

## TES Special Issue

# Pak Dusa's Law: Thoughts on Law, Legal Knowledge and Power<sup>1</sup>

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**Abstract:** *This paper examines the ways in which law, legal knowledge and power become involved in social interaction. Any such interaction takes place within and is constrained and enabled by actual and imagined "power fields", constituted by configurations of relations of autonomy and dependence. Legally constructed positions of legitimate power (in general rules or concrete decisions) can be important resources which can be drawn upon in interaction. This is illustrated with the experiences of Pak Dusa, a villager on the island of Ambon in Eastern Indonesia. The paper argues that the main difference between constructions of law in legal decisions made in courts and by other actors outside courts does not lie so much in the actors' knowledge of the law but more in the courts' legally constituted position to exercise power. However, as the experiences of Pak Dusa show, court decisions enter a wider power field in which they may lose their legally constructed significance, while his own, unauthorized law carried the day.*

**Key words:** Natural resource management, anthropology of law, legal pluralism, power and knowledge, power fields, Ambon (Indonesia)

## 1. Introduction

This paper is an attempt to clarify my ideas and assumptions concerning the conceptual and empirical relations between law and power. This is a very complex undertaking because both power and law are multivalent and contested concepts. Their meaning is often used in a rather common sense way. Moreover, when their relationship is discussed, authors easily get drawn into somewhat polarised approaches. One is a perspective that reproaches those devoting much attention to law for not giving sufficient attention to power. This is a kind of "it's power, stupid" perspective. This kind of critique is apt, where law is presented as the representation of a common will that is neutral to the political and economic interests of categories or groups of the population, and that is enforced neutrally through state institutions especially selected and trained for

this task and given an independent position. In a way, this is a caricature of some western ideologies about law, which obviously does not fit the actual institutionalisation and functioning of legal systems. While it provides a handy straw man to critique a naive understanding of law and power, most social scientists but also many legal scholars do not hold such stereotype views and no longer have to be convinced that that "legal systems encode power asymmetries" and "that law is not neutral" (Starr and Collier 1989, pp. 6-7; see also Turk 1978). The other perspective comes from the "but-law-is-also-important" angle, which complains that in all discussions of power and celebrations of its importance, the different roles which law can have are downplayed, not even mentioned, or subsumed in general categories such as norms and values, or becomes dissolved in

the wider categories of the economic, political or cultural. In order to avoid any kind of reductionism, it is useful to see how the categories and the social phenomena they capture relate to each other. In my contribution, I shall first state some general points concerning my own thoughts on these issues. I shall then illustrate these ideas with a case study. It deals with the experiences of Pak (Father) Dusa, a villager in the village of Hila on the island of Ambon, with the law and judicial authorities which in my view nicely illustrates these points. At the end, I shall combine the analysis of Pak Dusa's experiences with the law coming back to more general issues.

## 2. Law and Power: Some General Observations

### *The Many Faces of Power*<sup>2</sup>

What are the analytical properties of power? Power is often expressed as the ability to influence the behaviour or the behavioural alternatives of others. For Giddens (1979, p. 93) it is a "sub-category of transformative capacity, where transformative capacity is harnessed to actors' attempts to get others comply with their wants". Power thus understood is relational; it also is relative. For many authors following Weber (1956), power is a *potential* that can be mobilised. Bachrach and Baratz (1970) have elaborated "two faces" of power, basically power as structured in institutions and power instantiated in social interaction.

I do not think that we have to make a choice and would have to define power as either as potential inscribed into institutions or relationships, or only as actualised.<sup>3</sup> We can use both and make clear what we mean, and which aspects or social expressions of power we talk about. We shall have to differentiate anyway. First of all, it is useful to distinguish between the *domains and dimensions* of social organisation in which power relations are located and play a role; not just in big politics and the functioning of the state apparatus but also in family relationships, relationships within organisations or in property relations. Büscher and Dietz (in this volume) distinguish three *types of power*, decisional power, discursive power, regulatory power, which express three *different sets of activities* through which power is exercised. Foucault (1980) has emphasised that techniques of exercising power cannot simply be looked for in the unequal relations of rights and duties between state and

citizens, but in the increasingly important realms of disciplinary power and techniques of power through the management of the population, "governmentality" (see McClure 1997). Turk (1978) when writing about law as power and discussing the *bases of power*, distinguished five kinds of control over resources; in short: political, economic, ideological and diversionary power and the control over direct physical violence. I think that all these different aspects of power are important and should not be reduced to one another.

### *Law*

Since these different aspects of power point to quite different social phenomena, their relation to "law" will also be different. However, law is also a much discussed concept with probably even more faces than power. Lawyers, sociologists, political scientists and philosophers tend to think of law in terms of a rather ethnocentric legalistic understanding in which law is fixed by definition to the state, the sovereign and some kind of underlying legitimacy fiction (social contract, will of the people, etc). In particular, comparative and historically orientated social scientists, anthropologists, tend to use a wider concept of law, which can be used for cross-societal comparison and analysis. Such analytical concepts on the one hand indicate the properties to be shared if social phenomena be called law, and, on the other, indicate the dimensions in which such phenomena vary. Calling different types of normativity law thus by no means effaces differences between legal orders; on the contrary, it helps to understand the historical and societal specificity of the empirical manifestations of the analytical category. One of the most discussed issues has been the question of whether or not law should be conceptually bound to the political organisation of the state. With many anthropologists of law I do not think this is useful for the purposes of comparative description and analysis to tie law to the state conceptually; on the contrary, I see it as a submission to the legal ideology of state governments and legal science.<sup>4</sup> Law, in my use, is a summary category that comprises a variety of social phenomena, both within and between societies. Its empirical manifestations are not confined to constitutive, pre- or proscriptive "rules" and principles; it can also be inscribed or become embodied in institutions and social relationships, objects and persons. It can be involved in a variety of social interaction, and certainly not simply in the contexts of "legal"

decision making in courts or court-like institutions, as the experiences of Pak Dusa will show.

### ***Law and Power***

How should we relate analytic understandings of power to law, and of power and law to social life? My own preference is to adopt what K. von Benda-Beckmann and I have called a “layered approach” to social organisation.<sup>5</sup> That is that we assume that what power “is” as empirical phenomenon, will be found in different layers of social organisation. By layers we mean analytically different but interrelated categories of social phenomena that constitute social organisation: the legal-institutional layer; the actual social relationships; the layer of general ideological/cultural expressions; and the layer of social interaction. These are analytic distinctions; in the real world the difference may often be difficult to see; and social phenomena at these layers are interrelated through social practices. Just a very brief illustration in the field of marriage. The legal construction gives both marriage partners equal rights and demands consensus in many decisions. The actual relationships that have developed between the spouses, however, show that the wife is the dominant person, with much more transformative capacities (because he is a timid person, or because she has a strong character, or because she’s got all the money). The general ideology (as well as the general pattern of domestic power relationships), of which both partners are quite aware, may be that the man is the boss in the house. Any interaction takes place in such contexts. The interactions will certainly be influenced by the relationship of autonomy and dependence between the spouses. Their interactions may be influenced by ideology and legal rules. Any interaction also reproduces the relationship between the spouses. This can be in line with the relationship pattern that has come into existence, it also may lead to a shift in the relationship and which the power differential changes. My main point here is to emphasise that what power and law are is different in these different categories of social phenomena, and their substance is usually different as well. There are different relations between different aspects of law and different aspects of power that should not be reduced to one another.

### ***Legal Institutionalizations of Power***

At the legal-institutional level law defines in general, categorical terms, relations and positions of power of persons or organisations over persons, organisations and other resources in terms of rights and obligations.

For many, and I would include myself, such legally constituted sets of power positions and relations are what is meant by “authority”; authority understood as legally clothed power. Law also provides the legitimacy of this organisational distribution of power/authority. In other words, it provides one (often very important, sometimes the only) legitimation which says which exercise of power is permissible or impermissible, and what transactions or actions are valid or invalid.<sup>6</sup> Because law organises and legitimates power, the “legal certification of power”, as we could call it, is a resource much strived after in local, national and transnational arenas. In many societies, there are more than one set of legal construction and legitimation of power that define the different aspects of power positions and relations, often in a contradictory way; a situation usually referred to as “legal pluralism.”<sup>7</sup> These can have different sources and legitimations of the social agents making, maintaining and sanctioning these rules, such as a democratic state, tradition, religious authority.

### ***Power Ideologies***

The legal institutional layer is different from the layer of general cultural understandings, philosophies, and ideologies about power. In most contemporary societies there is some ideological plurality. In one society, there may be several general standards for characterising and legitimating power, which co-exist and possibly compete with, and are different from, the legal ones; such as moral, ethical standards, or standards of naked power, usually based on the command and exercise of physical force. While ideological notions of power are usually inscribed into legal frameworks, law and ideology cannot be reduced to each other. Just think of a society with a rather strong gender ideology favouring male power over female while gender equality and neutrality are legally institutionalised. But while ideological representations of power do not give an accurate picture of both legal/institutional frameworks and/or the actual distribution of power in a given organisation (that is, after all, why we call them ideology), they nevertheless can be an important source of motivation or justification in actual power practices.

### ***Actual Power Relationships***

While normatively constructed power grids may be important sources of power, we do not know to what extent they represent actual power relationships (legitimate or not), as these become manifest in

asymmetries in relations of economic and political autonomy and dependence, the complexity of which can best be captured with the ideas of networks or configurations of social relationships. Power is always embedded in social relationships as a power differential. Since power is relational, any field of social relations is (amongst others) a power field.<sup>8</sup>

### ***Power in Interaction***

It is in the interaction in these power fields where it is made out whether or not the concrete interaction (decision) and its transformative ambitions fade out into social irrelevance. The social effects of such attempts, the waves of interdependence they create, the degree to which they can change the power differentials in social, economic and political relationships, depends on the degree to which the other actors and institutions involved in such relationships can be brought to accept the consequences of such attempted exercises. Any attempt to exercise it is enabled and constrained by the set of relationships in which it occurs. All interaction takes place in a context in which the positioning of actors in the wider power fields are important; a context that precedes the interaction (see Holy 1999). Actual power relations, legally institutionalised legitimate power positions, and ideological conceptions of how power is or should be distributed and exercised, are part of this context, and can all be deployed as resources in social interaction. This is conditioned by the historically grown and sedimented patterns of power relationships and differentials, but it is not determined by them. From an ex-ante perspective, power relations and wider power fields only indicate the potentialities and probabilities of how power relationships could influence social interaction. Legal-institutionalised power positions and power-asymmetries are *potentials* that *can* be actualised in social practices of exercising power. Plural legal situations are giving a particularly wide set of possibilities, offering several repertoires of legitimate power relations and their political and economic relations of dependence. These can be mobilised against each other, but also can be combined. In this sense Turk (1978) has talked about law as a “weapon in social conflict”, and Vel (1992) characterised the plurality of co-existing legitimations of powers as an “arsenal”. Through its instantiation in social practice, the relations of power are reproduced, maintained or changed and become the context for further interactions (Giddens 1979, p. 93). “Power” thus is

context, medium and outcome of social interaction in the sense of Giddens' structuration theory. Power within social systems can be treated as involving the reproduced relations of autonomy and dependence in social interaction (Giddens 1979, p. 93).

### ***Legal Knowledge and Power***

Given the social value of the “legal certification of power” we must further ask how law becomes translated into power in social interaction, and to which extent knowledge of law is an important source of power. The saying that “knowledge is power” nowhere seems to be more true than in the field of law. Law lays down the conditions under which power can be exercised legitimately. Law is held to determine decision making processes which legitimate the transfer of goods and services, the allocation of social, economic and political resources, even the use of violence, against the wishes of the affected persons. Knowledge of such empowering rules and procedures therefore must be an important powerful resource itself. This has important social and political implications, for legal knowledge is unevenly distributed in most contemporary societies.<sup>9</sup>

The belief that legal knowledge is power is founded upon a rather simplistic model of law, the “law-as-rules-applied-to-facts” model. In this model, legal decisions result from the application of rules to facts. The law which fits the case under review is assumed to be pre-existent and known to the knowledgeable actor. Time and again, this simple model has been shown to be ideology, to misrepresent the way in which court decisions come about (see for instance Lautmann 1972, Esser 1972, Moore 1970). It is generally accepted now that making decisions is not just a subsumption of fact under rule. “Facts” themselves are social constructions, representations of reality or “situation images” (F. von Benda-Beckmann 1979).<sup>10</sup> Facts are constructed and made relevant for law largely through their reference to legal rules. The “facts” of a “case” are “edited diagrams of reality the matching process itself produces” (Geertz 1983, p. 173). It is in this sense that it has been said, in the tradition of the rule and fact sceptics of American legal realism “that people cannot know the law unless the case has been decided upon by a court” (Phillips 1982, p. 57), or, more generally, that law cannot be “known” beyond specific instances of it (Wickham 1990, p. 31). In this sense “law” means concretely interpreted

law, in which a concrete constructed situation image is evaluated for its legal consequences.<sup>11</sup> Saying that law cannot be known except in its concretization by courts cannot, of course, be taken to mean that there could be no memory storage and recall of institutionalized rules or previous decisions. It can only mean that, with respect to any concrete problematic situation, the legal meaning and consequence of such situation can only be seen in the concrete interpretation of fact and consequence. Such regulation can only be created through interpretation, the construction of “legal similes” of which it is asserted that they are derived from, and are in accordance with the general rules and principles. Before such instantiation of rules in a concrete situation there is only potential, hypothetical law.

Given the generality and high degree of abstraction of “general law,” it cannot be different. The law which can be known consists of abstract generalities full of uncertainties and ambiguities. Whatever efforts have been made to institutionalize and systematize such rule systems, they never are more than attempts at “regularization in a sea of indeterminacy” (Moore 1975). This is inherent in any legal system.<sup>12</sup> Legal systems only differ in the degree to which such indeterminacy is acknowledged or obscured in legal ideologies. Although different legal systems may have their own ideologies and modes of procedure, and their general rules and principles may be given different degrees of mandatoriness, recognizing more or less autonomy of the decision makers vis-à-vis the general rules — the actual procedures of “law application” largely come down to the same: A fact configuration and its legal relevance, and its evaluation for consequences have to be rationalized and justified. Such rationalizations and justifications are always causal constructs.<sup>13</sup> The behaviour and the objectives concerned must be represented as following logically from, or at least being in conformity with, the norms with which they are legitimated (F. von Benda-Beckmann 1989, p. 143). The “as-therefore” principle of rationalization and justification of concrete interpretations is a universal, whatever roads may have guided them, the subsumption logic of continental European law, an ideology of consensual decision making, or the way of Salomonic judgments. The constraint to rationalize and justify therefore forces the social actors to represent the process of concrete interpretation and decision making on facts and consequences in a way which obscures the

actual way decisions are taken. This is why the “rule-applied-to-facts” model and its causal implications can be so successfully maintained although there is wide agreement about its ideological nature.

With these assumptions in mind, let me turn to two major experiences of Pak (Father) in the village of Hila, on the island Ambon in the Moluccas in Eastern Indonesia. These two experiences show how law, legal knowledge and power are combined in quite different and at first glance counterintuitive ways.

### 3. The Experiences of Pak Dusa

Pak Dusa, in his fifties, was a farmer most of the time, looking after his vegetable garden and clove trees. He often also had acted as a *prokrol bambu*, the Indonesian word for “bush lawyer.” His experiences with the law had been enriched by the many disputes about property in which he had been personally involved. Such disputing had taken place within the village and outside. He had argued, claimed, won and lost in the village *adat* (customary law) sphere, in the state courts and in the Islamic religious courts. In comparison to other villagers, he was quite knowledgeable about *adat* rules and principles, he knew some Islamic law, and he also had a good insight in the procedural regulations and practices of state courts. He enjoyed displaying his knowledge and talking about his experiences. He was not mystified at all by the complex system of legal pluralism in which he lived, a normative world populated by government law, Islamic and traditional *adat* law. On the basis of his experiences, he had developed his own theory of the universals of legal competence. In his view, legal knowledge, in the sense of sophisticated knowledge of pre-existing rules, did not play a major role, although it might come in handy. What really counted were the following three factors:

1. You must have money (*uang*). The law and decision making institutions did not react by themselves. They had to be mobilized. Money was necessary in order to get any of the procedures going, whether you had a problem in the village or in a court, whether such money was required as official or as unofficial contribution to the machinery of justice.
2. You must be courageous (*berani*). In one’s dealings with law one was confronted with incumbents of

powerful positions. The more powerful people are, the greater the probability that they would disagree with you and your own interpretation of events and consequences. Also in direct confrontation with opponents you were likely to face more powerful persons. If you were afraid of such people, you could better forget about confrontation.

3. You must have evidence (*bukti*). In order to argue one's case, evidence of legally relevant fact was essential. One always had to base claims on facts, and one was always asked to prove them. It did not really matter so much in which legal system one operated. The fact knowledge embodied in evidence was usually relevant in all systems. Evidence was no guarantee, but without it one stood no chance.

In his legal affairs, Pak Dusa lived up to his theory quite consistently. In particular, he was keen on acquiring evidence, written evidence in the form of documents (see F. and K. von Benda-Beckmann 1994b). But as everywhere, theory and practice also were different in the life of Pak Dusa. Let me describe some of his experiences with the law.

### ***The Matter of the Disputed Clove Harvest***

Pak Dusa had pledged some clove trees to a Butonese fellow villager, La Abutadi, for the period of three harvests. According to Ambonese local law (*adat*) such agreements entitle the pledgee to pick the cloves during "good" harvests. In bad harvests, the pledgee and pledgor should divide the harvest and the year does not "count" as a harvest in the agreement. In the year 1981, the interpretations of the quality of the harvest differed. Pak Dusa thought it to be a bad year in which the harvest should be divided, La Abutadi thought it to be a good one. To make sure that La Abutadi would not pick the cloves, Pak Dusa himself had harvested the trees.

La Abutadi did not accept this solution to their disagreement and set about changing this unwelcome situation. He approached the village secretary, in order to have the village government settle the dispute. The secretary (after having received 150,000 *rupiah* for his good efforts from La Abutadi, as Pak Dusa alleged) in turn informed the village head. The village head informed the subdistrict head. Together they called a meeting with Pak Dusa and La Abutadi and stated that Pak Dusa should either

give the harvested cloves to La Abutadi or return the pledging sum. When Pak Dusa refused, they prepared a "letter of declaration" with the following content: That Pak Dusa, with respect to his fault in carrying out the pledge agreement agreed/admitted that he would have to pay back the pledge sum of 350,000 *rupiah* within a period of two months, with a monthly interest of 10% per month, thus altogether a sum of 630,000 *rupiah*. If he would not pay back the aforesaid sum within the specified time, he would forfeit his house in the village to La Abutadi, and Pak Dusa and his family would have to leave the house taking all their belongings with them. The document was signed by Pak Dusa, La Abutadi, the village head and the subdistrict head.

Reading the document one is inclined to believe Pak Dusa that he was strongly pressured into signing the agreement. He was confronted with the heads of the village and subdistrict administration, and he himself had little political support in the village. Although his clan was one of the important ones, which had provided the village with village heads, the present village head was from a different clan. Moreover, within his clan, Pak Dusa did not belong to the clan segment that had been politically prominent. He was also more of an individual operator, not allied to one of the major factions in the village but rather offering his services across these boundaries. So in this position of weakness, he had signed, and since he had done so, things looked grim for him. But Pak Dusa did not accept defeat. Two days later, his wife wrote a letter to the village head, sending copies to the subdistrict head, La Abutadi and the subdistrict chief of the police. She wrote that the agreement signed by her husband was not in accordance with the principles of humanity and the valid law. It violated the law concerning the common property of husband, wife and children and involved a monthly interest of 10%, which had the character of extortion. Since the agreement had been made without her knowledge, she declared it to be invalid. This really was a clever move, Pak Dusa told us. For he himself surely could not have attempted to invalidate the agreement. Had he not signed it himself? And would he not have to accuse the village chief and the subdistrict head of using force, and could he ever be in a position to prove it? But fortunately he had thought of this last way, and had his wife write this letter.

The letter seems to have had some effect. The village

secretary withdrew. But the village head and the subdistrict head were not impressed by this letter and renewed their pressure on Pak Dusa. So five weeks later, Pak Dusa's wife wrote another letter to the village head, in which she repeated her points more elaborately, emphasising that the agreement had not been signed voluntarily and that it was contrary to the valid law which in this case was known as *onderhandse akte*. For such matters one should consult the valid regulations (*ordonantie*); that there was an unacceptable accounting error in the agreement; that with an interest of as high as 10% one already was a usurer, which clearly was in violation of a presidential instruction. One thus would have to conclude that the village head supported a usurer acting in violation of presidential instructions; that besides all this such a civil agreement had no basis at all in the positive law: for why had she, as Pak Dusa's wife, not been asked to cooperate while the property mentioned in the agreement was also hers; that the matter concerned a civil subject matter which could not be settled by the village head by way of making a letter of agreement (*surat pernyataan*). So far her letter, which she signed with her thumbprint for she was illiterate! Copies of the letter were sent to the subdistrict head, the subdistrict chief of police, the chief of police of the district, the chief of police of the province, the governor of the province, and the head of the provincial security department. All these agencies were "approached in the hope that they would give their full attention to the prevention of usurious practices against the small people."

After this letter, Pak Dusa heard no more from the village head. After some time, La Abutadi approached him again and they made peace. The Butonese picked the trees during the next good season "according to their original agreement." Pak Dusa kept the harvest of the disputed season, and the village secretary the 150,000 rupiah which he had received from La Abutadi.

### ***The Land and Houses Dispute***

This time, Pak Dusa had been able to extract himself out of quite a difficult situation. But his experiences with the law had not always been so successful. In a series of property disputes with a distant kinsman of the same clan, Pak Dusa and this kinsman had pursued three disputes up to the Supreme Court of Indonesia, well over 2000 kms away to the West. This concerned "old" disputes between the clan

segments of Pak Dusa and his adversary, whose segment in colonial times had been more prominent in providing the village with village heads and other officials. The more or less same issues of land ownership and inheritance had been disputed in the generations of their grandfathers and fathers but never been really resolved (see F. and K. von Benda-Beckmann 1994b). One of these disputes concerned the ownership of a tract of clan land. For some 10 years, several houses had been built by other villagers on this land, with the consent of Pak Dusa's adversary who lived in the clan-house close to the disputed land. After a lengthy period of litigation, in the village and later in the state courts, Pak Dusa had finally won his case in the Supreme Court of Indonesia. His adversary, not content with the state of affairs, had taken new initiatives and started a new case in the state court of the city of Ambon. He lost, for the state court accepted the final judgement of the Supreme Court. Since his adversary still refused to accept the final judgement, Pak Dusa obtained an order of execution by the state court, and on a given day three court officials and 18 policemen came to Hila to execute the judgement; that is, to declare publicly that the land in question was Pak Dusa's, that the houses on the land had been built without a legally valid consent, and that the people living there either had to vacate the land or come to new agreements with the rightful owner, Pak Dusa.

So everything seemed to have turned out well for Pak Dusa. However, when the party went to the land in question, all of a sudden Pak Dusa was stabbed in his stomach by a close relative of his adversary. Pak Dusa was seriously beaten up and, on top of that, by the people who would have had to evacuate their houses had the judgement been carried out. Pak Dusa barely survived, spent three weeks in hospital. Three of his adversary's followers were prosecuted by the police and were held to be obliged to pay for Pak Dusa's medical costs. However, with respect to the land and the houses nothing changed. Eight years later, in 1986, Pak Dusa was still saving money in order to obtain a new execution order. His adversary told us smilingly that any new effort to execute the judgement would meet with a similar result. He regretted that the Supreme Court did not yet understand fully the *adat* law relevant in this matter, but he hoped to put things right and to clarify what obviously were misunderstandings.

#### 4. Law, Legal Knowledge and Intelligence

Let us take a closer look at these cases. In the first case, Pak Dusa had made his own law, and he made it stick. He constructed situation images of usury, of patronage of usurers, of a decision outside the competence of the decision makers. The original problematic situation — was it a good or a bad harvest, and what were the consequences of that?; was successively transformed into one of the validity of the agreement, and into one of possibly unlawful, criminal behaviour of the village head and the subdistrict head. He created these facts, evaluated them in terms of validity and permissibility, and spelt out the consequences, using state law as his frame of reference. He did not go into great detail, for he would not have known many details. What his legal constructions required was a highly creative spirit, legal intelligence, to construct legal similes which “could” be true in terms of the general legal rules and principles, even if one did not know these legal rules and principles in any detail.<sup>14</sup> Pak Dusa's educated guesses were largely bluff. Neither he nor the village and subdistrict head knew whether there were really any presidential instructions saying that 10% interest per month would amount to usury; according to local level practice such percentage is regarded as normal. Pak Dusa's references to “the valid law,” the *ordonantie*, the positive law, definitely would have not carried the day in terms of lawyers' legal knowledge, for a settlement of the dispute by way of agreement would have been quite acceptable according to whatever legal system. In order to invalidate it, Pak Dusa would have had to prove that he really was forced to sign the agreement against his will. The claim that the house was common property which could not simply be signed away by one spouse was itself a strong one in terms of *adat* or the state law but no specifically expert knowledge is required to come up with this notion. Inheritance to land and trees on Ambon is mainly bilateral, and women often receive as much or more than male children. Islamic inheritance rules and courts are only very rarely mobilised. Property acquired by spouses during their marriage is the dominant legal principle (see F. von Benda-Beckmann and Taale 1996).

Pak Dusa's constructions of facts and consequences, though based on bluff, were so plausible and threatening that they could supersede the situation image which had given rise to the whole process, the one of a problematic clove harvesting contract. The

threatening aspect, for the village and the subdistrict heads, was created by inserting his constructions into government law and its guardians; not so much by appealing to the courts but to the police and the military. No reference, for instance, was made to Islamic law, which prohibits the taking of interest; even though all persons involved were Islamic except for the subdistrict head. While this would have provided a good substantive argument, such reference would have been naive, for it would have distracted from the political power field in which he wanted to situate his “reality:” the state system, the system of the military and the police, the president himself. The validity of Islamic law in such matters could be disputed by the village chief and the subdistrict head; to dispute the validity of the president as law giver would have been a much more risky undertaking. How different was the situation in the other case. The combined expert legal knowledge and authority embodied in the Supreme Court judgment, which he had so successfully mobilized in accordance with his theory, could not help Pak Dusa.

#### 5. Actual and Imagined Power Fields

What can we learn from a comparison of these two case histories? What was the difference between Pak Dusa's law and the law of the courts? And how to explain their different effects in transforming political and economic relationships in the village?

It is instructive to look at the different power fields in which these processes occur. The social effect of processes, the waves of interdependence they create depend on the degree to which the other actors and institutions involved in such relationships can be brought to accept the consequences of such attempted exercises. This not only conditioned by the historically grown power relationships and differentials, as they exist in the village of Hila, or in the state judiciary. It also depends on the “images of relevance” constructed by the actors in the power field. Such *ex ante* constructions, like that of “legal relevance”, are also hypothetical, and their social force will lie in the plausibility which this hypothesized image of relevance has for the actors in this field. In analogy to Anderson (1991) we could think of “imagined power fields”. Law, is not simply, as Geertz (1983) told us, a way to “imagine the real”; is also and much more often a way of imagining the *possible* or the *probable*. It was the skillful manipulation of these

probabilities, rather than the actual distribution of power, which was decisive in the first case. It was here where Pak Dusa's strength lay; to conjure up the probability that the powerful agents receiving a copy of his wife's letter might indeed get into motion and would use their power potential, their transformative ability/capacity, to act in ways predicted by Pak Dusa. He transformed the legally relevant situation image, and made it seem relevant in terms of other power relations, by actually or by bluff involving higher level political authorities. If we look at the first case: It played in the village power field, into which La Abutadi had brought in the highest village authority and the even higher authority of the subdistrict head. In the village power field, the problem was an isolate between Pak Dusa and the stranger, La Abutadi, who, as a Butonese immigrant, had no basis in the political structure of Hila. The rest of the villagers were not involved, they were "lookers-on" as it were. What Pak Dusa achieved was to transform the problem into one which could be relevant in the village external power field of the political-administrative system. Obviously, he bluffed, but it was a plausible bluff. The village head and the subdistrict head did not dare to call the bluff. Pak Dusa had been too clever for them, they were not able to extricate themselves out of the new problematic reality which Pak Dusa had constructed, and to return to the "original case."

## 6. Judges' Law and Pak Dusa's Law

In the other case, Pak Dusa had mobilized the highest legal authority in Indonesia. Yet all the authority and present power of 18 policemen could not help Pak Dusa to have a judgment of the highest judicial authority executed. How can we explain the differences between Pak Dusa's law and the law of the court? In the way in which concrete law is constructed, there is no difference between the concrete law constructed by courts or by laymen — neither can know the concrete law in advance. Neither can a difference be found pointing at a greater social significance of the court judgement, on the contrary. What distinguishes their concrete interpretations of law, and what makes the interpretation of the judge into "spoken law" and that of the other an "educated guess," is not primarily their knowledge of abstract rules, principles or precedents. The difference comes about as a result of two legally constructed, normative elements:

1. Judges' interpretations and decisions are "legal" because they are given in a specific legally institutionalized context in which, to paraphrase Wickham, interpretations are given value in "legal currency" (1990, p. 34).<sup>15</sup> Within this context, decisions become law. This is the case even where decisions are not based on good rule knowledge; something which often occurs if judges interpret and apply legal rules (like local African or Asian rules) with which they are unfamiliar (see F. and K. von Benda-Beckmann 1988). Outside this context, on the other hand, a judge interpreting and evaluating a case with sound legal knowledge, would not speak "law."
2. Judges' interpretations differ from educated guesses in that they are "final." Guessing has found an end in the authoritative declaration in the legal context. True, there still are mechanisms for invalidating such statements, and establishing their nature as temporary guesses, by way of appeals. But such procedures give only a limited extension, within a restricted institutional and time frame. Once the highest legal authority has spoken, the statement is final within the system. Such finality, we must note, is also constructed through law; the concrete law of the court is final in legal currency only.

This perspective has consequences for the relation between legal knowledge and power, because the significance of legal knowledge is implicated in the ideological representation of decision making. While legal doctrines and ideologies want us to believe that decisions are primarily determined by legal knowledge, and not by social or political power, we see that it is essentially social and political power which underlies courts' decision making. The power attributed to (general) legal knowledge of legal experts, judges in particular, in truth may lie in their power to make legal decisions, a power conveyed on them by their appointment to a legally legitimated position of power.<sup>16</sup>

The courts' decision making power was successfully mobilised by Pak Dusa. But the courts' authority to construct the relevant concrete law in their decisions as such is not sufficient for transforming what has been decided into actual practice. Decision making power, and the power to carry out such decisions, are two different issues, and the actual interactions of decision making and executing them are situated

in different power fields, or in different segments of larger power fields. The law the courts speak, the decisions they take, flow back into "society," into the power fields which permeate it. The "legal currency" used in the legalized production of law, may not be valid outside the court context. Judges' decisions may never leave this context, or it may be outside this context be reinterpreted, transformed, exchanged into different "currencies" (Moore 1973, Galanter 1981, K. von Benda-Beckmann 1985). The institutionalized meaning which made the utterances of a judge into law there may lose its meaning and significance.

If we look at the power fields of the court system and the one into which the decision of the court flowed back, we see the following: In the world of the courts, Pak Dusa's case was an isolated one, one of a myriad of cases, to which no more attention was given than to others. It returned to the village power field, but there it ceased to be isolated. It was not his adversary alone whom Pak Dusa was facing, but the owners of the houses built on the land under dispute, who had an interest in retaining the old situation because they would have had to pay new sums to him with no chance of recovering old payments to his adversary. These people belonged to different clans, and could count on support by their clansmen. The expansion of the conflict was therefore programmed almost automatically.<sup>17</sup> Under these circumstances, Pak Dusa did not have a chance. He probably could have won from his opponent, and he would, I think, have got his "right" accepted in the village, had he not implicated the house owners. This was considered "too much" From the point of view of the police and the court officials, an isolated court judgement was transformed into the probability of a village war. That became too much for them, and they withdrew. Was perhaps Pak Dusa's theory not so pragmatic after all, and did he, despite his cynical assessment of the legal world, invest too much trust into the legal-political system?<sup>18</sup> Time will tell, this is what I wrote in 1991. And time told. When we came back to Ambon the next time in 1994, Pak Dusa had died. His wife did not want to engage in these troubles again, and their children were away on Java. But you never know. In a couple of years, children or grandchildren of Pak Dusa may find the judgments of the Supreme Court and get into the disputing business again.

## Notes

- 1 This is a revised version of the lecture given at the PhD Workshop on "Power, Development and Environment", held in Nexoe, Bornholm, June 2-4 2004. The empirical material referred to is based on field research on Ambon, where my wife and I did research in the mid-1980s. The case of Pak Dusa was originally published in F. von Benda-Beckmann 1991.
- 2 The image of face goes back to Bachrach and Baratz (1970).
- 3 For elaborations of the concept, see among others Weber 1956; Moore 1970; Bachrach and Baratz 1970; Foucault 1980; Lukes 1974; Giddens 1979. See also S. Lund and Nuijten in this volume.
- 4 For a recent overview of the discussions on "law" and "legal pluralism" see F. von Benda-Beckmann 2002.
- 5 We have elaborated this approach in some detail for property relations and social security (1994a; 1999).
- 6 Note that this legal legitimation also extends to Foucault's realms of disciplinary power and governmentality, even if the exercise of power via these techniques are less predefined by law.
- 7 For overviews on the history and meaning of this contested concept see Griffiths 1986; Merry 1988; F. von Benda-Beckmann 2002.
- 8 I employ the field-metaphor here because it points at sets of social relationships and interactions that are not closely bounded. For my use it does not really make a difference whether field is understood here as semi-autonomous social field in Moore's (1973) sense or Nuijten's (2003) notion of "force field", and in this volume.
- 9 Law is a field of knowledge that is differentiated from the layman's common knowledge. A specialized university training has to be followed. For those wanting to engage in professions in which the use of legal knowledge fills up most of their work, like judges, advocates or legal scientists, period of further practical training is often obligatory before they are considered sufficiently knowledgeable to interpret, practice, or speak the law.
- 10 For the notion of situation images, see F. von Benda-Beckmann 1979: 28-29, 1986.
- 11 I have called this "concrete law," and distinguished such concrete law from "general law," meaning abstract definitions of general situation images, standards of evaluation and consequential rules (see F. von Benda-Beckmann 1979, 1986).

- 12 African folk systems in that respect do not differ very much from European rule systems (see already Gluckman in his judicial process among the Barotse, 1955; see further Moore 1978, also F. von Benda-Beckmann 1986).
- 13 This causality introduced into rationalisation and justification is, of course, different from the type of ex-post causality between events constructed in sociological explanations (see McIver 1969, pp. 296—297).
- 14 To speak with Ryle, “knowing how” knowledge, the tactical knowledge of how to operate in terms of rules, is much more important than “knowing that” knowledge, the knowledge of the general rules and principles of the law (Ryle 1970, p. 28).
- 15 This is not particular to European legal doctrines. Also in less differentiated and scientificized normative systems knowledge may be firmly tied to status, be this the Pope or a clan chief and adat expert.
- 16 This point has been brought out clearly in Moore’s critical discussion of the typologies and continua of dispute settlement processes constructed by Gulliver (Moore 1970). As Moore points out, the creation of one-dimensional polar opposites between “legal” decisions determined by law and “political” decisions determined by the relative power of the disputing parties hide the power of decision making agencies that rationalise and justify their decisions as being determined by rules, and it also hides the significance which reference to legally defined rights and obligations can play as a resource in negotiating processes.
- 17 On the expansion of disputes in Ambonese villages, see F. and K. von Benda-Beckmann 1994c.
- 18 It is interesting to look at Pak Dusa’s future strategy. The next time, he promised, he would be more clever. He would involve the external power system, the courts and the police, more directly in order to make the execution of the judgment more important for them. He would not choose the other way, of isolating the problem in the village as one between himself and his adversary only, although he could have done so by lessening the consequences for the people who had built houses on the land, and thus cutting through their relationships with his adversary.

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