“Critical Legal Pluralism and the Law of the Ulayat: Resistant Legalities in a Plural Legal Reality”

Observing the Impact of RUPES in Paninggahan, West Sumatra: Implementation, Integration, and Reactions of Normative Reward Frameworks and Assessments for the Future

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Abstract

This paper reports on research conducted evaluating the appropriateness of a critical legal pluralist framework for understanding the complex relations between natural resources, law, the different stakeholders and their resultant actions, in Payments for Environmental Services (PES) schemes in legal pluralist settings. Suggestions will be made as to how this methodology can be utilised for the successful implementation of future schemes.

Themes

Critical Legal Pluralism; Legal Pluralism; Stakeholder Relations (Actor Interests); Embeddedness; Forum-Shopping; Natural Resource Management; Project Law; Rewards; Resistant Legalities; Payments for Environmental Services (PES)
Abbreviations

BAL     Basic Agrarian Law 1960
BMN     Badan Perwakilan Anak Nagari
BPAN    Badan Perwakilan Anak Nagari
CDM     Clean Development Mechanism
CLP     Critical Legal Pluralism
CLS     Critical Legal Studies
ES      Environmental Services
GPS     Global Positioning System
HuMa    Perkumpulan untuk Pembaharuan Hukum Berbasis
        Masyarakat dan Ekologis
ICRAF   World Agroforestry Centre
IMF     International Monetary Fund
KAN     Kerapatan Adat Nagari
PES     Payments for Environmental Services
RaTA    Rapid Land Tenure Assessment Manual for Identifying the
        Nature of Land Tenure Conflicts
RES     Rewards for Environmental Services
RUPES   Rewards for Use and Shared Investment in Pro-Poor
        Environmental Services
YADDAS  YAYADAS
VCM     Voluntary Carbon Market
WB      World Bank

Laws

West Sumatran Domain Declaration 1874
Law on Local Government 1979
Basic Agrarian Law (BAL) 1960
Law 22 on Regional Government 1999
Law 25 on the Fiscal Balance Between the Central Government and the Regions 1999
Forest Law 2004

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Introduction

This is a report on the usefulness of a critical legal pluralist methodology in understanding the mechanics of Payments for Environmental Service (PES) schemes in legal pluralist settings. The complex relations between natural resources, law, and how the different stakeholders manage these components through their resultant actions, can be misunderstood, or even ignored, if the social scientific, and indeed, legal pluralist frameworks are not considered during the implementation of PES schemes. This can also apply to any other project involving similar dimensions where there is a contractual obligation created between multiple actors resulting in changes in management of natural resources. Without understanding the realities of a legal pluralist setting (and more on the different definitions of legal pluralism to come), it can be argued that a scheme may fail, as the social, cultural and political meshwork has not been considered with the same importance as the hard science that brought the scheme there. It is a consideration of whether it is good for the people, as well as for the environment, that propels this report, thus pushing for the ethical importance of the success of schemes over those that fail. Within those that fail, there may be elements of inapplicability and unfairness to the projects, and this is to be avoided at all costs. Furthermore, there are relations of land tenure and property rights that are not easily defined through more Western ‘categorical’ understandings, and are ‘concretised’ relations that a methodological framework of legal pluralism, and even moreso, a critical legal pluralism, can dissect and unravel more satisfactorily.

Legal Pluralism

So first of all, would be the question, “Why legal pluralism?”, followed not long after by, “… and critical legal pluralism?”. For any scientist and forester who knows Indonesia, they will know that this country has been conquered and resurged many times over the centuries, has been caught between the trading continents as an archipelago of distinct positioning between the Pacific Rim and the entrance to the Middle East, Africa and Europe, offering a preponderance of natural resources, thus being subject to many instances of colonialism. Trade routes and spiritual paths have crossed here, religions and merchants vying for the acceptance of the Indonesian population with similar virility. With these traders, these colonisers, these faiths, have come attached their organisation of law, in fact, it is arguably only ever through law itself that colonisation itself becomes legitimated, and is possible. Whether through a series of self-legitimating acts from those who came to conquer, or the cultural regulations of religious laws, or the local laws that remain in tact despite all this, Indonesia gives space to a myriad of edifying legal levels, which is reflected in the motto of ‘Pancasila’, the unity of the five faiths and the very multi-ethnic and disparate cultures that Indonesia is home to. This organisational setting, the methodology of legal pluralism is adverse in explaining.
Minangkaban Embeddedness and Forum-Shopping

Home Indonesia is, also, to the tribe ‘Minangkabau’, in West Sumatra, an intelligent and educated people of around six million. The name Minangkabau means ‘Buffalo Wins’ and refers to an old battle between the Minang and a Javanese king. The reference to buffalos (kabau) is evident within the arched architecture of the roofs, shaped like horns. The Minangkabau have been the subject of much research over the past years, predominantly due to their matrilineal system of property management and inheritance. Legal pluralists and legal anthropologists Kebeet and Franz von Benda-Beckmann, based in Hallé’s Max Planck University, have been the most predominant authorities on Minang culture, and have given great influence to the structure of this research undertaken thus far. Minangkabau offer a very solid example of legal pluralism, sedimented through adat law and religious custom and incorporated, and compromised with state law. There is a Minang mantra, quoted by the Benda-Beckmanns, as: “Adat is based on Islam, Islam is based on the holy Koran; religious law orders, adat is used; nature is the teacher of mankind.” Still frequently used and repeated to me by farmers and local leaders alike, it is a clear example of the connection and importance of the different legal orders within Minang culture, and according to the Beckmanns, emphasises the strong connection between adat and religion, that together make up Minangkabau identity.1

Given that, the rigidity of the legal levels is not sacrosanct, and one percolates into another, one compromising or overlapping or superseding another – indeed, one completely misconstruing another. This is particularly the case with regards to issues of property relations, management of natural resources, and how the communities organise themselves around this according to adat law. But this is not always in accordance, or within the categorical confines of how state law understands property relations. Exemplified by the work of the Beckmanns, they speak of these interconnected relations as ‘embedded’, whereby divisions of public and private and communal and are striated and incompatible with visions of state law, creating a situation where: “What an outsider might call private and public aspects of political and economic authority [are] largely embedded within multiplex relationships. Speaking of adat rights, or about lineage heads, is also speaking of village commons, lineage property, representation in village politics, matrilineal inheritance. Talking about village commons thus automatically actualises the whole interconnected complex of economic, social and political rights.”2 Given this embeddedness, it is fundamental that this should be understood by any development organisation or outside project manager, for the successfulness of their projects, and not least the happiness of the Minang people involved and for whom any assignments are initiated. The fact that community understandings emanate from a mixture of communal family and individual property and kinship relations, and that each represent one and another, mean that the plural legal systems are very important to Minangkabau, giving a situation where the people have been argued as more legalistically aware than other cultural groups, which would not be a surprise. This was one of the central questions for this research, how the plural legal system affects the interests of the


actors concerned and what this can mean for contract negotiations and the successes of any proposed PES scheme. The Beckmanns have done extensive research on this, and so this research springs from their wealth of knowledge and understanding of Minangkabau culture. Accordingly, they argue that these embedded relations also affect and create hierarchies of power. As my research ensued, I started to wonder whether I was dealing here with legalities or with politics, but then this is an age old question in itself. Highlighted are three affective criteria of embeddedness and what it can mean in relation to individual’s actions: “One is the multiple embeddedness of property rights at different layers of social organisations, in particular in social and general legal relationships. The second is the systemic implications of property rights in other domains of social organisation, for instance, authority and power relations. The third is the specific complexity and concomitant legal insecurity within plural legal orders.”

Given this proposed insecurity, and awareness of the differing legal systems, the Beckmanns have proposed a situation in Minangkabau society whereby: “The pluralism of legal procedures and substantive law provides opportunities for ‘forum shopping’ in which parties seek the optimal solution for their legal problems.” This propensity to be able to pick and choose between the most favourable solution from within alternating legal systems, has been termed as ‘forum-shopping’. Again, whether the participants in my research were suggestive of ‘forum-shopping’ was also central to my research and the manner in which contractual and community negotiations were played out during the implementation of the given PES scheme.

PES and Project Law

How is this all relevant to PES, you may ask? As an organisation, ICRAF (World Agroforestry Centre) is one of the few (and indeed, only) organisations to be working on PES schemes in Indonesia, and thus PES probably needs a little less introduction than legal pluralism. The role of ‘Rewards for Use and Shared Investment in Pro-Poor Environmental Services’ (RUPES) in and around the surrounding area of Lake Singkarak has been to implement a range of PES projects, the most developed of which during the time of my research being the ‘voluntary carbon market’ (VCM) planting scheme. This takes the form of payments from a buyer for carbon sequestered from trees planted as part of the project, by local farmers. These payments have been referred to as ‘rewards’.

When considering the outline of my research coming to ICRAF, I was struck by the use of this term ‘rewards’, and found it (and still do), somewhat problematic. The choice of wording is perhaps one more of lexical style, but to me it seemed a little difficult to refer to a basic transactional process between a buyer and a seller, as a reward mechanism, purely because the farmers concerned were considered poor, target groups. Not only that, but as a legal pluralist researcher, this obviously stands out as some form of organisational structure, with rights and duties attached, and coercions, punishments coming from the rewards so too. This led me to consider the role of ICRAF and other organisations involved, and whether they were producing what has been referred to by Weilenmann, Randeira, Kebeet and Franz von Benda-Beckamm, as ‘project law’. This is a very top-down imposition of law, normally produced by huge multinational aid

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agencies, such as the World Bank (WB) and IMF (International Monetary Fund), and is a legal pluralist understanding of what is commonly understood in economic terms as ‘structural adjustment’. Whether ICRAF etc. were producing a project law and how this affects and alters the embedded relations of the Minangkabau were central to the research, and exemplified by the presence of this term ‘reward.’

Critical Legal Pluralism

The appropriateness of the role of legal pluralism as a methodology is readily apparent, so what does it mean to garner a critical legal pluralist methodology? Criticisms of legal pluralism normally come in the form of a defence of the ‘rule of law’, legal pluralism seen as a lessening of the binding role of state law, and thus throwing any notions of order and justice into chaos. It is also seen as linked to ‘exotic’ understandings of cultures that, predominantly, are not Western, the most obvious plural legal orders being those that have been colonised, the case in point being Indonesia. The fact that legal pluralism has had such criticisms, is true to the extent that without colonialism, there would not be such a thing as having to integrate ‘customary’ law into state law. Among the proponents of these assumptions, they come from an array of backgrounds, left and right, more of which shall be referred to later, however, it is enough for now to say that some criticisms of legal pluralism come from the ‘critical legal’ camp. Critical Legal Studies (CLS) seeks to critique law and understand it in its ambiguities, through highlighting the misuse of law by the powerful, and also underlining its potential for social change. A critical legal critique of legal pluralism centres around this ‘watering down’ of a central understanding of justice, the ‘exoticising’ of the ‘other’, as well as the social scientific legal pluralist methodologies of research. By and large, the CLS camp uses non-empiricist theoretical approaches to methodology (or no methodology at all), and so combining the two through a critical legal pluralism seeks to bring together two very divergent groups. My wish within this research was to see whether such a thing as a critical legal pluralist methodology does and could exist, and what this might be. Ultimately, also to see how appropriate it can be for understanding the complexities of ethically implementing a PES scheme. What critical legal pluralism thus seeks to do is to accept that there are pluralities of laws (whether within the state, such as adat or outside the state, such as the ‘law of playgrounds’ for instance), but that at the same time these pluralities can be used and misused, and have a potential for change. At the same time as exoticising village elites, legal pluralism has a tendency in history to see the customary through rose-tinted glasses. What critical legal pluralism may unravel is how legal pluralist settings affect the actions of its individuals, from a realistic standpoint. From the point of view of PES schemes, this can refer to the actions of the village leaders, the farmers, the facilitators, and the buyers, and who should be benefiting the most from the development of the schemes given the embedded structures previously mentioned, and who could be using the legal pluralist setting to serve their own interests so too. Given the constraining and enabling role of plural legal systems, what a critical legal pluralist understanding of how people respond and act in given situations may also account for the creating of new laws, or new ‘coping mechanisms’. Given the importance of communal property relations, and those entrenched in the matrilineal system and the management of natural resources at the same time, one can infer that if such a thing as project law is present and ‘disembedding’ the structures already there, then the community will find ways of organisation in response to this. It is the hope of this research to find these instances and to seek out any occurrences of ‘resistant legalities,’ that are more accessibly researched by using a critical legal pluralist framework.
My background as a student of Birkbeck College School of Law, the home of British CLS, and my interest in legal pluralism, has propelled this wish to combine the two diasporas, for a wider understanding of law, society and environmental protection. This is not just how this is applicable in overtly plural legal systems, but also those that are not formally recognised by the state, i.e., how appropriate a critical legal pluralist standpoint can be for understanding complex political relations and the actor’s actions, what we can learn from this for PES schemes, and in general for a more informed, respectful and cooperative view of societies.

Research Summary

To following is a brief summary of the five sections of research that the report shall be focused on and what the research in Paninggahan set out to provoke:

1. **Critical Legal Pluralism**
   See how appropriate a critical legal pluralist framework can be for understanding relations between different stakeholders and their resultant actions in Payments for Environmental Services (PES) schemes in legal pluralist settings.

2. **Role of Legal Pluralism and affect on actor's interests (stakeholder relations) - “forum-shopping”?**
   See how a plural legal system affects the actions of the Wali Nagari, Nagari, ICRAF, YADDAAS, BV;
   See how a plural legal system is affecting the output of RUPES Paninggahan;
   See what knowledge Wali Nagari, Nagari, ICRAF, YADDAAS, BV have of the plural legal systems;
   See whether the farmers create their own form of resistant legality.

3. **RUPES role – a) as ‘project law’ & as ‘rewards’; b) the affect on the people and the land**
   See how RUPES environmental services rewards schemes change the relations between Wali Nagari, Nagari, ICRAF, YADDAAS, BV and the natural resources.

4. **Success of RUPES**
   See whether RUPES has successfully achieved its aims:
   involving the farmers in a tree-planting scheme on grassland around Lake Singkarak in order to offset carbon of the investor concerned (BV);
   ensuring the farmers and the local communities benefit from the tree-planting scheme through RUPES rewards

5. **Suggestions for the Future**

   Here are some of the main themes already introduced:
Objectives

The following are the main objectives of the research:

a. Assess the usefulness of a critical legal pluralist framework in understanding stakeholder relations and resultant outputs of environmental services rewards schemes operated by RUPES, thus: how appropriate CLP as a methodology for understanding relations between environmental services sellers, buyers, 1st and 2nd parties; the appropriateness of CLP in understanding conflicting interests of actors and the role of ‘forum shopping’ in decision-making and the resultant outputs; the appropriateness of CLP in understanding communal natural resource management; the usefulness of CLP in understanding rewards schemes, their impact, successes and failures, and suggestions for the future.

b. Assess the extent to which a plural legal system affected the actions of the stakeholders;

c. Assess the extent to which a plural legal system is affecting the output of RUPES Singkarak;

d. Whether critical legal pluralism can be used to explain any abuse of *adlat* law and the use of this as a form of legal and/or general domination of one group over another;

e. Assess rewards as a mechanism of coercion;

f. Assess the extent to which RUPES environmental services rewards schemes alter the relation between stakeholders and their natural resources;

g. Assess the extent to which RUPES has successfully achieved its aims: (involving the farmers in a tree-planting scheme on grassland around Lake Singkarak in order to offset carbon of the investor concerned (BV); ensuring the farmers and the local communities benefit from the tree-planting scheme through RUPES rewards);
h. Propose suggestions for the future.

Research Questions

1. The following are the main research questions that propelled the research:
2. How useful is a critical legal pluralist methodology in understanding stakeholder relations of environmental services rewards schemes?
3. How much does the ‘embedded’ nature of property relations affect the success of the RUPES scheme?
4. What is the role of the nagari ulayat (commons) as an exemplifier of the complexity of embeddedness?
5. How important is the ability to ‘forum-shop’ in taking part in contract negotiations?
6. How important are the landowners in the creation and integration of environmental norms into the mindset of the nagari?
7. What are the potentials for this?
8. How far can this be described as a ‘reward’ scheme, and what can legal pluralism say about this?
9. Is RUPES a form of project law?
10. How divisive is the role of the facilitators?

Hypotheses

The following are the main hypotheses proposed prior to the gathering of data:

Methodologies

CLP as an effective methodology for understanding:
   a. the realities of environmental service reward schemes regarding buyer, seller and facilitator relations;
   b. the complex relation between the sellers and natural resource management and property rights;
   c. the realities of environmental rewards schemes operating in plural legal systems.

Realities

a. Nagari leaders ‘forum shop’ more than that of nagari landowners;
   b. Because landowners do not forum shop as much as the leaders, they play a lesser role in the contractual negotiations and thus are unwilling to cooperate with the projects;
   c. The landowners do not see the benefits to themselves in cooperating in RUPES;
   d. The landowners do not understand the benefits to the environment in cooperating in RUPES (difference between this scheme and watershed – cannot see the outcome of their hard work);
   e. The ‘embedded’ nature of property relations has an affect on the successfulness of the meeting of contractual agreements between buyers, facilitators and sellers;
   f. That nagari structures of organisation may result in the domination of their legal system over that of others;
   g. RUPES is a form of project law;
   h. Rewards may operate as a form of coercion;
   i. Rewards can be seen to have turned into punishment (non-payment from investors).
Suggestions

a. That rewards need to be based on non-cash payments for better output from nagari;

b. Sellers and facilitators should take more account of the embedded nature of the relations of property;

c. Facilitators should be aware of their ‘disembedding’ role and the affects;

d. Suggestions for success should address the issues of embeddedness, forum-shopping, and project law.

Outline of Report

First of all will be a discussion of PES and the RUPES Singkarak and Paninggahan VCM sites. This will be followed by an in-depth look at Indonesian legal pluralism and the Minangkabau. The methodology and methods chapter will come next, followed by the raw data presented from the field research, and then the analysis. The report will finish with suggestions for the future and the conclusions.
PES and RUPES

PES

RUPES is a ‘Rewards for Environmental Services’ (RES) scheme that has been developed under the aegis of ICRAF, and is an instance of RES or a mechanism of PES. According to Leimona, RES, “…link global priorities on poverty reduction and environmental sustainability and are designed to balance effectiveness and efficiency with fairness and pro-poor characteristics.” RES and PES are used interchangeably, those seeing the transactions in economic terms, as having a preference for the term ‘payments’. Leimona states that proponents of fairness and equity as elements to be included in considerations of effectiveness and efficiency of these schemes, prefer the broader concept of ‘rewards’. In 2005, Wunder noted that there was no agreed definition of PES, even though it is commonly used throughout the literature, offering the following definition, “a voluntary, conditional transaction where at least one buyer pays at least one seller for maintaining or adopting sustainable land management practices that favour the provision of a well-defined environmental service.” RES are thus market, payment and incentive schemes that reward actors who conserve (in a guardian role) or restore (in a stewardship role), “… the regulating, cultural and support services provided by terrestrial, freshwater and marine ecosystems.” At least one ES buyer compensates at least one ES provider. PES or RES schemes have been divided into three categories, the first being: ‘Payments for pollution control’ where payments serve as an alternative to the ‘polluter-pays’ principle; the second category is ‘Payments for the conservation of natural resources and ecosystems’; and the final category is ‘Payments to generate environmental amenities.’ In the instance of RUPES Paninggahan, where this research took place and which falls under the final bracket, a carbon trader is paying upland farmers for setting agricultural land aside to plant trees for carbon sequestration (a global commons). This can also be tree-planting for stabilising the soil to prevent flooding of downstream areas (local or regional commons). According to Leimona, “PES mechanisms need to balance effectiveness and efficiency with fairness and pro-poor characteristics, with transaction costs as obstacles to both.”


What is interesting, that in the literature, it has been noted that, given clearly delineated property rights and low transaction costs, PES hold the promise to be more effective in halting environmental degradation in sensitive upland areas than conventional command and control approaches. Nevertheless, trying to locate such a regime of property rights that are clearly defined is one that would not be an easy task in countries such as Indonesia, given the plural character of the legal system. There are also a number of other realities that come attached to PES schemes.

It is a pivotal question as to whether such schemes can be seen as an instrument for both environmental protection and poverty alleviation, and this issue remains as highly controversial. PES markets have been created in a very short time and are thus relatively immature which puts their ability to address local socio-ecological contexts into doubt, and highlights the need to understand the social costs. Authors have given caution to the potential of PES as a poverty alleviation tool because of the high transaction involved with regards to the outputs of poor smallholders. Cash payments are often seen as too small to have an affect on the wellbeing of the participants and their communities. In order to provide the most appropriate mechanism of rewarding and paying these smallholders, discussions have centred around what form the payments should take, and this is something that was also questioned in the research undertaken in Paninggahan. One proposition is that non-financial incentives to ES providers will contribute to reducing poverty by linking the community participants various types of capital, and not just that of a cash-related basis. Other capital in this sense is seen as human, social, natural, physical and finally, also financial. According to Leimona, cash payments are more often than not viewed as the best mechanism, as they can be converted to local goods and services, according to the needs of the seller. Arguments against non-cash payments are that they are seen as condescending and insubstantial considering the outlay costs undertaken on behalf of the sellers. Thus, if cash payments are to be of any use at all, then there are arguments that the amounts given should be increased, given the onset of the aforementioned costs.\footnote{Leimona, Beria (2009), “Can Rewards for Environmental Services Benefit the Poor? Lessons from Asia”, 3, International Journal of the Commons, 1, 87.}

There are a number of other factors that make PES schemes controversial with regards to their role in poverty alleviation, but also the participants’ understanding of the schemes is important with regards to their helping the environment. Some authors question whether such schemes make sense in the long-term for small-scale farmers, and whether their needs can extend to an understanding of their affects on the environment over a number of years, whilst dealing with short-term issues of daily subsistence.\footnote{Neef, A. (2009), “Rewarding the Upland Poor for Saving the Commons? Evidence from South East Asia”, 3, International Journal of the Commons, 1, 5-6.} However, it is equally important to ensure that the farmers are fully involved in the decision-making, whether or not they can visualise what the schemes will bring them in the future. If sellers are not treated as equals in PES negotiations and have little influence on decision-making, then this is highly problematic.\footnote{Neef, A. (2009), “Rewarding the Upland Poor for Saving the Commons? Evidence from South East Asia”, 3, International Journal of the Commons, 1, 8.} A balance between sensitivity to local arrangements and sustainable resource management is the key issue that is raised in this regard, as with regards to considering cultural capital, understanding
kinship is essential, for instance.\textsuperscript{14} Undeniably, transparency is a key factor in helping to maintain the credibility of PES, and in order to do this, monitoring has been highlighted as the key means of achieving a successful and ethical scheme, using outside facilitators and neutral auditors, or by direct participation of environmental service providers and buyers.\textsuperscript{15} In addition, the mechanism of the distribution of payments is a fundamental issue of contention, and highlighted most blatantly through the research conducted and presented in this report. Transparency is also essential in setting up contractual arrangements between ES buyers and sellers, and must be clearly delineated from the start, as to the nature of activities, obligations, services and rewards as well as monitoring mechanisms and sanctions in case of default and free-riding.\textsuperscript{16} Considering the issues with regards to the credibility of PES, these components were fed into the research questions whilst in Paninggahan, and the presence of any of problems were duly observed.

**RUPES**

RUPES itself as a project aims to, “work with both potential users and producers of environmental services to find conditions for positive incentives that are voluntary (within the existing regulatory framework), realistic (aligned with real opportunity costs and real benefits) and conditional (linked to actual effects on environmental services), while reducing important dimensions of poverty in upland areas.” RUPES thus partners with ICRAF and in the various sites in Indonesia, China, Vietnam, India, Tibet, Nepal and the Philippines, implementing the projects at the same time as working to make policy frameworks more conducive to positive incentives. RUPES is financially supported by the International Fund for Agricultural Development and various other donors.

The RUPES idea itself has been in response to the command and control approaches that dominate environmental management in developing countries, and a genuine attempt to tackle the exclusion of local people from government protected forest, through uncompromising schemes developed by national governments. In the words of a recent completion report, “…RUPES introduces voluntary, incentive-based reward mechanisms that reflect people’s needs.” In light of this recognition of the need for national policy reform that the RUPES project has been propelled by, RUPES has also been cooperating with stakeholders at a national level, such as in Indonesia and the Philippines, in order to improve coordination between government agencies, whilst simultaneously improving existing legislation on environmental conservation and natural resource management in this regard.

According to the recent completion report of the watershed scheme in and around Lake Singkarak, RUPES developed a number of criteria and lessons learned from the experiences of the project there and elsewhere. Leimona, Villamor, van Noordvijk, Fauzi, and Utaira state that there should be four key principles and criteria for rewards for environmental services: those that are realistic, conditional, voluntary, and pro-poor.


Four stages were thus proposed so too: 1) scoping, 2) stakeholder analysis of RES key actors, 3) negotiating between ES sellers and buyers, and 4) implementation problems in reaching poor. The project itself was designed to focus on the lack of a proven institutional mechanism for ‘recognising and rewarding the upland poor for environmental services.’ In the Lake Singkarak instance, thus the objective of RUPES became to establish the basis for such an institutional mechanism. These objectives are outlined to be understood as having two purposes: that of knowledge-related objectives (whereby a system of understanding for a reward system can be garnered) and development objectives (the institutional mechanism for such reward systems).17

The lessons learned by RUPES and the experience and expertise to be used for future schemes, most obviously for the case of the Lake Singkarak area, are those that inform the entire RES and PES market. The RUPES team in Indonesia has learnt that it is essential to focus PES schemes in areas that actually expressed some kind of demand for it, whereby buyers can be identified and sellers located accordingly. The project also understands that land tenure is an unconditional right that needs to be recognised for indigenous communities, such as in the case of Minangkabau. A process of deliberative and inclusionary mechanisms for the poorest of the communities to be involved in the negotiations are central to the outlook of RUPES, whereby there are a logical sequence of steps can provide a clear basis for realistic agreements. The issue of empowerment is essential here for RUPES so too.

Figure 3 – RUPES Lake Singkarak Catchment Area

RUPES Lake Singkarak

Throughout the Lake Singkarak area, there are twelve nagari that fall within the catchment area. Nagari is the Minang name for the village, or the village district, as the areas encompass not just the villages but the surrounding countryside. There are four main projects as part of RUPES Lake Singkarak, as well as an additional VCM site developing in Palupuh. ICRAF acts as facilitator in the building of an environmental education centre, the project currently at model stage and attracting investors. The aims are to educate the local communities about the impact of their activities on the environment, other people and about environmental issues in general. This is aimed at filtering through into the mindset and governance of the farming and the land in the

Singkarak area. Another project is that of coffee revitalisation, ICRAF’s role as facilitator once again and the project is currently being stalled whilst awaiting land tenure status. The aim is to create another source of income for the farmers, and revitalise the area after years of unproductivity due to exploitative unrest and conflict. In addition, there is another project regarding integrated lake management, ICRAF as the facilitator, and also currently in the planning stage. The aims are to bring more tourism, investment and prosperity to the area, all with environmental considerations at heart.

**RUPES Paninggahan VCM**

The most developed, and that which has been chosen for the focus of this research, is the voluntary carbon market in Paninggahan. According to Leimona, the: “Carbon emission reduction scheme has led to the concept of ‘carbon rights’ is a new area for contest and cooperation”, and it is indeed the most prevalent site of action within the Singkarak area. The VCM project is in and around the grassy and uncleared upland areas and foothills surrounding Paninggahan, and the aims are to involve the farmers in a tree-planting scheme on grassland around Lake Singkarak in order to offset carbon of the investor concerned, as well as ensure the farmers and the local communities benefit from the tree-planting scheme through RUPES rewards. The main stakeholders concerned are described as ‘buyers’ and ‘sellers’, whereby the buyer is the carbon trader, and the sellers are the farmers. Given the Minangkabau political and governance make-up, this means that any contractual agreements are to be made through the village leader, the ‘*Wali Nagari*’, which means there are additional members of the sellers contingency. As well as this, there are the facilitators who are ICRAF, and local nongovernmental organisation (NGO), ‘YADDAS’ (YAYADAS). These are the signatories according to the contract.

According to YADDAS, the outside verifier and fourth party in the contract, ICRAF was invited to set up their RUPES site with the Paninggahan community in 2004.

**28 and 21**

The leaders of the *nagari* signed the agreement and the farmers then followed (with their approval), utilising 28 hectares of communal village land, with the aim of creating 4,090 tonnes of carbon over a period of 10 years. So far, there has been alternating reports of success for the tree-planting on behalf of the farmers, with 40% of the target amount of trees successfully planted so far for the year, thus already the scheme being set behind on the overall ten year plan. The buyer has withheld payment for the trees until further success is achieved. The situation is a lot more complicated than this, however.

As a result of this being a pilot project for the buyer concerned, there have been two groups of farmers and there are in fact two areas of the land that have been set aside for the use of RUPES VCM, to be cleared, planted, maintained and re-planted. Overall, there are 49 hectares that are split between one group of farmers covering the lands of the 28 hectare group, and the remainder 21 hectares within the lands of the other group of farmers. With the 28 group, there is a contract, and with the 21 there is not. This is for a number of reasons, the main reason being as a trial mechanism on behalf of the buyer. With the 28 group, there are the buyers, the sellers with the office of the *Wali Nagari* as the distributor of payments, and ICRAF as facilitators, and YADDAS as verifiers. With the 28 group, and the exact details of this will be outlined through the results and analysis of the research, there have been issues as to the success of the planting, the measurement and clearing of the land, and the mechanism of payment.
through the nagari. In order to see whether the success of the scheme would be different with a different means of organisation, the 21 group thus have no contract so far committing any of the various actors. In this instance, the role of YADDAAS has been excluded, and the role of the nagari office is in contention. Below are the two plans of the 21 and 28 groups, although the areas have altered since these maps were made (Figures 3 and 4).

It has become clear through the course of the research that there has been developed a second contract between the Wali Nagari and the farmers, in order to legitimate his payment mechanism. This allowed him to take 12.5% of the operational costs in one lump sum, as opposed to over the course of ten years, as the farmers are paid.
Stakeholders

The buyer/trader is the company ‘CO2 Operative’, headed by former ICRAF social scientist from the Netherlands, Paul Burgers. As an academic at Utrecht University, he moves between his Dutch commitments and his Indonesian ones. He has a Project Officer, Martin, based in Singkarak, who is there to oversee the projects and communicate with the farmers and the nagari office. His work started in April 2008, and in 2009 he presented his ideas at a big conference. He has Martin, Kiki (an Indonesian student) and himself as part of the company, as well as sharing an office in the Netherlands with a small business in sustainable product development. His trades carbon primarily with the printing, advertising agencies, marketing and graphics industries. He works with a foundation, and has had discussions with the textile industry. With regards to Paninggahan, he works with the foundation and a printing office. There are 43 farmers involved as sellers overall, both male and female, but mostly male, all from the nagari or the surrounding areas of Paninggahan. ICRAF is the facilitator and YADDAS are in the contract with the 28 group as verifiers, but as there has been minimal carbon sequestered so far, there has been no need for verification as yet.

Figure 5 – Stakeholders

Paninggahan VCM Site
Indonesian Legal Pluralism

In order to understand the importance of using a legal pluralist framework, the following section will introduce the various levels of law in Indonesia, and specifically with regard to the Minangkabau.

Indonesian Law

According to Wang, there are a myriad of sources of legal pluralism in Indonesia. He states them chronologically as determined according to the differing historical accretions of the religions that have come to the collection of islands. They can be listed as:

- animism since prehistoric times, Hinduism-Buddhism before the fourteenth century, Islam afterwards, and Christianity later on;
- indigenous and mostly unwritten jurisprudence in the form of adat, altered from locality and locality and from island to island;
- the Syariah, theocratic Islamic law code and hadith, the Islamic, legal traditions;
- Dutch legislation and colonial apartheid legalities and self-legitimations based on race and national origin;
- legal reform by the British during the Napoleonic wars;
- legal reform by the Japanese who occupied Indonesia during World War Two;
- laws emanating from the Independence of Indonesia from Dutch rule.\(^{18}\)

In addition to this can be seen the recent effects and affects of processes of autonomy and decentralisation after the fall of the Suharto regime in 1998.

Decentralisation

According to the Benda-Beckmanns, the decentralisation process in Indonesia has induced the legal pluralism that is evident within the country today. Specifically in West Sumatra, the fall of the Suharto regime, triggered the re-emergence of previous discourses and practices of law, as a result of greater political freedom. This is what the Beckmanns have termed as the ‘recreation of the nagari’, as the alteration of village organisation meant the reverting to, and reawakened interest in, relations between adat, and Islam, with adat as an object of regional and local politics. This meant the shifting in the prioritisation of each of the systems of law, with the conflicts and compromises that would be expected.\(^{19}\) For any understanding of the plural legal reality of Indonesia, and its recognition as a unity within the national political make-up, the decentralisation process and the role of autonomy, must be understood. As a result of both external demands coming from the World Bank and the IMF, and internal demands to shift the focus of Indonesian politics and demography away from the most populous island on

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earth, Java, decentralisation ensued. Accordingly, the relationship between the state legal system and those of customary locality, have taken more precedence and consequently so too, the role of rights to revenues from natural resources have taken voice through these restructurings. Thus, decentralisation has taken place at the district and municipal levels. According to the Beckmanns, this has prompted new and strong feelings of regionalism.

From the perspective of a legal pluralist researcher, of course the subject matter is rife, and in order to speak to decentralisation’s dynamic and complex processes, there exist what can be termed as a situation where actors operate across and between several overlapping ‘semi-autonomous social fields’, to use a term coined by legal pluralist Sally Falk-Moore. Through this individuals arguably are managing and negotiating their cultural, political and economic lives through alternating structures for new local governance and resource rights. As a result of this, new power elites emerge based on revived structures of governance, through alliances between the roles of governors, district heads, desa heads and adat leaders, the governor being the primary leader of each region, down to the now officially recognised in the eyes of the state, ‘Wali Nagaris’, who are the lowest level of governance. The Beckmanns also argue that the village elites and district officials have begun to restructure the economic landscape. The desa was the former means of organising the village structures, and within West Sumatra, the nagari structure is now recognised, which alters the political and economic landscape, and the legal one so too.

The relevant laws with regard to the new regional autonomy structure, rely on two laws: Law 22 on ‘Regional Government’ 1999 and Law 25 on the ‘Fiscal Balance Between the Central Government and the Regions’ 1999. For an in-depth and detailed account of this, see all relevant Benda-Beckmann articles. To understand the operation of local villages and the political character, the affects of the decentralisation process are the first thing to consider, as this has insurmountable impact on the manner in which the natural resources are managed, and how they are viewed as being managed legitimately or illegitimately. In order to unravel this connectedness further, the nature of the three levels of legality should be explained.

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In Indonesia, a considerable part of the law most relevant to any PES scheme is that of land tenure. Land tenure is broadly defined by Galudra, et al as, “... the relationship between individuals or groups, either customarily or statutorily defined, with respect to land.”

The ‘Basic Agrarian Law’ (BAL) 1960, covering all of the Indonesian landbase, determines seven types of rights. The first is that of the right of ownership, and according to Galudra et al, the remaining six are ‘usufruct’ rights on land under state control. The BAL delineates two types of lands: those of ‘Customary Lands’ (tanah adat), which existed prior to the implementation of BAL, and those of ‘State Lands’ (hak lama), which are free to be distributed to private entities. In addition to this, there are ‘Forest Zones’ (kawasan hutan). Further divided into two categories, there are the state forests (belonging to the state and with no private rights attached), and there are private forests, which are delineated as forests with private rights attached.

In sum, thus there are customary and state lands that straiten ownership of the rainforest, the customary rights to which are understood through the variant versions of adat law.

Adat

Adat differs from one nagari to the next, and there is no central archive of the law, mostly unwritten and if the nagari are organised, they will have some laws written down as well. Adat is seen as a legitimation of, “… political authority and rights to natural resources.”

It is also the collective term for Minangkabau law and customs. The Beckmanns term

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this as based on rights to local authority over persons and natural resources as ‘actualised’, which in turn affects the operation and viability of state, Islamic, adat laws so too.30 Through the ‘Law on Local Government’ 1979, the model of the desa as the lowest level of local government was operated, with the previous nagari split into several desa administered by desa-heads. This system was replaced once again by the nagari system, re-awakening adat organisation, by Laws 22 and 25, that initiated the system of decentralisation.31 As previously mentioned, new forms of political and administrative relationships developed as a result of this, rekindling the importance and legitimacy of adat rules and regulations, and situating the Wali Nagari as officially the lowest level of government representative. The Beckmanns highlight that this not only brought new alliances and forms of inclusion, but so too, exclusion, as shall be demonstrated through the research at Paninggahan VCM site.32 Similarly, the legislative preponderance of customary rights, has been argued as not reflecting the adat reality.33 More shall be said on adat with regards to its political and juridical organs in reference to Minangkabau culture.

Islamic

Islamic law has been ‘adatised’, whereby Shariah law has been translated into a specifically adat character.34 Thus, despite adat being the operational model of customary law, it is very much an instrument of Islamic law. Within the Indonesian constitution, is what can seen as this ‘triangular’ relationship between the legal systems as very much emanating from Islamic law, whereby within state law, adat rests on sharia law and the sharia rests on the Koran.35 Given that: “Despite the fact that processes of hybridisation of legal concepts occurred on a relatively grand scale, there was a general and persisting agreement that adat, Islam and state law remain distinct systems.”36 Nevertheless, there are instances where the two collide, for example, with regards to the opposing systems of organisation of Minang matrilinealism and that of strict Islamic paternalism. This is a good instance of where Indonesian legal pluralism conflicts within itself, and similarly relies on the respect for compromise.

Conflicts and Compromise

Given the plural legal nature of Indonesian law, there are bound to be instances of conflict and inapplicability of one in light of the priority of another. The preeminence of adat law over state law was recognised by the ‘Association of Minangkabau Village Adat Councils’ with regards to a land rights struggle between the village of Lubuk Kilalang and the Padang Cement Factory. It underlined that adat could not be ignored, and issued a fatwa to concretise this. The case underscores the connectedness of natural resources management with property rights, whereby land and coral stone could not be used for the production of cement, as it, “… had been and always would be part of the commons (ulayat) of the village (nagari).” This consequently placed the superiority of adat over the law of the state, with regard to issues of land and management of natural resources most prevalently.

Issues of inheritance are inimical to this, and the village commons or ulayat are the point at which these relations of matrilineal property rights become more tangible. The problem with state law in conflict with adat, concerns the fact that the village commons straddle what are considered the categorical relations of public and private, each family having their own ulayat, or communal family lands that are passed on from one generation to the next. The West Sumatran Domain Declaration 1874, whereby the


government assumed legal control and disposition rights over all waste lands, which encompasses the commons, deemed that if village commons are registered then they risk being lost to the state as they will shift from concretised relations of law to a categorised determination whereby they will be assumed to be public, and not owned. 40 Thus: “A variety of lines of conflict have developed for the major property categories. Control and exploitation rights over village commons became a major problem between villages and adat and the colonial state, when the Dutch economic problem shifted to the establishment of economic enterprises and a systematic exploitation of natural resources.” 41

Similarly the role of Wali Nagari (village leader) has an ambiguous position of compromise and priority. His role is to ensure the economic, social and cultural aspirations of the nagari are the priority, whilst ensuring the actions of the nagari are operating within the legality of state law. The officialisation of the role of village leader now means his priority is state law, and not that of purely adat, and thus issues of compromise are now central to the role of village leader, and exacerbate his position somewhat whereby his priorities can also be argued as being compromised. Despite these sites of struggle within the systems, the elements of compromise are clear too, particularly with regards to the decisions made by the Wali Nagari and their dual roles as state and nagari representatives. This is the ambiguous role of the state and that of the nagari, within the leaders 42


The Minangkabau are a distinct ethnic grouping, whose deep attachment to the Islamic faith, and that of their surrounding resources, are evident in the manner in which they organise themselves. Property and inheritance rights are determined according to the rights of the eldest daughter, the women thus having the rights of ownership of the land, whilst the men retain the political and cultural management of the villages, and the production and management of the land itself. Their own *adat* matrilineal laws and those of Islamic law, were in existence prior to colonial times, meaning their legal plural character and understanding is entrenched within the character of their culture.

**Organisation of Nagari**

There are distinct groups within the Minangkabau, and there are firstly three classical categories of *adat*. These are the *adat* elders (*Ninik Mamak*), religious leaders (*Alim Ulama*) and the ‘intellectuals’ (*Cerdik Pandai*). Other groups are also the *adat* women who are married (*Bundo Kanduang*) and ‘the young’ (*pemuda*), striated by groups of local leaders, farmer leaders and groups, professionals and migrants.43 The *nagari* use democratic mechanisms based on common deliberation until consensus.44. The term *nagari* can infer the legislative, executive and judicial organs of the *nagari* combined, as well as with regards to the demographic site of one village.

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### Figure 8 – Nagari Structure

*Wali Nagari*

- **(Executive)**
  - **KAN (Kerapatan Adat Nagari)** (Judiciary)
  - **BMN (Badan Perwakilan Anak Nagari)** (Legislature)

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Nagari, whereby his role was to adat law was kept and administered by the people, since the resurgence of adat organisation, the officialisation of the role of village leader now means his priority is to ensure nagari activities are legitimate in accordance with the state. Despite this, the village leader is not a civil servant, but does have a monthly payment from the state, of around 6,000,000,00 rp. Up from the Wali Nagari is the Camat, who is the non-adat representative of the state, at sub-district level. This is followed by the Bupati, who is at the level of district governance and is the highest level of nagari representative, before the levels of governance at province level, being the governor. In order for the Wali Nagari to take the distinguished position of village leader, he (and it is predominantly a he, as the matrilineal system of organisation does not stem to issues of governance of the people) must fulfil a number of criteria with regards to district and village adat regulations. He must be competent, has an intrinsic and respecting knowledge of adat and religion, and he must also be a neutral political figure. There are some village regulations with regards to minimum age, (thirty years most often). Given the fact that a large population of the males migrate to the cities for work reasons, and then return to the villages, they must have had prior residence in the nagari of two years.

KAN (Kerapatan Adat Nagari)

With regards to settling issues based on adat, the KAN or Kerapatan Adat Nagari is referred to. The KAN is thus the judicial wing of political organisation in the nagari. This is the Village Adat Council that determines the applicability and sanctions of district regulations and village proposals, their role being to maintain, develop and strengthen adat and Islamic law. They also settle disputes on adat titles and property (sako and pusako), and in addition those of a criminal nature within the nagari. There are two documents which refer in state law to KAN, the ‘Tanah Datar’, and that of the draft of district ‘Sawah Lunto-Sijunjung’. Despite this, the KAN has been an adat institution since ancient times, and has been kept separate from government operation.45

There are up to sixty members of the KAN, whose backgrounds are mixed with differing levels of education, all of whom are drawn on for their knowledge of adat and their position in the community as elders. Issues with regard to ulayat have the right of veto from the KAN, with the Wali Nagari seeking advice on issues in this regard. The laws are mainly unwritten and it depends on how organised each KAN is, if the administration is good then they will keep a record of it. Punishments are social and nonviolent. There is never really an issue here as the law of the state overrules, and thus if there is any decision to be made in this regard, then the adat has to compromise. The Kan state that: ‘adat salankar nagari’, or adat is different from one nagari to the next.

BMN (Badan Perwakilan Anak Nagari)

The BMN, or Representative Council of Village Citizens (Badan Perwakilan Anak Nagari, BPAN), is more the legislative wing of nagari organisation. This, in effect, acts as a parliament and consists of members chosen by the nagari population. The number of members of the village parliament vary between eleven and thirty-three,46 and include both men and women and members of different groups.


Property Relations

The region of West Sumatra is now largely moving toward a concept of property rights akin to the Western concept of ownership, through the process of monetisation and market influence. Nevertheless, there are two distinct categories of property relations and management that remain operating outside ethnocentric conceptions of property, these being the ulayat and pusako, the village commons, and the matrilineal organisation of inheritance of these lands, in turn.

Ulayat

Ulayat is the common village lands, described in adat as, ‘the buffalo gets up, the watering place remains’, meaning only temporary rights to the land for the villagers and outsiders, as the land remains no-one individual’s property, but is assigned to either families or the nagari as a whole. Control over ulayat, has been a site of struggle between villagers, village governments, officials of various state agencies, NGOs and development agencies. Within the families (or sukus), the land can never be sold, although there is contention over this, and if it is to be sold, it must be done so by mutual agreement and consensus. This is a common site of conflict between the villagers themselves.

The Basic Agrarian law 1960, declared ulayat to be state land, and only gave recognition to commons that, “…continue to be held as in the past by the nagari, where village commons still exist in reality and where the relationships between adat law community and village commons have not been severed in the course of time.” Therefore, this gives great insecurity to the nagaris over the rights to their land, as if the land is registered, then it effectively becomes state land. After the expiration of private ownership, the land would revert to ownership of the state.

The ulayat is arguably, and is argued in this research, the epitomisation of the embedded nature of the legal systems within the natural resource management of the Minangkabau, and its role surfaces as divisive within the findings and in relation to the choice of PES scheme location in this instance.

Pusako

Pusako is the inherited lands and goods of the eldest daughter of a matrilineal clan, of which the ulayat is central. This is the manner in which the lands and properties are organised, and to whom they are passed on. There is low pusako and high pusako, which

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the Beckmanns note as the inheritance of the future and the past.\textsuperscript{51} Low pusako relates to the goods and property that is gathered and acquired during the course of a marriage partnership, from both the male and the female. High pusako relates to the land, including the ulayat. Both high and low are passed from the eldest daughter to the next, accumulating the goods and passing on to the next generation. This is the matrilineal process, whereby the women are the owners of the land and the men have the right to manage and produce from the land. Again, this is embedded within the customs and legal awareness and understandings of the communities, and is how the system operates. Despite predictions that the matriarchal determination of the society would disappear with the introduction of new state laws, governing the inheritance and sale of pusako, it has remained strong, although low pusako is conceded at some levels. Its accumulative nature cements this embeddedness, not only of law, but of generation to generation, attached to their land and property, creating a snowballing connectedness.

**Embeddedness**

The goods of the pusako and the ulayat is a space of struggle, and they are also exemplifiers of embeddedness.\textsuperscript{52} Indeed: “In all matters of external relationships and political authority, the people-property complex is treated as ‘one’ and is represented by the lineage head in transactions and disputes.”\textsuperscript{53} Given these ambiguities, sites of conflict, and deeply connected regimes of property, inheritance, natural resource management and legal systems, there are effects that manifest themselves within the organisation of the members of the communities. The Beckmann’s argue that this ambiguity stems in part from the embeddedness of the property rights, as adhered to earlier in the introduction. This is the manifestation of the plurality of the legal systems within the actions and the perceptions of the people, and ultimately their understanding of law.\textsuperscript{54} The rights to natural resources are argued thus as embedded in wider social, economic and political relationships, therefore any project from an outside development agency that seeks to look at property relations in isolation, would fail in their understanding of the entrenched character of the legal systems as felt through this embeddedness. This embeddedness is the affect of the legal systems on the actions and resultant social relationships and domains of social and political organisation.\textsuperscript{55} The Beckmanns show the difference between institutionalised legal orders and those of a non-categorical nature, or those that are plural:

\begin{itemize}
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“In highly institutionalised legal orders, property relations are conceived and regulated as a relatively separate sub-field, in which they are treated as an isolate, largely differentiated from other social or political relationships, such as family relations or political rights. Many traditional legal orders, by contrast, treat property relations a only one aspect or strand of more encompassing categorical relationships. In which kinship relations, property relations and relations political authority are largely fused in a many-stranded or multiplex relationship.”

If these relations are misunderstood, thus outside forms of property and legal understanding may cause a process of ‘dis-embedding’, which can be epitomised through the ‘project law’ of NGOS (more on this later). The embedded and ambiguous nature of the legal relations however, lead the Beckmanns to argue that instances of ‘forum-shopping’ occur.

**Forum-Shopping**

Forum-shopping can be argued as: “The extent to which one can bend the law to one’s own benefit depends on the distribution of power.” Thus, given the relative preponderance of choice with regards to which rules and regulations to follow, forum-shopping is evident in Indonesia, and particularly Minangkabau. The embeddedness gives way also to legal insecurity, resulting in pragmatism and ‘highly legalistic reasoning’, whereby there is created, “… ambivalent and opportunistic ways to negotiate property relations and to justify […] interpretations of actual conditions, claims and solutions in legal terms.”

Indonesian and moreso Minangkabau legal plurality demonstrates thus both the enabling and constraining structure of the systems, whereby law becomes a resource through the selective use of the legalities. According to research conducted by Biezfeld in West Sumatra:

> “Villagers sometimes frame their arguments in terms of state law, whereas state civil servants may use adat rhetoric. The parties involved in a conflict can use both state law as well as other normative orders in a flexible way […]. People show enormous creativity in the way they seek to employ these different kinds of discourse, in a process that could be described as discourse shopping, as an analogy to the notions of ‘forum shopping’ […] and ‘idiom shopping’ […].”

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This also suggests a level of realism, whereby McCarthy argues following from Campbell, that, “… adat, he has suggested, is not necessarily a glorious living tradition of harmony with nature that is fully operative in forest dependent communities”, 61 reflecting perhaps the political realities through the Indonesian plural legal reality.

The most obvious example of forum-shopping is seen in the role of Wali Nagari. His compromising role means he is dealing with both state and adat levels of expectation when it comes to adherence to regulations. It could be argued that when there are situations where the state law offers the most benevolent outcome in comparison to that offered by adat, then he may choose state over the priority of the nagari. Throughout the course of the gathering of research in Paninggahan, it became clear that this pivotal role as state and nagari representative, means that the Wali Nagari is himself a site of struggle and choices over the exercising of power. The legal systems here affect the actions and interests of the leader and lead him to forum-shop, sometimes in the interest of the state, sometimes in the interest of the nagari, and sometimes, according to his own interests.

Methodology and Methods

“Law as a theoretical and analytical device is a concept which embraces a category of phenomena (ethnographic facts) selected according to the criteria the concept specifies. Although it is composed of a set of individual phenomena, the category itself is not a phenomenon – it does not exist in the outer world. The term ‘law’ consequently is applied to a construct of the human mind for the sake of convenience. The justification of a concept does not reside in its existence outside the human mind, but in its value as an analytical, heuristic device.”

Methodology

Returning back to the research summary and objectives that propelled my stay in Paninggahan, and the wish to understand PES schemes in terms of a legal pluralist and critical legal analysis, the methodological framework can be derived. First and foremost, the research centres around enquiring into how appropriate a critical legal pluralist framework can be for understanding relations between different stakeholders and their resultant actions in Payments for Environmental Services (PES) schemes in legal pluralist settings. In addition is to see how a plural legal system affects the actions of the Wali Nagari, Nagari, ICRAF, YADDAS, BV, the output of RUPES Paninggahan, what knowledge Wali Nagari, Nagari, ICRAF, YADDAS, BV have of the plural legal systems, and whether the farmers create their own form of resistant legality. The role of ICRAF and YADDAS are considered so too as to their influence in the manner environmental services rewards schemes change the relations between Wali Nagari, Nagari, ICRAF, YADDAS, BV and the natural resources concerned. Finally, the aim is to see whether RUPES has successfully achieved its aims of involving the farmers in a tree-planting scheme on grassland around Lake Singkarak in order to offset carbon of the investor concerned (BV), and ensuring the farmers and the local communities benefit from the tree-planting scheme through RUPES rewards.

Given the summary above, questions ensue as to why choosing a legal pluralist and indeed, critical legal pluralist framework over other methodologies for the investigation. There are some preliminary answers here prior to analysis later on of the relevance and applicability with regards to this methodology in terms of the effectiveness of PES schemes. These are:

- legal pluralism seeks to understand relations that are caused by both individuals and their resultant institutions, state and non-state mechanisms, thus this methodology has been chosen for this focus, and how it may explain the behaviours of Wali Nagari, Nagari, ICRAF, YADDAS, BV, the output of RUPES Paninggahan, and the resultant actions of the farmers;
- because the setting is in an overtly legal pluralist setting of Minangkabau culture, legal pluralist methodology can locate instances of the effects of legal pluralism.

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on the actions of the participants, and also critical legal pluralist approaches may locate the existence of covert legal production in the form of non-state organisation, in the form of farmers’ collectives and coping mechanisms;

- natural resource management can be understood in legal pluralist terms and thus a legal and critical pluralist methodology can be used to understand the complex and embedded nature of the relations between the villagers and their land and the importance of the legal levels in understanding this;

- a critical legal pluralist approach may account for some of the realities of the actions of individuals in legal pluralist settings, the affects this has on the successes of PES schemes, and the manner in which PES sites should be chosen appropriately in future.

The legal pluralist setting means that choosing law as a key methodological starting point is obvious and perhaps recommended, but to analyse the appropriateness of the methodology further would be to ask why law as so important, in systems where the plurality is not so clear. Within the legal pluralist and legal anthropological literature, the problem of whether the concept of law might serve as an analytical concept for comparative cross-cultural analysis was a juncture in the development of the discipline.63 At the same time, legal pluralism also seeks to point to the existence of other normative ordering or forms of social control both can and cannot ‘disprove’ the ideology of legal centralism.64 Thus, legal pluralism is a methodological mechanism for understanding systems of relations that are state and non-state produced, as produced by both individuals and organisations, depending on what strand of legal pluralism is used. If law is a system of human relations, thus law becomes manifest in ‘concretised’ form as ‘concrete law’ with regard to the constitution and interpretation of a concrete problem, relationship, occurrence, etc.. In these forms of concretised law, law also becomes inscribed into social relationships, giving legal meaning, and embodied in persons who are defined by their legal status. This is then ‘categorised’ within law, in embodied organisations such as community, town, the state, or in international organisations.65

The importance in this instance of PES schemes here is that legal pluralism as a methodology seeks for an understanding of law and how this can be galvanised for social and environmental change. Critical legal pluralism goes even further and locates individuals themselves as not purely legal actors, but the producers of law, as legal actors and subjects for change, which holds great potential when considering the success of PES and its reliance on cooperation, cultural understanding, and the use of the legal systems at hand.

To try and promote this as the first instance of legal pluralism being promulgated as a methodology for ES in general would be wrong, and ICRAF itself has devised a model names ‘RaTa’ (Rapid Land Tenure Assessment Manual for Identifying the Nature of Land Tenure Conflicts) that reflects this wish to consider the social as well as environmental impact of ES schemes, and the appropriateness of site location so too.

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Indeed, Freudenberger highlights three reasons why considering strata such as land tenure is so important in natural resource management programs: firstly, it affects who has access to resource, secondly, whether people are willing to participate in the projects, and thirdly, the distribution of the program’s benefits. In addition to this would be the impact assessment, and so it is not new to propose considering the social costs of ES schemes. In light of this however, given the fact that RUPES is there to benefit those who are the least high up in the chain of benefits, and is pro-poor, understanding the cultural make-up of these groups is essential in order for them to benefit from the schemes. In the Minangkabau instance, the cultural make-up is expressed most tangibly through the legal plurality, and thus legal pluralist methodologies are the most appropriate in this instance.

Legal Pluralism

General

Each legal pluralist has their own supposition as to what exactly a pluralist law is, and this is based predominantly upon the lack of conclusiveness over what state law is itself. Both Griffiths and Tamanaha focus on some of the divisive theoretical questions that trouble the legal pluralist movement, mainly the contentions over what kind of plurality legal pluralism seeks to manifest, and therefore, what definitions of legality it seeks to distance itself from. The easiest way to set about understanding the importance of legal pluralism and its role in understanding not just law, but also the social relations attached to law (or law itself), is to start from the negative, which would be the body of so-called ‘legal centralism’ or positivism that has dominated accounts of law. Another means would be to consider its historical birth pangs, and the role of the colonial imposition of Western law upon already-functioning legal apparatuses during the eighteenth and nineteenth centuries. Thus there appear two differing contexts within which legal pluralism operates. The first, is the, “… rejection of the law-centredness of traditional studies of legal phenomena, arguing that not all law takes place in the courts.” The second is the practical impact of colonialism and is the very origin of research on legal pluralism, “… begin[ning] in the study of colonial societies in which an imperialist nation, equipped with a centralised and codified legal system, imposed this system on societies with far different legal systems …”.

The point here is that intellectual and wider reaching societal conceptions of law have therefore expanded, and the era of legal centralism tinged by the violence of forceful legal expropriation is more subtle, not so explicit. Legal pluralism is therefore, “… the key concept in a post-modern view of law.” According to Tamanaha, legal pluralism is considered to be the new paradigm in the social scientific study of law. From another


perspective, and related to its pioneering properties, is the very potential legal pluralism holds for reproofing the dominant order of legal hegemony. According to Tie, “… legal pluralists look towards decentralised sites of conflict resolution as fertile sources of critique.”\textsuperscript{71} Consequently, legal pluralism can be seen as an effective method of critique, through its potentiality to reveal the inappropriateness of one system through the appropriateness of another.

According to Tamanaha, a legal pluralist will claim: “(i) there is a particular phenomenon – a form of normative order or social control – which can be identified cross-culturally and across all sorts of groups; (ii) this phenomenon is ‘law’; (iii) there is a plurality of social groups everywhere each with their own attendant (now ‘legal’) demands; (iv) thus legal pluralism is a fact.”\textsuperscript{72} This is a broad summation, and so to give an indication of the variety of versions that are proposed, here are two further conceptions that offer just as a snapshot of the lack of consensus over the very nature of legal plurality. According to Engle Merry, legal pluralism, “… is generally defined as a situation in which two or more legal systems coexist in the same social field.”\textsuperscript{73} This is a simple assumption and one that fits with any polycentric notion of law. As Griffiths states in the opening pages of his article ‘What is Legal Pluralism?’: “For present purposes we can define ‘legal pluralism’ as that state of affairs, for any social field, in which behavior pursuant to more than one legal order occurs.”\textsuperscript{74}

What is highlighted by these definitions, however, is the occurrence of law that is not produced in the state institutional form. This law is therefore guided by and/or is, a set of social relations. These sets of social relations are not necessarily played out within the remits of courts and judges, but are within traditionally perceived non-legal forms of normative ordering. These could be within the settings of farmer groupings, playgrounds, universities, corporations, factories etc. And so there is a real underlying pointer here that law could perhaps be made and monitored on a daily basis by individuals themselves, without having to be within the confines of the state’s monopoly. Said in Tamanaha’s terms, law is now recognised as a ‘human social creation’,\textsuperscript{75} not just in the institutionalised form that is recognised as state law.

There are some problems that plague the legal pluralist camp(s), however. If one is to start stating that law is being created by individuals on a very hum-drum, mundane basis, then what exactly is this law? What is the criterion that makes law? According to Merry, being liberal with the identification of plural laws runs the risk of dumming down the process entirely, stating: “Where do we stop speaking of law and find ourselves simply describing social life?”\textsuperscript{76} It must be considered, therefore, that all forms of social control are not necessarily law. This is echoed by Santos, stating: “If law is everywhere, it is

\begin{itemize}
\end{itemize}
nowhere[.].” Tamanaha claims that when all of the functionalist and essentialist elements are removed from law then it is difficult to denote what is law and what is non-law. This makes state law very easy to recognise.

**Strong and Weak Pluralism**

Griffiths has claimed a distinction between legal pluralism as studied by lawyers, and that as the focal research of social scientists. Accordingly, Griffiths states that law as studied in a more juristic manner is ‘weak legal pluralism’, and that which is studied by social scientists is ‘strong legal pluralism’. One way of understanding the difference between the two would be the role of unity. Weak plural legal systems would be considered as pluralistic in the juristic sense when the sovereign determines different bodies of law for different groups of a population, categorised along the lines of ethnicity, religion, nationality or geography. These legal systems are ultimately dependent upon the central state for the recognition of their existence and are in some respects, one legal order. According to Griffiths, weak legal pluralism suggestive of unification are in relation to post-colonial poly-legal systems. The pluralism characterised by the Minangkabau would thus be a weak form of pluralism. It can thus be argued that weak legal pluralism only maintains the constructs of legal centralism further, as all other systems are hierarchically set below that of the central organ.

On the other end of the spectrum, strong legal pluralism has greater links with legal anthropology, coming out of the studies of the colonies and being remoulded for and in other settings. This is why the strong version of legal plurality is more associated with ‘complex’ societies’ legal phenomena, describing systems that are living in parallel with one another and are not set to be unified. It is, “… the scientific observation of the fact of a plurality of legal orders which exists in all societies.” In the words of Engle Merry, it is the, “… view of an empirical state of affairs in society (the co-existence within a social group of legal orders that do not belong to a single ‘system’) “…

Legal pluralism as a condition, one that is experienced by an individual as part of their daily life, is also the project of de-normativising the classical view of law, and understanding it for its cultural and social explicatory potential. There is a growth and acceptance of the concept of legal pluralism, whereby enriching general

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understandings of, “… law and of the relationship between law and society in all legal systems, having colonial past or not.”

Given the theorists discussed, in relation to the research on PES, the methodological backdrops of ‘semi-autonomy’, embeddedness, forum-shopping and ‘project law’ and the most important guides to understanding the relevance to the research with RUPES. This in turn leads to a further understanding of critical legal pluralism and its methodology and the importance of law production coming from a strong pluralist backdrop.

Falk-Moore – Semi-Autonomous Fields

Legal pluralism is understandable as situated on a legal level, it is the political formation of a corporation, it ‘lives’. Thus, considering these levels, Falk-Moore describes her methodological underpinnings for studying law in its social setting:

“The approach proposed here is that the small field observable to an anthropologist be chosen and studied in terms of its semi-autonomy – the fact that it can generate rules and customs and symbols internally, but that it is also vulnerable to rules and decisions and other forces emanating from the larger world by which it is surrounded. The semi-autonomous social field has rule-making capacities, and the means to induce or coerce compliance: but it is simultaneously set in a larger social matrix which can, and does, affect and invade it, sometimes at the invitation of persons inside it, sometimes at its own instance.”

Falk-Moore claims that law and social relations can only be properly understood if actually studied in the context of social life. In order to understand the notion of semi-autonomous fields, there is are cognition of the presence of the state system in the autonomous field, in that it influences and shapes the legal system (field) on a continuum of autonomy. It therefore: “By definition […] requires attention to the problem of connection with the larger society.” This suggests a clear intervention on behalf of the state in to the fields of legality, and so too those forces of the field affecting state law in a reciprocal manner. Conforming with network theory, these are complex forms of socio-legal organisation, an understanding of which best defines areas of social activity and organisation that are within complex societies. Issues of autonomy and self-regulation are central here, determining the level of autonomy along internal and

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external links that can be legal, non-legal, and illegal norms that are part of the meshwork.

This has direct relevance, firstly to why law should be understood in terms of its social setting, and thus the same vice versa, but also with regard to Indonesian decentralisation and the effects this has had on the political and plural legal characteristics of organisation at village level, and the actions of the villagers and village leaders so too. Semi-autonomy is thus the methodological backdrop that can account for a legal pluralism found within the Indonesian state, and how this may affect the actions of interests of the actions of individuals concerned within the scheme. Following the advice of Falk-Moore, the legal systems have been chosen to be studied in a particular setting, that of the site of Paninggahan.

**Benda-Beckmanns - Embeddedness, Forum-Shopping, Project Law**

Already described in detail has been the embedded nature of law within the Mingangkabau culture, attached to their management of their natural resources, and the overall connectedness of their concretised forms of property relations. Forum-shopping has been described as the consequent behaviours of the presence of plural legal systems. Thus both the embeddedness and forum-shopping observational concepts of the Benda-Beckmanns are used as a staple from which the actions of the participants can be assessed. Methodological questions that can be answered here are with regards to the importance of the *ulayat* as a site of embeddedness, and the manner in which forum-shopping and the legal systems are altering this, in line with the project of RUPES. The actions of each of the stakeholders can also be assessed in line with an understanding of the presence and consequences of forum-shopping.

Given this, there is also the remit of ‘project law’ as a methodological concept that informs this research so too. How can the work of RUPES be understood as a form of project law, and indeed even the actions of the local elites, in this instance the *Wal Nagari*? Project law can be understood as creating a manner of dis-embedding. Can RUPES VCM be said to be exacting a, “… discursive sphere in which civil society NGOs, as spokesmen for democracy and ‘the people’, redefine the relationship between nagari, village leadership, and the common good.”? 93

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Critical Legal Pluralism

“The anti-prescriptivist perspective invites legal subjects to imagine themselves as legal agents and to discover the normative potential of their own actions. In so doing, these legal agents are staking a position ‘against nomopolies’, however constituted.”

Legal pluralism is used as a framework for understanding what law is (and is not) and how this can explain social action. Thus, following from Falk-Moore, who states that law and the social context in which it operates must be studied together, this research has applied this principle to a semi-autonomous setting of law. As well as this are critical legal considerations, whereby critiquing and questioning the structures of law and society that are in place, offers a way of creating new ways of seeing law, space, society and the world around us.

A very important development that has arrived from the use of both critical legal and legal pluralist approaches, has been the surprising complimentarity of the two genres of thinking. Surprisingly, this is, because they are normally considered separate realms of humanities and social science that are not deemed to be reconciled. Critical legal pluralist Melissaris has noted the divergence between the two remits, whereby through his own work on legal pluralism and critical theory combined, the results are neither a work on pure legal philosophy nor one on empirical socio-legal theory. This tension between legal theory and philosophy, are one that he hopes to bridge through his own work, and a methodological point that is noted here for the practical aspects of this thesis so too. According to Melissaris: “Much of critical legal theory is concerned less with the source(s) of law than with what distorts normative meanings, rendering State law an apparatus of domination and the law’s inherent inability to become co-existent with justice.” Therefore, this critical approach deems that there are normative orders outside of the state that are silenced and thus made an injustice. Legal pluralism itself is critical of law and its lack of decentralisation, and seeks to locate law that has a distance from the state, but also studied in a manner that allows for its conceptual and actual understanding. Melissaris states that legal pluralism is the task of illustrating that normative orders that exist outside of the state.

‘Critical legal pluralism’: this term is useful in showing a new direction in legal pluralism, one that this work ascribes to, “... which perceives of the law as radically diverse and disperse.” Critical legal is a manner of critiquing, and the legal pluralist is a manner of

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gathering evidence of this exclusionary nature of state law. Thus, both hold within them the underlying notion of justice, and what justice should be, critical legal determining that state law is separated from justice, and legal pluralism as showing how operations of justice can be exercised in non-state situations.

If legal pluralism is the study of legal systems and their affects on society, and critical legal studies seeks to critique state law and yet uphold the rigidity of state law as the source of justice, then critical legal pluralism seeks to show multiple operations of justice and injustice. Accordingly, “The much-praised ‘Rule of Law’ is, on such a view, simply the domination of some people by other people – the latter claiming power expressed through what are said to be scientifically objective, abstract, impartial and politically legitimated norms.”99 By and through statements such as this there is the possibility for alternate legal systems to be understood as tools in political manoeuvring and forms of domination of one over another. This is a shifting away from the ‘prescriptivism’ of law as understood as only conceived in one form, whether state or plural legal, and a move to more anti-prescriptivist assumptions that propel the work of critical legal studies. In a quote from critical legal pluralist MacDonald: “While we locate ourselves as legal pluralists, we nonetheless take our distance from empirical, social scientific conceptions of legal pluralism. As a further departure, we do not adopt a prescriptivist stance towards legal normativity. We deploy the word law here to mean ‘the endeavour of symbolising human interaction as being governed by rules.’”100 Thus, he states:

“Our root claim is that it is possible to interrogate human practice and behaviour for its normative import without having to assume that this normative import must be judged against some kind law that pre-exists and is external to its presumed legal subject. Indeed, we see this inquiry as central to achieving a better understanding of our responsibilities to ourselves and as members of normative communities.”

Given this less rigid, more ambiguous and constantly morphing understanding of legal pluralism, the site is the individual. Echoing the post-structuralist influences of critical legal studies, individuals are considered as legislators. The question thus is: “How do legal subjects imagine, invent and interpret legal rules? How are these acted out?”102 The idea here is to escape the bonds of legal subjugation and to be active in creating and changing law. A critical legal pluralist methodology therefore seeks to, “… emphasise heterogeneity, flux and dissonance in our normative lives and, in doing so, to contemplate how human agency overcomes and transcends the subservience of legal

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subjectivity. This reflects the work of Jacques Vanderlinden and his wish to shift away from the colonial roots of legal pluralism and understand law as a means of emancipation, and as a more radically pluralistic phenomenon which has to focus on legal pluralism at the level of the individual. Indeed, “I realise today that in order to have pluralism, one must necessarily have many legal orders meeting in the same situation and making the individual not a ‘sujet de droit’ but a ‘sujet de droits’.

What does this mean for PES and RUPES? Critical legal pluralism allows the researcher to see law and society from inside out. In this sense, “... rather than beginning with the premise that society (and communities) are entities that law can treat, it investigates how community members treat law.” This is highly applicable to the work on PES and how the users of the legal systems, the buyers and the sellers, co-opt and use the law, again echoing the notion of forum-shopping. In addition, by understanding the role of state law as a mechanism of how people are subjugated, it can also offer explanations as to how individuals react, and cope in such circumstances. Given that the legal systems within Indonesia are all united within state law, thus being weak pluralism, the affect this has on the actions of the individuals is important. Where a critical legal methodology can infer the participants in RUPES as sites of law themselves, their own legislators, would be to see how the farmers react to the alteration of the payments mechanisms, and whether there exists here a strong form of legal pluralism so too.

Given this, the methodological manner thus should consider both the importance of empirical and non-empirical research. It should combine the sources of both critical legal studies and that of legal pluralism, with a reliance on qualitative and interpretative understandings of social science and philosophy, in order to account for the complexities of the Minangkabau that this research has introduced, and will outline further in the findings. What follows are the methods proposed as viable for a critical legal pluralist methodology.

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Methods

The very methods themselves will now be analysed, and given the marriage of law, social science and philosophy, with that of environmental scoping, there are a range of methods that can be utilised for information and research-gathering using critical legal pluralism.

There has been work done already by the nongovernmental organisation, ‘HuMa’ and its sub-branch, ‘Episteme’, on the relevance and applicability of legal pluralist and critical legal approaches to natural resource management and environmental schemes in Indonesia. After a meeting at their offices in Jakarta before leaving for Paninggahan, both Myrna Safitri and Sandra Moniaga, researchers and workers with the organisation, gave a worthy insight into how they visualise working within a legal pluralist and critical legal framework. The methods they use are both qualitative and quantitative, offering a ‘triangulation’ of research criteria in order to achieve the most applicable and optimal results in data-gathering. The work is in its infancy with regards to the development of a methodological framework itself, and the results of this report hopes to aid the work of both HuMa and Episteme and offer a collaborative effort in this regard in the future.

HuMa and Episteme consist of the work of paralegals; policy and advocacy research; alternative theoretical and methodological approaches to research using socio-legal theory; and the putting together of a centre of documentation to archive all of the above. HuMA now remains as the work of paralegals and the policy and advocacy research, and the task of socio-legal and methodological analysis, alongside the development of the resource centre, have been divided into the work of Episteme. Thus, Episteme is now an
independent foundation of interdisciplinary research in law and society and the environment.

The manner in which they conduct their research is through the use of ‘learning circles’, workshops and knowledge sharing. The work of Episteme is described as the ‘soft advocacy’, which is used as the research background in order to place the appropriateness of the ‘hard advocacy’ used by the HuMa paralegals, along the lines of a combination of various socio-legal discourses.

Their methods they argue as relying very much on the research question, and having discussed with them the potential epistemological problems of combining a legal pluralist and critical legal approach to research in the form of a critical legal pluralism, they saw no problem with this, and indeed were very interested in its application and the research to be conducted in Paninggahan.

Thus, their socio-legal methods thus far have been a combination of:

1. Legal Documentary Analysis and Interpretation;
2. Anthropology, Ethnography and Participant Observation;
3. Statistical and Economic Analysis;

Of interest to them was the relations between lay actors and the heads of nagari, and their conflicting roles as state and adat officials, combined with the implications for the legal systems themselves, through the actors and their interpretation. They wished for a method that could reveal the abuse of adat law and the use of this as a form of domination of one group over another, and the backgrounds of the actors and their resultant networks. Central were the role of legal advisers, advocators, who made the decisions in the preliminaries of the VCM site, with regards to the discussions of the contract, the legality of the use of ulayat lands, and the central role of the contract itself. How this would be extracted in the research would be through questions, such as:

- What was the use of legal aid?
- What was the role of paralegals/public interest lawyers/NGOs?
- What are the decision-making processes of the nagari?
- How informed were the landowners of the terms and conditions of the contract?
- Did the leaders understand it in national or adat terms?
- What were the relations of authority and ownership between the communal lands of the KAN/family/commons and that of the elders of the nagari?
- i.e. did they have the right to make a deal with BV that let them use land that was not under their charge?
- Role of the nagari thus – was there a voluntary role for the landowners?

With the methods used by Episteme and their experiences in mind, combined with the previous introduction to legal pluralism and critical legal pluralism, the research methods should capture and reflect the following:

1. the affects of the plural legal system on the actions and interests of the stakeholders in the form of forum-shopping;
2. the legal agency of individuals and organisations as forms of project law or coping mechanisms as resistant legalities;
3. the embeddedness of natural resource management within the systems of law as exemplified by RUPES' use of *ulayat* lands;
4. the embeddedness, forum-shopping, instances of project law and resistant legalities and their relation to the success of RUPES Paninggahan VCM.

Using both very interpretative and qualitative methods, it can be said that in order to determine a critical legal analysis, fro

- **Critical Legal, Legal Pluralist and Critical Legal Pluralist Analysis:**
  - Discourses on legal pluralism, critical legal studies, embeddedness, forum-shopping and project law

- **Legal Documentary Analysis and Interpretation:**
  - 2 x VCM contracts
  - State regulations on decentralisation, land tenure and adat:
    - West Sumatran Domain Declaration 1874
    - Law on Local Government 1979
    - Basic Agrarian Law (BAL) 1960
    - Law 22 on Regional Government 1999
    - Law 25 on the Fiscal Balance Between the Central Government and the Regions 1999
    - Forest Law 2004
    - *Tanah Datar*
    - *Sawah Lunto-Sijunjung*
  - Adat law in its unwritten form
  - Adat law in its reported form within legal pluralist discourse

- **Political Science, Law Making and Legislative Processes Analysis:**
  - State regulations on decentralisation, land tenure and adat
  - Adat law in its unwritten form
  - Adat law in its reported form within legal pluralist discourse

- **Environmental Science Analysis:**
  - Discourses on ES, PES and RES

- **Qualitative Interviews:**
  - 15 x Farmer (seller) Interviews
  - 10 x Other Stakeholder Interviews

- **Focus Groups:**
  - Farmer Focus Group
  - Women Focus Group

Insofar as my choice of methods to reflect the research criteria, I would have liked to have conducted more participant observational work. Given the sometimes very discreet (and sometimes not very discreet at all) nature of the affects of the legal systems on the actions of the stakeholders, it can be argued that the most complimentary method would be of a more ethnographic determination. Because of language barriers and time constraints, it meant in this instance, the empirical research had to be conducted with the most practicable methods available, and these were the use of open-ended questionnaires (sometimes closed questions), with a sample of fifteen farmers from both the 28 and 21 hectare groups, in order to compare the success and impact of RUPES on both sides. The farmers were chosen as the most important grouping, for methodological reasons, in that there were more of them to choose from in order to give a more rounded overview.
of opinions. They are also the closest of the stakeholders to the affects and operations of the scheme, and know how RUPES Paninggahan is actually working on the ground. Despite this, there could be instances of bias occurring, whereby the farmers use the interview scenario in order to voice their grievances.

Given this, and in order to see the affects of the legal systems and the development of the affects of the plural legal system on the actions and interests of the stakeholders in the form of forum-shopping, the legal agency of individuals and organisations as forms of project law or coping mechanisms as resistant legalities, the embeddedness of natural resource management within the systems of law as exemplified by RUPES’ use of *ulayat* lands, and the embeddedness, forum-shopping, instances of project law and resistant legalities and their relation to the success of RUPES Paninggahan VCM: it is recommended that longitudinal research combining legal documentary analysis (such as the interpretation of contracts and laws) with ethnography and qualitative interviews, would have been the most appropriate critical legal pluralist data-gathering method in this instance. Specifically, this extended participant observation would have been able to have access to the unwritten laws of adat and also to the manners in which the PES scheme has developed and the reactions of each of the stakeholders. Given the time constraints and the language barriers, and benefiting now from the hindsight of analysis, it can be said that participant observation would have been very beneficial to understanding the constructs of legal pluralist relations as described through the methodology of critical legal pluralism.

**Interviews**

The research for the farmers, and so too for the interview with BV, ICRAF, and YADDAS, were divided into questions in order to gauge:

RUPES VCM and how what they understood the scheme to be, the manner in which they have benefited specifically from the VCM scheme, whether they think the scheme is fair, and what their suggestions would be for the future;
Their accounts of the decision-making processes with regards to the contractual negotiations of RUPES PES and whether they were in receipt of any legal advice;
The role of the facilitators and how and whether they had received training and monitoring;
Their understandings and knowledge of the plural legal systems of *adat*, state and Islamic law;
Their understanding of *ulayat* lands;
Their understanding of environmental services (ES).

The questions for the farmers were as follows:

**RUPES**
What do you understand the RUPES scheme to be?
What are your main seller duties?
What are the main guarantees the buyers?
Do you think the rewards scheme is fair?
How do you feel about the fact that the second payment has been withheld?
Would you see that as a form of punishment?
How are you gaining/have you benefited from RUPES?
Have there been any trees to be planted on *ulayat*?
What does the *ulayat* mean to you?
How important are environmental services to you?

**Decision-Making**
Did you attend the initial negotiations?
How were the decisions made?
Were there any key decision-makers?
Was there discussion with the remainder of the community as well, i.e. women?
What was the role of ICRAF/facilitators?

**Legal Advice**
Did you have any legal advice from other NGOs/BV/ICRAF/YADDAS?
What kind of advice did you have?
Did you have anyone advocating for or representing you?
Would you say you are aware of *adat* law? (not just land but anything)
Would you say you are aware of state law? (not just land but anything)
Would you say you are aware of Islamic law?
Would you say it is important to know the legal systems here, for the purposes of RUPES, and on a daily basis?

**Payment Schemes**
Would it be better if you were paid on non-cash terms?
Have you found it difficult to locate the seedlings and set up requirements?
Would it be better if you were, given more money a the beginning, the same, more at the end, additional for equipment etc.?

**Training**
Have you had any maintenance training from BV/ICRAF/YADDAS?

**Monitoring**
Have you had any visits from anyone from BV/ICRAF/YADDAS?

**Success/Failure**
Why has there only been 40% success to far with the CDM?
How could success be achieved, in your view?

The criteria for the choice of farmers was chosen so that they were representative of both the 28 and 21 group, and also those of small amounts of land sequestered, those of medium, and those of large. This was according to 0.0-0.5 hectares, 0.5-1 hectares and 1-3 accordingly.

The remaining interviewees were chosen as they reflected each of the other stakeholder communities, and also were sources of knowledge on the legal systems and political structures.

**Focus Groups**

There were two focus groups that were undertaken in order to gather information collectively, and also see how the individuals acted according to the questions and the given social setting.
The first focus group was held with the farmers, again, from a cross-section of both the farmer groups, and discussing their understanding of ulayat and pusako, the role of the nagari, the legal systems, PES, the roles of facilitators and their suggestions for the future of RUPES Paninggahan VCM. They were split into their two groups to gauge any differences between the two groups over suggestions and perceptions of the VCM scheme.

The second focus group took place with the ‘Bando Kunduang’, or married ladies of the Paninggahan community, and topics on the agenda were ulayat and pusako, the role of the nagari, the legal systems, PES, and RUPES Paninggahan.

Now follows the results themselves, followed by the analysis of the data.
Women’s Focus Group

Aliyai, Juprial and Myself
Paninggahan RUPES Research

Research Plan and Delivery

The research took place over the course of three weeks, from Monday 21 February to Friday 11 March 2011, in Paninggahan and the surrounding area of Lake Singkarak and Solok District. Two members of ICRAF staff (Bubung and Juprial) were there to help with issues of translation, organisation and generally good care all round.

Here is the research schedule as it was completed:

<table>
<thead>
<tr>
<th>WK1</th>
<th>Early Morning</th>
<th>AM</th>
<th>PM</th>
<th>Evening</th>
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<tbody>
<tr>
<td>Monday 21</td>
<td>10am - Wali Nagari &amp; Camat</td>
<td>Select Cross-section 15 Farmers</td>
<td>Prepare Qs</td>
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</tr>
<tr>
<td>Tuesday 22</td>
<td>Prepare Qs</td>
<td>Visit Site</td>
<td>3 x Farmer Interviews</td>
<td>Prepare Qs</td>
</tr>
<tr>
<td>Wednesday 23</td>
<td>Write Up</td>
<td>Homework</td>
<td>Homework</td>
<td></td>
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<tr>
<td>Thursday 24</td>
<td>Organise interviews and focus groups</td>
<td>4 x Farmer Interviews</td>
<td>8pm - Qualitative Interview Martin</td>
<td></td>
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<tr>
<td>Friday 25</td>
<td>2 x Farmer Interviews</td>
<td>8pm Meeting Wali Nagari</td>
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<td>Saturday 26</td>
<td>BUKITTINGGI</td>
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<tr>
<td>Sunday 27</td>
<td>SINGKARAK &amp; SOLOK</td>
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<table>
<thead>
<tr>
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<th>PM</th>
<th>Evening</th>
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<tr>
<td>Monday 28</td>
<td>Prepare Qs and articles</td>
<td>Qualitative Interview Wali Nagari</td>
<td>Focus group with Nagari Farmers</td>
<td></td>
</tr>
<tr>
<td>Tuesday 1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wednesday 2</td>
<td>Reading</td>
<td>Reading</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Thursday 3</td>
<td></td>
<td>3 x Farmer Interviews</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Friday 4</td>
<td>Qualitative Interview Bundo Kunduang</td>
<td>1 x Farmer Interviews</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Saturday 5</td>
<td>Farmers Meeting and Visit from Minister of Forestry &amp; 2 x Farmer Interviews</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sunday 6</td>
<td>Qualitative Interview Paul BV &amp; find contacts for Women’s Focus Group &amp; Saldi</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>WK3</th>
<th>Early Morning</th>
<th>AM</th>
<th>PM</th>
<th>Evening</th>
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<tbody>
<tr>
<td>Monday 7</td>
<td>BUKITTINGGI</td>
<td>BUKITTINGGI</td>
<td></td>
<td></td>
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<tr>
<td>Tuesday 8</td>
<td></td>
<td>Qualitative Interview Bubung (gave questions)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wednesday 9</td>
<td>SOLOK - Qualitative Interview Bupati</td>
<td>SOLOK - Qualitative Interview Bupati</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Thursday 10</td>
<td>Pikali's School</td>
<td>SOLOK</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Friday 11</td>
<td>Qualitative Interview Juprial</td>
<td>2pm Focus Group – Women</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Saturday 12</td>
<td>PADANG – JAKARTA</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

49
### List of Interviews

<table>
<thead>
<tr>
<th>Name</th>
<th>Role</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aliyai</td>
<td>Farmer</td>
<td>220211</td>
</tr>
<tr>
<td>Arlis</td>
<td>Farmer</td>
<td>250211</td>
</tr>
<tr>
<td>Armen</td>
<td>Farmer</td>
<td>050311</td>
</tr>
<tr>
<td>Armen Acai</td>
<td>Farmer</td>
<td>030311</td>
</tr>
<tr>
<td>Dary Urlis</td>
<td>Farmer</td>
<td>030311</td>
</tr>
<tr>
<td>Delpina</td>
<td>Farmer</td>
<td>240211</td>
</tr>
<tr>
<td>Doni</td>
<td>Farmer</td>
<td>220211</td>
</tr>
<tr>
<td>Indra Panuku</td>
<td>Farmer</td>
<td>240211</td>
</tr>
<tr>
<td>Jon Ros</td>
<td>Farmer</td>
<td>030311</td>
</tr>
<tr>
<td>Leoni</td>
<td>Farmer</td>
<td>220211</td>
</tr>
<tr>
<td>Mansa Her</td>
<td>Farmer</td>
<td>050311</td>
</tr>
<tr>
<td>Nasir</td>
<td>Farmer</td>
<td>040311</td>
</tr>
<tr>
<td>Nasril</td>
<td>Farmer</td>
<td>250211</td>
</tr>
<tr>
<td>Nurlis</td>
<td>Farmer</td>
<td>240211</td>
</tr>
<tr>
<td>Sam Sirtantuno</td>
<td>Farmer</td>
<td>240211</td>
</tr>
<tr>
<td>Paul</td>
<td>BV</td>
<td>060311</td>
</tr>
<tr>
<td>Martin</td>
<td>BV</td>
<td>240211</td>
</tr>
<tr>
<td>Jasman</td>
<td>WN</td>
<td>280211</td>
</tr>
<tr>
<td>Pak Zulfahim</td>
<td>KAN</td>
<td>090311</td>
</tr>
<tr>
<td>Uni Gadi</td>
<td>Bundo Kanduang</td>
<td>040311</td>
</tr>
<tr>
<td>Syam Surahim</td>
<td>Bupati</td>
<td>090311</td>
</tr>
<tr>
<td>Pikal</td>
<td>YADDAS</td>
<td>250211</td>
</tr>
<tr>
<td>Alimin</td>
<td>YADDAS</td>
<td>220311</td>
</tr>
<tr>
<td>Bubung</td>
<td>ICRAF</td>
<td>120311</td>
</tr>
<tr>
<td>Juprial</td>
<td>ICRAF</td>
<td>120311</td>
</tr>
</tbody>
</table>

**Interviews and Focus Groups**

The following tables and graphs show the results of the farmers interviews, with the most important findings presented in graph form. There were differences between the 21 and 28 groups with regards to the management of their lands, and the general set up of the schemes, but with regards to the answers to the questions below, there was no clear division between the two groups and thus the results have been shown together.

With regards to the qualitative interviews with the remaining ten participants, their questions were more individually-based, however, their responses will be analysed with regards to the questions below and the conceptual issues of legal and critical legal pluralism, in the following chapter.

There were two focus groups conducted, one with the farmers and one with the women. They were very relevant with regards to suggestions made by the farmers for the VCM, and again, will be shown and discussed in the suggestions chapter. The women's focus group was very interesting with regards to the role of *pusako*, and also their lack of knowledge of the RUPES VCM scheme.
Farmer Interview Questions

Q1 What do you understand the RUPES scheme to be?

![What is RUPES?](chart.png)

<table>
<thead>
<tr>
<th>Responses</th>
<th>CDM</th>
<th>Don't Know</th>
<th>Planting for Money</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>6</td>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>%</td>
<td>40</td>
<td>53.33333333</td>
<td>6.66666667</td>
</tr>
</tbody>
</table>

Q2 What are your main seller duties?

<table>
<thead>
<tr>
<th>Responses</th>
<th>Open/Clear/</th>
<th>Plant/Maintain</th>
<th>Don't Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>15</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>%</td>
<td>100</td>
<td></td>
<td>0</td>
</tr>
</tbody>
</table>

Q3 What are the main guarantees the buyers?

<table>
<thead>
<tr>
<th>Responses</th>
<th>Replace/</th>
<th>Maintain/Not Cut for 10 years</th>
<th>Don't Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>15</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>%</td>
<td>100</td>
<td></td>
<td>0</td>
</tr>
</tbody>
</table>
Q4  Do you think the rewards scheme is fair?

![Rewards Scheme as Fair?](image)

<table>
<thead>
<tr>
<th>Yes</th>
<th>No, but thank you</th>
<th>No, spends more on labour</th>
<th>No, the mechanism is wrong</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>5</td>
<td>6</td>
<td>2</td>
</tr>
<tr>
<td>13.3333333</td>
<td>33.33333333</td>
<td>40</td>
<td>13.33333333</td>
</tr>
</tbody>
</table>

Q5  How do you feel about the fact that the second payment has been withheld?

![Second Payment](image)

<table>
<thead>
<tr>
<th>Disappointed</th>
<th>Don't Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>13</td>
</tr>
<tr>
<td>%</td>
<td>86.6666667</td>
</tr>
</tbody>
</table>
Q6 Would you see that as a form of punishment?

<table>
<thead>
<tr>
<th>Responses</th>
<th>Yes</th>
<th>No</th>
<th>Don’t Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>%</td>
<td>60</td>
<td>13.333333</td>
<td>26.666667</td>
</tr>
</tbody>
</table>

Q7 How are you gaining/have you benefited from RUPES?

<table>
<thead>
<tr>
<th>Benefits of RUPES</th>
<th>Many</th>
<th>Motivation</th>
<th>Productive</th>
<th>Money</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>3</td>
<td>4</td>
<td>2</td>
<td>6</td>
</tr>
<tr>
<td>%</td>
<td>33.333333</td>
<td>44.44444444</td>
<td>22.22222222</td>
<td>66.6666667</td>
</tr>
</tbody>
</table>
Q8 Have there been any trees to be planted on ulayat?

![Plantation on Ulayat](image)

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Some</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>9</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>%</td>
<td>60</td>
<td>20</td>
<td>20</td>
</tr>
</tbody>
</table>

Q9 What does the ulayat mean to you?

![Ulayat means?](image)

<table>
<thead>
<tr>
<th></th>
<th>Next to Next</th>
<th>Communal</th>
<th>High Pusako</th>
<th>State</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>8</td>
<td>4</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>%</td>
<td>53.33333333</td>
<td>26.66666667</td>
<td>13.33333333</td>
<td>6.66666667</td>
</tr>
</tbody>
</table>
Q10  How important are environmental services to you?

<table>
<thead>
<tr>
<th></th>
<th>Important Globally</th>
<th>Important Locally</th>
<th>Important Personally</th>
<th>Don't Know</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>No.</strong></td>
<td>2</td>
<td>5</td>
<td>6</td>
<td>2</td>
</tr>
<tr>
<td><strong>%</strong></td>
<td>13.3333333</td>
<td>33.3333333</td>
<td>40</td>
<td>13.3333333</td>
</tr>
</tbody>
</table>

Q11  Did you attend the initial negotiations?

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Don't Know</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>No.</strong></td>
<td>10</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td><strong>%</strong></td>
<td>66.6666667</td>
<td>6.666666667</td>
<td>26.6666667</td>
</tr>
</tbody>
</table>

Q12  How were the decisions made?

<table>
<thead>
<tr>
<th></th>
<th>Farmer Meetings</th>
<th>WN &amp; BV</th>
<th>Don't Know</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>No.</strong></td>
<td>11</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td><strong>%</strong></td>
<td>73.3333333</td>
<td>13.3333333</td>
<td>13.3333333</td>
</tr>
</tbody>
</table>

Q13  Were there any key decision-makers?

<table>
<thead>
<tr>
<th></th>
<th>Farmer Leader &amp; WN</th>
<th>WN</th>
<th>Altogether</th>
<th>ICRAF</th>
<th>Don't Know</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>No.</strong></td>
<td>3</td>
<td>3</td>
<td>5</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td><strong>%</strong></td>
<td>20</td>
<td>20</td>
<td>33.3333333</td>
<td>6.66666667</td>
<td>20</td>
</tr>
</tbody>
</table>
Q14 Was there discussion with the remainder of the community as well, i.e. women?

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Don’t Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>14</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>%</td>
<td>93.3333333</td>
<td>6.66666667</td>
<td>0</td>
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</tbody>
</table>

Q15 What was the role of ICRAF/facilitators?

<table>
<thead>
<tr>
<th></th>
<th>Facilitators</th>
<th>Deciders</th>
<th>Don’t Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>14</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>%</td>
<td>93.3333333</td>
<td>0</td>
<td>6.6666667</td>
</tr>
</tbody>
</table>

Q16 Did you have any legal advice from other NGOs/BV/ICRAF/YADDAS?

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>4</td>
<td>11</td>
</tr>
<tr>
<td>%</td>
<td>26.6666667</td>
<td>73.3333333</td>
</tr>
</tbody>
</table>

Q17 Would you say you are aware of adat law? (not just land but anything)

<table>
<thead>
<tr>
<th></th>
<th>Yes, a lot.</th>
<th>Yes, a little</th>
<th>Not Much</th>
<th>Don’t Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>7</td>
<td>3</td>
<td>2</td>
<td>3</td>
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<tr>
<td>%</td>
<td>46.6666667</td>
<td>20</td>
<td>13.3333333</td>
<td>20</td>
</tr>
</tbody>
</table>
Q18 Would you say you are aware of state law? (not just land but anything)

<table>
<thead>
<tr>
<th>Awareness</th>
<th>Yes, a lot.</th>
<th>Yes, a little</th>
<th>Not Much</th>
<th>Don't Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>2</td>
<td>8</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>%</td>
<td>13.333333</td>
<td>53.33333333</td>
<td>26.6666667</td>
<td>6.6666667</td>
</tr>
</tbody>
</table>

Q19 Would you say you are aware of Islamic law?

<table>
<thead>
<tr>
<th>Awareness</th>
<th>Yes, a lot.</th>
<th>Yes, a little</th>
<th>Not Much</th>
<th>Don't Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>10</td>
<td>1</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>%</td>
<td>66.6666667</td>
<td>6.666666667</td>
<td>6.66666667</td>
<td>20</td>
</tr>
</tbody>
</table>
Comparison:

Q20 Would you say it is important to know the legal systems here, for the purposes of RUPES, and on a daily basis?

<table>
<thead>
<tr>
<th>Responses</th>
<th>Adat</th>
<th>State</th>
<th>Islamic</th>
<th>Compared %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Don't Know</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not Much</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes, a little</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes, a lot</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Responses

<table>
<thead>
<tr>
<th>Important to know the legal systems?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, Very for both</td>
</tr>
<tr>
<td>Yes, for RUPES</td>
</tr>
<tr>
<td>Yes, for Everyday</td>
</tr>
<tr>
<td>Don't Know</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>No.</th>
<th>Yes, Very for both</th>
<th>Yes, for RUPES</th>
<th>Yes, for Everyday</th>
<th>Don't Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>13</td>
<td>86.66666667%</td>
<td>0%</td>
<td>0%</td>
<td>13.333333%</td>
</tr>
</tbody>
</table>

40% 60% 80% 100%
Q21 Would it be better if you were paid on non-cash terms?

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Maybe</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>0</td>
<td>14</td>
<td>1</td>
</tr>
<tr>
<td>%</td>
<td>0</td>
<td>93.3333333</td>
<td>6.66666667</td>
</tr>
</tbody>
</table>

Q22 Have you found it difficult to locate the seedlings and set up requirements?

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Don't Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>5</td>
<td>9</td>
<td>1</td>
</tr>
<tr>
<td>%</td>
<td>33.3333333</td>
<td>60</td>
<td>6.66666667</td>
</tr>
</tbody>
</table>

Q23 Would it be better if you were:

<table>
<thead>
<tr>
<th>Responses</th>
<th>A.</th>
<th>B.</th>
<th>C.</th>
<th>D.</th>
</tr>
</thead>
<tbody>
<tr>
<td>%</td>
<td>40</td>
<td>35</td>
<td>25</td>
<td>5</td>
</tr>
</tbody>
</table>

Payments
A. Given the necessary equipment, any set up costs, in addition to the initial payment?
   - No. 6
   - % 40

B. Given more at the beginning, as an incentive?
   - No. 5
   - % 33.33333333

C. Given the same at the beginning, the amount is ok?
   - No. 3
   - % 20

D. Given more towards the end, as an incentive?
   - No. 1
   - % 6.66666667

Q24 Have you had any maintenance training from BV/ICRAF/YADDAS?

<table>
<thead>
<tr>
<th></th>
<th>BV</th>
<th>ICRAF/ YADDAS</th>
<th>Forestry</th>
<th>WN</th>
<th>Community</th>
<th>None</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>11</td>
</tr>
<tr>
<td>%</td>
<td>0</td>
<td>6.666666667</td>
<td>6.66666667</td>
<td>6.66666667</td>
<td>6.66666667</td>
<td>73.333333</td>
</tr>
</tbody>
</table>

Q25 Have you had any visits from anyone from BV/ICRAF/YADDAS?

<table>
<thead>
<tr>
<th></th>
<th>BV</th>
<th>ICRAF/ YADDAS</th>
<th>None</th>
<th>WN</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>2</td>
<td>8</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>%</td>
<td>13.33333333</td>
<td>53.3333333333</td>
<td>20</td>
<td>13.33333333</td>
</tr>
</tbody>
</table>

Q26 Why has there only been 40% success so far with the CDM?

Only 40% success?

<table>
<thead>
<tr>
<th>Only 40% success?</th>
<th>Rainy Season</th>
<th>Payment Witheld</th>
<th>Don't Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>11</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>%</td>
<td>73.33333333</td>
<td>20</td>
<td>6.66666667</td>
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Q27 How could success be achieved, in your view:

Suggestions for Success

- More Money
- More Monitoring
- More Training
- More Freedom to Choose What to Plant
- More Freedom to Choose What rewards
- More understanding of ES
- Less Nagari
- More Equipment

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RUPES Paninggahan Analysis

When considering the analysis of the information that was collected, each of the research questions shall be referred to and the data gathered shall be analyses in order to assess the extent to which the questions have been answered successfully. Remembering once again what the questions of each of the interview intended to interrogate at the same time:

1. the affects of the plural legal system on the actions and interests of the stakeholders in the form of forum-shopping;
2. the legal agency of individuals and organisations as forms of project law or coping mechanisms as resistant legalities;
3. the embeddedness of natural resource management within the systems of law as exemplified by RUPES’ use of ulayat lands;
4. the embeddedness, forum-shopping, instances of project law and resistant legalities and their relation to the success of RUPES Paninggahan VCM.

Following from the research summary at the beginning of the report, firstly the role of legal pluralism and its affect on the actor’s interests, shall be considered through the results gathered. Critical legal pluralism as an affective methodology in this setting shall be considered in within the conclusive analysis towards the end of the report.

Role of Legal Pluralism and affect on Actor’s Interests (Forum-Shopping)

The effects of the plural legal system can be seen most clearly within the actions and respective interests of the Wali Nagari. There is little evidence of the farmers forum-shopping, however, and this is arguably linked to their social and economic position within the communities. From my observations at the time:

“I think it can be said that the WN uses his ability to forum shop much more than those of the farmers, as I predicted, and the farmers really don’t mind, but they acknowledge the importance of the legal levels and are very knowledgeable on adat and also Islam.”

His role as the intermediary between the farmers (sellers) and the buyers (Paul) has been divisive in the slowing down of the process and the success of the VCM in Paninggahan. His ability to forum shop has exacerbated the results that have been produced by the scheme. Echoing the importance of understanding the actions of the stakeholders in consideration of the critical legal pluralist role, he has made some interesting legal decisions. In order to ‘legitimate’ some of his handlings of the payment mechanisms, he made another contract with the farmers, allowing him to take 12.5% of the payment to the nagari staff, all at once and not over a period of 10 years, as the farmers receive their payments in instalments. This meant that not only was he forum-shopping here, but he was also acknowledging the importance of making a contractual agreement with the farmers, whilst at the same time voiding the importance of the previous contract. This would also put adat in a form of contract which looks more of a Western form of law, and not that of adat which tends to be in an unwritten form. Once again, however, the Wali Nagari is in fact making his own law in this instance, and thus highlighting the ability
for each of the stakeholders to create their own law, and also, to use their positions of power.

In addition to this, there was an interesting intimation of the importance of the legal levels, the use of *adat* law, as the *Wali Nagari* stated to me that all issues in regard to the decision-making of the contract was legitimatied by the members of *KAN*. According to the understandings of the role of *KAN*, only issues with regards to *nlayat* lands should be decided by the *adat* judiciary. According to the *Bupati*, the *Wali Nagari* can make decisions on his own, depending on the need, and the *KAN* is consulted with regards to *nlayat*. The BMN can act as mediator between the two. Although the majority of the lands used have been those of village commons, not all issues pertaining to the contract negotiations were the remit of *KAN*, and thus here is a clear instance of forum-shopping (incorrectly) on behalf of the *Wali Nagari*, as he may have been legitimating his actions with regards to the change in payment mechanism by assuming that he can use the *KAN* as an excuse without those questioning him knowing any better, considering the gaps in knowledge of the different legal systems.

There seems to be different perceptions between the role of the *Wali Nagari*, and which law he is there to be upholding, and those considered appropriate by the people of the village. He stated that his role was to run a public service, in a socio-economic capacity and to administer government law. Thus the priority here being his protection of state law, and yet the farmers seem to think that his position was to put the *nagari* and *adat* first. In this regard there are clearly instances again where forum-shopping could take place, due to lack of understanding and clear delineation of roles with regards to the different legal systems and the people’s actions. The *Wali Nagari* did say that he found his role as a site of conflict of interests, as sometimes state law contradicts *adat* law. Thus his answer to this was to “… run with state law in order to see the community’s needs. This is the priority.”

With regards to the actions of the other stakeholders, the presence of forum-shopping is less obvious within the actions of ICRAF, YADDAS, BV. Indeed, there does not seem to be a great deal of acknowledgement of the affect of the legal pluralist systems on the actions of these stakeholders, however, it does affect the resultant success of their scheme, as will be explained shortly. For the farmers, the legal pluralist system is evidently part and parcel of who they are. Nevertheless, the contract negotiations did not seem to reflect this once again. With regards to the decision-making, the majority of the farmers were there at the initial negotiations, although 40% said that it was the WN that made the decisions. 90% say that the community was consulted about the VCM scheme, however, it seems as though from the focus groups, the women were somewhat unaware of the site and the negotiations. It seemed that one of the considerations should be, mainly when dealing with Minangkabau culture, as the women are the owners of the land and thus should be consulted by the stakeholders, and included by the stakeholders so too. The land is the woman’s and the rights to the land to run it are the man’s, but neither of these cross over, and so the land can never be sold, and thus there is clearly a role of the women here to be consulted. This is an indication of the need for a critical legal pluralist understanding when dealing with the realities of the legal pluralist organisation with regards to the set up of PES schemes.

How a plural legal system is affecting the output of RUPES Singkarak, is seen not only through the relations with the village leaders, but also the manner in which the use of forum-shopping is expressed through the contractual documents involved in the VCM.
As already adhered to, there are two separate groups of farmers, one the ‘28’ group and the other the ‘21’. From the first three interviews alone, I could sense there was a difference between the 21 and the 28 hectares’ farmers. The 21 seemed more organised and valued their *ulayat* moreso than the 28 hectares. There was no contract with the 21 and yet they were more organised than the 28, as well as 21 having no YADDAS as facilitators whereas 28 did. Overall, 21 had succeeded in more planting than 28.

Given this, it is an interesting experiment in legal organisation, from the point of view of Paul Burgers, the trader. Here, he is seeing whether or not the role of the additional stakeholders are useful or not by comparing them in a contractual and non-contractual situation. Because of the issues with *Wali Nagari*, he needed to deliberate over quite how to continue with the payment mechanism, hence the withholding of the second payment. With regards to the role of the facilitators, in this instance, the verifiers, he did not wish to include the role of YADDAS, as there had been some problems with regards to their structure and the manner in which their demand for payments had been administered, and the lack of support on their behalf so too. On a number of occasions, the *Wali Nagari* has been referred to as working for YADDAS, and then on other occasions, not. There has also been lack of payment for one of the YADDAS staff, Pikal, who works for Alimin, the main YADDAS individual. This indicated that it may be easier to exclude YADDAS from future operations, despite their help at the beginning. Given the lack of professional organisation, both ICRAF and Paul have found it difficult to implement in a working relationship. Alimin has close links to the *Wali Nagari*, and could cause future problem.

By waiting to finalise the contract, Paul has also foreseen the demise of the current *Wali Nagari*, Jasman, as he was ousted from his position during the time that I was in Paninggahan. Indeed, there was a power vacuum in Paninggahan, as Jasman was no longer technically in power. At one farmer meeting, someone complained about the fact that some of the money had been borrowed, and I noticed the body language of the farmers was tense and a little hostile towards the *Wali Nagari*. Given this, Paul no longer wished to go through the *nagari* office, and was considering negotiating straight with the farmers, for the outline of a new contract and payment mechanism through a joint bank account. Thus, with the new contract, there would be a very distant level of *nagari* involvement, the money perhaps going straight to the farmers’ group account in order to make it a more transparent process. Paul underlined that if the next village leader were more transparent, then these issues would not be apparent. Whilst acknowledging the need for an alternative system of payment and organisation with regards to the role of the Wali Nagari, leaving him out of discussions, however, could prove problematic here. Despite the evidence of forum-shopping on behalf of the trader, he also needs to be aware of what the avoidance of the village leader for acceptance of the scheme may lead to. In a legal pluralist understanding, this could be seen as an illegitimate contract, as it did not consider the *adat* laws and regulations from the start. It also show that there must be some level of forum-shopping with regards to the farmers and the farmer leaders, in order to be agreeing to this overriding of *adat* in order to make a second and more beneficial contract with Paul. Both groups 28 and 21 seemed to suggest the role of the *nagari* as superfluous.

**Legal Knowledge**

From the results of the farmer questionnaires, 60% of them say they are knowledgeable on *adat* law, less know about state law, and 72% of them say they are knowledgeable on
Islamic law. This was reflected in the answers of the other ten interviews as well. All interviewees agreed knowledge of the legal systems is important for their daily lives and for the operation and understanding of RUPES as well. One farmer even gave a clear indication of the role of ‘embeddedness’ by stating that, “… knowing the law important as all issues are connected.” Another farmer said: “Yes, important on a daily basis, without understanding law, life doesn’t mean anything!” This, is echoed with the more official and Andalas University-educated opinion of the K-4N member who was interviewed, who stated: “Law is what makes the difference between humans and animals, so yes, very important. This is Pancasila, coupled with ‘adat basa nisara sara basa ni kitambula’, the basis of adat law is religion and the religion is the Koran.”

Both facilitators, and buyers also agreed that knowledge of the legal systems was important, and according to Paul: “Always handy, should know the formal rules as an investor and know a bit about the culture and how people work. Yeah, important, more a cultural thing, know where the boundaries are.” For Alimin, from YADDAS, knowledge of the legal systems is very important, and he even suggested setting up an education centre for it in Paninggahan, as he believed the younger generation have not been educated so well on the original meanings of the Koran within adat. This is interesting in itself, and shows that although the legal systems may be adhered to by the older generations, it would be interesting to see how knowledgeable the younger generations are about the legal plurality.

Legal agency of individuals/organisations (Project Law or Resistant Legalities)

With regards to the legal agency of the individuals, considering this from a critical legal pluralist standpoint, there are a number of analytical observations that can be made.

With regards to the role of the term ‘rewards’, this is very interesting, as in fact what has happened is that the scheme, for now, seems to have been operating along the lines of a ‘punishment’ mechanism. Because the payment has been withheld, 60% of the farmers saw the withholding of the payment as a form of punishment. And this was agreed by the trader himself, Paul Burgers, as a means of waking the farmers up, to see how interested and committed they are. Unfortunately, as is reflected in the results of this research, it seems as though the punishment was being administered to the wrong people, and so ironically, the rewards scheme has turned into its opposite, as a form of retribution. Martin, Paul’s assistant at BV, said it was a lesson to the farmers to obey the contract. In this regard there have been some issues, the first being that the measurement has not been completed properly, and thus not all the land has been cleared as required within the contract; the second is that not all the trees have been planted although the farmers were given the money. This is according to ICRAF data, an not that gathered from my research, as the majority of the farmers seemed very interested, very committed to the project, and at the same time, very disappointed that they payment has been withheld. It can be recommended that this is perhaps not the way to deal with the farmers themselves, as a lot of them have had to hire labourers in order to maintain the land, as the ulayat land is difficult to access and not their normal places of work. Thus, they are having to pay the labourers whilst having no income from the VCM scheme at all, and therefore the scheme is costing them a lot of money, and the benefits are minimal at the moment. At the same time, it is the nagari office who are in charge of distributing the payments, so if the withholding of the money was to be a form of punishment, then it would make the most sense to affect them first and foremost.
So what does this mean with regards to project law? According to Weilenmann, project law takes two forms: first as a planning instrument, and secondly as an implementing tool. With regards to the payments as rewards or as punishments, then this shows how in this instance, the actions of the buyers and/or the facilitators, can have a disembedding affect, in the sense that the relations between the communities may be altered by the imposition of the schemes, and the affects thereof. At the same time, given the fact that the farmers have indeed garnered their own means of coping mechanism, discussed shortly, the actions of the buyers/facilitators and of course, the nagari office, may have a ‘re-embedding effect’. I suggest this as a term whereby traditional manners of organisation and relations to the land are re-vitalised in times of change as represented by outside organisations and political and legal organisations. In effect, the traditional methods of survival kick in, and the farmers work together communally, strengthening their relations with the land. Given that, this is not suggested as a manner of strengthening ties between communities and their land, by adopting ‘survival’ methods, as the PES scheme is there give them ‘extra’ income and benefits, not based on subsistence alone.

It can be said that ICRAF and YADDAS are not operating a form of project law, and in fact that they do not have the capacity to do so. There is minimal monitoring and training from both facilitators, and there are only two ICRAF staff in the field, plus one seemingly unpaid member of YADDAS in Paninggahan, and Alimin in Bogor. Thus, ICRAF and YADDAS as facilitators are doing just that, facilitating, with YADDAS not having completed its tasks as yet with regards to the contract. Despite this incapacity, there is also a lot of potential for there to be more effectiveness, given the amount of data and skills sharing that could take place. This is something that could be recommended for the future, with regards to maximising resources, revitalising and sharing and communicating the data to each of the stakeholders.

Following from Weilenmann’s relation of project law to Foucault’s form of ‘governmentality’, whereby organisation and knowledge are used as a form of power, it can be said that the Wali Nagari is clearly operating his own form of project law, and is the most obvious example of this. Thus, legal agency is expressed through the Wali Nagari, but more obviously in the coping mechanisms of the farmers.

Resistant Legalities

As has already been adhered to, in response to the lack of payment there, has been what I will describe as evidence of a ‘law of the ulayat’, whereby the farmers operate their own communal coping mechanisms. By the very fact that this is evident, seems to suggest that there are instances of disembedding and also of project law, and thus any coping strategy should be avoided at all cost within a PES scheme, as they should be benefited and not just surviving from the scheme. Interestingly, within the 21 group, because they are more related and interweaved as a community, they developed a mechanism where one week, they would all work on one farmers land, and then the next, they would move

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on and help the next farmer maintain his land. This is to avoid labour costs in response to the lack of second payment. They did this in a cycle of five to ten farmers, in a form of organisation called ‘julo julo’, basically meaning, ‘one day in your land, the next day mine, then on to someone else’s.’ Or in other words, their own solution to the problem thus being to work together, a Minangkabau custom, ‘goto rayon’, or helping each other.

This information was gathered spontaneously from the farmers and thus, each farmer was asked with regards to this after I had gathered a few comments. The 21 group had this organisation in operation, which is interesting considering lack of contract, although of course, this contract is in terms of non-adat law, and thus, re-asserting the insecurity of the legal plural system, and the opportunity for legal innovation in response to this.

Natural Resource Management as exemplified by Ulayat Land (Embeddedness)

It had been mentioned as a theory, that the Wali Nagari wished to use the ulayat land in order to open up the communal land for acquisition on behalf of the state. 60-80% of the trees have been planted on ulayat, the land belonging thus to the families. The state wish to have these lands registered at some point, and it could be in the Wali Nagari’s interest to negotiate with the farmers in the form of a PES scheme, in order to have the land opened up for potential registration. None of the farmers have registered their land, as proof of ownership, as this is a way of the state taking away the land (given the public and private striation). If the state decided to take the land away, those farmers asked said they would defend the land. The thoughts were that may be Wali Nagari was using RUPES as a compromise with the state for the future acquisition of land, which may result in the selling of the land at a later date to the state. The KAN was involved in the development of the second contract between Wali Nagari and the farmers because this was with regards to ulayat land.

What the focus on ulayat shows is its importance as the epitome of Minang relations between the people and their natural resources, but once again, showing how the Wali Nagari’s position can be open to abuse due to his dual role with the state and with the nagari. It is this very embeddedness that connects the natural resources, the law, the people, together, and expressed through forms of organisation such as the ‘law of the ulayat’ in times of threat to the land, or processes of disembedding taking place.

Considering the role or embeddedness, forum-shopping, project law, and resistant legalities, how does this affect the overall role success of Paninggahan VCM? Given these issues, the next chapter will deal with the successes and suggestions for the future of RUPES VCM.
Suggestions for the Future

Success of RUPES

Throughout the course of asking the farmers about RUPES and the tree-planting scheme in Paninggahan, it became clear that despite the environment being of great importance to them, and also the scheme itself and their commitment to it, they did not really understand what ES were themselves. Only 13% of them understand what ES means globally, and 40% understood ES in terms of what personal benefit they are getting from the scheme. Considering these statistics, at the same time, I am not sure whether ES are properly represented here, as they seemed to understand ES in terms of protecting the environment only, and not as a transactional process for doing so on their behalf. Some saw the global importance, and some even understood the carbon sequestration process, and some saw the role of the trees as helping the local community through protecting them from landslides, deforestation and the burning of the forest. I commented to myself:

“It seems as though most so far see the environment as important, but they do not quite get the idea of environmental services so I think they are not always understanding the question, some are unsure of what carbon is.”

Nevertheless, this is a sign of progression, and an indication of the level of impact of the scheme and the success RUPES Paninggahan’s VCM site has had thus far. According to ICRAF staff, the Lake Singkarak catchment area projects cause the most amount of problems and difficulties in implementation, and it can be suggested at this juncture, that this is due to the legal systems and the insecurity and forum-shopping that this causes as a result of the embeddedness of the relations to the land.

The following section shall consider whether RUPES Paninggahan VCM has been successful in its aims, with suggestions for the future from the research collaborated and the opinions of the interviews, afterwards.

Successfully achieved its aims?

a) involving the farmers in a tree-planting scheme on grassland around Lake Singkarak in order to offset carbon of the investor concerned (BV);

Considering the achievement of their first aim, it can be said that RUPES Paninggahan has indeed managed to fulfil their commitment to involve farmers in a tree-planting scheme in and around Lake Singkarak. Interestingly, however, 53% of the farmers don’t know that RUPES is and only 40% know what CDM (VCM) is and what it means in relation to their work. They all have the same understanding of buyer and seller duties nevertheless, as clearing, planting and maintaining the land, and the responsibility of the buyer as to supply funding for this.

Despite this, there have been some very real difficulties in achieving what was meant to be set out in the contract. It seemed as though the main reason why some of the trees
had not been planted successfully was because it was suggested at the wrong time of the year, in the wet season, and thus they died quickly when the dry season came around. They should have been planted in between February and March. 70% stated this the reason why there has only been 40% success in tree planting so far, because the trees were planted in the rainy season and thus they suffered in the heat at the beginning of the dry season, and consequently, the majority died.

The other predominant issue that arose as a result of conversations and further data gathering, was the nagari office’s corrupting role and the payments not being distributed properly, with the office creating a further contract with the farmers in order to pay themselves 12.5% of ten years’ worth of work up front, whilst leaving the farmers with a total of around €2,000 to share between 43 farmers.

Other issues raised relating to the lack of success of the project thus far, have been due to the measurement and the incomplete clearing of the land, with the farmers complaining about GPS (Global Positioning System). As well as this, there was noted a general lack of communication between the farmers, the facilitators, the buyers and the Wali Nagari, particularly in the case of the latter, as the nagari office had not been informing the farmers what they had been doing (if anything), and thus the perception of the farmers of the nagari office was that they had not actually been doing anything so too. In addition to this, there is little sharing of data between facilitators and the buyer, and the farmers, and the nagari office, thus making progress inevitably slow.

In addition to this, over 70% said there was no training provided, and nearly a quarter stated that there had been no monitoring from anyone. This again, would not help the completion of RUPES’ aims in the VCM site.

b) ensuring the farmers and the local communities benefit from the tree-planting scheme through RUPES’ rewards.

With regards to the achievement of the second aim, there are mixed reactions on this level, and thus there are benefits that have been felt by some, some with more to come, and those who see the scheme as unfair and a disappointment so too. One way or another, they all see themselves as gaining, whether it be now or in the future, which also indicates the farmers’ abilities to plan for the future and see how they can assess the impact of the scheme in terms of longevity.

Some of the quotes from the farmers include:

“I have had the encouragement and the spirit to plant the trees, and also a way of making money from it.”

“I have gained more motivation to work on the land and get equipment to help me work on the land. But I don’t know nor care about the carbon!”

“Unused land has been opened up and made productive which means more income for my family.”

“I have had no gain for the moment, but hope in the future I can get some income from the land.”
Given the fact that the scheme has been referred to as a ‘rewards’ system, one of my main questions was whether the farmers thought the scheme was ‘fair’. The answers to this were a resounding no, with 86% of them thinking it was unfair and that they were disappointed with the withholding of the second payment, yet at the same time they were grateful for the opportunity that had been presented to them in the form of the VCM in order to earn more income. 33% of them countered their comments on unfairness with thank yous to Paul. The issue of the compensation was the main point of contention, the little amount of money, the manner in which it had been distributed, and the lack of second payment. Because the ulayat land is far away and difficult to maintain, the money spent on labour exceeds that of the money given in the form of payments, before the money was stopped, and thus these were some of the reasons why the farmers believed they had not benefited (thus far) from the VCM.

Because the payment has been withheld, the farmers are thus doing double the work, as they have already planted the trees, and yet no longer have the money to maintain them, so they are not benefiting at this point in the scheme. At the same time, there were those who appeared so committed, that even if they didn’t have the money anyway, they would still work. This shows very clearly that the farmers are committed, and certainly the ones I spoke to, doing the best they can for the project despite having no money to achieve this.

**Suggestions for the Future**

With regards to the farmers, further success could be achieved in their view by more monitoring, training, better understanding of ES, a lesser role of the Wali Nagari, and more money provisions. Over 70% would have liked more assistance financially at the beginning, less so at the end. They also voiced that they wished to have better ways of being informed about what to do, as well as money for seedlings when they die. They also stated that it might be better to make a new group of farmers so the group of farmers can manage their own money and distribute their own rewards and punishments on their own terms. They all stated that for future success, the trees should not be planted at the end of the wet season.

For Paul, more success could be achieved with more cooperation, more money available, more training, and less involvement with the nagari. Paul also stated the need for a social scientific element at scoping stage, when considering a suitable site for VCM. According to Martin from BV, there is a need for change in the distribution mechanism for the payment, by making a group of farmers, so the money is direct to the farmers through the group and not through the nagari staff. This was echoed by Paul aswell. The nagari would thus only monitor the group and the distribution of the money, so that the distribution of the money is transparent.

In the eyes of Juprial, one of the ICRAF staff, money is not necessarily the issue. If they can maximise on the training and monitoring provisions, then there would be no need for more money. The mechanism should be different, where the farmers are more involved in the scheme, and so the village leader is thus aware of his role for the good of the community and not thinking about his own needs for the program. The *Wali Nagari*’s actions should have been monitored from the beginning, and there should be more access to support for the farmers. He stated that monitoring is the most important thing, and communication to the farmers about any changes, and thus also the need for more transparency.
Pikal, formerly of YADDAS, also recommended the need for more transparency, for the farmers and the whole of Paninggahan so too.

With regards to cash payments, nearly all parties agree that cash is the best way of payment, and given that most said the seedlings were easy to find, the suggestion would be for more money.

**Farmers’ Opinions and Suggestions on CDM**

During the course of the focus group with the farmers, they were split into their two groups, 28 and 21, and given the opportunity to offer their own reasons for lack of success and their suggestions for the future, in their groups.

**28 Group**

And they think 70% success for their planting overall. They have been:

1. cutting back the grass;
2. make holes/room to plant the seedlings;
3. planting;
4. maintenance.

Suggestions for Paul for the future:

1. need more assistance for monitoring;
2. more infrastructure;
3. more training.

**21 Group**

They think their group has not yet been successful.

They have been:

1. cutting back the grass;
2. removing the dead trees;
3. planting;
4. maintenance;
5. making holes/room to plant the seedlings

Suggestions for Paul for the future:

1. repair the track;
2. more money;
3. more seedlings;
4. more training re: plantation;
5. more tools and equipment;
6. fertiliser;
7. pesticide.
Conclusions

With regards to the RUPES’ four key principles and criteria for rewards for environmental services: those that are realistic, conditional, voluntary, and pro-poor, in tandem with the stages of: 1) scoping, 2) stakeholder analysis of RES key actors, 3) negotiating between ES sellers and buyers, and 4) implementation problems in reaching poor - a critical legal pluralist methodology should be implemented as part of the scoping, and if not, the stakeholder analysis. This echoes the RUPES understanding of ‘stepwise’ processes with multiple decision points, with an understanding of clear and realistic targets and understandings of the stakeholders. Given the role of legal pluralism as a framework with which to be able to understand the relations of stakeholders in PES settings, this also agrees with the model put forward and developed by ICRAF, that of RaTA.

The following section shall lay out the research findings, followed by the suggestions with regards to the future implementation of PES schemes in legal pluralist settings, and indeed those within less obvious legal frameworks.

Report’s Research Findings

- Legal pluralist system affects the actions of the stakeholders, visible in the actions of the WN, and the farmers
- Legal pluralist system affects the output of RUPES because of misunderstanding power relations and the use of forum-shopping through embeddedness
- The nagari structures of organisation result in the domination of their legal system over that of others
- The WN is a site of legal production and forum-shopping - contract
- Nagari leaders ‘forum shop’ more than that of nagari landowners
- Because farmers do not forum shop as much as the leaders, therefore their benefits are decreased
- RUPES is not a project law, as there is not the capacity - need for more individuals working on the scheme
- Rewards can be seen to have turned into punishment (non-payment from investors)
- Farmers created their own law – julo-jelo – ‘law of the ulayat’
- The farmers understood the need to protect the environment but locally, they do not understand the ES
- Due to the payment being withheld, the farmers have felt less benefit than they could have so RUPES has not achieved its aims in this regard – YET
- CLP as useful in locating hierarchies of power the use of forum-shopping, the role of embeddedness, the role of project law and the affects this has on the ‘sellers’ in the form of ‘resistant legalities’
Report's Suggestions for RUPES Panningahan VCM

- Payment mechanism transparency and lesser role of nagari office
- Approaching members of the KAN in order for the contracts to have the legitimacy to be put in place without the Wali Nagari reneging
- More substantial cash incentives, or maximising the use of those already in place
- Monitoring right the way through in order to achieve constant transparency
- Communication between the different stakeholders as essential, through the facilitators
- Understanding of the nilayat lands, and measurement systems
- Training provision provided by buyers, sellers and facilitators, on what VCM is and their role in it, and ES
- More field assistants working in and around Paninggahan
- Involve more young people in the scheme for the implementation in the future
- Plantation to begin in the dry season
- Consult the women as the landowners
- More equipment
- Awareness of the dis-embedding and re-embedding role of project law and facilitation
- Contracts should reflect and accommodate the plural legality, awareness of priority of adat
- CLP used to minimise opportunity for forum-shopping in order to maintain transparency
- Empowerment through advocacy
- Critical Legal Pluralist Toolkit (methodology used, plus participant observation)
- Inter-disciplinary team when doing scoping
- Legal team or at least one or two persons researching on legal systems
- Legal advisers or paralegals, on each of the legal systems
- Property relations understood, i.e. Minangkabau, women should have been consulted
- Adaptable social scientific modelling - ‘adat salankar nagari’
- Reconsider the term ‘Rewards’ (given the punishments)

Appropriateness of a Critical Legal Pluralist Framework for PES Schemes

In the instance of Paninggahan, it is clear that there needs to be a way of understanding the importance of adat over other laws and that the two categories do not fit, thus individuals of the villages will act in different ways.

In order for the future success of a critical legal pluralist methodology in regard to PES schemes, there needs to be a development of a ‘toolkit’, and as already mentioned earlier on in this report, the role of participant observation and ethnography is key here, at scoping stage. In order to assess the ethical implications of these schemes, and the realities so too, the legal systems must be understood in order for the PES schemes to be a success. Thus, the overall lesson from this research has been that the best
methodology, is the monitoring itself. Without monitoring, there will be no success, and
with, there will be a greater understanding of what is going on, on the ground. This is
basically the same as participant observation, and this is where the critical legal pluralist
methodology takes its main inspiration.

Given the insecurity that legal pluralism determines of the results of the systems
themselves, the question should be, how, given the fact that these systems are used and
abused, can contracts drawn up between PES stakeholders, remain in tact, and the
scheme deemed a success? What is suggested here, and as a result of understanding the
legal pluralist realities that shape the actions and output of those involved in RUPES
Paninggahan, the judicial arm of the Minangkabau should be consulted. This would
mean that in any instances of the village leader acting despotically and taking the money,
if the KAN were involved and would have agreed the terms and conditions that limited
the actions of the *Wali Nagari*, then it is the argument of this report, that he or she will
adhere to the authority of KAN over that of anyone else. Thus the critical legal
pluralities would be considered, the scheme would be a success, and there would be no
need for resistant forms of legal agency like that exemplified in the ‘law of the uleyat’.

Final Comments

“The gift of law is its capacity to accomplish both purposes together - to celebrate our
potentialities as human beings while recognizing our frequent shortcomings. A critical
legal pluralism takes such a view and avoids framing law dogmatically.”

“Such attornment reminds us that we are each responsible ‘legal actors’ rather than
passive ‘legal subjects’. Each person who commits herself or himself to a legal regime -
and not just the over-emphasized ‘legal official’ who purports to ‘make the law’ - has a
role in constructing the normativity of that regime.”

Given the above to quotes, it is hoped that the complexities and realities of legal
pluralism have been understood, the potential these relations hold for future schemes,
and the manner in which individuals can act in order to create positive change.

I would like to thank Dr Leimona Beria for inviting me to conduct this wonderful
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aswell as the people of Paninggahan for their help and inspiring contribution to PES
through RUPES.

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Adult Relationships”, 1, European Journal of Legal Studies, 28.

Adult Relationships”, 1, European Journal of Legal Studies, 6.
Appendices - Photos of Participants

Farmers

Aliyai   Arlis   Armen Acai

Dary Urlis   Delpina   Doni

Jon Ros   Leoni   Nasir
Nagari Officials

Jasman, Wali Nagari       KAN       Bupati

BV

Paul Burgers (right), BV       Martin, BV
Facilitators

Bubung and Juprial, ICRAF, and myself

Pikal, YADDAS

Women

Uni Gadis
(Bando Kunduang)
Bibliography


