Introduction

“What we aim at is a win-win situation, so he parties feel as though neither of them have been punished or sanctioned through the mediation. What they feel is an obligation to share and to achieve fairness. Nobody looses.” Husaunun Tuan Guru Muda, Kodya, Lombok.

The Village Judicial Autonomy research paper is identifying mechanisms and institutions that currently exist for resolving disputes at the local level. It will track dispute resolution processes, norms, and actors with a specific focus on the experiences of poor and marginalized members of the community – women, ethnic minorities, and youth. The analysis is based on interviews, focus group discussions, and specific case studies from at least five provinces. The research paper is being developed in cooperation with the Supreme Court as part of the Justice for the Poor program to provide recommendations and options for a national system of mediation and conciliation at local level. The present interim report presents the findings of the field research conducted from January to June 2004. The final research paper is due in December 2004.¹

Methodology

The research comprises the following activities:
1. Legal context literature study is completed.
2. Initial consultations with relevant government institutions, NGOs and donor organizations to assess levels of interest and feasibility of policy reform of this nature. The dialogue with the Supreme Court, Bappenas, and other relevant institutions is ongoing.
3. Field research in the provinces of NTB, Maluku, West Sumatra, and Central Kalimantan between March and June 2004.² Research in East Java and follow up research in the existing provinces is planned for August-September.
4. Comparative desk studies of village based dispute resolution institutions in other Asian countries (Philippines, Cambodia, Bangladesh and Sri Lanka). Field visits are being considered for the second half of 2004.

¹ This interim report necessarily contains some generalisations. The complete case material is found in the field report from the four provinces.
² Not all the case material from the field has been written up at the time of the interim report.
Field research locations have been selected based on the information obtained during the initial consultations and represent different constellations of ethnic, socio-economic and logistic conditions. The extent to which the local government has taken legislative initiatives upon decentralization and the extent to which adat institutions are formalized also differ among the selected provinces.

The Justice for the Poor team assisted by local facilitators carries out the fieldwork. The initial phase of the research has focused on mapping the agents and institutions involved in dispute resolution, and how villagers use the different venues available in addressing perceived injustices. The cases studied are those raised by the villagers, from minor civil or criminal cases between residents in the same village, to prolonged conflicts between villages, and between villagers and external parties such as private investors or government. As far as possible, interviews are conducted with all parties to a conflict and with the local mediator or representatives from the institutions involved. The focus is on the process and the means involved in solving the conflicts, and how the involved parties perceive the process as well as its outcome. Special efforts are made to obtain the perspectives of women, who are often not represented in the traditional local leadership and dispute resolution structures.

The impact of regional autonomy on local administrative and traditional institutions

The political reform process and the regional autonomy following UU22/1999 shows examples of (i) reestablishment of territorial village units to the adat based entities previous to the law on village administration of 1979 (UU5/1979), and (ii) a revival and partial codification of adat laws and the adat institutions related to its jurisdiction, or (iii) integration or overlapping of adat and civil administration institutions.

“The people’s perception on the issue of return to the nagari is not clarified. What kind of nagari? This problem may incite internal conflicts because there will be local fights for power” Rahmadi, environmental activist in West Sumatra

The nagari in West Sumatra is an example of the “return” to an adat based territorial unit and the subsequent revival of related nagari adat institutions, including the Adat Council mandated to settle adat related disputes. This development is supported by regulations by the provincial and district government (Perda) and enjoys great support among the communities, many of them now actively issuing their own nagari regulations (Perna).

In both Maluku and NTB there are present efforts to draft regulations that will “preserve” the adat. In Maluku the traditional village leader, the raja, was formally abolished by the UU5/1979, but in practice appears to have maintained his position as raja cum village head (kepala desa) in most villages. In his capacity as raja he is also the main mediator and judge in village matters and local dispute resolution.

In NTB the traditional village structure, called Pemusungan, are being reintroduced with an integrated leadership comprising adat leaders (Pemangku Adat), religious leaders (Penghulu), and Head of Pemusungan. This “trias politica” is a local initiative and it is integrating adat and religious institutions with the village government.

In Central Kalimantan, the implementation of the UU22/1999 appears to be mainly a concern of the political elite as codifying local adat may gain the support of some ethnic groups, but it has not changed the

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3 Matt Stephens, Peri Umar Farouk, Samuel Clark, Dewi Novirianti, Siti Megadianty Ada, Bambang Soetono, Taufik Rinaldi, and Lene Østergaard.

4 The status and role of Kerapatan Adat Nagari or Lembaga Adat Nagari was confirmed by provincial regulation no 13/1983 in reaction to the UU5/1979, but its function has been hampered by the lack of corresponding administrative units.

5 Peraturan Daerah issued by the provincial and district legislative assemblies. The mandate of the latter to make regulations pertaining to local administration was greatly increased by the law on regional autonomy.

6 The research was limited to the northern part of Lombok, known as Payer Utara.
awareness of the communities. The provincial government is attempting to revive the role of adat leaders based at sub-district level, the Damang, and has been passing Perda to this effect. Community acceptance of the Damang institution is highly variable across the province. In West Sumatra and NTB notions of adat are strong, whereas the situation in Maluku and Central Kalimantan is more open. But it should be noted that both in the communities and at the more political level, there is no common understanding of what adat entails and what its “revival” implies. Adat may refer to a system of community leadership and governance, to a system of values, to customs and rituals, as well as to identity and religious beliefs. It is exactly this ambiguity and its varied potentials different actors play out in the present transitional situation.

Informal mechanisms of local dispute resolution

The research paper is concerned with local and informal mechanisms for resolving conflicts. Nevertheless, many local cases are linked to the formal system based on the national law and its related institutions of police, prosecutor, and courts. Although serious criminal cases are taken to the police and through the formal system to the courts, minor cases of theft and fighting are typically resolved informally. An adat sanction may be imposed as well in order to “fulfil” the requirements of the adat and reconcile the parties. The imposed adat sanction may even be considered and the formal sanction accommodated accordingly. The norms for when a case belongs to the formal system are ambiguous and do not necessarily conform to national legislation, and certain types of cases, such as rape and domestic violence are generally handled outside the formal system. Unresolved cases at the informal level can in principle be brought to the formal system (to the police or the district court), although not all parties have the means to pursue this option.

The informal system comprises several sources of norms and laws, which are available to different extent and with different strengths in the research areas. These are (i) adat or customary laws, (ii) religious laws, and (iii) local administrative regulations. Just as common are systems where no specific law or well-established norms apply. In several of the research areas two or even all three normative systems are integrated, but cases of competition between representatives of the three systems is also found. Disputes are often resolved on the basis of local conceptions of justice or fairness or indeed what the local leadership thinks is an appropriate outcome, without any reference to state, religious or traditional law. The party able to muster most authority is likely to determine the venue, the process and thus the likely outcome.

- In West Sumatra, the nagari administration is separate from the adat leadership, whereas the religious officials are integrated into the latter. In the villages visited, the head of the nagari, wali, both collaborated and competed for spheres of authority with the traditional leadership, for instance by developing nagari regulations on adat matters. However, formal enforcement is not possible and the support of such regulations and the community members were split in their support for the wali and the adat leaders. Both depend on the result of mediation and deliberation between the parties and on social sanctions to enforce decisions. The process is

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7 The Damang was based at the village level during the Dutch period.
8 There is an ongoing discussion of which adat or which of its aspects are the most “original,” and deserving of being codified: the pre-colonial, the system supported by the Dutch administration through the policy of Indirect Rule, or what existed in various curbed versions during the regime of Orde Baru, or whether the present window should be used to develop a more “modern” version.
hierarchical and a case can only be taken to a higher level or another fora if negotiations fail at the lower levels.

- In Maluku the village head is in some cases also the traditional leader or raja. Although there are differing opinions on this, the raja remains the main actor in solving adat disputes. His success in this appears to depend on his personal standing, the respect and reputation he is able to maintain. Cases relating to family and marriage are reported to the religious leader, imam or priest for the Muslims and Christians respectively.

- In NTB the “trias politica” comprising village head, adat leaders, and religious leaders constitute the informal mechanism for dispute resolution, being replicated at the hamlet level. A conflict can be brought up at any level. The parties represent themselves and the main objective is reconciliation. The religious heads of Islamic boarding schools, the Tuan Guru, are teachers and advisors and mediators in conflicts and offer an alternative mechanism, based on but not limited to Islamic teachings. Their position depend on reputation and is unrelated to administrative or adat boundaries.

- In Central Kalimantan several actors are involved in conflict resolution. The local government is trying to revive the Damang at the sub-district level to resolve adat disputes, but he is generally considered to be just one of many options open to community members for dispute resolution. As a government-led, openly top-down revival process, the independence and legitimacy of the Damang is questionable in the eyes of the community. The intensity and level of acceptance of adat structures varies massively across the province. This is reflected in the risks inherent in government co-optation of a previously community-based institution – intrusion of the state carries the benefits of authority and government funding, but also the stench of illegitimacy. Within the villages, the village head is used for resolving conflicts, but respected members of the community may also take up this role.

All the institutions met with have male incumbents only. According to adat and religion women are not expected to occupy formal positions, and this clearly spills over into the village head institution. All the informal institutions depend on fear of social sanctions for effecting decisions.

Dispute resolution processes within the villages are generally characterised by mediation aiming at conciliation. Even where sanctions are imposed, the objective is to re-establish social relations and the social “balance” within the community, even if this implies confirming existing power structures. Consensus decisions rather than judgements are preferred, although the parties to the consensus may not be the parties directly involved in the conflict, but their representatives. The level of choice for venues and actors to involve varies in the provinces. Women generally do not represent themselves, but depend on male relatives and husbands. In conflicts between communities and with external parties, the external parties may have an interest in using informal mediation where they have a better control of the process than through the formal system.

Main types of conflicts identified in the cases are: (i) internally among members of the community, (ii) between communities, and (iii) between the community and an external party such as private investor or the government.

The informal system typically addresses cases within the first category, i.e conflicts internal to the community, such as (i) adat cases that have no bearing within national law and which are solved by the local adat institutions. Some of the sanctions in these cases may border on the violation of basic citizens rights. Typically adat cases

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9 Both in West Sumatra and NTB it was reported that non-conforming to adat entailed the social eviction of the offender from the community, making it impossible to perform essential rituals as marriage and burial or any other transaction with members of the community. In NTB the sanction also included denial of administrative services by the village authorities, such as providing letter to other governmental institutions or issuing the obligatory identification card.
are decided upon by the adat leaders after the parties have been heard but without their participation in the deliberations. Within the norms of adat law individuals are generally perceived as members of descent groups or extended families and are represented by heads of these in conflicts. (ii) Family and domestic issues, including violence against women and marriage/divorce processes are typically referred to the religious leader, or to the adat leaders when the religious officials are integrated into these. (iii) Minor criminal offences (thefts, fighting) are often taken to the village administration, and depending on the local set up, either solved by this office or given to the adat elders to mediate between the parties. (iv) To most informants land disputes are the most significant type of case. In West Sumatra this is particularly acute as women hold land and depend on their maternal uncle to guard it. In the other research areas, women do not posses specific resources of their own.

Access to economic resources is a prominent source of conflict, and the type of conflict most often forwarded to the formal court system when the informal attempts fail to solve it. It is also the most prominent conflict erupting between communities and between communities and a third party. In the case of the latter, the adat based authorities, or the village administration, may act as a vehicle for advocacy for the interests of the community. However, in several cases observed in the field, the involvement of a local NGO or other resource persons seemed crucial to the success of the community in addressing these cases. In general terms, communities lack an appropriate forum, which can effectively voice and advocate for their interests against powerful third parties.

Women do not have the same access to the informal dispute mechanisms as men in any of the research areas. In no case are they represented on the adat council or on the religious office relating to conflict management. They are rarely represented in formal village leadership structures. In West Sumatra and NTB women cannot represent themselves in case hearings according to adat but depend on a male relative to be their spokesperson. At least in West Sumatra, they cannot choose this male representative freely, but is confined to their lineage head. In all areas, violence against women is considered a domestic matter and, if addressed at all, referred to the religious leader. This is a particular predicament as women are the holders of lineage land often alienated by the lineage head supposed to guard their interest. Interestingly, the Muslim women in Maluku reported that they used the wife of the imam to raise their case with the imam, clearly showing that women are not always comfortable relating their domestic problems in front of the imam directly. In both Central Kalimantan and NTB, both local practice and adat law where it applies, does protect the rights of women, particularly related to sexual assault and distribution of rights upon divorce. But the law is protective in nature rather than empowering. Women are the passive objects of dispute rather than the participating actors.

**Strength and weaknesses of the informal mechanisms**

The ambiguity inherent in the informal system gives it a strong flexibility and may impede exclusive control by specific actors, but is also leaves it open to power misuse and lack of legitimacy and enforcement, particularly towards external parties. The following points do not necessarily apply to all the cases studied, but summarise some of the observations made.

“Whenever someone raises a problem that has already been solved, they are violating adat law anew. And whatever happened before a dispute is resolved is considered to have never happened. So people return to tranquility and peace.” Kamardi, village head, Bentek village, North Lombok.

**Strengths:**
- Widely accepted and understood
- Culturally meaningful in local context
- Often fast and low or flexible costs
- Several possible venues and entry points for addressing disputes
- Public transparency
- Aims at reconciliation and re-establishing social relations
• Largely consensual in nature with flexible and realistic remedies

Weaknesses:
• Women are not represented in any of the institutions
• Incumbents in offices addressing disputes are not elected but appointed or descent based
• People cannot always represent themselves or choose their representative
• Prone to political manipulations
• No check-and-balance
• Can end in deadlock due to the multiple roles of the contestants
• Not inclusive of all ethnic groups
• Heavily dependent on individual social relations, particularly to the persons who have the authority to solve disputes
• Lack of an effective formal sanction leaves weaker parties vulnerable to exploitation
• Traditional laws and norms have no reference in national law and sanctions may violate basic citizens rights
• Difficulty in standing up to and often dismissed by formal system

Possible interventions to support VJA

“It’s unthinkable that women should decide over us.” Male adat leader in West Sumatra

The preliminary findings show that none of the research areas have a coherent and widely accepted system for dispute resolution. On the contrary, there are intimations of varied value systems, fragmented practices, and biased processes and power imbalances. This suggest that any activity supporting informal dispute resolution processes at the local level must be perceived by the communities as having legitimacy, independence, and authority in order to achieve the required local ownership. The degree of influence of and links to the government and the relation to the courts should be carefully considered. It is important that initiatives open up multiple avenues to justice, places choice in the hands of the community, provides effective representation of women, and provides a forum for effective capacity building. Consideration should be given to:

• Support the establishment of adat institutions that are more democratic, gender sensitive, open and that have legitimacy within the community and towards the government and external agencies.
• Support the collaboration between informal institutions and the district courts regarding minor criminal offences, for instance through training of the former in order to improve transparency and fairness of proceedings and of the enforcement.
• Support of communities in conflicts with external and more powerful parties through NGOs
• Empowerment of women on legal matters through NGOs.
• Supporting processes of mediation and reconciliation rather than sanctioning and judging.

Issues to be addressed in the next phase of the field research

The first phase of the research has brought up several highly relevant issues that will be investigated in more depth in the follow-up visits to the provinces. Some of the issues deserving particular attention are:
• Identification of local actors and processes critical to the success of the informal conflict management
- Application of conflicting national and local norms in perception of legal issues (land certificate vs. customary rights for instance)
- Different interests of stake local stakeholders, their proposals for modifications
- Significance of NGOs in advocating cases for communities and in awareness building
- Availability and use of informal mechanisms by different ethnic groups
- Type of institutions and processes in urban settings
- The knowledge existing within the formal judicial system of the informal processes at the local level, particularly with regard to *adat* and local norms
- Processes for modifying present systems and operational mechanisms for VJA

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### Dispute typology at local level

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<th>Typology</th>
<th>Mediators</th>
<th>Issues Related/Assessment</th>
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| Petty criminal,      | Village Head  
                     | Adat Leader  
                     | BabinSa (military)  
                     | Police                                                            | Usually can be effectively resolved, sometimes with an oppressive approach. Quick to respond where accessible and for small cases. Not always impartial. |
| misdemeanor,        |                                                                |                                                                                          |
| fighting, theft      |                                                                |                                                                                          |                                                                                       |
| Domestic Violence    | Adat leader/lineage head  
                     | Religious Leaders + wife  
                     | Village Head + wife                                                                 | Public process with no women directly involved in resolution, or closed process within extended family. Women often urged to comply and accept or be accused of causing problems. |
| Adultery             |                                                                |                                                                                          |                                                                                       |
| Divorce and          | Religious Leader  
                     | Village Head  
                     | Religious Court  
                     | KUA (Religious Administrative Office)                                    |                                                                                          |
| Inheritance          |                                                                |                                                                                          |                                                                                       |
| Land                 | Adat leader and staff  
                     | Village Head  
                     | Police  
                     | Courts                                                                | Not always impartial. Conflicting and confusing legal frameworks. Communities lack effective unifying force to confront powerful third parties. Government interests often contrary to local communities. |
| Corruption           | Police  
                     | Village Head                                                                  |                                                                                       |