is appropriate modest dress in Aceh or at what age a woman is required to start wearing it (Millalos, 2007). Throughout the

Muslim world the rules regarding veiling differ extremely and within Indonesia this is not exception. There is no defined rule of what is acceptable for women to wear with secular, Islamic and adat customs all holding women to a different standard in that regard.

In Aceh the compulsory veil is seen as a form of collective resistance. It is a symbol of resistance towards the rest of secular Indonesian society. And with little resistance to the rules (according to Millalos [2007] only 1 article of 217 on the subject dealt with resistance to the imposed veiling) this form of politicized Islam as a form of local pride policy appears to be a popular part of the modern legal system in Aceh.

## INHERITANCE

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Islam as a religion has strong clear rules regarding inheritance. The exact percentages that are to be inherited by all different parties are clearly defined in the Quran. The world of adat and state law often have their own interpretations of how inheritance should play out however. This leads to a conflict of interests where once again the role of Islam is dependant on the formalization of law and its role within a complex dynamic.

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### MINANGKABAU

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For the Minangkabau, inheritance is a large part of their identity. The Minangkabau are the largest matrilineal descending ethnicity in the world. They are also Muslims however, according to traditional interpretations of the Quran this is an impossible combination. Inheritance has been an interesting point of conflict in Minangkabau society. The formalization by the Indonesian government of Islamic courts to preside over inheritance cases provides an interesting alternate form of inheritance for the Minangkabau adat.

The increasing power afforded to Islamic courts have historically had little to no impact on Minangkabau inheritance. "The living law" of Minangkabau by which the judge of a civil court was to decide had always remained the adat law of the Minangkabau. In the 20 years following the 1989 decision whereby Islamic courts could decide over inheritance cases only 1 percent of inheritance cases would be decided by Islamic courts. Inheritance remained firmly within the power of the civil courts who decided inheritance along the lines of adat (von Benda-Beckmann & von Benda-Beckmann, 2013). The Islamic courts of West Sumatra are primarily a court for divorce proceedings, as is required by Indonesian and Islamic law married Muslims must divorce according to Islamic law.

The unique situation of inheritance in Minangkabau has adapted to Islamic influences such as adapting to self-acquired property going from father to children instead of passing matrilineally. This however has been an Islamic influence on the civil courts who pass adat law instead. It has not changed the number of people going to Islamic courts. (Von Benda Beckmann & von Benda-Beckmann & Griffiths, 2012).

Islam has had a significant influence on Minangkabau society in recent years, particularly when related to aspects of morality such as proper dress. This influence is hardly seen on legal proceedings regarding inheritance however, as the number of Minangkabau who chose to settle inheritance cases in Islamic courts remain some of the lowest in Islamic Indonesia (Von Benda-Beckmann & Von Benda-Beckmann 2013).

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## ACEH

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Even within Aceh the practices of inheritance are quite diverse. While throughout the Minangkabau region the “living law” regarding inheritance had always been the adat law and as a result the civil courts were the primary courts for such cases, in Aceh this was not the case. The coastal regions of Aceh had always had Islamic law as the living law and inheritance was brought before Islamic courts. Even within the region of Aceh there is great diversity in this matter however. The highlands of Aceh, home to the Gayo people have historically seen their “adat” as their living law. This has resulted in an interesting conflict in the gayo highlands as Islamic judges came to preside over all Muslim disputes in the territory of Aceh following the peace deal (von Benda Beckmann & von Benda-Beckmann & Griffiths, 2012).

Gayo èdët, the vocalization for adat in the Gayo language, includes both Islamic and non Islamic elements. The Gayo have been Muslims since the 17th century, shorter than the coastal regions of aceh. The Gayo’s inheritance adat is based on village structures. Inheritance is partilineal but also depends on location. Sons remaining within the village gain more access to land than those who left the village. This is a left over from “before the dutch came” when “there was no ownership (*milik*) in Isak: only use-rights (*hak pake*)”(Bowen, 1988). This results in a marriage contract among the Gayo of which primary function is changing the village affiliation of a bride. A man who thus lives in his wife’s village in place of his own has little power over either, forfeiting power and inheritance rights at home and the land of the village he has moved to is in case of divorce not his either. This form of adat despite being in practice mostly patrilineal is not in accordance with Islamic law due to the great importance placed on village membership and place of residence (Bowen, 1988).

The resulting conflict between gayo adat and Islamic law can be seen in the gayo saying: “the headmand decides based on material proof, the [Islamic]law decides based on what is written”. The increasing power of the Islamic courts under an increasingly independent Aceh appears to have had an effect on this traditional inheritance pattern in Gayo however. Females and men who left their village had a lot to lose under traditional inheritance patterns in the Gayo highlands. Gayo adat also placed a huge importance on concensus however and with Islamic inheritance rules one could argue for an alternate division of property (Bowen, 1988).

With the increasing power of Islamic courts after the 1989 court, whereby inheritance cases between could be settled in an Islamic court the amount of inheritance cases in central Aceh increased. The Islamic courts as alternate form of inheritance law has resulted in forum shopping that allowed previously disadvantaged parties under Gayo adat to gain a share of inheritance, although the judges still decided primarily along village lines. The change is more an adaption of adat however than a complete change towards Islamic law (von Benda Beckmann & von Benda-Beckmann & Griffiths, 2012). Further Islamic laws such as the 2006 Amendment Law in Aceh which stipulated that ownership disputes involving Muslims should be transferred to the religious court have had a less profound effect however. The new power of Sharia courts inheritance cases has often resulted in courts who either apply a mixture of adat and Sharia law or defer the case to civil courts. Sharia courts in Aceh have not fully embraced the power they have. Even in the region of Indonesia where Islamic courts have complete power, the religious judges do not decide over inheritance cases along purely Islamic lines despite pressure from the Islamic High Court and the Department of Religious Affairs (Salim, 2013)(von Benda Beckmann & von Benda-Beckmann & Griffiths, 2012).

## CONCLUSION ON CASE STUDIES

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Islam plays a large role in both societies' modern lawmaking. The effectiveness of Islamic regulation in changing local customs is doubtful however. In both societies inheritance, a realm of the legal world with strong influence from adat, has not or barely been affected by increases to the power of religious courts. In both Aceh and West Sumatra inheritance is seen as within the realm of adat and even Islamic courts will rule along adat lines. In the case of the hijab we can see that while policies have been "effective" in both societies the effectiveness of the hijab is due to an already existing part of the culture being transcribed into law. The promotion of hijab is a promotion of a firmly Islamic part of local life, personal piety, into the public sphere under the pretext of "local pride" (Hamdani, 2009)(Salim, 2013).

## DISCUSSION

Islam plays a role for the Minangkabau and the autonomous region of Aceh in many aspects of legal and public life. The two sumatran societies draw legal inspiration from large set of influences including adat, state and Islam which all influence the local worldview. While the two societies would seem to be very different especially in the role that islam plays when one looks at the history, further analysis shows many similarities in the time following Reformasi.

For the Acehnese Islam has always been a symbol of rebellion. It's strong grounding in Islamic values has always ensured that it is different from its neighbors. Aceh was portrayed as a small miniature of Arab land; and thereby was dubbed as "Serambi Mekkah" (the Porch of Mecca) (Anshori, 2012). Given that the historical codified rules, the Hadi Maja, explicitly refer to the Acehnese identity as Muslim the huge respect for Islamic law is no surprise. This is part of what makes Aceh unique. When the Dutch attempt to solidify their hold on Aceh it is then logical that the resistance to this occupation comes under the banner of what defines Acehnese life, Islam. For the veranda of mecca to be subservient to a secular nation headed in java made rebellion in the region under the banner of Islam to be broadly accepted by Acehnese society (Anshori, 2012). The national epic of Aceh Hikayat Prang Gdmpeun composed by Dokarim, i.e. Abdulkarim glorifies the fighting of a Jihad against outsiders (Wieringa, 1998). The Islam of Aceh is undeniably influenced by the state's that have ruled it. The idea of an acehnese nation is one borrowed from Dutch and Indonesian ideas of statehood (Aspinall, 2007).

The Minangkabau history of conflict under the banner of Islam is much less vast than that of Aceh. Minangkabau Islam was first came strongly to the forefront during the padri war. The Padri, Muslim Scholars influenced by what they had seen in Mecca, wanted to purify the matrilineal adat system and cross pollination islam with local beliefs among the Minangkabau. When the Padri gained the momentum in the war, the traditional adat chiefs made a deal with the Dutch in 1821 to help their side. Eventually the war died out with the exile of the Padri leader in 1837. The adat leaders had won but this helped to strengthen the dutch hold on the province. In the years following this [Islam is based on Sharia and Sharia is based on the Quran] became an accepted way of thinking among the Minangkabau (Salim 2010). Islam and adat were more often than not placed together against an external civil law under the Dutch or later Indonesia than at odds with each other. The Minangkabau have no history of viewing Islam as a form of rebellion. Their adat is traditionally what made them different than other cultures, not their religion. Islam and adat were more often than not placed together, under ABS-SBK against an external civil law under the Dutch or later Indonesia than at odds with each other. Adat and sharia are seen as compatible with each other and freedom for adat means freedom for religion.

Both societies place great emphasis on local traditions and autonomy. The Acehnese appear to have transformed their Islamic identity into a national identity. Indeed the original goal of the GAM rebels was to create a separate Acehnese nation not necessarily one ruled by Islamic law. The great amount of Islamic laws in place in Aceh now came from the Indonesian government granting Acehnese religious courts huge freedom in order to win hearts and minds and stop the conflict. The increase in religious laws in West Sumatra followed a different path. The Reformasi granted local governments great amounts of autonomy. This was used by the Minangkabau to return to their traditional adat councils and nagari village structure. The great freedom also allowed for increased Islamic influence however. Minangkabau morality is Islamic morality, because ABS-SBK (von Benda-Beckmann & von Benda-Beckmann, 2012).

Despite an increasing Islamic presence in society and laws for both Aceh and among the Minangkabau of West Sumatra, the laws have taken decidedly different turns. Aceh has attempted to create an Islamic state, with every aspect of legal life going to a religious court. It is the only province of Indonesia which is allowed to apply sharia law. Aceh is attempting to create an Islamic society to strengthen its goals of independence. If Aceh can firmly enforce the Sharia, the thing that sets them apart from the rest of the nation they have begrudgingly rejoined, then they can prove their independence, yet so far the judges themselves seem unwilling to cooperate (Millalos, 2007). This shows the pervasiveness of adat in Acehnese life. It is difficult to enforce sharia out of nothing, when despite its strong Islamic nature Aceh has never truly been a sharia country (Salim, 2013). The central government of Aceh's attempts to make sharia in effect the adat of Aceh is a lofty goal and is still not being fully realized (Salim, 2013). For the Minangkabau, Islam is not a symbol of independence. Their adat is their unique aspect and symbol of rebellion. Sharia law not only means repulsive punishments, it means the end of matrilineal kinship and inheritance and such a legal change would harm the very soul of what it means to be a Minangkabau (von Benda-Beckmann & von Benda-Beckmann, 2012). Minangkabau follow adat which is influenced by Islamic law, so while Islam is essential to the Minangkabau identity it is part of village life and does not transcend it (von Benda-Beckmann & von Benda-Beckmann, 2012). Islam is the moral compass of Minangkabau adat life not the basis. This is probably why laws dealing with morality, such as those against gambling or those dealing with jilbab's for women have been so popular and indeed why the jilbab is now seen as "traditional" Minangkabau dress despite a very different adat costume existing. Adat is popular in post-Reformasi West Sumatra and if adat is popular then Islam as the moral compass for adat, is popular. In the Minangkabau view adat is based on sharia, adat is not sharia (von Benda-Beckmann & von Benda-Beckmann, 2013), this is exactly why the Minangkabau have embraced more fluid parts of Islamic ideology such as morality while leaving concrete parts such as inheritance within the realm of adat.

## CONCLUSION

Islam plays a huge role in the socially and legally complex relationships between Islam, State and adat for both the Minangkabau and Aceh. The Minangkabau and Aceh both have a rich Islamic history. They have Islam firmly engrained within their respective cultures. For Aceh Islam has been the banner under which to fight external threats while for the Minangkabau Islamic conflicts have been internal in nature, primarily dealing with Islam's place in Minangkabau life. For the Acehnese Islam is a unifying presence while for the Minangkabau, Islam to the detriment of adat leads to imbalance and conflict.

In Aceh and West Sumatra today the triangle of legal pluralism is a complex network of influences. While the central government of Aceh attempts to create a sharia state to emphasize autonomy, the real situation is very different. The idea of nationhood and democracy upon which the GAM and the resulting government in place now is founded are undeniably linked with the influence of Western and Indonesian states. West Sumatra is a complex mix of state, Islam and adat. It acts as the moral compass of what is seen as correct living under adat. With more room for adat, the state in West Sumatra has implemented policies popular with the local population, including numerous Islamic ones, instead of those implemented by the Indonesian government.

In both societies the role of Islam on lawmaking is evident. Both the Minangkabau and Aceh place great importance on Islamic morality. This can be seen in the numerous edicts about correct Islamic dress, particularly for women, which have been enacted in both areas. While both place pressure on women to conform to Islamic morality, the rules in Aceh are stricter and more mandatory. In both cases women often already conformed to these rules before the edicts were in place. In Aceh, under increasing power for Islamic courts, the formalization of Islamic law has made some inroads into traditionally adat areas of judgement such as inheritance. For the Minangkabau this is an area of expertise for adat. Adat is influenced by Islam, particularly in areas of morality or where adat does not have an answer, such as inheritance of newly acquired property. Adat is the core however, and despite increasing power of Islam in law nationally it has failed to change the things that make the Minangkabau unique, their inheritance and village structure.

In both societies we see that society as much influences laws as is the reverse. In both societies Islamic regulations have failed to effectively change the forms of inheritance in place. In areas of society where the force of Islam is clearly seen such as female dress, the formal laws of an Islamic nature are largely symbolic. Women in both societies for the most part followed the laws of modesty that the laws promote whether they are in place or not (Millalos, 2007) (von Benda-Beckmann & von Benda-Beckmann, 2012). Islamic laws that have been instituted by the state in both societies have been able to formalize the requirements of Islamic morality but done little to effectively change the structure of social relations as they exist in both societies. Islam has grown in power in both societies, particularly in the realm of individual morality, but is still just one of many influences on legal thinking whether we look at the obviously pluralistic Minangkabau or the more Islamic Acehnese. Despite being a Minangkabau saying in both cases "adat is based on sharia, and sharia is based on Koran" applies. Islam is an inspiration for morality but the living tradition of adat defines the perception of laws in both societies.

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