

Provincial Government and Local Community Endeavours to Reform Village (*Negeri*) Government in Maluku, Eastern Indonesia

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Introduction

Indonesia's Village Government Law no. 5 of 1979 is blamed by many NGO and indigenous rights activists for undermining the country's rich diversity of local customary governance and resource management regimes. Nowhere is this more evident than the island province of Maluku. In implementing the law, Maluku did not follow the example of provinces such as West Sumatra or Bali, in preparing provincial decrees that took into account local forms and practices. Rather, the provincial legislation parroted the national laws and regulations almost word-for-word. Customary leaders were appointed to prominent positions within new village government structures, but the national template did not accommodate local forms and responsibilities, while accountability within the new structure was to the central government source of power and funding, rather than the clan-based authority structures that formed the basis of the customary institutions. With the passage of time, traditional authority structures weakened or vanished altogether, and many resource management practices grounded in generations of experience and local norms began to erode and disappear.

The Asian Financial Crisis of 1997-98 brought about an upheaval of violent protest in Indonesia, which culminated in the collapse of the New Order government in May 1998. As the central government strove to recover from the shock, violent ethnic and religious conflict broke out in many parts of the country. Many of these outbursts were short-lived, others still persist today.

From 1999 to 2003, the province of Maluku was plunged into civil warfare that claimed over 7,000 lives and displaced hundreds of thousands of people (ICG 2000, 2002, 2004). Peace finally began to take hold after the signing of the Malino Peace Accords in February 2003, and today the people and government of Maluku are resolutely attempting to put the conflict behind them and work together to rebuild a peaceful and prosperous future.

With the passage of the new decentralisation legislation of 1999, many regions throughout Indonesia are attempting to craft local village government institutions that accord with local values and traditions. Such a process is now underway in Maluku, as it struggles to rebuild in the wake of the 1999-2003 conflict. This paper looks at provincial and district government

efforts to establish appropriate frameworks that revive customary terminologies and sensibilities, while attempting to promote values of democracy, transparency and accountability. The government's legalistic, decree-driven approach contrasts with the more organic, grass-roots approach currently underway in several villages throughout the province.

Background

Under the 1979 Village Government Law, each of Indonesia's nearly 67,000 villages (*desa*) was required to adopt a uniform system of government. The Village Head (*Kepala Desa*) became a salaried employee of the national government, assisted in his job by a small staff including a Village Secretary and a few Section Chiefs (*Kepala Urusan*). The law also mandated the establishment of Village Consultative Councils (*Lembaga Musyawarah Desa* or LMD) and Village Community Resilience Councils (*Lembaga Ketahanan Masyarakat Desa* or LKMD), charged with 'conveying the aspirations of the village community', and 'activating community participation to carry out development in a co-ordinated way', respectively. The territorial unit was standardised as well; all *desa* adhered to minimum and maximum size and population criteria, leading to the consolidation in many cases of several settlements into a single *desa* unit.

Desa governments received guidance, direction and funds from the central government. Each year, each *desa* prepared an annual development plan, a formulaic procedure that formed part of the national 'bottom-up/top-down' national development planning cycle, which produced a predictable and uniform set of village development models in keeping with national policy priorities. *Desa* governments were also responsible for managing and developing their own resources, giving these units considerable control over local labour and natural resources.

Domestic and international NGOs singled out the 1979 law and its scores of implementing regulations as a dangerous homogenising force, which peripheralised and enfeebled the socio-political institutions underpinning traditional local resource-management regimes. According to this argument, local cultures throughout the archipelago had developed resource management systems and supporting mores and institutions, grounded in an intimate understanding of the intricacies and particularities of local environments developed through generations of accrued experience and knowledge. The 'one-size-fits-all' Village Government Law shunted aside these time-tested structures and institutions, replacing them with a new culture of government that was accountable not to local communities and livelihoods, but to political rulers in far-off Jakarta.

In Maluku, like other outer island societies, the new village government template rested uncomfortably over pre-existing grids of power and obligation. Problems included the poor fit between the positions and responsibilities established by Law No. 5 and traditional structures and divisions of authority in Malukan villages, and the size and shape of the territorial unit itself.

In their attempts to implement the law in many parts of Maluku, *Kabupaten* (District) officials tried, wherever possible, to accommodate indigenous structures and offices. Nearly all *Raja* were automatically appointed as the *Kepala Desa* of their home villages, however, officially they had no more authority than the other, non-hereditary *Kepala Desa*. Where local traditional leaders did not meet legal criteria to serve as *Kepala Desa* (that is, age, education, literacy, length of service, Indonesian language speaking ability or knowledge of national law), the district government often employed the expedient of appointing them as ‘temporary’ or ‘acting’ (*Pejabat*) *Kepala Desa*. Many of these ‘temporary’ appointments lasted for more than 16 years, the maximum legal term for elected *Kepala Desa*. Other *adat* functionaries such as clan leaders, village scribes and storytellers, war captains and spirit mediums took most of the other positions (Secretary and Section Chiefs) within the new *desa* government and also staffed the new LMD and LKMD institutions. However, there was not a particularly good fit between the number and nature of village government positions available and pre-existing politico-religious designations and roles.

Another contentious aspect of Law No 5 of 1979 involved the territorial unit itself. In Ambon and Ceram, large *Negeri* (the term used in many parts of Maluku for ‘village’) were split into smaller *Desa* units, while in places like Kei and Aru in Southeast Maluku, several *kampung* (the Indonesian term for ‘small village’ or ‘hamlet’) were conjoined into larger *desa* units. These changes gave rise to innumerable conflicts over control of land and sea territories and resources, as original *Negeri* disputed the right of newly formed *Desa* to cleave away their own territories from the pre-existing customary territorial unit (called *petuanan*), or as previously autonomous *kampung* begrudged *Desa* governments’ power over their territory, resources and affairs.

As time passed, the *Desa* government progressively displaced traditional forms as primary arbiter of village affairs. Because it affords virtual sole control of central government village development funds and use and allocation of village-owned resources, the position of *Kepala Desa* became a highly sought-after appointment in New Order Indonesia. *Kepala Desa* became notorious for diverting village development funds for personal and family gain; and

for monopolising and commercialising village-owned resources. In the Kei Islands, for instance, some *Kepala Desa* used their position to grant rights to village marine territories (*petuanan*) to non-local fishing fleets or pearl farms. This has been a matter of great contention in many villages, as the clans and councils that previously exercised control of these functions were progressively edged out of the decision-making process, and often denied the profits accruing from the lease of ‘their’ territories and resources. Also, as village development funding from the central government grew to become the major source of cash in many villages, so too did community resentment grow as the *Kepala Desa* typically channelled projects to his own family, neighbourhood and clan.

The Long Road to Recovery

The Province of Maluku’s 2003-2008 *RENSTRA* Strategic Plan, prepared after the cessation of hostilities, devotes considerable attention to the issue of building ‘social capital’ in the province, particularly the consolidation and revitalisation of *adat* traditions, norms and practices. This is seen as a key ingredient in promoting social and political harmony, a primary focus of the *RENSTRA* plan. Provincial and District governments are encouraged to conduct detailed studies of the state of *adat* in their respective regions, and to prepare regulations to facilitate an increased role for *adat* institutions and practices in the social and political life of the province (Provincial Government of Maluku 2004).

While Maluku was at war, numerous fundamental changes took place within the national political structure. Foremost among these was a ‘big bang’ decentralisation process, in which many fundamental government responsibilities were devolved to district-level governments. The new regional government laws of 1999 and 2004¹ also superseded the 1979 Village Government Law and hundreds of implementing regulations. Villages are no longer part of the national government hierarchy, but instead now enjoy ‘natural autonomy’ (*otonomi asli*). The new laws encourage regional governments to devise regulations that support customary forms of village government, while empowering villages to exercise their customary rights and obligations. The 2004 version also makes special concessions for new villages established during the past few decades, that might not have customary claim to *adat* lands or seas, or are populated by mixed or non-native people.

¹ *Undang-Undang Nomor 22 Tahun 1999 tentang Pemerintahan Daerah, and Undang-Undang Nomor 32 Tahun 2004 tentang Pemerintahan Daerah.*

The provincial government of Maluku has yet to issue implementing regulations for the 2004 law. Deliberations in the DPRD Consultative Council have been stalled by the Social Justice Party (PKS) faction, who fear that the new regulations will not protect the rights of the province's large migrant population. Nonetheless, efforts are underway to guide the various district governments through the process of preparing regulations – which can only be officially issued once the Provincial regulation is passed – to serve as the framework for establishment of 'new' village governments throughout the province.

The governor's legal team estimate that at least ten district regulations are needed to provide the legal platform necessary to allow villages to exercise their 'natural autonomy'. The term used in many parts of Maluku for village is '*negeri*'. The proposed regulations differentiate between '*negeri adat*' and '*negeri administratif*': the former being *negeri* that have existed for many decades and which still retain characteristics from the pre-1979 era, while '*negeri administratif*' are those that were formed by subdividing larger *negeri*, or by establishing new settlements (e.g., transmigration settlements). These latter do not have hereditary claim to territories ('*petuanan*'), and special measures will necessary for them to be able to exercise territorial control and management authority under an *adat*-based system. According to Malukan *adat*, this latter group of villages are located within the pre-existing *petuanan* of older *negeri*.

The draft regulations identify seven basic characteristics of *negeri adat*:

- a. *Adat* communities.
- b. Clearly defined area (*petuanan*) still controlled by *adat* law.
- c. *Adat* institutions (e.g., *Latupati*, *Raja*, *Saniri Negeri*, *Soa*, *Matarumah*, *Kewang*, etc.).
- d. A connection between the community and the region/area, with *adat* regulations about management, control and use of *petuanan* land and sea that are still in force.
- e. Customary social institutions (such as *sasi*).
- f. *Adat* symbols and structures (e.g., *Baileo*, *Batu Pamale*, *adat* costumes, etc.).
- g. Other *adat* characteristics (e.g., the belief that *Raja* or *Kepala Soa* are descendents of particular lineages, *adat* marriage ceremonies, dress, language, etc.)

The first three are 'essential characteristics', while the remaining four are 'complementary characteristics'. *Negeri adat* must possess all seven, while those *negeri* that do not have their own *petuanan*, customary social institutions, symbols and structures will be classified as *negeri administratif*. According to the provincial legal team, *negeri administratif* can be guided and developed to one day become *negeri adat*.

Both types of *negeri* government will be empowered to regulate village affairs, including routine government matters, village community social and economic development, village revenues and disbursements, village infrastructure, and cooperation with other villages and government institutions. The primary difference between *negeri adat* and *negeri administratif* is that the former are entitled to exercise ‘customary’ or ‘original’ rights (*hak asal-usul*). A vague but powerful legal concept, this basically translates to customary control of territory and resources. Perhaps most significantly for the communities of Maluku, this customary control can extend over marine territories up to four and a half nautical miles from the coastline (half a mile beyond district or municipal seas, which comprise one-third of the province’s 12-mile coastal sea zone). This authority will only be accorded to *negeri* that can demonstrate that there are active *adat* institutions and practices in place to manage access and exploitation of coastal waters, and that members of the *negeri* community still utilise these seas and resources themselves (i.e., these rights have not been contracted to migrant fishers or outside commercial interests). Otherwise, management control (and revenues) revert to the district government. This important right will likely only be available to *negeri adat*, while other communities and enterprises will be required negotiate with *adat* communities for rights within marine *petuanan* where these are still in force, or with district officials for those seas no longer under *adat* control. As most Malukan communities depend on the sea for subsistence and livelihoods, the proposal to afford legal recognition of territorial seas to village communities has profound implications.

While the provincial DPRD deliberates and the governor’s legal team provides guidance to district officials, many local communities in the province have decided not to wait for new regulations before restoring *adat* governance. Local and regional NGOs such as Baileo Maluku and its many network partners are actively engaging with village communities and leaders in Seram, Ambon, Kei, Aru, and Tanimbar, to investigate and record oral histories and customary beliefs and practices, and to revitalise old structures and institutions. These NGOs provide training in legal drafting, and assist village communities to prepare *negeri* charters and regulations. Many communities have been galvanised by commercial exploitation of *petuanan* resources, particularly small-scale IPK timber concessions issued by district governments during the early days of the decentralisation era. Groups like the *adat* community of Honitetu, in Western Seram, assert that IPK permits were issued without consultation with local *adat* leaders, and that they comprise a violation of the *negeri* community’s customary rights (*hak asal-usul*). Other communities, such as Haruku in the

Lease Islands and Debut in Kei Kecil, believe that the restoration of robust *adat* structures and traditions is the only way to address conflicts with neighbouring villages over access to marine territories and resources. The neighbourhood of Batumerah in Ambon is so far the only urban community to attempt to reactivate a *Saniri Negeri* government structure. After having sustained heavily damage during the conflict years, Batumerah is now recovering more rapidly than other parts of the city. A strong grass-roots movement is emerging province-wide, as village groups and NGOs meet and exchange views and experiences, and attempt to duplicate the successful models pioneered by these and other village communities in different parts of the province.

Far from being merely a 'salvage' or 'restoration' operation, this movement is seeking ways to craft new institutional forms and practices that combine the advantages of customary governance with concerns of democracy, equity and environmental sustainability. Nearly all *adat* governance throughout Maluku is based on heredity, with particular clans and families exercising near absolute power over decision-making processes, resource management and benefit streams. Issues of precedence and ancestral heritage permeate all aspects of local governance in the province. The challenge is to retain the power and efficacy of *adat* forms, while assuring that all sectors and factions within village society are fully represented in deliberative processes and allocation of benefits. Fortunately, nearly everyone involved in the process is cognisant of the need to go beyond simplistic Hobbesian narratives advocating a 'return to the old ways' as a panacea that will solve all the province's woes. *Adat* norms, practices and institutions have evolved over centuries, constantly responding to changes in the social, political, economic and natural world in which they inhere. After 25 years of being sidelined and overridden, Malukan *adat* is now back at the centre of the changes swirling through the region today.

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