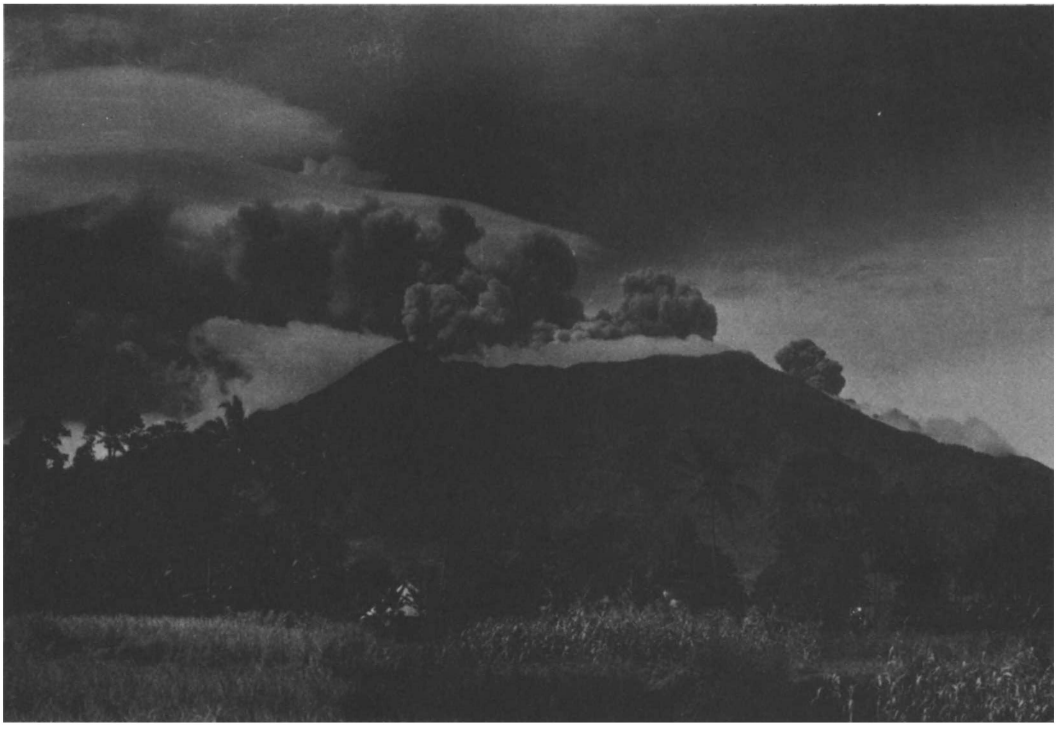
PROPERTY IN SOCIAL CONTINUITY



Dari mano titiek palito	From where did the candle drip?
Dibaliek telong nan batali	Behind the lantern on a cord.
Dari máno asa niniek kito	From where did our ancestors originate?
Dari ateh gunueng Marapi	From the top of Mount Merapi.

VERHANDELINGEN
VAN HET KONINKLIJK INSTITUUT
VOOR TAAL-, LAND- EN VOLKENKUNDE

86

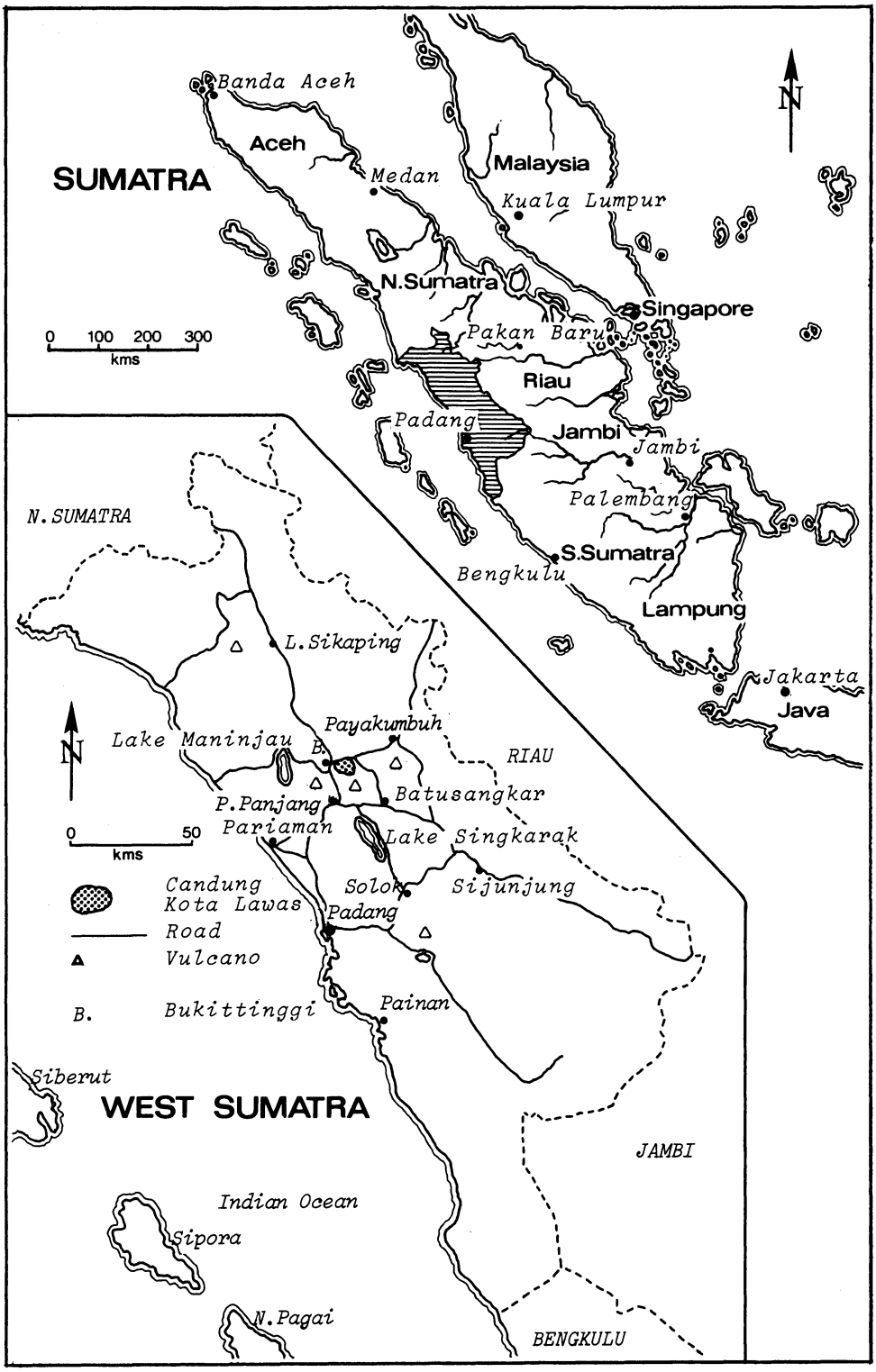
FRANZ VON BENDA-BECKMANN

PROPERTY IN SOCIAL CONTINUITY

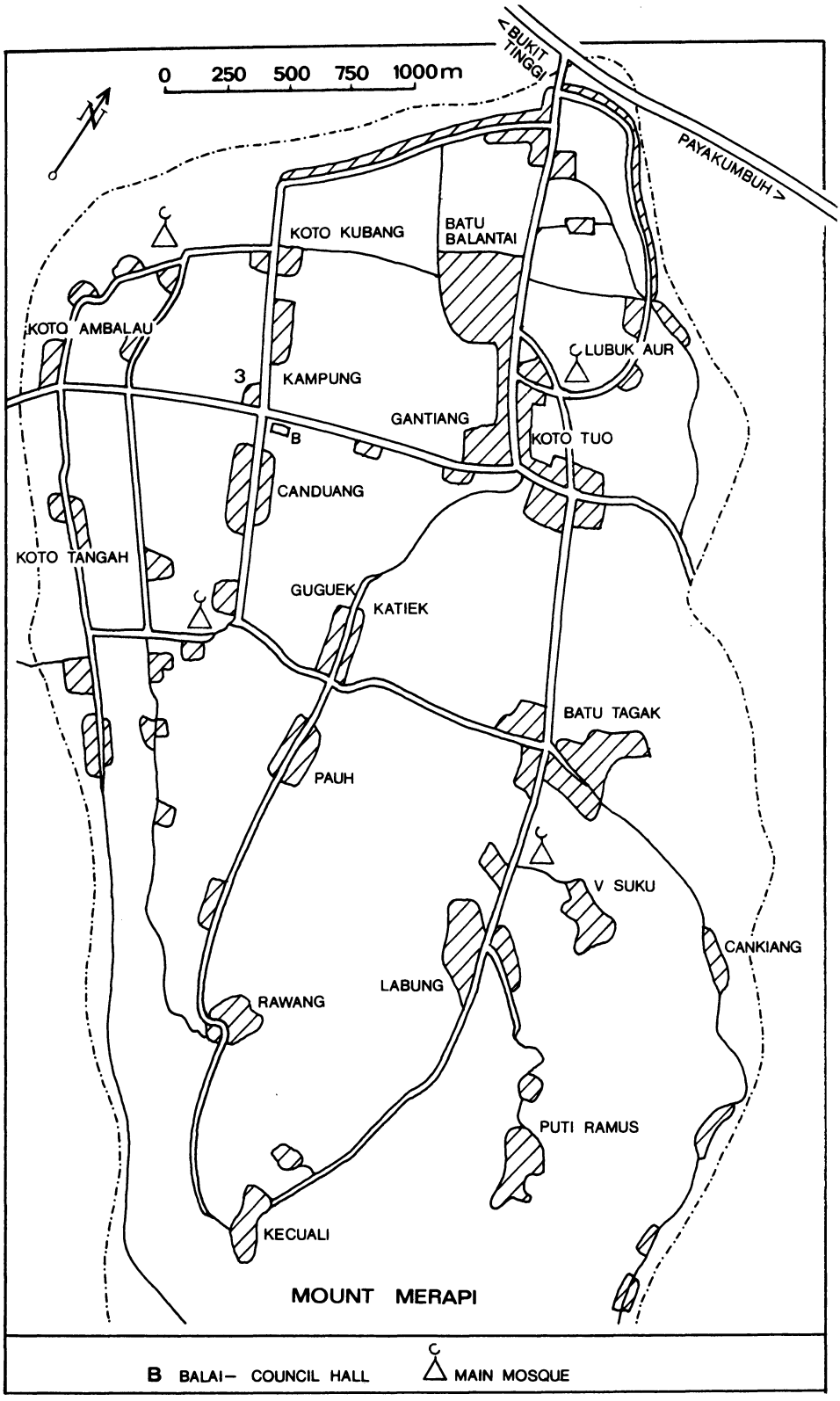
CONTINUITY AND CHANGE IN THE MAINTENANCE OF PROPERTY RELATIONSHIPS THROUGH TIME IN MINANGKABAU, WEST SUMATRA



THE HAGUE — MARTINUS NIJHOFF 1979



Map of the research area



Nagari Candung Kota Lawas

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Leiden, December 1978 Franz von Benda-Beckmann

A NOTE ON ORTHOGRAPHY

In this study I have regularly used Minangkabau and Indonesian words, particularly the basic concepts through which the systems of socio-political organization, property, and inheritance are expressed. I trust and hope that the reader will quickly accustom her- or himself to these terms and realize that, e.g., words like *jurai*, *kaum*, *buah gadang*, and *suku* convey a much clearer impression of social groups in Minangkabau than would the English terms lineage, minimal, minor, major, or maximal lineage.

In the literature, but also in interviews with Minangkabau villagers, the Indonesian and Minangkabau terms are often used interchangeably, e.g. *harta pusaka* (Ind.) or *harato pusako* (Min.) for inherited property. Combinations of words from the two languages are also quite frequent, like in *harta pusako*. In order to achieve some standardization, I have in principle employed the Minangkabau terms; only in direct quotations have I given the (usually Indonesian) forms. A glossary of Minangkabau and Indonesian terms is appended to the study (pp. 429-436); in the cases where Indonesian and Minangkabau words have been used for the same term, the Indonesian has been inserted in brackets.

With regard to the Indonesian and Minangkabau language in general I have followed the new orthographic convention which was introduced in 1972. It is contained in a government publication entitled *Edjaan Bahasa Indonesia Jang Disempurnakan*. The main changes are set out below.

Old System	New System
j	*y*
dj	*j*
tj	*c*
nj	*ny*
sj	*sy*
ch	*kh*

Except for some direct quotations, I have transcribed all sources using the old orthographic system into the new one. The glottal stop in words like *mamak* has been transliterated with the letter *k* as has become customary in contemporary Minangkabau and Indonesian; older Dutch writers, by contrast, employed the letter *q* or an apostrophe. The number *2* following an Indonesian or Minangkabau word, like in *harta2*, is the conventional abbreviation for the duplication of the word. Duplication generally indicates the plural number or undefined quantities.

In the transcription of Arabic terms I have followed Fyzee (1955). However, most Islamic legal terms appear in their Indonesianized form.

Finally, it should be mentioned that, unless I have indicated otherwise, all translations from Dutch or Indonesian sources are mine.

ABBREVIATIONS

A.	*Angku*
AR	*Assistent Resident*
art.	*Artikel* (section)
B	Brother
BGB	*Bürgerliches Gesetzbuch* (German Civil Code)
B.W.	*Burgerlijk Wetboek* (Dutch Civil Code)
Ch	Children
CKL	Candung Kota Lawas
CPNTR	*Corops Penasehatan Nikah Thalak Rujuk* (Advisory Committee of the Registrar of Marriage, Divorce, and Remarriage)
D	Daughter
D.	Dutch
DPRN	*Dewan Perwakilan Rakyat Negeri* (Elective Village Parliament)
Dt.	*Datuk*, *Datuek* (title of higher *adat* functionaries, particularly of *panghulu*)
e	elder
F	Father
G.	German
GSB	*Gubernur Sumatera Barat* (Governor West Sumatra)
ha	hectare
I.	*Inyiek*
Ind.	Indonesian
I.S.	*Indische Staatsregeling*
Isl.	Islamic
KAN	*Karapatan Adat Nagari* (*Nagari Adat* Council)
KN	*Kerapatan Negeri* (*Nagari* Council)
KUA	*Kantor Urusan Agama* (Office for Religious Affairs)
LKAAM	*Lembaga Kerapatan Adat Alam Minangkabau* (Association of the Minangakabu *Adat* Councils)

LR	*Landraad* (Dutch colonial court)
M	Mother
MA	*Mahkamah Agung* (Supreme Court)
Min.	Minangkabau
MUBES	*Musyawarah Besar* (Full meeting of the LKAAM)
par.	*Paragraph* (section)
PN	*Pengadilan Negeri* (State Court)
PP	*Peraturan Pemerintah* (Government Regulation)
PT	*Pengadilan Tinggi* (State Appeal Court)
P3NTR	*Pembantu Pegawai Pencatat Nikah Thalak Rujuk* (Village Registrar of Marriage, Divorce, and Remarriage)
R.B.G.	*Rechtsreglement voor de Buitengewesten*
R.R.	*Regeringsreglement*
RvJ	*Raad van Justitie* (Dutch colonial Appeal Court)
S	Son
S.	*Staatsblad* (Government Publication)
SK	*Surat Keputusan* (Provincial Regulation)
WN	*Wali Negeri* (Village Mayor)
y	younger
Z	Sister

INTRODUCTION

Learn the laws of inheritance and teach them to the people;
for they are one half of useful knowledge.

Mohammed (Fyzee 1955: 329)

When the prophet created this aphorism he had in mind the rules of inheritance law revealed to him by Allah. We could apply it to social anthropology as well since the inheritance of property and the succession to positions of socio-political authority are among the most important elements of social organization. They are the vehicles of continuity which maintain property and authority through time. In many societies, and particularly in those generally studied by anthropologists, inheritance and succession are closely interconnected with kinship and descent and provide the economic and political substance for the existence and continuity of kinship- or descent-based social groups. They are, as it were, the flesh on the bare bones of kinship relations. The importance of inheritance has, of course, not escaped the notice of social and legal anthropologists, and in recent years several studies have ably demonstrated the point (Radcliffe-Brown 1952, Goodenough 1951, Leach 1961 b, Goody 1962, Lloyd 1962, Gray and Gulliver (eds.) 1964, Derrett (ed.) 1965, Gluckman 1972, Moore 1969, Burling 1974). Yet in general, property and inheritance have rather been treated as an appendix to economic and kinship studies. In particular, "methods of inheritance have received little systematic treatment" (Goody 1962: 11), and "there are only a few accounts available which give us more than oversimplified statements" (Pospisil 1971: 347, cf. Moore 1970: 279 f.). This study attempts both: To make a contribution to the systematic study of inheritance and inheritance law, and to give a detailed statement for one so-

ciety, the Minangkabau.

The Minangkabau inhabit the west coast of Sumatra. The greatest part of the traditional Minangkabau world, the *alam Minangkabau*, is today comprised of the province of West Sumatra of the Republic of Indonesia. Within the provincial borders, in the Padang Highlands, lies the nucleus of the Minangkabau world, the *darek*, which was divided into the three districts (*luhak*) Tanah Datar, Agam, and 50 Koto by the legendary rulers and law-givers Dt. (*Datuk*) Perpatih nan Sabatang and Dt. Katumanggungan. Surrounding the *darek* was the *rantau*, those areas which, according to the legendary history transmitted in the *tambo*-legends, were settled and colonized by the inhabitants of the *darek*. The *rantau* comprised the Padang lowlands, the coastal plains of West Sumatra in general, and large parts of the present provinces Riauw and Jambi. Together, *darek* and *rantau* extended nearly all over central Sumatra (cf. Naim 1974: 33 ff., 91 ff.). In the 15th or 16th century, a part of the Malayan peninsula, Negri Sembilan, was settled by Minangkabau immigrants and since then there have been constant relationships between Negri Sembilan and Minangkabau. Sometime in the 14th century a kingdom was established in the Padang Highlands. Little is known about the history of the Minangkabau kingdom but there is evidence that it had important external and trade relations with the surrounding areas and islands. But when the Dutch landed on the west coast in 1600, the coastal plain was under the control of Achenese merchant governors. The reports which reached the outside in the second half of the 17th century all indicated that no actual power was exercised by the king. The Minangkabau world consisted of *nagari*, village states, which seem to have been quite autonomous. Of the *nagari* in the *darek* it was said that they were governed by the *panghulu*, the leaders of the *nagari* matrilineages. The *nagari* in the *rantau* were said to be governed by a *rajo*, a king, possibly a representative of the King of Minangkabau. The Dutch had ousted the Achenese as rulers in the main trading centers at the west coast in the second half of the 17th century. But it was only in the beginning of the 19th century that Dutch colonial rule was established in the Padang Highlands and the three districts. Since the Republic of Indonesia has established a regular system of administration, the province of West Sumatra is now subdivided into 8 districts, *Kabupaten*, which are headed by a *Bupati*. Three of these districts more or less correspond to the old "three districts" Tanah Datar, Agam,and 50 Koto. Each *Kabupaten* is divided into 5 to 10 subdistricts, *Kecamatan*, headed by a *Camat*. The *Kecamatan* con-

sist of 5 to 12 *nagari*, which total 508 in the province. Besides the 8 *Kabupaten*, there are 5 townships or *Kotamadya*, Padang, Bukit Tinggi, Payakumbuh, Padang Panjang and Sawah Lunto, which have their own administrations and which together comprise 35 *nagari*. Most of the present *nagari* are also *nagari* according to *adat*, the traditional political constitution of Minangkabau. However, during Dutch colonial rule and also after Independence, some *adat-nagari* have been split and others united for administrative purposes. The contemporary population of the province numbers 2.792.221, 389.793 of whom live in the towns. Thus approximately 86% of the population live permanently in the *nagari*; most of the townships have a rather *nagari*-like character, too. Minangkabau have a long tradition, of "going to the *rantau*", of a temporary voluntary migration (cf. Naim 1974). Nearly as many Minangkabau are estimated to live outside the province of West Sumatra as within.

Minangkabau is predominantly an agricultural area. In terms of measures of economic productivity, West Sumatra is one of the poorest of Indonesia's provinces as there are no highly remunerative natural resources and but little modern industry. The standard of living, however, is good and there is as yet but little poverty. The main subsistence crop is rice, which is cultivated on irrigated fields (*sawah*) and dry fields (*ladang*). The quality of the field differs widely, but in some areas two harvests per year are possible, and in many areas people can harvest 3 times in two years. Coffee, cinnamon, nutmeg, cloves, and chili-peppers are grown as cash-crops. Rice is grown as a cash-crop, too. At the coast and in the areas surrounding the lakes, fish are an important means of subsistence and are also sold in the markets. Many *nagari* have long developed specializations in particular economic activities. One is known for its gold and silver works, another for its weaving, and yet another for its blacksmithing industry (Kahn 1975, 1976; for detailed geographic and economic data see Scholz 1977).

Within Indonesia, Minangkabau is represented in nearly each small town by the people who have gone *merantau* and work as traders, proprietors of restaurants and administrative officials (cf. Naim 1974). A look at the street map of Jakarta, the capital of Indonesia, indicates the number of Minangkabau who were prominent in the struggle for independence and who helped to govern Indonesia afterwards. Politicians and intellectuals such as Hatta, Natsir, Sutan Syahrir, Abdul Muis and Haji Agus Salim are Minangkabau, as also are others whom the street names do not mention any more such as Tan Malaka, the leader of the former Communist Party of

Indonesia. Besides, the Minangkabau are counted among the most devout Muslims in Indonesia. Any visitor will quickly realize that the *puasa*, the fasting, is kept very strictly in Minangkabau. Minangkabau has produced a large number of prominent Islamic scholars. Many Islamic schools have been established since the beginning of this century which attract pupils from all over Indonesia (cf. Taufik Abdullah 1971, 1972). It is estimated, that in Jakarta, about 60% of the *khatibs*, the preachers who give sermons during Friday prayers, are Minangkabau (Naim 1974: 183).

Of course, the Minangkabau are also known for their "matriarchal" *adat* (socio-cultural and legal system), their *adat pusako* (*adat* of matrilineal heritage) or *adat kamanakan* (*adat* of the sister's children). This latter aspect was of particular interest for the Dutch and other foreign administrators and anthropologists. This Islamic society had a social system which fulfilled nearly all prerequisites of an ideal matrilineal system: The population was organized in matrilineal descent groups. Authority was with the mother's brother. Residence was duolocal or uxorilocal. There were no conjugal families. There was the highest rate of polygamy in Indonesia. Cross-cousin marriages were considered ideal. There was much to make anthropologists curious. And Minangkabau did make anthropologists curious. Among the Dutch scholars of Indonesian cultures and *adat* law, Minangkabau has always taken a prominent place. But as most reports on Minangkabau were written in Dutch, most of the available literature escaped the notice of the non-Dutch reading anthropological public. Publications in more widely read languages were rare until recently. In German, little has been written (Lublinsky 1927, Scholz 1977) since Kohler (1910) acquainted the German public with Willinck's monumental (950 pages) *Het Rechtsleven bij de Minangkabausche Maleiers* (1909) (The Legal Life Among the Minangkabau Malays). French publications are equally rare. Collet's book on the peoples of Sumatra (1925) only recently has been followed by Cordonnier's report (1974). In English, too, there had been only a few publications. After the work of Loeb (1934, 1935) and Cooper-Cole (1936, 1945), it was mainly De Josselin de Jong's thesis on socio-political organization in Minangkabau and Negri Sembilan (1951) and the inclusion of Minangkabau among the societies discussed in Schneider and Gough's volume *Matrilineal Kinship* (1961) which made Minangkabau known to the general English reading public.

Only in the 1960's did there begin what may be called a Minangkabau-boom. Publications on Minangkabau, written by foreigners and Minangkabau social scientists themselves, appeared in an increasing number, and most

of them were based upon field research (Maretin 1961, Fischer 1964, Tanner 1969, 1970, 1971, Cordonnier 1974, Kahn 1975, 1976, Dobbin 1975, 1977, Evers 1975, Thomas 1977, Scholz 1977, F. and K. von Benda-Beckmann 1978; Umar Junus 1964, Bachtiar 1967, Taufik Abdullah 1966, 1971, 1972, Sa'danoer 1971, Naim 1974). Minangkabau thus certainly is no virgin field of study. Yet the words of De Josselin de Jong still hold true, that:

"...the social organization of the Minangkabau is known generally but superficially ...'Generally', in both meanings of the word: there is a fairly adequate general acquaintance with the Minangkabau among anthropologists who are not Indonesia specialists; and the specialists have by now an adequate general picture of the overall structure of this society, but are at a loss whenever one proceeds from the general to the particular" (1975:20,25).

The research which my wife and I carried out focussed upon three particulars:

1. The socio-political organization of one *nagari*. In this study, only a general account will be given of the socio-political organization of one *nagari*; we hope to give a more systematic general account of Minangkabau socio-political organization in a later publication.
2. The processes of dispute-settlement in the *nagari* institutions and in the State Courts, with particular emphasis on the problems resulting from the fact that the State Courts are mandated to apply substantive *adat* law but in doing so are bound by rules of procedure and evidence which have been modelled after Dutch law. These problems will be dealt with in a thesis my wife is currently preparing.
3. The Minangkabau system of property relationships and inheritance, of which there has been no systematic study since the writings of Willinck (1909) and Guyt (1936). This last topic will be dealt with in this study.

A contribution to the ethnographic knowledge of Minangkabau is, however, not the sole purpose of my study. It is further meant as a contribution to the anthropological study of property, inheritance, and law. Minangkabau is an excellent example with which to illustrate the theoretical and practical difficulties of legal anthropology. The legal system which pertains to property and inheritance affairs is pluralistic: There is *adat*, the indigenous Minangkabau system, Islamic law, and written law (statutory colonial and national law). Besides, a variety of institutions are given an active part in the social processes of dispute-settlement and dispute-prevention. There has, moreover, been a considerable change

both in the legal systems as well as in the practice of handling property and inheritance affairs, in particular a process of ever increasing individual autonomy in property affairs and of concentrating property and inheritance within the conjugal family. Such changes are the more striking, because they are taking place in a society which still adheres to an ideology of matrilineal descent.

To deal with these problems, a different approach than that usually taken by legal anthropologists is necessary. The approach taken in this study tries to fulfill Moore's prophecy, that "in the future, law and legal institutions are likely to be analyzed simultaneously from long-term historical perspective, and from the perspective of individual-centered, short-term, choice-making instrumental action and interaction" (1970: 294 f.). In the first chapter I shall outline the assumptions and hypotheses underlying this approach. Here I shall only give a brief summary of the structure of the study indicating the main principles on which it is based.

This study does not just describe systems of property and inheritance. The system of property relationships is only one aspect of the total social organization (Moore 1970: 253, Nader and Yngvesson 1973: 886). In some societies it is so well integrated into the other aspects of social organization that it is nearly impossible to dissect it and treat it in isolation. That this is often so in traditional societies has already been stated by Maine, who held that the law of things can hardly be divorced from the law of persons (1905: 230). Yet if one wants to concentrate on one aspect, the dissection must be made, particularly in those situations where a pluralistic system of cognitive and normative conceptions pertains to one field of social relations. However, it is necessary to the structure of the study that, before the systems of property and inheritance are described, an outline must be given of the social and political framework in which they operate and of which they are a part. I shall therefore start my study with an overview of the socio-political organization in Minangkabau (Chapter 2) and shall then give a brief account of the development of the pluralistic situation in the administrative and legal field (Chapter 3).

Property and inheritance in Minangkabau will then be treated under three headings. First I shall describe the three systems of property and inheritance that exist in Minangkabau (Chapter 4). In the second part (Chapter 5) I shall illustrate how the Minangkabau actually handle their property and inheritance affairs, and try to assess the degree to which

their actions are influenced by the cognitive and normative conceptions which the three systems offer. The question of by reference to which *system* the Minangkabau use to legitimate their actions here steps into the background. The question remains important, but the emphasis here is on the actual conceptions used. For even if one system is *said* to be used, this does not yet indicate which concrete conceptions are employed. Conceptions of one system may be used in the guise of another, and new conceptions may be construed and be declared to be part of a system. Many cases described in this part of my study involve conflict, and in many cases institutions of conflict resolution take an active part in the process of inheritance. Yet my concern is not with trouble cases per se. In terms of common anthropological language, the cases discussed are extended ones which are defined by reference to an analytical point of reference: inheritance. In the second section of Chapter 5 I shall isolate the various ways of bringing about inheritance, and attempt to analyze which role they play and have played in historical perspective. In the third part (Chapter 6) I shall concentrate on the application, change, and creation of legal conceptions in historical perspective. A differentiated approach is required here, for in Minangkabau there are several "authors" who continuously produce and reproduce legal meaning: The courts, the *adat* institutions, the literature, the legal experts within and without the *nagari*, and, last but certainly not least, the "people". I shall restrict my description and analysis to the conceptions that refer to what in my view are the most crucial aspects of the systems of property and inheritance: the problem of society's members' autonomy over property and the representation of time in the conceptual system in which property relationships are expressed.

After the description and analysis of the systems of property and inheritance (Chapters 4,5,6) I shall "put" property and inheritance "back" again into the social organization in general. In the concluding analysis I shall try to interpret the Minangkabau system of property and inheritance and the changes that have occurred therein as part of the overall social and political organization (Chapter 7).

With this organization of my data I hope to come close to a description and analysis which pays due regard to the dialectical process of social reality, as it has been reformulated recently by Berger and Luckmann (1967), and which Gluckman has cast into the formula "that law can only be understood through cases, and cases can only be understood through law" (1973b: 622). The systems described in Chapter 4 are, of course,

nothing but the result of the social processes by which inheritance is carried out and by which legal meaning is produced. They must be regarded as differentiated bodies of cognitive and normative conceptions, changing through time. Yet an understanding of the differentiating processes presupposes the knowledge of the systems, which are therefore best described first in order to make clear *what* is being differentiated. I do not claim that my ordering of the data is the only adequate representation of the dialectical process through time. The only thing I can say is that there is probably no "really" adequate form, and that the way I have chosen has been chosen conscientiously.

The kind of data employed in this study raises some problems which need be briefly mentioned. The material upon which my interpretation of Minangkabau social organization and its property and inheritance systems is based is very heterogenous. To a large extent, it is drawn from earlier sources in the literature; for the rest it is material which my wife and I have collected during our field research in Minangkabau. Our data partly refer to the contemporary situation in Minangkabau, and partly to the past as it is envisaged by our informants. This raises the question of the proper periodization of the information. As Kahn has recently pointed out, the Dutch literature has often presumed an "ideal-type" matrilineal Minangkabau society which is generally taken to be *the* Minangkabau social organization, whereas it in fact only represents the system as it was under Dutch rule, reflecting all the influences which Dutch rule had upon it (1976: 65, 79 f.). With the general point I agree. Most data were collected in the 19th and 20th century after the establishment of Dutch rule and the turmoil of the Padri-war. And it has to be admitted that "a consistent picture of pre-Padri social organization has not yet emerged" (Kahn 1976: 80). Yet I think that the immense wealth of available data allows a much more differentiated analysis than is admitted by Kahn, and I cannot share his view that the picture of the traditional matrilineal Minangkabau system was basically the product of Dutch colonial policy. But the fact remains that there are hardly any data on pre-Padri Minangkabau, and my description should therefore, unless I indicate otherwise, be taken as to refer to Minangkabau since the beginning of the 19th century.

The available data will not always permit this study to live up to its analytical frame of reference. A duly differentiated account can

be given at least partly of the contemporary situation. Also with respect to the development of *adat* in the literature and in the courts, this can be done tolerably well. However, for the development of *adat* in the *nagari* and for the actual practice of property and inheritance affairs in historical perspective we have to depend on very general and undifferentiated reports.

A further comment must be made on the representativeness of the data. As far as the description of the socio-political organization and the systems of property and inheritance and their historical development are concerned, the description will hold true more or less for Minangkabau as a whole; important variations from the general pattern will be mentioned. This information is largely derived from the literature, of which we made an intensive study in Dutch libraries before we went to the field. The data on court practice which we have collected in the field, mainly refer to the State Courts (*Pengadilan Negeri*) in the districts of Agam, Tanah Datar, and 50 Kota. With the friendly help of the chairmen and the staff-members of these courts, we could check the court registers and study court records and judgements as far as these were available. For the period of 1968-1974 we could get a fairly differentiated idea about the courts' case-load and the way in which suits were handled formally. Additional data were collected through structured interviews and casual conversation with the judges and the other staff-members. When our knowledge of the languages (Indonesian and Minangkabau) had become sufficiently good, we were also able to attend court hearings and systematically followed several processes. According to our division of labour, this part of the research was carried out by my wife, who will report most of her findings in her thesis.

The particular data on socio-political organization, the system of *adat*, and the practice in property and inheritance affairs - both for the historical development and the contemporary situation - were collected in the *nagari* Candung Kota Lawas, where we spent about 10 months of our research. Their particular character will always be indicated.

Candung Kota Lawas (CKL) is located in the *Kecamatan* IV Angkat Candung in the *Kabupaten* Agam. It lies adjacent to the main road that connects Bukit Tinggi with Payakumbuh. The *nagari* extends from this road to the slopes of the vulcano Merapi from where the ancestors of the Minangkabau descended according to the legends. CKL has always been one *nagari* according to *adat*. During the Dutch colonial rule, it had been divided into two administrative *nagari*, Candung and Kota Lawas, in the 1830's.

In 1915, Candung and Kota Lawas were reunited. CKL is a large *nagari*. It comprises some 20 settlement centres and covers an area of approximately 2.300 hectares (see map on p. V). According to the Government census of 1971, the population numbered 9.636 persons, 4.358 of whom are indicated as "children" (probably meaning:unmarried) and 5.278 as "adults". 3.444 persons originally from CKL live in the *rantau*, 2.291 of whom are children, 496 are married persons, and 675 are individuals who work as dealers and military and administrative officers. The sex-ratio is more or less even: Of the children there were 2.166 boys and 2.192 girls. Among the adults we find a preponderance of women, 2.970 as compared with 2.308 men, and this difference is matched with a corresponding preponderance of men among the persons living in the *rantau*.

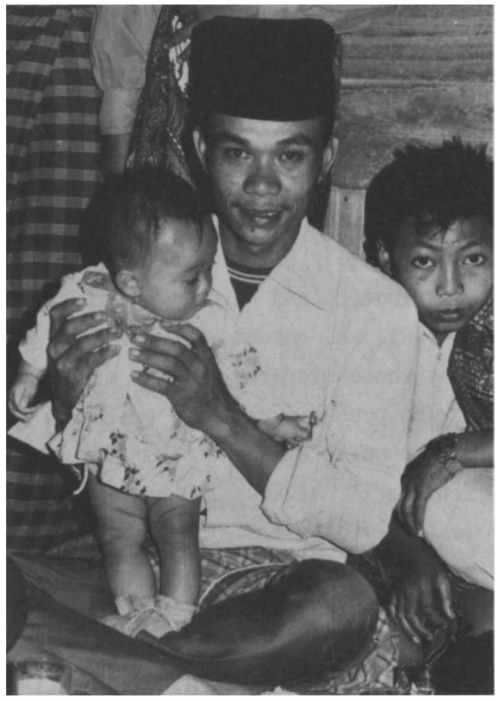
The people of CKL mainly live by agriculture. The *nagari* has an area of 1.115 hectares of irrigated rice-land. The average of 0.116 ha per capita is slightly higher than the average for the district Agam (0.115) and definitively higher than that of the whole province (0.098). If calculated on a per capita basis and disregarding the uneven distribution of land within the *nagari*, the harvested rice is still sufficient to support the subsistence needs of the whole population (using a similar calculation as Kahn 1976: 76). In addition to rice, cinnamon and coffee as well as some tobacco, vegetables, and chili peppers are grown, partly for subsistence and partly for the market. The people have few cattle; there were only 284 *karbau* (water buffaloes) and 230 cows kept in CKL. Some people engage in petty trade with cattle, tobacco, and clothes, some families run rice-mills and coffee-shops. Others make embroideries for gowns or make baskets, a small home industry.

We spent ten pleasant months in CKL. Once it had been established that we were neither development experts nor missionaries, we were quite warmly received by the villagers. That foreigners showed interest in their lives and the social organization of their *nagari* was no surprise to most villagers, who are well aware that their "unique matriarchal *adat*" gives them a special status among Indonesia's ethnic groups. It was within their understanding that our research primarily was aimed to further our own academic careers, for success in the modern educational system is something which is highly valued in Minangkabau. This enabled us to live there with a minimum of hypocrisy.

We collected our data in various ways. Lengthy interview-sessions with *adat* experts and common villagers provided much information, but often more valuable information was gained in the daily conversation we had



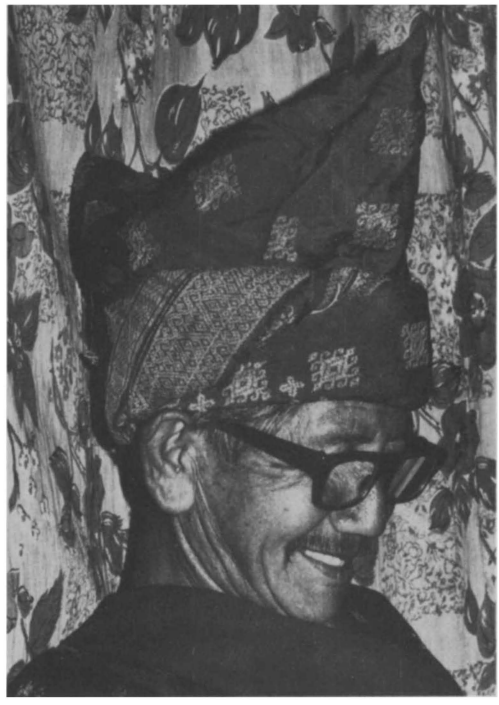
Itam



Sidi Katik



Palimo Putih



Haji Dt. Bagindo Basa

Friends and teachers in Candung Kota Lawas

with neighbours and acquaintances. We were regularly invited to ceremonies, mostly weddings, and were also allowed to attend the meetings of the *Nagari Adat* Council (*Karapatan Adat Nagari*) and of the *Nagari* Council (*Kerapatan Negeri*) when matters of *nagari* policy or disputes were discussed and decided. A part of the *nagari* area, comprising approximately 35 hectares, was mapped to get a clear impression of the distribution and holding of the matrilineages' rice-land (see map on p. 145), and genealogies were made of the kinship networks of the persons whose property affairs we got to know best.

The problems which we encountered during our research varied greatly. It was quite easy to obtain data on the ideal *adat* system, no villager finding it difficult to give elaborate lectures on *adat* topics. But it was often difficult to collect information on concrete social and property relations and matters of *nagari* politics. The response to our curiosity differed greatly here; men, in particular, could become very evasive when such matters were discussed, women usually were much more straight forward. The information we received was often selective, and sometimes we were "fed" particular information. We were content when we could detect such cases on the basis of our prior knowledge. As we moved into the *nagari* from which the relatively greatest number of disputes had reached the State Court, and as we had been able to study the relevant court records before we had moved, we often knew at least one version of the events to which new information could be related. But in general, we learnt to live and do research knowing well that we could not always cross-check the information we were given, not to speak of ascertaining its "truth". In the presentation of the materials, particularly in the stories about property and inheritance affairs told in Chapter 5, I identify the source and kind of information upon which my reconstructions are based.

CHAPTER ONE

BASIC ASSUMPTIONS AND HYPOTHESES

The method employed I would gladly explain
While I have it so clear in my head,
If I had but the time and you had but the brain,
But much yet remains to be said.

L. Carrol, *The Hunting of the Snark*

A systematic approach to the study of property and inheritance and the law which involves them requires that assumptions and methods be explicated. This I shall do in the first Chapter. I shall outline my approach to the categorization of social phenomena for anthropological inquiry and explicate my assumptions about the nature of human social organization.[1] With this done, I shall be able to indicate what I understand to be "law", "property", and "inheritance".

A. THE ANALYTICAL FRAME OF REFERENCE: SOCIAL FUNCTIONS

The ultimate aim of anthropology is the scientific understanding of human social and cultural behaviour and a systematic understanding of the distribution in time and space of its manifestations (in the words of Goldschmidt 1966: 2). The theories and methods developed by post-evolutionary social anthropology have mainly centered upon the analysis of the internal structures of single societies, analyzing the functional interconnections between their constituent elements. As these elements, generally called institutions, vary from society to society, the result of the study of one society cannot be extrapolated to others. But a scientific understanding of human social and cultural behaviour can only,

if at all, be achieved through intercultural comparison. This raises the question of what should be compared. The dominant approach has been the comparison of institutions. As institutions differ from society to society, efforts were made to define them in a way as to make the definitions cross-culturally applicable. This raises two questions which have not always been kept apart:

1. How far can such resulting conceptual systems, with their inherent problems of ethnocentrism, be appropriate for the comparative study of human societies?
2. Can one in the first place reasonably derive one's conceptual frame of reference from institutions per se?

The discussion of these questions has occupied anthropologists' attention to a degree that it has been more or less equated with anthropological theory in general. One of the most notorious discussions to plague legal anthropology has focussed on the quest for a cross-culturally applicable definition of the concept of law; and in this discussion the question of whether concepts taken from western legal languages can be successfully employed in the description and analysis of non-western legal systems has, naturally, been prominent. This discussion found its culmination in the so-called Bohannan-Gluckman controversy (see Nader 1965, 1969, Bohannan 1969, Gluckman 1969, 1973 a). Some stressed that the social reality of the societies studied would be distorted if the terms of western legal systems were used, a point already made by the Dutch *adat* law scholar Van Vollenhoven in 1909 (1909: 42 ff.). The discussion found its preliminary end in a compromise on a "comparative analytical system", a conceptual system to which legal phenomena and theories of various societies could be related (Nader 1969: 4). Unfortunately, however, just what this comparative analytical system should look like has yet to be determined.[2]

But the basic problem is not so much the question of concepts and the appropriate analytical language, but what the concepts should mean. As Moore has pointed out recently, what the participants in the controversy mentioned above were really concerned with was the question: What do we study in order to find out what? (1969: 338, 340, 343). On this level, most anthropologists have taken institutions as their point of departure; the institutions were then (re-)defined in order to make their cross-cultural study possible. These attempts have provoked endless terminological disputes and resulted in the resignation that all attempts at

cross-cultural definitions are vain, and in vain.[3] Both consequences are closely interrelated: The resignation is due to the insight that law, marriage, or ownership, conceived of as a social phenomenon (institution), cannot be satisfactorily defined for cross-cultural comparison; or, conversely, it is due to the failure to realize that, as Pospisil has put it:

"... law (insert: marriage, ownership, money etc., v.B.B.) as a theoretical and analytical device is a concept which embraces a category of phenomena 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" (1971: 39).

The terminological disputes are due to the fact that, although all writers agree that the value of a concept depends on its analytical and heuristic value, there is no consensus concerning what is of heuristic interest. And as concepts are usually applied to institutions, and as institutions differ from society to society, terminological and definitional disputes are almost unavoidable.

One of the more constructive results of these disputes has been the recognition that the terms denoting western institutions, such as law, marriage, ownership etc., are not a monolithic bloc but rather a "bundle of rights". The bundle-of-rights metaphor, which goes back to Maine's analysis of ownership (1883),[4] has been introduced into the discussion of marriage by Leach (1961 a: 105, cf. Goodenough 1970). Yet when Leach enumerated ten distinct classes of rights with which the "institutions commonly classed as marriage" are concerned (1961 a: 107), he transcended the border drawn by the usual definitions of marriage, stating "that in no single society can marriage serve to establish all these types of rights simultaneously; nor is there any one of these rights which is invariably established by marriage in every known society" (1961 a: 108). In his later essay *Rethinking Anthropology*, Leach argued that the anthropologists' concern should not be "comparison", understood as the comparison of institutions, but "generalization". The approach necessary for generalization was explicated in an analogy with topology: the analogy directs thinking to the organizational ideas that are present in any society as constituting a mathematical pattern (1961 a: 2). Leach illustrated this idea with a reference to the topology of an elastic surface:

"If I have a piece of rubber sheet and draw a series of lines on it to symbolize the functional interconnections of some set of social phenomena and I then start stretching the rubber about, I can change the manifest

shape of my geometrical figure out of all recognition and yet clearly there is a sense in which it is the same figure all the time. The constancy of pattern is not manifest as an objective empirical fact but it is there as a mathematical generalization" (1961 a: 7).

By analogy, society should be considered not as an assemblage of things (institutions) but an assemblage of variables and their relationships. The same relationships can become manifest in different institutions in different societies. As Leach put it:

"(We should) cease to be interested in particular relationships (those embodied in institutions, v.B.B.) and concern ourselves with the regularities of pattern among neighbouring relationships. In the simplest possible case if there be a relationship p which is intimately connected with a relationship q then in a topological study we shall not concern ourselves with the particular character of p and q but with their mutual characteristics, i.e. with the algebraic ratio p/q. (Generalization demands) that a small cluster of interconnected facts must be treated as an isolate expressing a particular principle of social mechanism which is embodied in the ratio p/q" (1961 a: 7 f., 11 f.).

While this is, in my view, a fruitful way of approaching the elements of social organization, it does not yet tell us *by reference to what* the relationships are to be selected. In other words: On the basis of what assumptions are the "interconnected facts that express a particular principle of social mechanism" conceived of as a "cluster" or an "isolate"?

A general framework into which Leach's ideas can be and indeed have been built, has been provided in Goldschmidt's essay *Comparative Functionalism* (1966). Goldschmidt, following Aberle et al. (1950: 100 ff.), calls for the comparison of what he calls "social functions", "that is the actions requisite or desirable for the self-maintenance of the social system", which are defined by reference to problems with which every human society is faced (1966: 33, 31). These universal functions are derived from a model of society which is based upon general assumptions about the nature of man and human society. The model of society operates within a field which is constituted of three basic parts: The psychobiological character of man, the ecosystem, and the temporal dimension (1966: 33). By his cultural mode of life man is enabled to develop and to pass on complex forms of behaviour and to collaborate for mutual assistance and protection in large organized entities (1966: 57). These characteristics enable us to call elements of social organization "instrumentalities" and the instrumental role leads to the notion of functional requisites (1966: 57). Goldschmidt indicates two general and rather broadly defined classes of functions:

1. Those relating to human needs like obtaining food, providing shelter etc.
2. The provision of the institutional machinery to maintain the social system as a system (1966: 58).

The distinction between these two classes of functions is difficult if not impossible to draw; this is, however, not crucial to our problem. Primarily, the study of social organization demands the decomposition of the second class of social functions into specific ones, which obtain their specificity by reference to a particular problem with which each human society is confronted. The unit of study is thus no longer defined with reference to institutions but rather with reference to social functions which may be fulfilled by different institutions in different societies. This field of study closely corresponds to what Fortes calls "domains" of social organization (1970 a: 95 ff.), which are conceived of as socio-spatial sectors of social organization (1970 a: 97). Each such sector, as Fortes puts it, "comprises a range of social relations, customs, norms, statuses, and other analytically discriminable elements linked up in nexuses and unified by the stamp of distinctive functional features that are common to all" (1970 a: 97).

However, these sectors, as I visualize them for the purpose of my study, are abstract frames of reference. They receive their distinctive functional feature by reference to a universal human problem, not through reference to the empirical reality of the elements filling them. The sectors are analytically discrete; the empirical elements, however, are not. The sectors can be thought of as exclusive and complementary, but what is within a sector need not be exclusive - is not "either red or blue", as Fortes puts it (1970 a: 97). The functional requisites filling one sector may well fill another as well. For the purposes of my study, domains have the methodological role of providing analytic frames of reference for cross-cultural generalization, not the role of isolating empirical phenomena. In a later section of this chapter, I shall try to delineate the social functions of property and inheritance on this basis.

It must, of course, be admitted that in naming social functions or domains of social organization, one cannot escape completely from ethnocentric bias. Such bias is probably inevitable.[5] The advantage of the approach, however, is clear: The concepts denoting institutions are dereified, and the Leachian resignation, expressed in his 1955-paper on the definition of marriage (1961 a: 105), is turned into a positive model.

B. SOCIAL ORGANIZATION: THE RESTRICTION OF SOCIETY'S MEMBERS' AUTONOMY

Social and legal anthropologists are mainly concerned with the second class of functions mentioned above: The provision of the institutional machinery to maintain the social system as a system. The way in which society's members solve the organizational problems of maintenance through their thoughts and actions is the empirical social organization. As Goldschmidt put it, social organization "must be seen as the means by which the ego-centered psychobiological needs of the individual are both given satisfaction and held in check ..., for these ego-oriented needs can only be attained in a social interaction system" (1966: 59). Social organization involves the essential conflict between self-interest and community-interest (1966: 132). Thus conceived, social organization is, of course, a relative conception. It mediates between the self-interest of society's members and the interests of the community, but the way in which it does so differs significantly from society to society. Some criteria by means of which we can differentiate the various forms of social organization will be discussed below. In each society, however, whatever its organizational structure, social organization always indicates the *relative* degree to which the autonomy of society's members is recognized and restricted. The extremes, complete individual autonomy or complete restriction of individual autonomy, cannot exist in human society. The degree of recognition/restriction of autonomy, of course, varies considerably in the various fields of social life.

The relation of the individual to the social entity of which he is a member is also relative in another meaning: When we speak of a social system or a society, we generally think of an entity which itself is autonomous in relation to more inclusive groups, and within which the individual members' autonomy is restricted and recognized. But in fact, each social formation which we call society is not just structured as a composite of individuals but has less inclusive social formations, which mostly have group-character. In relation to its individual members, these groups in many aspects represent the entity in which the members' autonomy is restricted and recognized, whereas in relation to the other groups and the more inclusive entity, the group itself is the entity whose autonomy is recognized and restricted. Borrowing Moore's words, we can better speak of "semi-autonomous" groups (1973: 722).[6]
The conceptualization of the social formations in which the members'

autonomy is recognized/restricted in terms of groups is, of course, only one if the most frequent and important paradigm of human social organizational forms. There are other formations with less well defined boundaries and with less continuity, which in anthropological terminology go under the names of quasi-groups, action-sets or networks,[7] and which also mediate between the individual and the more inclusive social entity. It is therefore more appropriate to speak of "semi-autonomous social fields" (Moore 1973: 722). Thus when we speak of societies or groups we should always keep in mind that a) in each society the restriction and recognition of individual autonomy is mediated through semi-autonomous groups or quasi-groups, and that b) the entities of which we speak of as societies in most cases are semi-autonomous groups themselves, whatever their claim to independence or sovereignty may be. In the contemporary historical period with its extended supra-national forms of organizations and networks, all societies in some respect are semi-autonomous in relation to world society.

The main instruments by which a society's members solve their organizational problems are institutions. They come into existence when people feel recurrently faced with the same or similar problems; then their mental and physical activity tend to become habitualized. The standard social process by which the problem is to be solved, its consequences, the values connected with it, and the status of the participants become set in conceptions which state what things are and why they are what they are (cognitive conceptions) and which state how things should, may, or must be or have been (normative conceptions). Institutions lay down generalized channels of problem-solution in terms of cognitive and normative conceptions. With Berger and Luckmann we can speak of "reciprocal typifications of habitualized action by types of actors" (1967: 72).

To a great extent, human activity can be made meaningful by its relation to the institutional conceptions. The relation can be either negative or positive. It is positive if the relevant human activity is conceived of as "falling within" or "being in accordance with" the institutional conceptions. It is negative, if it is conceived of as "deviating from", being "not in accordance with" or "in violation of" the institutional conceptions.

Non-habitualized behaviour to a great extent is made meaningful through typification, too. The typified but statistically untypical behaviour usually is not related to institutional conceptions but is,

cognitively, contrasted to the totality of human behaviour and, normatively, to the underlying values pertaining to human behaviour in general. Thus "killing" in most societies is a typification of behaviour which is not usually habitualized and institutionalized. This typified, but atypical behaviour is contrasted with and related to the notion of "not killing". Typified atypical behaviour constitutes a problem in each society, and all societies have developed institutions to deal with it.

But it is not human activity only, which is made meaningful in terms of cognitive and normative conceptions. The human mind tends to bestow meaning upon any kind of occurrence; or rather, on anything that it perceives as a set of facts or "situation-image" (F.v.Benda-Beckmann 1976: 362). In most instances, such situation-images will be constituted by human behaviour, but they may also be formed by occurrences in human life, like birth or death, which are not generally subsumed under the concepts "behaviour" or "activity". Situation-images may further be constituted by the presumed activity of non-human or supra-human beings like gods, demons, witches, animals, or nature. In most societies, there is a definite tendency to attribute these occurrences, too, to the behaviour of humans by means of conceptions of causation and the allocation of responsibility, which may differ significantly from society to society (for a recent collection of pertinent examples see Gluckman (ed.) 1972).

All cognitive and normative conceptions by which human experience is explained and ordered are products of the human mind. Once made public (or "externalized" in the terms of Berger and Luckmann 1967: 78) they attain a reality of their own in that they confront their original producers and other addressees as a "facticity" external to and other than themselves (Berger and Luckmann 1967: 78 f., Berger 1973: 14, who call this "objectivation"). Once objectified in this way, they act back upon society's members. Each individual is born and socialized in a society with an already existing body of cognitive and normative conceptions, part of which are "transformed into structures of subjective consciousness through the process of internalization" (Berger 1973: 14). Through making their own conceptions public and thereby objectifying them, society's members develop a system of cognitive and normative conceptions through time in a dialectical process of externalization, objectification and internalization, reproducing it or changing it through their own innovative ideas and actions.

The conceptions referring to habitualized courses of activity channel behaviour into one direction; those referring to non-habitualized typified activities keep human behaviour from going in that direction. In the most general manner it can be said that such conceptions imply *control*. The controlling character is inherent in the conceptions as such, prior to or independent from any mechanisms of sanction specifically set up to support them (Berger and Luckmann 1967: 72, Fried 1967: 9, 13). These mechanisms, the sum of which is generally called a system of social control, exist in most societies; their controlling efficacy, however, is of a secondary or supplementary kind (Berger and Luckmann 1967: 72). This is well supported by the ethnographic accounts of societies in which these institutions are developed only to a minimal degree and which yet have a definite and well functioning social organization (compare Fortes and Evans-Pritchard (eds.) 1940, Middleton and Tait (eds.) 1958). These mechanisms themselves constitute a field of "reciprocal typifications of habitualized action by types of actors", a social function which is the society's institutional answer to the universal problem of conflict and dispute.

This is not to imply, of course, that human thought and action are *actually* - exclusively or even predominantly - restricted by those predefined conceptions which face the individual member as an "external facticity" in the social reality into which he is born and in which he lives. The individual's autonomy is restricted by his psychobiological character, by what he has internalized, and in the daily interaction with his co-members; in particular, through specific social processes in which he is threatened with or directly affected by physical, economic, or psychological sanctions. Yet what he internalizes is largely prestructured by the kind of conceptions which exist in his society. In a given situation, the individual will be influenced by *all* conceptions which he has transformed into structures of subjective thought and not only by those which refer directly to the concrete situation and the action-alternatives indicated by the conceptions for this concrete situation. Besides, the individual may be faced with situations for which no conceptions have yet been objectified and where he must construct new conceptions or derive them from the already existing ones. And even when conceptions are provided by the preexisting system, that does not preclude the individual from creating his own innovations. The body of conceptions existing in a society may further be illogical or contradictory, in which case the individual is forced to make choices between them.

To summarize: Social organization and the conceptions through which it is expressed always restrict society's members' autonomy to behave and to construct cognitive and normative conceptions by themselves. But it is always relative. To differentiate the morphology of the various forms of the restriction/recognition of society's members' autonomy, four criteria seem useful, which I call here 1) the degree of institutionalization, 2) the referent of institutionalization, 3) the complexity of institutionalization, and 4) the mandatoriness of institutional conceptions. I shall briefly outline what I mean by these criteria.

1. *The Degree of Institutionalization*

The degree of institutionalization indicates the degree to which the cognitive and normative conceptions are predefined in a society. Seen from the point of view of society's members, it indicates the degree to which they are free - in terms of the predefined conceptions - to establish their own or new conceptions.

2. *The Referent of Institutionalization*

Institutional conceptions lay down predefined patterns for problem solution in a very general manner. Two different kinds of conceptions can be distinguished: Those which refer to the *processual form* of the activity-sequence which is society's answer to the social problem and those, which refer to the *substantive content* through which the problem-solution is to be explained and justified. The former I shall call procedural conceptions,[8] the latter substantive conceptions. Even if a clear cut analytical distinction cannot always be maintained, the distinction is of great importance in social reality, where it usually *is* drawn and where the different conceptions affect the autonomy of society's members in a very different manner (Geiger 1964: 233 ff.). Society's members may be strictly bound by procedural conceptions but relatively free to construct their own substantive conceptions in the prescribed process - a situation known from many traditional societies, where the substantive conceptions have a vague and undifferentiated character such as "truth", "justice", "reason", or "the unity of the society".[9] In other societies, like in most contemporary western societies, the body of substantive conceptions is highly systematized. Here the autonomy of society's members is restricted to a larger extent by the substantive conceptions, whereas the procedural ones have lost in importance.

3. *The Complexity of Institutionalization*

Complexity means the degree to which the requisites for one social function consists of a diversity of institutions. In most societies, the social reality is not so simple that there would be just one institutionalized solution for one social problem. Generally, we find a much more complex arrangement of institutional requisites. These arrangements may be of different kinds:

a. The institutional requisites may be arranged diachronically in the way that for the solution of one social problem several successive institutionalized forms of activity must be followed, each of which only fulfills a part of the problem-solution. This kind of arrangement is often used with respect to the social function of "marriage", e.g. with respect to the ten classes of rights enumerated by Leach (1961 a: 107, Goldschmidt 1966: 93 f.).

b. The arrangement may also be synchronic in that alternative institutions are provided which all fulfill the social function and between which the society's members may be allowed to choose. This arrangement is also known in marriage, where e.g. the individuals can choose between the traditional forms of marriage, marriage by elopement, or marriage in court, as is found in many African societies. It is also common in inheritance, which can be effected through unilateral dispositions, contractual agreements, or intestate inheritance in many societies.

This complexity may obtain within one body of conceptions which is conceived of as a distinct system; but there may also be several of such systems each of which provide cognitive and normative conceptions and institutions for what may or should be done by society's members. These forms of complexity are usually called "horizontal pluralism," (Nader and Yngvesson 1973: 904) which one can further differentiate in system-internal pluralism and pluralism of systems (cf. Smith 1969, F. v.Benda-Beckmann 1970, v.d. Berghe 1973, Hooker 1975).

The empirical manifestations of pluralism are manifold. Pluralism may pertain to the whole field of social activity, to particular social functions only, or even to just some aspects of social functions such as the standards of validity or permissible behaviour. It may be restricted to procedural conceptions, where different procedures may all carry the same consequences in terms of substantive conceptions. Finally, there may be different degrees of complexity for cognitive and normative conceptions (see Berger and Luckmann 1967: 127).

4. *The Mandatoriness of Institutional Conceptions*

Conceptions, normative conceptions in particular, can further be differentiated according to the degree to which they are mandatory for society's members. Moore, criticizing the "apparent mandatoriness" with which legal rules are often indiscriminately characterized by legal anthropologists, has argued that one should distinguish at least two kinds of rules. She proposes that the distinction between preferential and prescriptive rules elaborated by Needham (1962) with respect to marriage, should be extended to other rules (1969: 399 f., on the distinction cf. Lounsbury 1962). This point has important theoretical implications for the anthropology of law, as the common "rule - deviation - sanction" -cliché, through which law is characterized by most legal anthropologists, cannot be successfully appended to rules which are not either prescriptive or proscriptive. However, I think that at least four different kinds of conceptions can be distinguished:

1. Prescriptive Conceptions: Conceptions are prescriptive, if a situation image must be evaluated in its terms, and/or if the consequences attached to the evaluation of a situation image must follow from it.
2. Facultative Conceptions: Conceptions are facultative, if in a given situation, there is more than one set of predefined conceptions and where the choice of one among them is prescriptive.
3. Optional Conceptions: Conceptions are optional or dispositive, if in a given situation society's members are free to choose an existing set, or between several existing sets, of predefined conceptions or to substitute them by their own conceptions.
4. Options: Options are what I call those predefined conceptions which put an individual into the position in which he may exercise his autonomy in a way which restricts the autonomy of others. Whereas the exercise of the option is free, the consequences attached to the exercise of the option are prescriptive.

C. LAW

I. THE TERMINOLOGICAL PROBLEM

Law is a particular way of restricting society's members' autonomy. Most writers agree that law is a form of social control, that it is essentially normative in character, and that it denotes what I call objectified conceptions.[10] Beyond these premises, disagreement starts. The definitional battles on the field of law are notorious and their results have been depressing. Despite the serious efforts of eminent social anthropologists (not to speak of lawyers and legal sociologists) none of the definitions offered has found general acceptance in social science. This failure can be traced to two main reasons. 1) The semantic implications of the word law are so manifold and the social phenomena subsumed under it so complex, that it seems impossible to comprise them all in one definition. This insight led several leading theoreticians like Frank and Llewellyn to abstain from further attempts to define law.[11] 2) Most definitions offered so far have recourse to normative criteria, legitimacy in particular. As these criteria differ from society to society, the definitions given proved to be inadequate for a concept aiming at comprising the same social phenomena in different societies.

That these definitions may be barring a road which anthropologists need not travel has been convincingly put by Pospisil. They "stem from the false assumption that concepts are objective as are phenomena" (1971: 39). To quote Pospisil:

"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" (1971: 19).

Unfortunately, the heuristic value of the concept law has mostly been confused with methodology. Since Hoebel (1954) a great deal of the theoretical discussion about law has been framed in terms of methodology and led to the conception of the "methodological triad": the study of abstract rules (the so-called ideological method), the study of behavioural rules (the so-called descriptive approach), and the study of trouble cases (the so-called casuistic approach) (see Hoebel 1954: 29 ff., Pospisil 1971: 18 ff.). This framework presupposes that "law" will be found once

the best method to find it has been devised, an assumption which is as naive as it is wrong. Methodology, in principle, presupposes a predefined object; the object is not to be defined through methodology.[12]

As I see it, the anthropologist deliberating about which meaning to give to the concept of law is faced with three main alternatives, all of which have been followed by previous writers, although they have usually been stated in different terms:

1. He can relegate law to a domain of social organization. This approach is still dominant in contemporary legal anthropology and it is closely connected with the casuistic approach. It becomes evident in "the trend to focus on process rather than on the organization and structure of institutions" (Nader and Yngvesson 1973: 884); social process for most writers being synonymous with the processes of dispute settlement and conflict resolution. The approach is best illustrated by the followers of the case-methods, no matter whether they focus on the social process of conflict resolution as extended case (like Gulliver 1963, 1969, 1973) or whether they focus on the exercise of legal authority (like Pospisil 1958, 1971) or the sanctioning of rules (like Hoebel 1954).

2. The second alternative is to reserve law to those forms of normative conceptions which are particular to a specific form of political organization. In these, generally evolutionistic, approaches law is defined as "an emergent system of social control that develops in response to the need to regulate behaviour attendant upon the expansion of the community and the decline in effectiveness of kinship" (Fried 1967: 149). The proposed development from egalitarian societies to the state (Fried 1967), or from kinship-based communities to the class-structured polity (Diamond 1973) is here reflected in the development from "custom" to "law". This approach, going back to Maine and Durkheim, is best exemplified in contemporary anthropology by Fried (1967) and Diamond (1971, 1973).

3. The third alternative is to treat law as an "aspect" or a "dimension" of social organization which is inherent in all social institutions; which pertains to all domains of social life and which is analytically divorced from the social processes which produce, apply, or enforce it. This approach goes back to the writings of Vinogradoff (1914) and Malinowski (1926) and has slowly been gaining more adherents like Gluck-

man (1973 a), Barkun (1968), Moore (1970), and Nader and Yngvesson (1973).[13]

In my view, this last approach offers the relatively greatest analytical and heuristic value for the anthropological study of law, and I shall adopt it in my study. I shall speak of law as an aspect or a dimension of social organization, which pervades all domains of social life. What I have said so far about social organization and the institutions with which it works holds true for law as well. Law is a dimension of the cognitive and normative conceptions through which society's members' autonomy to behave and to construct their own cognitive and normative conceptions is restricted and recognized. However, such a general circumscription of law is, of course, still insufficiently clear for a distinction between law and other kinds of social control or conceptions. The concept must be specified through additional criteria, and I shall try to specify these criteria in the following section. Such specification in my view must concentrate on the character of the cognitive and normative conceptions. The evolutionary-typological approach and the domain-casuistic approach have failed to elaborate these specific characteristics and have stressed the importance of other criteria instead, such as the morphology of the political organization, of the administrative and governmental domain in particular, and on the social processes of sanctioning, which has led to the "rule-deviation-sanction" cliché with which legal anthropologists are usually operating. Although these criteria undoubtedly are important for a proper understanding of the working of law in society, the insistence upon their inclusion into the definition of law has led to the many inconsistencies which surround these definitions and which minimize their analytical value.

In the next section I shall elaborate what I shall understand to be "law" in this study. I should like to make it clear in the beginning, that my primary concern is with the specific characteristics of conceptions and not with the definition of the concept of law. I call these cognitive and normative conceptions law, for I think that they most appropriately characterize those social phenomena which are usually labelled law. But if the reader should be offended by my usage I would rather drop the term law and keep to the conceptions indicated as a distinct and analytically useful category. In this study, I cannot, of course, review the immense literature on the topic of law; all I can do is to indicate en passant where my conception is derived from the ideas

of others, where it is fundamentally different, and why I think that the conception used in this study has a greater analytical value.

II. THE CONCEPT OF LAW USED IN THIS STUDY

1. *The Specification of the Concept*

Law consists in the objectified cognitive and normative conceptions by means of which a society recognizes and restricts its members' autonomy to act and to construct their own cognitive and normative conceptions. With law, situation-images, i.e. facts as construed by the participants (see F.v. Benda-Beckmann 1976:362), are evaluated for relevance. Relevance means that definite consequences, in terms of cognitive and normative conceptions, are attached to and rationalized by reference to this evaluation. Empirically, law is manifest in two basic forms: It is expressed in a general way (general law), referring to a typified situation-image and its consequences in general, and it is expressed in concrete situations where a concrete situation-image is evaluated for its consequences (concrete law). If manifest as general law, the legal conceptions usually are combined in the form of a conditional program of the "if - then" character; if manifest as concrete law, the legal conceptions are usually combined as a rationalization program of the "as - therefore" character. Let me briefly explain this condensed circumscription of law in more detail:

To begin with, it is important to note that law comprises both cognitive and normative conceptions. In other words, law is not only concerned with the consequences following from certain situation-images, but it also contains conceptions determining the facts from which the consequences follow. Normative conceptualizations always imply certain cognitive presuppositions (Berger and Luckmann 1967: 127), and legal conceptions to a great extent determine the way in which situation-images are constituted (see also Barkun 1968, Cancian 1975, Gluckman 1973 a, Moore 1969, Von Wright 1974).[14] Law may define what a "son", a "thing", or a "father" is in relation to specific consequences. The study of cognitive conceptions is of great relevance for the study of law. A comparison of the normative rules about killing, for instance, makes little sense unless one knows what constitutes the situation-image of "killing" in the respective societies (cf. F.v. Benda-Beckmann 1976: 362 f.). The

whole body of causal hypotheses and the conceptions relating to evidence are usually constructed as cognitive conceptions.

I do not want to insinuate that legal anthropologists have not considered this part of law in their descriptions and analyses of ethnographic data; on the contrary, there are some excellent accounts. But it is usually not taken into account when anthropologists construct their legal theories. The anthropological and sociological theories on law which hinge on the "rule-deviation-sanction" principle are clearly inadequate to include the cognitive aspect of law within their frameworks (cf. Von Wright 1974: 137).

In law, situation-images are evaluated for relevance. A set of facts as construed by the participants is judged for its consequences, i.e. whether or not, and what kind of, consequences are to be attached to it. If definite cognitive and/or normative consequences restricting society's members' autonomy are tied to the evaluation, the evaluation may be said to be legally consequential; it is non-consequential if no such consequences are attached. Relevance thus covers both forms of evaluation, consequential and non-consequential. To which extent the participants can employ already existent objectified legal consequences in the process of evaluating a situation-image for relevance is, of course, a matter not of theory but of empirical investigation. It depends on what I call the degree of institutionalization (see p. 22).

The evaluation of situation-images for legal relevance operates with three main standards: the standards of permissibility and validity, and an indifferent standard. In the first case, situation-images, usually constituted by human behaviour, are evaluated in terms of the permissibility of such behaviour, and the pertinent consequences (generally called sanctions) are attached to the evaluation or not, depending upon its consequential or non-consequential result. In cases of evaluation in terms of validity, the situation-images are usually formed by cognitive and normative conceptions constructed by society's members, such as a contract or some other "legal", i.e. legally relevant action or transaction. Evaluation in terms of validity means that the situation-image is judged for its validity and for its eventual further consequences as may be attached to it as an exercise of autonomous conduct. Both standards can, of course, operate together in the evaluation of one situation-image. Contractual agreements, for instance, in most societies are subject to an evaluation both in terms of permissibility

and validity. What is generally permissible need not be valid specifically and vice versa.

Validity and permissibility are the dominant standards used in the evaluation for relevance. But there is another standard of evaluation which cannot be subsumed under validity or permissibility, as it has no bearing upon the values and purposes underlying those standards. It can best be described as an evaluation in terms of relevance per se. A good example is the evaluation of death for consequences with respect to the property held by the deceased. Important consequences (inheritance) are attached to this occurrence, but by itself death cannot be judged in terms of validity or permissibility.

The dominant legal theories with their bias for the evaluation of human behaviour in terms of permissibility usually content themselves with subsuming the process of evaluation and the attachment of legal consequences in terms of "sanction". This is often superficial as the distinction between validity and permissibility should always explicitly be made, but the concept of sanction can well cover both forms of evaluation and consequences (as in Vinogradoff 1914, 1959: 43 f.). But this "rule-deviation-sanction" cliché is wholly inadequate if cases of "simple" relevance are considered. Death has important legal consequences for property relationships which cannot be denied by any theorist. But how could death, in this respect, be considered a sanction-bearing act?

It is important that a clear distinction be made between conceptions which determine legal relevance and those expressing the consequences of such conceived relevance. This is well attested by the example of death and its consequences. The distinction is particularly important because different degrees of mandatoriness (see above p. 24) may operate in these two spheres of legal conceptions. Whereas behaviour constituting the situation-image may be evaluated in terms of prescriptive conceptions, the consequences attached to it may be facultative or optional. Conversely, the behaviour constituting the situation-image may be optional, whereas the consequences attached to it may be prescriptive. A striking example in ethnographic records of the confusion which arises if these two spheres are not kept apart is the discussion of prescriptive cross-cousin marriages. The notion of prescriptive cross-cousin marriage was quite unproblematic in those societies in which it was stated that one had to marry a cross-cousin, and also in those cases in which one had to marry into a category of relatives one sub-specification of which in-

cluded one's actual cross-cousin. The evaluation of marriage would be done in terms of prescriptive conceptions and any violation of the prescription would have its consequences.[15] However, the difficulties arose when anthropologists discovered systems in which every man was married to a categorically defined person, but where this could be the result of two possible marriages. Either the spouse belonged to the category already before marriage or he/she only became a member of that category through the act of marriage. Although the spouses in the latter type of marriage have hitherto been unrelated, their and their group members' kinship statuses are adapted to the category, and new inter-group marriage relationships are established. This type of marriage was also named prescriptive cross-cousin marriage. Quite understandably it has been argued that the use of the concept "prescriptive marriage" was highly misleading, as the category of persons whom ego should marry was *not* prescribed (L¨offler 1964: 218 ff.). It was therefore proposed to label such marriages "taxonomic" in order to indicate the consequences such marriages had for future marriage relationships (Löffler 1964: 225). Though this characterization is useful, it does not fully reveal the distinction we are concerned with here, for the consequences of such marriage, the "taxonomic" effects, *are* prescriptive.[16]

2. *The Manifestations of Law*

Law becomes empirically manifest in two forms: As conceptions that evaluate a concrete situation-image for its concrete consequences and as conceptions which generally evaluate typified situation-images for their consequences. The general law is the predefined institutionalized law, the concrete law is the law for "cases". With this statement I more or less follow Gluckman's conceptualization of law (1973 a: 227, 325), although my concrete law covers much more than "legal rulings in processes in which cases are tried" (Gluckman 1973 a: 227).[17]

General law exists in all societies, but the degree to which it does and the forms it takes vary greatly. General law is institutionalized, predefined law; the degree to which such law exists in a given society must be ascertained with the help of the criteria by means of which the society's institutional arrangements can be differentiated (see above p. 22 ff.).

In most contemporary western societies, there exist one or more bodies of conceptions, to a large extent laid down in written form, which contain very detailed and systematized procedural and substantive conceptions which pertain to nearly all fields of social activity. In other societies, and in particular in those studied by anthropologists, the body of general legal conceptions usually is less systematized and less articulated in formulative rules (cf. Llewellyn and Hoebel (1941) on the near non-existence of detailed general substantive conceptions among the Cheyenne Indians). But there is hardly any traditional, tribal, or primitive society which does not have at least a body of general procedural conceptions relating to institutions such as marriage, property, the internal organization of the society, and the allocation of socio-political authority. In comparison with contemporary western legal systems, the main difference lies in the degree of the specificity of general conceptions. In all societies, legal conceptions must be specified so as to be applicable to concrete cases in the processes of law. But whereas in western legal systems this task is largely facilitated through a previous specification of the general conceptions, in non-western legal systems general conceptions usually consist more of very vague and unspecific conceptions, which makes the task of specifying them in order to fit a concrete situation-image more difficult. Conversely, the decision-makers in non-western societies usually have a much larger degree of autonomy vis-à-vis the general conceptions than have judges in western legal systems.

In its concrete forms, law exists in all societies. In all societies, concrete situation-images must be, and are, evaluated for legal consequences. The characterization of the social processes, of the "cases", in which this is done is one of the central topics of legal anthropological theory. The conceptions applied, enforced, sanctioned etc. in specific social processes (trouble-cases, dispute-settlement, conflict-resolution) for many writers represent the only manifestation of law. In my view, these processes, although they are of greatest importance for the study of law and although they constitute one of the most important domains of social organization for the legal anthropologist, indicate but one manifestation of law.

When we speak of "law in action" or of social processes which are "legal" we must begin with an important distinction between different forms of relating law to social process, which is sometimes hidden when

the terms "legal process" and "legal institution" are employed. It is the distinction between events having legal consequences, which *may* take the form of a social process, and the social processes in which situation-images are evaluated for legal consequences. In fact, it is a distinction between two aspects of occurrences/social processes, for the activity concerned may display both aspects: The processes in which situation-images are evaluated for legal consequences always have legal consequences, the classical case being the social process of dispute-settlement. However, not all legally consequential events are also processes of evaluation, the classical cases being those "legally relevant" actions of society's members in the exercise of their autonomy. In the following, I shall be concerned with the processes of evaluation only.

Processes of evaluation for legal relevance are an institutionalized field of social activity. They are society's answer to problematic situation-images. The problematic situation-image, through the evaluation in terms of legal conceptions, is transformed into an unproblematic one, again unproblematic in terms of legal conceptions (F.v.Benda-Beckmann 1976: 367, Moore 1975, 1977: 159).[18] What constitutes a problematic situation-image differs, of course, from society to society, and in most societies there is a multitude of typified problematic situation-images which must be evaluated for legal consequences even if "in reality", i.e. by the persons concerned, no problem is perceived. The most obvious and frequent problematic cases are the social processes called dispute-settlement and conflict-resolution. Here, the factual situation, the appropriate standard of evaluation, the consequences to be drawn from such evaluation, or all these aspects together may be subject to conflicting interpretations by the participants or between some individual and an administrative agency in the society. These disputes or conflicts are resolved in terms of legal conceptions, which does not, of course, mean that the dispute or conflict would necessarily be completely resolved in practice - in the same way as institutionalizations do not necessarily restrict society's members' autonomy.

But the problematic situation-image need not be that of a conflict or dispute. It may also be constituted by "uncertainty", if the participants, for instance, do not know what the consequences of a given situation-image should be and where the content of the situation-image is trouble-, conflict-, or dispute-indifferent (see also Moore 1970:280).

These kinds of social processes, in which situation-images are retro-

spectively evaluated for legal consequences - which we may call by the short formula "reactive law application" - however, are not the only forms of social processes in which law is applied to a concrete situation-image. In most societies there are also institutionalized processes in which law is applied "preventively", in which certain types of situation-images are evaluated for legal relevance, usually in terms of validity, before they actually become problematic. The most common instances of such preventive law application, both in western and non-western societies, are the validation of marriage, the affirmation of one's status as heir, and the validation of transactions over particularly important property. The evaluatory process establishes the validity of the transaction in terms of law, implying or explicitly stating that the consequences attached to the situation-image of a valid marriage, of a divorce, or of a valid transaction will indeed follow.

Which persons or agencies are entrusted with the functions of reactive and preventive law application differs with the complexity of society's socio-political organization and its system of roles of socio-political authority. In non-western societies, the task of preventive law application usually is in the hands of the personnel also being active in reactive law application, be they contending groups negotiating the evaluation and its consequences, be they family or community leaders acting as mediators, arbitrators, or as judges. In contemporary western societies, the function of preventive law application is entrusted to diverse offices of administration, the registry of marriages, to notaries, but also to courts. In Germany, for instance, the affirmation of one's status as heir must be obtained from a court, though this court is a different institution from the courts engaged in reactive law application.

Concrete law thus becomes manifest in social processes of evaluating situation-images for legal consequences. In all the social processes discussed above - in the reactive evaluation of conflicting or conflict-indifferent situation-images as well as in the preventive evaluation - essentially similar conceptions are employed. There is no basic difference between these processes as regards the degree to which the conceptions are explicitly articulated or implicitly acknowledged. There is also no basic difference as regards the effectiveness of the different kinds of evaluating situation-images for legal relevance (cf. J.F. Holleman 1973).[19] I see no reason why the conceptions should not

be called by the same term "law". Anglo-American legal anthropology with its emphasis on the "trouble-case", on the processes of dispute settlement as the only form of law application, has more or less neglected the other forms of law application. This restriction of processes of law application is unfounded. Only recently, Moore has pointed out that what I call conflict-indifferent processes of evaluation and preventive law application "have seldom, if at all, been treated as a topic related to processes of dispute-settlement" and that they "certainly merit this treatment" (1970: 280). It should therefore be stressed, that these forms of law application have since long been elaborated by the Dutch scholars of Indonesian *adat* law, in particular by Van Vollenhoven (1931: 247 ff.), F.D. Holleman (1920), Logemann (1924), and Ter Haar (1930, 1934a, 1937, 1941). In his analysis of those land transactions in Toeloengagoeng which had to be carried out in the presence of witnesses and the village head, Holleman had discerned three interrelated functions of these processes:

1. The guarantee (*voorzorg*) that no present or future interests are violated through the transaction.
2. The sanction that the transaction is valid in law.
3. The creation of evidence and legal certainty for the future (1920: 293 ff.).

The notion of "preventive law care" (*preventieve rechtszorg*) was first verbalized by Logemann. In his words, the idea of preventive law application means the guarantee that what happens (the transaction) contains no violation of law (1924: 128) - law being understood as both the objective law of society and the subjective legally protected rights. Finally it should be stressed that Ter Haar, the most important theoretician of *adat* law, had included the "judicial decisions without dispute" as constitutive elements in his definition of law besides the judicial decisions taken in processes involving disputes - well before the "case-method" had been received into legal anthropological theory in England and America (Ter Haar 1930, 1934a, 1937, 1941; Van Dijk 1948; J.F.Holleman 1973; for a concrete example see Ter Haar 1939: 87).[20]

The empirical manifestations of law in the form of general and concrete law, are, of course, quite different social phenomena.[21] These different kinds of social phenomena are both called law, as they are manifestations of *one* analytically determined kind of cognitive and normative conceptions. Against such a kind of definition, criticism has

been levelled, and I shall therefore briefly justify it in relation to this criticism.

With regard to Gluckman's conceptualization of law, which is in this respect similar to mine, Pospisil writes:

"One may criticize this modified casuistic approach and dualistic definition of law on the basis of logical inconsistency. Since the rules that ought to be enforced often deviate in a remarkable way from the principles that are actually enforced in legal decisions, one can hardly call both sets of principles which sometimes differ to the point of contradiction, by the same term, 'law'" (1971: 33).

Though Gluckman may be criticized for not making the logic underlying his conception explicit enough (Hooker 1975: 42), the logic is there, and I claim that it is the logic which I have tried to outline in this chapter. In my view, the logical inconsistency rather is inherent in Pospisil's conception of law and in all those conceptions which declare law to be exclusively those rules which are sanctioned in trouble cases. For one, Pospisil himself has taught us that concepts are not social phenomena per se but are designed to categorize different social phenomena on the basis of some characteristic properties. That concrete law and general law are different social phenomena which may not only diverge but cannot coincide (Gluckman 1973 a: 325, Moore 1969: 377) is obvious, but that does not mean yet that they do not have the same characteristic properties. *That* general law and concrete law have the same characteristic properties, the evaluation of situation-images for consequences, I hope to have demonstrated in this chapter. That their different character as social phenomena be recognized, on the other hand, is crucial for the understanding of law. It is here that we find the basic fallacy of the theories which focus on cases: The confusion of general and concrete law.

When speaking of "law application", I mean that the legal conceptions established for concrete situation-images are derived from and legitimated by reference to general conceptions. That it is not the "same" law that is applied is obvious. That the concretization of general conceptions is not purely the finding of the preexistent law - as was held by the traditional western doctrine - but that it usually amounts to the specification of new conceptions and often to the creation of new law, has been long recognized by lawyers in most western legal systems. In non-western societies, the processes of reactive law application can even less be considered an application of predefined general conceptions; for such general conceptions may not yet exist. On the contrary, the autonomy of society's members - individuals or administrative agencies -

to construct new conceptions may be explicitly recognized in the society's doctrine of decision making. This body of general conceptions referring to the procedural aspect of decision making, *may* state that the conceptions constructed for concrete cases must be derived from conceptions which have been previously applied to similar concrete cases, i.e. that the conceptions applied to concrete cases shall have general character. This is the doctrine of Anglo-American law. Law being embodied in cases, the conceptions applied in concrete cases should not only evaluate one concrete situation-image but aim to evaluate future situation-images as well. By this doctrine, concrete law is transformed into general law.

Many anthropologists have implicitly included this or other transformation-doctrines in their analytical concept of law. As law, in the casuistic approach, is defined by reference to concrete cases of decision making or sanctioning, *no general legal conceptions can be found at all unless these concrete conceptions are invested with a general character*. With Hoebel, legal norms receive their general character through concrete processes of quasi-retrospective sanctioning on the presupposition, that the norm, as statistically dominant behaviour in typified situation-images, has general character already before the sanction (see Hoebel 1954: 14 f.). With Pospisil, the concrete conceptions receive their general character through the attribute of the "intention of universal application" for the future (1971: 78 ff.): If taken seriously, this attribute would even "beat" the Anglo-American doctrine of precedent, which at least makes a distinction between the *ratio decidendi*, the part of the decision which is to be general law in future cases, and the *obiter dictum*, that part of the decision which need not be followed in later cases.

That the inclusion of such an attribute into one's analytical concept of law may create general legal conceptions where there are, due to a different doctrine for decision making, none, is obvious. This unwarranted assumption has already been discussed by Dutch *adat* law scholars well before the case-method was received into Anglo-American anthropological legal theory. Ter Haar, in his well known "decision-theory" (*beslissingenleer*) basically defined law as "judicial decisions in cases with and without disputes" (1934a, 1937). In his review of Ter Haar's lecture in which the decision-theory was finally developed (1937), F.D. Holleman criticised exactly this presupposition in Ter Haar's definition of law:

"Mr. ter Haar's constructive idea is based upon the assumption that it is part of the judge's function that he gives the same judgement in cases where the relevant facts are the same. His judgement, formally binding in the concrete case, implies by necessity that it must be decided in the same way in the future. As such, the judgement can be conceived of as a general rule and has importance for the future" (1938: 437).

Correctly analyzing this assumption as a matter of doctrine, Holleman concluded:

"Whether this doctrine (*dogmatiek*) holds true for other legal systems I shall not judge here. But for the systems of the *adat* law (of the Indonesian societies) it seems untenable to me and not without danger" (1938: 437).[22]

To include this assumption into one's analytical concept of law distorts the social reality of the society one sets out to study. The anthropologist is better equipped with a concept of law which, though recognizing the similar properties of concrete and general law, also takes account of their fundamental difference as social phenomena.

I have located law, in all its empirical manifestations, on the level of objectified conceptions. These conceptions should not be confused with the social processes in which they are produced and manipulated, nor with the referents which serve as their legitimation, such as the will of the people, the command of the sovereign, traditional behaviour patterns, etc. The inclusion of these elements in the concept of law inevitably gives rise to confusion and distortion of social reality and minimizes the concept's analytical and heuristic value.

It should, however, be self-evident that the social scientist aiming at a description and analysis of law can only do so by studying the social processes in which law is produced, manipulated, and applied. The study of these processes and their operative conceptions forms the indivisible microcosmos of legal anthropology. This microcosmos is not bound to one specific form of socio-political organization like "the state". Like most contemporary legal anthropologists writing in the tradition of Ehrlich (1913) and Weber (1921) I hold that law operates and is operated upon in all the social formations which have semi-autonomous character (cf. Van Vollenhoven 1918, Llewellyn and Hoebel 1941, Pospisil 1971, Moore 1973, Smith 1956, 1969).

D. THE SOCIAL FUNCTION OF PROPERTY AND INHERITANCE

I. PROPERTY: DOMAIN, OBJECT, AND RELATIONSHIP

In this study I am mainly concerned with one domain of social organization: the organization of property relationships. In all human societies there are objects, material or immaterial objectivations, that are regarded as having some value. The universal problem with which all societies have to cope is to regulate their members' relationships to these objects. In all societies, the performance of this function is institutionalized to some degree and expressed in legal conceptions. In most societies, the institutionalization has reached a high degree, for property relationships provide one basic framework for economic life, they contribute significantly to the cohesion and continuity of social groups, and they are an important means through which positions of socio-political authority are acquired. In each society, there is production, and production "requires organizational devices and rules to direct labour, land and other resources to specific uses. Resource allocation is never unstructured because continuity in the production of basic goods is never unimportant" (Dalton 1967: 66). Property does not only concern basic economic goods, but all goods, i.e. objects that are regarded as having value. It does not only concern the allocation and distribution of already existing goods but also the manner of allocating newly created goods, and the "appropriational movements" which involve changes in objects' relations to social roles (Hopkins 1957: 300). In the organization of property relationships, society's members have to cope with and are restrained by the three basic factors which constitute the field in which all human societies exist: the psychobiological character of man, the ecosystem, and the temporal continuum. In each society, these factors become transformed into socio-cultural ones and therefore are culturally variable. Nature, human nature, and time are conceptualized, and consequences, many of them legal in character, are attached to these conceptualizations. The content of the conceptualizations and consequences, and the economic use made of these factors, vary considerably from society to society, often changing natural characteristics beyond recognition. Land is immobile, yet its products or the relationships to it can be transformed into a highly mobile commodity. Time is continuous, yet notions of time may be developed in which the continuous flow of time is stopped or declared irrelevant. Persons die, yet proper-

ty relationships may be held by the dead; or living persons may be regarded as incapable of holding property relationships.

In the most general manner, property refers to the whole of instrumentalities through which the relationships between society's members and their valuable goods are regulated. When we speak of property and inheritance, property indicates the part of the instrumentalities that regulate the relationships between the living members of society, inheritance indicates the maintenance of this regulation through time. This conceptual use is, of course, too general and it must be specified, and criteria must be offered by which the system of property and inheritance can be described and analysed in a more differentiated manner. When we try to refine our conceptual apparatus, we are again confronted with the same problems and questions that we have dealt with in the first parts of this chapter. The approach developed there must be projected onto the domain of property relationships. This means, that we shall not be concerned with a definition of the institutions of property, ownership, and inheritance which are known to us from our own or other societies, but that we rather attempt to isolate some analytical criteria by which we can better describe and analyse the institutions which we meet with in the society we study, and which are sufficiently abstract of culture-specific institutions in order to allow generalizations about the instrumentalities of the function of property relationships in different societies. Again we cannot consider the vast amount of anthropological writings on this topic and shall only, in elaborating our conceptions, discuss those opinions upon which my conceptions are based or from which they radically differ.

Most authors trying to define property or ownership for anthropological purposes pay due hommage to Maine's statements, that ownership is a bundle of rights (1883), and that ancient law does not sharply distinguish between the law of things and the law of persons (1905: 230, cf. Goody 1962: 285 ff., Gluckman 1972: 94, Bloch 1975: 204). Both statements reflect important aspects of property relationships, which lead directly to the analytical conceptions with which I shall operate. My consequences,however, to some extent are quite different from those which have been reached by other anthropologists.

The reference to ancient law, which does not sharply distinguish between the law of persons and the law of things, is often followed by the remark "that primitive law rightly represents property relation-

ships as what they are: namely relationships between persons with respect to things" (Goody 1962: 287, Gluckman 1972: 113, Bloch 1975: 204), and "that the notion of property as a relation between a person and a thing is a contradiction in terms" (Bloch 1975: 204). These two statements are generally treated as if the latter would logically follow from the former, an opinion which is due to misconceptions about property law both in traditional and western societies:

1. The distinction between the law of persons and the law of things discussed by Maine refers to the degree to which the system of property relationships is divorced from the law of persons, i.e. the legal conceptions pertaining to the position of the individual, to group formation and to the allocation of socio-political authority. As Gluckman, following Maine, has emphasized, in tribal societies rights to land are an incident of political and social status (1972: 78), whereas in western societies this incidental character of the property relationships has been lost and the legal conceptions which define property relationships are conceptually and substantively divorced from the law of persons, the result of what Maine called the movement from status to contract (1905: 151). Speaking in terms of domains, we would say that in primitive law the instrumentalities, the institutional elements in the domain of property relationships, to a large extent are the same ones that obtain in the domain of interpersonal relationships. Analytically, however, the two domains should be kept apart for the study of all societies, even where one institution performs several functions. For only on this basis can we determine at all whether, in a later stage of development or in a different society, the two fields of law as social phenomena or complexes of institutions, are divorced, i.e. whether distinct institutions perform the different functions.

2. The question of how property relationships are legally defined, however, is a different one. In many societies, where the law of persons and the law of things are not divorced, property relationships are predominantly expressed as relations between persons and things, or what Bohannan called the man-thing-unit (1963: 102). As we shall see, Minangkabau property law is one of the cases, where property relationships are an incident of social and political status, but where the dominant property categories are defined by relation to the property holders (see Chapter 4). Western law on the other hand, and contrary to widely held

misconceptions[23], defines property relationships only to a very limited degree as a relation between persons and things: For one, there is the whole body of conceptions covering the law of obligations, which consists of relationships between persons with respect to things or immaterial goods, and which, although it is sharply distinguished from the law of things, certainly falls into the domain of property relationships.[24] And also the rights to things, like ownership, are usually defined as relationships between persons with respect to things. The legal definition of ownership (*Eigentum*) in German law, par. 903 BGB, well expresses the right of ownership as the degree to which individual autonomy over a thing is restricted and recognized through general law and the complementary autonomy of the community's members:

"The owner of a thing can dispose of it according to his wishes and can preclude all others from acting upon it, unless this is contrary to the law or the rights of third persons".

The misconceptions about western notions of ownership and property are probably due to the plural meaning these concepts have in western law. The German *Eigentum*, for instance, is legally defined as a relationship between persons with respect to things. This relationship confers upon holder and object of the relationship a distinct legal status, of *Eigentümer* ("owner") and *Eigentum* ("owned object"), i.e. the same concept also denotes the object itself. Besides, the relationship itself is treated like a thing in law. In Anglo-American law, this plural meaning is rather attached to the concept of "property" and not to "ownership", which is generally treated as a relationship only. It seems to be the latter meaning, the reified notion of the relationship, which seems to come up when anthropologists discuss ownership and property. For in the reified concept, the relativity of the relationship,its restriction by the rights of other persons, is blended out: *Eigentum* remains *Eigentum* even if the autonomy of the individual (the relationship) is increasingly restricted.

It is obvious that the anthropologist should not use one term to cover all these meanings.[25] I shall therefore adopt the following conceptual usage: The relationships between societies' constituents with respect to material or immaterial objects that are regarded as having value, I shall call *property relationships*, no matter whether they are reified or not and no matter what their specific degrees of recognition/restriction of autonomy are.The objects, material or immaterial, to which such a relationship is attached or to which it pertains, I shall call *property objects*.I shall speak of the *legal status* of property

objects with the understanding that it is not exclusively defined through the relationship which is attached to it. The person or persons to whom a property relationship is attached I shall call *property holders*.

The social organization of property relationships involves the recognition/restriction of society's members' autonomy over property objects and it is expressed in general and concrete legal conceptions. In most societies, the members' recognized autonomy is conceptualized in the form of rights. These rights, no matter what their specific content may be, always express a relative degree of recognized autonomy. The restriction is, in all societies, manifest in the rights which are recognized for the other members of the community (cf. Hoebel 1954: 58 f.). But in all societies which have some form of government which is vested in social roles and statuses, the restriction of all members' autonomy is further expressed through the rights which are vested in these positions of socio-political authority which, according to the constitutional legal conceptions, represent the community. These rights usually pertain to the most valuable property objects, particularly to the land on which the community lives, their territory, and that which provides the most important economic resources. Whereas the members' rights pertain to the use and the exploitation of the property objects, the rights of the socio-political authority usually refer to the outward-representation of the community in property matters (territorial matters) and, in relation to the community's members, to the ultimate control over use and exploitation in its various forms (for a more detailed statement about the Yoruba, see Lloyd 1959: 112). I shall call these two levels on which property relationships are expressed the *level of socio-political authority* and the *level of use and exploitation*. This distinction is not new, and most anthropologists report its empirical manifestations in the societies they study. It appears in different conceptual usages. Some authors speak of sovereignty and ownership (Lloyd 1959: 112, Vanderlinden 1969). Leach has described and analysed these two levels among the Kachin, where the socio-political control over a domain, vested in a chief, is called *madu*, and the usufructury rights are expressed by *lu* and *sha*, drink and eat (1954: 141). Leach translates them as "ownership in the sense of 'having rights over something or some person' and ownership in the sense of 'having and therefore being able to enjoy for the time being'" (1954: 142). Gluckman, following Sheddick

(1956), called the two levels "estates of administration" and "estates of production" (1972: 89 f.). In his analysis of the system of Barotse property relationships, Gluckman made an important point, which corresponds to the conception of semi-autonomous social fields which I have outlined in the first part of this chapter. He demonstrated how among the Barotse the level of socio-political authority consists of a series or a hierarchy of "estates of administration", through which the ultimate socio-political authority is mediated to the individual. In whom the socio-political authority is vested depends, of course, on the form of socio-political organization. In Barotseland it is vested in offices, in other societies it may be vested in lineages or other corporate groups. In most contemporary societies, the situation is even more complicated by the fact of pluralistic systems of legal conceptions, which are often contradictory. This is the case in nearly all societies which have been united under a common colonial or national political superstructure. The pluralistic legal systems may define different positions of socio-political authority and give a different content to the rights of the incumbents of socio-political authority as well as to the rights of the community's members in general.

The conceptualization of the two levels on which property relationships are expressed, and the recognition of the possibility that they may be subject to pluralistic definition, provide useful tools for description and analysis. They are one aspect of the bundle-of-rights metaphor in the sense that the bundle represents the full range of autonomy over property in a given community, which in each society must be divided into rights, all of which express a relative degree of autonomy. But the bundle-of-rights metaphor has another aspect, which provides us with another useful analytic instrument: It is the recognition that each of the rights, as conceptualized above, itself can be thought of as a bundle of rights. When property relationships are legally defined, there will always be, on both levels, one conceptualization of the most complete degree of autonomy recognized for society's members, like in the form of ownership in western societies. In relation to the complete range of autonomy, this right is one of the "bundle". But, as is usually done in legal systems, if it is treated as the most complete kind of rights, it provides the basis for the derivation of lesser rights from it. The "full" relationship can be split into component ones, which are, however, dependent on and derived from the full relationship. In his analysis of

property relationships on Truk, Goodenough proposed a systematic conceptual use to denote this, when he wrote:

"Two basic forms of ownership must be distinguished. One of these will be called *full ownership*, be the owner a person or a corporation. It confers upon the owner what will be called a *full title*. The other divides a full title asymmetrically between two parties, either or both of whom may be individuals or corporations. This will be called *divided ownership*. It confers upon the owners two distinct titles, respectively, each characterized by different rights and duties. One will be called *provisional title* and the other *residual title*" (1951: 33 f.).

I shall partly adopt this usage, and speak of residual and provisional property relationships; not of ownership as the latter concept implies an ethnocentric specification of a property relationship. However, additional clarification is necessary: Provisional relationships are by definition derived from residual relationships. But the notion of residual and provisional relationships is relative in so far that a provisional relationship is provisional in character only in relation to the residual relationship from which it is derived. In other relations, for instance in relation to a lesser provisional relationship, it may have all the characteristics of a residual relationship. To give a common enough example: A, holding the (relatively) most complete right over land, pawns the land to B. In relation to A, B is the holder of a provisional right, and A the holder of the residual right. However, B may give the land to C in share-cropping. In relation to C, B then is the holder of a residual right.

Finally, the distinction between residual and provisional property relationships may operate on both levels on which property relationships are expressed: On the level of socio-political authority and on the level of use and exploitation.[26]

II. INHERITANCE: NON-RECIPROCAL DIACHRONIC TRANSFERS

Part of the function of property relationships is the problem of maintenance of the system of property relationships through time. This problem is considerably aggravated by the fact that individuals die, whereas, at least in most societies, some or most of the property objects they held during their lifetime continue to be used by the remaining members of society.[27] When dealing with the instrumentalities by which societies cope with this problem, lawyers and anthropologists alike usually think in terms of inheritance. In western law, inheritance

is an institution which is defined in detail by legal conceptions. It signifies the transfer of a complex of rights and obligations from one person (the deceased) to one or more other persons (the heirs) at the time of the deceased's death. This transfer occurs automatically in and through law. The kind of distribution of the deceased's property is also predefined by general law. Many legal systems recognize to varying degrees the autonomy of the individual property holder to direct the flow of property after his death in the form of unilateral declarations or contractual agreements. This institution of inheritance is a characteristic of all legal systems which have been influenced by the later Roman law. In this specific form it is by no means typical for human societies in general. In common anthropological understanding, inheritance therefore refers to those social processes which follow the death of a person and which are concerned with the property he held during his lifetime, and to the cognitive and normative conceptions which refer to these processes. As Hoebel has put it, it is useful to conceive of inheritance as "the transference of statuses from the dead to the living with respect to specific property objects" (1954: 59 f.). When dealing with status-transfers, we again discover that in most societies, ancient law does not sharply distinguish "the law of persons from the law of things". The deceased's status with respect to property objects may be transferred, but his or her status as member of a kinship group or the status of socio-political authority may be transferred in the same social process. Since Rivers we have been accustomed to distinguish inheritance, as the transfer of status with respect to property objects, from succession as the transfer of socio-political status, particularly if it is attached to an office. Most societies have developed institutions which fall under this rather flexible anthropological understanding of inheritance. Yet it is commonly acknowledged that the problem to which the institutions of inheritance are an answer, need not be solved at the time of or after the property holder's death but can also be solved at an earlier time. There is a wealth of ethnographic data which show how in some societies the transfer of property, or at least of a large amount of property, is effected before the death of the property holder(s), the classical examples being the Kalinga (Barton 1949) and the Nyakyusa (G. Wilson 1951, M. Wilson 1967). These property transfers, in which inheritance is anticipated, may be in the discretion of the property holder, but they may also be prescriptive as e.g. is the case among the Nyakyusa at the coming-out-ceremony (G. Wilson 1951: 287 ff., M. Wilson

1967: 220). The cases of prescriptive property transfers during the lifetime of the property holders illustrate that the crucial chronological point in persons' lives, at which they lose or have to lose the capacity[28] of being property holders is a matter of socio-legal definition. Death poses a natural problem for the continuity of property relationships, but that does not mean that death must be used as the crucial or the only chronological point in legal definition. The duration of a person's capacity to be holder of property relationships may be defined with reference to an event within their or other persons' lifetimes; on the other hand, their capacity to hold property, or some specified kind of property, may also transcend death.[29] The definitions of inheritance which focus on the status-transfer with respect to property objects at the time of death therefore do not provide a useful concept for cross-cultural generalization, as other transfers which we would want to include as "inheritance-like" are thereby excluded. Yet the need for a distinction between inheritance and inheritance-like transfers from all other forms of property transfers is generally acknowledged as ethnographically justified and analytically necessary.

Not many anthropologists have addressed themselves to the problem of how such a distinction should be made; I shall discuss the one notable exception, Goody in his *Death, Property and the Ancestors* (1962) presently. In my opinion, the distinction between "inheritance-like" and other transfers should rest upon one characteristic: whether a return is given in the transfer which itself is valued as property. Transfers in which no return is given in all societies are treated differently from those where there is: They are conceived of as being "through time" and come closest to what anthropologists call inheritance in its widest sense. They are further characterized by the fact that a different degree of autonomy pertains to such "diachronic" transfers than to other transfers. But however useful this distinction between diachronic and other transfers is, it can never mark off a separate field of property relationships but must be subordinated to the more general question with which we are concerned, the maintenance of the system of property relationships throught time, time understood as the abstract continuum in which all human societies exist. In the following sections I shall explain this in some detail.

Related to the abstract continuum, to "stellar time" (Leach 1961 a: 133), in which all human societies exist, of course all holding of

property and all transfers of property occur through time. The continuum in which societies exist is one inseparable aspect of the property system in general. But time is socially defined in each society. As Leach, following Hubert and Mauss (1909) has put it: "The idea of time ... is one of the categories which we find necessary because we are social animals rather than because of anything empirical in our objective experience of the world" (1961 a: 125). How time is conceived, however, varies from society to society.[30] Each society develops notions of time which "flows", the concrete manifestations of which may be quite different.[31] But each society also develops notions of time where this flow is ignored, and notions where the flow is halted, and which are conceived of as "timeless" and "presents" respectively.

All social relationships are set into time. The various notions of time are also inherent in the conceptional system which pertains to property relationships and transfers. In each society, there are notions of property transfers which are considered to be "through time", in line with continuity, which in the following I shall call *diachronic* transfers. Other transfers are conceived of as being "in or at some time" or "within the same time", and these I shall call *synchronic*. The diachronic dimension of property relationships and transfers is, of course, not identical with abstract continuity. It only makes sense in contrast to the synchronic dimension, synchrony and diachrony being the two basic and complementary modes of relating property transfers to abstract continuity. When anthropologists speak of inheritance and inheritance-like transfers of property, they usually mean such diachronic transfers. Underlying this thinking is the implicit or explicit idea that the distinction between the temporal dimensions is defined by the lifetime of the property holder. When people try to differentiate their body of property law into a field of property and one of inheritance, they usually recur to this distinctive point. We have seen that also most anthropological conceptualizations of inheritance rest upon this distinction: Inheritances are property transfers which are "through the time marked by the lifetime of property holders", property law in general is the organization of property relationships and transfers "between the living". Although this is, by all means, the easiest way to make the differentiation, it does not correspond to the differential treatment of property transfers in societies' legal systems. In my introductory remarks I have already drawn attention to the fact that it is not natural lifetime which could usefully mark the distinction, but the legal capa-

city to be a property holder. But even the legal capacity of a property holder, conceived of as the time in which the capacity endures, is not a sufficient criterion. Here, too, diachronic transfers can be "anticipated" by actions or transactions which, although effected before the termination of the legal capacity, are diachronic in character. The characteristic of property transfers which justifies our speaking of anticipated diachronic transfers in these cases, and which gives them a diachronic character, is that no return is given in these transfers which is valued as property. Diachronic transfers are non-reciprocal transfers, there is no reciprocal property transfer "in time". Non-reciprocity in property transfers and non-reciprocity in time mutually define each other.[32]

The distinction between synchronic and diachronic therefore cannot be made with reference to any fixed date in the property holder's legal capacity. It rather must rest upon the autonomy of the property holder, of which the capacity to be a property holder is only one aspect. The distinction between synchrony and diachrony is established with reference to the individual, but not with reference to his lifetime or his legal capacity to be a property holder but through reference to his autonomy in property affairs. The greater the recognition of individuality and individual freedom is in a society, the more will "the present" play a role in the thinking in that society, and the more will continuity diminish in importance. The less individuality and individual autonomy is valued, the more will diachronic thinking dominate. But in both cases no final distinction can be drawn between the temporal dimensions with respect to lifetime or legal capacity conceived of in time. In contemporary western legal systems, individual autonomy is highly valued and the synchronic property law consequently occupies the prominent place in the whole system of property relationships. But when we look at the institutionalized kinds of property transfers, we see that the basic distinction is made between property transfers which involve a return in property and those which do not, and that this distinction is manifest in different degrees of recognized/restricted autonomy. Even transactions, such as donations which are carried out and become effective during a property holder's lifetime and thus at first glance seem to be located in the synchronic dimension, in the end are judged in diachronic terms and can be invalidated retroactively.[33] In traditional societies where individual autonomy is not that highly valued and where consequently no

systematized synchronic property law is conceptualized, the plausability of my analysis is even more apparent. As Derrett has said with respect to inheritance in Nigeria:

"Succession (meaning the inheritance of property, v.B.B.) as an event happening at death is altogether foreign to Nigerian problems. We must be prepared for rules of succession appearing in the guise of restrictions upon alienation *inter vivos*" (1965: 5 f.).

The implication is clear: The rules of inheritance, representing the diachronic dimension of property relationships in western thinking, are applicable between the living; i.e. a distinction cannot be made with reference to the individual members' lifetime, but only through reference to the degree to which their autonomy to dispose of property is recognized.

The instrumentalities through which diachronic transfers are effected are manifold and cannot be defined by their legal cloth. Diachronic transfers may become manifest in the automatic transfer of property relationships which we call intestate inheritance. They may also be effected by unilateral actions as testaments and donations, donations and testaments both becoming manifest in contractual forms, too, in many societies. Inheritance is of course the classic case. Such transfers are non-reciprocal as the original property holder after his death is not in the legal position to receive any contraprestation which is valued as property. Transfers which occur during the lifetime assume diachronic character when they are construed as non-reciprocal in terms of legal conceptions. The most common institution of this kind is donation, the "outright transfer of property relationships with no expectation of return in goods or services" (Goody 1962: 309).

The question of whether donations should be treated as falling within the category of inheritance-like transfers at all, and if so, what kind of donations should be so treated, has not often been dealt with systematically by anthropologists. One of the few anthropologists who has proposed a systematic analytic treatment of donations in the context of inheritance is Goody in his study of property and inheritance among the LoDagaa (1962). In his discussion of inheritance, Goody has freed himself from the ethnocentric western notion of inheritance. He cautions his readers that he uses "the term inheritance in a wider sense than some writers" (1962: 312) and proposes to call this "inheritance in the widest sense", "intergenerational transmission", or "devolution". He refers to societies in which property, or at least a substantial amount

of property, is transferred before the holders' death, and notes:

"These examples show that even transfers made to the heir within the lifetime of the holders must be seen in the total context of intergenerational transmission. In the last analysis all such transactions can be considered as advance payment on the material heritage, and, whether they occur *post mortem* or *pre mortem*, they all can be thought as being made *propter mortem*" (1962: 279).

For inheritance in the widest sense we therefore must consider "transfers of property from holder to heir during the holder's lifetime as well as after his death" (1962: 311). Up to this point I can fully share Goody's analysis. But Goody makes it clear that not all donations among the living are to be included in this extended meaning of inheritance. In principle, two kinds of property transfers are to be distinguished: alienations and inheritance. Donations are only treated as inheritance in those cases where they occur between the property holder and his heir(s), in principle, they are "alienations": "With donation, which is admittedly the limiting case, the position is different: from the analytical standpoint it comes closest to inheritance, and yet should be usually distinguished from it as a form of alienation" (1962: 309).

This cannot be accepted, and certainly not for the reason that it is "usually" done. Goody himself has established the irrelevance of the chronological focus on the property holder's death and thus freed himself from the ethnocentric western distinction. Yet he proposes to substitute a criterion, the legal status of the recipients before the transfer, which is no less ethnocentric, in this case LoDagaa-centric: He is determined to restrict inheritance to property transfers at death and to those property transfers among the living which take place within the corporate kinship group (1962: 312). For a conception of inheritance in its widest sense, which is useful for cross-cultural comparisons and generalizations, - and this is Goody's aim, too - this distinction cannot be maintained. For if death is not the crucial chronological point upon which the distinction rests, and if donations among the living can be included in the category of inheritance, why should the distinctions be made with respect to the legal status of the beneficiaries of the donation? Asked differently: If the distinction is made with respect to the legal status of the beneficiaries, and if death is not the crucial criterion for the distinction, would not the same distinction have to be made with regard to donations which become effective before and after the property holder's death? This would be the consequence of Goody's argument, but this consequence is hardly tenable. For it would mean the

exclusion from inheritance of all testamentary dispositions which are made for the benefit of persons not belonging to the corporate kinship group, or, in other legal systems, to persons not belonging to the legal intestate heirs. On this point, Goody's argument is inadequate. He concedes "that in many non-literate societies with established rules of inheritance, oral testaments that take effect at death can serve a similar purpose. Indeed, among the Ashanti, wills have been described as 'a form of inchoate gift that takes effect at death' (Mateson 1953: 224)" (1962: 310). This reference, of course, would strongly indicate that such transfers should be included in the wider category of inheritance, but Goody is determined to have it otherwise:

"Analytically, both modes of transactions provide standardized ways of alienating property from the corporate group. However, normally the individual is not free to make such gifts or testaments except with the approval of other members of the group, who are called upon to act as witnesses (Busia 1951: 125). It should be added that even where testamentary inheritance is the established practice, it does not necessarily follow that a man has free disposition of all his property" (1962: 310).

This is quite true. But it *does* follow that he is free to dispose of his property to some extent by donations and testaments. And corresponding to this degree, the legal heirs or members of the corporate group become *one sort of heirs* beside the testamentary heirs. To exclude the testamentary heirs from inheritance would be absurd. In many societies, particularly in those which have been influenced by the later Roman law, the beneficiaries of testamentary dispositions are given exactly the same legal status of heir as the intestate heirs. There are even legal systems in which the making of a testament is approved by law and religion, like in Islamic law, and where the testamentary disposition *may not be made for the benefit of one of the legal intestate heirs* (Juynboll 1903: 256, Fyzee 1955: 310).

Once we have eliminated death as the distinctive criterion, there are no analytical differences between donations which become effective before and after death. The opposition we are concerned with is not between "heirs" and "persons to whom property is alienated" but with different persons who receive property without contraprestation in time, with beneficiaries of diachronic transfers. To what extent these beneficiaries can be persons not belonging to the corporate group or the legally predefined intestate heirs depends on the degree of autonomy which is recognized for the property holder. The limitation of inheritance in its widest sense to transfers between property holder and predefined heir

presupposes a fixed degree of autonomy and includes it in the concept, an approach which obviously is not suitable for the purpose of cross-cultural generalization. It subjects inheritance to a specific form of socially organized groups and, in the case of Goody, makes inheritance a function of unilineal descent. However, inheritance is always a function of social organization in general, which expresses the degree to which society's members' autonomy is recognized/restricted in all domains. As we know well from our own society and as is further evidenced by most studies of change in traditional societies, the rules regulating the continuity of social groups and those regulating the continuity of property are never fully consonant (see Moore 1969).

Following Goody, we have considered so far the donation of residual property relationships, or of "outright donations" (Goody), as diachronic transfers only. It is, however, important to note that this analysis holds true for provisional property relationships only to a limited extent.

1. The derivation of the provisional relationship by the holder of the residual relationship, e.g. the creation of rights for a pawnee, is no diachronic transfer. Provisional relationships are, by definition, provisional in time, too. They are always temporary relationships, whatever their actual or intended duration may be. The temporary character gives them a synchronic appearance: Temporary relationships are always "within time", within the time marked by their temporary duration. In this respect, it therefore makes no difference whether the provisional relationship has been created in exchange for a return which is valued as property or not. Donations of provisional relationship, by the holder of the residual relationship to the recipient of the provisional one, therefore do not fall into the category of diachronic transfers.

2. We must, however, recall the most important characteristic of provisional property relationships: They are provisional only in relation to the residual relationship from which they are derived. In all other respects, they can - depending on the legal system concerned - assume all characteristics of a residual property relationship: Lesser relationships can be derived from them, and, in their residual aspect, they can also be the object of a diachronic transfer. Thus if A, the holder of the residual property relationship a, gratuitiously derives a provisional

property relationship b for B, this always is a temporary and synchronic transfer. According to the degree of autonomy inherent in b, B may derive another provisional relationship c for C, which again is temporary and synchronic. But the legal system may also provide that b can be diachronically transferrred, e.g. be inherited by D. In the relation between B and D, the relationship then has residual character, even if the relationship between A and B, and, after B's death, between A and D is of a provisional kind. In this way,provisional property relationships, like the rights of a pawnee, can be maintained as temporary relationships through generations.[34]

The distinction between residual and provisional property relationships and their synchronic and diachronic transfers is of particular importance for the study of property systems where residual property relationships are usually attached to social groups which do not die in legal definition. Anthropologists have too easily assumed that only residual relationships, generally identified as "ownership", could be inherited. Typical for this is the attitude referred to by Allott, Epstein and Gluckman in relation to African laws of succession and inheritance:

> "But if an estate was, and remains, the property of a kinship group or family, and the successor to its former holder administers it for the group even while he has beneficial enjoyments of it, can there be said to be 'inheritance' at all? Can a group be said to 'inherit' what it already so-to-speak owns?" (1969: 50).[35]

What, would we ask, happens within the group and between the group members? That the residual relationship is attached to a group will be quickly ascertained, so our attention should be directed at what synchronic and diachronic transfers occur within the group and between group members and non-group members.[36] Within the group, there may be a differentiated system of provisional property relationships which are regularly subject to diachronic transfers. As Moore has pointed out recently, this has "significant theoretical implications,since it adds an inside perspective to the conventional picture of agnatic descent groups in which everyone is seen from the outside as jurally equivalent to everyone else" (1969: 390). This theoretical implication shall briefly be explicated: It shows that the western notion of common ownership cannot be used to characterize the residual right held by the group. For in common ownership, all members are owners. Their respective relationship to the property is expressed in divisible or indivisible shares, in terms of the residual relationship and not in terms of provisional re-

lationships. In many non-western societies, in contrast, there is an elaborate system of provisional property relationships, through which the group's members' rights to use and to exploit the property objects are demarcated differentially and which can be inherited, whereas the group members' participation in the residual relationship cannot be expressed in terms of shares. As we shall see later in this study, the Minangkabau system of property relationships is a good example for such a system; we shall also see that the projection of the western notion of ownership on the Minangkabau system of property relationships through Dutch judges and administrators had important practical consequences for its further development (see Chapter 4: 190, Chapter 6: 354 ff.).

The conceptions outlined in this section - the conceptions of residual and provisional relationships, operating on the level of socio-political control over property and on the level of use and exploitation of property objects, and of synchronic and diachronic transfers of property relationships - in my view are the best analytic devices by which systems of property relationships can be studied. I also think that what I have characterized as diachronic transfers comes closest to the kind of transfers which are usually subsumed under "inheritance" or "inheritance-like transfers". In my study of the Minangkabau system of property and inheritance I hope to demonstrate the value of this framing of these concepts. Yet the analysis also demonstrates one point which has already been mentioned: When we want to study how societies maintain their system of property relationships through time and how they cope with the fact that the individual members of the society die, the study of inheritance or of diachronic transfers of property relationships alone will always be insufficient. We must never forget that all holding and all transfers are through abstract time. The distinction between diachronic and synchronic transfers is culturally variable and so is the degree of autonomy of the constituents in property affairs. When we want to make generalizations about inheritance or diachronic transfers, the study of the respective institutions is not sufficient. We must always study the whole system of property relationships and must start with the question, how society sets its property relationships into time and why it does it in the way it does.



Balai adat (village council hall) in Singkarak



Village mosque in Candung Kota Lawas

CHAPTER TWO

SOCIO-POLITICAL ORGANIZATION IN MINANGKABAU

A. INTRODUCTION

Little is known about the early history of the political organization of the Minangkabau world. Data which would allow an historical reconstruction are scarce (see Kielstra 1887a, De Josselin de Jong 1951, Dobbin 1975), and the main sources for knowledge and conjecture are embodied in the *tambo*, the historical Minangkabau legends which are transmitted in oral and written form. In this study I shall restrict myself to the description of the socio-political organization of the Minangkabau village states, the *nagari*, and of *nagari* Candung Kota Lawas (CKL) in particular. The analysis of the materials on Minangkabau political organization before the beginning of the 19th century would go far beyond the scope of this study (for a recent attempt see Dobbin 1975). I shall give my interpretation in a different publication, which will also deal with the question of how CKL fits into the general picture. In this introduction I shall therefore only give a very summary account of what is known about the political history of the Minangkabau world.[1]

The Minangkabau *tambo* relate the creation of the world, the arrival of the ancestors under the king Maharajo Dirajo, the youngest son of Iskandar Zulkarnain (Alexander the Great), the settlement in the first *nagari* Pariangan Padang Panjang, the expansion of the population and the activities of the two half-brothers Dt. Perpatih nan Sabatang and Dt. Katumanggungan, who devised the political organization and the *adat*. The settled area was divided into the "three districts" (*Luhak nan tigo*) Tanah Datar, Agam, and 50 Koto, and the "two *lareh*" (*lareh nan duo*) Koto-Piliang and Bodi-Caniago. The population lived in *nagari*, village states, which consisted of one or more settlement centers (*koto*). Within

the *nagari*, the population was organized in matrilineages; the matrilineages were each affilitated with a *suku*. The *suku* were and still are named matriclan-like groups. They may oncehave functioned Minangkabau-wide as true matriclans, but in historic times they have had a group character only within *nagari*. The *nagari* were governed by *panghulu*, the matrilineage leaders resident in the *nagari*. In the 14th century a kingdom was established in Tanah Datar by the prince Adityawarman (an historic figure) who probably extended into West Sumatra one of the great empires which had flourished at the east coast of Sumatra in the second half of the first and the beginning of the second millenium. The kingship was later vested in three offices, *Rajo Alam*, the King of the World and the actual ruler of the kingdom, *Rajo Adat*, the King of Custom, and *Rajo Ibadat*, the King of Religion. The kings resided in the *nagari* Pagarruyung in *luhak* Tanah Datar. Succession to their office was patrilineal, a contrast with the matrilineal organization of the *suku*. Little is known about the position of the kings. They seem to have wielded little power. In the original three districts the *nagari* were sovereign states, whereas in the *rantau*, the area surrounding the *luhak nan tigo*, there was a *rajo* (a king's representative) in each *nagari* (Francis 1839). Howsoever the political organization may have been in the 14th, 15th, and 16th centuries, the Minangkabau kings did not exercise substantial power in the first reports given by western foreigners. The first European to reach Minangkabau from the east coast, the portuguese Dias, who visited the royal courts in Buo, probably a dependancy of the *Rajo Adat* (De Josselin de Jong 1951: 101) in 1684, noted the very limited powers of the king (see De Haan 1897, Schnittger 1939). And the messengers from the Dutch at the west coast who established contact with the "emperor" (*Keizer*) of Minangkabau in 1665, reported that the king himself was not in the position to exercise any authority, but that they had to negotiate with the heads of the two "tribes" (*geslachten*) Koto-Piliang and Bodi-Caniago (Kroeskamp 1931: 46). These two tribes, the *lareh* Koto-Piliang and Bodi-Caniago had been established by the legendary lawgivers Dt. Katumanggungan and Dt. Perpatih nan Sabatang well before the Kingdom was established in Pagarruyung. The character of the two *lareh* is rather unclear. De Josselin de Jong (1951) regards them as moeities, out of which the allegedly original, four *suku*, Koto, Piliang, Bodi, and Caniago developed. Most authors, however, regard the two *lareh* as political parties (see De Rooij 1890, Leyds 1926). Koto-Piliang, founded by Dt. Katumanggungan, was the "royal party" which supported the King-

ship, and established a rather autocratic form of *nagari* government, which was exercised by the *Datuek nan ampek suku*, the heads of the four *suku*, to which the matrilineages of the *nagari* were affiliated. Bodi-Caniago, founded by Dt. Perpatih nan Sabatang, was the "democratic party", opposing the Kingship and proclaiming complete *nagari*-autonomy and the equality of all lineage heads in *nagari* government. There were additional differences in the penal law, Koto-Piliang stressing the *talion*-principle whereas Bodi-Caniago relied on the principle of compensation in homicide cases. The Four Ministers of the Minangkabau Empire, the *Basa nan Ampek Balai* (The Great Men of the Four Council Halls), all resided in *nagari* belonging to the Koto-Piliang Federation; this supports the hypothesis that the establishment of the Kingship was essentially an effort of the Koto-Piliang party. Each *nagari* had to adopt either the *adat* Koto-Piliang or Bodi-Caniago, but several *nagari* have claimed to belong to neither, a further indication of the "political party"-character of the two *lareh*. Historically the "parties" seem to have lost their original function, but Bodi-Caniago and Koto-Piliang have persisted as distinct *adat* systems into the present. The differences between the two systems have largely disappeared, a process which was enhanced by the imposition of a new political superstructure by the Dutch in the 19th century and the abolition of penal justice according to *adat* in 1875.

The Islamic religion was imported to Minangkabau most probably in the second half of the 16th century, but it seems that it was only gradually accepted. As late as 1761 the inhabitants of the west coast were described by a Dutchman "not as Muslims but mostly pagan, or rather without religion" (Dobbin 1975: 85, with further references). But as we have seen, among the Royal offices there was one of a "King of Religion", and among the *Basa nan Ampek Balai* there also was a minister of religious affairs, the *Tuan Kali* who resided in Padang Gantiang. Religious functionaries were also created within the *suku* administration in the *nagari*: the *Imam*, *Chatib*, or *Malim Adat*. The degree to which the Islamic religion was accepted by the Minagkabau in the first period of Islamization is largely unknown. At the end of the 18th century, at least, they were not devout believers. Variations in intensity of belief in Islam greatly contributed to the civil war which broke out in Minangkabau in the beginning of the 19th century, the so-called Padri-war. The Padri were an orthodox religious movement founded by three hajis who had returned from their pilgrimage to Mecca in 1803. During their stay in Arabia, they had

come under the influence of the very strict religious tenets of the Wahabite sect. After their return to Minangkabau they began preaching the abolition of gambling, opium smoking, cock fighting, and palm wine drinking, pleasures in which the Minangkabau seem to have indulged to a great extent at this time. Their campaign was also directed against the political organization of the *nagari*; they sought to replace the government based upon the heads of the matrilineages by a theocratic form of government through *Tuangku* (Lords), who were to wield both religious and secular power. Against those *nagari* which did not want to submit to their teachings, the Padri waged a holy war. At the beginning of the war, the members of the royal families were murdered, and soon the whole country was engaged in a civil/religious war. As will be described later (Chapter 3), it was the Padri-war which served as a pretext for the Dutch occupation of Minangkabau.

The Padri-war and the subsequent imposition of Dutch colonial rule on the Minangkabau *nagari* had a great impact on the socio-political organization. In the following description I shall indicate the most important changes which occurred as a consequence, but my main aim is to present the basic principles of the *adat* socio-political organization of the *nagari*. The development of the pluralistic situation in the legal and administrative field will be dealt with in the next chapter. I shall order the Minangkabau conceptions which refer to the order of their *nagari* under four headings. At first I shall describe the principles which divide the *nagari*-population into groups and which regulate intergroup relationships. Under the second heading I shall treat the allocation of authority to individuals and groups. The third is concerned with the individual's relationships to other individuals and to groups. Under the heading of residence I shall finally deal with the conceptions which localize the inhabitants' rights and duties and their activities.

The principle which pervades all four sets of organizational rules is the conception of matrilineal descent (*keturunan garis ibu*), which the Minangkabau define as "blood relationships" (*batali darah*). The fundamental socio-political units are structured according to this principle. Matrilineal descent provides an important criterion for determining the eligibility of persons for positions of social and political authority; the same descent principle also provides a criterion for determining the range of persons and groups over which positions of authority extend. The principle also marks off the functionally most important sub-

set of the individuals' kin, and it further functions as a guideline for the continuation of positions of authority and property relationships through time. But although the conception of matrilineal descent is the dominant principle used in social and political organization, it is by no means the only one. In the field of inter-individual relationships, relationships established through marriage are of considerable importance, and the relationships between children and their father and their father's lineage are functionally loaded to an important degree. So far as positions of authority are concerned, selection and communal agreement modify the principle of succession according to matrilineal descent. Finally, the population is divided into groups not only through the matrilineal principle, but there are also group divisions which are based upon political arrangement and on a territorial division of the *nagari*. These additional principles should be stressed, as the principle of matrilineal descent has generally been over-emphasized by previous authors. Further principles divide the population into categories of different social and political rank.[2] Stratification is based upon type of residence in a *nagari*. In principle, each *nagari* recognizes three categories of inhabitants: the descendants of the original settlers (*urang usali*, "original people"), the descendants of strangers which were accepted in the *nagari* at some later time (*urang datang*, strangers, newcomers, arrivals), and the descendants of former slaves (*locieh* or *kemanakan dibawa lutuik*, sisters' children below the knee) (see De Josselin de Jong 1975: 11, Umar Junus 1964: 292, 308).

B. GROUP FORMATION AND INTER-GROUP RELATIONSHIPS

I. THE CONSTITUENT GROUPS

By constituent groups I mean those groups which are presumed to exist in perpetuity and which function as the structural units of the *nagari*-constitution. According to the *adat* of CKL, the basic socio-political units are the groups called *buah gadang*. They correspond to the groups which in the literature on Minangkabau are usually called *buah paruik*, *paruik*, *familie*, or *kaum* (for an overview of the varying terminology see De Josselin de Jong 1951: 49 ff.).

1. *The Buah Gadang and Its Internal Structure*

The *buah gadang* is defined as "one" in several respects: The members of the *buah gadang* are said to "have in common" or are "of one" *panghulu*-title (*sasako*), heritage (*sapusako*), property (*saharato*), and graveyard (*sapandam sapakuburan*); they are people who are "offended and ashamed together" (*sahina samalu*). The *buah gadang* can be a matrilineal descent group (MDG), comprising only persons who trace common matrilineal descent from one apical ancestress. It may also be stratified or consist of MDGs of the same rank which do not together make up a MDG. As it is a rule of *adat* that strangers and the descendants of former slaves can acquire *nagari*-citizenship only by incorporation into a *buah gadang*, the social strata are usually indicated through a reference to their status as *buah gadang* members. For this reference the concepts of matrilineal descent are used: All group members are referred to as *kamanakan* ("sister's children"). According to *adat*, there are four kinds of *kamanakan*. To these four kinds of *kamanakan* correspond four different mechanisms of incorporation and the three social categories which have already been mentioned:

1. The first kind of group members is made up by the persons who are directly related by matrilineal descent to the *buah gadang*'s apical ancestress, and who have become members by birth to one of the group's female members. These are the "sisters' children related by blood" (*kamanakan batali darah*) or "sisters' children below the chin" (*kamanakan dibawa dagu*). A *buah gadang* may consist of such blood relatives only, but may also contain *kamanakan* of the following three categories.

2. The second kind of group members are those who have been adopted by the first kind and the adopted members' descendants. These are the "sisters' children below the breast" (*kamanakan dibawa dado*). Adoption is rare in Minangkabau and mainly occurs for demographic reasons: The *buah gadang* is threatened with extinction (*punah*, *putuih*) or there are no male group members who can effectively lead the *buah gadang* and manage its affairs. In principle, persons should be adopted with whom matrilineal descent relationships are recognized, but exceptions are permitted. Usually, the adopted members are also *batali darah*, blood relatives in the matriline, who were, before their adoption, members of a different *buah gadang* resident in the *nagari*.[3] In addition to *nagari* residents members of a *buah gadang*'s *balahan* can be adopted. The *balahan* are

groups formed by the descendants of persons who, in the past, had been members of the *buah gadang* but who, at some time in the *buah gadang*'s history, have split off to move into a different *nagari* (a case in which such an adoption is envisaged will be described in Chapter 5). The adoption requires a formal ceremony and the consent of the *nagari*-government. The new members must be acknowledged as *kamanakan* (*mangaku kamanakan*) and be officially and publicly received as new group members (*dionjokkan*). After the adoption, the new group member(s) enjoy the same rights and privileges as the blood relatives (see Willinck 1909: 357).

3. The third kind of group members consists of strangers and their descendants, who have associated (*malakok*) with a *buah gadang*. Any stranger wishing to settle in the *nagari* must be incorporated into a *buah gadang*. Minangkabau *adat* says of them: "*tabang manumpuehkan dahan - hanggo mancamkan rantiang*" - "(a bird) leaves the tree branch when flying away - it catches a twig when sitting down" (Kroesen 1874: 22). They must find a *mamak*, a "mother's brother", and they should seek acceptance in a *buah gadang* which belongs to the same *suku* to which they, in their original *nagari*, belonged. These are the "sisters' children below the stomach" (*kamanakan dibawa pusek*) or the ones related by "good relationships" (*batali budhi*).

4. The fourth group consists of the descendants of former slaves. These are the "sisters' children below the knee" (*kamanakan dibawa lutuik*) or the ones "related by gold" (*batali ameh*).

Slavery seems to have played only a minimal role in Minangkabau before the Padri-war. The Minangkabau are reported to have made occasional raids on their non-Islamic neighbours and on the islands off the west coast (Verkerk Pistorius 1868: 435 ff.). Only in the Padri-war, could Minangkabau themselves be made slaves. For the padri treated all those who did not want to submit to their rule as *kafirs*, unbelievers, and unbelievers could be made slaves. The *budak* or *locieh*, as the slaves were called, were treated as self-acquired property (*harato pancaharian*) and after their master's death became *budak pusako*, inherited slaves which were treated like inherited property (*harato pusako*) (see Kielstra 1892: 640 ff.). In general, slaves seem to have been treated rather well and were set free after having rendered good services to their master.[4] When slaves were set free, they had, as strangers in the *nagari*, to look for a *mamak* and to be accepted in a *buah gadang*, and they in general

chose their former master as *mamak*. When slavery was officially forbidden in the Colony in 1860, the colonial government freed all slaves, and also freed the *kamanakan dibawa lutuik* from their often slave-like obligations towards their former masters by buying them off (Kielstra 1892: 641, 643, Verkerk Pistorius 1868: 435 ff., AB 11: 82). In the district of "Old Agam", where CKL is situated, slavery played no role: Only 504 *kamanakan dibawa lutuik* were bought off at the time (Kielstra 1892: 643). But in some other *nagari*, such as Silungkang and Padang Sibusuk, nearly one third of the population consists of the descendants of former slaves.[5]

The different kinds of *kamanakan* are all group members. They are all subject to the socio-political authority of their *panghulu* who represents all his group members in the *nagari*. Besides, all group members share the same rules of exogamy. Thus strangers of *suku* X who had associated with a *buah gadang* of *suku* Y were henceforth not allowed to marry members of *suku* Y. But in some respects the status of the various kinds of group members is clearly differentiated: The *kamanakan* of the third and fourth kind have no equal vote in *buah gadang* matters. They are ineligible for their *buah gadang*'s *panghulu*ship, an exception being sometimes made for the descendants of strangers. They also have no equal rights to the *buah gadang*'s property. As will be described in detail later, only the blood relatives and the adopted members have a right to an equal distribution (*pambahagian*) - the other *kamanakan* are only "given" some property (*pambarian*; a story involving the property relationships between *kamanakan dibawah lutuik* and their former masters will be described in Chapter 5).

2. *Subdivision and Cleavage of the Buah Gadang*

The *buah gadang* differ in genealogical depth. Some trace their existence to times before the foundation of the *nagari*. Although not all ancestors are remembered (the deepest genealogy, *ranji*, which we saw comprised 11 generations), one "knows" that the *buah gadang* and the first incumbent of its *panghulu* title were among the founding families. Other *buah gadang* have come into existence at a later stage. Some may have branched off from an already existing one, others may have been constituted by the descendants of strangers or former slaves according to the rules which will be described later. In CKL, *buah gadang* are also subdivided into formal subgroups, the *kaum*. Whereas subdivision as such seems to be a

regular feature of Minangkabau *adat*, the form in which it is presently done may have been seriously influenced by Dutch administrative policy. This question will be discussed after the processes of subdivision and cleavage have been described.

a. Subdivision: The *Kaum*

In CKL, the subdivisions of a *buah gadang* are called *kaum*. As the use of the word *kaum* in the Minangkabau literature and in contemporary Minangkabau varies considerably, some general remarks must be made first:

The word *kaum* is Arabic and means group. It has probably been used in Minangkabau since the Islamization, but it is not known to which of the socially defined groups the term was applied, and whether there was a uniform usage throughout Minangkabau. In 1908, the Dutch colonial administration employed the term *kaum* to denote the groups which were to be responsible for the payments of the newly introduced tax (Van Vollenhoven 1918: 249, Joustra 1923: 92). For this purpose the groups were chosen which were presumed to hold property in common. The head of this group was styled *mamak kepala waris* (Min.: *mamak kapalo warih*), the "*mamak* who is the head of the heirs" (on the term *warih* see below pp. 99 and 196). This use of the term has persisted into post-Independence Indonesia, and it is universally applied in the State Courts. Disputes over group-property are, by definition, over *kaum* property, and the *kaum* must be represented by its *mamak kepala waris* (see also Tanner 1971: 265 ff.). It is, however, very doubtful whether the uniform usage in the courts corresponds to a uniformity on the *nagari* level.[6]

In CKL, the *kaum* are *potential* subunits of the *buah gadang*: The internal formal organization of *buah gadang* is expressed in terms of *kaum*. A *buah gadang* can consist of one *kaum* only, but also of several *kaum*. There are 100 odd *buah gadang* in CKL and nearly 400 *kaum*. The average thus is 3 to 4 *kaum* per *buah gadang*, but there are many *buah gadang* with just one *kaum*, and at the other extreme is one *buah gadang* which consists of 13 *kaum*.

The *buah gadang* is one group (*kaum*, in the most inclusive reference of the term) with "one" property and "one" *panghulu*ship and -title. Subdivision of the *buah gadang* into two or more *kaum* involves a formal division of the common property, but not of the *panghulu*ship. Of two *kaum* in the same *buah gadang* it is said that "*harato alah dibagi*", the property has already been divided. Both *kaum* have their *kaum*-leaders, the *mamak kepala waris*, as they are nowadays called (the terms *mamak kaum* or

tungganai are also still used, see below), who exercise authority in *kaum*-internal property affairs. According to court-practice, they also represent their *kaum* in all disputes over *kaum*-property. In inter-*kaum* disputes, however, or in intra-*kaum* disputes which cannot be solved at the *kaum* level, the *panghulu* retains the highest authority also in property affairs. No transfer of any *buah gadang* property, share-cropping agreements excepted, may occur without him taking cognizance.

Common holding and division of property are, however, expressed on two levels of socio-political organization: According to *adat*, in the sense of political-administrative relations, the *buah gadang* consisting of more than one *kaum* is still "one"; all *buah gadang* members are still *urang saharato*, people with one common property. The property division in the *buah gadang* between its *kaum* is to be valid only internally. As one of the stories told in Chapter 5 will demonstrate, this principle is still recognized in the *nagari* and has practical consequences in property-politics. On the other hand, the autonomy of the *kaum* in property affairs is clearly acknowledged in the State Courts, where the *mamak kepala waris*, and not the *panghulu*, represent their *kaum* in inter-group disputes. This somewhat ambiguous *kaum-buah gadang* relationship may be due to the fact that in the courts' perspective, *kaum* are the groups which have one property; "one property groups" can be either *kaum* or *buah gadang* groups in CKL.

Subdivision of *buah gadang* consisting of one *kaum* into two *kaum* will mostly be the result of a longer process. The division generally occurs for demographic reasons, when the group members have become numerous enough that they lose the feeling of "really" being one group. Minangkabau adat says: "*Panjang dikarek - buntak dikapiang*" - "what has become too large, must be shortened, what tends to become unclear, must be clarified" (Kooreman 1902: 917, Willinck 1909: 353). The division itself, however, must be formalized. When the division is to occur, the rule of "*kok limo kali turun*" - "when there are descendants five times", must be adhered to (Willinck 1909: 352, De Josselin de Jong 1951: 85). This rule indicates the generation level at which the apical ancestresses of the newly formed *kaum* are established: The apical ancestresses whose descendants form the new *kaum* are those women who, at the moment the group split is made, have had five generations of descendants. They thus are determined on the MMMM-level of the youngest living generation; the counting proceeds from the youngest living generation upwards, not from the apical ancestress of the former undivided group downwards, through

the generations.[7]

The above description only refers to divisions of *buah gadang* or *kaum* which consist of blood relatives. *Kamanakan* of the third and fourth kind can also be given *kaum*-status, and in this case the *kok limo kali turun*-rule does not play a role as there is no question of a common apical ancestress. The formal recognition of *kaum*-status requires the decision of the *buah gadang* elders.

The above principles do not only pertain to the subdivision of *buah gadang* which are one *kaum*, but to subdivision of *kaum* in general. Due to the varying demographic pressures, *kaum* will generally develop asymmetrically. There may be *kaum* where the common apical ancestress is still remembered by the living *kaum* members. In others, however, where due to failing demographic pressure there was no need for *kaum* splits, the common apical ancestress may be several generations removed, and the actual genealogical relationships between the *kaum* members may be not clear to them any more.

As long as the *buah gadang* as a whole is not split, the newly formed *kaum* still have the same *sako*, *panghulu*-title. This is often kept by the genealogically older *kaum*. But often (and apparently in Bodi-Caniago *adat* in particular) the two *kaum* agree to rotate the title and the *panghulu*ship between them. This agreement is called "*gadang balega* (*bagilieh*)" - "the greatness rotates" (see also Willinck 1909: 801 f., De Josselin de Jong 1951: 87, who speaks of the *adat sansako*). This agreement often leads to difficulties and serious conflicts between the *kaum*. For one, this is due to asymmetric *kaum* development. If a *buah gadang* subdivides into two *kaum*, the two *kaum* should alternatively use the title. But if one of the *kaum* is subdivided again later, and there are three *kaum*, the title should still be rotated between the two original *kaum*, whereas the two "sub*kaum*" should now start rotating their turn. The title thus should be rotated in a sequence like ABACABAC. But after some time, B and C will usually claim the same right as A. In addition, the *kaum* which has held the *panghulu*ship more often is loth to give it to the other *kaum* after the *panghulu*'s death and rather tries to install one of its members as new *panghulu* again. Such conflicts often lead to definite splits of *buah gadang*.

b. Cleavage of *Buah Gadang*

By cleavage I mean the establishment of two (or more) *buah gadang* out of one. The rules for cleavage are the same as have been described for subdivision, but there is one important additional rule: As it is one requirement for a group's *buah gadang* status that their members have "one *sako*", the establishment of a new *buah gadang* means the establishment of a new *panghulu* title. Conversely, the installation of a new *panghulu* means the formation of a new *buah gadang*. As the members of the new *buah gadang* must have been members of a *buah gadang* before, the establishment of a new *buah gadang* always means that an existing *buah gadang* is divided. The process of cleavage is generally preceded by the subdivision of the *buah gadang* into *kaum*.

There are four principle modes of establishing a new *panghulu*ship.[8] The concepts used to denote these four modes are not uniformly used throughout Minangkabau,[9] but the processes indicated by the sometimes varying terms denote the same mechanisms: They deal with the cleavage of *buah gadang* consisting of blood relatives (1 and 2), of the descendants of strangers (3), and of the descendants of former slaves (4):

1. *Gadang manyimpang* (The Greatness branches off)

In the case of *gadang manyimpang*, a new *buah gadang* is formed by one group of the blood relatives after an agreement over the cleavage has been reached. The typical situation is, that the *kamanakan batali darah* have increased. The *buah gadang* has already been subdivided into two *kaum* and one *kaum* may already have moved to cultivate land in a differant part of the *nagari*. So one decides "that the time has come" and that independence should be given to that *kaum*. The new group is given its own *panghulu*ship and title, which in many *nagari* generally is (or even has to be) derived from the *panghulu* title of the old *buah gadang*. Thus if the *buah gadang* of Dt. Sinaro establishes a new *buah gadang*, the new *panghulu* title may be Dt. Sinaro Panjang. To speak of "old" and "new" *buah gadang* only makes sense if it is related to the group which keeps the original title, and this often is the genealogically older group (descending from the older sister of the sisters who are apical ancestresses). Another and mostly corresponding reference is to the residence of the groups. The old group usually stays at the original settlement area, the "new" group moves away. But the two *buah gadang* may also agree upon "title-rotation": Each *buah gadang* wears the original and the new title in rotation. This was quite common in CKL.

2. *Baju sehelai dibagi duo* (One shirt is divided into two)
In this case, the *buah gadang* of the blood relatives is divided into two groups of equal rank, which both keep the original *panghulu* title. Thus one *buah gadang* Dt. Sinaro becomes two *buah gadang* with the *panghulu*-title Dt. Sinaro. According to "old" *adat*, this was forbidden, but it seems to occur so often that most Minangkabau consider it an unpleasant but hardly avoidable practice. Such a cleavage only occurs in case of trouble: mostly when there are two or more *kaum* which cannot agree which *kaum* is to keep the *panghulu*ship or when the title-rotation does not function. If the dispute cannot be solved by the other *panghulu* or not even by the highest *panghulu* in the *Karapatan Adat Nagari*, the *Nagari* Council, this kind of division may be the last resort.

3. *Mangguntiang siba baju* (A piece of the shirt is cut off)
In this case, a new *buah gadang* is formed by the descendants of former strangers, who had at some time associated with the *buah gadang*. If their descendants have increased, and when they have demonstrated their worth, it may be decided to give them independent *buah gadang*-status. They will be given their own *panghulu* title, which should in general be derived from the title of their former *panghulu*. The new *panghulu* thus may get a title like Dt. Sinaro nan Panjang.

4. *Mambuek kato nan baru, mambuek panghulu baru* (To make a new *panghulu*)
In this case a new *panghulu*ship is created for the descendants of former slaves which have been given independent *buah gadang* status. The title is new insofar as it may not contain part of the *sako* of their former masters; a new title has to be invented.

The same processes hold, of course, true for future cleavages of the newly formed *buah gadang*. If at a later stage the *buah gadang* which has been formed by the descendants of former strangers is split, this will follow the rules laid out in 1. and 2., the rules concerning cleavage of groups of blood relatives.

II. OTHER GROUPS

The *buah gadang* and *kaum* have been described as the constituent socio-political units. This constituent character is rooted in *adat* and the *nagari*-constitution. In addition, there are other references to groups, which partly overlap with *buah gadang* and *kaum*: *jurai*, *rumah*, *kampuang*, and *pariuak*. In CKL, these terms have the following connotations:

1. *The Jurai*

The term *jurai* can be used to denote any MDG which traces common matrilineal descent to one common apical ancestress, irrespective of its genealogical depth and formal structure. *Jurai* thus can be used to refer to a mother with her children, to a *kaum* or a *buah gadang*, and it can also denote a group of several *buah gadang* which share common matrilineal descent. In general, however, the term *jurai* is employed to indicate lineages *within* the formal groups, the *kaum* or *buah gadang*; i.e. the apical ancestresses of the *jurai* can be taken from each genealogical level below the one on which the *kaum*- or *buah gadang* ancestress is located. *Jurai* means both the actually living members of a *jurai* as well as the group in perpetuity. It has a purely genealogical connotation: A *jurai* is always formed of blood relatives *(batali darah)*, whatever their social status may be.

2. *The Rumah*

The term *rumah*, house, refers to the *rumah gadang*, the Minangkabau long-house, which is the center of *kaum* activities and ceremonies and in which the female group members sleep together with their husbands and children. *Rumah*, or the people who are *sa-rumah*, "of one house", can be used to indicate the kin group sharing the same *rumah gadang*. The eldest matrikinsman, the head of the house, is styled *mamak rumah* or *tungganai*. But *rumah* can also be used in reference to all persons whose ancestresses, howsoever far removed, once shared the same *rumah gadang*. It thus can indicate all members of a *buah gadang*, even if they now live in several houses. In *suku* Caniago, e.g., there was a subdivision called Caniago 5 Rumah, the Caniago of the 5 Houses. In this case, the 5 houses indicated the five original *buah gadang* of that subdivision. In CKL, as probably in most *nagari* in Minangkabau and as in many other societies, "house" has both a genealogical and residential/territorial meaning. In former times, the genealogical and residential rules were probably

matched insofar as a residential unit was also a genealogical unit recognized as a formal group. In a given historical situation, the people who were *sarumah* constituted the *kaum* or even the *buah gadang*. When the group members increased, at first new rooms would be added to the *rumah gadang*, or a smaller house would be built adjacent to it. In this case, the group members in the small house would still be "of one house" with the others. If the group continued to increase, people would start thinking of building a new *rumah gadang*. This is an important matter, to be decided by the whole group and the *panghulu*. If the new *rumah gadang* was built, the group members going to live there would have their own *mamak rumah* or *tungganai*, and the residential split would probably be accompanied by a formal subdivision of the group.

As far as I can judge, the genealogical principle, however, was the decisive one. It certainly has proved to be the persistent one in CKL, where the residential referent has lost most of its importance. For *rumah gadang* are no longer regularly reconstructed (it is too expensive and people appreciate some more privacy) and the *rumah gadang* which are still used usually do not house a formal group any more. The majority of people live in smaller houses, which have space enough for a *jurai* of three generations. Whether these houses can be called *rumah* in its *adat* meaning is questionable. In CKL, the eldest male matrilineal relative of a group living in a small house is sometimes designated *mamak rumah*, but in general *mamak rumah* or *tungganai* is used to denote the *kaum*-heads, also when the *kaum* members lived in several small houses.

3. *The Kampuang*

The concept *kampuang* is also used with both genealogical and territorial reference in Minangkabau. In the literature, it is used to refer to groups such as *buah gadang* in CKL as well as to larger groups composed of several *buah gadang* of the same *suku*. This seems to be the general case for *nagari* with Koto-Piliang *adat* in the district 50 Koto. *Kampuang* is also used to indicate the settlement area in which a genealogical *kampuang* lives. In CKL, the word is only used in a residential/territorial meaning.[10]

4. *The Pariuak*

The word *pariuak* literally means "rice-pot". It is used to denote the people who share one rice-pot - the group of matrilineal relatives who eat together.

III. GROUP FORMATION ON MORE INCLUSIVE LEVELS AND THE SYSTEM OF INTER-GROUP RELATIONSHIPS

The *buah gadang* are the basic socio-political units in the *nagari*. Their mutual relationships, hierarchical order, and the formation of more inclusive groups of *buah gadang* are regulated in the *nagari*'s constitution. The constitution is partly subject to Minangkabau-wide *adat* which contains principles according to which a *nagari* must be constituted; in part it consists of constitutional arrangements which have been made by the *nagari*'s political leaders.

One of the most important principles of *nagari* organization is that each Minangkabau individual, and consequently each group, must belong to a *suku*, and that there must at least be four *suku* in a territory before the territory may be declared a *nagari*. The description and analysis of the Minangkabau *suku* organization is complicated by the fact, that the term *suku* is applied to groupings of different character - in the literature as well as in the various *nagari*: *Suku* refers to the named groups which are generally considered to have been Minangkabau-wide matriclans, and which are said to have developed out of the "original" four *suku* Koto, Piliang, Bodi, and Caniago. At present, there are more than one hundred of such *suku* in Minangkabau, but they have group character only on the *nagari* level. Secondly, *suku* also refers to administrative associations of *buah gadang* which may not be related to each other by actual or assumed common matrilineal descent and which may even belong to different clan-*suku*. A detailed discussion of the Minangkabau *suku* system and of the interpretations given to it in the literature would go far beyond the scope of this study.[11] Here, I shall only describe the situation as it was in *nagari* CKL.

In CKL, there are two kinds of most inclusive groups, the *suku* and the *hindu*. The *suku*, also called *suku pusako*, are formed according to the principle of common matrilineal heritage, and are known by the matriclan names. The *hindu* (from *induek*, mother, *genetrix*) or *hindu adat*, which formerly had been called *suku adat*, are formed according to the principle of *adat* in the sense of political arrangements not (or not exclusively) based upon common matrilineal descent. The *hindu adat* are named after its dominant *suku pusako* group or after the number of its component *suku pusako* groups.[12]

In CKL, there are 9 *suku pusako*: Sikumbang, Guci, Koto, Jambak, Caniago, Selayan, Melayu, Pili, and Tanjung. There is unfortunately no exact information on the number of the *suku* members, but the relative strength can be indicated by the number of *kaum* and the multiplication of the number of *kaum* by the average number of the members of one *kaum* (25.5):[13]

Suku	Number of *kaum*	Estimated number of members
Sikumbang	76	1.938
Pili	11	279
Tanjung	10	255
Guci	80	2.040
Melayu	10	255
Koto	93	2.371
Caniago	32	816
Selayan	27	688
Jambak	39	995
	378	9.636

Genealogical relationships are not acknowledged between all the *buah gadang* of one *suku pusako*. Those which are related to each other by common matrilineal descent and which have developed through the processes of cleavage from one original *buah gadang* are characterized as being "*saparuik*" - "of one womb". (Note: In the literature the term *saparuik* is generally used as a formal group term for the groups called *buah gadang* in CKL.) But with other *buah gadang* of the same *suku* no such relationships are recognized. Some *buah gadang* had, at the time of the first immigration, come from very different parts of Minangkabau. With these *buah gadang*, only a very vague and putative common descent is recognized on the basis of common *suku*-membership, and the notion that all members of one *suku* ultimately had descended from one original group. With other *buah gadang*, even those relationships are not recognized as they had been formed by the descendants of strangers (who before their incorporation may have belonged to another *suku*) or the descendants of slaves. This, at least, is the conception held by the *adat* experts in CKL. The different kinds of relationships are clearly distinguished by them, and one still "knows" the actual kind of relationships. The charter of relationships is orally transmitted, and it is also written down in

the *tambo* of the *nagari*. We were shown excerpts, containing the lists of *panghulu* (*buah gadang*) and their grouping according to *saparuik* relationships. In the *tambo* excerpts, *adat* experts had also written down the places of origin of the *buah gadang* which had moved to CKL from elsewhere.

The *buah gadang* of the 9 *suku pusako* are grouped together differently in the 12 *hindu adat*. The composition of the *hindu* is as follows:[14]

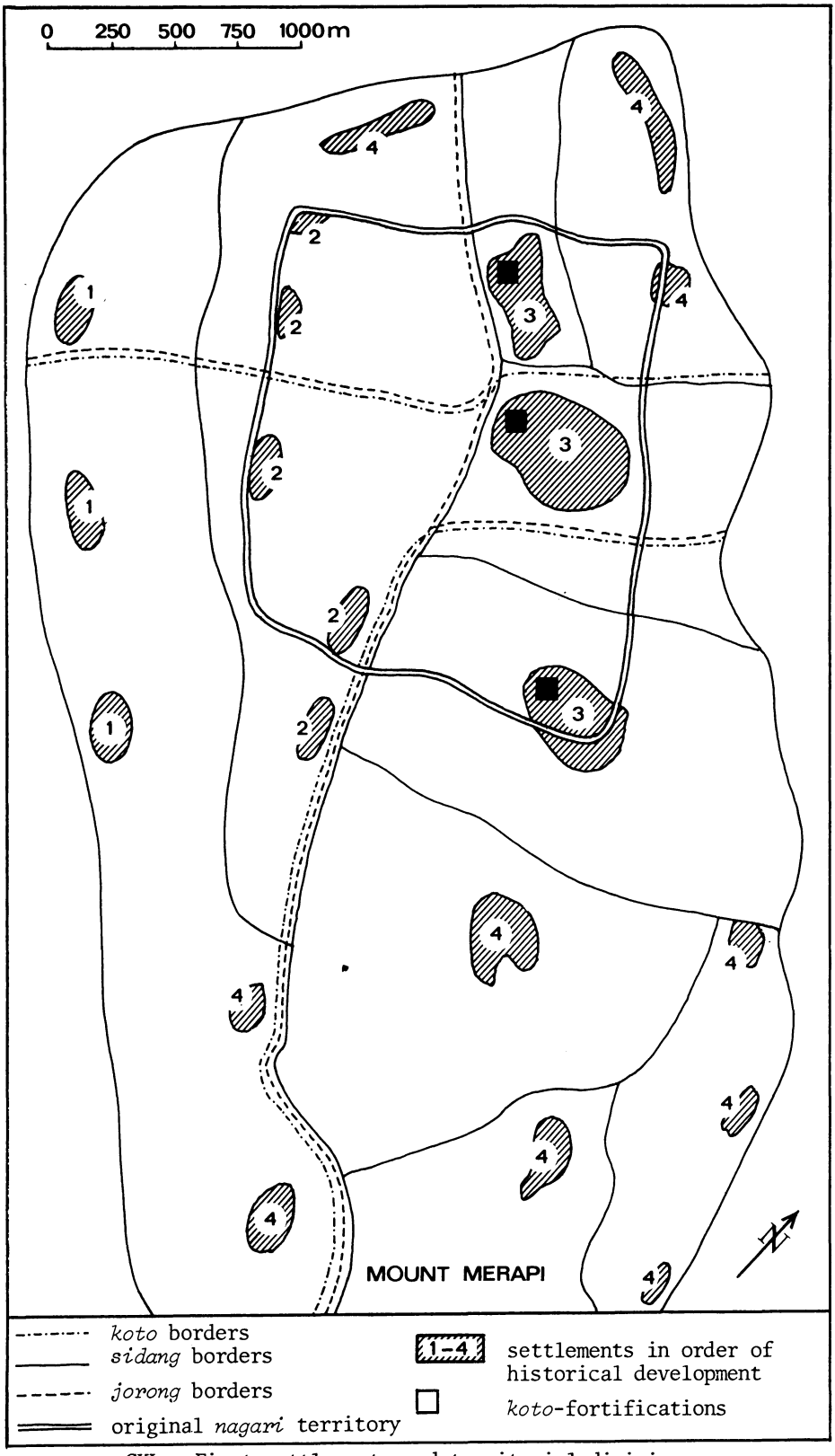
1. *Hindu* Sikumbang Tangah (the Sikumbang in the middle). This *hindu* comprises at least two unrelated (in the sense of *saparuik*) groups of Sikumbang *buah gadang*.
2. *Hindu* Sikumbang Koto Ambalau (the Sikumbang in Koto Ambalau). This *hindu* comprises at least two unrelated Sikumbang groups and the four *buah gadang* of *suku* Pili.
3. *Hindu* Sikumbang Koto Kubang (the Sikumbang in Koto Kubang). This *hindu* consists of at least two unrelated Sikumbang groups and the three *buah gadang* of *suku* Tanjung which originally settled in the northern part of CKL.
4. *Hindu* III Saniniek (the three of one grandmother, ancestress). This *hindu* comprises *buah gadang* of *suku* Koto, Guci, and Melayu.
5. *Hindu* Jambak Ujuang Balai (the Jambak at the end of the council hall). This *hindu* consists of two unrelated Jambak groups.
6. *Hindu* Jambak Batu Baji (the Jambak at Batu Baji). This *hindu* is composed of two unrelated Jambak groups and one group of Sikumbang *buah gadang*.
7. *Hindu* Caniago 5 Rumah (the Caniago of the five houses). This *hindu* comprises 8 *buah gadang* of *suku* Caniago which form at least two *saparuik* groups.
8. *Hindu* Caniago-Selayan. This *hindu* consists of two unrelated Selayan groups and three *buah gadang* of *suku* Caniago.
9. *Hindu* Koto Jantan (the male Koto). This *hindu* comprises several (at least three) unrelated groups of *suku* Koto.
10. *Hindu* Koto Batino (the female Koto). This *hindu* is also composed of several unrelated Koto groups and in addition comprises those *buah gadang* of *suku* Tanjung which originally settled in the southern part of CKL.
11. *Hindu* Guci Tangah (the Guci in the middle), and
12. *Hindu* Guci Ateh (the Guci high up (the mountain)), which are both composed of at least two unrelated groups of Guci *buah gadang*.

The *hindu adat* are formally subdivided into *sabuah paruik*. The *sabuah paruik* comprise *buah gadang* of one *suku pusako* within the *hindu adat*. Depending on the number of *buah gadang* within one *hindu* there are one or two *sabuah paruik*, 4 *buah gadang* being the average of a *sabuah paruik*. The *sabuah paruik* are grouped together as far as possible according to genealogical closeness, but even they contain *buah gadang* which are not considered to be related to each other. As will be remembered, the related ones are called *saparuik*. Experts in CKL laid great emphasis on the difference: *Buah gadang* which are *sabuah paruik* were "*disabuahkan*", were made into one *buah paruik*. (Note again: In the literature the term *sabuah paruik* is often used for what is called *buah gadang* in CKL).

This rather complex arrangement will briefly be outlined in its historical development (as could be reconstructed according to the information given by CKL experts): At the time when the territory of the later *nagari* CKL was still forest, 7 *panghulu* with their *buah gadang* moved into the area. They took possession of as much land as they wanted and started to cultivate it. These were 3 *panghulu* of *suku* Sikumbang, and one each of *suku* Selayan, *suku* Guci, *suku* Koto,and *suku* Jambak. In the course of time, the original *buah gadang* split and other immigrants moved into the area. The first settlers allowed them to settle nearby and to occupy and cultivate land. At that time, the newcomer groups retained their *suku pusako* membership but had to submit to the socio-political authority of the *panghulu* of the oldest lineages. The 7 *panghulu*, the leaders of the first *buah gadang* to occupy the area, were styled *panghulu* 7 *suku* and their following *suku adat*.

The population increased and new immigrants settled in the area adjacent to the original settlement area. In the course of time, the inhabitants of the various small residential clusters established three *koto*. *Koto* are settlement centers which have already some formal structure but not yet the status of a *nagari*. They could be established in an area over which no *nagari* yet claimed sovereignty but also within a *nagari* area. In the latter case, the founders of a new *koto* could be given *nagari* status, too, by the government of the original *nagari* which forthwith had the position of a "mother-*nagari*" towards the new one. In CKL, however, no *nagari* had claimed sovereignty over the area.

The centers of the three *koto* were located at some distance from the original settlement area (see map p. 76), and their foundation must have occasioned a shift in the traditional power-system from the old to the



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new and more heavily populated settlement clusters. Apparently, not all newcomers wanted to subject themselves to the authority of the *panghulu 7 suku*. So when the inhabitants of the three *koto* decided to establish one *nagari* in the area, the former 7 *suku* system was changed into the 12 *hindu* constitution. In each of the three *koto* were 4 *hindu adat*.

The 12 *hindu* system is said to be the "*cupak usali*" of CKL - the "original measure/standard" which cannot be altered.[15] All new groups had to be incorporated into their framework. The *sabuah paruik* division, on the contrary, was flexible. A comparison of the *sabuah paruik* groupings in the *tambo* excerpts with the groupings given for the contemporary system shows that there had been several rearrangements of the *buah gadang*.

When the *nagari* was founded, there were 60 *panghulu* recognized as *buah gadang* leaders, and each *hindu adat* consisted of 5 *buah gadang*. These 60 formed the *Karapatan Adat Nagari*, the *nagari adat* council. For administrative and governmental affairs, the *hindu*-functionaries constituted the highest executive. Each *hindu* has one *panghulu bahindu* - a *panghulu* for *hindu* affairs, one *juaro adat* ("*adat* champion"), who has the function of an executive official, and an *anak mudo* ("young child"), who functions as assistant to the *juaro adat*.[16] The *juaro adat* form a separate council under the chairmanship of the *tambang adat* (the "mine of *adat*"), who generally is a *panghulu*. The original 7 *suku* (*adat*) are still acknowledged, and the 12 *panghulu hindu* are normally referred to as "the *panghulu* of the 7 *suku*", although they number 12. The *panghulu* of the 7 *hindu* which have grown out of the 7 *suku adat* are regarded as having a "somewhat" superior status, and in formal ceremonies their former position is indicated by special seating-arrangements. The *juaro adat* are likewise distinguished and one speaks of the *juaro* of the 7 *suku* and the *juaro* of the 5 *hindu*.

Both *suku/hindu adat* and *suku pusako* have different spheres of competence and a different, though overlapping, hierarchy of socio-political authority. CKL- *adat* says: "*Pusako sakato niniek mamak - adat sakato nagari*" -"*Pusako* is a matter of the lineage elders - *adat* is a matter of the *nagari*". *Pusako* matters are subjects dealing with heritage, property and *panghulu* titles. Disputes about such problems should be settled in the *suku-pusako* hierarchy. *Pusako* also regulates the question of exogamy. In principle it is the *suku pusako* which are the exogamous units (see below D III 2). Inter-*buah gadang* inheritance is also regulated according

to *pusako*: If one *buah gadang* is extinct (*punah*) its property must be inherited within the *suku pusako*.

The *hindu* system is concerned with *adat*, which is used here in the sense of *nagari* administration and government, from which *pusako* (intra-lineage-, *suku pusako*-)affairs are exempt. Though the *hindu* are also spoken of in terms of matrilineal descent, *hindu* relations are irrelevant for matters such as property and marriage. *Hindu, induek*, means "mother". The *hindu* III Saniniek, the "three with a common grandmother", for instance, contains *buah gadang* from *suku* Guci, Koto, and Melayu. In *adat*, they are "one" - but they may intermarry, and if the Guci in III Saniniek should become extinct, their property would be inherited by Guci *buah gadang* of another *hindu*, not by the *buah gadang* of Koto or Melayu in their *hindu*.

When the *nagari* was founded, there were 60 *buah gadang* and *panghulu*. Since then the number of *buah gadang* has increased, and in CKL 100 *panghulu* are recognized as legitimate *buah gadang* leaders and members of the *Karapatan Adat Nagari*. The imposition of a new political superstructure by the Dutch has, however, seriously affected the *adat* constitution (see also Chapter 3). The Dutch had not recognized all *panghulu* as being of equal rank, and only a limited number had been given "*panghulu*-offices" in terms of the new administrative system. At the end of the last century, the Dutch had further forbidden the establishment of new *panghulu* titles, and the 100 *panghulu*ships most probably are the number at which the *buah gadang* and *panghulu* system was "frozen in" by the Dutch. They do not seem to have realized that with the prohibition to create new *panghulu*-ships they also disturbed the *adat* mechanisms of group formation. A number of "wild" *panghulu*ships have been established, and the *panghulu*ships have risen to a number between 113 and 139. It is not easy to determine which *panghulu*ships are the "wild" ones; even among the acknowledged *adat* experts of CKL there is some disagreement about that. In 1975, there were only 20 *panghulu* who had officially been installed, among them two of the *panghulu* 7 *suku*. Their authority has decreased, but the *adat* constitution and the *adat* functionaries still play a considerable role in *nagari* politics. The *Karapatan Adat Nagari* still holds meetings, and so do the *juaro adat* under the leadership of the *tambang adat*, who also functions as the chairman of the *Karapatan Adat Nagari*. In terms of western conceptions of effectiveness, they cannot govern the *nagari*, but they are still influential enough to sabotage the national *nagari* administration, which, to a great extent, is also recruited from their numbers.

IV. THE TERRITORIAL DIVISIONS OF THE *NAGARI*

The territorial structure of CKL is as complex as the *adat* and *pusako* structure. There are several and partly overlapping territorial divisions of the *nagari* (see map. p. 76), which divide the inhabitants into *adat*-, neighbourhood-, religious- and administrative local communities (see also below E II on Residence).

1. *The Adat Divisions of CKL*

Traditionally, CKL is divided into three *koto*. Besides being a territorial division of the *nagari*, the *koto* division is also a division of *adat*. The members of the four *hindu* localized in a *koto* formed semi-autonomous groups in *adat*. *Adat* matters and disputes usually came to the attention of "the *nagari*", i.e. the combined three *koto*, only after they had been discussed and decided within the *koto*. In former times, the people of one *koto* also shared collective liability in unsolved homicide cases.

In the course of time, the *koto* division has been overshadowed by another *adat* division of the *nagari* territory. When the Dutch used the Minangkabau *nagari* as units of local government in the 1830's, some *nagari* were divided, others united for administrative purposes. CKL was divided into two *nagari*, Candung and Koto Lawas. There were 5 *hindu* in Candung and 7 in Koto Lawas. Besides the division into *koto*, one spoke increasingly, but not exclusively, of an *adat* of Candung and an *adat* of Koto Lawas. When Candung and Koto Lawas were reunited in 1915, this distinction was retained.

2. *The Buek Division*

Another important division of the *nagari* is the one into *buek*. The *buek* may best be described as neighbourhoods which have been constituted by agreement of the members of the various *suku* residing in the same residential cluster of the *nagari*. The *buek* are subdivided into *umpuek* (Ind.: *kelompok*, group, cluster), which are the smallest territorial units consisting of members of more than one *buah gadang* of one or of different *suku*. The *buek* have their own rules and regulations, *buek perbuatan*, concerning community and neighbourhood matters. Probably since the Padri-war, each *buek* has developed its own regulations about the *surau* (prayer house) and mosque.

Besides the two basic principles of group and authority structure in

CKL which have already been mentioned (*adat sakato nagari - pusako sakato niniek mamak*) there is a third one concerning the *buek*: "*Buek sakato balingka*" - "neighbourhood matters are decided by the neighbours". The *buek* council is formed by the oldest men of the *kaum* resident in a *buek*. Besides, each *umpuek* has a *panghulu buek*, a *panghulu* for *buek* affairs, who usually is no *panghulu* according to *adat*, i.e. no incumbent of a *buah gadang*'s *sako*. The *panghulu buek* are *umpuek* representatives, who are responsible to the *buek* for the maintenance of *umpuek* affairs.

The *buek* structure probably precedes the foundation of the *nagari* and can be regarded as the oldest form of cross-*buah gadang* (*suku*) political and social organization.[17] After the *nagari* had been founded, the old *buek* structure was retained, but with the increase of the population some of the old *buek* have been subdivided and new *buek* have been formed in formerly unsettled parts of the *nagari*. The *buek* borders partly cut across all other territorial divisions of the *nagari*. As *buek* are not concerned with *adat* (which is a *nagari* matter) the *adat*-territorial division into the three *koto* and later into Candung and Koto Lawas was less relevant than the actual territorial neighbourhood. In some parts of the *nagari*, settlement clusters which belong to two *koto* are much closer to each other than the other settlement clusters in their respective *koto*, and *buek* were formed across the *koto*-divisions or *vice versa*.

3. *The Sidang System*

The territory of CKL is further divided into four *sidang*. The *sidang* are religious councils, which are attached to the four main mosques. Their function is decision making in religious matters, mainly in disputes about marriages.

The contemporary *sidang* system in CKL most probably is the remainder of the attempt to establish a theocratic governmental system, which in the Padri era had been undertaken in most *nagari* which had come under the political domination of the Padri forces (cf. AB 39: 212 ff.). In CKL, it was based upon the *buek* system. Several *buek* were united to form one *sidang* which, with the mosque as its center, was to be governed by the mosque officials and representatives of the *buek*. The highest *buek* representatives were called *Tuangku* or *Angku* in CKL; according to the number of *buek* united in one *sidang* their full title was *Tuangku nan* 3 or *Tuangku nan* 4. In CKL, the *sidang* system has been "*adat*isized", integrated into the *adat* political structure in the course of time. A sharp distinction was made between the "four *sidang* according to *adat*" and the

religious village council which has been created within the local government system (see Chapter 3: 125 f.).

4. *The Jorong Division*

Finally, the *nagari* is divided into village districts, *jorong*, as part of the local government system. The *jorong* borders to some extent run parallel with old *buek* borders. Each *jorong* has a village district headman, *wali jorong*, as administrative head, who is subject to the village mayor, the *wali negeri*. In his daily affairs, the *wali jorong* is assisted by a *jorong* deliberation-committee.

C. THE ALLOCATION OF AUTHORITY

I. THE BASIC NOTIONS OF AUTHORITY IN MINANGKABAU *ADAT*

The basic notions of authority in Minangkabau *adat* are well expressed in one of the most frequently quoted *adat* sayings (see e.g. R.M. Dt. Rajo Panghulu 1971: 80):

"Kamanakan barajo ka mamak
mamak barajo ka panghulu
panghulu barajo ka mupakat
mapakat barajo kapado alua
alua barajo kapado mungkin dan patuik
patuik dan mungkin barajo kapado bana
bana itulah nan manjadi rajo."

"The *kamanakan* are subject to the *mamak*
the *mamak* is subject to the *panghulu*
the *panghulu* is subject to the *mupakat*
the *mupakat* is subject to the power of reasoning
the power of reasoning is subject to what is appropriate and possible
what is appropriate and possible is subject to truth
it is truth which is the highest authority (which becomes king)."

Final authority thus is vested in abstract values, but what is appropriate, possible, and true, must be found through the exercise of human reasoning. As far as authority is vested in man, the *adat* saying well expresses the two basic notions of authority which pervade all Minangkabau *adat*:

1. There is the idea that authority is vested in individuals (*mamak*, *panghulu*) who occupy social positions which are defined by sex, age, and offices. This authority is hierarchical. It gives the individual occupying such a position authority over other persons. The hierarchy of social positions corresponds to the political structure of the *nagari*, starting on the most exclusive group (*jurai*) level up to the most inclusive group, the *nagari*.

2. There is the idea that authority is, somewhat diffusely, vested in groups of persons. This finds its expression in the principle that all decisions affecting groups must be taken in a process of common deliberation, *musyawarah*, and lead to a unanimous decision, *sakato* ("one word") or *mupakat*. This principle applies to all group levels, and it complements and restricts the first principle according to which authority is vested in individual persons.

The groups, in which authority is vested according to *adat*, are the groups we already have discussed: structured by matrilineal descent or at least modelled on this principle. Authority is allocated to individuals as members of such groups. In the following, I shall describe the manifestations of the *adat* principles. The territorial and politico-religious group structures have already been discussed and the offices of these structures have been mentioned. As they are of less relevance for property affairs, they need not be described in detail here.

II. AUTHORITY VESTED IN SOCIAL POSITIONS

1. *Group Leadership*

The clearest manifestation of authority vested in social positions which are filled by individuals is the rule that each group has, or must have, a leader. This rule finds its expression in the notion of "*mamak*ship". Each group from the smallest *jurai* to the *hindu adat* must have a *mamak*. *Mamak*ship in this sense denotes group leadership. It involves authority over the group members and the representation of the group or the individual group members in inter-group relationships. This pertains to all kinds of social relations: political, where the group is represented in the *nagari*; economic, where all property transactions between members of different groups (or between groups) need the presence and the consent

of the group leader; social, like cases of marriage, where the group leader must give his consent and represent his group and his marrying *kamanakan* in the ceremony.

As regards intra-group affairs, the *mamak* (on whichever group level) is responsible for the maintenance of order in his group. He is the person whom one must notify when one wants to leave the *nagari* and to whom one must report when one returns.

With respect to outsiders, the *mamak* is responsible for any acts which his group members may have done in violation of *adat*. He must take care that the fault is atoned by the appropriate measures. If not, it is he who will be sanctioned, too, not his group member only. Thus if a group member has violated *adat* by not adhering to the marriage rules, it will be his or her *mamak* who will be banned from *nagari* political and social activities, unless atonement for the fault has been made. In CKL, we observed several such cases where a *mamak* was held liable for an offence of his *kamanakan*. The *mamak* is also responsible for the execution of any decisions taken at more inclusive group levels.

*Mamak*ship in general is vested in the male sex (but see Korn 1941 on the "female *mamak*") and is defined by age: The *mamak* is the oldest matrilineal kinsman of the group, of a *jurai* of any size. No official process is required to make him *mamak*. If the present *mamak* dies, or when he is unable to fulfill his function, the kinsman next in age will automatically assume the function of *mamak*. These principles are modified for those *mamak*ships which are vested in offices, which exist from the level of *buah gadang* upwards. The system of offices will be described later.

2. *Authority Vested in Females*

The *mamak*ship is not the only individualized social position in which authority is vested. The *mamak*'s authority covers the representation of the group completely, but in matters internal to the group authority is also vested in the position of the eldest woman of the group (*jurai* until the size of *buah gadang*). She is the "*limpapeh rumah gadang*", the "strong pillar of the family house", and the "*amban puruek - kunci nan tagueh*" - "the strong lock of the chest" in which the *harato pusako*, the group's inherited property, is kept (see Willinck 1909: 392, 403, 601; Korn 1941: 319; R.M. Dt. Rajo Panghulu 1971: 50; I.H. Dt. Rajo Panghulu 1973: 50 ff.). She wields the highest authority within the house. But her authority is not restricted to purely domestic matters. For the oldest woman is the one "*nan pagang harato*", who controls and keeps the

property, who has the dominant voice in the distribution of the group's property and any surplus the group's property may have yielded (for more details see Chapter 4). That these references to the woman's position are not just idealizations of the female's/mother's role but a concrete reference to her function in social organization is amply borne out by the knowledge we have of Minangkabau social life during the last one and half centuries (compare Willinck 1909, Korn 1941, Tanner 1971), and it will also be apparent in the stories of property affairs (Chapter 5). In group internal affairs, she is even characterized as the *highest* authority: Willinck states "that in the Minangkabau family circle, the oldest common ancestress, if still alive, actually stood above the *mamak*. She remained in each case where family affairs had to be decided in the *sabuah paruik* or *jurai*, the highest authority (1909: 391 f., cf. Korn 1941: 320).

Yet in general, women cannot assume the function of group leader and outward representative. If males are absent, this function is generally assumed by the leader of the group which is most closely related according to matrilineal descent. Occasionally exceptions are made, but this seems to be restricted to group leadership in property affairs.[18] According to our findings, the principle that women cannot act as group leaders is adhered to. In one case in CKL, where the problem arose whether a woman could represent her *kaum* in a property transaction, the *adat* functionaries decided that she could not and that the *mamak kepala waris* of the most closely related *kaum* should do so. The principle is also, with some exceptions, applied in the State Courts.[19]

3. *Authority Vested in the Father*

According to *adat*, only little authority is vested in the role of the father. The *mamak* is the center of authority; it is he who should discipline his *kamanakan* if necessary. The *mamak* represents his *kamanakan* in social and political matters, and the childrens' *pusako* affairs are also subject to the authority of the *mamak* and the childrens' matrikin in general. Minangkabau men as fathers are supposed "to carry their children", as *mamak* they are supposed to "lead their *kamanakan*". However, in their role of in-married husbands (*urang sumando*), men participate in the decision making processes which affect their childrens' property affairs and in the ceremonies which accompany their *rites de passage*. Besides, fathers can exercise some economic control over their wives and children by transferring their self-acquired property or some of their

own *jurai*'s *pusako*-property to the conjugal household. But in principle the father's authority is limited to minor domestic matters (see also below the sections on marriage and residence).

The *adat* conceptualization of the father's role, however, is modified through the Islamic notions about the father's position. In religious matters, fathers usually represent their children. In particular, fathers act as marriage guardians "according to religion" (*wali syarak*) besides the *mamak*, the marriage guardian "according to *adat*" (*wali adat*). The extent to which fathers can exercise authority over their children has also changed considerably during the last 150 years, mainly as a consequence of the decrease of the *mamak*'s authority and an increasing economic orientation of men towards their conjugal household (this development will be analyzed more fully later in Chapters 5 and 6). Men live more permanently in the houses of their wives, they contribute more to the economic budget of their wife and children, and they usually pay the school fees which in former times were paid by the *mamak*. But the fact that they do so, and that they are consequently less in the house of their *kamanakan* (which means that their childrens' *mamak* also will stay most of the time with his children) does not mean that the authority over the children has been shifted from *mamak* to father. It rather has concentrated on the childrens' mother. According to our experiences, both with villagers and educated townspeople most serious decisions and disciplinary measures were taken by the wife/mother, the husband/father taking care not to interfere with the education of "her" children (cf. Tanner 1971; Thomas 1977).

III. AUTHORITY VESTED IN OFFICES

The leadership positions of the *buah gadang* and of all more inclusive groups formed by *buah gadang*, are vested in offices. Offices are social positions that in principle exist independently of their incumbents. If the office is vacant, the function is either fulfilled by an office holder of another group acting as representative, or by the group's *mamak* as non-office holding "normal" group leader. Only within the *buah gadang* are there some offices which are attached to concrete individuals. The offices are titled, and the office titles (*gala bapangkat*) and particularly the title of the *panghulu* (the *sako*) belong to the inherited property (*pusako*) of the *buah gadang*'s blood relatives (see below Chap-

ter 4: 164 ff.).

1. *The Offices of the Buah Gadang*

a. The *Panghulu*

The leadership of the *buah gadang* is vested in the *panghulu*. The *panghulu*ship is the *sako* of the group, which descends through the generations. But the *panghulu* is also the group's leader in the *nagari*. Thus if a *panghulu* is to be installed, two sets of rules have to be adhered to. One set refers to the choosing of the *panghulu*-candidate by the persons to whom the *panghulu*ship belongs. The other refers to the rules by which the *nagari* political community accepts a new *panghulu* as one of its leaders.[20] According to the principle of *pusako*, the appointment of the *panghulu* is the concern of the group which holds the *sako* as inherited property (*pusako*). No *panghulu* can be installed without the unanimous "round" decision of the group,without a *kebulatan kaum buah gadang*. As a general guideline, the title is to descend from *mamak* to *kamanakan*, from MB to ZS. But this is, at least in the *adat* Bodi-Caniago, not a prescriptive succession rule in terms of genealogical positions.[21] It rather indicates that succession must be between matrilineal relatives and that it should be from a senior to a junior generation. But in principle, the candidate must be *chosen*, and have all the attributes that Minangkabau *adat* demands of a *panghulu*.[22] The principle of MB-ZS succession is further mediated through the institution of *gadang balega* according to which the *panghulu*ship is rotated between the *jurai* or *kaum* of the *buah gadang* (see above). So the successor may well be a brother or grandnephew or even a very distant matrilineal relative of the former *panghulu*. If the *buah gadang* members cannot agree upon a candidate and the *musyawarah* does not lead to *mupakat*, the *sako* is *dilipek*, "put aside", for the time being. In the case where there is no suitable candidate at all (no male *buah gadang* members, or only too old or too young ones etc.) the *sako* is *tatarueh*, "deposited". If the *sako* is *dilipek* or *tatarueh*, the *buah gadang* has a "normal" *mamak* as group leader (or a *panungkek*, see pp. 82,88). He will act as *mamak* in all intra-group affairs and will in principle also represent the group in the *nagari*. Only on the occasions where a *panghulu* must act in *nagari* affairs, will the group be represented by one of the *panghulu* who is "*saparuik*".

According to the principle of *adat*, the installation of a *panghulu* is a matter of the *nagari*, and the other *panghulu* must accept the new candidate as their equal. Non-acceptance is expressed by not attending the ceremony at which the highest *nagari* officials, the *panghulu* of the 12 *hindu*, the *juaro adat* and the *anak mudo*, finally invest the new *panghulu* with his title.

The selection and installation of a *panghulu* is a long and expensive process. Several meetings must be held, in which the approval for the candidate must be formally secured from different groups of persons, starting with kin groups moving up through the more inclusive political groups and finally culminating in a meeting in which only the *panghulu* of the 12 *hindu*, the *juaro adat*, and *anak mudo* participate and in which the new *panghulu* is officially installed "by the *nagari*". At all these meetings, ceremonial meals are held, and for the final ceremonies a buffalo must be slaughtered, a certain amount of rice must be given, and the *adat*-money must be handed to the *adat*-officials.[23]

The *panghulu* can be installed in three different ways, which are distinguished according to the distance in time from the end of the previous *panghulu*'s office-holding. The descriptions given in the literature are rather uniform, but there is some variation in the terminology.[24] The following categories are used in CKL and also in the *nagari* III Balai and Padang Tarab, where we were able to attend altogether 4 *panghulu* installations:

1. *Hiduik Bakarilahan*

In this case, the succession occurs during the lifetime of the old *panghulu*. This happens very rarely. Informants in CKL could not remember a single case, but there was a rumour that one *panghulu*, while still alive, wanted to give his title and office to a *kamanakan*.

2. *Mati Batungkek Budi*

In this case the successor is determined shortly after the *panghulu*'s death and publicly declared *panghulu* in a formal meeting of the highest *adat*-functionaries. This meeting should take place on the day of the death or immediately afterwards. The actual installation ceremony is then held after the funeral ceremonies, but must not exceed three weeks from the day of death. Until the installation ceremony has been held, the new title holder cannot act as *panghulu*, although the transfer of the *panghulu title* is and remains valid, and the new *panghulu*-to-be is

addressed with his new title. In CKL, there are several of such "half-*panghulu*" who have not yet held the installation ceremony, and who cannot "go to *adat*" as *panghulu*. During our stay, one *panghulu* died, and on the same day a *buah gadang* member was selected and declared new *panghulu* in the manner described above. Due to *nagari* politics, however, the installation ceremony was not held in due time, although it had been scheduled during the meeting in which the candidate was declared *panghulu*. Unfortunately, the resulting problems had not yet been solved before we left the *nagari*.

3. *Mambangkik Batang Tarandam*

This is the ceremony by which a *panghulu* is installed if his predecessor has been dead for a longer period than for which *mati batungkek budi* is allowed. This is the most elaborate and most expensive way to install a *panghulu*.

b. The *Panungkek* (*Tungkek*)

In CKL (as well as in other Bodi-Caniago *nagari*) a *panghulu* can have one or more *panungkek*, "aides". The *panungkek* also carry the title *Datuek*, and their title is generally derived from the title of their *panghulu*. So if the *panghulu* is Dt. Sinaro, the *panungkek*'s title may be Dt. Sinaro nan Tungga. The function of the *panungkek* is to help the *panghulu* in the administration of the *buah gadang*. If the *buah gadang* consists of several *kaum*, a *panungkek*ship may be created and the administration of one or more *kaum* may be entrusted to the *panungkek*.

The office of *panungkek* is closely connected with that of his *panghulu*. The *panungkek* is installed together with his *panghulu*, and continues to function as long as a new *panghulu* is not installed. If a new *panghulu* is installed, he may confirm the old *panungkek*, but the *panungkek* may also be relieved of his office and a new one appointed. If the *panghulu* dies, the *panungkek* assumes most of the *panghulu* functions in *buah gadang* internal matters. In *adat*, in the *nagari*, he can represent his *panghulu* only to a limited degree. It is not unusual that *panungkek* try to establish themselves as successors when the *panghulu* has died. This is called "*bulan manjadi matahari*" - "the moon becomes the sun". Particularly in cases of *gadang balega*, where *panghulu*ship and *panungkek*ship are rotated, this often leads to *buah gadang* cleavage in the form of *baju sehelai dibagi duo* (see above p. 69). In contemporary CKL, there are several groups the status of which - *kaum* or *buah gadang* - and the

status of their leader - *panungkek* or *panghulu* - are unclear.

c. The *Angku*

In CKL, each *panghulu* who is not the eldest lineage member, has an advisor, an *angku*. *Angku* is used here to denote the *adat*-office. Besides, it is a title of Islamic functionaries, it can be conferred upon elderly persons as an honorary title, and is also used as a polite form of address. The *angku* according to *adat* is the eldest and wisest man of the *buah gadang*, who is to give advice in all matters, particularly in *adat* matters, to the young and perhaps inexperienced *panghulu*. He is installed together with the *panghulu*, and his title is the same as the *panghulu*'s, with the difference that, instead of the *Datuek* title prefix, the *angku* has the "*Angku*" prefix. The *angku* of Dt. Sinaro thus is Angku Sinaro. In CKL, the groups under a *panungkek* usually also have their *angku*.

2. *The Offices in the Hindu System*

The offices in the *hindu* system are quite complex. The information which was given in CKL by informants and which could be found in the excerpts of the village-*tambo* was partly ambiguous or contradictory. It seems that some offices were created after the Dutch had established their administrative system as it has been also reported for some offices in district 50 Koto (see De Rooij 1890; Leyds 1926).

a. The *Panghulu Bahindu*

Each group in the *hindu* system has a *panghulu* as leader who is responsible for the management of *hindu* (*adat*) affairs, but who for the rest functions as *primus inter pares* with the other *panghulu*.

On the *buah gadang* level, the *panghulu* are the *panghulu* of the *buah gadang*. On the *sabuah paruik* level, there is a *panghulu babuah paruik*. This is one of the *buah gadang panghulu*, who has the additional function of running the *sabuah paruik*'s *adat* matters. The *hindu* also has a *panghulu bahindu*, who is responsible for all *hindu*-internal *adat* matters. The authority of the *panghulu bahindu* thus can extend over *panghulu* of different *suku pusako*. Such *panghulu bahindu* exist in each *hindu*. But besides, there are also *panghulu basuku*, as leaders of the *suku pusako* within *hindu* groups.

The actual practice is as follows: The *panghulu 7 suku* are "*panghulu suku*". In their *hindu*, *they* function as *hindu*-leaders, in the other *hindu* it is the *panghulu bahindu*. The *panghulu 7 suku* are the oldest

panghulu in their *hindu*, the heads of the *buah gadang* which in former times had founded the *suku adat/hindu adat*. In their *hindu*, the *panghulu bahindu*ship is usually given to the oldest *buah gadang* of the younger *sabuah paruik*. In some *hindu* (of the other 5) the *panghulu bahindu*ship is rotated between two *buah gadang*, the oldest *buah gadang* of the *hindu*. Thus in the *hindu* III Saniniek, the *panghulu bahindu*ship is rotated between a *buah gadang* of *suku* Guci and of *suku* Melayu, and similar arrangements exist in other *hindu* where no "oldest" *buah gadang* is recognized. When a meeting of the 12 *panghulu* of the 12 *hindu* took place, the *panghulu* 7 *suku* went to represent their *hindu*; in the other *hindu* the *panghulu bahindu* were the representatives.

The *panghulu bahindu* offices are connected to the particular *panghulu* titles. If a new *panghulu* is installed, his status within the *hindu* is determined and restated. If the *panghulu*ship is vacant, another *panghulu* of the *buah paruik* will fill the vacancy of *panghulu bahindu*, not as office holder in his own right, but as representative. His acting as *panghulu bahindu* for his colleague does not make him a representative of the non-installed *panghulu* in *buah gadang* matters, too.

b. The *Juaro Adat*

The *juaro adat* are the "executives" of the *hindu*, who have to manage *hindu* affairs under their *panghulu*. *Juaro* carry titles, but there are two or three titles for each *juaro*, one of which has to be assumed by the newly installed *juaro*. The installation of the *juaro* is similar to, though less elaborate than, the *panghulu* installation. The office of *juaro* is the property of the *buah gadang* of the *panghulu bahindu*. This also applies to those *hindu* which have a *panghulu* 7 *suku* as leader. When the *panghulu bahindu*ship is rotated, the *juaro* is rotated as well, the *juaro* being then held by the non *panghulu* holding group.

c. The *Anak Mudo*

The *anak mudo* act as assistants to the *juaro* and *panghulu*, and are used as messengers and go-betweens in *adat* affairs. In addition, the *anak mudo* have to be well versed in the *pidato*, the ceremonial recitals of history and *adat* which fill a large part of the *adat* ceremonies. In *adat* ceremonies, such as *panghulu* installations, they serve the *panghulu* and *juaro*. The *anak mudo* also carry titles, but no special installation ceremony was held for them. They could be installed whenever a more important ceremony was held in the *nagari*. In principle, the *anak mudo*

were chosen for their capabilities, and their office was not the definite property of a *buah gadang*. In the two Sikumbang *hindu* in which other *suku* were incorporated, the other *suku* (Tanjung and Pili) also had one *anak mudo* so that the actual number of *anak mudo* was 14.

3. *The Hierarchical Structure of Social Positions of Authority*
The *adat* saying already quoted "*Kamanakan barajo ka mamak - mamak barajo ka panghulu*" - " the *kamanakan* are subject to the *mamak*, the *mamak* is subject to the *panghulu*", expresses the hierarchical order of the leadership positions within the *buah gadang*. Leadership positions derive their status from the status their group has in *adat*, and a definite hierarchy exists, from the smallest group, the *jurai* with its *mamak*, to the largest, the *hindu adat* with the *panghulu bahindu*. This hierarchy is relevant for two fields of social activity:

1. It must be followed in the processes of decision making in conflicting issues. The conflict should be solved at the lowest level. If it cannot be solved, it must be brought to the next higher level until it reaches the highest forum, the *Karapatan Adat Nagari*. For *adat*- and *pusako* matters, different though overlapping hierarchies exist.

In *pusako* matters, the way to be followed is from *mamak* to *panghulu*; from the *panghulu* to all the *panghulu* of the *sabuah paruik* who are of the same *suku* in the same *hindu*; then to all *panghulu* of the same *suku* in the same *hindu*; then, such matters go to all *panghulu* of the same *suku* in the *nagari*.

In *adat* matters, conflicts go from the *mamak* to the *panghulu*, but then the *juaro adat* should take over, exercising his function for the *panghulu bahindu*. If the problem cannot be solved by the *(Juaro) hindu*, it must be brought to the 5 *hindu*(in Candung) or the 7 *hindu* (in Kota Lawas). The final forum for both hierarchies is the *Karapatan Adat*.

2. Decisions made on a higher level (i.e. in matters concerning the implementation of *nagari* politics or *suku*-wide problems such as a change in the exogamy rules) have to descend according to this hierarchy. Minangkabau *adat* expresses these two principles with the *adat* saying: "*Bajanjang naiek - batanggo turun*" - "One has to go up the stairs - one has to go down the ladder". No step may be left out. If people approach a higher forum immediately, this is "wrong" according to *adat*; the parties will be reprimanded and the issue not entertained.

This is, of course, the ideal order which has been heavily influenced

by the other available means for conflict resolution provided by the *buek/sidang* system and the local government and judicial systems. But the principle of *bajanjang naiek-batanggo turun* is still used in *nagari* politics and processes of conflict resolution, and has been extended to include the State Courts, which sometimes refuse to hear a case unless the *adat*-hierarchy in the *nagari* has first attempted to deal with it.[25]

IV. AUTHORITY VESTED IN GROUPS

The second basic principle of authority makes the exercise of authority a matter of all group members. Here the ideas of togetherness, unanimity, and equality of the group members are stressed. This finds its expression in the principle of the "*musyawarah* until *mupakat*": "Decisions concerning group interests must be taken by the group members and lead to a decision in which all concur". Minangkabau *adat* says: "*Bulek aie dek pambulueh - bulek kato dek mupakat*": "(as) the water gets round in the bamboo-pipe - the words (decisions) get round through the *mupakat*". This principle is highly valued in Minangkabau, and the Minangkabau use it to define the character of their society in the terms of the *mupakat*-democracy, which they consider superior to other forms of allocation of social authority.[26] The principle minimizes the power exercised by individuals by virtue of their social positions of authority, for the most important issues in Minangkabau social and political life (property, *panghulu* installation, marriage etc.) are matters which affect the group and are decided by *musyawarah*.

The general principle works at all group levels. However, a distinction must be drawn between those groups which are, in this respect, regarded as a group of individuals, and those groups which are regarded as being composed of sub-groups. In the former, all group members of "reasonable" age and of both sexes take part in the decision-making process. In the latter, only the leaders of the sub-groups, thus males only, participate as their groups' representatives in the decision-making process on a higher group level. In former times, the border case probably was the *buah gadang*, in contemporary CKL it is the *kaum*: On the supra-*kaum* level, the representatives of the groups decide, within the *kaum* all *kaum* members participate.

The *musyawarah* until *mupakat* principle is, of course, an ideal, and a brief comment may be made on the actual practice. Actual decision

making is generally prepared in smaller groups or by individuals who make their own policy and recruit support for it. The decision has often been taken already when the formal meeting, in which the *mupakat* is to be secured, starts. The ideal equality of the participants is modified to a great extent by the personal authority, economic status, and, in the political field in particular, by power sources outside the *adat* system. There is a multitude of evidence, both in the early literature on Minangkabau as well as in our own field-experience, that these sources are manipulated as far as possible.[27]

In *kaum*-internal affairs the same holds true, but here another factor heavily influences decision making: the strong position of women, the older women in particular, who "swing" most decisions or prevent effective decisions from being made. It must be a very strong *mamak* who wants to control his female lineage members effectively - within the *kaum*. Externally, the *mamak* skilfully operate power sources which are usually not available to women. The principle that the *kaum* must be represented by the *mamak kepala waris* in property matters in the State Courts has led to frequent abuse of the *mamak* position.[28] This has led to a shift in *kaum*-internal authority relations and to the not uncommon occurrence of *mamak* cheating their female *kaum* members on the basis of their artificially strengthened *mamak*-position. Yet the force of the *musyawarah/ mupakat* principle should not be underestimated. It is true, that "round" decisions are less frequently taken, but the actual force of the principle resides in its negative aspect: If no *mupakat* is reached and no unanimous decision taken, nothing will hapen, and undecided problems and conflicts dominate the social and political life of the *nagari*.

V. CONCLUSIONS

The two basic conceptions of authority are clearly objectified in *adat*. In practice, and particularly in *kaum*-life, they are hardly distinguishable and seem to flow into each other. It is striking how closely the two Minangkabau principles correspond to the two analytical principles of governmental activity, which Smith has elaborated in his famous essay "On Segmentary Lineage Systems" (1956). The allocation of authority to the group leaders and the *kamanakan barajo kamamak* principle correspond to the principle of "administration" (1956: 49), and the allocation of authority to the groups and its exercise through *musyawarah*-processes to

the principle of "political activity" (1956: 48 f.). Whereas one may question whether "administrative" and "political" are the best labels for these different kinds of processes, the distinction itself is extremely valuable and fully supported by the Minangkabau data. As Smith has noted, the principles, though analytically distinct, frequently occur together (1956: 48) and this certainly is the case in Minangkabau, most obviously in *kaum*-social life and decision making. Yet what goes on in these processes could not be better described than in Smith's words:

"Whereas the form of political systems is segmentary, and only displays hierarchical patterns to the extent that the political structures are directly involved in administration, the form of an administrative system only displays segmentary patterns to the extent that the administration itself constitutes a political system" (1956: 49).

The words "administrative" and "political" have only to be substituted by the two Minangkabau principles of authority: *Kaum* administration is in the hands of the *mamak* and is hierarchical as far as it involves the execution of *musyawarah* decisions taken at higher group levels as well as everyday organization of *kaum* life. But insofar as decision making is concerned that touches the interests of the whole group, the *kaum* constitutes a political system (in Smith's words) in which authority is segmentary, the individual *kaum* members being the segments. On higher group levels, characterized by their hierarchical order expressed in the saying " *bajanjang naiek - batanggo turun*", this "hierarchic devolution of authority and functions is transformed into a segmentary contraposition of components" (Smith 1956: 49) when policy decisions (*musyawarah*-decisions) are taken by the representatives of the component subgroups.

D. RELATIONSHIPS BETWEEN INDIVIDUALS AND BETWEEN INDIVIDUALS AND GROUPS

I. INTRODUCTORY NOTE

Each Minangkabau has a complex set of relationships to the other members of his *nagari* and to the groups which exist therein. These relationships are expressed in a similarly complex system of references and, to a much lesser degree, by the system of terms by which the Minangkabau address each other. Some of the relationships and their social functions have already been described in the previous part of this chapter: The relationships arising out of common group membership. As

groups play an important role in social and political life, reference to common group membership is often made when inter-individual relationships are characterized. This is done by the expression that one is/is not of "one" (*sa-*)group with the other person/group referred to, the kind of group being specified. Most of the groups have already been described: It can be a territorial group (*sa-buek*, *sa-koto*, *sa-nagari*), a descent group (*sa-jurai*, *sa-kaum*, *sa-buah gadang*, *sa-paruik*, *sa-suku*), or a group formed according to *adat* (*sa-buah paruik*, *sa-hindu*). Another quite frequent mode of reference is the indication of the common sharing of a social function or relationship, which is specified in the reference. Thus ego will denote his relationship to another individual or to a group by naming the social function which they share or which pertains between them. E.g. ego will state that his relationship to X is of one property (*sa-harato*), one heritage (*sa-pusako*), of the same *adat* (*sa-adat*), or that one pays debts together and receives outstanding debts together (*utang samo dibaie - piutang samo ditarimo*). These functions are generally attached to groups, but the reference is made without explicitly naming the group. Within the complex set of relationships with his *nagari* co-citizens, a person's kinship and, to a lesser extent, his marriage relationships take a central place. These shall be described in some more detail.

II. THE KIN

The Minangkabau are of the opinion that both father and mother have a part in procreation, and that social relationships come into existence by the fact that a child is born to his married parents. By extension, ego is related to all persons to whom his/her parents are related by a series of filiative links. This aspect of bilateral filiation in Minangkabau kinship has often been overlooked or not sufficiently emphasized by previous authors on Minangkabau.[29] The adat saying "*ayam gadang indak batalua*" - "the cock lays no eggs", is often quoted in support for statements that "there are no kinship relations between the father and his children" or that "the children belong to the mother's side only". However, this saying merely refers to the principle of incorporation into groups on the basis of matrilineality; it contains no statement about the establishment of relationships through procreation in general: Fathers do not bear children in patrilineal societies either.

Ego can denote most of his kin by two modes of reference: By individualizing reference where ego refers to a kinsman/woman as an individual, and by the use of social group terms by which ego either refers to his relatives as a group, or to individuals as members of such a group, or where ego, as a member of his own group, denotes individual relatives (for a more systematic account cf. Thomas 1977).

1. *Individualizing Reference*

The recognition of "abstract" bilateral kinship is reflected in the terms by which ego denotes his kin as individuals. With two exceptions, the terminological system for cognates is of the generation (Malayan) type: The same term is used for relatives on the same (known or assumed) generation level, and the kind of the relationship is specified by qualifiers indicating sex, relative age, or closeness.

On ego's generation level, all kin are labelled *dansanak* - "sibling". Separate terms can be used to indicate younger (*adiek*) and older (*kakak*) siblings. Older siblings can be distinguished according to sex, *uni* (elder sister) and *uda* (elder brother).

On the +2 level, all grandparents and their *dansanak* are called *niniek* or *(in)yiek*.

On the -2 generation level, ego's and his *dansanaks'* grandchildren are called *(anak) cucu*.

On the +1 and -1 levels, there is an exception to the general principle: All matrilineally related males on the +1 level are called *mamak*. In CKL, *mamak* is usually employed to denote the +1 generation males within one's *suku pusako*. Only in the case of Caniago and Selayan this use of *mamak* was extended to both *suku*, which were said to have been "one" in former times. The inverse term for matrilineally related persons of both sexes, on the -1 level, is *kamanakan*. The father and his matrilineal collaterals are called *bapak*, the inverse term is *anak*, children. All kinswomen on the +1 level are uniformly called *biyaik* or *amak* (in CKL), and often the Indonesian *ibu* is also used. The inverse term for the children is *anak*.

As has been mentioned before, the terms *mamak* and *kamanakan* are also used to denote group leader and group followers, irrespective of their genealogical position.

These terms are qualified by additional terms which indicate:

* the sex of the person referred to: *laki2*, male, and *parampuan* or *padusi*, female.

* nearness: Nearness can be expressed explicitly as genealogical nearness through the reference to the common ancestor/ancestress which ego shares with the person referred to. Thus one speaks of being *dansanak saibu* or *dansanak saniniek* - siblings of one mother or siblings of one grandmother. Through this usage, also half-siblingship is expressed: *dansanak saibu* (*saja*) - siblings with a common mother (only) and *dansanak sabapak*, siblings with a common father (only). Nearness can also be indicated in a more general way through the terms of *dakek* (near) and *jaueh* (distant, far), but it is clear from the usage of these terms, that nearness is here also conceived of in terms of the genealogical levels of the respective apical ancestresses (cf. Thomas 1977).
* ego's direct ascendant or descendant: This is generally expressed by leaving away qualifiers.
* the relative age of one's direct ascendants' siblings: *tuo* (older, oldest) *tangah* (in the middle) and (*k*)*etek* (younger). Thus *amak tuo* means MeZ, *bapak ketek* means FyB.

2. *References Involving Group Terms*

In addition, groups of kin can be denoted by the use of social group terms. Reference to individuals as members of some group can also be made by saying that he/she is a member of that group. As most social functions in Minangkabau are attached to groups, this part of the referential system most clearly shows the basic principles of social organization. In contrast to abstract bilateral thinking, here emphasis is put on matrilineal descent. The kin groups referred to are all structured according to matrilineal descent. Relationships to them are based either on matrifiliation or patrifiliation. By matrifiliation, ego becomes a member of his mother's group. By patrifiliation, ego does not become a group member, but important relationships are established between him/her and the matrilineal group to which his father belongs.

a. Relationships Involving Patrifiliation

Any ego's father's matrilineal group is called *bako*. In CKL it was applied to the *kaum* and *buah gadang* of the father. The term designates the group as a whole. Each member of the *bako*, with the exception of the father himself, can be referred to as being *bako*, without any further differentiation according to the sex or age (relative or genealogical). Reciprocally, all the group members (the *bako*) refer to the real children

of their male group members (thus excluding ego as a group member) as *anak pisang*, no matter in which genealogical position the respective male *kaum* member stands to the speaking ego.

In some *nagari*, there are still special terms which denote the *bako* of the father and the *anak pisang* of the *anak pisang* (Thomas 1977). In CKL, only the father's *bako* was recognized as such and labelled *induek bako*, the "mother *bako*". This was done in reference to *panghulu* installations, where the father's *bako* still has a specific function. In general, however, the terms *bako* and *induek bako* were employed coterminously in CKL. A category of "*anak pisang* of the *anak pisang*" was not conceptualized in CKL. The *anak pisang* in CKL were all children of one's male group members in the same *kaum/buah gadang*. However, the expression *anak ujuang ameh* was used in reference to children of the male members of other *kaum* in one's *buah gadang*; the same expression was also used to refer to the children of males of other *buah gadang* in one's *sabuah paruik*. The *anak ujuang ameh* also had a function in *panghulu* installations, but no inverse term was used for the group to which the *panghulu* belonged. The *panghulu* in this case was not *bako*. The relationship between the *bako* and its *anak pisang* is loaded with important social functions (see Korn 1941; Fischer 1964) which will be described in detail for property matters in the following chapters.

b. Relationships Involving Matrifiliation

By matrifiliation, ego becomes a member of his mother's group and of all groups of which his mother's group is a sub-group. Ego can denote all his group members by indicating common group membership and specification of the group.

Besides the group terms already given in the previous parts of this chapter, the category *warih* must be mentioned. *Warih*, in Indonesian: *waris*, is derived from the Arabic *warith*, which means heir. It is used with this meaning in Indonesian as well as in Minangkabau. In concrete cases of inheritance, *warih* is used to denote the heirs, also called *ahli warih*. In contemporary usage, all heirs - be they the children or the *kamanakan* - are called *waris/warih*. But besides, *warih* is also used to indicate all of ego's living group members, whether or not ego would actually inherit something from them or they from ego. It is in this sense that the group head is the *mamak kepala waris*, the *mamak* who is the head of the *warih*.[30]

In addition, the *warih* category can also be used to express relationships between groups. Ego as a member of his own group refers to other groups as his group's *warih*. These group-*warih* are qualified by terms which indicate distance:

sajari (Ind. *sejari*) - one finger
satampo (Ind. *setempap*)- the breadth of one hand
saeto (Ind. *sehasta*) - from finger to elbow
sadapo (Ind. *sedepa*) - from fingertip to fingertip (fathom)

Distance can mean genealogical distance, measured in common matrilineal descent, or distance in *adat*, or both. In the literature, the *warih*-categories are described in both contexts, sometimes by the same author (I.H. Dt. Rajo Panghulu 1973: 57 for genealogical meaning, and 1974 :44 for *adat*-meaning). This is probably due to the fact that the term is used in the context of the Minangkabau conception of inheritance, and of inter-group inheritance in particular, which can also be based upon *adat* (i.e. non-genealogical) relationships. In CKL, the category was usually employed in the genealogical meaning to indicate matrilineally related kin groups.

The Minangkabau referential system is complicated in that the same labels may be used to denote both kin, according to the Minangkabau conceptions of filiation and descent, and non-kin. During the description of the internal structure of the *buah gadang* I already mentioned that the vocabulary of matrilineal descent is also employed to denote persons with whom there is definitely no filiative or descent relationship. Likewise, some of the terms denoting kin are also used to address kin and non-kin, and the same holds true for references based upon common functions. I shall not attempt here to analyse which meaning, in the case of multiple meanings, is to be considered the "primary" and which the "extended" one. In my view, all terms should be regarded as social categories which are defined by different specifics, genealogical and others. But I should like to draw attention to Thomas' recent study in which data bearing on the so-called Leach - Lounsbury (social categories vs. extensionist) controversy are discussed. His conclusion, that the modified version of the extensionist approach which he proposes is the most fruitful way to explain Minangkabau kinship categories, seems very plausible to me.[31]

III. MARRIAGE

As in most societies, marriage in Minangkabau is not an affair of just the two spouses but involves their kin as well. Through marriage, relationships are established between the spouses and the spouses' kin. For a better understanding of these relationships, a brief account must be given of the rules according to which marriages are organized and which affect the choice of marriage partners (for a recent description of Minangkabau marriage *adat* and ceremonies see Sjafnir et al. 1973).

1. *The Organization of Marriage*

According to *adat*, marriages must be arranged by the spouses' kin. This rule particularly pertains to first marriages. In former times, boys were reported to be married off at about the age of 15 and girls at the time of their first menstruation(Loeb 1935: 114). In contemporary CKL, the average age at which people marry has risen considerably. Of the 186 marriages contracted in the years 1973 and 1974, only 15% of the boys had married at an age below 19, 58.6% had married when they were between 20 and 25 years old. 74.2% of the female marriage partners were between 17 and 33 years old, and only one marriage had been with a 16 year old girl.[32] The main organizers of a marriage are the girl's *kaum* members. The *kaum* of the girl must take the initiative. Once a girl has reached a marriageable age, her *mamak* must organize a meeting of the *kaum* in which the problem of the marriage is discussed. The girl's father and some other members of the *bako* are invited. At this meeting, the potential candidates (there should always be more than one) are discussed. Once a preliminary choice has been made, the respective elders of the boy are approached. Marriage involves elaborate ceremonies which are held in the (*jurai*'s) houses of the groom and the bride, and the groom is officially "fetched" from his (mother's) house to his new house, the house of his wife (for more vivid accounts see Verkerk Pistorius 1871; V.d. Toorn 1881; Van Eerde 1901; for a recent description of such a meeting see Tanner 1971: 289). In contemporary CKL, marriage involves no major economic transactions. Each group pays its respective costs, which may be substantial as the ceremonies and the meals given during the ceremonies involve a large number of guests. But there is no major gift giving or gift exchange. From earlier accounts of Minangkabau marriage, and also from contemporary accounts from other *nagari* it seems, however, that this is not the dominant practice and

rule in Minangkabau. It seems to be (have been) customary in Minangkabau that the bride's *kaum* makes substantial gifts to the groom and his *jurai* (see Loeb 1935: 115; Naim 1974: 428; Thomas 1977: 66).

Islamic law has had an important impact on marriage in Minangkabau. It has been taken as the basis for the official administrative regulations concerning marriage. The marriage is officially validated (in terms of Islamic and statutory law) by the Tuan Kali, the mosque official, and it must be registered at the office of the village Registrar of Marriage and Divorce, and Remarriage (P3NTR, *Pembantu Pegawai Pencatat Nikah, Thalak, dan Rujuk*). Marriages are officially valid even though *adat* rules have been violated. However, if the marriage has not been contracted in accordance with *adat*, if e.g. the *adat* ceremonies have not been held, the marriage will not be recognized in the *nagari*, and the spouses and their *mamak* will be punished by banning them from certain activities as long as they have not atoned for their fault by inviting the *niniek mamak*, the community's *adat* elders, to a ceremonial meal in which they admit their fault and ask for forgiveness. In practice, marriages thus are subject to a dual set of rules. In general, both sets of rules are adhered to by combining the necessary actions in the marriage ceremonies.

In 1974, a new uniform marriage law was enacted for Indonesia, which had not yet come into force when we left Minangkabau. Some details of this law will be discussed later in the study (Chapter 4: 213).

In CKL, as well as in other parts of Minangkabau, the number of marriages initiated by the young people themselves, has been increasing. This is normally tolerated so long as the young lovers "keep to the rules". This means, that they have to report their choice to their *mamak*, and then the indicated boy will be "chosen" as future husband in the *kaum* meeting in which the candidate is discussed and the usual formal contacts will be determined by the girl's *kaum*. Failure to "keep to the rules" will mean that the girl's *kaum* will not consent to the marriage and not stage the ceremonies, which has the consequences described above. In the *nagari*, young people are usually not in the position to evade the social pressure following such an affront to their elders.

2. *Rules Affecting the Choice of Marriage Partners*

Minangkabau *adat* poses several restrictions upon the choice of potential marriage partners and considers some unions as particularly appropriate.

a. *Nagari* Endogamy

Until the middle of this century, the *nagari* were endogamous units. Exceptions were made for those *nagari* which had developed out of one common mother-*nagari*. The rule was prescriptive, violations were punished with temporary or even permanent[33] expulsion from the *nagari*. Due to growing inter-*nagari* relationships and the increasing mobility of the *nagari* inhabitants, dissatisfaction with the endogamy rule grew, and it was officially abolished by decisions of the *Karapatan Adat Nagari* in most *nagari* in the 1950's.[34] Breaches of the rule were known in CKL, and one informant, now aged 72, claimed that he had been the first person to marry out. He was punished by exclusion from *adat* activities until he had atoned for his fault.

In contemporary CKL, most persons still find their partners in the *nagari*. Of the 186 marriages contracted in 1973 and 1974, 9 men (4.8%) and 12 women (6.4%) had married out. In two cases, both spouses did not originate from CKL.

b. *Suku* Exogamy

As a general principle, it is the *suku pusako* which is the exogamous unit in CKL. The acknowledged exceptions to this rule are said to be based upon agreements made by the respective lineage elders in times which were not remembered any more. These exceptions pertain to *suku* Sikumbang, where marriage is allowed between some (but not all) subgroups which are formed by *sabuah paruik*, or groups of *sabuah paruik*, in the *suku*-within-*hindu* of Sikumbang. This was explained by the fact that these groups had, when settling in the *nagari*, no genealogical relationships whatsoever. The other main exception was, that persons of the *suku* Caniago and Selayan could not intermarry. It was explained, that Caniago and Salayan "perhaps" had been "one" in former times.

In CKL, *suku pusako* exogamy, with the exceptions mentioned, still is the legal and statistical rule: Of the 186 marriages contracted in the years 1973 and 1974, only 10 (5.4%) were between members of the same *suku*, and 6 of these marriages were between members of *suku* Sikumbang where intermarriage is partly permitted.[35] Violations of the exogamy rule are still regularly sanctioned in CKL: the parties must invite the *adat* elders to a communal meal and they must admit their fault and ask for forgiveness. The character of this sanction, however, seems to change slowly from "punishment" to "fee".

These data from CKL should not, however, be taken as being representative for Minangkabau in general. Other reports suggest that in other Minangkabau *nagari* the formerly common *suku* exogamy rule has lost most of its force and that much smaller social groups have become the exogamous units.[36]

c. Second and Further Marriages

Polygyny is allowed. According to Islamic law, men may be married simultaneously to as many as four wives. Whether polygyny was allowed in Minangkabau before the coming of Islam is not known.

There are several *adat* rules which restrict the taking of a second (and third etc.) wife: During the lifetime of the first wife, no woman from the first wife's group may be married, "group" meaning the *suku*-within-*hindu* groups in CKL (for *nagari* Gurun compare Thomas 1977: 98 f.). A man should further not be married to two (or more) women from the same residential area (*umpuek*). According to the rationalization of the villagers, the wives' houses, their bathing place, and also their property should not be close to each other. For they would become ashamed, *malu*, if they saw their husbands working with or going to the house of the other wife.

d. Social Rank

Marriage partners should in principle be of the same social status. In determining a person's social status, not only his status as *kamanakan* (i.e. his or her status within the *buah gadang*, and of his *buah gadang* in relation to other *buah gadang*, with respect to the original settler, ex-stranger, ex-slave differentiation) is considered but also the status of his father and his *bako*. It is, however, open to the deliberations of the girl's *kaum* to choose a partner of different rank. Hypogamy for females was said to have been forbidden in former times, male hypogamy tolerated (compare Thomas 1977: 102). In the course of history, these rules have undergone change; in particular they have been influenced by the new status attributes provided by the administrative, economic, and religious status hierarchies.

e. Parallel Cousins

Parallel cousin marriages are forbidden. For matrilateral cousins this already follows from the principle of *suku* exogamy. Patrilateral parallel cousins are considered to be "too closely" related; the explanations

given for this rule differ widely (compare Besseling 1904; Fischer 1964: 105; Thomas 1977: 93 f.).

f. Preferred Unions

There are some kinds of marriages which are considered ideal in Minangkabau. The most ideal form of marriage is with one's cross cousin. The two forms of cross cousin marriage (CCM) are expressed by distinct expressions which take the point of view of the male spouse. Matrilateral CCM is expressed as "*pulang ka anak mamak*", to return to the child of the *mamak*, meaning a marriage of a male with his MBD. Patrilateral CCM is expressed by "*pulang ka bako*", to return to the *bako*, indicating marriage with the FZD. Villagers in CKL explain the ideal character of the CCMs by reference to their value in property strategies and by the fact that they reinforce affinal relationships which have been established one generation before.

Among anthropologists, the form and social function of CCM in Minangkabau are topics of discussion. De Josseling de Jong (1951) developed the hypothesis that in early Minangkabau social structure, the matrilateral CCM was the only ideal marriage, and that the Minangkabau social system was based upon a system of asymmetric marriage alliances.The patrilateral CCM by this interpretation is a recent development. This view has been accepted, though with less caution than it had been originally proposed, by some writers (see Umar Junus 1964; Maretin 1961; Kahn 1976). Other authors have received this hypothesis with some reservation (Leach 1952; Kloos 1963; Fischer 1964); and Thomas (1977) has systematically refuted it on the basis of his recent field research. My reading of the literature and our own field research has led me to essentially the same conclusions which Thomas has drawn. The issue, however, is too complex to be dealt with adequately in this study. I shall discuss the property argument which bears on it later in this study (Chapter 5: 295 ff.). For the rest I content myself with stating that in all reports on Minangkabau both forms of CCM are given as ideal marriage, and that there is rather a bias in favour of the patrilateral CCM.[37] In my interpretation, which will be justified more fully elsewhere, CCM was an option given to the girl's *kaum*: It had the right to ask a cross cousin in marriage, and such a union was considered ideal; but the exercise of this option by the girls's *kaum* was in no way prescriptive. And I further tend to support the view that the patrilateral CCM was the "more ideal" match in former Minangkabau (see below Chapter 5: 297 ff.).

The marriage of a sister and brother of one *kaum* with a brother and sister of another *kaum*, "*batimbang baluak*", freely: "balanced opposition, balanced exchange" is also considered ideal as it is said to produce "strong connections" between households (see Thomas 1977: 97).

The remarriage of a widower with a sister of his deceased wife, and the remarriage of a widow with a brother of her deceased husband are also considered ideal. Both marriages are called "*ganti lapiek*" or "*batuka lapiek*","to replace" or "to change the sleeping mats".

3. *Divorce*

Divorce is regulated according to Islamic law. Men can divorce their wives by uttering the Islamic phrase of *thalak*. Women must obtain a declaration of divorce from the Religious Court. In Minangkabau, women can obtain a divorce rather easily due to the *thalak taklik*, the "suspended" *thalak*, an agreement in which the husband declares his *thalak* as having fallen under certain conditions. In Minangkabau, as in most Indonesian societies, the *thalak taklik* is a regular part of the marriage contract, which is already printed in the marriage book, *buku nikah*, which the spouses are given when registering their marriage. The husband declares in written form: If I leave my wife for an uninterrupted period of longer than 6 months, or if I do not support my wife for a period longer than 3 months, or if I treat my wife "indifferently" for a period longer than 6 months, then my wife is free to file her request for divorce at the Religious Court. Under the condition that she pays the divorce-fee (*uang 'wadl*), my *thalak* falls automatically.

Divorce is easy and frequent in Minangkabau, and both men and women remarry quickly.[38]

4. *Relationships Established Through Marriage*

Through marriage, relationships come into existence between the spouses and the spouses' households. Formalized and socially defined relationships are further established between each spouse and his or her spouse's *kaum/buah gadang*.

Affinal relationships are partly expressed through individualizing reference. Husband and wife speak of each other as *laki*, male, and *padusi* or *bini*, female. In contemporary Minangkabau, the Indonesian (-Indian) terms *suami*, husband, and *isteri*, wife, are also frequently used. On the 0-generation level, the in-laws of both sexes are designated as *ipa*. Children refer to their parents-in-law as *mintuo*, and parents to

their children-in-law as *menantu*. Co-spouse kin types are labelled *pambayan*. *Pambayan* is used between wives of a man or the wives of a male sibling, and between the husbands of female siblings (cf. De Josselin de Jong 1951: 45 ff.; Umar Junus 1964; Thomas 1977).

Besides, there are terms by which ego as a group member designates all husbands and wives which are married to members of his group. The term *urang sumando* is given to husbands of the women of one's own group. The term is used by male and female speakers, except that women do not ordinarily refer to their husbands as *urang sumando*. The group in this respect is the *kaum* or *buah gadang*. The term *urang sumando* is used to denote the single in-married husband as well as the sum of all husbands. It is not used to designate the *urang sumando*'s *kaum*. In fact, there is no special term by which the *urang sumando*'s *jurai*, *kaum*, or *buah gadang* could be referred to. The only way to do so is to speak of "the *kaum* of X (of our *urang sumando*)", or, if the couple has children, of the "*bako* of our children/*kamanakan*".[39]

The term *pasumandan* is used to denote the wives of one's male lineage members. In CKL, little use was made of this term. In how far *pasumandan* is and was also used to designate the wife's *kaum* or *buah gadang* in other parts of Minangkabau, is not clear from the literature.[40]

In contemporary Minangkabau, the people do not have a "conceptualization of the groups linked by marriage as a triad: ego's group, its bride givers, and bride receivers" (De Josselin de Jong 1975: 19); and it is improbable that they ever had. Marriage does not establish socially defined relationships between the constituent social groups, but only temporary inter-household relationships and relationships between the individual spouse and his or her spouse's socio-political unit (*kaum* or *buah gadang*).

E. RESIDENCE

I. INTRODUCTORY NOTE

Under the heading of residence I include the complex of legal conceptions which localize a person's or group's activities in terms of predefined alternatives, duties, and rights (see K. and F. von Benda-Beckmann 1978).[41] In Minangkabau *adat*, no distinct residence-rule category exists, but the rules drawn together here are part of the various fields

of relations which have already been discussed.

The residence rules in Minangkabau, the post-marital residence for men in particular, have suffered various and divergent interpretations. The Minangkabau have been cited as one of the few societies where nuclear family arrangements are absent due to residence rules: The husband stays a member of his localized matrilineage and only visits his wife at night. The residence rules have therefore been labelled natolocal or duolocal (see De Josselin de Jong 1951: 11; Gough 1961: 548; Fox 1967: 101 f.). Other authors have discerned a change in Minangkabau residence: due to the impact of economic conditions, the residence rules were said to have become uxorilocal (De Josselin de Jong 1951: 117; Umar Junus 1971: 223; Sjafnir at al. 1973: 18 ff.) or even patrilocal or neolocal (Maretin 1961: 158). The idea of original duolocality, which mainly has been stated by reinterpreters of ethnographic records and not always by the reporters themselves, has been rejected by Korn (1941) and Fischer (1964), who claim that also in traditional Minangkabau social organization post-marital residence for men was uxorilocal (similarly Tanner 1971: 18, 39 f.). Thomas has recently reviewed the literature on residence in Minangkabau and shares Korn's, Fischer's and Tanner's conclusions (1977: 50 ff., 59). His field data, collected in 1974, unequivocally indicate post-marital uxorimatrilocal residence for men (1977: 50 ff.).

These discussions of Minangkabau residence are usually concerned only with post-marital eating and sleeping arrangements. However, if the category of residence, as I understand it, is to have any value for the analysis of Minangkabau social organization, we must differentiate further. Residence rules *inter alia* determine where people may exercise their rights as community members and where and by whom they may be asked to make contributions, in the form of money or labour, in the communal interest; they lay down with whom one shares collective responsibility in certain cases, with whom one shares a prayer house and mosque, and to whom one must bring one's disputes. At least three different aspects of residence must be distinguished:

1. "Domestic" residence: the localization of domestic activities like eating, sleeping, the education of young children.
2. "Political" residence: the localization of a person's political rights and duties as a community member.
3. "Economic" residence: the localization of a person's labour and other economic activities.

Only these three aspects together allow a satisfactory analysis of Minangkabau residence. In what follows, I shall be mainly concerned with domestic and political residence, as economic residence is to a large extent dependent on this system of property relationships, which shall be described in detail later. Just a short comment may be made here in order to give the reader a general impression. As far as agricultural work is concerned, it is the normative and statistical rule that persons work the land which they have the right to use and exploit; in addition, they will often work on others' land in the context of neighbourhood- or kinship-based working arrangements. Women hold most of the rights to rice-land, and men therefore work as rice cultivators mainly on land which belongs (in the sense mentioned above) to women. In former times, men spent most of their labour on the fields of their female members of their *jurai* or *kaum*, nowadays men prefer to work on the fields of their wives. Areas used for cash crops and perennials are mainly held by men, who do most of the necessary work and are only occasionally helped by women.

II. DOMESTIC RESIDENCE

Domestic residence changes during the life-cycle of individuals, and is different for men and women.

For children, the domestic residence is their mother's house. During the day-time, they play, help their mother and aunts, and, when old enough, accompany their parents or their *mamak* to the fields. At night, they sleep with their parents in the parents' sleeping-room (*bilik*) in their mother's house, be it a family long house (*rumah gadang*) or a smaller house. When the boys reach puberty, they may not sleep in their mothers'/sisters' house any more. They move to a *surau*, the bachelors' dormitory which is also used as prayer house and for religious and *adat* education. The *surau* can be held by a *buah gadang* or *kaum* but may also be common property of a *buek*. Children are also frequent and welcome guests in the house of their father's mother, "in the house of the *bako*".[42]

After marriage, the husband sleeps in the house of his wife. Polygynists are supposed to make some arrangement by which they share their time fairly between their wives, and most polygynists we knew had developed a fixed schedule. In principle, the young couple lives in the

house of the wife's mother. If this is a family house, the couple will be given one sleeping-room (*bilik*). In former times, new rooms were added to the family house when the house became too crowded, i.e. when there were more married females than there were rooms. If no rooms could be added, another house, either a new family house or a smaller annex, would be built adjacent to the old *rumah gadang*. If the housing area did not permit the construction of a new house, or if a *jurai* wished to move to another part of the *nagari*, new houses could be built there, if the wife's *jurai* possessed inherited property (*harato pusako*) there. In contemporary CKL, *rumah gadang* are still in use, but are generally used by a *jurai* comprising one grandmother, mothers and children only. Most people live in smaller houses, which are constructed according to the same plan as the *rumah gadang*, but which can accomodate fewer persons. The report of the *Wali Negeri* of CKL made in 1971 lists 330 *rumah gadang*, 626 houses (*gedung*, houses with a verandah intended as permanent residence) and 419 "primitive houses" (*rumah bungkus nasi*, which do not have a verandah and are often rebuilt or torn down after a short while).

In the last resort, domestic residence is thus determined by reference to property. The residence of the married couple may not always be in the wife's mother's house, but it will always be on the wife's (*kaum*'s) property. The house, no matter who financed its construction, is on the wife's *pusako* land, and it is a part of the wife's *pusako* (as also in Gurun, see Thomas 1977). As residence is determined by reference to the property on which the house stands, "neolocal" residence is nearly impossible in the *nagari*. For all land is already someone's property, and the houses are built on the wife's property. Exceptions to this rule are extremely rare. In the part (*jorong*) of CKL in which we lived and which comprised about a hundred houses and more than 1000 inhabitants, no husband did not live in his wife's house! One wife lived with her husband in a different part of the *nagari*, but villagers stressed that this was only a temporary measure until the wife's house had been reconstructed. During our stay, this was done, and the husband moved in afterwards, indeed. Cases in which husbands try to live with their wife and children on their own *jurai*'s property occasionally occur, and inevitably lead to trouble. Usually the wife and children have to leave after their husband's/father's death. In CKL, there had been one case of neolocality. The founder of the famous Islamic school of Candung had managed to exchange some of his *buah gadang*'s property against a housesite which belonged to a different *suku*, on which he then built a house

for himself and his wives. His sons, however, though they belonged to the most prominent religious functionaries of the *nagari*, all lived in the houses of their wives.

An adult man does not sleep in the houses of his mother. Exceptions are made if the man is old or when it is too troublesome for him to return "home" or to the *surau* after a long night of discussion or ceremony. However, men may neither sleep in nor even enter the sleeping quarters in the mother's or sister's house. If they spend the night, a mat will be placed near the staircase in the open front room, or they may be allowed to sleep in the kitchen. Divorced men, unless they remarry quickly, have to move to a *surau*. Old men are sometimes allowed to sleep in their *jurai*'s family house permanently, and it is customary that dying lineage members are cared for there during their last illness (cf. Korn 1941).

This account of domestic residence in contemporary CKL, and of post-marital domestic residence of men in particular, does not differ significantly from the descriptions given in earlier writings on Minangkabau. In my view, there is little reason to speak of a "visiting marriage", and I would consider post-marital domestic residence of men uxorilocal. Taking into account, that most daytime activities are outdoors, men will during the daytime be where they have property to work, and for the rest of the time they are free to choose their locality: the coffee-house, the *surau*, the house of their *bako*, their mother's and their wife's house. Under these circumstances, emphasis must be put on the activities after dark, and after dark men lived and live in the houses of their wives, unless they visit their mother's house to discuss or instruct their *kamanakan* in family matters, or to participate in ceremonies. But they are also present in the houses of their wives, when family matters are discussed there. As *urang sumando* they participate in the decision making processes which affect their wives' childrens' property and in the ceremonies accompanying their *rites de passage* (see Korn 1941).

III. POLITICAL RESIDENCE

Little attention has been given to political residence in Minangkabau, yet a knowledge of political residence rules is indispensable for a proper assessment of residence in general. The place of political resi-

dence is where a person's *buah gadang* is resident. This holds true for persons of both sexes during all stages of their life cycle. In terms of short formulas, political residence is matrilocal. In CKL, there was no exception to this rule. The rule refers to all three basic principles of socio-political organization: *adat*, *buek*, and *pusako*. However, the rules are more complex than the "matrilocality" label suggests, and must be described in detail.

1. *Residence in Adat*

A person's source of political rights and duties in *adat* is his *buah gadang* membership, and it is localized where his *buah gadang* is localized. But *buah gadang* localization is not a matter of actual staying or living on *buah gadang* property, it is determined by the original political constitution of the *nagari*. The latter contains the localization of the 12 *hindu adat*, according to which 4 *hindu* are localized in each *koto*. In the process of expansion of the *nagari* population, several complete *buah gadang* have moved to different *koto* in different parts of the *nagari*, and new *buah gadang* may have split off in these new localities. Yet in *adat*, their political residence remains their old *koto*, or the *koto* to which their mother-*buah gadang* belonged through *hindu* affiliation, even if they have been living and been resident in *buek* terms (see below) in the new locality for generations.

Political residence in terms of *adat* Candung and *adat* Kota Lawas functions in the same way. For instance, *buah gadang* from *suku* Sikumbang, which have been resident in Kota Lawas territory for generations, still have to adhere to the *adat* Candung. Political residence in *adat* is thus localized where the *buah gadang/hindu adat* was localized in the original *nagari* constitution, and may be quite different from the place where a person's *buah gadang* is now located, and where its members spend most of their time.

2. *Residence in Buek*

Residence in *buek* is similar to residence in *adat*, in that one's residence is where one's *buah gadang* is resident. However, in contrast to *adat* residence, official changes can be made in *buek* residence. Moving into a new *buek* requires a formal ceremony by which the new *buek* members are accepted by the *urang sabuek* (we attended one such ceremony in CKL). Individuals cannot move, only *jurai*, and these must, of course, have some property on which to live in the new *buek*. Men thus acquire *buek*

membership only in their role of mother's brother/mother's son - as a member of a *jurai* but not as husband or father. Husbands who have married into another *buek*, and who spend most of their domestic time at their wife's place, have therefore no political rights there in community and neighbourhood affairs.[43]

3. *Residence in Pusako*

The place of *pusako* residence is where the *buah gadang* and its property are actually located. Rights in *pusako* matters are exercised in the (one of the) *rumah gadang* on the *buah gadang*'s *harato pusako*-land.

4. *Residence in Jorong*

Residence in *jorong* is generally based upon the *adat* rules concerning domestic and political residence. Thus when the *nagari* government conducted a census, the men were registered as "household heads" at their wife's place, uxorilocally. However, in political matters concerning the national local government system (election of the *Wali Negeri* and of the members of the elective village parliament etc.) residence was based upon the principles outlined above for residence in *adat*.

IV. CONCLUSION

If all aspects of residence are considered together, we may conclude that residence for married Minangkabau men is duolocal: domestic post-marital residence was and still is uxorilocal, political residence was and is matrilocal. I should like to emphasize, however, that this statement about duolocality does not express the same views as those held by previous writers who overemphasized domestic residence and took little, if any, account of political residence. The changes mentioned by observers generally refer to the economic residence of men, which has seen a shift in the daytime activities of men, who tend to live and work with their wives and children. As they live and work mainly on the property of their wives, such residence can hardly be called neolocal or patrilocal; on the contrary, the increasing trend to form stronger nuclear families has strengthened uxorilocal post-marital domestic residence (cf. Tanner 1971: 39 f.).

CHAPTER THREE

THE PLURALISTIC SITUATION

Three bodies of objectified meaning exist in Minangkabau which contain conceptions pertaining to property relationships and their diachronic transfers, and which are conceived as distinct systems. These are *adat/adat* law, Islamic law, and written law. This "existence" can be tied to three basic points of reference:

1. The national legal system of the Republic of Indonesia - formerly of the colonial system - which recognizes the three bodies as distinct systems of law and which contains rules about the applicability of the systems.
2. The actual use which is made of these systems in the social processes which deal with property relationships and diachronic transfers.
3. The "general knowledge" which the Minangkabau have of these systems.

Before these three points of reference are dealt with, a short description of the systems shall be given.

A. THE SYSTEMS

I. *ADAT/ADAT* LAW

1. *Adat*

Adat is the symbolic universe by which the peoples of the Indonesian archipelago have constructed their world. To employ the words of an Indonesian *adat*-law scholar: "*Adat* is the whole body of teaching and their observance which governs the way of life of the Indonesian people and which has emerged from the people's conception of man and world" (Koesnoe 1971: 3). *Adat* refers to all domains of social life, and it also

covers the realm of the sacred and supernatural. Although the sacred world has been superseded in most Indonesian societies by one of the established religions - Buddhism, Hinduism, Islam, Christianity - in most societies *adat* still contains elements of the sacred, magical, and mystical sphere (Koesnoe 1971: 7, 15; Surjono Wignjodipuro 1973: 24). In those societies which have not yet, or but recently, been converted to one of the official religions, *adat* still covers both the supernatural and secular social reality.

The etymology of the word "*adat*" is evident to most scholars: *Adat* comes from the Arabic and has been incorporated into most languages spoken in the archipelago (Koesnoe 1971: 3; Van Dijk 1971: 5 f.; Van Vollenhoven 1918: 7). In Arabic, *adat* means "custom"; in Indonesia, however, *adat* does not mean custom but has the meaning indicated above (for "custom" usually *kebiasaan*, Dutch: *gewoonte*, is used). There is, however, another etymological interpretation which should not go unnoticed, as it is much more in accordance with the meaning the word has in the Indonesian languages. According to R.M. Dt. Rajo Panghulu, the leading contemporary Minangkabau *adat* expert, the word *adat* which is used in Indonesia, is a Sanskrit word, and its existence in Indonesia thus antedates the coming of Islam and of the Arabic language. The word is composed of "*a*" meaning "not" and "*dato*" meaning the "material" (*sifat kebendaan*, 1971: 85 and personal communication). *Adat* or *adato* thus would mean "the immaterial". In Dt. Rajo Panghulu's opinion, *adat* in its Sanskrit meaning was the belief system of the Indonesian peoples pertaining to the secular and the sacred, which only later was restricted to the secular as a consequence of the intrusion of the established religions (1971: 86 f.).[1]

Adat in Minangkabau is embodied in an innumerable number of proverbs and sayings which have poetic and rhythmic character.[2] There are several different kinds of "sayings", and *adat*-experts still distinguish the *mamang* and *pitua adat* (proverbs), the *kato adat* (the *adat* rules) and the *papatah petitih adat* (the *adat* maxims).[3] Most sayings contain a reference to the workings of Nature from which the relevant rule for human behaviour is derived according to the basic maxim: "*Alam takambang manjadi guru*" - "The growing nature is the teacher" (see I.H. Dt. Rajo Panghulu 1973: 5). To give one example (see Nasroen 1957: 52) the *adat* saying concerning the process of decision making runs:

"Bulek aie dek pambuluah
Bulek kato dek mupakat
Aie batitisan batuang
Bana batitisan urang."

"The water gets round in the bamboo-pipe
The words (decision) get round through the *mupakat* (the unanimous decision)
The water is led through the bamboo
Truth is revealed (bridged) by man."

Within *adat*, some complexes of rules are distinguished from the rest of *adat* sayings and traditions: The two standards, *cupak nan duo*, the four laws, *undang nan ampek*, and the four kinds of *adat* rules, *kato nan ampek*. The actual classification given by Minangkabau experts varies a little, but it mostly comes down to the following (taken from Dt. Sidi Bandaro 1965: 12, similar I.H. Dt. Rajo Panghulu 1973: 114 ff.; R.M. Dt. Rajo Panghulu 1971: 100 ff.).[4]

1. *Cupak usali* - the original standard.(*Cupak* is a measure of bamboo, but also used to denote standards of behaviour.)
2. *Cupak buatan* - the standard which has been made (in cases where the original *cupak* has been changed by decision of the *Karapatan Nagari*).
3. *Undang2 Nagari*- the laws about the constitution of a *nagari* (e.g. that a *nagari* must have four *suku* etc.).
4. *Undang2 dalam nagari* - the laws about the *nagari*-internal life.
5. *Undang2 luhak* - the laws about the Minangkabau empire and the division of Minangkabau into the three *luhak*.
6. *Undang2 nan 20* - the law of 20, which consist of the law of 8, a crude criminal code, and the law of 12, a code of evidence.
7. *Kato pusako* - the rules which are heritage.
8. *Kato mupakat* - the rules which have been made by *mupakat* in the *Nagari* Council.
9. *Kato dahulu* - the "olden" rules.
10. *Kato k(em)udian* - the rules yet to be made.

Adat as a whole is generally divided into four kinds of *adat* (Nasroen 1957: 45; I.H. Dt. Rajo Panghulu 1973: 109; R.M. Dt. Rajo Panghulu 1971: 87):

1. *adat nan sabana adat* - the *adat* which is truly *adat*.
2. *adat nan taadat* - the *adat* which has developed into *adat*.

3. *adat nan diadatkan* - the *adat* which has been made into *adat*.
4. *adat istiadat* - the general (ceremonial) *adat*.

Although different contents are attributed to these four categories, the same four or five core-meanings reappear, which distinguish *adat* according to its sources:

1. the *adat* which consists of the laws of nature (*adat nan sabana adat*).
2. the *adat* which is the old, pure *adat*, given by Dt. Katumanggungan and Dt. Perpatih nan Sabatang. This is either *adat nan taadat* or *adat nan diadatkan* for the various authors. Under this kind of *adat*, the *cupak nan duo*, the *undang nan ampek* and the *kato nan ampek* usually are subsumed.
3. the *adat* which has been made by a decision of the *Nagari Adat* Council, generally labelled *adat nan diadatkan*.
4. the general customs, mostly *adat nan taadat* or *adat istiadat*.

Several authors have incorporated another distinction of *adat* into this quadrupartition: the distinction between *adat jahiliah*, the *adat* which is contrary to Islam, and the *adat islamiah*, the *adat* which is in accordance with Islam (cf. Taufik Abdullah 1966: 15): The *adat nan sabana adat* is conceived of by several authors as the Law of God, whereas the *adat istiadat* is conceived of as the *adat* contrary to Islam.[5]

Adat is further specified by reference to a particular field of social relations. Thus one speaks of the *adat kawin*, the *adat* of marriage, or the *adat pusako*, the *adat* of heritage. It is also used to indicate a standard of evaluation, both in terms of permissibility and of validity: *menurut adat* - in accordance to *adat*, *salah menurut adat* - wrong according to *adat*; and: *syah menurut adat* - valid according to *adat*, *tidak syah* or *batal menurut adat* - not valid, void according to *adat*. As has already been mentioned, *adat* can also be used in a more restricted way, signifying a particular field of social relations in contradistinction to others, e.g. *pusako* or *buek*.

2. *Adat and Adat Law*

Adat restricts the constituents' autonomy in various ways and to different degrees. Some *adat* sayings and rules are quite explicit in their prescriptive character and leave little room for interpretation and discretion by the decision makers. However, most sayings are vaguely

phrased, often in an allusive way and have to be interpreted in an actual context: they leave room for the exercise of the constituents' autonomy in the interpretation of the rather general notions embedded in the *adat* sayings. This kind of autonomy is firmly embodied in the *adat* doctrine of decision making through the process of common deliberation, the *musyawarah*, which has already been described in the discussion of the Minangkabau notions of authority. The *adat* rules restricting the autonomy in these processes are more what we would call procedural in character. The decision must be found in a proper process, and certain procedural criteria must be adhered to. If this is done the decision makers are not restricted by substantive criteria. *Adat* is amenable to change (see below Chapter 6: 314 ff.), and the principle of a common decision upholding the harmony between the contending parties and the social relations in the *nagari* in general is higher valued than the idea of an application of rules to a set of facts.[6]

According to the conception of law which I have outlined in the first chapter, there is much general and concrete law in Minangkabau *adat*. It should be noted, however, that my conception does not fully correspond with the concept of "*adat* law", Dutch: *adatrecht*, Ind.: *hukum adat*. The concept *adatrecht* had first been created by Snouck Hurgronje, who denoted with it "those *adats* which have legal consequences" (1893: 357). The concept was subsequently taken up by Van Vollenhoven, and through his usage the concept received its publicity. In Van Vollenhoven's definition, *adatrecht* meant "the sum of the behavioural rules in force for the natives and foreign orientals, which have sanctions (therefore: law) and which are not codified (therefore: *adat*) (1918: 14).[7] The discussion about what *adatrecht* is, or rather, what it should mean, has since then been carried on through the subsequent generations of Dutch and Indonesian *adat* law scholars. The most prominent conception became the so-called decision-theory (*beslissingenleer*) of Ter Haar (1930, 1934 a, 1937, 1941) which has already been discussed in the first chapter. In the meantime, Indonesian scholars have developed their own conceptions which are usually variations of Van Vollenhoven's and Ter Haar's definitions.[8]

In contemporary Minangkabau, the notion of *adat* law, *hukum adat*, is known, but its use and its interpretations differ. Most persons who have received a formal legal education, such as judges, lecturers at the universities, and higher administrative officials, use the concept, and by

their use they contrast *adat law* from *adat*. The judges, in particular, have insisted on a distinction between *adat* and *adat* law, and emphasized that they applied *adat law*. In their opinion, expertness in *adat* law is firmly connected with a formal legal training, and the Minangkabau *adat* experts, *panghulu* who have written books on Minangkabau *adat*, are experts in *adat* only. Their notion of what constitutes that difference, however, was very vague. It mostly referred to Van Vollenhoven's or Ter Haar's definitions of *adatrecht*: Law was what was applied in their courts. However, in the rationalizations and legitimations of the courts' judgements, we could detect no difference between *adat* and *adat* law. Both terms were used indiscriminately, and the problem of the eventual distinction was never explicitly dealt with.[9] Minangkabau villagers generally do not speak of *adat* law, but of *adat*. The term *adat* law, *hukum adat*, is known, but is, quite correctly, considered a Dutch invention.[10] If the term *hukum adat* is used, no distinction is made from *adat*. But in general, no matter which field of social relations they discuss (thus also in the processes of conflict resolution) only *adat* is employed. The word *hukum* is used, but not in the sense of "law", but rather in the sense of "judgement, verdict". *Hukum* is mainly used in its verbal form *menghukum*, *mahukum*, to judge, to convict. If *adat* is specified or differentiated at all in the *nagari*, people refer to the classifications which I have mentioned. The quadrupartition of *adat*, though it forms part of the standard repertoire out of which first information is offered to the foreigner, is hardly ever used in the processes of decision making. It is rather the *cupak*, *undang2*, and *kato* which are referred to. But most people are quite aware of the somewhat obsolete character of these subdivisions in *adat*, as particularly the fields of penal sanctions and of constitutional law have been superseded by colonial government regulations and national law. What I would consider law in *adat* (but also what others consider to be *adat* law) is not conceptually distinguished from *adat* in general by Minangkabau villagers.

II. ISLAMIC LAW

Islamic law, *sharī'at*, Ind. and Min.: *sarak*, *syarak*, or *syarat*, is intimately connected with the Islamic religion. It is religious law and regarded as "canon law" by most scholars of Islamic law (see Fyzee 1955: 15). *Syarak* literally means "the road to the watering place, the path

to be followed". It consists of the totality of Allah's commandments, each of which is called *ḥukm* (Ind.: *hukum*). Basically, *syarak* is a doctrine of duties which extends to all fields of human behaviour, the sacred and the profane worlds (Fyzee 1955: 15). The religious injunctions of the *syarak* are classified into five different standards of evaluation (see Juynboll 1903: 5 f.; Fyzee 1955: 15):

1. those actions which are strictly forbidden (*ḥarām*)
2. those from which one is advised to abstain (*makrūh*)
3. those where *syarak* is indifferent (*jā'iz*)
4. those which are advised and looked upon positively (*mandūb*)
5. those which are strictly enjoined or prescribed (*fard*)

In terms of the conception of law which I have outlined in the first chapter, only the injunctions of nos. 1 and 5 could be regarded as general law, as only they explicitly limit the individuals' autonomy in a definite manner.[11] But besides or rather within the *syarak*, there is the body of the *fiqh*. The *fiqh* is defined as "the knowledge of one's rights and obligations derived from the four sources of law" (Fyzee 1955: 17). *Fiqh* means "intelligence", but under its name the whole Islamic science of jurisprudence has become known. It is generally regarded as the "proper law" or "law in a more narrow sense" by students of Islamic law, and it contains what I call standards of permissibility and validity and the pertinent legal consequences. The "four sources" or "roots" (*'ilm uṣūl*) of law are the Koran, the traditions and practices of the prophet (*ḥadīth* and *sunna*), the principle of analogical deduction (*qiyās*), and the consensus of the learned (*ijmā'*).[12]

Islamic law is the product of a long development process. Islamic scholars divide this process into four main periods, in the third of which, counted from the year 40 until the third century after the *hidjrah* (622 A.C.), the four important schools of Sunnite jurisprudence were formed.[13] In the Indonesian archipelago, most Mohammedans follow the school of Imām Shāfi'ī (150/767 - 204/820). The Shāfi'ites mainly recur to the works of Imām Shāfi'ī and to the two standard works in which the *fiqh* has been elaborated: the *Tuḥfah* of Ibn Ḥadjar (died 959/1551) and the *Nihâyah* by ar-Ramlī (died 973/1565) (Juynboll 1903: 38). Another important source of Islamic law have become the collections of *fatwā*. *Fatwā* are explanations of the law in a concrete case, which have been given by a recognized legal expert (Juynboll 1903: 40).

III. WRITTEN LAW

Written law (*hukum tertulis*) is the sum of the Dutch law which has been received as law in the Colony of the Dutch East Indies, of the laws promulgated for the Colony in Holland, and of the laws made by the colonial and later Indonesian legislative institutions.

Dutch law, like most western legal systems, is a mixture of the late Roman law and the Germanic tribal laws.[14] Most law was codified in the beginning of the 19th century. The Dutch codes were closely modelled on the French codes which were enacted under the reign of Napoleon I. In Dutch legal theory, law is in principle codified, and is applied to concrete sets of facts by the subsumption of the facts under the law. Dutch court decisions do not play the important role they play in Common Law countries, and there is no doctrine that the law is embodied in cases. But court decisions as well as the books written by learned jurists serve as important sources upon which judges draw in the rationalization and legitimation of their judgements. This system was also introduced into the Colony. Legislation-techniques in the Colony also followed the Dutch system, aiming at a complete solution of the problems to be covered in the form of codification of detailed rules, and leaving the judges little room for the exercise of discretion in the application of the law.

Early in this century, Colonial law (*Indisch Recht*) gained in importance when a separate study of it was established at the University of Leiden. In the 1920's a University for Law was established in the Colony's capital, Batavia (now Jakarta).

B. THE "EXISTENCE" OF THE LEGAL SYSTEMS IN MINANGKABAU

I. THE COLONIAL AND NATIONAL LEGAL SYSTEM

The official legal system of the Republic of Indonesia, and formerly the legal system of the Colony of the Dutch East Indies, contains rules about the applicability of the different subsystems and establishes, or recognizes, the administrative institutions which have to apply these subsystems to concrete cases. Most Indonesian societies had already known some sort of legal pluralism after the acceptance of the Islamic religion, but with the Dutch colonialization, the legal pluralism gained in importance. The inhabitants were partly subjected to a new set of

legal rules, and they were also subjected to an administration of justice which was carried out by the new rulers, who were not content to have their own law applied to themselves but also usurped the application of the inhabitants' law. Legal pluralism thus did not just affect domains of social life such as marriage, inheritance, or property. The constitutional systems, and particularly the field of the exercise of socio-political authority were affected to a much greater extent. In the following section, I shall briefly sketch the development of this dual legal pluralism in Minangkabau.

1. *Pre-Independence Development*

The Dutch had first come to the west coast of Sumatra in 1600. Then in the first half of the 17th century they had managed to establish some trading posts at major coastal sites. Between 1647 and 1660 they ousted the Achenese merchant governors who had brought the coastal area under their control, probably as a consequence of the weakening of the Minangkabau empire. In the coastal area, in particular in the largest place, Padang, the Dutch introduced some kind of administration, but until the English interregnum (1795-1819), no European had ever set foot into the three *luhak* from the west coast. Raffles, who governed the west coast during the English interregnum for the English East India Company, was the first European to make the journey into Tanah Datar in 1818, where he established a small military post at Simawang. When the west coast had been returned to the Dutch in 1819, they were approached by some *adat*-leaders from Tanah Datar for help against the Padri, and this served as pretext for the introduction of colonial rule in the Padang Highlands. In 1821, the Dutch *resident* of Padang made a treaty with these *adat*-leaders in which "the regions of Pagarruyung, Saruaso, and Sungei Tarab" (all situated in Tanah Datar) as well as "the other regions of the Minangkabau empire" were handed over to the Government of the Dutch East Indies (Westenenk 1918b: 678; Kielstra 1887b: 27 with the full text of the treaty, cf. Dobbin 1977). It is in this treaty that the first regulation concerning the applicability of the laws was made. In fact, legal pluralism was not yet to be introduced. Art. 5 of the treaty said:

"The time-honoured customs and traditions of the land and the relationships between the Native Heads and their subordinates shall be completely safeguarded. In no case shall they be violated, insofar as they are not contrary to the regulations stipulated above" (Kielstra 1887b: 28. The regulations referred to concerned the military presence of the

Dutch in the Highlands and the obligation of the Minangkabau to provide the Dutch with coolies).

The war against the Padri, which was only ended in 1837, prevented the Dutch from a fast establishment of a proper administration. But for the areas under Dutch control, a preliminary administrative system was erected in 1823.[15] Following the pattern also used on Java, the Minangkabau region was divided into 2 *hoofdafdelingen* and 4 *regentschappen*. The *regentschappen* were subdivided into districts. These districts were called *laras* and were based upon actual, or what were erroneously assumed to be, *nagari*-federations. They were placed under the control of a Minangkabau administrative official, the *Tuangku Laras* (*Lareh*). The *nagari* were placed under a village-mayor, *Kepala Nagari*. These officials were paid by the Dutch administration. In the first phase they were appointed by the Dutch administrative officials, later elected by the population. In 1864 election became obligatory (Westenenk 1918b: 830, 832). In 1825, the first court (*landraad*) in the Padang Highlands was established at Fort van der Capellen (Batu Sangkar) (Westenenk 1918b: 680 ff.). In 1833, it was decreed (by *Missieve* 9.1.1833) that courts (*landraden*) were to be constituted in all major centers of Minangkabau, and "that the law should be applied in accordance with the existing customs in each district".

The jurisdiction of these first colonial courts was restricted. All disputes between natives were in principle to be decided by the *nagari*-government. Only appeal to the Dutch courts was allowed (Westenenk 1918b: 686). This state of things was solemnly confirmed by the Governor of the West Coast in the so-called *plakaat panjang*, "the long declaration", of 25.10.1833:

"The Government shall refrain from all interference into the domestic affairs of the natives, and all problems concerning debts, torts, marriage, divorce, and inheritance must be decided by the *adat*-functionaries according to *adat*". (Kroesen 1873: 95 ff. with the full text of the *plakaat panjang*; Kielstra 1889: 332; Westenenk 1918b: 688).

The promises of the *plakaat panjang* were quickly forgotten. In 1837 the Dutch had taken Bonjol, the last stronghold of the Padri-forces. The court structure was renewed, but without any significant changes. But already in 1825, the Dutch had begun levying a market tax (Kielstra 1887b: 125), and in 1847 the *cultuur-stelsel*, the system of forced cultivation of cash crops, in Minangkabau mainly coffee, was introduced (cf. Kahn 1976: 81), the latter made compulsory in 1862. The villagers were forced to plant a number of coffee trees and sell the products to

the storehouses run by the Dutch. The *Tuangku Lareh*, village mayors, and the *panghulu* officially recognized by the Dutch (the *panghulu rodi*) were responsible for the implementation of this policy.

In 1875, the West Coast received a new judicial structure which brought some fundamental changes (see der Kinderen 1875). The *Reglement op het Rechtswezen van Sumatra's Westkust* (coming into force on 1.11. 1875) completely abolished the jurisdiction of the village government, and the penal law was made subject to a (Dutch) Penal Code. The West Coast now had the typical dual court structure with different chains of courts for Europeans and Natives.[16] Only the lowest court for the natives, the *distriktsgerecht* or *Rapat Tuangku Laras*, was staffed with natives. It was presided over by the *Tuangku Laras*, with some of the *nagari panghulu* as assessors. These courts were to apply *adat* law but had to follow Dutch procedural law. Appeal lay in the *Inlandsche Rechtbank* (later to be styled *landraad*) which was presided over by a Dutch administrative official with at least two *Tuangku Laras* as his assessors.[17]

The application of *adat* through *adat* officials, which had been abolished in 1875, flourished also without official recognition. The *Karapatan Adat* continued to exercise their jurisdiction according to *adat*. The official courts condoned this. Guyt, himself a judge in the *Landraden*, states that the governmental courts highly valued the decisions of the *panghulu* (1934: 133). In the 1930's, it had even become regular court practice that intra-lineage (*kaum*) disputes were not accepted by the courts unless the parties had obtained a decision of the *Karapatan Adat Nagari* beforehand (Guyt 1934: 134 and the judgements published in T 133: 264, T 135: 299, T 138: 471).

In 1935, some kind of "village justice" was officially resuscitated by the colonial government.[18] An ordinance amending the *Rechtsreglement voor de Buitengewesten*, R.B.G., was enacted, in which it was stated that: "Legal actions, of which the judges of smaller communities should take cognizance according to *adat* law, are subject to such cognizance".[19] The newly recognized *adat* institutions were given the status of a mediating body (*hakim perdamaian*). The natives were not prevented from bringing their suits before the Dutch courts. However, the *distriktsgerechten* had to inform themselves as to whether the "village judge" had already given a ruling in the case, and if so, were obliged to take cognizance of this ruling. They were also entitled to remit the case to the village judge and could regard the suit as lapsed (*vervallen*) if the plaintiff

refused to do so.

Islamic institutions of dispute-settlement were not recognized as judicial institutions in West Sumatra.[20] However, in those *nagari* where such institutions had been established during the Padri-war and, as in CKL, had been more or less integrated into the *adat* system, they continued to exercise jurisdiction, particularly in marriage affairs, also without official recognition (see AB 39: 212 ff.).

The law which was to be applied in this dual court system had been systematized for the whole colony in 1848. The basic principle was that different law was to be applied to the different population groups. These groups were mainly based upon racial origin. At first, two groups were recognized, Europeans and Natives, but the *Regeringsreglement* (R.R.) of 1854, the constitution of the colony, recognized three population groups: Europeans and persons treated like Europeans (mainly Christians), Natives, and Foreign Orientals.[21] These provisions remained unchanged until 1920, when the R.R. was amended, and then to 1925, when the *Indische Staatsregeling* (I.S.), the new constitution, was enacted. Art. 163 I.S. defined who belonged to which population group, and art. 131 regulated which law was to be applied to which population group.[22] According to art. 131 (6) I.S., all private law in force for the native population on 1.1.1920 continued to be in force. This meant, that according to art. 75 R.R. the law which was applicable to the natives consisted of their unwritten *adat* law and those European regulations which had been made applicable to the native group by decree of the Governor General. The application of *adat* law was restricted by the rule that it was not to be applied when it offended the (western) principles of equity and justice (see Gautama and Hornick 1972: 10, Hooker 1975: 278). Before 1920, only very little Dutch law had been made applicable to the native group.[23] The members of the native category had also some opportunities to become subject to European law, but these were infrequently used by the Indonesians. The fields of property and inheritance law were excluded from these possibilities in any case.[24]

The *adat* law of property and inheritance thus was in principle untouched by these provisions. However, several laws and regulations had been enacted which had some impact on property relationships and land law in particular: The *Domeinverklaring* for Sumatra (S. 1874: 94 f.) by which all "waste land" was declared to be the domain (*domein*) of the

State, and the "Prohibition on Land Alienation"(*Verbod van vervreemding van erfelijk individueel gebruiksrecht* of 1875) which prohibited sales of "native land" to non-natives (Gautama and Hornick 1972: 75 ff., 83). These laws will be discussed later in Chapter 4.

2. *Post-Independence Development*

Since the independence of the Colony of the Dutch East Indies in 1945/49, the pluralistic situation has not basically changed. The regulations of arts. 163 and 131 I.S. are generally held to continue to be in force,[25] and they are still applied in contemporary Minangkabau State Courts.[26] Some laws have been enacted by the Indonesian legislature which have important consequences for the fields of property relationships: The Basic Agrarian Law of 1960 and the Marriage Law of 1974. They will be discussed in the next chapter.

The dual court was abolished during the Japanese interregnum, and after Independence this unitary court system was retained. The ordinary jurisdiction was conferred upon the *Pengadilan Negeri* (PN) as courts of first instance, the *Pengadilan Tinggi* (PT) as courts of appeal, and the *Mahkamah Agung* (MA), the Supreme Court, as court of revision.[27]

The village justice in its officially recognized form survived the Japanese interregnum and the Dutch military actions. In post-Independence Indonesia, it is generally held that the regulations introduced in 1935 are still valid and that the village institutions are still permitted to act as *hakim perdamaian*. In West Sumatra, the structure of the administrative bodies which function in village justice has been changed by several regulations.[28] The first systematic reorganization of the local government system in West Sumatra was introduced in 1968 by a decree of the Governor. The *nagari* government was to consist of a village mayor, *Wali Negeri* (WN), a *nagari* council, *Kerapatan Negeri* (KN), and a village parliament, *Dewan Perwakilan Rakyat Negeri* (DPRN), the membership to which was elective (SK 015/GSB/1968). The KN was to assist the WN and to function as court of mediation in *adat* and religious matters. The regulations on the KN were implemented by a decree of 1970 (SK 149/GSB/1970): The KN consists of three sections, an *Adat* Section, a Religious Section, and a General Section. For each section, a jury (*Dewan Juri*) is to be established. The juries shall take decisions "which are to mediate between the parties and which should be accepted by both parties" (*keputusan perdamaian yang disepakati oleh pihak2 yang berperkara*). The members of the *Adat* Section shall be the members of the

Karapatan Adat Nagari (KAN), the members of the Religious Section the members of the Council of Religious Experts (*Majelis Ulama Negeri*) or those persons who are recognized as religious experts (*Alim Ulama*).[29]

In most *nagari*, the *Karapatan Adat Nagari*, the *adat* councils according to *adat* constitutional law, exist side by side with the officially established *nagari*-institutions. The KAN are not officially recognized by Indonesian national or provincial law, but their existence is known and indirectly acknowledged by the provision that the members of the KN should be recruited from the KAN.[30]

During our stay in Minangkabau, a new local government regulation was introduced (SK 155 and 156/GSB/1974), which abolished the DPRN and restructured the KN, without, however, basically changing its jurisdictional powers. The re-establishment of a religious section of the KN has already been mentioned.

Post-Independence saw a growing recognition of Islamic institutions. Besides, Religious Courts were set up in several parts of Sumatra after Independence, mainly by and in cooperation with the Ministry of Religious Affairs.[31] The Ministry has a department (*Perwakilan*) in each province, and Religious Administrative Offices (*Kantor Urusan Agama*, KUA) were set up on *Kecamatan* level. The KUA in many parts of Indonesia assumed jurisdictional powers, until in 1957 Religious Courts were officially established outside Java and Madura (see Lev 1972a: 76): The Government Instruction (PP 45 of 1957) established Religious Courts, *Pengadilan Agama* or *Mahkamah Syriah*, in the places where PN already existed. The Religious Courts' jurisdisction is only vaguely circumscribed. It comprises disputes between married persons of the Islamic religion as well as matters of marriage, divorce, remarriage, and disputes concerning inheritance and gifts, but only "if these subjects are, according to the living law (*hukum hidup*) to be decided according to Islamic law. If other than Islamic law is in force in these matters, the Religious Courts may not assume jurisdiction" (art. 2 and 4). The decisions of the Religious Courts can only be executed after they have been reviewed and confirmed by a State Court (art. 3-5).

The administrative structure of the Religious Department reaches down to the *nagari* level. There is an Officer for the Registration of Marriage, Divorce, and Remarriage (*Pembantu Pegawai Pencatat Nikah, Thalak, Rujuk*, P3NTR) in each *nagari*, who is chosen by the village mayor and whose appointment must be confirmed by the KUA. Since 1969, the P3NTR has an advisory committee, the *Corops Penasehatan Nikah, Thalak, Rujuk*, (CPNTR),

the members of which are appointed by the village mayor.

II. THE ACTUAL USE MADE OF THE SYSTEMS

The second form of actualization of the three systems in Minangkabau is the actual use made of the systems in property and inheritance affairs. The substantive rules of the systems will be described in the next chapter, and the actualization of the systems in the social processes which are concerned with property and inheritance affairs will be treated in Chapters 5 and 6. But in order to convey an impression of the systems' respective importance, first a general overview will be given here.

1. *The Legal Systems Used by the Courts*

a. The State Courts

The State Courts either apply *adat* law or written law but not Islamic law. That Islamic law is not applied is to be emphasized, as the foreigner is often told the contrary in introductory interviews. Most people whom we interviewed still vividly remembered the two conferences which had been held in 1952 and 1968 on the subjects of land and inheritance law. In the resolutions issued by the conferences' participants it had been stated that Islamic law should be applied to the inheritance of self-acquired property (see Prins 1953, Naim (ed.) 1968). The Judges' Organization had participated in the 1968-conference and had agreed with these resolutions. In some of our first interviews with judges and administrative officials we were offered the statement that Islamic law was indeed applied in the State Courts. But our check of the court records of the PN in Bukit Tinggi, Batu Sangkar, and Payakumbuh for the period of 1968 - 1974 revealed, that Islamic law was not applied in one single case. Once we had become better acquainted with the judges, they, too, emphatically denied that Islamic law was, or should be, applied in their courts in property or inheritance matters.

Most courts explicitly legitimate their judgements by reference to *adat* or *adat* law. Written law only enters the judgements in rare instances. The only substantial exception is formed by the bulk of cases in which banks try to recover loans from their debtors. In the period under review, this kind of case constituted about 14% of all contested

civil cases (71 of 507). In practically all other cases, *adat* (law) was applied as the system of substantive law. In disputes about property and commercial transactions in the towns, the courts sometimes recur to single principles of Dutch law like the principle of *bona fide* acquisition. But the law in these cases also is, for the rest, *adat* law (for a more detailed overview of the case load see Chapter 5: 307).

It must be remembered, however, that the law of procedure and evidence is a modified version of Dutch procedural law. This is of considerable influence on the concretization of *adat* law in the state courts.[32]

b. The Religious Courts

In principle, the Religious Courts apply Islamic Law. The actual exercise of their jurisdiction in Minangkabau is reduced to marriage problems. The greatest percentage of their case load (78%, N=1.237) is formed by applications demanding the declaration of validity of a previously unregistered marriage (*pengesahan nikah*). Property or inheritance questions are hardly ever brought before the religious courts. In the 6 years of 1969-1974, for which we examined the case load of the *Pengadilan Agama* in Bukit Tinggi, only 8 cases concerning property (or 0.64% of the total case load) came before the court. Of these 8 cases, only two were actually decided: One uncontested case of inheritance and one property dispute between a married couple. The other six cases were withdrawn, and in two cases the court did not assume jurisdiction on the grounds that the matter in dispute was subject to *adat* law and should therefore be heard by a State Court.[33] One of these cases will be reported in Chapter 5: 267 ff.).

2. *The Use Made of the Systems in the Nagari-Institutions of Decision Making*

It is difficult to give an answer for Minangkabau as a whole to the question of the degree to which the three systems are used to legitimate decisions in property and inheritance matters by the *nagari*'s institutions. Although I think it probable that the situation in most *nagari* will be similar to the one in CKL, I shall restrict my statements to *nagari* CKL.

Property matters are in principle dealt with only by the *adat* institutions and the *adat* section of the *Kerapatan Negeri*. These institutions use *adat* to legitimate their decisions. The P3NTR did not handle property problems, and neither did the religious section of the KN; in fact, the

latter had not decided any case at all and its existence was very much on paper only. Marriage affairs are dealt with by the P3NTR, the KUA, and the *Pengadilan Agama*, but disputes over the division of marital property are handled by the *adat* institutions. In some cases in CKL, disputes concerning property were also dealt with by the *sidang*-councils (see Chapter 2: 80). The *sidang*, however, were regarded as *adat* institutions in definite contrast to the P3NTR or the religious section of the KN.

3. *The Use Made of the Systems Outside the Formal Institutions of Decision Making*

Here again, it is difficult to give a precise and statistically supported statement. As a general rule, *adat* is used by the population to rationalize and legitimate all kinds of property relationships. One exception, which will be discussed in detail later in this study, is, that the inheritance of a father's self-acquired property by his children is sometimes rationalized as being in accordance with Islamic law. Religious experts are also occasionally approached for advice with respect to the division of self-acquired property of a deceased in accordance with Islamic law. In CKL, such cases seem to have been extremely rare, and no concrete instance was reported to us.

III. THE ACTUALIZATION OF THE SYSTEMS IN THE KNOWLEDGE OF THE MINANGKABAU

The third point of reference for the "existence" of the three systems lies in the knowledge of the Minangkabau that these systems exist; a knowledge held by more or less all adult Minangkabau, independently of the degree to which these systems are applied in social processes that deal with property affairs, and independently of the degree to which the Minangkabau have internalized the formal characteristics and the substantive content of the systems. The situation may be compared with that of the common German, who *knows* that in his society religion, law, ethics, and morals exist as different and distinct systems which contain standards for his behaviour, but who can neither define the distinction between the systems nor claims to have adequate knowledge of their contents. For he knows that in his society this knowledge is the realm of lawyers and theologians, of experts who have undergone a special training. Yet he knows "something" of the systems' substantive rules and has his

own ideas about them. The situation of "the Minangkabau" is quite similar, and it shall briefly be described in what follows.

1. *The Knowledge of Written Law*

Minangkabau do not know much written law. This law has been made in Holland or in the national or provincial capital, it is laid down in statutes, and has been elaborated by learned men. Written law is taught only at the Legal Faculties of the Universities, in West Sumatra at Universitas Andalas in Padang. The courses include lectures on Dutch civil law, the students thus becoming acquainted with the principles of Dutch property and inheritance law. Some more written law is taught at the APDN, the *Camat* Training School, but there no courses in western property or inheritance law are given. The judges in the State Courts - the State Courts are, with a few exceptions, all staffed with Minangkabau judges - for the greatest part are University graduates (according to the law, judges *must* be law graduates) or have at least followed the training in the School for Judges and Public Prosecutors, where the basic principles of western law are also taught.

But these sources of knowledge are not open and accessible to the common villager, and they interest him little. The written law which reaches the villagers consists mainly of government regulations relating to administrative matters. Thus there is no actual knowledge of the western written law of property and inheritance, although the most relevant provisions of the Basic Agrarian Law and the new Marriage Law are known to many. But most villagers hold some vague notions of what western law is, like: That Dutch family law does not recognize matrilineal descent; that it is patriarchal; that the children follow the father; and that they inherit from their father, whereas the *mamak* does not play a role in western law. It is also known that according to western law a person is quite free to dispose of his property as he wants to, and that his relatives cannot interfere in his property relationships.

Information about written law reaches the villagers mainly through the channels provided by the State administration. National or provincial regulations flow from the provincial administration to the *Bupati*'s office, from the *Bupati*'s office to the *Camat*'s office. The *Wali Negeri* receive information and instruction from the *Camat*. A separate channel is provided by the Department of Information which keeps information officers down at the *Kecamatan* level. If new regulations are to be ex-

plained or propagated, the information officer calls a meeting of the WN of his *Kecamatan*.

Another important channel of information is the organization of the "*Karapatan Adat* League of the Minangkabau World" (*Lembaga Kerapatan Adat Alem Minangkabau*, LKAAM). The LKAAM is a government sponsored organization of *adat*-functionaries which functions on *Kecamatan*, *Kabupaten*, and Provincial levels. It serves as a forum in which government plans and policy are explained to the *adat*-elders by the representatives of the Government, with the aim of securing the *adat*-elders' cooperation for the implementation of these plans.[34]

The information thus flows through the various channels to the village government, either to the *Wali Negeri* or to the Head of the *Karapatan Adat*. In meetings it is then transmitted to the *Niniek Mamak*, the lineage elders, whose task it is to pass it on to their *kamanakan*.

2. *The Knowledge of Islamic Law*

The principles of Islamic law are known to a much greater extent. "Real" knowledge of the law, the *fiqh*, and of its interpretation and application, however, is firmly ascribed to the status of *alim ulama*, of the religious expert.

Principles of Islamic law, as part of the religion, are taught at all levels of the educational system. In the *nagari*, children of the age of 8 to 10 years follow a yearly course of religious instruction which is held in the mosque or *surau*. They are taught rudiments of the Arabic language and are instructed in the Koran. At the end of this year, the *Khatam-al-Koran* ceremony is held: The children are led in a procession through the village, accompanied by relatives and neighbours. On the return to the mosque, each child recites one verse of the Koran. This ceremony is followed by a feast, which usually takes two days, during which friends, relatives and neighbours come to congratulate the parents and matri-relatives of the children and to eat with their hosts. There is some religious instruction in government schools, and systematic teaching takes place in the Islamic schools at primary and secondary school level.[35] Religious instruction - for all villagers - is regularly carried out at night in the mosques and *surau*. The Islamic functionaries recognized as *alim ulama* who act as teachers there, often are persons who have learned religion from a recognized teacher, and have had no formal education in religious matters.

Even if the exact knowledge of Islamic law and its interpretation is a matter for the experts, the general principles of Islamic law are well known to all Minangkabau. Islamic law plays its most important role in the field of marriage and divorce, and the basic rules are regularly restated in the relevant procedures. In inheritance matters it is well known that the Islamic rules of inheritance differ radically from the *adat* rules. Everyone knows that according to Islam "the children inherit from their father", and that male heirs get a bigger share than female heirs. Most people know that the actual distributory rules of Islamic law as laid down in the Koran are much more complicated, but these details are considered a matter for the experts (which is understandable in view of the complexity of these rules).

3. *The Knowledge of Adat*

a. The Knowledge of *Adat* in the *Nagari*

Most of *adat* is known to the population, but there are also several fields of *adat* which are considered the special knowledge of experts.

Adat is learnt during the process of socialization. Children listen to their elders, observe their behaviour, learn the language and the many *adat* sayings in which *adat* rules and maxims are embodied. The basic principles of *adat* are taught at a very early age. Children are systematically educated in feelings of shame, of propriety, and of lineage solidarity. Much of *adat* is learnt by observation and imitation, but there is also (or used to be at least) some formal instruction. When boys move to sleep in the *surau*, they are taught by older men, if possible by their *mamak*. Children are allowed to attend most ceremonies and formal occasions, at which *adat* is restated in ceremonial language by the *adat*-functionaries. In some *nagari* (such as Padang Parab, where we attended two *panghulu* installations) children are even allowed to attend the most formal meetings of the *panghulu* installation. *Adat* is also contained in most of the stories and epics told to the children, and there are some stories, like *Rancak Dilabueh* (see Dt. Panduko Alam 1954, Johns 1958) which contain more or less the whole of the principles of *adat* morality and law.

Rethorical skill is highly valued in Minangkabau. Knowledge of *adat* not only means the ability to remember *adat* rules and proverbs once learnt, but great emphasis is laid upon the capacity to reproduce *adat* in the proper verbal behaviour. Each proper Minangkabau must be able to

berunding, to talk in a highly flowery and polite phraseology, which is full of allusions. For it is one basic principle of *adat* (under which the curious anthropologist will often suffer) that one may not speak straightforwardly: "*Indak bulieh taruih tarang*" - "you may not express yourself directly and clearly", was a phrase which we repeatedly heard during our stay as a characterization of the proper way to speak in *adat*. To *berunding* is generally learnt by observation and imitation. For other forms of verbal behaviour, however, special knowledge is required. The *pasambahan* is a form of formalized speaking which is employed at all ceremonies. It also consists of allusive and flowery phraseology which involves a constant restatement of *adat* proverbs and rules, in which the intentions of the speaker have to be expressed. The *pidato* are *adat* recitals, which are held during the major ceremonies, for which there are different kinds of *pidato*. Those *pidato* held during *panghulu* installations mainly consist of a recital (spoken or sung) of the *tambo* of the Alam Minangkabau, the Minangkabau *adat* and its historical (*tambo*) development. The *pidato* are performed by younger *adat* functionaries, in CKL by the *anak mudo*. The *pasamabahan* and the *pidato* must be learnt from someone who is "*pandai*", an expert, and this involves a formal teacher - pupil relationship. Nowadays, there are several "standard-versions" of the most frequently used *pasambahan* and *pidato* which have been published by Minangkabau *adat*-experts.

A more intensive knowledge of *adat* is expected from the *adat* functionaries and lineage elders. The *adat* functionaries, the *panghulu* and *juaro hindu* in particular, must "know" the *adat*. They must know how to use *adat* in the processes of decision making. They must be skilled in the verbal behaviour which is employed in these processes. They further must know the *undang2*, the *kato*, and the *cupak* of the Minangkabau *adat* and the *nagari*'s own *adat*. This knowledge has to be learnt from a teacher, who should be a *mamak* or the *panghulu* or some other person of one's *suku* who has a reputation for his *adat*- knowledge. Young *panghulu* who have not yet had the opportunity to learn enough continue their *adat*-education after their installation.[36]

This intensive knowledge of *adat* is one of the prescribed status attributes of the *adat* functionary. But villagers are quite aware of the fact, that not all *panghulu* are equally knowledgeable, and that in contemporary Minangkabau "*panghulu* are not what they used to be". Particular skill and knowledge as well as obvious inabilities are freely discussed and commented upon. Intensive knowledge of *adat* is not only

recognized in *adat* functionaries. It can also be achieved by persons who do not hold any office. Their abilities will always become evident as they are displayed at the numerous public occasions and ceremonies. Persons who acquire the reputation of great knowledge and who are neither *adat* not Islamic functionaries, are called *Caradiek Pandai* (Ind.: *Cerdik Pandai*), the "intellectuals", who may play an important role in *nagari* political life.[37]

An important part of expert *adat* knowledge is the *adat* of one's *nagari*; in particular its history, its constitution, the political and genealogical relationships between the *buah gadang* and the status of their *panghulu*. Such knowledge is of great relevance in the frequent disputes over *kaum* or *buah gadang* property, especially when one *kaum* or *buah gadang* has become extinct and the question of its inheritance has to be settled. This kind of knowledge is highly valued and kept secret. It means prestige and power and has also some economic consequences. For if such knowledge is required to solve a dispute, the expert will be approached with customary (or modern) gifts.

For the common villagers and the experts themselves, the differentiation of *adat* knowledge is accepted as a matter of fact. In discussions about the *adat* of CKL and its development, we were frequently referred to those "who know", even when we had reason to assume that the person asked would perfectly know himself. The experts, too, held that "knowledge must be in different levels" (*ilmu mesti bertingkat2*). There are some fields of knowledge which are ascribed to the *panghulu* or *juaro* status: Only a *panghulu* "can" know about the development of his *suku* (*buak gadang* etc.) and the development of the original lineage property belonging to the *buah gadang* of his *suku*. Others "cannot" know this. This knowledge is transmitted to selected persons only, generally to the prospective successor, and only when the expert feels his end coming.[38]

On a lower level, the *buah gadang* or *kaum* genealogy, and the location of the property are also transmitted from *mamak* (group head) to his *kamanakan* (his prospective successor). This knowledge is part of the group's heritage, which may only be transmitted within the group. Minangkabau *adat* says: "*warih dijawek*" - "it has been received as heritage". Reference to this kind of acquisition of knowledge is a valid basis for evidence in *adat*.[39]

In contemporary Minangkabau, the value attributed to *adat* knowledge has decreased, and so has the number of persons who are *adat* experts. The younger generations are attracted by the new knowledge offered by the schools which opens the way for new and attractive careers outside the *nagari*. The *panghulu* have lost much of their traditional authority, and their position is less respected and desired than before Independence, when the *adat* functionaries were used as the main tool of Dutch colonial policy. In the *nagari*, there are only a few younger people who really want to learn *adat*, and the *panghulu* in CKL had only a very few pupils. The youths in the towns seem to display no interest in *adat* at all.

The *adat* elders and the *adat* pressure groups are greatly concerned with this situation. At present, *adat* is not taught at schools, and people realize that in the field of the formal educational system, *adat* has lost all ground to religious and modern knowledge. At the LKAAM-meeting in 1974, a special committee on *adat*-development had been formed, which made some proposals for the improvement of the situation. According to these, *adat* is to be introduced in the curriculum of primary schools. In addition, the LKAAM intends to organize courses and lectures in *adat* in the towns and *nagari*. Lectures which had been organized by *Bundo Kanduang*, the Women's *Adat* League, were held already shortly after the LKAAM-meeting of 1974. Finally, plans have been made to found a People's University (*universitas masyarakat*) in which lectures in *adat* shall be given. This university will be open to everyone interested in Minangkabau culture (see K.v.Benda-Beckmann 1975: 73).

Besides the predominant oral tradition of *adat*, it must be noted that since the beginning of this century a substantial number of books and brochures has been published by Minangkabau, generally by *panghulu*. The start was made by Dt. Sangguno Dirajo (1919, 1920, 1924, for an early review see Ter Haar 1934b) and the publicity campaign for Minangkabau *adat* was furthered by Dt. Sutan Maharajo who edited several journals in which *adat* was explained and discussed. Both writers reacted against the publishing activity of the Islamic pressure groups (see Taufik Abdullah 1971, 1972). Most of this expert literature consists of an exposition of the *tambo* and Minangkabau *adat*, stressing its compatibility with Islam and the state ideology of the Republic, often in the form of a serious attempt at reinterpretation of *adat* in the terms of religion and ideology, often as a lip-service only. The ideas contained in these books and the systematization of *adat* and history are to a growing extent

disseminated to the *nagari*, and we have met or heard of several *panghulu* who returned to these books when they themselves were interviewed as experts.[40]

b. Knowledge of *Adat* in the Courts

As has been mentioned, the judges consider themselves experts in law, not in *adat*. In the curriculum of the Legal Faculties, courses on *adat* law are taught, but these courses are on "*adat* law in general" and are mainly based upon the writings of Dutch (Van Vollenhoven, Ter Haar) or Indonesian scholars (Supomo). There are no courses on Minangkabau *adat* law in particular. Most judges, however, are Minangkabau and have undergone some socialization in *adat*, and some of the elder judges are themselves *panghulu*.

However, the crucial questions which decide about 80% of the court cases, are not problems of substantive *adat* (*adat* law) rules (in the sense of legal consequences) but rather problems of evidence and *nagari*-specific *adat*: The constitution of the *nagari*, the genealogical relationships between *buah gadang*, the genealogical position of the parties, etc. These facts generally are not known to the judges, and in practically each case expert-evidence given by *panghulu* of the *nagari* is required. As the research of K.v.Benda-Beckmann has shown, much confusion arises from the fact that the standard terminology for property holding groups used in the courts - the *kaum* under the *mamak kepala waris* - is insufficient to understand the actual relationships in a dispute, and frequently does not correspond to the terminology used by the parties.[41]

With the exception of several judges who are generally acknowledged to be knowledgeable, the villagers do not consider judges to be experts in *adat*. Court judgements are freely criticized as not being in accordance with *adat*. However, it is generally only the outcome of the dispute, the concrete decision, which is evaluated by the villagers against their own understanding of *adat*. The legal reasoning of the judges and their elaboration of *adat* law usually do not come to the notice of the villagers.

CHAPTER FOUR

THE LEVEL OF MEANING: SYSTEMS OF PROPERTY RELATIONSHIPS IN MINANGKABAU

A. INTRODUCTORY NOTE

In the last two chapters an exposition has been given for the detailed study of the systems of property relationships through the description of the basic principles of the socio-political organization and of the administrative and legal pluralism in which they operate and of which they are part. I have until now spoken of *Adat*, Islamic Law and Written Law as "bodies" or "systems" of conceptions. I should like to emphasize that this was a description of ethnographic facts, for in the official legal system of Indonesia, in the social processes which deal with property and inheritance, and in the knowledge of the Minangkabau these three bodies of conceptions are treated as distinct systems. In this chapter, I shall describe the substantive content of these systems. Most space will be devoted to the system of *adat*, for it is the system which is generally applicable in property and inheritance matters. Yet a brief account must also be given of the other two systems. This is because the treatment of the three bodies of conceptions as distinct systems does not, of course, mean that ideas and principles of one system cannot be used as part of another. Neither does it indicate to what extent system-external legal or non-legal factors have influenced those conceptions which are regarded as part of the *adat* system. These problems will be analysed in Chapters 5 and 6, but in order to analyse the possible influences of such system-external ideas, they must be known first. In this context two remarks must be made which directly affect the following description of the systems:

1. Since the Islamization of Minangkabau, many words of the Arabic language which are part of the legal terminology of Islamic law have been incorporated into *adat*; in fact, a great part of *adat* has been expressed in these words since then. Though, as far as we can tell, they in general signify *adat*-institutions and not, as we do know, the ones of Islamic law, the restatement of *adat* in Islamic legal concepts must have had a heavy influence on the pre-Islamic *adat* (see Taufik Abdullah 1966: 9 f.). Unfortunately, there are no data on *adat* from pre-Islamic times, and one is left to do one's best in intelligent speculation. I shall deal with this problem in the sixth Chapter when I try to analyse the change in the conceptual system of property relationships in Minangkabau in general. Yet whatever the influence of Islamic legal terminology may have been on pre-Islamic *adat*, *adat* and Islamic law have henceforth always been distinguished in Minangkabau, and Islamic law has continuously been taught and transmitted as a distinct legal system. In this chapter, I shall describe this system as far as it is directly related to the study of property relationships in Minangkabau.

2. An important part of *adat* is embodied in conceptions which refer to the processes of decision making. The outcome of these processes depends much more on social interaction processes than on the substantive criteria in terms of which the decision must be legitimated. But in the Dutch colonial courts and in the present Indonesian State Courts, whose judgements constitute an important source of data, the law of procedure and evidence is a modified version of Dutch procedural law. Through this, an important part of *adat* is surpressed in the courts. This affects the judgements of the courts the more, as most judgements depend on questions of evidence, whereas the substantive rules are generally undisputed. The analysis of these effects, important as they are, would go far beyond the scope of my study. They form an important part of the study which K. v. Benda-Beckmann has made on the work of the contemporary State Courts in Minangkabau. The *adat* produced by the courts and the *adat* produced by the other agents of externalization should therefore, on this ground alone, be differentiated, irrespective of the question as to how far the substantive rules, which are externalized within and without the courts, are congruent or not. The new procedural system has not only influenced the law produced by the courts, however. It has also had an impact on the procedures used in the *adat* institutions, as a comparison of the old *adat* processes with the current processual practices

clearly reveals (On this problem see Ter Haar 1929, 1950 I: 416 ff.). It constitutes one of the many factors which have influenced *adat* in its development, which shall be briefly discussed in the sixth Chapter.

B. *ADAT*

I. CATEGORIES OF PROPERTY RELATIONSHIPS AND PROPERTY OBJECTS IN MINANGKABAU *ADAT*

In Minangkabau *adat*, as in many other traditional social systems, property relationships are one aspect of social and political relationships which are not clearly conceptually distinguished from the latter. The principles of social and political organization which have been described in Chapter 2, also govern the system of property relationships to a large extent. This holds true both for the level of socio-political authority over property as well as for the level of use and exploitation. However, it is characteristic of the basic Minangkabau categories of property objects, that they define the legal status of property objects in relation to the person(s) holding them. The categories of property objects are construed as "man-thing units" (Bohannan 1963: 102); they do not express the rights and duties, the specific relationships attached to the property objects.[1]

On the level of socio-political authority over land, the main concepts are *tanah ulayat* ("trust"-land) and *pusako* (heritage). When the formerly autonomous *buah gadang* united to form a supra-*buah gadang* community, the *nagari*, they had to cede some of their autonomy to the newly established community and its governmental agents. With respect to the land which they had taken possession of before the foundation of the *nagari*, however, hardly any autonomy was ceded. This land already become their *pusako*, their heritage, which was transmitted through the generations of group members according to the rules which will be described in detail in this chapter. The *nagari* had no competence in *pusako* matters. As has been mentioned earlier "*pusako* matters are decided by the lineage elders" (*pusako sakato niniek mamak*). But the control over the area claimed as *nagari* territory which was not yet the *pusako* of one of the *buah gadang* was assumed by the groups together. This area was called *ulayat* or *tanah ulayat*, "trust-land", and the authority over this area was vested either in the *nagari*'s governmental agents or it

was distributed among the *buah gadang/panghulu* who had founded the *nagari*. Depending on who exercised the authority, the land was styled *tanah ulayat nagari* or *tanah ulayat panghulu*.

The relationships on the level of use and exploitation center around the concepts of *harato*, material property objects, and the various categories of *harato* known in *adat*: The *harato pusako*, inherited property, the *harato pancaharian*, self-acquired property held by individuals, and the *harato suarang*, the self-acquired common property of spouses. Before the relationships legitimating the use and the exploitation of property objects are described, the basic categories of *ulayat*, *pusako*, and *harato* and their subcategories will be outlined in the following section.

1. *The Level of Socio-Political Authority over Property (Territory)*

Since regular information on Minangkabau *adat* has become available, the concepts *ulayat* or *hak ulayat* have been used to denote the highest form of property relationships exercised by and vested in the community or its governmental agents. Both *ulayat* and *hak* are Arabic words. *Hak* means right, power, competence; *ulayat* means guardianship, trusteeship (Westenenk 1918a: 15). In recent usage in Minangkabau and Indonesia in general, the term *ulayat* or *wilayat* has assumed a spatial meaning: "area, region, district". There is little information on the pre-Islamic and pre-colonial system of property relationships and its conceptual expression. Westenenk (1918a: 19) and Kroesen (1874: 7), however, report an *adat* saying which refers to socio-political control over land and which does not yet employ Arabic words.

Nan barimbo rajo, rajo
nan bautan kareh, panghulu
nan bauran lambuik, kamanakan

Literally, this would mean:
The King's jungle belongs to the King
The hard forest belongs to the *panghulu*
The soft forest belongs to the *kamanakan*

Kroesen, Westenenk, Willinck (1909: 651) and indeed most authors on Minangkabau *adat* were convinced that the reference to *rajo*, "king", was not to the King of Minangkabau, as according to most sources the king

of Minangkabau did not exercise any socio-political control over land. They translated *rajo* as "king in the *nagari*", as referring to the highest governmental institutions of the *nagari* (Kroesen 1874: 7; Westenenk 1918a: 19).[2] In his translation, the saying has the following meaning:

The jungle is under the *nagari* government
The hard wood, the cultivable but yet uncultivated area, is under the *panghulu*
The soft wood, the area under cultivation, is under the *kamanakan* (1918a: 20).

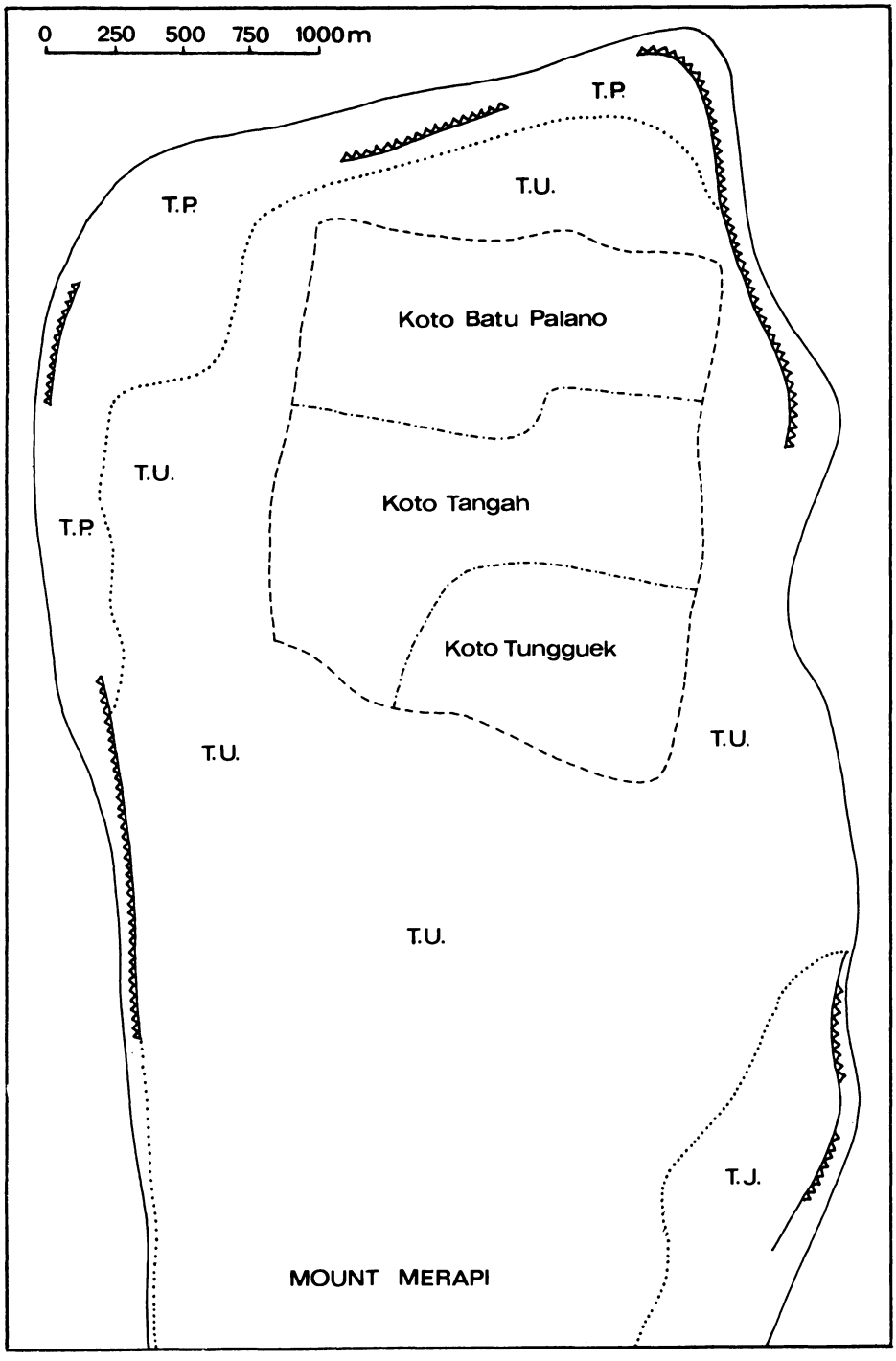
This interpretation is plausible. Yet the translation of *rajo* meaning *nagari* government could not be extended to the *tanah rajo* - the "king's land". The *tanah rajo* was a strip of land between adjacent *nagari* which had the status of no-man's land. Nobody was allowed to cultivate it, and it was believed that any encroachment would evoke magical sanctions. The *tanah rajo* was also used as a battlefield for inter - *nagari* wars, where the *parang batu*, the stone war, or the *parang bedil*, the rifle war, were fought (see AB 27: 327; Willinck 1909: 119). It has been reported that in former times such wars had to be stopped when a royal emissary of the King planted his yellow banner on this land. *Rajo*, meaning "king in the *nagari*" would certainly be a wrong translation here, as nobody from the two adjacent *nagari* could lay any claim on this land. Yet it would be premature to conclude from the few available data, that the King of Minangkabau exercised political control over this land or that this land may have even been worked for the King in times of greater centralization and expansion of the Minangkabau empire (Kahn 1976: 89 f.). Still, there certainly is a reference to the King of Minangkabau, on the exact nature of which one can only speculate. As the kingship in Minangkabau was identified with the sacred and magical, the *tanah rajo* may have been attributed to the King in this sense, which may have led to the custom of having his emissaries bringing peace to the land by appeal to his mystical powers. This interpretation would not cover Westenenk's translation of *rimbo rajo* as "jungle under the *nagari* government". But it is possible that, contrary to Kroesen, Willinck and Westenenk, *rimbo rajo* also referred to the King of Minangkabau as the sacred inter-

mediary between the human and superhuman worlds. Both *tanah rajo* and *rimbo rajo* then would not have made part of the old *adat* classification of property relationships, as the "king-thing (*rimbo, tanah*) units" did not imply a possessory or controlling relationship. In contemporary Minangkabau, the *tanah rajo*, where it is easily accessible and is good rice land, is cultivated, and has since long been transformed into *pusako*, the inherited property of a *buah gadang* or *kaum*.

Since the Dutch colonization, socio-political control over communal property was expressed as *ulayat* or *hak ulayat*. The Dutch writers translated *hak ulayat* as *beschikkingsrecht*, the communal right of avail.[3] There is some disagreement between the Dutch authors as to which part of the *nagari* the *hak ulayat* extended and in whom it was vested. Some held that the *hak ulayat* was exercised over the whole *nagari* territory (Van Vollenhoven 1918: 263; Westenenk 1918a: 16); in other reports it is said that it pertained only to the uncultivated areas and the forest within the *nagari* territory (Résumé 1872: 15; Kroesen 1874: 7, 9, AB 11: 77, AB 11: 115 ff., 122, 124). These apparent contradictions can, however, be resolved: It had been early realized by the Dutch that in most Indonesian societies there existed property relationships expressing socio-political control which were held by communities. These relationships had been labelled by several terms, for example *ulayat*, which were often taken from the regional languages. The term *beschikkingsrecht*, which already had been employed by previous authors (Kroesen 1874; De Rooij AB 10: 113) became the standard term through its use by Van Vollenhoven (1919, cf. Ter Haar and Logemann 1927: 5).[4] This *beschikkingsrecht* extended over the whole *nagari* territory, but in different manifestations. So far as *nagari* territory was "*dipusakoi*", made into the *pusako* of one of the resident *buah gadang*, the socio-political control was vested in this group alone: on this point there are no contradictory reports. Only the *beschikkingsrecht* over the uncultivated areas was denoted by *ulayat nagari* or *ulayat panghulu* in Minangkabau, quite in correspondence with the Minangkabau way of categorizing property objects and property relationships, which does not conceptually focus on rights but on the status of objects. The *beschikkingsrecht* over the *ulayat* (or, in Dutch usage: the *hak ulayat* over the *ulayat* land) seems to have been vested in the *panghulu* in most *nagari*, either as the representatives of the *nagari* or as the representatives of their lineages (see Westenenk 1918a: 22; Van Vollenhoven 1918: 263; Kroesen 1874: 7, 9; Résumé 1872: 11; Willinck 1909: 119).[5]

The relationships of individuals to property of *pusako* status will be described in detail in the later parts of this chapter. The land which was *ulayat* could be used by all inhabitants of the *nagari*, or, if the *ulayat* was distributed between the *suku* or *buah gadang*, by the members of these groups only. According to most authors, such use was free, at least if no permanent use was intended (Dt. Sangguno Dirajo 1924: 73; Willinck 1909: 675 ff.). Kroesen reports, that the *panghulu* were not asked for "permission" if non-permanent use was intended, but that they had to be asked if permanent use of the land was planned (1874: 10-12). In later times, fees, *uang adat*, were demanded, but this custom probably only developed when the *panghulu* had been incorporated into the Dutch system of local administration. Such fees were demanded for the mining of land (*bunga tanah*), when forest products were collected or used systematically (*bunga kayu*), or when *ladang* (dry fields or gardens) were made (Willinck 1909: 675 ff.; Westenenk 1918a: 27 f.; Kroesen 1874: 10 ff.; Résumé 1872: 20 f.; AB 41: 381 f.). The fees consisted in part of gold and generally in a ceremonial meal in which the permission was asked and the authority of the *ulayat* holder formally acknowledged. If permanent agricultural use of *ulayat* land was intended, the property became subject to the set of property relationships which regulate use and exploitation in general. Newly cultivated land (*tarukoan*) was the self-acquired property (*harato pancaharian*) of the cultivator. If after his death his heirs did not want to continue to use the land, the land simply reverted to the *ulayat* holder as part of the *ulayat*. If the heirs continued to use the land, it became their *harato pusako*.

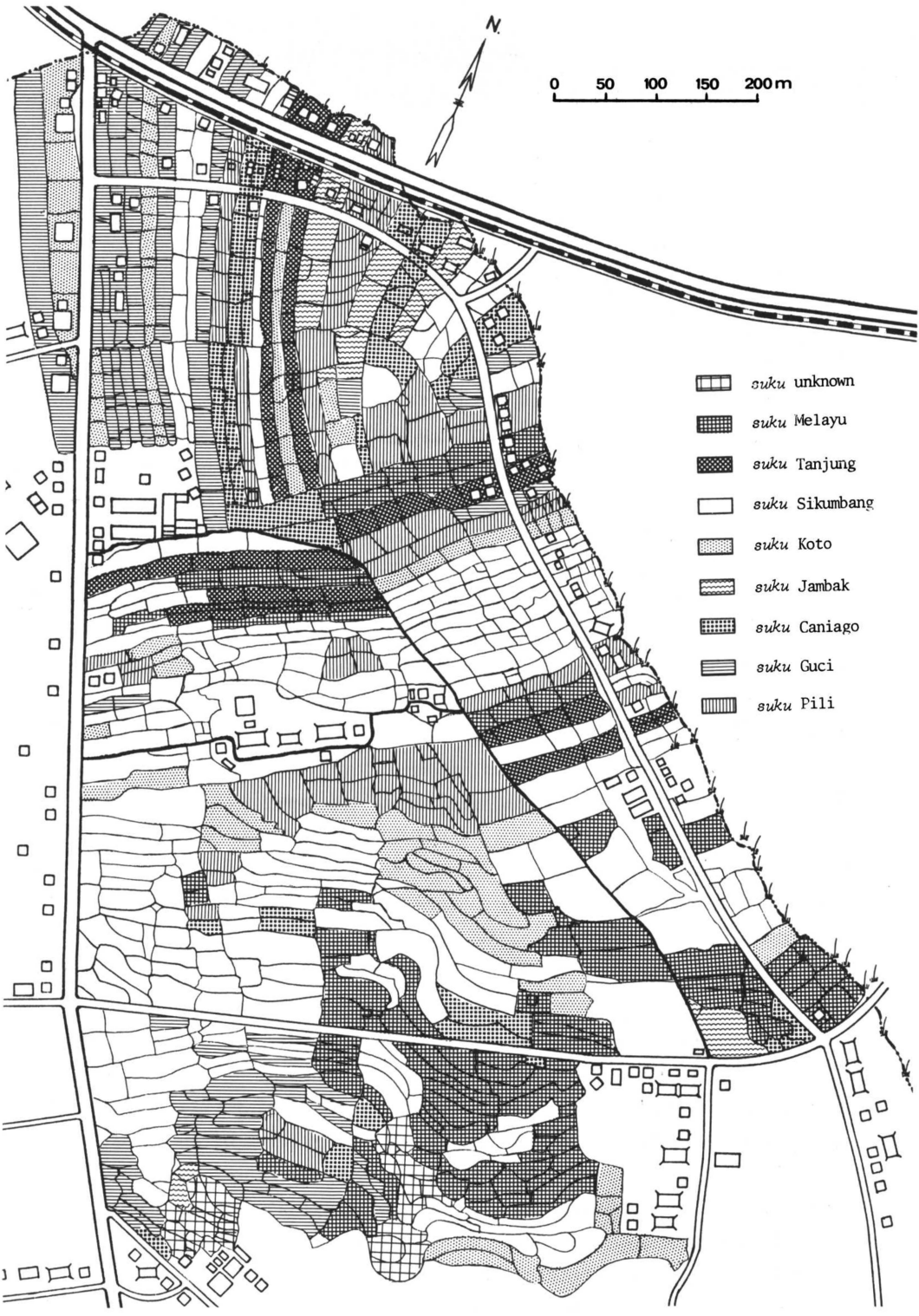
This general outline, drawn from the literature, is more or less in accordance with what we were told in *nagari* CKL: The *panghulu* who first moved into the territory of the present *nagari* CKL, the *panghulu 7 suku*, took possession of as much land as they wanted. They constructed rice fields, built houses, and made grave-yards for their *buah gadang* members. The land which was permanently used was their *harato pusako*, their inherited property. When the population increased and when new groups moved to the territory, still uncultivated land was given to the newcomers by the original settlers. At this time, the original settler groups and their *panghulu* were the absolute lords over the land. The *panghulu 7 suku* were the highest authorities in land matters over all those who had received land from them. When, at a given time, the groups resident in the *nagari* founded the *nagari*, the area under cultivation and the



kubu --------- *lantak nagari*

T.U. *tanah ulayat* T.J. *tanah jajahan* T.P. *tanah parampasan*

CKL - The development of the *nagari* territory



Distribution of *harato pusako* per *suku* in Candung Kota Lawas

areas reserved for future cultivation were declared the official *nagari* territory, the *lantak nagari* (see map on p. 144). The *nagari* and the *lantak nagari* "belonged" to the 60 founding *panghulu*, politically and economically. The distribution of the *buah gadangs' harato pusako* was marked by signs and stones, and this distribution pattern, the *corian barih* (Ind.: *coreng baris*, "the streak of lines") symbolized the property constitution of CKL. Still today, the *adat* experts of CKL teach their pupils the titles of the 60 oldest *panghulu* by asking them to find out who (which *buah gadang*) has the largest portions of *harato pusako* within the *lantak nagari*.

The area adjacent to the *lantak nagari* was also claimed as *nagari* territory. In CKL it was called *tanah ulayat panghulu*. According to the unanimous opinion of all CKL-experts, it was the *tanah ulayat* of the 60 *panghulu*. At least in the areas which were suitable for rice-cultivation, the *tanah ulayat* was (at which time?) distributed among the 60. This is still easily observable in the northern part of CKL, where the *tanah ulayat* was divided into parallel strips of land running downhill (*turihan*) and where each *panghulu* was assigned one of those strips (see map on p. 145). The *tanah ulayat* was mainly used to give land to expanding group members and to provide newcomers, who had associated with one's group, with *harato pusako*. In contemporary CKL, the area which was *tanah ulayat* is *dipusakoi*, i.e., is the *harato pusako* of various *buah gadang*, but the former border between the *lantak nagari* and the *tanah ulayat* is well remembered; the expression *tanah ulayat* is today only used in a territorial (spatial) reference. Only in the southern part of CKL, on the higher slopes of Mount Merapi, is there some *tanah ulayat* which is not yet *harato pusako*.

The present territory of CKL comprises more than the *lantak nagari* and the former *tanah ulayat*. Surrounding the *tanah ulayat* was *tanah parampasan*, open land over which one had fought in former times, and which one had incorporated into one's *nagari* (see map on p. 144). In these areas, one had built *kubu* (walls, fortifications) and settled "brave men" in the *kubu* area to demonstrate the territorial claims of one's *nagari*. The *kubu* area settlers were mostly strangers or the descendants of former slaves. When the attempts to take possession of these areas had succeeded, the *tanah ulayat* was extended to the newly won land, and it was generally given to the settlers as their *harato pusako*.

Another area making part of CKL, the area of 100 Janjang ("the hundred steps") (see map on p. 144) was *tanah jajahan*, "colonial" land.

This area was won in war (during the Padri-war?) from the neighbouring *nagari* - so people in CKL claimed. When this land was occupied, the number of the *panghulu* recognized as members of the *Karapatan* had increased to 100. Each *panghulu* was given some land in the area, which he then distributed to the *buah gadang* members who wanted to settle in this area. In present CKL, nearly all former *tanah perampasan* and *tanah jajahan* is *harato pusako* of the *buah gadang*, with the exception of some *tanah jajahan* on the slopes of Mount Merapi which is not cultivated. Like the uncultivated *tanah ulayat*, most of this area has been declared State Land and is under the administration of the Forestry Department. I have not been able to find out precisely who exercises control over it according to *adat*. Permanent use can only be taken up with the permission of the *Wali Negeri*.

2. *The Category of Pusako*

Pusako (Ind.: *pusaka*) is a word derived from Sanskrit.[6] In Sanskrit the supposed cognate means "those things that serve to sustain life", and in the Indonesian languages it means "inherited things, heritage" (Loeb 1935: 108). In Minangkabau *adat*, the term *pusako* embodies the ideology of matrilineal descent and heritage. The most famous and most frequently heard *adat*-saying goes:

Dari niniek turun kamamak
Dari mamak kakamanakan
Patah tumbuah, hilang baganti[7]
Pusako alam baitu juo

From the great-uncle (MMB) it is handed down (it descends) to the uncle (MB)
From the uncle to his nephews and nieces (ZCh)
Where it breaks off, it grows again, where it is lost, it is substituted again[7]
It is just the same as with the *pusako* of nature

Pusako is divided into two basic categories by most Minangkabau *adat* experts:

1. *pusako* which is immaterial, the *pusako kebesaran*
2. *pusako* which is material property, the *pusako harato*.

The *pusako kebesaran* consists of immaterial entities which are the heritage of a group. Experts list under *pusako kebesaran* the *suku*, the *adat-istiadat*, the *papatah patitih*, and the titles. The category is

often equated with the most important part of the *pusako kebesaran*, the *sako*, the title of the group's *adat*-office holders, and some authors therefore distinguish between the *sako* and the *pusako harato*.[8] The *pusako harato* are material property: *hutan-tanah*, *sawah-ladang*, *pandam-pakuburan*: the forest and the land, the wet and the dry rice fields, the place for the living and the place for the dead (Dt. Sidi Bandaro 1965: 76). The *pusako harato* is, however, not limited to the heritage of immovable property: also included are movables like the ceremonial costumes of the *panghulu*, the valuable bridal costume, cattle; also money or gold can be *harato pusako*.

Harato pusako as inherited property is generally subdivided into four classes:

1. *harato pusako tambilang ruyuang* or *harato pusako turun temurun*
2. *harato pusako tambilang ameh*
3. *harato pusako tambilang basi*
4. *harato pusako tambilang kai'tan* or *harato hibah*

The classification distinguishes the *pusako* property according to the way they were *tambilang*, "dug up" with a spade, i.e. the way they have been acquired:

1. The *harato pusako tambilang ruyuang*, the property which has been "dug up from the tree stumps", is the property which the ancestors have created by their cultivation of the jungle. It is the actual *pusako* property which is *turun temurun*, which "descends and descends" through the generations of *buah gadang* members.
2. The *harato pusako tambilang ameh* is the property which has been acquired through the use of gold (later money). In this class also fell the *budak pusako*, the slaves who have become *pusako* property (Kielstra 1892: 641; AB 11: 74 ff.; Willinck 1909: 139).
3. The *harato pusako tambilang basi* is the property which has been acquired with (the) iron (hoe). This is land which has been newly cultivated, the *tarukoan*.
4. The *harato pusako tambilang kai'tan* or *harato hibah* is property which has been acquired by the way of *hibah*, gift (on *hibah* see Chapter 4: p. 178 ff.).

Often only two of these categories are used to express distinctions in the *harato pusako*. Thus *tambilang ameh* and *tambilang basi* are used to contrast the basic different modes of acquisition: by gold or by

agricultural work. Both *tambilang ameh* and *tambilang basi* are used to distinguish *harato pusako* which have been acquired recently from the *harato pusako turun temurun*, the property acquired by the ancestors.

This classification of *harato pusako* was given by *adat* experts in CKL, and it is the one most frequently mentioned in the writings of Minangkabau *adat* experts (see e.g. R.M. Dt. Rajo Panghulu 1971: 135; Dt.Majoindo 1956: 89).[9] In contemporary Minangkabau, the classification of *harato pusako* most frequently used is the one between the "high" and "low" *pusako* property (*harato pusako tinggi* and *harato pusako rendah*). "High" and "low" indicate the relative distance in time from the time at which the property was made into *pusako*: High *pusako* property acquired by the ancestors at a time which is not remembered anymore, low *pusako* property is that which only recently has become *pusako*; one still remembers the persons who acquired it. This distinction has been employed in the Dutch colonial courts, a practice which has been continued by the judges in the Indonesian State Courts. It is also used by Minangkabau villagers and *adat* experts (see Dt. Sidi Bandaro 1965: 77).[10]

3. *The Category of Harato*

Harato (Ind.: *harta*) in Minangkabau *adat* means "material property objects".[11] The use of the term implies that the objects are conceived of as standing in a relationship of being possessed by a person or group of persons. The relationship is not, however, specified. *Harato* more or less corresponds to the meaning of the English concept "property" and to the way I use the concept "material property object" in this study.

The main distinction of *harato* is between the *harato* which are *pusako* and the *harato* which are *pancaharian*. The *harato pusako* have already been discussed above. *Harato pancaharian* (from: *cari*, *mancari* - to look for, to search) are property objects which one has acquired during one's lifetime by one's own efforts. Most *harato pancaharian* are movable property objects (most land is *harato pusako*), but land which has been bought or which has been newly cultivated (*tarukoan*) is also *harato pancaharian*.

Besides the "*pancaharian* proper" there are also property objects which are "impure" *pancaharian* in the usage of Guyt (1936: 78). "Impure" property has been self-acquired, but the basis of its acquisition has been *harato pusako*, "*harato pancaharian pokok asalnya didapatinya dari pada harta pusaka*" (Dt. Sanggoeno Dirajo 1924: 101). A young *kaum* member,

for example, has been given some more starting capital for his trade, which was taken from the sale of the rice harvested on the *harato pusako*. Or a *kaum* member was given money from the *pusako* in order to go to school and university which enabled him to become a rich and successful man. Although the later profits of the trader and the salary of the graduate undoubtedly are *pancaharian*, their initial source, the *asal usulnya*, was his group's *harato pusako*.

The Minangkabau themselves do not separately label these two "kinds" of *harato pancaharian*, though they do recognize the distinction. Their point of view is that, as far as *harato pancaharian* are concerned, one must always look into the background and source of it and determine whether it has some connection with the *pusako* or not. This factor influences the legal consequences which are attached to the *harato pancaharian*, which will be described later (see Chapter 5: 267 ff.).

The *harato* category is also employed to define the legal status of marital property. The property acquired by husband and wife during the marriage is their *harato suarang* or *harato pasuarangan* (Ind.: *perseorangan*, individual), their common *harato pancaharian* which can only be divided at the dissolution of the marriage. The property which the husband brings into the marriage is his *harato pambaoan*, the "brought property", labelling the post-marital domestic residence of the Minangkabau husband. The corresponding category for the wife is the *harato dapatan*, the "received property".[12] Both *pambaoan* and *dapatan* can comprise *harato pancaharian* and *harato pusako*. As Minangkabau used to marry at an early age at which they normally had not yet acquired much property by their own efforts, the *dapatan* and *pambaoan* usually signified the *pusako* - portions allocated to the spouses by their *kaum*.

II. THE *ADAT PUSAKO*: ACQUISITION, USE, AND DIACHRONIC TRANSFERS OF PROPERTY RELATIONSHIPS BASED UPON GROUP MEMBERSHIP

1. *The Pusakoization of Harato Pancaharian*

The dominant idea of the Minangkabau system of property relationships is that all property is *pusako* which descends and descends through the generations of the members of groups which are structured according to matrilineal descent. All property has been handed down through the generations, and all property will be handed down through the genera-

tions, from the great-uncle (MMB) to the uncle (MB) and from the uncle to his sisters' children. The *pusako* must be guarded, and it is the moral obligation of all *kaum* members to add to the *kaum*'s *pusako*. The latter is the task of the men in particular. The "good" *mamak* must go out in order to *mancari*, acquire property. His earnings, the *harato pancaharian*, are destined to become *harato pusako* for his sisters and *kamanakan*. In *adat*, the *harato pancaharian* were, as Willinck put it, *harato pusako* in chrysalis state ("in *larvenstadium*" 1909: 584). The *pancaharian* status of property objects is temporary, it is tied to the lifetime of the *pancaharian* holder. After his or her death, the property objects assume the status of *pusako*. This *pusako* can be specified by the means by which it has been acquired (*harato pusako tambilang ameh* or *tambilang basi*) or by reference to the person who acquired it (*harato mamak*, the property which had been acquired by the *mamak*). In the contemporary usage in the *nagari* and in the State Courts the *harato pancaharian* which have been inherited are usually called *harato pusako rendah*.[13]

The inheritance rules for *pancaharian* inheritance are the same as those that apply to inheritable property relationships to *pusako* objects in general (see below p. 157 ff.): Inheritance occurs within the *pancaharian* holder's *jurai*. For a female *pancaharian* holder, this is the *jurai* of which she is the apical ancestress. For a male *pancaharian* holder, it is the *jurai* of which his mother is the apical ancestress. Within the *jurai*, inheritance occurs first in the older generation: for a woman her childrens', for a man his siblings' generation. For predeceased female heirs, the principle of representation allots their part to their descendants.[14] If the whole *jurai* is extinct (*punah*), the property is inherited by the *jurai* with common apical ancestresses on the next higher generation level, by the woman's mother or the man's mother's mother.

The same principles pertain to the common *pancaharian* property of the married couple. According to the *adat* saying " *suarang diagieh*" - "the *suarang* is divided", the *harato suarang* are divided at the time of the dissolution of the marriage. If the couple is divorced, the property-half of each spouse is "normal" *pancaharian* again. In the case of death of one spouse, the *suarang*-half is normal *pancaharian* for the surviving spouse and the half of the deceased spouse falls to his or her heirs as *harato pusako rendah*.[15] In many areas of Minangkabau, and specifically in CKL, the houses which had been built on the wife's group's *pusako* land partly or wholly with the husband's money, are not considered to

form part of the *harato suarang*. They are regarded as belonging to the wife's group's *pusako*, under the socio-political control of the wife's *mamak*. If the marriage is dissolved, the houses (the money invested in their construction) "remain" with the wife and no compensation is given to the divorced husband or the deceased husband's heirs (compare also Van Hasselt 1882: 227 f.).

Polygynists form *suarang* complexes with each wife. As they stay in the houses of their wives, their *harato pancaharian* will often also be separated spatially. In cases where the *suarang* complexes cannot be clearly distinguished, e.g. with capital or property outside the *nagari*, one must try to sort out the wife with whom the husband had acquired the various parts of the property.

In the course of time, there has been a change in the inheritance rules concerning a man's *harato pancaharian*. Since the 1960's it has been official *adat* (law), that a man's *harato pancaharian* is inherited by his children. It becomes their *harato pusako rendah* and is *turun temurun* in their *jurai*, i.e. is henceforth inherited according to the matrilineal rules. If a man leaves no children, the rules of the *adat pusako* are followed.

A similar change has occurred in the *adat* concerning the individual's autonomy to dispose of his *harato pancaharian* during his or her lifetime. Whereas in former times, such dispositions were only valid with the consent of the person's *kaum* members, in contemporary Minangkabau the individual can freely dispose of his or her *harato pancaharian*. The development of the *adat* concerning the inheritance of and the autonomy over one's *harato pancaharian* will be described and analyzed in detail in Chapter 6.

2. *The Relationships to the Harato Pusako*

a. The Dual Character of the *Pusako* - Group Relationship

The *harato pusako* is by definition the common property of a matrilineal group, a *jurai*. The *jurai* which holds common *harato pusako* may be a *jurai* of any size up to that of the *buah gadang*. The status of members of a *jurai* which holds common property is the basis upon which they, whether as individuals or as subgroups of that group, are entitled to the use and the exploitation of the *harato pusako*. Two basic kinds of relationships legitimate use and exploitation: the distribution of

property on the basis of inheritable rights and the allocation of temporary rights. Before these are described, however, it must be explained that the relationship between the group and "its" *harato pusako* has a dual character in Minangkabau *adat*.

The *harato pusako* are generally attributed to the *panghulu* of the *buah gadang*, the members of which are spoken of as "the people of one *pusako property*": One refers to the "*pusako* of Dt. X". But from this usage one may not conclude that the *panghulu* "owns" his group's *pusako*, or that he "owns it for" his group. This is evident in cases where such reference is made to a *buah gadang*'s *harato pusako*, the last *panghulu* of which has died some time ago. This attribution of the property to the title is not to the incumbent of the office, but to the title as symbol of the group. The group holds both title and property in common.

All *harato pusako* which is held by the *buah gadang*'s or *kaum*'s members is considered the "*harato pusako* of *buah gadang* X" or "of Dt. X". Such reference, however, can mean two things:

1. It may refer to the fact that all group members hold the *harato pusako* in common in "*adat*", in the restricted meaning of that term signifying socio-political control over property and common representation in inter-group relationships in particular. Such reference is always possible.
2. It may also mean that the property is *turun temurun* for all group members, i.e., that it is common heritage for all group members alike. The group members' claims to a portion of the *harato pusako* can only be based upon the latter fact.

In principle, all *harato pusako* held by the *buah gadang*'s members may be *turun temurun* for all group members. But usually, this is only the case with respect to a part of the property which is held in common in *adat*. There may be *jurai* with apical ancestresses on generation levels below the one of the *buah gadang* or *kaum* ancestress, which hold their separate *pusako*. Such separate *pusako* will come into existence through the inheritance of the *harato pancaharian* of a *jurai* member (see above) or through the reception of property by way of gift (see below p. 176 ff.). Such property is *turun temurun* only for the *jurai*, and only the *jurai*'s members are entitled to receive a part of it in the processes of distribution and allocation. But also in this case, their *harato pusako* is under the control of their *panghulu* and is part of "the *pusako* of Dt. X". If, for instance, *pusako* property is

given by the *bako* to the children of one of their male lineage members, the transfer will occur in a public ceremony in which the *panghulu* of the *bako* will ceremonially transfer the socio-political control over that property to the *panghulu* of the *anak pisang* (see Duursma 1934: 160 ff., own interviews in CKL). Yet the property will be *turun temurun* only in the children's *jurai*, and only they are entitled to the use and exploitation of it.

This distinction is of utmost importance for the understanding of *pusako*-relationships. The distinction has not always been recognized by Dutch writers on Minangkabau *adat*[16] and is usually not considered in the Dutch and Indonesian Courts. The introduction of the cliché of the "*kaum* which holds common *harato pusako*" and the neglect of the differentiated *adat* classification of *harato pusako* led to the conception that no such difference exists and that "the *harato pusako tinggi* of *kaum* X" are held in common also with respect to use and exploitation (see p. 190 ff. and Chapter 6: 353 ff.).

b. Distribution

It is difficult to describe the principles of distribution of the *harato pusako turun temurun* of a group, for any given situation in the group's history which we try to conceive of as in the present (synchronic) flows out into time and assumes diachronic character. The property relationships on any ego's generation level depend on and are structured by the ones on the + 1 and + 2 generation levels; the former in turn predetermine the property relationships on the - 1 and - 2 levels. Thus in order to understand a given situation, we must know the principles which have structured it - the principles of diachronic transfers of property relationships. Yet conversely, in order to understand the latter, we must start in a given synchronic situation. In order to describe the principles of diachronic transfers, I shall start with a fictive point in the group's history, of a *kaum* which has common and yet undistributed *harato pusako*.

The *kaum*'s common *pusako* may not be divided (*dibagi*) unless the *kaum* is split. But the property of which the *harato pusako* consists can be distributed. However, not all property objects will be distributed. The movable property objects, the ceremonial dresses of the *panghulu* and the bridal costumes, the ornaments and the family's gold will be kept in the house of the senior women, who will guard this *pusako* for the *kaum*. What is distributed is agricultural land and land for new housing

sites. If the *kaum* has more agricultural land than would be required by its members, the surplus land may be left undistributed. In general it will not be worked in this case, but it may e.g. be pawned if the *kaum* requires money (see below p. 169 ff.). Also,some fields may be reserved for the *panghulu* or other *adat* functionaries,if the *kaum* has a living *adat* functionary. The *sawah pagadangan gala* (cf. Kahn 1976: 71) or *sawah ninik mamak*, the *sawah* of the lineage elders, as it was called in CKL, would be worked for the *adat* functionary by his *kamanakan* in order to permit him to exercise his duties as group head free of economic troubles.

The distributive mechanism is the *bagi baumtuek*, "the distribution for use" (*bagi* can mean both divide and distribute). Through the process of distribution, the recipients get the *ganggam bauntuek*, the "handful for use". The distribution must be the result of a *kaum* meeting in which a *musyawarah* is held, and which must lead to a unanimous decision on how the property is to be distributed. The *mamak* has to see to it that such a meeting takes place and that a consensual decision is taken. He must prepare the *mupakat* in discussions with the individual households of his *kaum*. This is quite a difficult burden, as his aunts, sisters, and nieces may have quite different ideas about how the *pusako* should be distributed. The *ganggam bauntuek* is given to the *kaum* members who need it most. In principle these are the women who have dependants: mothers or grandmothers. The eldest living women on the same generation level (in our fictive example) have a right to get *ganggam bauntuek* from some part of the *harato pusako*, but there are no specific rules of distribution. Distribution is subject to the general principle that the *ganggam bauntuek* be distributed according to the needs of the various households. A woman married to a rich man, who has much of his own *pusako* fields at his disposition, should claim and get less than her poor sister. Likewise, a women who already has nine children will be given more than her sister who has only one child.

The *ganggam bauntuek* gives its recipients the exclusive right to use and to exploit the property and to consume its products. It is, in principle, given in continuity to the woman and her *jurai*, but that does not preclude a redistribution at some later stage in the *kaum* history. If the circumstances have changed, if the demographic development in the *jurai* has led to an obviously unfair distribution, the *ganggam bauntuek* distribution should be revised. But this is only possible in a new *kaum* meeting, in which again a unanimous decision on the redistribution

has to be taken. These *kaum* meetings are a heavy burden for the *mamak*, for it is not always easy to bring his *kaum* members to a consensus about the distribution and redistribution of the *harato pusako*. In the deliberations much will depend on the personal authority and influence of the main actors.

If the *mamak* cannot convince his *kamanakan* of the necessity of a redistribution, the authority of the *panghulu* may be invoked, and the quarrel may be discussed on all levels of dispute-settlement in the *nagari*. The *panghulu* will press for a redistribution if he feels that the situation is intolerably unjust, and generally the disputing *jurai* will yield to the pressure exercised by the *adat* functionaries. Such forced rearrangements of the *ganggam bauntuek* distribution may seriously influence the inter-*jurai* relationships. Particularly when the original distribution has taken place some generations ago, the quarrel about the redistribution may give rise to the feelings that actually one does not want to be "one" any more: "Why should one be bothered by a distribution which allegedly took place 60 years ago? Is it really true that our grandmother was a sister of Angku X who now demands a redistribution under the pretext that he has more *kamanakan* than Sutan Y, our *mamak* ? As a good *mamak*, he should be able to take care of his *kamanakan* - we at least can do so".

If no settlement can be reached in friendship, such quarrels often lead to permanent group splits.[17] The *harato pusako* are divided, *dibagi*, and two new *kaum* are formed: The former common *harato pusako* ceases to be common; the property which the former *jurai* held as *ganggam bauntuek* will now form the common property which is *harato pusako turun temurun* in the newly formed *kaum*. This property then is again distributed as *ganggam bauntuek* among the *jurai* of the new *kaum*: Here we have arrived at the beginning of our fictive *kaum* history.[18]

The *ganggam bauntuek* is distributed to the women and their *jurai* in continuity. At the moment of the distribution, it is vested in the individual women. If the original *ganggam bauntuek* holder dies, the *ganggam bauntuek* is inherited by her heirs, who together hold the *ganggam bauntuek* in common. The *ganggam bauntuek* as such is not divided; in *adat*, it *cannot* be divided. But the various property objects to which the *ganggam bauntuek* pertains, are factually distributed between the heirs in a process of *musyawarah*. On the basis of the rule that all heirs are likewise *ganggam bauntuek* holders, the factual distribution

is subject to principles of law and morality. Sex-specific property objects will usually be given to the persons of the respective sex. The house(s) are left to the female heirs, for the males have to stay in their wives' house anyway. Male heirs are "expected" to leave most agricultural property to the use of their sisters and *kamanakan*, as is "proper" for a good *mamak*. But males definitely have a right to the *ganggam bauntuek* property as well as their female co-heirs, and it is quite customary that they leave the exploitation of their part of the *harato pusako* to their sisters or *kamanakan* on the basis of share-cropping, the most frequent form of which is the "*mampaduokan-manya - duoi*" - "to make it into two parts". Others may work it together with their wives and children for their own use; yet others will try to get their sisters' and *kemanakan*' consent to give their part to their children for the lifetime of the children in a formal gift-ceremony. Which concrete course is taken, depends on the outcome of the *musyawarah* and the "*condisi dan situasi*", the concrete circumstances in which it takes place.

Usually, most of the agricultural property is distributed among the female *ganggam bauntuek* heirs. If the fields are more or less of the same value, each female heir may be given a certain number of fields to work. If the fields have different agricultural values or if they are spatially unevenly located, one will usually agree upon a system of rotational use, according to which each heir works the good and the bad fields alternatively for a period of time (*bagilieh*, *balega*).[19] The period generally used is the "*sawah*-year", the *tahun kesawahan*, which allows the possessor to have one rice harvest and use the land thereafter for other crops like chili-peppers or vegetables until the next rice-planting season starts.

The inheritance rules are the same as those which have already been briefly outlined for the inheritance of *harato pancaharian*: Primarily, inheritance is in the *ganggam bauntuek* holder's *jurai* and by the oldest generation: If a female *ganggam bauntuek* holder dies, the *ganggam bauntuek* will be inherited by her children, male and female. For predeceased female children, their descendants will inherit according to the principle of representation. The heirs within the *jurai* are the "close heirs", the *warih nan dakek* (see Willinck 1909: 776). If the *ganggam bauntuek* holder has no descendants her *jurai* is extinct, *punah* or *putus*. In this case, the property is inherited by the "distant heirs", the

warih nan jaueh (Willinck 1909: 779). The closest distant heirs are those *kaum* members who are the descendants of the common apical ancestress on the next higher generation level, i.e. of the *ganggam bauntuek* holder's mother. If this *jurai* should be extinct, too, the propert will be inherited by the *jurai* formed by the descendants of the *ganggam bauntuek* holder's mother's mother etc. The same principle also applies if the whole *kaum* or *buah gadang* should be extinct. Inter-group inherit ance is based upon genealogical closeness measured in common apical ancestresses in the matriline. As has already been mentioned the genealogical distance is expressed through the *warih*-categories of *sajari*, *satampo*, *saeto*, and *sadapo* (see p. 99).

These principles of *ganggam bauntuek* distribution and of inter-*jurai* inheritance function within and between the groups of blood relatives, *kamanakan batali darah*. In the case of a stratified *kaum* or *buah gadang* the *harato pusako* will therefore not be distributed between all *kaum* members. Only the *kamanakan batali darah* have a right to share in the distribution (*pambahagian*). The other *kamanakan*, who form part of the *kaum/buah gadang* in *adat*, are only entitled to a gift of property, a *pambarian*: The blood relatives will decide how much of the *buah gadang*'s property is to be given to the *kamanakan dibawa pusek* or *dibawa lutuik*. The property given remains subject to the ultimate authority of the *kamanakan batali darah*, and the recipients of the *pambarian* are often not allowed to pawn the property. Within their group, however, this property is treated like *harato pusako turun temurun* and thus is subject to the same rules of distribution and inheritance described above. If the blood relatives in the *kaum* are extinct, their *harato pusako* may be transmitted to the *kamanakan* who are the descendants of strangers or slaves. This is, however, no automatic process in *adat* but requires the consent of the distant heirs of the same matrilineal descent in the other related *kaum*.

The "*punah*-situation", where a *kaum* is extinct, however, is generally resolved before the *kaum* is completely extinct, i.e. during the lifetime and at the initiative of the last *kaum* members who foresee that there will be no more descendants in the female line. They can try to adopt one or more new *kamanakan* with the aim that they continue the group and its *harato pusako*. The principles concerning adoption have already been outlined in Chapter 2; a property history concerning an adoption will be presented in the following chapter (p. 253 ff.). The last *kaum* mem-

bers are usually also granted a larger degree of autonomy to dispose of their *harato pusako* by pawning, sale, or - if the last *kaum* member is a man - by gift to their children. According to "old" *adat*, such transactions always required the consent of the distant heirs in the genealogically related groups. In contemporary Minangkabau, the last group members are more or less free to dispose of their group's *harato pusako* if there are no more persons who are *saharato*, i.e., if the whole *buah gadang* is extinct. If only a *kaum* is extinct, the consent of the other *kaum* in the *buah gadang* is still necessary. In the following chapter two property histories will be presented in which this difference is quite explicitly stated (p. 239 ff. and 253 ff.).

c. Allocation

The *ganggam bauntuek* is not the only relationship which legitimates the use and the exploitation of the *harato pusako*. Besides, there are also temporary allocations of property objects to group members. In fact, the actual distribution of the property objects which are held by the *ganggam bauntuek* holder(s) is often already prestructured by temporary allocations which have occured at a time when the *ganggam bauntuek* holder(s) had not yet inherited the *ganggam bauntuek*.

Allocations usually occur when group members marry. The *harato pusako* allotted may be property which is still held in common by the whole *kaum* and which is not yet distributed as *ganggam bauntuek*; it may also be property which already has been distributed in this way. To understand the principles of allocation, we must again take into account the development of the group: The *ganggam bauntuek* is given to adult women at the fictive point in our *kaum* history. The woman has received several *sawah* fields, a piece of land to build a new house, and some garden land. She will work the land, helped by her children and by her husband. A great deal of the agricultural work is carried out with the help of the other *jurai* members, and in the main stages of the agricultural work, such as planting, harvesting and threshing, the *kaum* members and also the *bako* and the *buek*-neighbours will help on the basis of the principles of *tolong menolong*, the ideal of mutual help. In former times, the decisions about the timing of planting and harvesting of rice were taken by higher authorities, the *kaum* council, the neighbourhood council or even by the *nagari* government, but in contemporary CKL the decisions are taken within the *ganggam bauntuek* holding group. The children will help their mother and father, both on the fields of their mother and on the fields

of their *bako*.

A change occurs, when the *ganggam bauntuek* holder's children grow older. A daughter marries, and her husband moves in to live with her in the *bilik* in the *rumah gadang*. If the family does not live in a *rumah gadang* any more, the girl will be given a plot of land to build a house for herself, her husband, and her children. There will be no great change in the activities of the young couple. The young wife will continue to work on her mother's fields, and her husband will also help her, and continue to help his mother and sisters on their fields. But at marriage or after some time, when the young couple get children, the wife is given a part of the *harato pusako*, to which her mother holds the *ganggam bauntuek*, or which is still unused common *harato pusako* of the *kaum*. This property is for the couple's exclusive use and consumption in their *pariuk*, their "ricepot". The married daughter's younger sisters, who are still unmarried will continue to help their mother, and they will now also help their older sister. When the next sister marries, she in turn is given some of the *harato pusako* for her use. The property given in this way is the *dapatan*, the "property (she has) received". The *harato* (*pusako*) *dapatan*, however, remain subject to the authority of the *ganggam bauntuek* holder, and the normal Minangkabau grandmother does not easily lose control. Major problems concerning the *jurai*'s property will, of course, be discussed with all adult group members, and within the group, the *mamak jurai* will have an important word to say. But note that the *jurai* in question here is the group of which the *ganggam bauntuek*-holder is the apical ancestress. The *mamak* of the *ganggam bauntuek* holding *jurai* will be the original *ganggam bauntuek* holder's son or grandson. The eldest woman in this group is generally on a higher generation level than the *mamak*, she is his mother, and this explains to a large extent the dominant position of the senior women in Minangkabau social organization (see Chapter 2: 83 f.). In this way we have also to understand Willinck's statement (1909: 391 f.) "that in the Minangkabau family circle the oldest common ancestress, if still alive, stood actually above the *mamak*. She was in each case, where family matters in the *sabuah paruik* or *jurai* had to be decided, the highest authority". For the *ganggam bauntuek* holder's "*mamak*", her mother's brother or her brother, do not, in this fictive situation of the *kaum*'s history, belong to *her ganggam bauntuek* holding group. They exercise authority only in those affairs which have to be decided by the whole *kaum*, matters which concern the relationships between the *ganggam baun-*

tuek holding group with other such groups or with individuals or groups that do not belong to the *kaum* at all.

When the male children of the *ganggam bauntuek* holder marry, they may also be given some of their *kaum*'s or *ganggam bauntuek* holding group's *harato pusako* for the exclusive use and exploitation of their conjugal family. This property is called (*harato pusako*) *pambaoan*, the "brought property". The decision of whether the young bridegroom is to be given *harato pambaoan* must be taken in a meeting of the *kaum* council, for it involves inter-*kaum* relations, the marriage and a temporary factual alienation of the property. The following considerations will play a role: "How much property can his own *kaum* spare? Will the young couple have enough property for themselves? How rich is the bride's family? How much should one give in order to demonstrate to the bride's *kaum* that they made an excellent choice in their *urang sumando*? How much can one dare to give as *pambaoan*, as there is always the danger that the man's wife and children will try to 'sneak away' with this property". The relationships between one's own and the girl's *kaum* and relatives will also play a role. If the young man, for instance, had *pulang ka anak mamak*, married his MBD, the *mamak* would be inclined to favour the giving of *pusako pambaoan* (on marriage as strategy in property politics, see Chapter 5: 295 ff.).

The allocations of *dapatan* and *pambaoan* are temporary. If the girl/woman to whom *harato dapatan* has been given is divorced, she will keep the property for herself and her children. When she dies, the property will revert to the *ganggam bauntuek* holder and can be allotted anew. According to the *adat* rule for the division of marital property, the "*dapatan tingga*" - "the *dapatan* remain" with the *kaum/jurai* of the wife. According to the same rule the "*harato pambaoan kembali*"-"it returns" to the group which had given it; to the *kaum*, if the *pambaoan* had been taken from the yet undistributed *harato*; to the *jurai*, if the property has been taken of the stock on which the *jurai* already held the *ganggam bauntuek*. When the property "returns" it becomes "regular" *harato pusako* again and will be redistributed. The *kaum/jurai* of the deceased husband may, however, decide to leave this property to his children, in order to show their good intentions to their *anak pisang*. Such a decision will be facilitated, if the children, e.g. one of the man's sons, has *pulang ka bako*, has married a *kamanakan* of his father. In this case, there is no danger of the property getting "lost". Such a decision requires a *musyawarah* of the whole *kaum* and a formal transfer of the property to

the *anak pisang* in the forms known to *adat* (see below p. 176 ff.).

When the original *ganggam bauntuek* holder dies, her heirs thus generally already hold *dapatan* and *pambaoan* relationships to the property for which they now inherit the *ganggam bauntuek*. They may have worked this property for twenty years, and it will not always be easy to come to a rearrangement of the property distribution after such a long time. Such a rearrangement will often be demanded, for the older sisters (oldest daughters of the *ganggam bauntuek* holder) and their descendants will generally have more property at their disposal than the younger ones: They may have been given *dapatan* already before their youngest sister was born, and her mother could not know yet the number of *jurai* members for which the *harato pusako* must suffice. In general, the daughters are given as much property as they need, and the oldest daughters, as the first ones who need property, will usually be given a lot, on the basis that they, in the later stages of the *jurai*'s development, will cede some of that property to their younger sisters in case they should need it. Such rearrangements require the *mupakat* of all the *ganggam bauntuek* holders, thus also the consent of the one who holds too much in comparison with her sisters. As the oldest sister after the mother's death, will be the oldest and senior woman of the group and as such be the one *nan pagang harato*, "who keeps the property", it will generally be very difficult to enforce a new property arrangement against her wishes. Though *adat* treats siblings as equals in property affairs, the practice will often lead to the result that the oldest sisters, and later, the oldest *jurai* in the *kaum*, and the oldest *kaum* within the *buah gadang*, control most of the *harato pusako*. Combined with the factor of (uneven) demographic development, this may lead to a quite uneven distribution of the *harato pusako* even within the *ganggam bauntuek* holding group. This unequal distribution will later be "frozen in" when the *ganggam bauntuek* holding group develops into a *kaum* and when, later still, this *kaum* splits again.

d. The *Pusako* Relationship in Terms of Rights

The individual *kaum* members' legitimations to the use and the exploitation of the *harato pusako* which are their common *pusako turun temurun* are expressed in terms of *ganggam bauntuek*, *dapatan*, and *pambaoan*. The relationship of the *kaum* as such to its *pusako* is not defined with a special concept. The relationship is one of "having" the property as

turun temurun in one's group. The relationship is only specified in a dual way by stating that "*mamak bahak - kamanakan bamiliek*". This might be preliminarily translated as "the *mamak* has the right of control - the *kamanakan* have the possession". This specification is further illustrated by the *adat* saying:

hak bamiliek - harato bapunyo
hak nan banampu - harato nan bamiliek
hak nan tagantuang - miliek nan takabiah
arati miliek: nan disauaki

This saying is difficult to translate. Westenenk gave the following translation (1918a: 15):

hak bamiliek	the common right of disposal is transformed into possession
harato bapunyo	one has limited ownership of individual property objects
hak nan banampu	*hak* are the rights held in common
harato nan bamiliek	the *harato* are possessed individually
hak tagantuang	the *hak* is "hanging" (not specifically assigned)
miliek takabiah	the *milik* is personal possession
arati miliek: nan disauaki	*milik* means: what is derived (from the *hak*).

A similar translation (into Indonesian) is given by a leading Minangkabau expert, I.H. Dt. Rajo Panghulu (1973: 197):

hak adalah bersama	the *hak* (right) one has together
harta adalah milik	the *harta* are possessions
hak adalah bergantung	the *hak* is hanging
milik adalah bermasing	the *milik* one (each) has for oneself

These sayings are especially difficult to translate because two translations are involved: One translation is of the *adat* conceptual system into the legal concepts of Islamic law, and the other is of these into one's own language. However little role this saying plays in the courts' judgements and in normal conceptual usage in the *nagari*, it is interesting in so far as it attempts to express the group's relationship to the *harato pusako* in terms of rights. I shall not try to give another translation of the saying (which was probably created by Islamic *adat* experts in the last century) but only state two points

which I think can be inferred from it:

1. One point is that the *pusako* relationship has two aspects: the one of socio-political control, the *hak*, which is "hanging", abstract, not reified. This *hak* is of the whole group, but is vested in the *mamak*, the group head. The other aspect is the material property, the *milik*, which is possessed and distributed among the *kamanakan*, the individual *kaum* members. *Hak* and *milik* indicate two different aspects, the communal and the individualized, or the man-thing relation. The *mamak* is *bahak* over all of his *kamanakan' harato* which they hold in the state of *milik*. The *mamak*, as group member, will generally also have some *milik*, some property objects for his own use. But that does not make him "*bahak milik*" on these property objects. In Minangkabau *adat*, *hak* and *milik* cannot be combined in one person or group. The concept *hak milik*, which in contemporary Indonesia is used as an equivalent for the Dutch *eigendom* (ownership) was unknown in *adat*.
2. The other point is that these abstract characterisations of *hak* and *milik* do not indicate a legitimation for the use and exploitation of the property object. The *hak* does not entitle the *mamak* to use and exploit the property over which he has the *hak*. The *milik* is the description of a possessory relationship, but not its legitimation. This *adat*-meaning of *hak* and *milik* is important to note, as in the more recent conceptual usage in Minangkabau, the concept *hak milik* is increasingly used to express property relationships in *adat*. This development will be analysed in Chapter 6.

3. *The Relationships to the Pusako Kebesaran*

a. The Titles

The most important (and only) part of immaterial *pusako* to which Minangkabau, and the men only, have an individualized relationship are the titles, *gala*. Each grown-up Minangkabau man used to wear a title in former times. Minangkabau *adat* says: "*ketek bamamo - gadang bagala*" - "when one is small, one has a name, when one is grown up, one wears a *gala*". There are some regional variations as to how far the *gala*-wearing is still practiced. Mansveld reported already a hundred years ago, that the custom was most strictly adhered to in the district of Agam, whereas, e.g. in 50 Koto, only the *adat* functionaries still used and were called by their titles. This situation does not seem to have changed

since then: In Agam, and also specifically in CKL, each adult man wears a title, with the exception of Islamic functionaries and those persons who hold a post in the state administration. The *gala* are mostly of Hindu origin, meaning King (*Rajo*), King of Kings (*Maharajo Dirajo*), Crown (*Mangkuto, Mahkota*), Military Commander (*Palimo, Panglima*), Sultan (*Sutan*), the Great One (*Basa*) etc. In CKL, as in most *nagari* in Agam, most titles worn by the individuals consist of two components like Rajo Basa, Palimo Putih, Sutan Nagari etc.

Most of the titles worn in Minangkabau are *pusako*.[20] The most important titles, the office-titles of the *adat* functionaries with the additional title Datuek, the *gala sako*, are the *pusako* of the *buah gadang*. The titles which are not attached to *adat* offices, partly are the property of the *suku* (*pusako*), partly the common property of all *suku*.[21] These titles are usually called *gala pusako*.

The titles are conferred upon the men after they have married. With marriage, the Minangkabau man is "*gadang*", great, grown-up. The title-giving occurs in the course of a ceremony, such as a *panghulu* installation or a marriage ceremony. At some stage of the ceremony, one of the elders functioning as "host" reads out the new titles to the public: that X will wear from now on the title Rajo Sutan, that Y will now wear the title Payuang Ameh etc. In the course of his lifetime, a Minangkabau man may wear several titles. He will get a title in any case at the time of his marriage. If at a later time he should assume an *adat* office, he will receive a new title, or he may be given an honorific *gala* when he is older.[22]

b. The Giving of the *Gala Pusako*

When the title of the young man is read out (*dihimbau*) to the public in the ceremony it had already been determined which title he should receive. The principles of the title-selection can best be compared with the *allocation* of material property, with the essential difference that titles can be duplicated whereas material property cannot. Titles can be duplicated in that two or more living group members can wear the same title which consists of two components (e.g. Sutan Marajo) or through the multiple use of the single components. For example, one group member may have the title Rajo Imbang, another Sutan Rajo Imbang, and yet another Rajo Sutan. The *mamak* of the young man has the task of finding the title. That means that he must organize a *kaum* meeting in which the question is discussed and a unanimous decision is reached. The *kaum* can

take one of the title-stock of their *suku*, and they can also use one of the common titles. In CKL it has become a custom, that the young man receives one title-component from his *kaum*, and the other from his father's *kaum*. If the man's father wants to confer a title (component) upon his son, there has to be a *musyawarah* in his *kaum* (the son's *bako*) in which it is decided which of their *gala*-stock will be given to the *anak pisang*. In the last resort, the complete title thus has to be chosen by the *mamak* of the man's *kaum* and by the *mamak* of his *bako* (not necessarily by the father himself).[23]

If persons are asked from whom they have got their titles, they will usually state that they got it (*dapek*) from their *mamak* and, as in CKL, from their father, or that the title has been given (*dikasih*) by them. Such statements have been interpreted in the sense of "title-inheritance" from *mamak* to *kamanakan*, or from father to son. It is therefore quite important that the mechanisms of title-giving are well understood. In the statements "I got my title from my *mamak*" or "from my *bapak*", *mamak* and *bapak* indicate the collectivities represented by the *mamak* and the father. It does not mean, that the *mamak* or the father selected the title by themselves. Nor does it mean, that the nephew/son, "who got his title from his *mamak/bapak*", wears the same title or one of the title components which his *mamak* or father wears. This may happen, but is rather unusual, and of course a father has several children, and a *mamak* several *kamanakan* (and the *kamanakan* several *mamak*) who normally are not given exactly the same titles.[24] As far as the *gala*-giving "from father to son" in CKL is concerned, it must further be mentioned, that the *gala* component is given by the *bako* to its *anak pisang*. Once the *anak pisang* has died, his *gala* "reverts" to the *bako* again. It may not be used by the *kaum* of the man, as it is the *pusako* of his *bako*.

c. The Giving of the *Gala Sako*

The principles for the giving of the *sako*, the office title, are somewhat different. The office is the *pusako turun temurun* of the *buah gadang* (blood relatives) and it cannot be duplicated. The title is attached to the office, and will automatically be given to the new *panghulu* in the course of the *panghulu* installation.

The basic principles of the succession to the *panghulu* office have already been described (Chapter 2: 86 ff.). Like all *pusako*, the *sako* is "*turun temurun* from the MMB to the MB, and from the MB to the ZS". But this does not necessarily mean that the successor to the *panghulu*

will always be his sister's son. At least in the *nagari* following the *adat* Bodi-Caniago, the *buah gadang* members are quite free to select the successor, and the inheritance-principle is further mediated through the institution of the *gadang balega*. Economic considerations will also play a role. As it is quite expensive to install a *panghulu*, it may be more economical for the *buah gadang* to have a grandnephew installed than a brother or nephew, thus lengthening the time between installations.[25]

Office titles in principle may not be given to other persons than *buah gadang* members. Only under special circumstances may a *panghulu gala* be given to a son: If the *buah gadang* of the father (the *panghulu*) is extinct or if there are no suitable male successors for the *panghulu*, his *buah gadang* can agree in a *musyawarah* that their *anak pisang* should be allowed to wear his father's title. This has happened once in CKL. When Dt. Mangiang had died his son was allowed to wear his title. Though the title was the *sako* of his father's *buah gadang*, the son did not (of course) assume the office of *panghulu* in his father's *buah gadang*, and, once he had died, the *gala* Dt. Mangiang could not be worn by any of the sons's *buah gadang* members.[26]

III. TRANSFERS OF PROPERTY RELATIONSHIPS IN MINANGKABAU *ADAT*

1. *Introductory Note*

It is the basic principle of the *adat pusako*, that *pusako* property is *turun temurun*, that it continually descends in the group of persons for whom it is common heritage. To achieve this goal, the property must be kept in the group. The living generation may use and exploit the *pusako* property, but must guard its basic resources for the future generations just as the ancestors have guarded it for the present generation. An *adat* saying states: "*Aienyo bulieh diminum - buahnyo bulieh dimakan - batangnyo tatap tingga*" - "Its water may be drunk, its fruit may be eaten, but its stem remains and remains". Transfers which would alienate the *harato pusako* from the group in which it is *turun temurun* are severely restricted by *adat* and permanent alienations are prohibited in principle. But the ideology of the *adat pusako* does not only affect the *harato pusako*. It is the moral duty of each Minangkabau, the men in particular, to add to their group's *pusako*. Whatever they earn as *pancaharian* is destined to become *harato pusako*. *Pancaharian* transfers which threaten to alienate this *harato pusako in spe* from the holder's

group against the wishes of the group were not allowed in *adat*.

The *pusako* ideology is reflected in the legal *adat* rules that pertain to temporary and permanent property transfers. These rules conceptualize the various forms of transfers, state the conditions under which they are valid and what the consequences of such transfers are. More generally, the ideology is firmly embedded in *adat* morality. As such, it constitutes an important factor influencing the holders' decisions of whether or not a transfer, though valid in law, should be carried out at all.

In the following part of this chapter, I shall describe the *adat* concerning the possible transactions. In the course of history, there has been a considerable change, both in the *adat* conceptions pertaining to transfers and in the way the Minangkabau made use of these transfers. The most important changes will briefly be mentioned here; in the following two chapters the use made of the property transfers and the development of the *adat* conceptions will be described and analyzed in detail.

2. *Jua Bali - Selling and Buying*

The concept *jua bali* (Ind.: *jual beli*) corresponds closely to the western concept of sale. *Jua* is the transfer aspect, *bali* the buying aspect. *Jua bali* is the exchange of property against money or gold. Once the exchange has occurred, no party can reclaim its original property. As the *adat* saying states: "*Jua salamaik*" - "selling is safe". *Jua bali* is conceived of as a synchronic property exchange (which, however, can be used to effect diachronic property transfers, see Chapter 5: 267 ff.).

In *adat*, no basic legal distinction is made between immovable and movable property objects.[27] "Land is sold in the same way as a writing desk" (PN Bukit Tinggi in case 16 of 1972). This is a trait of all *adat* systems in Indonesia, which has even been kept under the influence of Dutch law (which makes that distinction), and which has also been incorporated into the Basic Agrarian Law (Gautama and Harsono 1972: 47 f.). With respect to the holders' autonomy to sell property objects, an important distinction was made according to the status of the objects in terms of *harato pancaharian* and *harato pusako*.

Harato pusako in principle cannot be validly alienated at all. Minangkabau *adat* says: "*Jua indak dimakan bali - sando indak dimakan gadai*" - "if to be sold, it may not be eaten up by the buying, if to be pawned, it may not be eaten up by the pawning". Only two exceptions seem to have been made from this rule:

1. *Pusako* land could be sold to *nagari* co-citizens if it was to be used for house sites, and if all *buah gadang* members and their *panghulu* agreed to the transfer. It is not known whether this is a recent development. Duursma reports that it could be done "since the olden times" if the land was not rice-land (1934: 163). In CKL, some house sites had been sold during the last 100 years, and their sale was regarded as being quite in accordance with *adat*.[28]
2. When the *urang saharato sapusako* are extinct, the last living members of the *buah gadang*[29] are usually allowed to sell the *harato pusako* to *nagari* co-citizens. Such sales required the consent of the *warih nan sajari*, the relatives of one blood in the genealogically related *buah gadang*. In contemporary Minangkabau, the *buah gadang* members are usually free to dispose of their *harato pusako* without this consent. However, if only a *kaum* is extinct, the consent of the other *kaum* within the *buah gadang* must still be obtained (see the story of the "Extinct *Buah Gadang*", (Chapter 5: 253 ff.).

Agricultural products produced on *harato pusako*, the "*bungo pusako*", "the fruit of the *pusako*", are treated as *harato pusako*, with the exception that they could be sold. The goods or money received in return have the status of *harato pusako*.

Harato pancaharian in principle could be sold. Trading activities necessitated some circulation of goods, and most objects created by economic production (weaving, gold- and silver works, blacksmithing etc.) were *harato pancaharian*. The property received in return had the status of *harato pancaharian*. Diachronic transfers, however, which would alienate the holder's *pancaharian* property and *harato pusako in spe* of his *kamanakan* were subject to severe restrictions (see below p. 180).

3. *Pagang Gadai - The Adat of Pawning*

a. The *Pagang Gadai* Transaction

The *pagang gadai* transaction has been translated as "pawning" or "pledging" by English authors and as "*verpanding*" by Dutch authors.[30] It involves a temporary transfer of the right to use and exploit land in exchange for a sum of money or gold.[31] *Pagang* indicates the taking, *gadai* the giving of the land. I shall speak of the "pawner" and the "pawnee", meaning the *panggadai* (giver of the land) and the *pamagang* (giver of the money).

Most land having the status of *pusako*, pawnings usually involve *pusako* property. Pawnings of *harato pusako* were subject to two sets of restrictions: They may only occur in specific situations and additionally need the

consent of all (adult) *kaum* (group) members.

1. Pawning is allowed in four "classic" situations which are mentioned in any publication on Minangkabau *adat* and which are immediately quoted in each interview about *pusako*. *Harato pusako* may be pawned if the *kaum* as a whole needs money for:

- *gadis gadang alun balaki* - the grown-up girl is still without husband, i.e., money is required for the wedding ceremonies,
- *rumah gadang katirisan* - the family house needs repair, or a new family house is to be built,
- *mambangkik batang tarendam* - the *panghulu* must be installed,
- *maik tabujua di tangah rumah* - the corpse lies in the middle of the house, i.e., money is required for the burial ceremonies.

Besides these four cases, some others have been mentioned in the literature, such as to provide the costs for the pilgrimage (*naiek haji*) of a *kaum* member or the payment of common debts (*utang di tangah medan*) (Résumé 1872: 19; Joustra 1923: 118; Guyt 1936: 59).[32]

In our interviews in CKL, people usually mentioned the classical four cases. Most interviewees emphatically denied, that *harato pusako* could be pawned in order to provide the costs of the pilgrimage. But as the pawning register of CKL reveals, such transactions were, however, not uncommon 100 years ago. In lengthier discussions of the problem most people expressed a rather liberal opinion (which seems to be shared in contemporary Minangkabau in general), namely that *harato pusako* may be pawned in any case where money for common needs is required. In CKL *pusako* was frequently pawned in order to secure the necessary money for court-suits over *harato pusako* (cf. Chapter 5: 228 ff.).

2. The pawning of *harato pusako* is done by the *mamak*, after he has secured the *sakato* or *mupakat* of his *kaum* members. In all pawning transactions, the *mamak* (of the *panggadai* party, the pawner) represents his group in inter-group relationships, and he also does so in the cases of property relationships between groups. As he is responsible for the organization of the ceremonies for which the money is required, it is he who has to secure the money in the case that the *kaum* has not enough funds to finance the ceremonies. The initiative for the pawning will

therefore often be taken by him. To make the pawning valid, he must, however, have the consent of his *ahli warih*, his group members, in principle of all adult members of his *kaum*.[33] The initiative may also come from an individual or from a *ganggam bauntuek* holding *jurai*. The *ganggam bauntuek* rights,however, do not entitle its holders to pawn the *harato pusako*. The consent of the *kaum*'s other *jurai* and its *mamak* is required, and the *mamak* must act as the actual pawner's representative. Slightly different is the case, where a *jurai* holds separate *harato pusako turun temurun*. Here the *jurai* is entitled to pawn the *harato* in their own right without the consent of the other *jurai*, but the *mamak* of the *kaum* must act as representative in the pawning ceremony (see also Sarolea 1920: 120 ff.).

The transaction is usually initiated by those who need the money. They will approach someone who might be willing to lend the money and take the *harato* in exchange until the money can be repaid. According to *adat*, the persons approached should be persons closely related, possibly in one's *buah gadang* or one's *suku*. If the person or group approached is willing, and if the pawners have secured the unanimous decision of their *ahli warih*, a ceremony must be held in which the transaction is publicly carried out. This ceremony must be held in the house of the pawnee (the *pamagang*), for the money (*uang gadaian*) must be "fetched" (*dijemput*). If the pawnee is a woman, the ceremony will be held in her (mother's) house. For men, however, the "house of the *pamagang*" can mean either of two houses: the house of his children, i.e. the house of his wife, or the house of his *kamanakan*, i.e. the house of his mother. Where the money is fetched depends upon for whom the pawnee intends "the money" and the right to use and exploit the pawned property. If the money is fetched in the house of the *kamanakan*, it means that the transaction has been made for the immediate or future benefit of the *kamanakan*. If it has occurred in the house of the children, it means that the pawned property is intended for the children.[34] The ceremony consists of a communal meal, in which the transaction is publicly confirmed. In addition to the parties, their *mamak* and the *ahli warih*, the *panghulu* of the parties, and in some *nagari*, also other *adat* functionaries, have to participate as well as the holders of the plots adjacent to the one being pawned (cf. Guyt 1936: 93 ff.). This participation of the *adat* functionaries is a classical case of "preventive law application" (*preventieve rechtszorg*) as described by the Dutch scholars of

adat law (Holleman 1920, Logemann 1924, Van Vollenhoven 1931). Through the presence of the *adat* functionaries the transaction is validated in *adat* (Ter Haar 1948: 106).

In 1915, the Dutch introduced a regulation (S. 1915: 98 jo 687, art. 14, 15), which permitted the making and the registration of a *pagang gadai* contract before the Dutch administrative officials (Guyt 1936: 44). But in some districts, the administrative officials had already informally introduced the rule that the transactions should be confirmed in the presence of the *Tuangku Laras*, the parties, their *panghulu*, and one of the *ahli warih*, possibly a young female *kaum* member. In CKL, this was already practiced in 1873, as the pawning register of Candung shows.[35] The practice of making a *gadai*-deed, a *surat gadai*, has in most *nagari* persisted, and nowadays a copy of the *surat gadai* is often given to the archive of the *Wali Nagari*. Not all transactions are reported as many villagers do not wish to inform the *Wali Nagari* and give greater publicity to the transaction than is needed. But as can be inferred from interviews and regular court practice, the written document is used as evidence only, not as an element determining the validity of the transaction.

The period for which the property is pawned can be stipulated by the parties. If no such date is set, the property may be redeemed after a minimal period of two years (*duo tahun katigo*). After this time, the pawnee (*pamagang*) has to accept the redemption money (*uang tabusan*) if it is offered to him.

b. *Tebusan* - The Termination of the *Pagang Gadai* Relationship

The *pagang gadai* relationship is terminated by the redemption of the property, which is *ditabuih* or *ditahuri* by the pawner (*panggadai*). If the property is not redeemed after a short time the relationship should be *disabuik-sabuik*, "mentioned again and again" (cf. I.H. Dt. Rajo Panghulu 1974: 54): The fact that the property is pawned and is not *pusako* of the pawnee, should be declared each year to the pawnee and the four witnesses, the holders of the adjacent plots. This was not done in CKL, however.

No matter how long the pawnee keeps and works the property, the right to redeem it can never be abrogated and is not subject to limitation. Minangkabau *adat* says: "*Selama peredaran matahari, bulan dan bintang - salama awan putih - salama gagak hitam - salama aie hilir*" - "(the *pusako* remains) as long as sun, moon, and stars move, as long as clouds

are white and crows are black, as long as water flows downhill" (Wilken 1926: 417; cf. Van Vollenhoven 1918; Dt. Maruhum Batuah and Bagindo Tanameh 1954: 55). It frequently happens that redemption is demanded after several generations. This regularly leads to conflicts, in particular, if the original transaction cannot be proven any more (see already Wilken (1888) 1926: 417 f. Such a case will be described in Chapter 5: 249 ff.). To redeem, *menebusi*, means, that the property is fetched back to the original holder in exchange for the pawning money. Redemption in this sense is in the name of the *kaum*: as *pusako turun temurun* it can be distributed and allocated again.

c. *Memperdalami* - To "Deepen" the Pawning

If the *kaum* of the pawner is not able to repay the redemption money, there is another mechanism to keep the *pagang gadai* relationship a going affair. This is called *memperdalami gadai*, to "deepen" the pawning. It means that the pawner, the *mamak* who pawned the property or his successor, approaches the pawnee with the demand that more money should be added to the original sum.[36] The deepening of the *gadai* also involves a ceremony with witnesses, in order to demonstrate who the real *pusako* holder is. If the pawning has been deepened several times, the redemption sum may have reached such a value that it is uneconomical for the pawners to redeem their *harato pusako*. In this way the pawning may come close to a de-facto final alienation. But the right to redeem the property cannot be abrogated, and what is "economical" may significantly change in the course of development. Cases in which the redemption is demanded after 100 years, are not rare in Minangkabau, though they usually result in conflicts and court cases.

d. *Jual Gadai* - The "Pawning-Sale"

In the first half of this century, the concept of *jual gadai* seems to have been employed quite often. In contracts making use of the concept it was either stipulated that the contract was a "sale" *(jual)* for which, however, a right of redemption was agreed upon, or that it was a pawning (*gadai*) which was later followed by a sale (cf. Van Vollenhoven 1918: 204 f., 266; Guyt 1936: 37 ff.; Ter Haar 1934c: 145). The Dutch courts often interpreted such transactions as sale in the sense of western law. Ter Haar has pointed out that such translation/interpretation was wrong, and advocated that it should not be used by the colonial courts (1934c: 145; also Van Vollenhoven 1918: 627, 1933: 242, 244). He pointed

out that the first mode probably was developed - by the Minangkabau as well as by other Indonesians - in order to circumvent the *riba*-prohibition of Islamic law: The *riba*-prohibition forbids Muslims to draw profit from pawned property (Juynboll 1903: 285 ff., see below p. 198). The pawnee in a *pagang gadai* contract is in a position to draw profits (for example, from his working the land) from a property object not belonging to him which had been given as security for a debt. Devout Muslims therefore preferred to clothe their agreement in the form of a sale, which would make the property object the property of the pawnee, and, in accordance with *adat*, to make a provision for redemption. *Jual gadai* cases therefore should be regarded as a normal means of pawning with no time-limit stipulated (Ter Haar 1934c: 145) or a "deepened *gadai*" (Guyt 1936: 39 f.)[37] as the right to redeem the *pusako* property cannot be abrogated in *adat*: "*jua indak dimakan bali - sando indak dimakan gadai*".

e. *Kisah Gadai* - The Transfer of the *Gadai*

The *pagang gadai* relationship between the original pawner and pawnee can also be ended by the "transfer of the *gadai*", *mangisah* or *pindah gadai*. The initiative for such a transfer can come from both parties.

1. The pawner (*panggadai*) may be of the opinion that the pawnee has kept his property long enough. The relationship should be terminated, otherwise the pawnee might claim that actually the property is *his harato pusako*, hoping that the original transaction cannot be easily proven any more. If the pawner does not have enough money to redeem the property by him- or herself, he or she can decide to *kisah gadai*, to transfer the *gadai* to another person who is willing to take over the property. If A has pawned rice-fields to B for 3 *rupiah* he can transfer the *gadai* to C. C will pay 3 *rupiah* to A, with which A pays back the original pawning sum to B. This transaction is often used to effect a "deepening" of the *gadai*, e.g.,if A demands 5 *rupiah* from C, repays 3 to B, and keeps 2 for himself.

2. The initiative may also come from the pawnee (*pamagang*). If he does not need the rice-field anymore and wants his money back, he will offer the fields to A for redemption. If this offer is not accepted as A has not enough money to redeem the *sawah*, B himself can initiate the transfer of the *gadai* to C. In this case he always should offer the fields to A first. If A feels by-passed by the transfer of the *gadai*, or some of A's group members are not content with it, they have, of course,

always the right to redeem the property from C, too. If the original pawner, the *kaum* A through its *mamak kepala waris*, has not sufficient money to redeem (*menebusi*), one of the *kaum* members may redeem the fields. This is called *menebusi* only if the redemption is in the name of the *kaum*. A "good" family member should, of course, redeem the property in the name of the whole group which formerly held it as *harato pusako turun temurun*. But he cannot be prevented from redeeming it with his or her own money (*pancaharian*) for him- or herself, if the whole group is unwilling to do so. Such a redemption is also called "*kisah gadai*" and follows the *kisah gadai* rules.

f. The Consequences of the Pawning Transactions for Diachronic Transfers of Property Relationships

The types of *pagang gadai* transactions, and the conditions under which they are allowed to take place in *adat*, have been extensively described in the Dutch and Indonesian literature. Little attention has been given to the further consequences which these transactions, the transfer of the *gadai* in particular, have for the pawner and the pawnee. But these consequences are of fundamental importance for the understanding of the contemporary Minangkabau system of property relationships:

If a *pagang gadai* transaction has occurred, the property object keeps the status of *harato pusako* for the pawner. The right to redeem or to *kisah gadai* is, as part of the *pusako*, inherited in the group which holds the property as *turun temurun*.[38] For the pawnee, the "land is *harato pancaharian*", if the money with which he or she pawned it was *harato pancaharian*. In colloquial language, most pawnees will point to the property they have pawned and will say "This is my *pancaharian*". Thus it seems that the same property object has the status of *harato pusako* for one party and of *harato pancaharian* for the other. If the question is discussed more intensively, however, it becomes apparent that the *land* is *harato pusako* of the pawner, but not the *pancaharian* of the pawnee. *Harato pancaharian* is only the money which has been invested in the land, and the right to use and exploit the land which is based upon this investment. On this point, there were no differences in the answers of the various interviewees, judges, *adat* experts, or common villagers. This *pancaharian* follows the rules which govern the diachronic transfer of *harato pancaharian*: the rights to use the land are consequently disposable and inheritable as *harato pancaharian*, but they can always be nullified by the redemption of the original pawner. This leads

to particular difficulties if one member of the original pawner's *kaum* has transferred the *gadai* to him- or herself. Although he is a member of the *pusako* holding group, the pawnee's right, which entitles him to the use of the property, has *pancaharian* character. The other group members for whom the land also is *harato pusako turun temurun* always retain the right to redeem the property. They can secure a share, corresponding to the *jurai*-distribution in the *kaum*, by paying a respective part of the redemption sum to the group member who had transferred the pawning to himself, or to his descendants if some generations should have passed since the first transfer of the *gadai*.[39]

It must further be noted that once *harato pusako* has been pawned, the severe restrictions which *adat* puts on temporary alienations do not fully apply anymore to the transfers of pawnings. When the pawner-*kaum* as a whole wishes to transfer the pawning to a new pawnee, a unanimous decision of all *kaum* members is still required. But the *adat* restrictions are considerably lessened when individual *kaum* members wish to transfer the pawning to themselves, or if the pawnee wishes to terminate the pawning relationship through a transfer to a new pawnee. For if the *kaum* does not redeem the property, it has no right to prevent these transactions. The practical consequences thereof, a rather high mobility of *pusako* property, will be described and analyzed in the next chapter.

4. *The Privileged Loans of Harato Pusako*

Besides the temporary transfers of *harato pusako* in the form of *pagang gadai*, *adat* allows the transfer of some of a *kaum*'s *harato pusako* to the *kaum*'s *anak pisang*, the children of the male *kaum* members. These transfers closely resemble a privileged loan. They are temporary in principle and involve no, or only a small counter-prestation on the part of the *anak pisang*. They sometimes are clothed in the form of a pawning, in which case, however, much less money is demanded from the *anak pisang* than would be asked from another pawnee. In contemporary Minangkabau, such transfers go under the term of "*hibah* of *pusako*", but in former times other, and more differentiated terms were used.

a. *Manggarek Gombak* - The Cutting of the Hair-Lock

In the areas of Solok and Batu Sangkar (Tanah Datar) one *pusako* transaction between the *bako* and the *anak pisang* was called *manggarek gombak*, "the cutting off of the hair-lock" (cf. Duursma 1934: 160 ff.). It is (was) a transaction in which the rights to use and exploit the property were transferred. The *bako* had to be *sakato*, and the *kaum* of the children

and their *adat* elders were invited to a communal meal. During this meal and the accompanying ceremony, the *bako* declared that one wanted to give this and that property, say rice-fields, to one's *anak pisang*. The recipient, who could be a boy or an adult male, but was in all cases a male *anak pisang*, then made his round of the *Niniek Mamak*, who cut off a hair-lock which was kept as *tando*, as evidence for the transaction (Duursma 1934: 160; Korn 1941: 312). In the area of Batu Sangkar, the child gets the use right for his lifetime. After his death, the property reverts to his *bako*. During the time of his possession he may not pawn (or sell) it, but may have it worked by share-croppers. In the region of Alahan Panjang and Muara Labuh, the property is given to the child's *jurai* in continuity. It becomes the *pusako rendah* of his *jurai* members after his death. If his *jurai* should become extinct, the property reverts to the *bako* and it is not inherited by the other *jurai* of the recipient's *kaum* (Duursma 1934: 161).

b. *Sando*

The term *sando* is not used often in contemporary Minangkabau, and the historical and present meanings of this concept in Minangkabau cannot be stated with absolute certainty. *Sando* is a Sanskrit word, meaning "to pawn", "to pledge", and it has been incorporated with this meaning in several Indonesian languages.[40]

There is some evidence that *sando* was also used more or less coterminously with *gadai* (e.g. in the saying "*sando indak dimakan gadai*"), but much evidence supports the interpretation that it was used to denote a particular form of pawning or gift from the *bako* to its *anak pisang*. According to Kemal, *sando* is just another word for *pagang gadai*, but he reports that in the region of Lintau Buo (in Tanah Datar) *sando* is used to denote "*pagang gadai* transactions with the children *selama huduik anak*, for the lifetime of the children" (1964: 67). For such transactions, also the terms *sando agung* or *sando kudo* were used. In a similar way the meaning had been explained by *adat* experts to Guyt, who acted as chairman of colonial courts in the 1930's: "To give land to the *anak pisang* for little money" (1936: 19).[41] The most sophisticated elaboration in the contemporary Minangkabau expert-literature is given by Dt. Majoindo (1956: 91 ff.), which suggests that in former times *sando* and its different manifestations may have been the basic concept for all transactions over *harato pusako*. According to Dt. Majoindo, the word *pagang* originally referred to pawnings of "movable property or *harato panca-*

harian" only, whereas *sando* were pawnings of *harato pusako* in the four classical situations in which *adat* permitted such transactions. He enumerates three kinds of *sando*:

1. *sandoro* — this is a normal *sando* (pawning) for *dua tahun ketiga*, which may be redeemed after two years.
2. *sando kudo* — this is a pawning to the children (*anak pisang*) or to other persons with the stipulation that it can only be redeemed with the consent of the pawnee.[42]
3. *sando agung* — this is a *sando* which has been carried out that long ago, that people do not remember the original pawning sum any more.

During our stay in CKL, the term *sando* was used in one case by one *panghulu* with the meaning of a transfer of *pusako* to the *anak pisang* for little money in a situation where the *buah gadang* of the *pusako* holder was extinct.

c. The *Hibah* of *Harato Pusako*

In contemporary Minangkabau, transactions like the ones mentioned above are denoted with the label or *hibah*. *Hibah* is an Arabic word which means gift. In Islamic law, *hibah* is a complete and irrevocable donation made during the lifetime of the donor (Fyzee 1955: 186 f.), but in Minangkabau *adat* the term is used with different meanings: *Hibah* of *harato pusako* means the transfer of *pusako* property objects to the *anak pisang*, usually *selama hidup anak*, for the lifetime of the children, or for the children's *jurai* in continuity. No matter who initiates the transaction, (usually fathers who want to give some of their *harato pusako* to their children initiate), all *kaum* members must agree to it, and the *hibah*-transaction must be held in the house of the giver's *kaum* with the presence of the four holders of the adjacent property and the *panghulu* and other *adat* functionaries. If all persons agree to the transaction the *panghulu* of the giver's *kaum* officially hands over the authority over the property to the *panghulu* of the receiver's *kaum*. If such *hibah* is made in *punah*-situations, e.g. by the last living member of a *kaum* or *buah gadang*, the *warih nan sajari*, who would inherit the property if the group was extinct, must also give their consent (cf. Dt. Maruhum Batuah and Bagindo Tanameh 1954: 51).

According to *adat* experts, different kinds of *hibah* must be distinguished. The following version is taken from I.H. Dt. Rajo Panghulu

(1973: 51), and it corresponds more or less with the explanations of *hibah* which were given us in interviews in CKL:

1. *Hibah laleh*: This is a *hibah* from a man whose group is extinct to his children or to *kamanakan* of the same *suku* with whom no genealogical relationships are recognized. This kind of *hibah* practically results in an adoption of the beneficiary: "the child is made a *kemanakan* and from now on lives with his or her descendants in the *suku* and the *kampuang* area, which are the *pusako* of the father who has given the property as *hibah*".[43]
2. *Hibah bakeh*: This is a temporary *hibah* to the children. The length of the transfer is stipulated when the *hibah* is made; it usually extends until the last of the children has died. Often, the property which had been the father's *harato pambaoan* is used for such a *hibah*.
3. *Hibah pampeh*: This is a *hibah* from a *panghulu* to his children or to others because he either "has too much *pusako*" or his group is extinct. In this case, a *pampeh* (Ind.: *pampas*), a reimbursement, is specified. The children make a token payment at the time of the transaction, and after the time stipulated in the transaction has elapsed, the *kamanakan* of the giver can redeem the property by paying the reimbursement (*dengan memberi pampasan*) which is much higher than the token payment the children had to make (1973: 51 f.).

In CKL, the latter transactions were known under the name of *hibah-gadai*. *Hibah* for the lifetime of the children (*selama hidup anak*) and for the childrens' *jurai* in continuity were distinguished. Instances of such transactions are described in the following chapter.

d. A Note on Terminological Development

In contemporary Minangkabau, the "*hibah* of *pusako* with the consent of the *kaum* and the *panghulu*"is a common topic. Experts write about it, villagers speak about it, and cases concerning the *hibah* of *pusako* are quite frequent in the State Courts. This is quite surprising, if one considers that, according to older Dutch sources, *hibah* could only be made with *harato pancaharian* (Wilken 1926: 56 , Willinck 1909: 749; Joustra 1923: 121). According to Willinck, "*hibah* with respect to *harato pusako* or the *ganggam bauntuek* are void" (1909: 749).[44]

In my opinion, it would be premature to conclude either that Willinck was wrong or that the *adat* has changed in this respect. What has changed is the terminological usage. What Willinck wrote on the *hibah* of *pusako*

referred to the kind of *hibah* which individuals used to make over their *harato pancaharian*: Individuals were allowed to give some *pancaharian* property to their children by way of *hibah*; if *individuals* wanted to make such a *hibah* of the *harato pusako* they held as *pambaoan* or *ganggam bauntuek*, this would be void - in Willick's time as well as in contemporary Minangkabau according to the regular court practice. But obviously the term *hibah* was not used for transactions between the *bako* and its *anak pisang* in Willinck's time. The transactions themselves, however, are not new; it is only that they are now denoted differently. Most probably, the *hibah* categories have superseded the *sando* categories: The most widely remembered meaning of *sando*: a *pusako* transfer from the *bako* to the *anak pisang* for the lifetime of the children, is now covered by the term *hibah* in its most widely practised form, the *hibah bakeh*.

5. *The Gift of Harato Pancaharian*

a. *Hibah*

The gift of *pancaharian* property - usually from a father to his children - is called *hibah*. The *hibah* in *adat* is different from the meaning the *hibah* has in Islamic law (see pp. 178, 198). In *adat*, the *hibah* is carried out by the father during his lifetime, but the transfer of the property becomes effective only upon the father's death. After the father's death the transfer is definite. A *hibah* once made can be revoked before the death of the person making it (Willinck 1909: 747). The property objects given by *hibah* became the recipient's *harato pusako* (*rendah*) to be *turun temurun* in his or her *jurai* (1909: 750).[45] The degree to which the individual was granted autonomy to make *hibah* of his *harato pancaharian* has changed considerably during the last 100 years. In Willinck's time, around the turn of this century, *adat* allowed the individual to give away about one half of his or her *pancaharian* property by *hibah*. This transaction, however, had to occur "with the knowledge" of the individual's *ahli warih*, and had to be witnessed by his *panghulu* (1909: 748). In other sources it is reported that such a transaction even required the "consent" of the *ahli warih*.[46] These restrictions on the individual's autonomy have been increasingly lessened in the course of time. In the 1930's it had become court-law that an individual could dispose of all his *harato pancaharian* without any cooperation of his *kaum* members or the *adat* functionaries, and in contemporary Minangkabau

this freedom of disposition is generally ackowledged. This development will be described and analysed in detail in Chapter 6.

b. *Pemberian* - Gift

In contemporary Minangkabau, the concept of *pemberian*, "the given", "the gift", is increasingly used to denote transactions over both *harato pancaharian* and *harato pusako*. It is used for transfers which become effective during the giver's lifetime as well as for those, which have effect after his death. It is not a traditional *adat* concept to which precise legal consequences are attached. In practice, *pemberian* is used to cover those transactions which otherwise are denoted *hibah*, and the same distinction concerning its validity are made which are made for a *hibah* of *harato pancaharian* and *harato pusako* respectively.

6. *Umanaik, Wasiyat, Hibah-Wasiyat - Testamentary Gifts*

Written testaments were unknown in *adat*. People could make "death bed declarations" by which they could try to direct the flow of their *harato pancaharian* property, but such declarations had no binding force on the heirs, the *ahli warih*. Under the influence of Islam and Islamic law, the concept denoting the institution of testament in Islamic law, *wasiyat*, was incorporated into *adat*. Besides *wasiyat*, the terms *umanat (umanaik)*, or *hibah-wasiyat* are used. The legal consequences attached to testaments in *adat*, are, however, quite different from those in Islamic law (see below p. 199 ff.). In *adat*, a person could not dispose of *harato pancaharian* by testament more freely than by *hibah* during his lifetime. The development of the *adat* concerning testamentary dispositions has been parallel to the one concerning *hibah* and the individual's autonomy to dispose of his *harato pancaharian* in general.

7. *Utang - Debts*

The information about debts and the diachronic transfer of debts according to *adat* is rather scarce. In the older Dutch sources some information is given, but in the more recent literature the problem is hardly mentioned at all. Interviews yield only very general rules, and there are only a few decided cases dealing with debts from which the "*adat* system of debts" cannot be abstracted as a matter of course.

The basic principle of the *adat pusako* is expressed in the following saying: "*Utang si mati dibaie jo harato si mati - Utang pusako dibaie jo pusako*" (Willinck 1909: 783; R v J in AB 6: 16) - "The debts of the

deceased are paid with the property (*pancaharian*) of the deceased - The debts of the *pusako* are paid with the *pusako*". In *adat*, two kinds of debts are recognized: Debts which an individual has incurred (private debts) and debts of the whole *kaum*. The latter are debts incurred in the name of the *kaum* by the *mamak kepala warih* or some other *kaum* member. In order to make a debt a *kaum* debt, it must have been made after a consultation with the *kaum* members, who must be a *sakato*. If one *kaum* member makes debts and does not ask the approval of his *kaum* members, his debts will be "private" ones. Creditors are supposed to know what sort of debts their debtors make and to make sure, at their own risk, whether the debt is a private or a *kaum* debt. In *nagari* life, most cases of debt will be quite unambiguous. One cannot make great debts in secret. If one does, they must be private debts. The creditor will know it, and he will also know that the *kaum* of his debtor will not do anything about such debts. In economic activities outside the *nagari*, this is more difficult to ascertain, and one probably has to assume that debts are private ones unless the *kaum* has officially recognized the debt as a *kaum* debt. It is reported, that the creditors had to announce their claims at the funeral ceremony, before the inheritance was distributed. If they were late with their public announcement, the heirs were not obliged to pay the debts (Van Hasselt 1882: 284). In the funeral ceremonies which we attended in CKL, it was demanded during the ceremonial speeches given in the deceased's house, that those who had claims against the dead should come forward and announce them, and that the moral debts, the *utang budi*, should be forgiven. But this statement had a formal and ceremonial character. It was certainly not meant that the creditors should come forward at this moment, but that they should approach the heirs after the burial and the further funeral ceremonies.

Private debts must be paid of the *harato pancaharian* of the debtor. If the debt exceeds the value of the *pancaharian*, the whole *harato pancaharian* will be used in payment. The *harato pusako* of the debtor cannot, however, be used to satisfy the creditor. This holds true in synchronic and diachronic perspective, during the lifetime of the debtor and after his death: Only the *harato pancaharian* of the deceased can be used to pay the debts, the *harato pusako* or the *pancaharian* held by the debtor's heirs cannot be held liable (see Willinck 1909: 783 f.; AB 6: 16).[47] *Harato Pancaharian*, which had been given by *hibah* to the children, could not be held liable for the payment of debts; only the *activa* were transferred by *hibah* (Willinck 1909: 751, 794 f.).

The debt relationship as such thus was not continued by the heirs. It was and remained attached to the deceased and his or her *harato pancaharian*. The heirs were only responsible to make the payment out of the property which the deceased left. The main principle for *kaum* debts was that the person who had made the debt should repay it. But if he was not able to do so, or if he died before he could do so, the *kaum* was responsible for the repayment with its *harato pusako*. The *kaum* members are "*utang samo dibaie, piutang samo ditarimo*" - "debts are paid together, and outstanding debts are received together". *Adat* further states "*bautang mamak, kamanakan mambaie - bautang kamanakan, mamak mambaie*" - "the debts of the *mamak* are paid by the *kamanakan* - the debts of the *kamanakan* are paid by the *mamak*" (see Willinck 1909: 783 ff., Andresen in Kielstra 1892: 273; TNI 1895: 387).

These rules seem to be more or less valid in contemporary Minangkabau, as will be apparent from the following cases. Most problems occur, when a *kaum* member gives the *harato pusako*, which he holds as distributed property, as security for debts or credits given by a bank. Security seems to be rarely given, and the question of whether *pusako* may validly be given as security at all is rarely explicitly answered. In interviews with judges and villagers the opinion prevailed that it could be given if all *kaum* members agreed to it.

In case 8 of 1971 in the PN Batu Sangkar, a *panghulu* and his wife had received a credit from a bank. When they were unable to repay, they made an agreement with the bank: They would repay the credit within 60 days. The *panghulu* gave a rice-field as security. Failing repayment, the bank should be entitled to sell the field in public. After the 60 days had elapsed, the couple could not repay the credit, and the bank enforced a seizure of the rice-field through the PN. After this had been done, the bank and the *panghulu* were sued by the *panghulu*'s *kaum* members, who claimed that the seizure was void and illegal: The *sawah* was not *harato pancaharian*, but *harato pusako tinggi*. Already in 1969 the *panghulu* had made an agreement with the plaintiffs (they claimed) which gave the plaintiffs the right to use the field (a *ganggam bauntuek* distribution). The debt had been made without the knowledge of the plaintiffs as the *warih* of the *panghulu* and the *ganggam bauntuek* holders of the property ("*oleh karena tanpa setahu dari penggugat2 baik selaku waris dan kaum tergugat maupun yang memegang ganggam bauntuek berdasarkan persetujuan tersebut*"). The debts therefore were private debts and could only be

claimed against the *panghulu*'s *harato pancaharian*, not against the *harato pusako* ("*karena itu menurut adat hutang tersebut tidak dapat debebankan kepada harta pusaka tinggi tetapi hanya dapat dibebankan kepada harta pancaharian pribadi dari X*"). Unfortunately (for the anthropologist) the case was stayed and has not yet been decided.[48]

The rule "*bautang mamak, kamanakan mambaie - bautang kamanakan, mamak mambaie*" may also be illustrated with a case (27 of 1969 PN Bukit Tinggi): In 1965, the woman A had made debts with the plaintiff in the case. When in 1967 some trouble had occurred over the repayment, the parties had made up a document in which the debt was acknowledged by the defendant (a *surat pangakuan hutang*). C, the *panghulu* of A, had written a declaration (a *surat keterangan*) which was to serve as *jaminan*, "security", that the debt of his *kamanakan* A would be speedily repaid (*bahwa hutang kemanakannya akan segera dibayar*). The plaintiff had sued A and C, claiming that C, as *mamak kepala waris* of A, was also a party to the debt-relationship. The *panghulu* defended himself by stating that the debt had been a private debt, and that he was not the *mamak kepala waris* of A, but had only acted as lineage elder (*ninik mamak*); in other words, that he was not the *mamak kaum* of A, but the *panghulu* of the *buah gadang*.

The PN decided, that the *panghulu* was liable to pay the debt, as he was the *mamak kepala waris* of A, and "had also engaged in some activities to speed up the payment". In appeal, however, (PT Padang case 84 of 1970) the claim against the *panghulu* was rejected: The PT held that the *panghulu* had merely "acted as someone who wanted to settle the dispute between the parties", and that it had not been proven that he was a party to the debt-relationship.

Private debts should be paid by the *pancaharian* - heirs. In interviews it was generally stated that now, when the children inherited a man's *harato pancaharian*, his debts should also be settled by them.[49] But much depends on "*situasi dan condisi*", on the particulars of a concrete situation. Consider the following case, which had occurred in CKL and had been finally decided by the PN Bukit Tinggi (case 42 of 1972). The woman R., who was sued by her father's *kamanakan*, claimed that she had lent her father some money and that her father had allowed her to work "his" *pusako*-fields in return. When the father's *kamanakan* claimed the *sawah* after his death, R. fended them off by demanding that they should pay her father's debts first. The *kamanakan* basically agreed.

But when no consensus could be reached over the amount of money to be paid, they took the case to court. During the hearing of the case, the plaintiff *kamanakan* stressed that there had never been a pawning transaction between their *mamak* and his daughter, but that their *mamak* had "admitted" (*mangaku*) to one of his (classificatory) sisters that he had borrowed the money from his daughter. The court ordered the return of the fields in exchange for the payment of the debts by the *kamanakan*. This ruling was based upon the argument, that "if money is given in exchange for land, there is a pawning transaction", and that the plaintiffs were therefore entitled to redeem their *harato pusako*.

The interesting aspect of this case is that the idea, that the debts could have been private debts which should be inherited by the daughter, was completely foreign to all participants and was never raised as an argument. For the plaintiff *kamanakan*, the case was clearly one of "debt". There had been no pawning transaction, and none of the witnesses heard had made any reference to a pawning ceremony. So we must assume that in the eyes of the plaintiffs, the "avowal" of the debt by the deceased to one of his *kaum* members was sufficient to make it a *kaum* debt; during the case it was never mentioned or claimed that the debt had been made in the interest of the *kaum*. But it may also be that the villagers take a different stand towards the inheritance of *pancaharian-activa* and *passiva*: Whereas it is considered normal in contemporary Minangkabau that the *harato pancaharian* (*activa*) are inherited by the children, it may well be, that with respect to debts, the "old" attitude may still prevail: that debts are inherited "by the heirs", the *kamanakan*. The court evaded the question of debt-inheritance by constructing a *pagang gadai* transaction; certainly the easiest way out of the problem, but the one least in accordance with *adat*.

IV. ANALYSIS OF THE *ADAT PUSAKO*

In the following section, I shall attempt a brief analysis of the *adat pusako* in relation to three main points of reference: I shall analyse the *adat* system in terms of:

1. corporateness, examining the relation between corporate group structure and property relationships in Minangkabau;
2. the way in which society's members' autonomy is restricted by *adat* with respect to property;

3. the temporal dimensions inherent in Minangkabau property relationships and its conceptual system.

The analysis, in this place in the study, has a preliminary character. It is intended as an analysis of the "old" Minangkabau system of property relationships which will serve as background and frame of reference for understanding the developments which have occurred during the last 150 years; these later developments are described and analyzed in the following two chapters. I am quite aware of the fact that such a juxtaposition of "old" *adat* and its developments leading to the "new" *adat* is in part artificial, yet I see no other way to analyse the changes which undoubtedly have occured in Minangkabau. Change and development demand a reference to a previous "state", and the anthropologist must construct such a state, knowing that he has to throw together various manifestations of *adat* which belong to different historical periods, and which themselves are developments rather than steady states.

1. *Corporate Group Structure and Property Relationships in the Adat Pusako*

In my description of the *adat* system of property relationships I have consciously avoided the use of the concepts "corporate" or "corporate group". Since Maine it has become quite common in social anthropology to characterize the social groups in traditional societies, and lineages in particular, as corporate groups, and many anthropologists chose to define the corporate group character with reference to common or corporate property holding (see Goodenough 1951; Leach 1961b; Gough 1961; Goody 1962; Smith 1956; Fried 1957). Some of the greatest authorities on Indonesian *adat* law, too, have characterized the legal status of social groups, the *rechtsgemeenschappen* (legal communities), by reference to common property holding and administration. Van Vollenhoven, for instance, used the criterion of common property to define the "*familie*" in Minangkabau, which corresponds to the social groups called *kaum* or *buah gadang* in CKL (1918: 250). This practice has been followed somewhat uncritically by later authors and, in my view, has given rise to some misunderstandings of the *adat pusako*. If I therefore employ the concepts "corporate group" and "common" or "corporate property" in the following analysis, I do not intend to enter into the discussion over their proper conceptual use; my aim is rather to clarify Minangkabau property relationships in relation to the ideas expressed by other authors.

To define social groups as corporate using corporate property holding as a or *the* constitutive criterion is, of course, a matter of convenience. If it is done, however, it should fit the ethnographic facts. Incongruencies between ethnographic facts concerning social groups and their allegedly corporate character stimulated Fortes to his recent critical review of the various ways in which the concept has been used by other anthropologists (1970a: 291 ff.). Fortes' analysis is a convenient starting point for my discussion of the character of the property holding groups in Minangkabau. In his analysis, Fortes maintains that the decisive characteristic of corporate groups is their definition as "one", as "one juristic person" in what he calls the politico-jural domain (1970a: 300, 302, 308). Commenting upon the working concepts of Goodenough, Gough and Goody which are based upon "one property", he concludes that property relationships are contingent upon and not constitutive of corporate group character. According to Fortes, property is the dependent variable, the definition of the social group as "one" in the politico-jural domain the independent one (1970a: 300). As much as I can agree with his review of the works quoted, his conclusion remains unsatisfactory. For it fails to distinguish between the two levels on which property relationships are usually expressed, the level of socio-political authority over property and the level of use and exploitation of property. Minangkabau *adat* allows me to demonstrate that the analysis of property relationships in terms of corporateness will remain confusing unless both levels are considered separately:

The Minangkabau *buah gadang*, and in contemporary Minangkabau the *kaum*, (corresponding to those social groups called *paruik* or *sabuah paruik* in the literature on Minangkabau) seem to be the corporate group par excellence. In *adat*, these groups are defined as "one" in several respects, among which is property-holding. The members of the group are *urang saharato*, people of one property; the *mamak* represents his *kaum* members in all property affairs; no suit about *harato pusako* of the *kaum* will be entertained in court unless each party is represented by the *mamak* in his capacity as *mamak* of the *kaum*. The *mamak* is further responsible for the distribution of property within the group, and he must act for the group in transactions over *kaum*-property. In *adat*, there is not just the definition as "one" in terms of the *adat*-ideology, the functions attached to the "one-ness" carry important practical consequences.

But within the *kaum*, there are quite important differentiations between the members who are of "one" property:

1. There is the differentiation according to the socio-political status of the group members, which also affects their relationships to the "one" property. The descendants of former slaves and strangers have no equal rights to the property of the group. Though they *may* inherit the property if the blood relatives have died out, they are in principle ineligible for the *panghulu*ship and cannot inherit the *sako* even if the blood relatives are extinct. So far as these factors are concerned, one cannot speak of the *kaum* members as constituting a group which has "one" property, or which "functions as an individual in relation to property", like the lineages described by Goodenough on Truk (1951: 29 ff.).[50]

2. The "corporateness" of the *kaum* is not only dissolved through the different social statuses of the group members. Having "one" property only applies to that property which is *turun temurun* for all group members. Only in relation to this property have the *kamanakan batali darah* essentially the same rights, which are then allocated and distributed in the ways described above. But this property may not be the only "property of the *kaum*": There may be property which is the separate *pusako turun temurun* of one *jurai* based upon the inheritance from their *mamak*, and *jurai* may have their own *pusako* in continuity which has been given by the *bako*.

If we were to adopt Fortes' attitude, the Minangkabau example would well support his analysis: The *kaum* is described as corporate group, but the group members do not actually form a corporation aggregate with respect to all the property objects which are *harato pusako kaum*. It would therefore be necessary to conclude that what gives the *kaum* its corporate character is its definition as one in the politico-jural domain or, as the Minangkabau would say, in *adat*. But it is much more reasonable to examine both levels of property relationships and consider the corporateness of the group on the level of socio-political authority, and use-and-exploitation separately. For on the level of socio-political control over property, the *kaum is* corporate. It is defined as "one" with respect to property, and the corporate character becomes manifest in many social functions. On the level of use rights and exploitation, the *kaum is not* (necessarily) corporate, but rather there are several

jurai, some contained within others, which have their separate *harato pusako turun temurun* within the *kaum*. The best illustration for this two-level conception is the gift of *harato pusako* from the *bako* to its *anak pisang* in continuity: The property is officially handed over from the *bako*'s *panghulu* to the *anak pisang*'s *panghulu*. From now on, the property is *pusako* of the *anak pisang*'s *kaum* (*buah gadang*) and their *panghulu* will exercise socio-political authority over it in the same way as over the other *harato pusako* of his *kaum* members. On the level of use-and-exploitation, however, only the *anak pisang*'s *jurai* may use and exploit that property. Even if their *jurai* were extinct, their co-*jurai* would not inherit it, but it would revert to the *bako*.

What has been said for the corporate "holding" of property also pertains to inheritance. As Fortes correctly remarks:

"Succession, as all authorities insist, is of key importance in corporate group structure as well as, of course, in the continuity of corporations sole. But it is the instrument for ensuring the corporate continuity, given the principle of the corporate identity of organized pluralities, not the foundation of this principle, unless, of course, we subsume the rules of exclusive recruitment under the rubric of succession" (1970a: 305).

Failure to make the distinction will only lead to a confusion in the interpretation of the ethnographic data. Examples of such confusion are the statements of Goody on the corporate nature of property relationships among the Lo Dagaa. Although Goody makes it very clear that he intends to separate inheritance from descent (1962: 316), he is led into difficulties by his undifferentiated use of the concept "corporation". With respect to inheritance he states, that

"in the last analysis, these various mechanisms are dependent upon the concept of corporation, the idea that all members of the matriclan are entitled to share the dead man's property" (1962: 354).

But the practice seems to be different:

"Implicit in the whole situation lies a potential conflict between the idea of joint ownership and the operation of the next-of-kin principle of selection, between the claims of a single individual and those of the corporate group as a whole" (1962: 346).

If one reads these statements one cannot help but conclude that a discrepancy between the ideal norm of corporate group structure and the actual inheritance practice is indicated. But there may be a "conflict" only if both levels of property relationships are fused into one through the notion of corporation.[51] But in fact, there may well be just two sets of norms: one on the level of socio-political authority, where the principle of corporateness operates, and one on the level of use rights

and their inheritance, where the principle of next-in-kin inheritance works.[52]

I would not have restated so much of the *adat* in terms of corporateness, if the description which I have given of the *adat pusako* system of property relationships corresponded to the descriptions which are dominant in the Minangkabau literature. But most authors have not drawn the distinctions I have made, and which are, as I have described, also drawn in the *adat pusako*. Most authors have been guided by the influential statement of Van Vollenhoven, that only the *familie* (*buah gadang* or *kaum*) was a *rechtsgemeenschap*, a legal community with common property, whereas the "family branch or *jurai*" are not legal communities (1918: 250). This view was also extended to inheritance: If a person died leaving *harta pancaharian*, this property fell to his family (*kaum*) as family property. The whole family became its possessor; the closest relatives, the *jurai* and their *mamak*, only took "precedence" (*voorrang*) over the other *kaum* members with respect to the use of the property. Once the generation of the persons having this "precedence-in-use" (*onderhoudsvoorrang*) had died, the property became *pusako* for all family members alike (1918: 261 f.). Smits and Van Bosse, two Dutch colonial lawyers, construed the *pusako* relationship on the model of the Germanic *Gesamthandseigentum* with its institutions of accrual and decrease: Each time a family member died, the remaining members' shares increased, and each time a new member was born into the family, the other member's shares in the *pusako* decreased (quoted in Willinck 1909: 769 ff.).

These interpretations contradict our data and would certainly be wrong for contemporary Minangkabau. But already Willinck had explicitly stated that only the *jurai* of the deceased had a right to the former *harato pancaharian* of their *mamak*, and that the other *kaum* members (in the *kaum*'s other *jurai*) would only inherit the right to use and exploit the property if the *jurai* was extinct (1909: 574 f., 782 f.). Willinck's statement was shortly afterwards confirmed by Sarolea (1920), who focussed his research on exactly this question and came up with the same results as Willinck. Van Vollenhoven's statement is probably based upon less differentiated sources, and it must be noted that he expressed himself with caution, writing "that it seems" (*naar het schijnt*) that all family members had an equal right to the property after the generation of "precedent-users" had died. Later authors were less cautious; they either took over Van Vollenhoven's statement unreflectedly, or contented

themselves with rather undifferentiated statements that "*pusako* was owned both communally and individually" (cf. Kahn 1976: 71). I must also contradict Evers who in his recent (and otherwise very interesting) analysis of land tenure in Padang claims to have "detected" the separate holding of *harta pusaka* by a woman and her descendants as a "new" type of communal landownership (1975: 107).[53] As has been sufficiently demonstrated (and will be illustrated in the following chapter) this type of *pusako* holding is by no means new. It may be more evident, since in contemporary Minangkabau the level of *adat* socio-political authority has been superseded to some extent, and the relationships on this level are less effective than they used to be.

2. *The Limitation of the Society's Members' Autonomy*

Minangkabau *adat* limits society's members' autonomy in different ways.

1. The autonomy of all Minangkabau, individuals and groups, is limited in the name of the community through its general *adat* rules, in so far as

a) *harato pusako* may not be alienated permanently,
b) temporary alienations may only occur under specified circumstances: in the four classical situations in which a *pagang gadai* is allowed, or if it is based upon a particular social relationship, like the gifts of the *bako* to its *anak pisang*.

2. The autonomy is, under the preconditions of 1., fully granted to the groups, and in these cases the individual's autonomy is restricted by the groups. The groups may do what they want, if they speak as "one", when they are *sakato*. If the individual wants to exercise autonomy over the property objects which he has a right to use and exploit, he must:

a) as member of the *pusako* holding group, try to achieve a *sakato* of his group,
b) as holder of *pancaharian*, secure the consent, *saizin*, or the "knowledge", *satahu*, of his group members.

3. In most of the cases mentioned under 2., an additional requirement is the "knowledge and participation" of the *adat*-functionaries and witnesses in the transaction.

The validity of transactions, in which society's members exercise their autonomy over property objects, thus is measured in two ways: First, it is evaluated in reference to general law, in a process of abstract evaluation; and, it is also validated in a social process. The character of these social processes has been excellently analysed by the Dutch scholars of *adat* law, who referred to them as "*gesteunde naleving*" (Van Vollenhoven 1931: 247 ff.) or "*preventieve rechtszorg*", preventive law application (Logemann 1924: 128, see Chapter 1: 35 f.). These functions are also inherent in the social processes in Minangkabau, which require the consent of the *kaum* and the participation and witnessing of the *adat*-functionaries. However, in social life one has not only to do with successful processes. *Adat* prescribes that a *sakato* must have been reached if the transaction is to be valid. It does not, however, prescribe *that sakato must be reached*. As a general principle, each *kaum* member has the right to withhold his consent and prevent the *sakato* from being reached. What determines the outcome, positive or negative, of the *musyawarah* process rather are moral, political, and economic factors, which, of course, are *adat*, too. The outcome is "*tergantung situasi dan condisi*"; i.e., it depends on the situation and the circumstances. The principle of decision making is based upon the presupposition that the actors will do the "proper" thing in each concrete situation, and what is proper can only be determined in the interaction of the participants in a concrete situation. It would therefore be quite dangerous to abstract general principles from such decisions (see Chapter 1: 37). Individual aims and motivations are readjusted though the pressures - moral, political and economic - which others can bring to bear upon the individual. In the last resort, the higher authorities can be used to exert this pressure. If the *kaum* withholds its consent (seen from the individual) or if one *kaum* member does not want to be *sakato* (seen from the *kaum*) the exercise of the participants' autonomy can be evaluated by those "who know better" according to the value and authority system. The aggrieved person(s) can bring the problem before the *panghulu*, the *suku* council or the *nagari* council (following the hierarchy *bajanjang naiek - batanggo turun*, see Chapter 2: 91 f.). These authorities will determine, whether there was a "proper" or an "acceptable" reason for the respective persons to withhold their consent or to insist on their intention to make a specific transaction. The council can either order the others to cooperate, or even declare the transaction valid itself without their cooperation (see Dt. Sanggoeno Dirajo 1924: 118 ff.; Guyt 1936: 80. In

CKL the same views are expressed.). But there are also restraints that will prevent the conflict being taken to the higher authorities, or which will prevent the higher authorities from deciding definitely. For conflicts should be settled within the group. One would become *malu*, ashamed, if others were to take notice of it, or even if others decided the conflict. It would also be a sign of poor *mamak*ship, if the *mamak* could not lead his *kamanakan* to a *sakato*. The result is, that conflicts linger undecided within the group: one cannot come to a *sakato*, but one does not want to have others mix with the problem. Likewise, the *nagari* council will be loth to interfere in the matter, for "*pusako sakato niniek mamak*": *pusako* troubles should be decided by the lineage elders, and the *Karapatan Nagari* has "more important things to do" than to be busy with some quarrel between people who do not know what is proper.[54]

It is important to note, that there is only a gradual difference in this respect between the notion of "consent" (*saizin*) and of the "knowledge" (*satahu*) which is required in such cases. The "*satahu*", literally: "with one, or common, knowing", is extremely difficult to translate. The most appropriate English translation probably is "taking cognizance" or "acknowledge". Most Dutch authors translated it with "*kennis*" or "*medeweten*". But *satahu* does not refer to abstract knowledge. It is not sufficient for the validity of a transaction that the *mamak* and the *adat* elders "know" of it. *Satahu*, too, refers to a social process in which knowledge must be given and accepted, and in which knowledge can also be refused. Refusal to accept knowledge is usually expressed through one's absence in the ceremony which must be held if the transaction is to be validly carried out. Even if one knows fully about the transaction, i.e., if one has been informed of it, if one does not appear in the meeting, then one does not "know" in *adat*, one does not (yet) accept responsibility for the validity of the transaction. The distinction between "consent" and "knowledge" made in western law does not correspond to this *adat* distinction. *Satahu* and *saizin* are both variants of the same kind of process. They indicate different degrees of necessary cooperation of the group members and *adat* functionaries, but both imply a "consent"-requirement which must be fulfilled in the social process of giving consent or taking cognizance (cf. Logemann 1924: 123).

It is obvious that the concrete functioning of these principles will be seriously influenced if the factors which motivate the individual participants' interactions in these processes change and if new forms of morality and authority develop. The problem of change and its impact

on the principles just described will be dealt with in the following chapters.

3. *The Temporal Dimension in Minangkabau Property Relationships*

The dominant attitude towards time inherent in the conceptual system of the *adat pusako* is one of infinite continuity. This finds its primary expression in the notion that all property is *pusako turun temurun*, which descends and descends as heritage in an endless process. The basic *adat* categories of property, the various kinds of *harato pusako*, are, as it were, distinguished in the diachronic dimension: the kinds of *harato pusako* are distinguished according to their mode of acquisition in the past, and further by the relative distance in time from the moment of their acquisition.

There are also property categories which do not embody this dimension of infinite continuity: *harato pancaharian, harato suarang, harato dapatan* and *harato pambaoan*. The legal status of these property objects is temporary; it is tied to the individual's lifetime or to the duration of the marriage. Once the individual has died or the marriage has been dissolved, the legal status cannot be maintained but the property objects become absorbed in the endless process of *turun temurun* as *harato pusako*. In Minangkabau thinking on property, these temporary legal statuses are of less importance if compared to the continuity of the *pusako*. The *harato pancaharian* are "drawn into" the diachronic dimension: they become *harato pusako tambilang ameh* or *harato pusako tambilang basi*, or, in the more modern conceptual usage, *harato pusako rendah*. In the system of *pusako* categories, the *harato pancaharian are harato pusako*. Clearly, this equation of *harato pancaharian* with *harato pusako tambilang ameh* or *harato pusako rendah* is only possible in the diachronic dimension. In the synchronic dimension, related to the lifetime of the individual, it would not make sense: For the individual property holder, *harato pancaharian* and *harato pusako* are definitely different categories of property to which different legal consequences are attached.

The dominance of this diachronic thinking, in which the individual property holder is more or less "blended out", most clearly becomes apparent in the way in which Minangkabau think and speak about inheritance. Here, the equation of *harato pancaharian* with *harato pusako* is very frequently made. When the villagers explained to us their system of inheritance and stated that self-acquired property in contemporary Minangkabau is inherited by the children, this was frequently expressed

by saying that "the *harato pusako rendah* are inherited by the children" ("*harato pancaharian diwarisi oleh anak*", or "*harato pancaharian jatueh kapado anak*"). At first we found these statements puzzling, for we construed them according to our, western, thinking about inheritance, which is prospective: The *harato pusako rendah* are, i.e. will be, inherited by the children. But this did not, of course, make any sense in the light of what we knew about inheritance in Minangkabau. Further discussion with villagers then revealed unfailingly that, of course, property objects which had the legal status of *harato pusako rendah now*, would never be inherited by the children but by the *kamanakan* - for the property is *pusako*. The statement: "*harato pusako rendah* are inherited by the children" thus would have to be translated as follows: "Property objects, the legal status of which will be *harato pusako rendah* after their holder, to whom they are still *harato pancaharian*, has died, will have been inherited by the holder's children". The Minangkabau speaker projects himself into the future in order to speak of future events as already having occurred in the past. He does so by equating *harato pancaharian* with *harato pusako rendah*, by projecting the legal status of the property into the future, which presupposes a future event, inheritance, to have happened. If we were to translate this thinking into the western system of tenses, it would correspond to the future perfect tense.

This kind of speaking about inheritance is quite frequent and it is by no means limited to the common villagers. One of our informants who had received a modern education and held a post in the state administration, used to refer to the *harato pancaharian* of his still living father as "my father's *harato pusako rendah* which will be inherited by us, his children". The same attitude is also manifest in the following statement given by a State Court (PN Batu Sangkar case 39 of 1969):

"... *bahwa oleh karena di Minangkabau ada dua macam harta pusaka datam pembahagian pokok, yaitu harta pusaka tinggi dan harta pusaka rendah, dimana perbedaanya terletak pada asal usul harta2 tersebut, yaitu bahwa harta pusaka tinggi berasal dari hasil cancang letih dari generasi asal yang bertali darah menurut garis ibu dan turun kepada generasi dalam garis ibu juga, sedang harta pusaka rendah adalah harta2 yang diperoleh bukan sebagai hasil cancang letih oleh nenek moyang sendiri, melainkan mungkin deperdapat karena jalan beli maupun karena hubungan2 hukum lain.*"

"In Minangkabau there is a basic division of two kinds of *pusako* property, namely between *harta pusaka tinggi* and *harta pusaka rendah*. The difference between the two lies in their origin: The *harta pusaka tinggi* originate from the work of our ancestors in the mother's line and are handed down the generations in the mother's line as well. The *harta*

pusaka rendah, on the other hand, do not originate from the work of the ancestors but have been acquired by sale or by other legal means."

Here, the statement that the *harta pusaka rendah* is property which has been bought cannot be read as meaning that bought property is *now harta pusaka rendah*. It becomes *harta pusaka rendah* only after the buyer, for whom the property was *pancaharian*, has died. The intervening inheritance is implicit in the court's statement; and the judge implicitly defines the basic distinction of property in the diachronic dimension.

Another example of this attitude is the use which is made in Minangkabau of the concept of *warih*. In Arabic, *warith* means heir, and in Islamic law, as in western law, one has the status of an heir only after the death of the deceased. In Minangkabau, *warih* is also used to denote the living matrikin of the speaker. This led Dutch scholars to the conclusion, that in Minangkabau, the concept *warih* could not be translated as heir. Van Vollenhoven stated quite explicitly that the *wareh* in Aceh and the *warih* in Minangkabau are the "blood relatives"(*bloedverwanten*) and the "associates of the *mamak*" (*mamak-genooten*) and that these words do not imply any thought of inheritance (1918: 178, 262). I cannot agree with his statement. People *do* think of inheritance when they use the concept *warih*; not only in situations where *warih* denotes persons who would be considered heirs also in western understanding, but also when it is a reference to persons or groups still living. Besides, the different categories of *warih* (*sajari, satampo, saeto, sadapo*, see above p. 99) clearly suggest, that the *warih* need not be "*mamak-genooten*", i.e. *kaum* members, but that they may also belong to quite different, though matrilineally related, social groups. What Van Vollenhoven probably wanted to make clear was that, according to the western logic of property and inheritance law and its ego-centric distinction of the synchronic and diachronic dimension, there cannot be a holder-heir relationship between living persons, i.e. in the synchronic dimension.[55] But if we adopt the Minangkabau manner of thinking in terms of the diachronic dimension, also living persons can be called heirs because "they will have been heirs". It should also be added, that in western colloquial language, the reference to living persons as "heirs" is not uncommon. This dominant diachronic thinking about property relationships in the *adat pusako* is one of the most important elements of the Minangkabau social system. Its importance will become more obvious when the changes in the Minangkabau social system and in the conceptual system of property relationships are described and analysed in the following chapters.

C. ISLAMIC LAW

In this section, the basic principles of Islamic property and inheritance law shall briefly be described. The emphasis is on Islamic law proper; the adaptation of Islamic legal concepts and institutions into Minangkabau *adat* will be discussed later in Chapter 6.

I. *MĀL, MILK* - PROPERTY AND OWNERSHIP

The concept *milk*, which more or less corresponds to the western notion of ownership, involves the right to the most complete and exclusive use and disposition recognized in Islamic law. The property objects, material and immaterial, to which the *milk* pertains, are called *māl*, the holder of such a relationship *mālik* or *rabb* (see Schacht 1964: 134 ff., 135). The concepts *milk* and *mālik* are used for property relationships to things and to the rights to usufruct (Schacht 1964: 135), but a distinction is made between the rights which give control over the substance of the object (the *'ayn*) and those which legitimate the making of profits from the substance (the *manfa'at pl.manāfi'*) (Fyzee 1955: 194). Property is not distinguished according to its mode of acquisition in the sense of a distinction between self-acquired and ancestral/inherited property. With respect to most legal transactions there are no different rules for movable and immovable property (Fyzee 1955: 194).

II. PROPERTY WITHIN THE CONJUGAL FAMILY

The conception of individual property is central to Islamic law. The property acquired during the marriage by both spouses is regarded as the individual property of the spouse who has acquired it by sale, gift, inheritance etc. (Juynboll 1903: 208). The notion of a joint effort is not recognized (cf. Gautama and Hornick 1972: 46). The husband has the obligation to care for his wife's (wives') living. This obligation ends in principle with the dissolution of the marriage, and is only extended to the *iddah*-period, which in the case of divorce covers the time of three menstrual periods. In Indonesia the *iddah*-period is usually 100 days (cf. Fyzee 1955: 181 ff.).

III. PROPERTY TRANSACTIONS AND THE PROHIBITION OF *RIBĀ*

Islamic law allows permanent alienations of property such as sale and barter (*bay', shirā'*). Temporary transactions such as pawning (*rahn*) are allowed, but are subject to the *ribā*-prohibition. The prophet had spoken very harshly of the *ribā*, usury, the taking of interest from other people's property (Koran II, 276). It has consequently become a firm principle of Islamic law, that it is forbidden to make profit or take interest from uses made of property objects which have been given as security for borrowed money (Juynboll 1903: 273). This greatly affects pawning-transactions: The pawnee may not take benefits from the property objects; in the case of pawned land, e.g., he may not use and exploit it. He is merely allowed to sell it, if the debtor does not repay his debts on the specified day (Juynboll 1903: 273).[56]

IV. *HIBA* - DONATION

Islamic law makes a sharp distinction between donations between the living and those which become effective after the property holder's death, the testamentary dispositions. The main distinction is that during his lifetime the property holder may dispose of *all* his property by donation, *hiba*, whereas in testamentary dispositions only one third of his property may be freely disposed of.

The *hiba* is the donation of a property object; to be exact, the donation of the substance (*'ayn*) of it. Donations of the profits or benefits which may be drawn from property objects are called *'āriya* (Fyzee 1955: 187). Donation is the transfer of the right to the substance of the property object without return and without consideration. In order to be valid, it must have contractual form: It must be offered (*ījāb*) and accepted (*kabul*). In general, the possession of the object must be delivered at once (Fyzee 1955: 187, 198). In the cases where donor and donee live in the same house or in the cases of *hiba* between husband and wife, or between parents and their son, immediate delivery of possession is not required, but there must be at least an unequivocal manifestation of the donor's intention to transfer the exclusive possession of the property objects (Fyzee 1955: 199 f.). Donations are in principle irrevocable. Once completed, they can only be revoked by the intervention of a court of law or with the consent of the

donee (Fyzee 1955: 223 f.).

V. *WASIYYA* - TESTAMENT

The autonomy of the individual to dispose of his or her property by testament (*waṣiyya*) is limited in Islamic law. Only one third of the property (after the subtraction of debts and other liabilities) may be disposed of in this way. The rest of the inheritance *must* fall to the legal heirs whose intestate inheritance is laid down in the Koran (Juynboll 1903: 255; Fyzee 1955: 303). The making of a testament is, however, regarded as *mandûb*, advisable, by the *syarak*. Testamentary dispositions may not be made to one of the intestate heirs, for according to the interpretation of the Islamic jurists, testaments may not interfere with the inheritance portions as they are laid down in the Koran (Juynboll 1903: 256).

The same restrictions also pertain to donations which are made during the last illness, the "sickness of death" (*marḍu'l-mawt*). Such donations are subject to the formalities and conditions of a *hiba* and all restrictions pertaining to the *waṣiyya* (Fyzee 1955: 314 f.; Juynboll 1903: 257).

VI. *WAKF* - PROPERTY OF "THE DEAD HAND"

The concept *waḳf* (Ind.: *wakaf, wakap*) literally means "detention". In Islamic law it denotes 1) State lands which are used for charitable purposes and which are inalienable, and 2) pious endowments. In Indonesia, *wakaf* is only used in the latter sense. By *wakaf*, property objects are given to "the dead hand", i.e., they are exempted from business dealings with the destination that their use and profit shall flow to a certain, mostly pious or religious goal, or to a certain group of people (Fyzee 1955: 231 f.; Juynboll 1903: 274). It is the basic motive for the *wakaf* that the property object will belong to God and that its usufruct be dedicated to specified persons of a charitable purpose in general (Fyzee 1955: 235). Only persons who are entitled to dispose freely of their property may make a *wakaf*. The object given must be definitely specified as well as the beneficiaries of its profits. The use to which the property is dedicated must be permissible in law (Juynboll 1903: 275 f.).

VII. *FARAIDH* - INTESTATE INHERITANCE

The Islamic inheritance law (Ind.: *hukum faraidh*) is derived from the inheritance portions which are laid down in the Koran. In Arabic, these portions are called *farīdah*, pl. *farā'iḍ*. The Koranic heirs are called "members of the *fardh* - portions (*dzawu'l - farā'iḍ*)". As the knowledge of the fixed portions is the most important and complex part of Islamic inheritance law, the inheritance law as a whole has become known under the name of *'ilm al-farā'iḍ* (Ind.: *ilmu hukum faraidh*), the science of the inheritance portions (Fyzee 1955: 337; Juynboll 1903: 246).

The Islamic law of intestate inheritance is a combination of the pre-Koranic Arabic tribal inheritance law and the new legal rules which were revealed to Mohammed by Allah. Before the establishment of Islam, the Arabic tribes had an agnatic inheritance law. Only the *'aṣabāt*, the agnates, were entitled to inherit. This law was changed by Mohammed. The Koranic verses (IV, 12-15, IV 175) do not contain a completely new regulation but only change the traditional system (Juynboll 1903: 239, 241; Fyzee 1955: 329 f.; Schacht 1964: 169 ff.).

The basic principle of intestate inheritance law is that the Koranic heirs must first get the share determined in the Koran, and that thereafter the rest falls to the *'aṣabāt*. In the Koran, a fixed portion is given to the daughter, both spouses, and the brothers and sisters. The range of the Koranic heirs has been extended by "The Learned" to include the son's daughters, the grandparents, and the matrilateral and patrilateral half-sisters (Juynboll 1903: 250). Some of the Koranic heirs lose their right to a fixed portion if they inherit together with a son (sons), and can in this case only inherit as *'aṣabāt*. In terms of inheritance law, the *'aṣabāt* recognized as heirs are the close male agnates and four specified female agnates: the daughters, the son's daughters, the full sisters and the half-sisters (Fyzee 1955: 339).

It is impossible to give a full overview here of all possible combinations that may occur. They can be found in the relevant literature (see Juynboll 1903: 251 ff.; Fyzee 1955: 336 ff.) and are a constant reminder of the prophet's aphorism "that the laws of inheritance are one half of useful knowledge". Here, only a short overview will be given:

The Koranic Heirs:

1. The daughters have, as Koranic heirs, the right to ½ of their parent's inheritance. A set of more than one daughters inherit 2/3 together. If the daughter(s) inherit together with a son, they are not entitled to their Koranic portion but only inherit as *'aṣabāt* after the distribution of the other Koranic shares. Their portion then is one half of what the sons inherit (Juynboll 1903: 251).
2. The same rules apply for the son's daughters respectively.
3. The father of the deceased is always entitled to 1/6 of the inheritance. He can, in addition, inherit as *'aṣabāt*, unless he is excluded by the closest agnates, the deceased's descendants.
4. The grandfather's Koranic portion is 1/6, but he is excluded by his son, the deceased's father. If the grandfather inherits together with the deceased's brothers, he inherits as *'aṣabāt* on the same level as the brothers.
5. The mother's portion is 1/6, if she inherits together with children, son's children, or two or more brothers and sisters. In all other cases her portion is 1/3 of the inheritance.
6. The grandmothers' share is 1/6. But the father's mother is excluded by the father, and the mother's mother by the mother.
7. The full sister's share is ½, two or more sisters together inherit 2/3. If sisters inherit together with a full brother, they only inherit as *'aṣabāt* and receive half of their brother's share. Full sisters are excluded by the sons, son's sons, and by the father. As *'aṣabāt*, they inherit on the same level as the grandfather.
8. Patrilateral half-sisters inherit like full sisters, but are excluded by full sisters who together inherit 2/3. If there is one full sister and one half-sister, the full sister gets ½ and the half-sister 1/6 of the inheritance.

9./10. The matrilateral half-brothers' and -sisters' part is 1/6. If two or more come together, they inherit 1/3 together. They are excluded by the children, the son's children, the father, and the paternal grandfather.

11. The widower's portion is ½. If he inherits together with a child or a son's child, his portion is 1/4.
12. The widow's portion is one half of what the widower would inherit, thus 1/4 and 1/8 respectively. If there is more than one widow, they share the widow portion together.

After these portions have been given to the Koranic heirs, the *'aṣabāt* take the rest in the order of: descendants, male descendants' children, father, grandfather and siblings. There may be cases in which the Koranic heirs consume the whole inheritance and nothing will be left to the *'aṣabāt*, e.g., when a man leaves both parents and two daughters: 2/3 should be inherited by the daughters and 1/6 each by the parents. There may also be cases where the portions of the Koranic heirs amount to more than 1, e.g., when someone leaves a husband and two sisters, who should inherit ½ and 2/3 respectively. The solution for such situations is to increase the denominator to make it equal to the sum of numerators and allow the individual numerators to remain constant, thus achieving a proportionate decrease of the share of each heir. This artificial inflation is called *'aul*, *'awl*, which means literally "increase". Its real effect, however, is the proportionate reduction of the shares (Fyzee 1955: 355). If the Koranic portions amount to less than one and there are no *'aṣabāt* to take the rest, the rest returns to the Koranic heirs in propertion to their shares. This situation is called *radd*, "return" (Fyzee 1955: 256).

VIII. DEBTS

In Islamic law, the deceased's property does not become the indivisible common property of the heirs. Debts can only be claimed against the deceased's property, and the individual heirs are effected by such claims only in proportion of their shares (Juynboll 1903: 242; Fyzee 1955: 326). It is the theory of Islamic jurisprudence, on which the rights of inheritance are based, that even after his death the deceased's rights in his property still inhere in *him* to the extent necessary for meeting the funeral expenses and the legal obligations which he had incurred during his lifetime (Fyzee 1955: 326). The heirs themselves therefore are not liable for the debts of the deceased, the debt-relationships are not continued by the heirs. However, they can only claim their inheritance portion after the proportionate reduction of the debts from the inheritance.

D. WRITTEN LAW

The Dutch law of property and inheritance, laid down in the Civil Code (*Burgerlijk Wetboek*, B.W.) and elaborated in court decisions and books produced by legal experts, had been received in the Colony of the Dutch East Indies in 1848. It has already been mentioned, that the Minangkabau *adat* was in principle left untouched by Dutch property and inheritance law, and by written law in general. However, some exceptions were made by laws which made inroads into the *adat* system of property relationships. These laws, which mainly affected the property relationships to land, shall be described in the second part of this section. At first, a brief outline must be given of the Dutch system of property and inheritance law. For the few legislative enactments that affected the Minangkabau system of property relationships were based upon it. In addition it must be remembered that, even if the applicability of Dutch law was restricted to a few exceptions in the *legal* context, it still was existent in Minangkabau as a cultural phenomenon: The villagers had some very vague notions of it, and the administrators and judges in the Dutch colonial courts, as well as the judges in the contemporary State Courts, had been socialized within this system; factors which are well of importance for the analysis of the change which has taken place within the *adat* system.

I. THE BASIC PRINCIPLES OF DUTCH PROPERTY AND INHERITANCE LAW

1. *Eigendom - Ownership*

Eigendom, as defined by art. 625 B.W., is the capacity to use a property object freely and control it and dispose of it in the most absolute way (*volstrektste wijze*), provided such actions do not violate the law or other public regulations, and under the condition that they do not violate the rights of other persons. It embodies the greatest degree of autonomy over property objects that is conceded to the individuals in Holland and it is the quantitatively most complete relationship.[57] As the relatively most complete right it embraces all other kinds of property relationships in the sense that all others must be derived from the *eigendom*. As Pitlo has stated, it would, however, be wrong to consider this elasticity as *the* criterion of the *eigendom*. For relationships which have provisional character in relation to the *eigendom* can also be residual relationships in relation to lesser provisional rights. This is, e.g., the case

with the inheritable lease, *erfpachtrecht*, in relation to the right of usufruct, *vruchtgebruik* (see Pitlo 1965: 125, 1966: 302 f.). In practice, the *eigendom* can be reduced to the letters of the concept, if comprehensive provisional relationships are derived from it, or in the case where *eigendom* is given as security for debts, where the new owner is severely restricted in his autonomy over the *eigendom*-object (Pitlo 1965: 123). The basic characteristic of *eigendom* is that the *eigendom*-relation is unlimited in time, whereas all other property relationships are provisional in time (Pitlo 1965: 123, 126).[58]

2. *Mede-Eigendom - Communal Ownership*

Eigendom can be held by individuals but also by more than one person. In the latter case, the *eigendom* is called *mede-eigendom*. The explicit treatment of *mede-eigendom* in Dutch law (in the B.W.) is less systematic than in other contemporary western legal systems (e.g. in German law), but the Dutch law shares more or less the same rules which obtain in most contemporary laws and which all are a mixture of the late Roman and the Germanic tribal laws. Two basic forms of *mede-eigendom* are distinguished:

1. property, where the fact of common *eigendom* holding is the only legal bond which unites its owners. This is derived from the Roman *condominium* and is called "free communal ownership", *vrije mede-eigendom* (in German law: *Miteigentum*, in English law: joint ownership);
2. property, where the fact of common *eigendom* holding is the effect of a different cause, if there is another legal bond which united the owners, such as the fact of being heirs to the same person. This is derived from the Germanic "*Gesamthandseigentum*" (Dutch: *gezamenhandse eigendom*) which is called "bound communal ownership", *gebonden mede-eigendom* (In German law: *Gesamthandseigentum*, in English law: common ownership).[59]

The two forms of communal *eigendom* are subject to different legal consequences with respect to the divisibility of the *eigendom* relationship and to the degree of the autonomy granted to the individual communal owner. *Division* is the legal action by which the common or joint ownership is dissolved. *Vrije mede-eigendom* can always be divided. For *gebonden mede-eigendom* there are no uniform rules. The division of inheritance, one form of *gebonden mede-eigendom*, for instance, can always be demanded (art. 1112 I B.W.), whereas marital property cannot be

divided as long as the marriages persists. As a general rule it may be stated that the division is always possible if the legal bond which unites the owners is dissolved.[60]

As regards the autonomy to dispose of *mede-eigendom*, there is a basic difference: With respect to *vrije mede-eigendom*, each owner has his share in the communally owned objects, which is itself a separate property object of which he can dispose of freely (Pitlo 1965: 150). With respect to *gebonden mede-eigendom*, each owner has the full right to the whole *eigendom*-complex, but is restricted by the equally full rights of the others. The individual cannot dispose of this kind of "share" (Pitlo 1965: 150). But the law is not explicit in this respect. The *gebonden mede-eigendom* developed out of the Germanic *Gesamthandseigentum*. This was characterized by the rules, that only all owners could dispose of the property together, that no individual owner could dispose of his share, and that there was the institution of accrual, *aanwas*. *Aanwas* meant that if one of the owners left the common bond of property holding, his ideal share fell to the other owners (Pitlo 1966: 467). The institution of accrual has in the meantime been abolished in most forms of communal property. In inheritance, accrual still occurs if, in the case of testamentary dispositions, one of the testate heirs has predeceased the others. His part accrues to the other testate heirs (art. 1049 B.W.; Pitlo 1965: 151).

3. *Marital Property Relationships*

Unless the spouses make different provisions in a contractual agreement (*huwelijksvoorwaarde*)[61], the marriage creates a form of communal property which does not correspond to the two forms of *gebonden* or *vrije mede-eigendom*.[62] The communal marital property (*algehele gemeenschap van goederen*, art. 93 B.W.) includes the spouses' property before marriage and in principle all property which they acquire during marriage. Property acquired by one of the spouses by donation or inheritance in principle also becomes communal property, unless the donor or testator has explicitly directed otherwise (art. 94 B.W.). As in *gebonden mede-eigendom*, there are no definite fractions of the two owners in the individual property objects or the property as a whole, but the communal holding of the property relationship is sharply dissociated from the rights of control and disposition: Each spouse has the full right to control and to dispose of those property objects which came into the communal property from her/his side (art. 97 I B.W.), and each spouse can invalidate

a legally relevant action of the other spouse over property objects which he/she had brought into the communal property, unless it was an "action of ordinary control" (*daad van gewoon beheer*) or unless the third party acquired the property *bona fide* (art. 98 II B.W.).

4. *Inheritance*

In Dutch law, the individual's capacity to be a holder of a property relationship ends with his death. The deceased's property relationships are continued by his heirs. This transfer is effected in and through law. This holds true for both intestate and testate forms of inheritance. Unless the property holder makes directions as to who shall continue his property relationships, the law provides the rules which determine who the heirs are.[63]

a. Intestate Inheritance

The Dutch law of intestate inheritance calls the following groups of relatives as heirs in successive order (see Pitlo 1966: 430 ff.):

1. The first group is constituted by the spouse and the children, each of whom inherits one half of the property. In the case of several children, the childrens' portion is divided into equal shares. If the deceased leaves no children or no spouse, the spouse or the children respectively receive the whole inheritance (art. 899, 899a B.W.). The principle of representation functions in the descending line: For a predeceased descendant, his or her share is taken by his or her descendants (art. 888, 889 B.W.).
2. If there are no persons of the first group, the heirs of the second group inherit. This is constituted by the parents and the siblings of the deceased. In principle they are each allotted an equal share: The parents inherit 1/4 each and the rest is divided in equal shares among the siblings. But if there is only one sibling, the parents and the sibling inherit 1/3 each of the property (art. 901 B.W.). The principle of representation is also applied to the heirs in this group.

If there are no heirs of the first two groups, the inheritance is divided. One half is for the patrilateral, one for the matrilateral relatives (art. 900 I B.W.). They inherit in the following order:

3. In the two groups of relatives, the direct ascendants have priority. They form the third group, whereby the closer ascendant excludes the

more distant one (art. 900 II B.W.).

4. Only if there are no direct ascendants, the lateral relatives (*zij-verwanten*) come to inherit, who form the fourth group of heirs. Here, too, the closest relatives exclude the more distant ones. Relatives are recognized as (potential) heirs until the 6th degree. If there is no heir in one of the groups, the whole inheritance is inherited by the other group of heirs. If there are no relatives to the sixth degree, the inheritance falls to the State (art. 879 II, 1172 ff. B.W.).

Before 1923, the law of intestate inheritance put much greater emphasis on kin as heirs. The range of relatives who could be heirs extended to the 12th degree. The inheritance by the spouse was virtually excluded, for spouses were only called to inherit if there were no relatives. Only in 1923 (with the introduction of art. 899a B.W.) was the spouse given the same status as the children,and the range of the relatives who could inherit was restricted to include relatives to the 6th degree only (Pitlo 1966: 430).

b. Testate Inheritance

The property holder can also direct his property to fall to other persons than the legal heirs in a testament. Testaments are revocable until the death of the property holder and only take effect with and through his death. The testator can invest the beneficiaries as heirs, whose status then equals the status of legal, i.e. intestate heirs. But he can also make a *legaat*, a legacy, by which he allots some of his property to specified persons. The legatees do not have the status of heirs but only are given a claim against the heirs with respect to the property specified in the *legaat*.

5. *Donation and Contractual Inheritance*

In Dutch law, donations are contracts. The donor gives property to the donee irrevocably and without contraprestation (art. 1703 I B.W.). Donations may only be made *inter vivos* (art. 1703 II B.W.) and with respect to property which is held by the donor at the time of the donation (art. 1704 I B.W.). The new family law of 1969 (S. 1969: 257) introduced an important exception to these general principles: It allows spouses to make donations to each other in the marriage property agreement (*huwelijksvoorwaarde*, art. 146 I B.W.). These donations may com-

prise a part or the whole of the donor-spouse's inheritance (art. 146 II). Such donations are in principle irrevocable (art. 146 III) and need not be explicitly accepted by the donee (art. 146 IV B.W.). Although the law treats these transactions as "donations" (*giften*), they amount, in fact and in law, to the investment of the donee-spouse as an heir. In the case of such donation, the donee-spouse does not acquire a claim against the heirs, but becomes heir him- or herself: The principle of *saisine* (see Note 63) applies in the same way as in the case of testate or intestate inheritance (Klaassen, Eggens and Luijten 1973: 332).

6. *The Restriction of the Individual's Autonomy*

The individual's autonomy to dispose of his property by testament or donation is quite severely restricted in Dutch law. The most decisive restrictions are contained in the rules which protect the so-called *legitimarissen* (art. 960 ff. B.W.), the "legitimate heirs".[64] The law allots to some persons the right to a legitimate portion of the inheritance. This is a fraction of the portion which these persons would have inherited if the property holder had made no testament. The persons thus protected are the direct lineal descendants and ascendants of the property holder: *Legitimarissen* therefore are found in the first three groups of intestate heirs: In the first group the children or their descendants, in the second the parents, in the third group the other direct lineal ascendants of the holder. The spouse, although placed in the first group of intestate heirs is (other than e.g. in German law) no legitimate heir.

The legitimate portions are the following: Legitimate heirs in the ascending line are always entitled to ½ of their intestate share as legitimate portion (art. 962 B.W.). For children, there is a differentiated regulation (art. 961 B.W.): If there is only one child, it is entitled to ½ of its intestate share. Two children are entitled to 2/3 of their share, and in the case of three or more children, the legitimate portion amounts to 3/4 of the intestate portion.

The rules protecting the *legitimarissen* primarily pertain to the field of testamentary dispositions. However, the testamentary dispositions which violate the rights of the *legitimarissen*, are not automatically void. They *can* be invalidated at the request of the legitimate heirs to the degree necessary to fulfill their claims (art. 967 B.W.). If there are no legitimate heirs, the testator can dispose of all his property

by testament (art. 964 B.W.). But the retroactive restriction of the individual's autonomy does not only affect testaments. It can also affect donations which were made in accordance with the donor's legal capacity and which had become effective during his lifetime. Art. 967 B.W., which lays down the legitimate heirs' right to invalidate the testator's legal actions, makes no distinction between testaments and donations *inter vivos*: It speaks of "gifts, either made by testament or by donations *inter vivos*". And art. 960 B.W. provides that the legitimate portion of the *legitimarissen* "is that part of the deceased's property, ... of which the deceased was not entitled to dispose *by donation during his lifetime and by testament*".[65] In order to assess the value of the "total inheritance" and the fractions that constitute the legitimate portions, all property which the deceased holder has given away as donation during his lifetime will be added to the actual inheritance (art. 968 B.W.). There is no temporal restriction. In principle, *all* donations can be included.[66] But these donations will be taken into account only insofar as they are necessary to fill up the legitimate portion. Primarily, the property disposed of by testament is used. If donations are taken into account, one starts with the last one and, if necessary, proceeds further into the past according to the chronological order of the donations (art. 971 B.W.).

II. WRITTEN LAW IN MINANGKABAU PROPERTY RELATIONSHIPS

The inroads which written laws have made into the Minangkabau system of property relationships have mainly affected property relationships to land.

1. *The Decree of 1853 Concerning the Pusako-Eigendomsakte*

In 1853 a Governmental Decree was issued for the West Coast of Sumatra, which allowed the establishment of an "*eigendoms-akte*", an ownership-deed for immovable property, the so-called *pusako-eigendoms akte* (*Gouvernementsbesluit* 7.3.1853, S. 1853: 14a). Immovable property which was *harato pusako* could be registered as *eigendom* and partly became subject to Dutch law. Art. 2 of the Decree said:

"In the case of a transfer of a part or the whole of some immovable property which belongs to a member of the Native population of Sumatra's West Coast, and of which an ownership-deed has been established, the highest local authority shall issue the documents of evidence which may

be required for the inheritance, the division of the deceased's estate, or for other transfers, after a consultation with the competent regents, *suku*- and family heads."[67]

The registration was carried out by the Governor's office. The oldest living female of a *kaum* was usually registered as owner. After her death, the names of her daughters were entered as new owners and heiresses. A remark was added that the property had been received as inheritance (*ten erfenis*) (Sarolea AB 27: 277). The Decree was amended in 1910. The task of registration was transferred to the *rechter-commissaris*, the "examining magistrate", and the method of registration was changed. The whole *kaum* was entered as owner specified by its *mamak kepala waris* who acted as family head (Sarolea AB 27: 273, 1920: 124). Some of the legal consequences of such registrations seem to have been generally acknowledged. The *harato pusako* registered could be mortgaged and traded outside the native world. The borders of the property were also registered in the *kadaster*, the land registry. But in principle such property became subject to Dutch *formal* law only, i.e. the substantive legal consequences attached to such property remained those of *adat* law (Sarolea AB 27: 275). This mixture of Dutch law and *adat* gave rise to very conflicting interpretations. In the sixth Chapter it will be shown how these were resolved in practice.

2. *The Agrarian Act of 1870*

A similar provision was introduced for the whole Colony in 1870 through the Agrarian Act (*Agrarische Wet*, S. 1870: 55), which contained a series of amendments to art. 62 R.R. (1854) (later art. 51 I.S.). Art. 62(7) as amended by the Agrarian Act read as follows:

"Land, which is held by a native Indonesian with the right of *milik* shall, upon proper application of its owner, be converted into land with right of *eigendom*; with such conditions and limitations as shall be prescribed by Ordinance and noted on the land deed, i.e. conditions regarding the owner's responsibility towards the State and village, and limitations of his power to sell such land to non-natives" (Gautama and Hornick 1972: 76).

This law was implemented for Java and Madura in 1872 (S. 1872: 172). Only individual holders were permitted to convert *milik* rights into the new form of "agrarian ownership", *agrarische eigendom* (Gautama and Hornick 1972: 87). Although it was a right in "Indonesian" land, it had to be registered at the Colonial Land Registry and could be mortgaged according to the rules of the Dutch Civil Code. But the conversion provisions were so complex that only few Indonesians took advantage of

the provision (Gautama and Hornick 1972: 87).

3. *The Ordinance Prohibiting the Alienation of Land*

In 1875, an Ordinance was enacted (*Grondvervreemdingsverbod*, S. 1875: 179) which prohibited the alienation of land held under *adat* rights to members of the non-Native population groups (cf. Gautama and Hornick 1972: 83).

4. *The Declaration of State Domain*

The most radical violation of the *adat* system of property relationships was contained in the so-called Domain-Declaration. Art. 1 of the Agrarian Decree in which this declaration was contained[68] provided "that all land which is not proven to be held with the right of *eigendom* shall be deemed to be the domain of the State".

The main purpose of this provision was to provide the Colonial government with a legal basis for conveying western (Civil Code) rights in land to foreign entrepreneurs. For according to Dutch property law, only the *owner* of land could transfer (provisional) Civil Code rights. The position of the State therefore had to be converted into that of an owner (*eigenaar*) (cf. Gautama and Hornick 1972: 80). For Sumatra, a separate domain declaration was issued in 1874, which differed somewhat from the general declaration which was implemented on Java and Madura. Art. 1 said:

"All wasteland in the Sumatran districts under direct Government rule (*Gouvernementslanden*) are part of the State's domain, unless members of the indigenous population exercise rights over it which are derived from the right of reclamation of unused land (*ontginningsrecht*). Except for the cultivation rights of the population, the right of disposal is exclusively vested in the Government."[69]

This meant for Minangkabau that the *tanah ulayat* was considered to fall under the domain of the State.[70] But in practice, the Government of West Sumatra was very reluctant to enforce these provisions as they were so much in contrast with *adat* (cf. AB 11: 88, and the story in Chapter 5: 259 ff.).[71]

5. *Mortgages*

In 1908 a law was enacted which permitted Indonesians who held "Indonesian" land, i.e. land held in accordance with *adat* or *agrarisch eigendom*, to give mortgages *(credietverband)* on their land to specified European banks (S. 1908: 542, 1909: 584, for details cf. Gautama and Hornick

1972: 108 ff.). The banks were only specified in 1937 (S. 1937: 191).[72]

6. *The Basic Agrarian Law of 1960*

The Government of Indonesia made an effort to abolish the dualistic land law with the Basic Agrarian Law of 1960 (*Undang2 Pokok Agraria*, law 5 of 1960, LN 1960: 104).[73] The new law is professed to be based upon *adat* law, but *adat* law is applicable only in so far as it does not contradict:

- the national interests of the State,
- the principles of Indonesian socialism,
- the regulations of the Basic Agrarian Law,
- other statutory regulations,
- stipulations based upon religious law (art. 5).

The provisions of the Basic Agrarian Law are, however, to a great extent modelled on western property law. The law recognizes some clearly defined relationships to land, the most inclusive of which is the *hak milik*, which more or less corresponds with the Dutch *eigendom* (Gautama and Harsono 1972: 39 ff.). All previously existing land rights are to be converted into the rights prescribed by the law. *Hak milik* can come into existence in three different ways (see Gautama and Hornick 1972: 97 f.):

1. Rights under *adat* law, which recognized *hak milik* (in *adat*), e.g. in the form of newly cultivated land, can be registered under the Basic Agrarian Law if the holder can prove that he has complied with the *adat* provisions.
2. The Government may grant *hak milik* to citizens or corporations out of the State Land.
3. Most *hak milik* is created by a conversion of property rights which existed before the introduction of the Basic Agrarian Law. According to the conversion-provisions[74] the former rights of *eigendom, agrarisch eigendom* and *milik* (*inlandsch bezitsrecht*) can be automatically converted into *hak milik*, provided that the holders of the old right are also qualified to hold the new rights.

Of the many further provisions concerning the sale, transfer, and pawning of land, one provision is of particular importance. Section 7 of law 56 of 1960 (reprinted in Harsono 1973: 236) reads:

"Agricultural property held with the *hak gadai* (which has been pawned) for 7 years or more at the time at which these regulations come into force, has to be returned to its owner within a month after the last harvest, without any enforceable claim to the *uang tebusan* (the pawning

sum)."

The introduction and implementation of the Basic Agrarian Law and its innumerable regulations has had little success so far. In Minangkabau in particular, hardly any land has been registered under the new provisions (see below Chapter 5: 281 ff.). The provision affecting the free return of pawned property after 7 years was applied by some courts during the first period after the introduction of the law (case 318 of 1963 PN Padang, 65 of 1963 PN Payakumbuh). Since the middle of the 60's, however, the courts have stopped enforcing the provision as it is obviously unsuitable for the situation in Minangkabau.[75]

The old regulations concerning mortgages on Indonesian land were not repealed by the Basic Agrarian Law, and at present there is some legal uncertainty (Gautama and Hornick 1972: 109) as to which rules should govern the field of securities given for loans. Most state banks in West Sumatra still accept *harato pusako* land as security, if all *kaum* members have given their consent. These credit relationships are partly governed by *adat* law, partly by Dutch law and government regulations.

7. *The Marriage Law of 1974*

Some regulations concerning marital property law were introduced by the new marriage law which was enacted in 1974 and which is to be applied uniformly throughout all Indonesia since 1.10.1975 (*Undang2 Perkawinan*, Law no. 1 of 1974. On the law see Prins 1977, Soewondo 1977, Ismuha 1978).

In principle, the marital property relationships remain based upon *adat*. Property acquired during the marriage becomes common property (*harta bersama*). Husband and wife may dispose of this property only if the other spouse agrees to it. Property brought into the marriage by one of the spouses (*harta bawaan*), as well as property acquired by one spouse during the marriage by way of gift or inheritance, remains under the exclusive control of the spouse concerned, and each spouse can dispose freely of his or her property (art. 35 and 36). Upon divorce, the common property is divided according to the "law of the parties", i.e. according to the *adat* law, religious law, or other law which applies to them (art. 37). For polygamous marriages the rules are the following: The second and further wives have no rights to the property which already had been acquired by their husband and his first wife. All wives have an equal right to the property which has been acquired after their respective marriage (art. 65).[76]



Men ploughing



Women planting rice

CHAPTER FIVE

THE LEVEL OF PERFORMANCE I: THE FULFILMENT OF THE FUNCTION

A. INTRODUCTION

In this chapter I shall describe and analyse instances in which Minangkabau women and men are engaged in property affairs; episodes in people's lives in which they successfully or in vain attempt to establish situation-images of continued property relationships. I shall try to relate as much as possible of the socio-economic and socio-political background in which the events took place, and I shall also indicate the kind of information upon which my reconstruction of the stories is based. This may help the reader to understand better the activities in the stories, and at the same time provide him with at least a minimal check on the interpretation which I have given to them.

The stories told in the first part of this chapter have been ordered according to the networks of interpersonal relationships which are typical in Minangkabau; typical in so far as all processes of diachronic transfers must occur in them. The classification of the stories thus closely corresponds to the one by which the Minangkabau themselves would indicate the context in which actual cases of diachronic transfers take place. These are:

1. The relationships within a *kaum*.
2. The relationships between two or more *kaum*.
3. The situation where a *buah gadang* is extinct.
4. Relationships between two or more social strata.
5. The relationships between children and the (their father's) *kamanakan*, between *anak pisang* and *bako*.
6. The relationships between children, particularly between the children of one man and different wives.

These stories show the Minangkabau as actors in the social processes which involve the relationship between the behaviour of the individuals and the factors which influence it,and the conceptions through which they explain and justify their actions and wishes. To borrow the words by which Turner has characterized the social drama:

"The social drama itself represents a complex interaction between normative patterns laid down in the course of deep regularities of conditioning and social experience, and the immediate aspirations, ambitions, and other conscious goals or strivings of individuals and groups in the here and now" (1968: XXV).

This complexity is of a particularly high degree in Minangkabau, as there is a plurality of cognitive and normative patterns that can be employed by the individuals. As Tanner has pointed out, legal pluralism in Minangkabau (as, of course, elsewhere) "provides interesting opportunities of dispute strategy" (1969: 46), and this certainly applies to the dispute strategies in property and inheritance affairs. Yet,as has been outlined in Chapter 1, we shall adopt a wider perspective: Legal pluralism provides opportunities for the strategy of establishing new unproblematic situation-images in general. The social processes which achieve this goal may involve disputes, but they may also be quite unexciting trouble-free affairs. Though most of the stories in the first part of this chapter have a highly dramatic form, they are not treated as "social dramas" (Turner) or "property dramas" of the kind which Turner has analysed among the Ndembu (1957, 1968: 91 ff.). The analysis of the processes of diachronic transfers does not use the morphology of human behaviour as its referent, but the "naked" function of diachronic transfers of property relationships, which is dramatic only inasmuch as it involves "schism and continuity" of property relationships.

The stories will illustrate nearly the whole range of the modalities by which property relationships can be transferred in Minangkabau. It will be seen that the actors employ the various conceptions provided by the three systems of property relationships and, of course, their own innovative syncretisms. In this respect, too, the stories can be taken as apt illustrations of Minangkabau inheritance behaviour. They cannot, however, be understood as indicating the statistically dominant behaviour as far as the content of the concrete solutions of the processes is concerned. I am quite aware that for a complete understanding of property and inheritance affairs in Minangkabau such impressionistic stories, impressionistic when considered in relation to the statistically dominant outcome, are not sufficient.[1] One would have to know the functional

value of:

- the various modalities of diachronic transfers in relation to the overall maintenance of property relationships through time,
- the cognitive and normative conceptions used in the various diachronic transfers,
- the agents of socio-political authority who validate the new situation-images of continued property relationships.

Further, we would like to have a differentiated picture of:

- the conceptions employed by the main actors in these processes as well as of those conceptions in which the new situation-image is finally conceived,
- the kind of property objects involved in these processes, their legal status, their natural characteristics, and their economic value.

Finally, we should demand a quantitative statement on the question of what makes people (of which sex, age, traditional or modern social status and of which economic means) employ which mechanism of diachronic transfer, which cognitive and normative conceptions, in what sorts of circumstances?

In the second part of this chapter I shall try to deal with these questions. There, I describe and analyse the various modalities of diachronic transfers in isolation, and I shall try to indicate the functional values of the factors which I just have mentioned. Yet I am afraid that the questions which I have outlined above must largely remain unanswered. The available data, including the data we have collected during our field research, are much too meagre to yield a systematic quantitative description and analysis. Systematic statistical research would by far have exceeded the manpower of our husband and wife team, and it would also have presupposed most of the knowledge which is laid down in this study. Some statistical data can be given, but for the rest I must rely on a qualitative analysis, which should, however, be related to the wider frame of reference which has been outlined above.

B. STORIES OF PROPERTY AND INHERITANCE AFFAIRS[2]

I. THE SITUATION IN A *KAUM*

In what follows I shall describe the property relationships within the *kaum* on whose *harato pusako* we lived during our stay in CKL. The genealogy of the *kaum* members and the location of its *harato pusako* and the houses of the *kaum* members are shown on the following charts. The numbers in the text refer to the "cases" which will be discussed after the description.

1. *The History of the Kaum of Dt. Kayo nan Gadang*

Sometime in the last century, a man came to Candung with sisters and *kamanakan*. He was a stranger (*orang datang*). As he wanted to settle permanently in the *nagari*, he had to associate (*malakok*) with one of the existing *panghulu*. He was accepted as *kamanakan* (*dibawah pusek, batali budhi*) by Dt. Hitam, one of the oldest *panghulu* of *hindu* Guci III Saniniek. Dt. Hitam gave land, the T 1 (the strip of land number 1 on the map, p. 221), to his new *kamanakan*, which was located in the area of the former *tanah ulayat* (1). After some time, the new *kamanakan*'s group increased, and it was decided to give it the status of a *buah gadang*. The stranger (or his *kamanakan*, or his grandnephew?) was given a *panghulu* title, Dt. Kayo, and he forthwith was considered one of the 100 recognized members of the *Karapatan Adat Nagari* (2). The group built two *rumah gadang* at first, one near the Simpang Tigo and one in the place where now houses 3 and 4 are located. Some time later, a rich man from *suku* Guci "became *punah* (extinct)" (perhaps it was a *buah gadang* that became extinct) and he accepted Dt. Kayo as heir - with the consent of the other *buah gadang* of Guci III Saniniek (3). Through this, Dt. Kayo received much new *harato pusako*: The T 2 and T 3 lands in the area of Salasa and some more land in the area of V Kaum, some hundred meters to the west in the *nagari*. Some of his *kamanakan* (a *jurai*) moved to V Kaum; then they tore down their *rumah gadang* near the Simpang Tigo and built a new *rumah gadang* in V Kaum. This is said to have occurred in 1870. Later, one of their *jurai* moved to the area of Batu Balantai and built a *rumah gadang* on land which they had bought. When the first Dt. Kayo had died, the *jurai* in Salasa and the one in V Kaum both wanted to install the successor. No consensus could be reached, so it was decided that the *buah gadang* of Dt. Kayo should be split, and that both groups should install a Dt. Kayo. The one in Salasa was called Dt. Kayo nan Gadang (Dt. Kayo the Great One), the one in V Kaum Dt.

Kayo nan Ketek (Dt. Kayo the Small One) (4). The division of the property seems to have gone without difficulties: Dt. Kayo nan Ketek kept the property in V Kaum, plus some additional fields in Salasa near their old *rumah gadang*, and the rest was kept by Dt. Kayo nan Gadang.

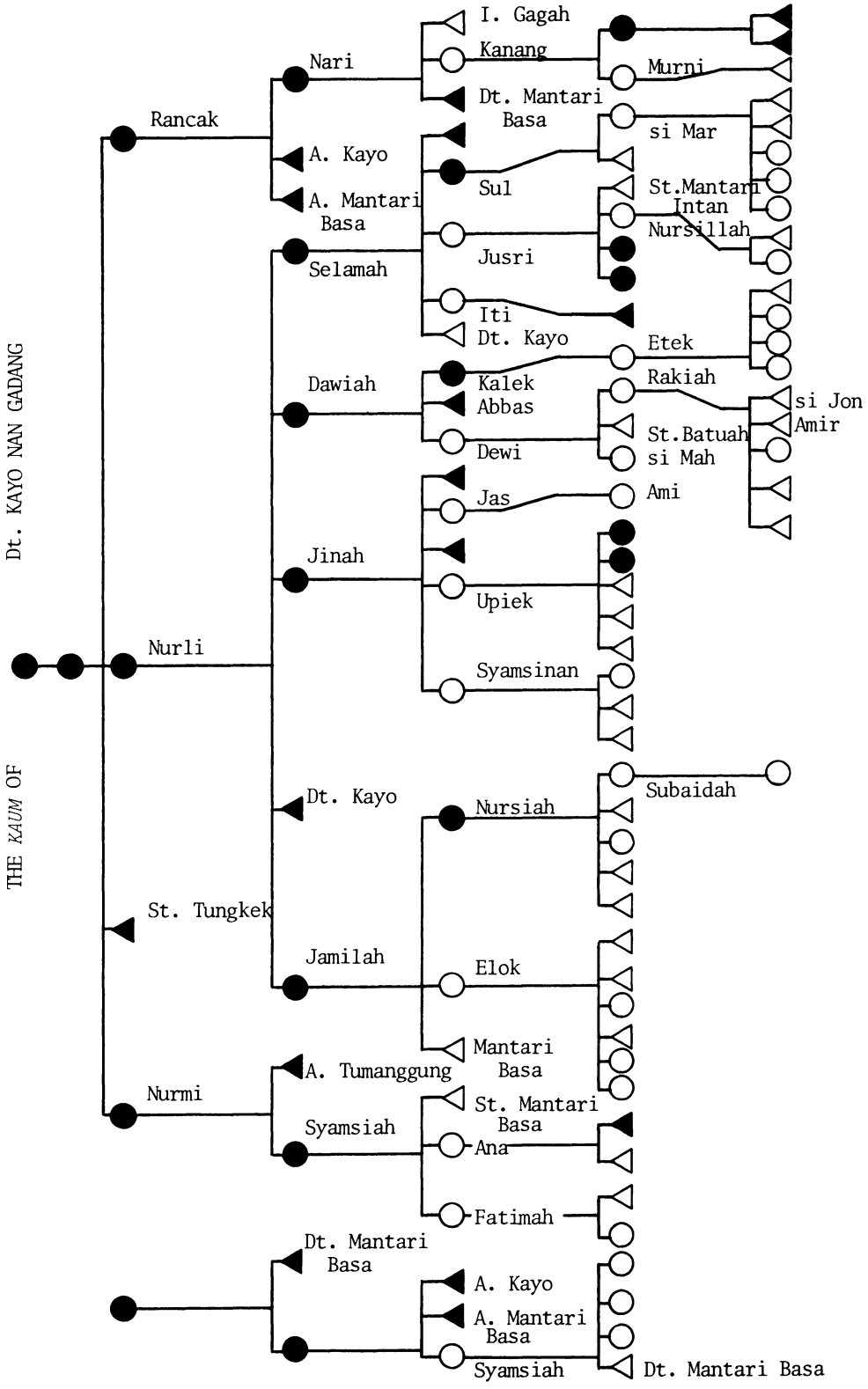
The group of Dt. Kayo nan Gadang, about which I shall mainly report here, continued to live in their *rumah gadang*. As the *kamanakan* increased, additional small houses were built by the sisters and daughters during the course of time. The *rumah gadang* was, however, only torn down in 1972.

Rancak, who had married a man from *suku* Pili, had obtained some land from the *bako* of her children, by *hibah*, to be *turun temurun* in her *jurai* (5). A *rumah gadang* was built, which burnt down twice, and finally house 10 was built. At present, Kanang, her daughter Murni and Murni's current (her third) husband live there with their only child. I. Gagah, the *mamak* of the *kaum*, long a widower, lives in the *surau* in Pakan Kamis.

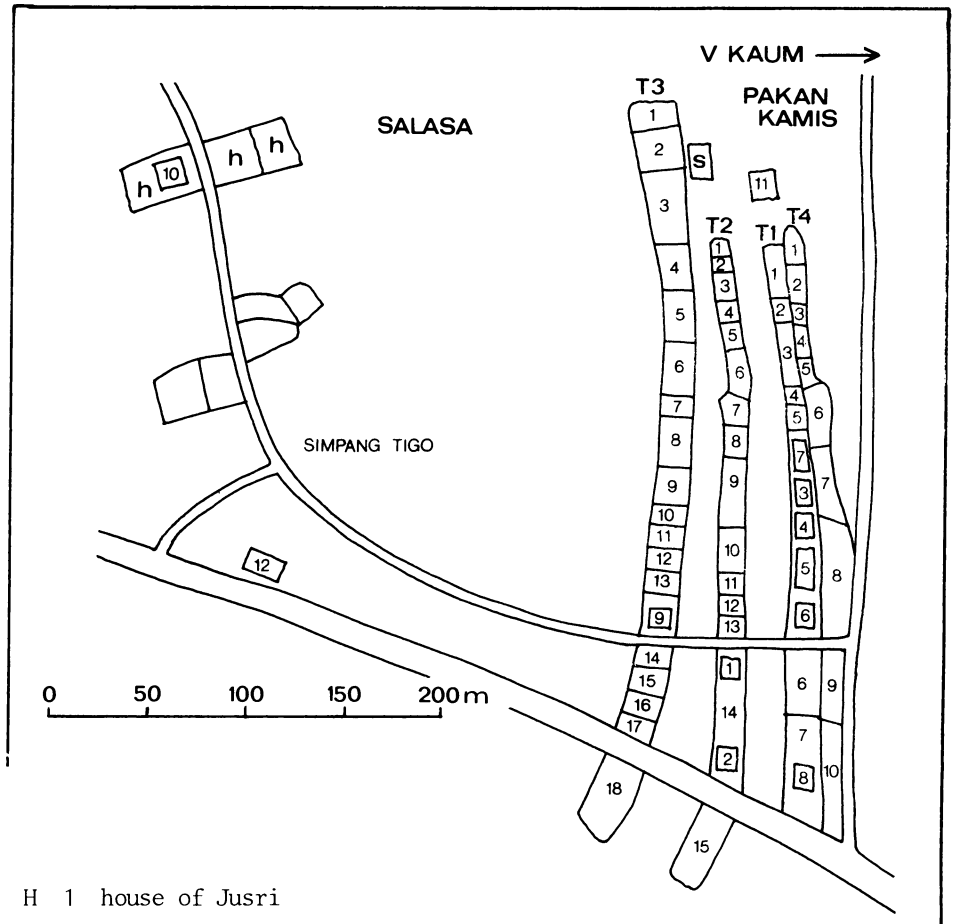
Syamsiah, the daughter of Nurmi, built a house (H 9) on T 3, where she now lives with her two daughters and their husbands. When Fatimah married, the house was too small for the new family, and Fatimah went to stay with her husband who lived in a different part of the *nagari*. This was the only case of a "virilocal" marriage we came across in this part of CKL, and people hastened to say that it was for the time being only, and that they were ashamed that such a thing should happen at all. During our stay in CKL, the house was torn down and reconstructed. Afterwards, Fatimah and her husband moved in there too.

Selamah, the mother of Jusri built a house (H 1) on T 2. Later, another house was built, H 2, when Selamah's daughters had married. Jusri kept H 1, her sister Sul lived in H 2. In H 1 now live Jusri and her daughter Nursilah with her husband and their two children. Nursilah's husband's five children from his first marriage are frequent guests in their house. In H 2 lives si Mar with her five children. Her father, Angku Payuang Ameh (*suku* Sikumbang) stayed there during the last years of his life, and he died in this house during our stay in CKL.

Dawiah and her children built house 5. Her daughter Dewi spent many years outside the *nagari*, as her husband, Dt. Batuah Rajo (*suku* Selayan) was a teacher. She is a widow now and mostly lives in Payakumbuh where her youngest daughter, si Mah, who is still unmarried (24 years old), is a midwife. The other daughter of Dawiah, Kalek, died early, and there was enough room in H 5 for the whole family. Rakiah, who married Dt. Batuah Rajo, a *kamanakan* and the successor of her father, moved out


THE *KAUM* OF
Dt. KAYO NAN GADANG
Rancak
Nurli
St. Tungkek
Nurmi
Nari
A. Kayo
A. Mantari Basa
Selamah
Dawiah
Jinah
Dt. Kayo
Jamilah
A. Tumanggung
Syamsiah
Dt. Mantari Basa
I. Gagah
Kanang
Dt. Mantari Basa
Sul
Jusri
Iti
Dt. Kayo
Kalek Abbas
Dewi
Jas
Upiek
Syamsinan
Nursiah
Elok
Mantari Basa
St. Mantari Basa
Ana
Fatimah
A. Kayo
A. Mantari Basa
Syamsiah
Murni
si Mar
St.Mantari
Intan
Nursillah
Etek
Rakiah
St.Batuah
si Mah
Ami
si Jon
Amir
Subaidah
Dt. Mantari Basa

The Property of Dt. Kayo



H 1 house of Jusri
H 2 house of si Mar
H 3 house of Elok
H 4 house of Upiek
H 5 house of Etek and Rakiah
H 6 house of Rakiah
H 7 house of si Mah
H 8 house of Subaidah
H 9 house of Syamsiah
H 10 house of Kanang and Murni
H 11 house of Syamsiah
H 12 house of Lambok

house
surau
rice-fields

T *turihan*, strip of land running downhill
h property given by *hibah*

after her marriage. She and her husband, who is an administrative officer, spent many years outside the *nagari*. When they returned to the *nagari*, they built house 6. H 6 was originally built as a rice-mill (huller, a rice-mill with a motor-engine; water-mills are *kicir padi*), which Dt. Batuah Rajo had set up. But the business did not go well, and now they use the H 6 as their house. In H 5 at present live Etek and her children. Rakiah's half is used as a *surau* for the boys of the *kaum*: Rakiah's two eldest sons, Etek's son and some of their friends sleep there. Etek's husband is a rare guest in the house as he usually stays with his first wife.

House 7 had only been built in 1973 by Dewi and her *jurai*. It is the house of si Mah. Since si Mah is still unmarried and works in Payakumbuh, it was temporarily used as a *surau*, too. Rakiah and Dt. Batuah Rajo had thought of moving in temporarily, if it had not been for the trouble with their neighbours, Elok and Pak Rajo. They had also thought of renting it out to the school children, the numerous pupils from other parts of Minangkabau (and Indonesia) who had come to CKL to study at the famous Islamic School. As the house was not yet fully finished and furnished, we were able to rent it and stayed there during 10 months.

Jamilah and Jinah continued to live in the *rumah gadang*. Jamilah eventually built a small house on the field T 3: 15. But there had been trouble about this, and so she built a new house, H 3, in which now Elok and Elok's husband with their 6 children live. When Elok and her older sister, Nursiah, married, a new house was built for Nursiah, H 8. After Nursiah's death, her children continued to live there. The oldest, Subaidah, aged 20, is already married and has a son. Jinah and her daughters were the last ones to live in the *rumah gadang*. When the *rumah gadang* had become too old and had to be torn down, Upiek built house 4, in which she lives with her husband and her youngest son.

The other *kaum* members live more or less permanently in the *rantau*. Iti and her brother, the present Dt. Kayo nan Gadang, live in Pakan Baru. Dt. Kayo only rarely visits CKL. Iti's only son has died, and it is doubtful whether she will return to the *nagari*. Mantari Basa, Elok's brother, spent several years with his *mamak* Dt. Kayo in Pakan Baru, but returned in 1970 to marry and farm. St. Mantari Intan, the son of Jusri, is married in CKL, but mainly stays in Padang as a trader. Dewi and si Mah live in Payakumbuh, but it is hoped that si Mah will marry soon and return to CKL to live in H 7. Dewi's son, St. Batuah, lives in Padang, where he is a lecturer in biology at the University. He seldom visits CKL, but is

frequently visited by Rakiah's children. Si Jon, the oldest of his *kamanakan*, has started to go to the secondary school in Padang and currently lives with his *mamak*. Jas and Syamsinan, the sisters of Upiek, live in Jakarta, and Upiek's eldest son is living with them.

According to all group members, definite genealogical relationships exist between the two *kaum* of Dt. Kayo nan Gadang and Dt. Kayo nan Ketek; it is not remembered (or said) who the common apical ancestress was. But some other *kaum* members of Dt. Kayo nan Gadang who live in Pakan Kamis in house 11, are said to have no genealogical relationships with this group. It took us a very long time (about 4 months) to find this out. We were always told that one was *saninik*, "of one grandmother", with them. Understandably, we were not able to trace this *ninik* in the genealogy for we were told later that the group had moved to CKL from the Payakumbuh area and had associated (*malakok*) with Dt. Kayo. When they settled in CKL, they had been given the T 4 as *pusako*. The T 4 did not belong to Dt. Kayo before, but to a different *buah gadang* of *suku* Guci III Saniniek. This *pusako*, too, was now "under Dt. Kayo".

Quite recently, the *kaum* had been enlarged by Lambok. Lambok is the wife of the *mantari*, the medical assistant. She originates from *nagari* M. where she had belonged to *suku* Guci. When she came to CKL, she approached Anku Kayo,the (now deceased) brother of Syamsiah in house 11. A. Kayo accepted her as *kamanakan*, but this was done without the knowledge of I. Gagah, the *mamak-kaum*. Only when A. Kayo had died, had Lambok approached I. Gagah and had been formally accepted as a *kaum* member. She and her husband live in house 12, which they have rented. They have not been given any land, for the *kaum* is much too poor to be able to give land away. But Lambok and her husband do not want to farm anyway, as her husband has his job. Lambok fulfils all social and kinship obligations of a *kamanakan* of Dt. Kayo.

2. *The Socio-Political Status of the Groups*

"According to *adat*", all *kamanakan* of Dt. Kayo are still "one". Although the two Dt. Kayo-groups were frequently spoken of as if they were separate *buah gadang*, in terms of *adat* there is only one *buah gadang* Dt. Kayo. If Dt. Kayo "has to go to *adat*" or to represent this *kamanakan* formally in the *nagari*, only one Dt. Kayo, "the Dt. Kayo", can go. Which of the persons wearing the title Dt. Kayo should represent the group has to be decided by the two, and in principle they should rotate the

exercise of the *panghulu*-function. In the present situation, however, Dt. Kayo nan Ketek should, as he alone has been installed as *panghulu*. Dt. Kayo nan Gadang had been invested with the title after his *mamak*'s death with the intention of making *mati batungkek budhi* (see Chapter 2: 87). But he has not yet carried out the installation ceremonies, and therefore is not regarded as a "*panghulu*", although he may wear the title. As Dt. Kayo nan Ketek lives in Aceh as a trader, his functions are performed by his *panungkek*, Dt. Mantari Basa nan Ketek. He attends most occasions, also those where only a *panghulu* should go according to *adat*. But as there are so few *panghulu* installed in CKL, people are glad to have at least a "*Datuek*" attend the meetings. Dt. Mantari Basa nan Ketek is the son of a *panghulu*, and he is married to a descendant of the last *Tuangku Lareh* of Candung, whose *kaum* is small and rich. All their *harato pusako* are given to "*kamanakan*" in share-cropping. Dt. Mantari Basa is an officer in the Forestry Department in Bukit Tinggi and thus has his additional independant income. He is said to be ambitious, and it is rumoured that he wants "to change with Dt. Kayo" in Aceh, i.e., that Dt. Mantari Basa should be installed as Dt. Kayo. Dt. Mantari Basa's official leadership of all *kamanakan* of Dt. Kayo is very much resented by the *kamanakan* of Dt. Kayo nan Gadang.

"Dt. Kayo" thus is still "one", and according to *adat* the whole group still consists of *urang saharato sapusako*, people of one *pusako*-property. But the *pusako* has been officially divided. The group and property split is said to have occurred in the 20's of this century. The two groups are treated as *kaum*, and both have a *mamak kepala waris*. In the tax register of CKL, Dt. Kayo nan Ketek and I. Gagah are registered as such (6). Within the *kaum* of Dt. Kayo nan Gadang, the next split is imminent. There are definite tendencies that the descendants of Nurli will form one *kaum* for themselves: Pakih, the husband of Subaidah (house 8) often referred to Nurli as the ancestress of his wife's *kaum* and tended to leave out the descendants of Nurmi and Rancak. The feeling of "not belonging together" anymore has also increased. During one of her very outspoken characterizations of her *kaum* members, Elok stated that "actually" they were already two *kaum*: "their" *kaum* (the descendants of Nurli) and the one with the descendants of Rancak and Nurmi. Elok had had trouble with I. Gagah and Kanang: When her sister Nursiah had died, "they" had not come to the burial. When Murni, Kanang's daughter, married, Elok did not go to the ceremony. When Rakiah joined the discussion, there was a dispute, for Elok and Rakiah did not like each other, and neither did their

husbands. Rakiah: "You are lying. We are one *kaum*, and I. Gagah is our *mamak kepala waris*". Elok: "Yes, formerly we were one *kaum*, but now we are two. Our *kepala kaum* is Dt. Kayo. As he is in the *rantau*, St. Mantari Intan, the son of Jusri, should be the *kepala kaum*. But as he stays in the *rantau*, too, the actual *kepala kaum* is Mantari Basa (her brother). Kanang and I. Gagah are a different *kaum* already, and Syamsiah (house 9) belongs to them, too. When they looked for a bridegroom (*cari menantu*) they did not ask us; and from us, nobody goes there anymore, not even Jusri, who is the eldest of our *kaum*". This was not quite true: When the house of Syamsiah was broken down and reconstructed (later), most of the *kaum* members were there to help cook, among them Jusri, Elok, Etek, Rakiah and Upiek.

But the next split is imminent. If the members of the *kaum* Dt. Kayo nan Gadang wish to adhere to the *kok limo kali turun*-rule, they will have to wait for some more time. For the women, who are to be chosen as the apical ancestresses of the new *kaum*, only have four generations of descendants. But in about 10 years, the girls of the youngest generation will have married and have children, and then Nurli will have *limo kali turunan*, five generations of descendants. The split will probably occur then (7).

3. *The Property Relationships*

It is not easy to recall how the relationships to their *harato pusako* have been for the generations of *kaum* members. Not all is remembered, and probably part of what is remembered was considered by our informants to be "without interest" for us. Besides, quite different versions are remembered. At present, the relationships between the *jurai* are bad, and as the brief history will show, they had been bad also in the older generations.

In tracing back the history of the *harato pusako* of Dt. Kayo we can go back as far as the generation of St. Tungkek and his three sisters. The *kaum* split and the official division of the *pusako* between the two Dt. Kayo had not occurred then, and we can assume that the T 1, 2 and 3 were the *ganggam bauntuek* of the mother of Nurmi, Nurli and Rancak. Their mother was still well off with all these *harato*. When the children were young, there was no reason to distribute the property; the daughters would work with their mother on their *pusako*. When Rancak married a man from *suku* Pili, her husband's *kaum* decided to give the young couple rice-fields as *pambaoan*, and a place to build a house on *pusako* of *suku*

Pili. Later, it was decided that this property should be, as *harato hibah, turun temurun* in Rancak's *jurai*. If her *jurai* should become extinct, it would revert to the *buah gadang* which had given the property. So when Rancak married, she was provided for.

Nurli also married. She had four daughters, so she was given a rather large share of the property, the T 1. St. Tungkek, the only male *kaum* member, was allowed to use the T 2 for himself. Nurmi must have been still young and unmarried, for the difference in relative age is considerable: Nurmi's daughter Syamsiah is not much older than Rancak's and Nurli's grandchildren Kanang and Jusri. So there was no immediate need to provide Nurmi with *pusako*, and she probably continued to work with her mother on T 3 (8).

St.Tungkek had pawned the T 2 (in 1915) to a man from *suku* Caniago, St. Tanameh. St. Tanameh later married Selamah, St. Tungkek's *kamanakan*. When afterwards St. Tanameh and Selamah had children, and none in the *kaum* wanted to redeem the fields for the whole *kaum*, Selamah "redeemed it for her children" (*menebusi untuk anak*) (9).

It was not clear whether Selamah paid the redemption money to her husband, or whether her husband transferred his *harato pancaharian* in this way to his children. The effect is the same: the T 2 is *harato turun temurun* of the whole *kaum*, but through the investment of the money, only Selamah and her *jurai* are entitled to use and exploit the *pusako*. This was recognized by the other *kaum* members. But it was equally clear, that any other *kaum* member could, in theory, regain a part of the T 2 by paying a share of the original pawning sum to Selamah, i.e. now to her descendants.

The T 2 was forthwith only worked by Selamah and, after her death, by Jusri and Sul. After Sul's death, Jusri took over the complete control of the T 2 and does not share it with her sister's daughter si Mar. The T 2 is now worked by Nursilah and her husband. Sometimes, it is given in share-cropping, also to other *kaum* members. It is the common opinion, that si Mar will come up with her claim after Jusri's death, and all *kaum* members think it very "bad" that Jusri is so greedy as to cheat her own child (ZD) of her inheritance. The reason why si Mar avoids the conflict with Jusri and does not yet press her claim to the T 2 is that she herself is rather well off. She uses none of her *kaum*'s *harato pusako*, except when it is her time to work the T 1 (see below). Her father Angku Payuang Ameh had been a rich man. He had taken much *sawah* as pawning (as *pamagang*) for her benefit (10). When Angku Payuang Ameh died in her house in 1975, there had been no trouble about his inheritance. Si Mar continued to work the *sawah* he had taken in pawning for her.

Some other fields, which Angku Payuang Ameh had allowed her to work, had actually been taken in pawning for his *kamanakan*, for he had given the pawning-document to them. It was expected that the *kamanakan* would "take back" these fields after the next harvest, and nobody expected si Mar to oppose this. The *harato pancaharian* of Angku Payuang Ameh had been kept in the houses of his three wives, and each family kept what had been in their house (11).

When in the 1920's the split of the two *kaum* Dt. Kayo occurred, the *harato pusako* were divided (*dibagi*), and each *kaum* now had its own *harato pusako*. At that time the children of Nurli and Rancak already had children and most probably the first grandchildren. Nurli's son had become Dt. Kayo, one of the two who were installed after the split. The property, which formerly was held as *ganggam bauntuek*, now became the *harato pusako* of the *kaum* and had to be distributed by way of *ganggam bauntuek* between the *jurai* of the new *kaum*. Dt. Kayo seems to have been a strong *mamak* and had the decisive voice in the meeting in which the property relationships were rearranged. He favoured himself and his sisters, and paid much less regard to the children of his mother's sisters (12). The T 1 was given as *ganggam bauntuek* to Nurli and her children. It was decided that Nurli's children should use the T 1 per daughter in rotation (*bagilir, balega*) for *sawah*-years. This seems to have been done over the years, and the original schedule is still adhered to: The T 1 is still "*sawah balega*" for the *jurai* formed by Nurli's children (13):

When it is "Jamilah's turn", Elok works the *sawah*, helped by her children, Subaidah, and Subaidah's younger sisters. Elok's brother, Mantari Basa, helps with the heavy work (ploughing, threshing). The harvest is shared between Elok and Subaidah. Mantari Basa is given a small share, as he normally works on the *pusako* of his wife.

When it is "Jinah's turn", Upiek works the *sawah*. As she is the only of Jinah's daughters who lives in the *nagari*, she takes the whole harvest. It is too little anyway to give a share to her sisters in Jakarta.

When it is "Dawiah's turn", normally none of Dawiah's daughters or granddaughters works the *sawah*. Dewi is too old, does not like farming, and lives most of the time in Payakumbuh anyway. Her daughter Rakiah, who also spent some time outside the *nagari*, also does not like farming. She has a small trade, selling rice, coconuts, oil, and salt in front of her house three times a week. She does not earn very much - according to her husband -, but he is glad because it keeps her busy. She is disliked for her sharp tongue, and only has a few customers. Often, even her

cousins do not buy from her. Dawiah's other daughter, Kalek, is dead, and her daughter Etek also does not like farming. She prefers to work in a shop at the main road in Candung, which is considered a shame for the whole *kaum*. Etek with her four children is badly off, as her husband completely neglects her and does not make great financial contributions to the household. So when it is Dawiah's turn, the land is usually given in share-cropping, mostly to Upiek. The harvest is divided. Upiek keeps one half and the other half is divided between Rakiah and Etek.

When it is "Selamah's turn", Jusri, Nursilah and si Mar work the *sawah*, and the harvest is divided between Jusri and si Mar.

The T 3 was also divided when the *kaum* split occurred. The fields T 3: 4-6 were given to Dt. Kayo nan Ketek and are now farmed by the mother of Dt. Mantari Basa nan Ketek. Fields 1-3 are held by I. Gagah "with money". I have not been able to find out whether these fields had formerly also been given to Dt. Kayo nan Ketek and later were pawned and then redeemed by I. Gagah. In any case, it is acknowledged that I. Gagah holds the *pusako* with money. He has given it in share-cropping to Fatimah, the daughter of Syamsiah and granddaughter of Nurmi (house 9). Nurmi's *jurai* had been neglected by Dt. Kayo when the *kaum* property was distributed. Nothing was given to her. Only after her son, A. Tumanggung, had grown up, he defended his mother's and his *jurai*'s rights against Dt. Kayo and demanded a share of the *harato pusako*. Dt. Kayo refused, and the trouble resulted in a lengthy dispute which was finally decided in the State Court. Here Dt. Kayo lost, and the fields T 3: 14-18 were given to Syamsiah and A. Tumanggung as their *harato pusako*, which was now regarded as their *ganggam bauntuek* (14).

Dt. Kayo himself had kept control of the fields T 3: 7 - H 9. These fields he gave to his daughter Sur by way of *hibah* for her lifetime (15). This *hibah*-business has had the most unpleasant consequences. Dt. Kayo had married a woman from T. from a very different part of West Sumatra and brought her to CKL. His wife "had no *suku*", and it was cautiously hinted that she was "*jenis keempat*", of the fourth kind of *kamanakan*, i.e. a descendant of former slaves. As she had no *suku*, she was also not adopted into a *suku* in CKL. Their daughter Sur was incorporated into the *suku* of her father, and had become a Guci-woman. The Guci and her father's *kaum* were, however, further treated as her *bako*. Dt. Kayo had given the fields T 3: 7 - H 9 to this Sur. When she married, Sur wanted to leave the house which had stood close to H 2; she probably did not

feel very comfortable so close to her "sisters" and her *bako*. She "stupidly" wanted to exchange the *hibah*-property for money and she pawned the property, either to her *bako*, or to other people. When Sur later wanted to redeem the property, there was trouble, for Jusri and Syamsiah (House 9) also wanted to redeem it (or, Jusri and Syamsiah wanted to redeem it and were not allowed to do so by Sur). In any case, this part of the story has not become clear despite several interviews and informal chats. Syamsiah, A. Tumanggung, and Jusri claimed that Sur had no more rights to this *pusako*. According to most villagers, Sur had been in the right. The *hibah* had been in accordance with *adat*, and Sur had the right to the *sawah*, i.e., to use and exploit it, to pawn and to redeem it, as long as she lived. Only after her death would the property revert to her *bako*. But Jusri and Syamsiah took the case to court. They took it straight to court, and there was no previous attempt to settle the dispute in the *nagari*. One would have been terribly ashamed if this dispute between the children and their *bako* had been discussed in the *Karapatan Adat*. The other *kaum* members, too, did not join in the dispute, feeling ashamed at Syamsiah's, Jusri's, and A. Tumanggung's behaviour. In the first instance, Jusri and Syamsiah lost, as all witnesses from CKL confirmed the validity of the *hibah*. But they appealed the judgement, and the appeal court reversed the judgement. For the other *kaum* members the reason was clear: bribery. A further appeal of Sur to the Supreme Court proved unsuccessful. So Jusri and Syamsiah had won more *sawah* (16). Jusri took the fields T 3: 7-10, Syamsiah the fields T 3: 11 - H 9. Jusri works this land with her daughter. Syamsiah, however, had to pawn most of her property in order to finance the suit against Sur. So the fields T 3: 14-17 had been pawned to people of *suku* Pili, and after the suit, field T 3: 13 was pawned to Dewi. It is currently used by Dt. Batuah Rajo, Rakiah's husband, who plants peanuts on it.

Jusri thus was quite rich in comparison with her *kaum* relatives, and this was very much resented by the others, who regarded her as greedy and unsocial. She had all this *sawah*, but she did not think of sharing it with her sisters! She even cheated her own daughter, si Mar. The other *kaum* members also thought it unjust that Jusri insisted on taking part in the rotational use of the T 1. This ought to be changed: all of Nurli's descendants were *ganggam bauntuek* holders and the use of the *sawah* should be rearranged. Elok's elder sister Nursiah had demanded that a meeting be held and the use of the T 1 be reconsidered. But then Nursiah had died. I. Gagah was a weak man, and Dt. Kayo was in Pakan

Baru and did not care about his *kamanakan* anyway. Besides, he was a brother of Jusri and would not do anything against her. But perhaps after Jusri's death ... (17). Matters had been worst when the decision was taken to build a house for si Mah (H 7). It had been planned to build it on field T 1: 6, which was not used for rice-cultivation, but for bananas and some cinnamon trees. But Jusri, who more or less controlled this property, too, had refused. She had made a scandal and torn her blouse! Her younger brother, Dt. Kayo, was unable to convince her that the house must be built there; so finally the house was built where it now stands, on the T 1. A whole rice-field had to be used for this, which was very much resented by the other *kaum* members, for the *kaum* did not have much *sawah* anyway. The real blame was put on Jusri and Dt. Kayo, but much of the resentment was directed against Dewi, who had "stolen" the *sawah* and did not mind losing it for the *kaum*, as she herself did not farm and did not depend on farming (18).

Feelings were still bad when we moved to CKL. Elok and Pak Rajo, in H 3, had "forbidden" Rakiah and her husband Dt. Batuah Rajo to use their yard as a path to H 7. They did not like each other, anyway. Rakiah, her mother, and Dt. Batuah Rajo were thought to be giving themselves fine airs, being too good to work on the *sawah*, sending their children to secondary schools, and trying to become important in village politics. Dt. Batuah Rajo had been installed as *panghulu* two years ago, he was the *tambang adat* and chairman of the *Karapatan Adat Nagari*. Besides, he was an administrative official in the information department in the nearby capital-*nagari* of the *Kecamatan*. Pak Rajo was a good friend of the *Wali Negeri*, who was an "enemy" of Dt. Batuah Rajo. There had also been trouble about the house with Syamsiah and Dt. Mantari Basa in Pakan Kamis (H 11), who held the T 4 between H 7 and the road. Although it was fully accepted that they held the T 4 for their exclusive use, there was a constant bickering between Syamsiah and Rakiah concerning the exact border between T 1 and T 4 in front of H 5 and 6, where Syamsiah had planted bananas on field T 4: 8. Rakiah claimed that Syamsiah had used about 30 cm of T 1, Syamsiah said she had not. I. Gagah had not been able to achieve peace, and it was said that Syamsiah had even gone to the police in this matter. It was in the context of such a quarrel, that we heard for the first time that Syamsiah and her *jurai* were not real *kamanakan* at all. So when Rakiah and Dt. Batuah Rajo wanted to make a small road from the main road to H 7, Syamsiah had said no. The field (T 4: 7) in front of the house had been pawned some years ago, and Dt.

Batuah Rajo had offered to redeem it, but Syamsiah had refused. Dt. Batuah Rajo had offered to pay a yearly rent just to get a small strip of land for the path, but Syamsiah had refused again.

This was the situation when we moved to the *nagari*. We had met Dt. Batuah Rajo in the *Camat*'s office, and the *Camat* had asked him to help us to find a house in CKL. H 7 stood empty, but there was the problem of the path. It was decided by Dewi's *jurai* that we could have the house but only if the house would get a path to the road. It needed a path, for we had a car. If the car could not be parked close to the house, the children would play with it, steal things etc. and they would suffer shame (*malu*). The *mamak rumah*, St. Batuah, safely away in Padang, thus had the case stated to the *Camat*. The *Camat*, eager to find us a house, ordered the *Wali Negeri* to settle the dispute. But the *Wali Negeri* "could not" settle the dispute. He probably had not the slightest intention of doing so, for Dt. Batuah Rajo was his enemy; should he help to have his enemy triumph over his friend, Pak Rajo? So it took some time until we could move in. Only some pressure from the *Camat*, and the understanding that we would pay rent, finally changed the mind of St. Batuah and his *jurai*. There was much talk about the path during our stay, but nothing had changed when we left. Syamsiah and her family were bad people, Rakiah said, for they wouldn't give them land for a path. Of course they were willing to give land for the path, even without money, but not "in this way", said Syamsiah. Weren't they of one *kaum*? Shouldn't there be a proper *musyawarah*? But to that *Rakiah* would not agree, said Syamsiah. Both were terribly ashamed that such guests as we were, who were nearly *kaum* members by now, should be treated this way through the fault of the other, said both. But nothing happened (19).

But not only Rakiah had had trouble with Syamsiah of H 11. Syamsiah, the daughter of Nurmi in H 9, had had trouble, too. For Angku Kayo, the brother of Syamsiah of H 11, had planted bananas on plot T 3: 18 and built a *pondok* (small stall) there. Syamsiah's (H 9) claim, that it was her land, had not bothered him a bit. I. Gagah, the *mamak kaum*, had again not been able to settle the dispute, and so one had brought the problem before the *Kerapatan Negeri*: Ana, Syamsiah's daughter, represented by I. Gagah, against Angku Kayo (case 8 of 1973). The case was heard by the *adat* section of the KN, and Ana won, i.e., Angku Kayo was ordered to give the land back and Ana was ordered to pay some compensation to Angku Kayo as he had "taken care" of the land, and for the bananas which he

planted. Ana had agreed to this solution and had signed the proposed settlement, but Angku Kayo had refused to do the same. They had then gone to the *Camat* to have their quarrel solved. The *Camat* also decided that the land belonged to Ana. Angku Kayo had again refused to accept the settlement. But then Angku Kayo had died, and Ana took back the land, unopposed by Syamsiah's *jurai* (20).

But that was not the only quarrel about property in the *kaum*. Kanang, the daughter of Nari (H 10), also felt cheated by the (old) Dt. Kayo. The T 1, for instance, was their *harato pusako turun temurun* as well that of the others' (Nurli's *jurai*). There was no reason for their exclusion from participating in the rotational use of the rice-fields. In fact, they had not got anything of the *kaum*'s *harato pusako*. Kanang and Murni would just inherit the fields T 3: 1-3 after I. Gagah's death.

And now there was even trouble about their *sawah*, the *harato hibah*. In former times, when Rancak still lived, the fields had been given to Syamsiah (H 9), because Syamsiah had been in greater need. But then, when Syamsiah had this disgraceful dispute with Sur, her son, St. Mantari Basa, had pawned the fields to a woman from *suku* Caniago. He had done so in secret, pawned the fields but then taken them back in share-cropping so that nobody should become aware of the transaction. This "pawning", of course, was void. Yet Murni had taken a friendly attitude towards her cousin. She had approached him and offered to redeem the fields together. But St. Mantari Basa had refused. I. Gagah had, once again, not been able to settle the dispute between his *kamanakan*. So she had just taken the fields back and planted chili-peppers on them. She would not pay anthing to that Caniago-woman; let St. Mantari Basa see for himself how he would manage. And she had enlisted support. She had gone to the *Wali Negeri*, who belonged to *suku* Pili, and he had advised her to go through with her plan and use the fields. If anybody could decide in this matter, the *Wali Negeri* had said, it would be people from *suku* Pili, for *suku* Pili had originally given the fields to Rancak as *harato hibah* until her *jurai* should become extinct. And if this should happen indeed - Murni until now only had a son - then one would marry her son to a daughter of the *Wali Negeri*, and the land would thus return to *suku* Pili (21). The *Wali Negeri*, however, did not belong to the *buah gadang* of *suku* Pili which originally had given the property to Rancak.

4. *Summary*

Within this short history of the *kaum* of Dt. Kayo, we can detect at least 21 cases, which have been marked by numbers:

1. We have seen the development of the group through time: It started as *kamanakan* who associated with an already settled *buah gadang* (1), and which later was given independent *buah gadang* status (2). After some more time, the *buah gadang* split into two *kaum* (6), and, most probably at three generations after the first split, the *kaum* will split again (7).

2. We have seen the basic mechanisms at work by which the members' relationships to their *harato pusako* are regulated: The allocation of the property objects within the *ganggam bauntuek* holding group (8), which was, after the *kaum* split, changed into a *ganggam bauntuek* distribution among the *jurai* of the newly formed *kaum*. The original allocation within the *ganggam bauntuek* holding group is more or less still effective for the DDDDs of the original *ganggam bauntuek* holder. The decision through which the property objects had been allocated in the group (13) could in principle be changed and the property relationships rearranged; the efforts were partly successful (14) and partly in vain (17).

We have also seen the main factors which influence the *musyawarah* processes in which the allocation and distribution should be carried out: The demographic structure of the group and the personalities of the main actors. Whereas the first allocation within the *ganggam bauntuek* holding group was still guided by the principle of need (8) - on the basis that it could be changed if the needs should change - in the later *ganggam bauntuek* distribution (12) and in the allocation within the new *ganggam bauntuek* holding *jurai* of Nurli (13) the principle of need was surpressed, and the *panghulu* clearly favoured his close relatives. Jusri, the oldest woman in the group, could successfully block all attempts to come to a redistribution or reallocation which would have been disadvantageous to her property interests (17, 18). The behaviour of Dt. Kayo, Angku Kayo, and St. Mantari Basa shows that men have few scruples in using their stronger position vis-à-vis women in whose *jurai* there is no strong male personality (20, 21). But decisions taken in a given power-situation can be changed again, once the power balance has changed. So Ana took back the land when Angku Kayo had died (20), and everyone hoped that there would be a more just reallocation in Nurli's *jurai* once Jusri had died (17). The weak personality of I. Gagah, on the

other hand, led to a multitude of troubles between the *kaum* members (18, 19, 20, 21). These stories are a good illustration of how the *musyawarah* principle works in practice: It has lost in force (if it ever had more force) in the sense that it has become more difficult to bring about consensual decisions. But it clearly continues to function in the opposite sense: If no consensus is achieved, then nothing will happen, no decision will be taken, and the problems will remain unsolved.

3. Most mechanisms and modalities of diachronic transfers have been employed by the *kaum* members: A group was adopted as heirs (3), the *pusako* was allocated within a *ganggam bauntuek* holding group (8, 13), the *ganggam bauntuek* was distributed (12) and was inherited automatically. *Harato pusako* was given by *hibah* to the *anak pisang* in continuity (5) and there was a *hibah* for the lifetime of the children (15). Land was taken in pawning for the benefit of the children (10), and *harato pusako* was redeemed for the children (9). And there occurred quite unproblematic inheritance of *harato pancaharian* (11). Besides, marriage was used (9) or planned (21) to make the future flow of property unproblematic. In those cases where trouble arose, a wide range of agents of dispute-settlement was invoked once the *mamak* and the *panghulu* had been unwilling or unable to settle the matter to the satisfaction of the disputing *kaum* members: The *Wali Negeri* (21), the KN (20), the *Camat* (20), and the State Courts (14,16), including the Supreme Court (16).

II. INTER-*KAUM* RELATIONSHIPS AND PROPERTY

Relationships between two or more *kaum* with respect to property usually become problematic in the following three situations:

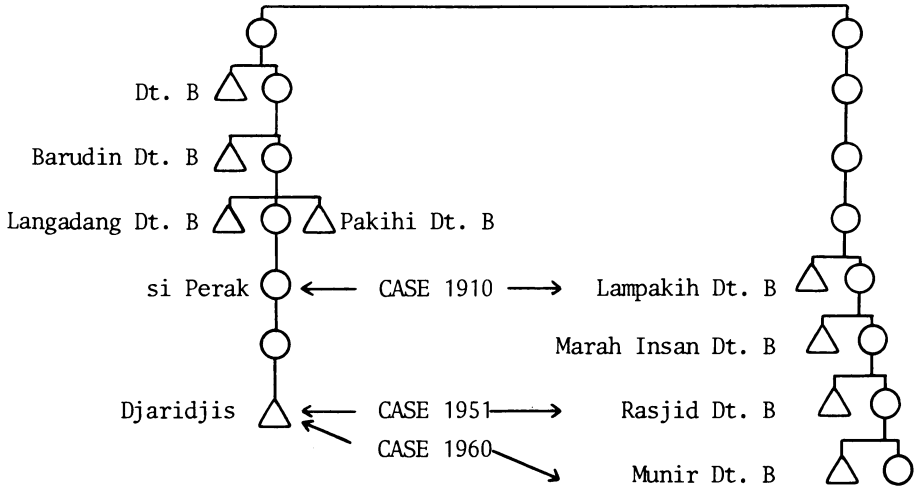
1. A *kaum* split has occurred, and the new *kaum* have to divide the formerly common *harato pusako* and make provisions for the succession to the *sako*.
2. A *kaum* is *punah*, extinct, and the inheritance question has to be settled between the *kaum* which claim to be genealogically related to the extinct one.
3. *Harato pusako*, which have been pawned some time ago, are claimed by the pawnee-*kaum* as their own *harato pusako turun temurun*.

These situations will be illustrated with one story each. The stories illustrate those cases which make up the greatest bulk of property disputes in the State Courts, and they throw light upon the most important problems of property and inheritance in contemporary Minangkabau.

1. *The Kaum-Split*

This story starts as a dispute over a *panghulu* title. Disputes over *sako* often turn out to be disputes over *harato pusako* and vice versa. If the contestant has successfully established his right to the *gala sako*, this will give him a strong position in future disputes over the *pusako* property which are known to belong or to have belonged to the *panghulu* in question. This holds particularly true for *nagari* with Koto-Piliang *adat* where the rule, "that the *sako* and the *pusako* always must belong together" in the same group, is still quite strictly upheld. In *nagari* with Bodi-Caniago *adat*, the opposite often happens: Here disputes about *harato pusako* often turn out to be disputes about a *panghulu* title. In CKL, there were at the time at least two cases which were treated as disputes over *harato pusako*, but everyone knew that the main contestants, the *mamak kepala waris* of the contending *kaum*, wanted to establish their right to be installed as *panghulu*.

The events which are described in the following story did not occur in CKL. I have extracted them from three judgements, in which the dispute between the contending parties was decided.[3] The following diagram shows the genealogical relationships between the parties.



In 1910, the woman si Perak brings a suit against Lampakih Dt. B. before the *Rapat* of the *Tuangku Laras* of IX Kota. She is assisted by one Haji AR, who acts as "her friend" and advocate (*kepala kota*). Haji AR is a distant relative of si Perak, "a *waris* who would inherit if Perak should become extinct" (*waris timbang punah, artinya nan akan meulas*). Perak claims that the *gala* Dt. B. is "hers". In former times, it had descended to her granduncle (MMB) Barudin, and from him to her *mamak* Langadang. After Langadang's death, the *gala* had been inherited by his younger brother Pakihi. Pakihi had died in 1908. At present, there was no suitable member in her *kaum* who could be installed as successor. But now the defendant had "just so" assumed the *gala* Dt. B, without any rights to it. She therefore demands that the *Rapat* should declare that the *gala* may not used by the defendant.

The defendant does not contradict Perak with respect to the history of the *gala*. But, he asserts, he is still of one family (*berkarib*) with Perak, and has not yet divided the property with her *jurai* (*belum membagi harta*). As he is the oldest and most suitable member of the *kaum*, it is quite normal for him to be invested with the *gala* of his *mamak* Pakihi.

Both parties bring witnesses, all of whom agree about the history of the *gala*. But two of Perak's witnesses "have heard people say" that the *gala* is actually worn by si Hajun, the brother of Haji AR. A third witness even knows for sure that si Hajun has been invested with the *gala*. The witnesses of the defendant tell a different story. Si Hajun had tried to be invested with the title, but his efforts had failed. Three witnesses declare that they were present when the defendant was invested with the title on the graveyard of Pahiki. And all nine witnesses of the defendant agree that Perak and the defendant have "family relationships" and that, in former times, they had the same *rumah gadang* and the same family graveyard.

On the basis of this evidence, the *Rapat* of the *Tuangku Laras* does not find it difficult to decide the case. If the defendant is indeed of one family with Perak, it is quite in order that he had been invested with the *gala* Dt. B. It is therefore declared to be right and valid in *adat* (*dibenarkan dan disyahkan*) that he wears the *gala* Dt. B.

41 years later, Djaridjis, the grandson of Perak, sues Rasjid Dt. B., the grandnephew of Lampakih Dt. B. in the State Court. Both men appear as *mamak kepala waris* of their respective *kaum*. Djaridjis' claim is the

following:

In 1908, his *ninik* Langadang had died. His grandmother, Perak, had made an agreement with the defendant's granduncle, Lampakih, according to which Lampakih was allowed to use the *gala* Dt. B. for the time being, but that the title must be returned to her *kaum* once his (Djaridjis') brother, who then was only two years old, had come of age. But when Lampakih had used the title for two years, he had transferred it to his *kamanakan* Marah Insan, without the consent of Djaridjis' *kaum*. When Marah Insan died in 1949, the defendant, his *kamanakan*, had assumed the *gala*, again without asking for the consent of Djaridjis' *kaum*. As the title is the *sako* of his *kaum*, Djaridjis now wants it back. His second claim concerns 7 large (*tumpak*) rice-fields. These fields had been used by the defendant's *kaum* since 1865 on the basis of share-cropping. As long as his grandmother had lived, Lampakih and Marah Insan had always given the due share to Perak. But after Perak's death in 1919 they had stopped. Djaridjis now reclaims the fields and demands compensation for the 32 years during which the half-share had not been paid.

The defendant does not deny that Djaridjis and he are the rightful *mamak kepala waris* of their *kaum*. But for the rest he disagrees. The *gala* Dt. B. is, in these days, not the property of the plaintiff's (*sekarang tidak hak sako turun temurun dari Djaridjis*) but of his *kaum*, and he can easily prove that his granduncle and uncle have worn it before him. The witnesses which are heard in court all state that they have heard from their *mamak* that the *sako* Dt. B. is the defendant's *sako*, but that they cannot exactly say what the relationships are.

The PN Solok rejects Djaridjis' claim on the grounds that his evidence is not sufficient to substantiate it. The claim for the *sawah* is not mentioned at all in the judgement. Djaridjis appeals, and in the appeal faces the *kamanakan* of his former opponent, the new Dt. B. His appeal is rejected on the ground that suits over *sako* cannot be tried at all in the State Courts. The problem of the *sawah* is again not mentioned.

Discussion:

What started as a *kaum*-internal dispute has two generations later developed into a dispute between two *kaum*. Both Djaridjis and Rasjid / Munir Dt. B consider themselves *mamak kepala waris* of their *kaum*. Their arguments center around the question of which of the two *kaum* owns the *gala* Dt. B. The problematic situation-image is thus presented as an alternative, which is retrojected into the past. But in the past, this

alternative did not exist, as there was only one *kaum* to which the ancestors of both disputants belonged.

Djaridjis unsuccessfully presented his claim to the court. But we can, if somewhat speculatively, assume that he would have had a much better chance if he and the court had possessed the knowledge which we have, namely a copy of the judgement of the *Rapat* of the *Tuangku Laras*. Djaridjis must have had no copy, for if he had he would have presented it as evidence, and he would have been able to give a better account of the relationships between the parties. Although an agreement between Perak and Lampakih Dt. B of the kind maintained by Djaridjis was not mentioned in this judgement, and although the *Rapat* had confirmed Lampakih Dt. B as rightful *panghulu*, the State Court would have become aware of the following:

(a) that in 1910 there was only one *kaum*;
(b) that the *gala* had descended in Perak's and Djarisjis' *jurai*;
(c) that Pampakih could wear the title only because there were no suitable male members in Perak's *jurai* at that time;
(d) that a *kaum* split had occurred in the meantime;
(e) and that it now had to be determined to which of the two newly formed *kaum* the *gala* should belong. According to the *adat* Koto-Pilang (the *nagari* S. has *adat* Koto-Piliang) there would have been no doubt: The *sako* has to be kept in the *jurai*/new *kaum* to which it originally belonged, and this was Perak's *jurai* and the *kaum* now formed by her descendants.

The defendant in the 1951-case did have a copy of the *Rapat*'s judgement (we got it from his *kamanakan* and made a copy of it for ourselves) but he preferred not to present it as evidence. For although his granduncle Lampakih had been confirmed as rightful *panghulu*, he was probably afraid that the study of the judgement might lead the State Court to the same conclusions about which we have just speculated. So Rasjid Dt. B relied upon his position and the western law of evidence, which proved to be sufficient.

That the claim concerning the *harato pusako*, the rice-fields, was not even mentioned by the courts, is probably due to the fact that the courts, too, regarded this matter as dependent on the *sako*-question. It would be highly improbable that the *sako*-holding group would take 7 *tumpak* of *sawah* in share-cropping from a poorer *jurai*. As it was proved that Dt. B's *jurai* was the *sako*-holding one, the claim of Djaridjis was

not very convincing.

The case further illustrates how much demographic factors may influence the potential activities in property and inheritance affairs. If Perak had had a brother or an adult son in 1910, the first case would never have happened. It took her grandchildren 41 years, or 32 years after her death, to get into a position in which they could face the Dt. B and to try to rearrange the property relationships and to demand compensation for the 32 years in which the half-share had not been paid. In this case, Djaridjis lost. But in similar cases such attempts may be successful, with property relationships rearranged after 30 or more years, and compensation paid for such periods.

Cases of this kind also contain an important lesson for the anthropologist. What looks like a settled case in a given historical situation, may be completely different some time later. If the anthropologist is lucky, he may observe whether a judgement in a property dispute is carried out or not, and he will draw his conclusions about the "effectiveness" of such judgements. But who stays in one society for 30 years or more? It would have been premature to abstract definite principles of property law and social control from the 1910-case, for on its basis the 1951-case would have been decided differently. And it may be equally premature to abstract principles of a general kind from the 1951-case. Imagine Djaridjis, or one of his *kamanakan*, finding a copy of the judgement of the *Tuangku Laras' Rapat* and starting a new case on the strength of this evidence ...

2. *The Punah-Situation*

When a *kaum* is extinct, or when there are only male *kaum* members left, the question of the inheritance of the *kaum* property has to be solved. The "typical" situation shows two or more *kaum*, represented by their *mamak kepala waris*, claiming to stand in the closest genealogical relationship to the one which is or becomes extinct. Disputes about the *harato pusako* of extinct *kaum* do not necessarily start after the death of the last *kaum* member. The related *kaum* which think that they might have a chance, start their strategies as early as possible, often with the help of the last members of the extinct *kaum*.

The following story tells of such a case. It concerns the property of one Haji Batuah (HB), whose *kaum* is extinct. HB's *kaum* is one of the many *kaum* in the *buah gadang* of Dt. Bagindo of *suku* Sikumbang in CKL.

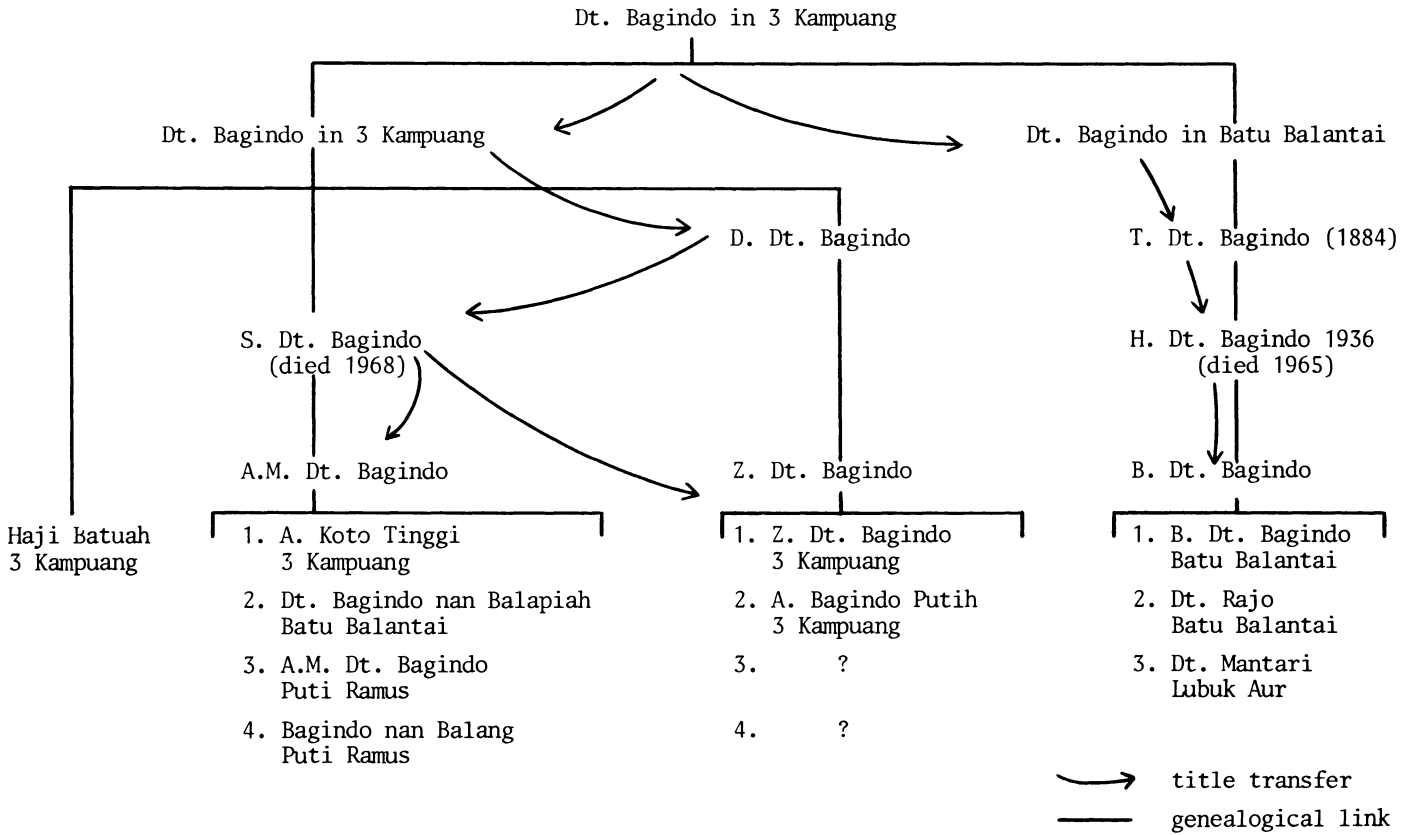
The relationships within this *buah gadang* are so complex, that a rough outline must be given of its composition before the story can begin. On the diagram given on page 241, the relationships of the 11 component *kaum* have been sketched. Originally there was one Dt. Bagindo who lived in 3 Kampuang and who was the *panghulu bahindu* of Sikumbang Tangah. At some time, one group of *kamanakan* of Dt. Bagindo moved to the Batu Balantai, and at some later time the Batu Balantai-group also established a Dt. Bagindo. At least as far back as 1884, there was T. Dt. Bagindo in Batu Balantai. Whether the 3 Kampuang and the Batu Balantai-group had agreed upon a system of title-rotation, or whether they made a definite split (*baju sehelai dibagi dua*) is not quite clear. In the excerpts of the *nagari-tambo* which we examined, there were usually two Dt. Bagindo mentioned. On the other hand, it was clear to all contemporary informants, that the "real Dt. Bagindo was H. Batuah", i.e., that the title was (should be) *turun temurun* in HB's *kaum*.

The contemporary *buah gadang* of Dt. Bagindo consists of 11 (or 13) *kaum*. According to *adat*, they are still "one" - though there is evidence that in former times they were regarded as two *buah gadang*. In the original 3 Kampuang-group, three main branches are recognized:

1. The one of H. Batuah, which is now extinct;
2. the one which currently is under A.M. Dt. Bagindo, which comprises 4 *kaum* resident in different parts of the *nagari*;
3. the one which is currently under Z. Dt. Bagindo, which comprises 4 *kaum* of which the two most important ones are still resident in 3 Kampuang. The Batu Balantai-group consists of three *kaum*, two of which are resident in Batu Balantai, whereas another, under the *panungkek* Dt. Mantari, had at some time moved to Lubuk Aur.

The eldest Dt. Bagindo who was still remembered was D. Dt. Bagindo, who belonged to the group of the present Z. Dt. Bagindo. His successor was S. Dt. Bagindo, who belonged to the group of the present A.M. Dt. Bagindo. Informants agreed, that as H. Batuah/his *kaum* "had not wanted" the title, it had been given to the other two branches which agreed upon the system of *gadang balega*, of title-rotation. Independently, the Batu Balantai-group had established a Dt. Bagindo in 1936. In the 1960's, both S. Dt. Bagindo and H. Dt. Bagindo died, and after their death there was considerable trouble about the succession. The group of Z. Dt. Bagindo claimed back the *gala* according to the system of rotation, but the group of the deceased S. Dt. Bagindo also wanted to install a successor.

BUAH GADANG OF DT. BAGINDO



Besides, the Batu Balantai-group also wanted to install a successor to H. Dt. Bagindo. Finally, all three were installed, the result of the management by the *juaro adat* of the *hindu*, Bandaro Hitam (a *kamanakan* of Z. Dt. Bagindo) and of Dt. Maharajo, the *panghulu ? suku* of *hindu* Sikumbang Koto Ambalau which was "*sapusako*" with the *hindu* Sikumbang Tangah, and who therefore had to act as organizer (*pitungguek*) of the installation ceremonies. After the installation ceremonies one *juaro adat* died, another is still (1975) ill, and Bandaro Hitam was ill for several months - which everybody attributed to the workings of poison (which we are inclined to believe).

The situation is "impossible" for most *adat* experts in CKL. For there are "three cocks in one ricepot" - "*tigo ayam salasuang*", i.e. three *panghulu* in one *buah gadang*. This shows, that (at least in contemporary CKL) the *buah gadang* is still regarded as "one". If "Dt. Bagindo" has to act in *adat*, only one of the three persons wearing the title of Dt. Bagindo can go. When the three Dt. Bagindo were installed in 1968, an agreement was drawn up in which the function of the "one Dt. Bagindo" was divided amongst the three newly installed persons: A.M. Dt. Bagindo is the *panghulu bahindu*, B. Dt. Bagindo is the *panghulu babuahparuik*, and Z. Dt. Bagindo is the *panghulu babuahgadang*. But everyone agrees that the "real" Dt. Bagindo, the descendant of the original *kaum* of Dt. Bagindo in 3 Kampuang, is H. Batuah.

Haji Batuah is aged 83 and currently living in Padang. He is the last *kaum* member and there have been discussions about his inheritance for several years. We heard about the problem for the first time when Dt. Bagindo nan Balapieh (Dt. BNB), a *panungkek* of A.M. Dt. Bagindo, came to our house in January 1975. Actually he had wanted to meet Dt. Batuah Rajo, the *tambang adat* and chairman of the *Karapatan Adat Nagari*. As Dt. Batuah Rajo had gone out, he dropped in on us to have a chat. He had with him a copy of an amicable settlement, written in Dutch, which had to do with the property of HB. For HB had finally decided, that he, Dt. BNB, should be his heir. As a token of his seriousness, he had given him the document. In former times, HB had never wanted to give it to him, but now HB was old, and the document had fallen to him. If possible, he wanted to have it translated into Indonesian; and he knew that my wife was Dutch.

HB had had a dispute with A. Koto Tinggi in 1939 about some *harato pusako*. This dispute was settled by amicable agreement by the

Landraad in Fort de Kock (Bukit Tinggi), rather to the disadvantage of HB. Dt. BNB hoped that the document, the amicable agreement, would mention the borders between the *harato pusako* of HB and A. Koto Tinggi, for he foresaw trouble about his inheritance, as some property of HB was pawned to the *kaum* of A. Koto Tinggi. When the translation showed that no borders were mentioned in the document, but that reference was made to a map which neither HB nor DT. BNB had in possession, Dt. BNB's enthusiasm over the document was blown away. He had become aware that it probably could be better used against him than to his advantage.

The land which he was going to inherit from HB would not be for him alone, but also for his *kamanakan*. The wife of Dt. Panghulu Rajo, one of the most influential *panghulu* in CKL, for instance, would also get a share, as she was one of his *kaum* members. Dt. Panghulu Rajo did not know yet, but he wanted to inform him soon. Dt. Panghulu Rajo would come to our house tonight? What a chance, then he, Dt. BNB would also come to talk things over with him. For the inheritance of the property of HB, this Dt. BNB clearly foresaw, would not go without trouble. For there were other people in *suku* Sikumbang, who claimed that they were more closely related to HB than he was. In particular, there was Upiek, the younger sister of (the now deceased) A. Koto Tinggi. She and her family were his enemies. In 1971 he had had a court case with her. Upiek had won in the first instance, as she had bribed the judges, but he had appealed. But this showed what kind of people one had to reckon with.

We had been able to study the court records before we moved to CKL (case 30 of 1971 PN Bukit Tinggi). The property disputed by Dt. BNB and Upiek in 1971 had already been the subject of a dispute between A. Koto Tinggi and S. Dt. Bagindo in 1943, during the Japanese occupation. S. Dt. Bagindo had lost the case, which was decided by a decisive oath. A. Koto Tinggi had sworn that the *harato pusako* in question belonged to his *kaum* (S. Dt. Bagindo had not expected that A. Koto Tinggi would dare to do so). The land which was in dispute between Upiek and Dt. BNB in 1971, according to Upiek, was part of the property which her brother had won in 1943. It had not been given back (it was located in Batu Balantai) and Dt. BNB's *kaum* had built a new *rumah gadang* on it. Dt. BNB had also been installed as *panungkek* of A.M. Dt. Bagindo in this house, and no protest had come from A. Koto Tinggi's *kaum*. But in 1971 they claimed, that the property had only been "borrowed" to Dt. Bagindo and later to Dt. BNB. The elders of the *hindu* had tried to settle the case. It was decided that the disputed *pusako* should be exchanged with a rice-field in 3 Kampuang which belonged to Dt. BNB's *kaum* and which was pawned to Upiek. However, in spite of several new meetings and discussions of the problem, the matter was not finally settled, and Upiek had gone to the State Court.

At a later meeting in our house (4.4.75) the matter was discussed again, and Dt. BNB complained about the "justice" which one got in the State Courts. Judges were corrupt and let things happen which were

contrary to *adat*. In his case against Upiek, the PN had declared the judgement executable, and he had indeed been forced to tear down the *rumah gadang* on the disputed *harato pusako*, something which could never have happened without the approval of the KAN, no matter who was in the right. Dt. Panghulu Rajo confirmed this. It had been the fault of the *panghulu* (A.M. Dt. Bagindo) who "had not stood in the middle" between his disputing *kamanakan*. Whoever was in the right in the matter, it would have been the task of the panghulu to decide the question of the *rumah gadang*. But obviously, Dt. Bagindo had taken sides against Dt. BNB, his own *panungkek*.

Some days later, Dt. Batuah Rajo, the chairman of the *Karapatan Adat Nagari*, came to our house. He wanted our advice (the only case in which our advice was asked). He put the problem abstractly: X makes a document giving Y power of authority (*surat kuasa*) over his property. X is still living. The content of the document is, that Y may administer X's property during X's lifetime. He, as *tambang adat* and chairman of the KAN, had been asked to take cognizance (*mengetahui*) of the document. Would there be any reason not to do so? We cautiously ventured the opinion that if the problem of inheritance was not touched, and if the giver of authority was entitled to give authority, he probably could do so, and that in this case the *tambang adat* could probably take cognizance of the document as well. The real problem was, Dt. Batuah Rajo confided to us, that he already had signed the document. It was a letter of HB to Angku Bagindo nan Tungga, the *mamak kepala waris* of Dt. BNB's *kaum*. The letter had been written on official paper (*atas zegel*) and had been signed by HB, his children, the *Wali Jorong* (village district head) of 3 Kampuang, and some of the distant *kamanakan* of HB. Therefore he, Dt. Batuah Rajo, had thought it quite in order to sign the letter, too. Admittedly, A.M. Dt. Bagindo and the *Wali Negeri* had not signed it. Actually, A.M. Dt. Bagindo at first had been willing to do so, but then had refused, since he "is an enemy" of Dt. BNB. And now "they" wanted to depose him as *tambang adat*, saying that with his signature under the document he had violated *adat*. He had just heard it from his father in Bukit Tinggi, for they had not dared to tell him directly. Dt. Batuah Rajo was quite concerned: "They want to depose me, but they have no right to do so. The *tambang adat* can only be deposed by the KAN. This is a matter of written law, anyway. The letter has been written on official paper, it is valid. Everyone can give authority to other persons. And according to the Constitution (of the Republic) I can sign such a

letter". And to Dt. BNB, who had come later, he said: "If they think that they can depose me like that, they have erred. Tell this to your friends from *suku* Sikumbang and to Bandaro Hitam".

Dt. Batuah Rajo did not like the case anymore. He had stepped into trouble and prepared his defence in reference to a different standard of validity: written law and the Constitution. We got the impression that this statement was also a hint of the forces standing behind the Constitution: the government administration. Dt. Batuah Rajo as administrative official in the information department, was part of this administration.
As background information it must be known that two years ago, A.M. Dt. Bagindo had been deposed as *tambang adat* and replaced by Dt. Batuah Rajo. Thus A.M. Dt. Bagindo was his enemy. The change in the *tambang adat*-ship had mainly been the work of Bandaro Hitam, the *juaro adat* of Sikumbang Tangah, one of the most influential and clever politicians in the *nagari*.
The *Wali Negeri* was also an enemy. So was the head of the General Section of the KN, who had defeated Dt. Batuah Rajo's grandfather (FF) in a property dispute (see "The Extinct Buah Gadang"). The head of the Religious Section of the KN, was a close friend of the WN and was married to a sister of Upiek, the opponent of Dt. BNB whom Dt. Batuah Rajo had supported by taking cognizance of the document.

In the meantime, Dt. BNB had received a new letter, this time from a child of Haji Batuah, asking to procure more money. A *sawah*, which had been pawned to a woman from *suku* Guci, should be "deepened" (*didalami*). But the woman refused, and so one would have to redeem it (*menebusi*). But the other Sikumbang people opposed this, the *kaum* of A. Koto Tinggi and Bandaro Hitam in particular.

Menubus, to redeem, is redemption in the name of the original holder. So if Dt. BNB redeemed the *sawah*, this would have meant that he acted as a *kaum* member of HB. If the other potential heirs of HB let this happen, the act could easily prejudice the question of who is the heir of HB.

They had even held meetings now in the *hindu* Sikumbang Tangah, only to keep him, Dt. BNB, from receiving the rightful inheritance. He had not attended these meetings. But he had asked the advice of Dt. Panghulu Rajo. To make a"letter of authority"is permissible, Dt. Panghulu Rajo had said. Only to make him heir (*kasih waris*) in this document would be against *adat*. For in matters of inheritance, the "property constitution" (the *corian barih*, Chapter 4: 146) would have to be consulted first. It must be ascertained who is most closely related to HB, and this would be in part determined by the location of their *harato pusako*. Dt. Batuah Rajo had advised Dt. BNB to write a letter to HB, asking him to declare in writing that he, Dt. BNB, was the closest relative (*kaum*), and that he, in particular, was more closely related to him than was

Bandaro Hitam. Dt. BNB then had called a meeting of his *kaum* to decide upon the future strategy. For nearly all of HB's property was pawned and it would require a lot of money to redeem it. But still, they had decided to go through with the matter. (The property had been pawned for altogether 77 gold *rupiah* (*rupiah emas*). 1 *rupiah emas* was at the time worth about 30,000 *rupiah*. 1 kg of meat cost 700 *rupiah*, 1 kg of rice 90 *rupiah*.)

The next time we heard about the case was from Bandaro Hitam (9.6. 1975). Yes, there was a lot of trouble again in Sikumbang Tangah, but he, Bandaro Hitam, had settled it all. Haji Batuah had made a letter of authority, in which he had invested Dt. BNB as his heir. But this was not proper (*patut*), as there were other people who were more closely related to HB. The problem had been decided anyway already in 1956, when they had discussed the inheritance of HB in a large meeting. It had been decided that the inheritance would be a matter of the branch of the Dt. Bagindo in the 3 Kampuang-group only, for it and the Batu Balantai-group had already divided their *pusako*. Within the 3 Kampuang-group, there were three branches, the descendants from three grandmothers: the one of Haji Batuah, the one of A.M. Dt. Bagindo, and the one of Z. Dt. Bagindo. Since Haji Batuah was *punah*, his property should be divided between A.M. Dt. Bagindo and Z. Dt. Bagindo. Dt. BNB was a *kamanakan* of A.M. Dt. Bagindo and could only get a share of the property in this capacity. But actually - this was hinted at for the first time - Dt. BNB (his ancestress) was not even of the same *buah gadang* as Dt. Bagindo. He had only been fetched (*diambil*) as *panungkek* (some generations ago) by Dt. Bagindo. This had been possible, as they were *saparuik*.

We asked whether it was written in the document that Dt. BNB was indeed invested as heir? Oh no, they would never dare to put it so directly. But it was written that Dt. BNB got authority "as *ahli waris*" (*sebagai ahli warih*), and this could not be allowed. If it had been written "to take care, or to administer" (*memelihara atau mengurus saja*) this would have been in order. But it was "*sebagai warih*" - and, indeed, Dt. BNB had already acted as if he was the heir of HB. After he had received the letter of authority from HB, he had transferred a pawning from a Guci-woman to someone from *suku* Caniago (Dt. BNB had not told us that). So he had acted as *waris*, and this could not be tolerated. A.M. and Z. Dt. Bagindo therefore had invalidated (*membatalkan*) the transaction and the letter of authority. They had approached the *Wali Negeri* and the *Wali Negeri* had after some time decided to ask him, Banda-

ro Hitam, to look into and settle the matter. He had then convened a meeting of all lineage elders of Sikumbang Tangah (of all 8 *buah gadang*) for a *musyawarah*. Dt. BNB had been present, but had not dared to say anything. In the meeting it had been decided that the original decision taken in 1956 should be adhered to.

Another, and hardly less grave matter, however, Bandaro Hitam added, was the fact that Dt. Batuah Rajo had signed the letter of authority. This was a great error in *adat*, but Dt. Batuah Rajo was still young (he was a few years older than Bandaro Hitam) and unexperienced. But he already had talked to him, and Dt. Batuah Rajo had realized his error. He had advised him to withdraw his signature.

The inheritance of HB and Dt. Batuah Rajo's signature had become a *nagari*-wide political matter. When we visited Dt. Maharajo, one of the *panghulu 7 suku*, sometime later (29.6.75), it seemed that the move to depose Dt. Batuah Rajo had made some progress. They had organized a meeting of the 5 *hindu* in Candung (Dt. Batuah Rajo was from Koto Lawas). This meeting had taken place in the house of Dt. Mangkuto (who acted as head of the *adat* section of the KN). The *Wali Negeri*, A.M. Dt. Bagindo, Dt. Mangkuto and Bandaro Hitam had participated. They had already found a new candidate for the chairmanship of the KAN: himself, Dt. Maharajo. But he did not want this position, and certainly not in this way, and so he had refused the invitation to the meeting.

> Dt. Maharajo's refusal to cooperate triggered off more political trouble. Some time ago, it had been decided that a new *juaro adat* should be installed in the *hindu* of Dt. Maharajo. The successor had already been selected. But now Dt. Mangkuto, who was of *suku* Pili which was part of the *hindu* Sikumbang Koto Ambalau, had instigated some of Dt. Maharajo's *kamanakan* to oppose the installation. Bandaro Hitam was, of course, behind this, too. Whereupon Dt. Maharajo started a campaign to depose Bandaro Hitam as *juaro adat*. The problem had not been settled when we left the *nagari*.

According to Dt. Maharajo, Dt. Batuah Rajo had "apparently" been wrong in this matter. But his error was not yet clear (*kesalahannya belum sempurna*) as it was rumoured that he already had withdrawn his signature. If he had done so indeed, this would mean that he was not wrong any more (*berarti dia tidak salah lagi*). In our discussion with Dt. Maharajo, we tried to ask some hypothetical questions with respect to the making of authority over *harato pusako*. Could one give such authority, even if it were for one's own lifetime only? No, he answered, for the ones who have to receive the property of Haji Batuah were, the three

Dt. Bagindo. (The first and only time where all *three* Dt. Bagindo were mentioned.) We again tried to frame our questions in a way that they should not imply any connection with future inheritance, but without success: In each case the property must go to the Dt. Bagindo. It must go to the *ahli waris*. Even for a lifetime only, such authority may not be given (*untuk hidup saja, tidak boleh. Harus ahli waris*). Dt. BNB had no right at all to mix in this matter. The problem could only be solved by a *musyawarah* of the three Dt. Bagindo and Bandaro Hitam.

Dt. Panghulu Rajo expressed a somewhat different view (21.6.1975): The *kaum* of HB was *punah*, the *buah gadang* was not. So HB was perfectly entitled to indicate someone (a *kaum*) from his *buah gadang* as his heir, e.g. Dt. BNB. This must, of course, happen with the cognizance of the lineage elders; without their cognizance it could not be done. However, they could not do anything against it, they were forced to consent to this (*terpaksa setuju*).

This was the last that we heard about the property of Haji Batuah. The case had come to a preliminary end, and Dt. BNB had obviously lost the first round. But the problem will be resuscitated when HB dies, and there will be a lot of trouble and most probably the case will go to court. Only then will Dt. BNB know what his letter of authority is worth.

Discussion:
As an example of property and inheritance politics the story speaks for itself. Only two brief comments must be made:

1. The story illustrates well how the principle that the *panghulu* must take cognizance works in practice. Clearly, A.M. and Z. Dt. Bagindo "knew" about the letter of authority. But that was not sufficient, they had to take approving cognizance, and they were not willing to do so (yet). The importance is also shown by Dt. Batuah Rajo's signature as he only could acknowledge the letter without having to "consent" to it. Yet his signature was taken very seriously, so seriously that his opponents in *nagari* politics could at least construct a plausible reason for his deposal as *tambang adat*. Taking cognizance, here meant an impermissible validation of the letter by the highest *adat* functionary; impermissible, as the validation could only be given after the *panghulu* had taken cognizance. Without their approval, the letter "could not" be valid in *adat*. On the other hand, the Dt. Bagindo *just had to* take cognizance, for HB *could* invest Dt. BNB as his heir.

But the social processes by which it lastly is determined whether it was right of the three Dt. Bagindo to withhold their acknowledgement, or whether it was wrong that Dt. Batuah Rajo signed the letter, do not function successfully any more in the *nagari*. In the higher forums of decision making, the State Courts, these processes cannot be reproduced. The evaluation of validity in *adat* therefore more and more becomes a matter of the political life: the one wielding most power for the time being will be the one who is right - for the time being.

2. The case also illustrates how individual and group autonomy over *harato pusako* is restricted. HB was *punah*, and in this situation he was quite free to dispose of his property. He had pawned nearly all his *kaum*'s *harato pusako* quite unimpeded by the other *kaum* of Dt. Bagindo. But the transactions he had carried out were temporary in character, and they did not prejudice the question of his inheritance. If he had transferred the pawning from the Guci-woman to the people from Caniago, nobody would have cared - for the transaction would not have lost its temporary character. The letter of authority was given to Dt. BNB only for the lifetime of HB - it was to have a temporary character, too, but that was not accepted. The letter was immediately drawn into "diachrony", into the dimension of inheritance, by all concerned, including Dt. BNB, and it was subjected to all restrictions that pertain to a transaction which is to have the character of a definite diachronic transfer of property relationships. Whatever Dt. BNB did, even during the lifetime of HB when he could not yet - in our understanding - be considered his heir, e.g. the transfer of the *gadai*, was not considered valid, as it would have shown Dt. BNB as heir in the *adat* conceptualization of inheritance.

3. *The Inter-Kaum Pawning Case*

Inter-*kaum* disputes often center around pawnings. If some time has elapsed since the original transaction and if the original witnesses have died, it frequently happens that the members of the original pawnee's *kaum* claim the *harato* in question as their own *harato pusako turun temurun*. The pawner or his descendants then have to prove that the property indeed had been pawned. This is rather easy when the parties belong to different *suku*, for it will be difficult for Guci people to maintain, say, that a rice-field surrounded by fields belonging to *suku* Sikumbang people, is their *harato pusako turun temurun*. But it is diffi-

cult to prove if the parties belong to the same *suku* or even to the same *buah gadang*.

The following case arose in the *buah gadang* of Dt. Bagindo - and we meet with familiar faces again. The contending *mamak kepala waris* were Bagindo Hitam, the MMZS of Bandaro Hitam and then (1961) *juaro adat* of *hindu* Sikumbang Tangah, and Angku Bagindo, the elder brother of Dt. Rajo, one of the *panungkek* of (the then still living) H. Dt. Bagindo of the Batu Balantai-group.

A. Bagindo had wanted to redeem a rice-field, which had been pawned (so he said) by his granduncle (MMB) to the granduncle (MMB) of Bagindo Hitam. Bagindo Hitam had apparently (this is based upon information from Dt. BNB) at first acknowledged the right of A. Bagindo in principle, but the parties had failed to come to an agreement over the redemption sum. Bagindo Hitam had demanded 12 *rupiah emas*, A. Bagindo had offered only 4 *rupiah emas*. The efforts to settle the case in the *nagari* proved a failure, and A. Bagindo took the case to the State Court. He felt optimistic, for he had as evidence the pawning register which had been kept by the *Tuangku Laras* of Candung during the years 1873-1897. The entry for July 29, 1887 was the following:

"At this time there have come three men. One is Tapa Dt. Bagindo, *suku* S., *negeri* and *Laras* Candung, who lives in Batu Balantai, and the name of the second is si Buruk gala Bandaro nan Panjang, *suku*, *negeri*, and *laras* and residence as before; and another man named Idris gala Sutan Bandaro *suku* Sikumbang, *negeri*, and *laras* Candung, who lives in Candung (3 Kampung). They have come here to declare that they have pawned *sawah*, eleven *piring*, situated in Ladang Lawas, which bring a harvest of 25 *sumpit*, and this is pawned for 500 *rupiah*. The one who is pawner (*yang menggadaikan*) is Dt. Bagindo, the one who is *pawnee* (*yang memagang*) is Sutan Bandaro. It is their agreement that if the *sawah* is to be redeemed (*batahuran*) this must be done with 500 *rupiah*, too. They have made this agreement before two witnesses, and these are also signing the letter so that the state of things may be clear".

The names and the titles of the parties and the witnesses are written, and the signatures consist of a cross.[4]

Besides this document A. Bagindo submitted two genealogies as evidence. According to the genealogy of his *kaum*, he was the ZDS of Tapa Dt. Bagindo, and this was not disputed by his opponents. According to his genealogy of the defendants' *kaum*, Bagindo Hitam was the son of Rasiah, who was the daughter of Rasimah, the sister of the Idris St. Bandaro mentioned in the entry in the register. The defendants, however, claimed that the land in dispute was their *harato pusako turun temurun*. The land mentioned in the pawning register was not the land in dispute

at all. Besides, there had never been an I. St. Bandaro in their *kaum*, and the alleged pawning had thus not been with their *kaum* at all.

Witnesses were heard. Two witnesses, among them H. Dt. Bagindo, the *panghulu* of the plaintiff, confirmed that indeed I. St. Bandaro and Rasimah had been siblings. But to whom the property actually belonged, they unfortunately did not know. Two other witnesses, old men from *suku* Sikumbang who lived in 3 Kampuang, stated that they had never known or heard of a St. Bandaro.

The PN (case 36 of 1961 PN Bukit Tinggi) rejected the claim. The plaintiffs had not sufficiently proven that the disputed *sawah* was indeed the *sawah* which had been pawned in 1887. Besides, the pawning register was no real evidence, as the parties had only made crosses and not given their own signatures.

What had happened? According to the information given by Dt. BNB, A. Bagindo should have won the case. For Bagindo Hitam had originally acknowledged that the *sawah* belonged to A. Bagindo's *kaum*. The witnesses, too, had been prepared to give evidence in favour of A. Bagindo. But in court, Dt. BNB concluded, the witnesses "had suddenly sat beside Bagindo Hitam". The reason for this was obvious to him: Money.

When we started to discuss this case with Bandaro Hitam, the MZDS of Bagindo Hitam and his successor as *juaro adat*, it seemed at first that we would not get much information from him. Bandaro Hitam remembered the case quite differently: Yes, there had been a *surat gadai* in this matter, and if he remembered correctly, it had been handed in by Bagindo Hitam as evidence that he had already redeemed the *sawah* in question. For you must know, he instructed us, if you pay back the money, you also get the letter back, and the chairman of the PN wanted to see some evidence that the *sawah* really belonged to our *kaum*. Originally, the *sawah* had been pawned to people of *suku* Guci, if he remembered correctly ... and his voice trailed off. But we had gotten quite well acquainted with Bandaro Hitam. After some time he gave us more confidence and warmed up." Yes, it was A. Bagindo who had claimed that it was his *sawah*. And Hasan Dt. Bagindo, it is true, had also stated that the *sawah* was the *harato pusako* of A. Bagindo. But we said that the *sawah* belonged to Bagindo Hitam (to our *kaum*). Said Hasan:'It belongs to A. Bagindo'. Said my *mamak*: 'No, these are not the *harato* of A. Bagindo. A. Bagindo's *pusako* are still under the control of Hasan Dt. Bagindo - *ahhhitu*!' Now Hasan was not stupid, for he had been a *prokrol* (unofficial advocate managing

court affairs for villagers). When he heard this, he changed his mind and said that the property belonged to us, indeed. That is how it was at the time".

With the latter remark, Bandaro Hitam implied that A. Bagindo may turn against H. Dt. Bagindo and demand more property from him, and that it might be wiser for H. Dt. Bagindo to side with Bagindo Hitam in order to have an ally if this should indeed happen. The expression "*ahhitu*", "ah, that", or "ah, there you see" is made when the speaker has made a point. The point in question was the cleverness of Bagindo Hitam, that he had made H. Dt. Bagindo aware of the implications of his statement.

"And when the *Pengadilan* inquired about our genealogy, and who Bagindo Hitam's mother was, Hasan answered: 'Rasimah'. Said my *mamak*: 'No. Her name is Dasimah' (thus a different woman). He said so in order to be quicker than Hasan, to invalidate and to turn around his statement (*untuk mencepatkan dan membatalkan dan memutar*). Said Hasan: 'Rasimah'. But my *mamak* was even quicker: 'Dasimah, not Rasimah'. In order to invalidate Hasan's information. For if the information was not invalidated, then we might have lost the case. This is the basic principle in disputes: The information of the opponent must be immediately invalidated. Even if it is true it must be contradicted straight away. This is a tactic of the dispute ... haaah. In the *Karapatan Nagari*, this cannot be done, but in the State Court it may (can) be done. For if it is not invalidated, it is a sign that the information is true, and we lose. (*Mamak saya lebih cepat lagi. Dasimah, tidak Rasimah. Haah. Untuk membatalkan keterangan Hasan Dt. B. Kalau tidak dibatalkan, nanti kita kalah. Pokoknya keterangan lawan batal terus. Walaupun betul, batalkan terus. Ini taktik perkara, haaah. Kalau di KAN, tidak bisa. Kalau di Pengadilan, boleh. Kalau tidak dibatalkan, tanda betul keterangannya: kita kalah*). "

This way, A. Bagindo's claim was defeated, as the court was not sure whether there were genealogical relationships indeed between Bagindo Hitam and the St. Bandaro mentioned in the document. The *kaum* of Bagindo Hitam had got "its" *sawah*.

However, the problems concerning the *sawah* did not stop. When Bagindo Hitam had died there was trouble again, but this time within his *kaum*. The fields only "belonged" to Bagindo Hitam as he had "redeemed" them. When he had died, the *harato* were taken by Bagindo Putih, the MyZS of Bandaro Hitam, and Bagindo Putih did not want to share the property with the *jurai* of Bandaro Hitam. The matter was first discussed in the

suku, and people thought that Bandaro Hitam was right to claim half of the property for his *jurai*. But Bagindo Putih did not accept this. So Bandaro Hitam went to the *Wali Negeri*, who also said that he was right: The property must be divided between the descendants of the two mothers in the *kaum*. Finally the dispute was ended by the *Camat*. Since 1974 the fields have been divided, and Bandaro Hitam has had his right. He himself uses the fields as *sawah niniek mamak*, as "his own" *sawah* which is allotted to him for his expenses as *juaro adat*. It is usually worked by one of his wives.

When he had had the trouble with Bagindo Putih, the *Wali Negeri* had "taken care" of the harvest which was in dispute, too. After Bandaro Hitam had won his case, the *Wali Negeri* did not want to return the harvest. So Bandaro Hitam went to the Police who came to Candung to settle the matter, and the *Wali Negeri* had to return the rice. He did not want to and said that he did not know where the rice was after such a long time. But Bandaro Hitam had said: "If the mice have eaten it, please show me the ashes (*abu*) as proof. Ahhhitu!"

III. THE EXTINCT *BUAH GADANG*

When *buah gadang* become extinct, most of their *harato pusako* has already been pawned by the last group member(s). Their autonomy over their *harato pusako* is generally recognized, as there are no more persons who are "of one common *pusako*". The last members of a *buah gadang* can also adopt other people as their heirs much easier than in cases where *kaum* become extinct. In particular, they can adopt their *balahan*, persons who in former times had belonged to their group and had moved to a different *nagari* later. But even if most *pusako* has been pawned, the inheritance of a *buah gadang* is still of considerable economic interest, as there is always the right to redeem or to transfer the pawnings. Besides, if one is at least *saparuik* with the extinct *buah gadang*, one has a good chance to acquire its *gala sako*. But the best strategy to become heir to a *buah gadang* is, of course, to claim that oneself or one's *kaum* is a member of the *buah gadang*, and that there is no problem of inter-*buah gadang* inheritance at all, but just of inheritance between *kaum* which are still *saharato sapusako* - of one *pusako* property. The easiest way is to oppose transactions which are carried out by the last *buah gadang* members on the ground that one's consent had not been asked

although one is of the same *buah gadang*. Such claims are facilitated by the partly untraceable relationships between the *kaum* and *buah gadang*, in particular between groups where no *panghulu* has been installed for generations. Often, *panghulu* A has represented "his" *kamanakan* of *buah gadang* B in *adat*, as B has no installed *panghulu*. If *buah gadang* A becomes extinct, the group members of B may "remember" very well that A was "their" *panghulu*, too. Although it is often nearly impossible to ascertain who the closest group of relatives of an extinct group is, there are criteria by which the reliability of claims can be tested. This will also be illustrated in the following story, which tells about the *buah gadang* of Dt. Tuah and the problems connected with the inheritance of its *harato pusako*.

The *buah gadang* of Dt. Tuah, *suku* Guci in the *hindu* Guci Tangah, to all appearances was nearly extinct. The last Dt. Tuah, who had been married in Lasi, the neighbouring *nagari*, and who died there, had not been replaced. After his death, only two brothers were left in his *jurai*, Haji Barudin and St. Pangeran. Haji Barudin had died recently, too, and now St. Pangeran, aged 72, was the last member of the *buah gadang*. He was a rich man, for Dt. Tuah had belonged to the 60 original *panghulu* who founded CKL, and the first Dt. Tuah (now there were 4 *buah gadang*) had been one of the *panghulu 7 suku*. St. Pangeran was a very well known but controversial figure in CKL. He took an active part in *nagari* politics, and acted as chairman of the General Section of the KN. According to his friends, he was a great *adat* expert, and in conversation - with us or in *adat* atmosphere - he was an inexhaustible source of *adat* sayings, for which he was greatly admired. According to others, he was not a "good CKL-man": He was 72 years old, yet he "behaved like a young man". He dyed his hair black, and liked to attend pig-hunts with his two expensive hunting dogs. He had been the first one (or the first one remembered) to break the rule of *nagari*-endogamy, for which he was duly punished at the time. St. Pangeran was quite aware of the fact that many people did not like him, and he took his precautions. When he was ill, he went to the medical assistant to get some pills. Of course, the native doctor (*dukun*) could have helped him better, but he probably would be bribed by his enemies to poison him. The problem of his inheritance was a matter of great concern in CKL. St. Pangeran himself lived very modestly in CKL. He had pawned most of his *buah gadang*'s property, and also had sold some fields, and he had transferred most of his capital

to his wives and children. But he had not yet made final arrangements about the inheritance. He had shielded all criticisms off by saying that he had *kamanakan* in *nagari* B. in district 50 Koto, who were a *balahan* of his, and he thus apparently would not even leave the property which was left to the related Guci people in CKL.

But the thing with the *balahan* was a dubious affair for most villagers, and there were only a few who believed him. The inheritance of St. Pangeran became problematic, when one Hassan Angku Mudo from *suku* Guci Tangah claimed, that he was actually a *kamanakan* of Dt. Tuah, too, and that St. Pangeran had no right to sell or pawn *harato pusako* without his consent. This finally developed into a court case, which will be reported presently. But before the case went to court, there had been an attempt to settle the matter in the KAN, where the problem of the *balahan* had also been discussed.

As a matter of *adat*, St. Pangeran had, of course, the right to adopt his *balahan*. Dt. Maharajo and Dt. Panghulu Rajo explained to us, what procedure would have to be followed in this case: *If* St. Pangeran had a *balahan* indeed in 50 Koto, and *if* his *buah gadang* was indeed extinct, he could transfer his *harato pusako* to them. But the *balahan* must be true *kamanakan*, i.e. *kamanakan batali darah* of the ancestor who in former times had been a *kamanakan* of Dt. Tuah. These *kamanakan* then would have to move to CKL. For "*pusako* cannot move" (*pusako indak bulieh pindah*). The *balahan* must be accepted as heirs (*dionjokkan dan memperlihatkan seperti ahli waris*) in a formal ceremony which must be validated by "CKL", i.e. by the 12 *hindu*. If St. Pangeran wanted to adopt his *balahan* he would have to notify the *juaro adat* of his *hindu*. The *juaro* would then report to the *tambang adat*. The *tambang adat* would discuss the matter with the other *panghulu* of *suku* Guci. If they consented, the matter would be brought to the notice of the *nagari* - in a meeting of the 12 *hindu*. If CKL also consented, the ceremony would be held in the *rumah gadang* of St. Pangeran. St. Pangeran would only have to care for the provision of the ceremonial meal, the organization of the ceremony would be in the hands of the *juaro adat*.

But when the question of the *balahan* was discussed in the KAN, the *panghulu* still had many doubts. Particularly, Dt. Panghulu Rajo had questioned St. Pangeran "in a way that he did not dare to eat or to drink" (this was told by Dt. Panghulu Rajo himself):

Q: "What are your connections with the people in *nagari* B.?"

A: "They are my *balahan*".

Q: "What is the title of their *panghulu*?"

A: "Dt. Basa".

Q: "Is there no Dt. Tuah or Dt. Tuah Basa?"

A: "No".

Q: "Where is their *harato pusako* in CKL? Do they have *harato pusako* in CKL?"

A: "No".

"So, you see", Dt. Panghulu Rajo concluded, "he had no proof at all that he really had a *balahan* in *nagari* B. If the *panghulu* of his alleged *balahan* had been a Dt. Tuah or Dt. Tuah Basa, it would be rather obvious that they were a *balahan* of Dt. Tuah in CKL, indeed. But with a Dt. Basa - where is the connection? And if they were a real *balahan*, there should still be some *sawah pusako* of them in CKL".

In the KAN meeting, St. Pangeran had neither accepted any other modalities for the inheritance of his property which had been indicated by the *panghulu*. He did not want to make *sando agung*: to give his property to his children. After their death, it would then fall back to the *suku*. Neither did he want to make *sando kudo*: to pawn (*gadai*) it to his children. And he also did not accept the last possibility mentioned by Dt. Panghulu Rajo: "*Tuan St. Pangeran boleh bagundik ka urang Guci* - St. Pangeran, you may take a concubine from Guci. Choose a woman and marry her". As the exogamy prohibition would be violated, a ceremony would have to be held and St. Pangeran would have to slaughter a buffalo for the ceremonial meal. But the breach of exogamy would be healed by the ceremonial meal and the marriage would be validated by CKL. The *harato pusako* thus could be saved for *suku* Guci. But St. Pangeran did not want this. On the contrary, shortly afterwards he married a young woman from *suku* Caniago.

And then there was still the problem of Angku Mudo, who claimed to be a *kamanakan* of Dt. Tuah. In the KAN they had not been able to settle this question, and Angku Mudo had brought the case to the State Court. His *mamak*, Angku T., he claimed, had controlled the *sawah* in dispute and had always taken its harvest. But after Angku T's death, St. Pangeran had sold the *sawah* to KB from *suku* Selayan. But he could not do so: For he, Angku Mudo, and St. Pangeran were of two *jurai* in the same *kaum*. Between the two *jurai* there had never been a distribution of the *harato pusako* in the manner of *ganggam bauntuek*, the property had just been used together (*belum pernah dilakukan pembahagian terhadap harta hutan tinggi secara ganggam bauntuek masing2 jurai atau anggota kaum lainnya, melain-*

kan dimiliki secara bersama2 saja dalam kaum). As the property which had been sold was *harato pusako turun temurun* in their *kaum*, he claimed that the sale was void and that the property should be returned to the *kaum*.

According to St. Pangeran, Angku Mudo and he were not *sakaum saharato sapusako*. His own *panghulu* was Dt. Tuah. The *panghulu* of Angku Mudo was Dt. Panghulu Ali. His own graveyard was in J., the one of Angku Mudo in I.L. They were of different *rumah gadang*, too. The *pusako* of Angku Mudo had no common borders with his. Angku Mudo had never participated as *waris* in pawning transactions. Finally, if St. Pangeran should die, his closest heir would be St. Rangkayo, not Angku Mudo. The second defendant, the buyer of the property, stated that it was true that he had bought the *sawah*. This had been in 1962, and he had bought it from H. Barudin, the elder brother of St. Pangeran, with the consent of Dt. Tuah who then was still alive.

Witnesses were heard: Some gave very vague statements: They "had heard" that the parties were *sekaum* or *sesuku*. Another witness stated that, when he had married a *kamanakan* of Angku Mudo, Dt. Tuah had acted as *adat* guardian (*wali adat*) for his wife. But according to another witness, an *adat* expert from CKL, this did not mean that Angku Mudo was a *waris* of Dt. Tuah. For according to the marriage law, one must have the consent of the *panghulu* for the marriage. As the *panghulu* of Angku Mudo was not installed, Dt. Tuah had taken his place. Thus if Dt. Tuah had acted as *adat* guardian, one must very well differentiate whether he had done so in his *buah gadang* or in the *suku* Guci in general. There were other points which had to be weighed carefully: All Guci *nan* 4, (the four *buah gadang* Dt. Tuah and the other *buah gadang*, including Dt. Panghulu Ali) had, in the colonial era, "paid the debts of Dt. Tuah". I.e., they were people "who payed debts together, and who received outstanding debts together" (*utang samo dibaie, piutang samo ditarimo*). But according to the same expert, this did not necessarily mean that they all were *waris*. For the maxim: "*mamak dipintu utang, kamanakan dipintu bayaran*" - "If the *mamak* stands at the door of debts, the *kamanakan* stand at the door of the paying", was valid in the whole *suku*: If the *kaum* of Angku Mudo had contributed to the payment of the debts, this did not mean that he was a *waris*.

Another incident, however, was considered to be much more important: Two witnesses declared that Angku Mudo had, after Dt. Tuah had died in Lasi, "brought the mattress" to Lasi in order to fetch the corpse of Dt.

Tuah to his *rumah gadang* and to carry out the *mati batungkek budhi-panghulu* installation. But this had failed. (*Kaum Penggugat ada membawa kasur ke Lasi guna mejemput mayat H. Dt. Tuah tetapi kasur tersebut tidak dipakai, dan begitu juga usaha penggugat untuk membawa mayatnya kerumah penggugat untuk melakukan batungkek budi gala Dt. Tuah tidak berhasil*). This was a clear sign that Angku Mudo and Dt. Tuah were not of one *kaum*. For even if Angku Mudo had not succeeded in bringing the corpse of Dt. Tuah to his house, he *would have had to* be successful in his attempt to succeed Dt. Tuah if he really had been of one *kaum* with Dt. Tuah and St. Pangeran. If the latter had opposed the succession, his opposition could have been overridden by a decision of the Guci nan 4 or the KAN.

The Court rejected Angku Mudo's claim. It accepted that Dt. Tuah was the *panghulu* of St. Pangeran (which was undisputed) and that Dt. Panghulu Ali was the *panghulu* of Angku Mudo. This alone already showed, that Angku Mudo and St. Pangeran were not of one *kaum* anymore (*tidak sekaum lagi*), as it is impossible "that two cocks are within one ricepot" (*karena tidak mungkin dua ekor ayam gadang selasung*); that there are two *panghulu* within one *kaum*. Another point was that the mattress had not been used. "For the mattress which is sent to fetch the corpse must be used if the deceased is a close *kamanakan*, a member of our *kaum*".

Discussion:
We should note the different uses of the terms denoting the groups; of *jurai*, *kaum* and *buah gadang*. The court consistently speaks of *kaum*, and the parties adapt their arguments partly to that usage. But it is quite clear, that what the court understands under "*kaum*" is a *buah gadang* in CKL, not the group which is called *kaum* in CKL. The statement that there cannot be two *panghulu* in one *kaum*, would be senseless in reference to a CKL *kaum*, it only makes sense to a group under a *panghulu*, which in CKL is the *buah gadang*.

St. Pangeran could thus successfully establish in court that his *buah gadang* was extinct and that Angku Mudo could not prevent him from disposing of the property. In fact, St. Pangeran had not done anything - it had been his elder brother who had sold the *sawah*. What will happen after St. Pangeran's death is still open. If he does not adopt his *balahan*, the other Guci nan 4 will inherit his property. Who exactly will get it, is uncertain. It is a matter for the other three *buah gadang* of Dt. Tuah to handle; they must discuss this question.

IV. INTER-STRATA RELATIONSHIPS

It is extremely difficult to get information about property relationships between individuals or groups which belong to the different social strata within the same *buah gadang* or *kaum*. Or rather, it is very easy to get abstract elaborations of the *adat* in this matter, on the classification of the *kamanakan*, on their respective rights and duties, etc. But it is difficult to have these illustrated by concrete examples in which these relationships have become relevant. For "one does not speak about it". Referring to living persons or groups as the descendants of former strangers or slaves, is impolite and insulting. It would make the persons referred to *malu*, ashamed, and it is one of the basic principles of *adat* morality that one may not make other people ashamed, "*malu indak bulieh diagieh*". What is a likeable trait of *adat* makes things difficult for the anthropologist who, though willing to conform to the *adat* and its forms of politeness, is nevertheless very much interested in such "unpleasant things". The degree to which he is told about it depends very much on chance and on how far he is trusted; trusted that he will not tell others what one has told him. If information is given at all, it is usually clothed in subtle hints and allusions the understanding of which often presupposes the knowledge which the hints contain. This barrier is quite strict for discussions of the status of the *orang datang*, strangers, and it is very strict for the status of the descendants of former slaves. If the relationships between the strata are good, and if the legal consequences of the relationships are not questioned, then the status differences will generally be explicitly denied. But sometimes, references to the lower status of others must be made: when there is trouble about property. In emotionally heated discussions, the threshold of *malu* is more easily crossed; and it has to be crossed when the legal consequences of the inter-strata relationships have become problematic.

1. *The Descendants of Slaves and Their Mamak*

Problems between the *kamanakan batali darah*, the blood relatives of the group ancestress, and their *kamanakan dibawa lutuik* arise when the latter do not acknowledge their duties towards their former masters or assume the same rights as the *kamanakan batali darah*. The following story tells of such "impudent" *kamanakan*. It was extracted from AB 11: 74 ff. and took place in the *nagari* Selayo in the beginning of this century:

On December 3rd 1901, I. gala Raja Kecil Besar (RKB) instituted proceedings before the *Rapat* of the *Tuangku Laras* against his *kamanakan dibawa lutuik* under their *mamak*, Muara gala Bagindo nan Hitam (BNH). The *kamanakan* of BNH were the descendants of a female slave whom the MMMB of the plaintiff had bought. The conflict concerned the *harato pusako* which had been given to the defendants for their living. RKB complained, that the *kamanakan dibawa lutuik* denied their (slave-)descent and claimed equal right to the *harta tua* of his lineage, and that they had allowed themselves acts which were the privilege of owners whereby the danger had arisen that the property would be lost to the family (the *kamanakan* had pawned the property). He had therefore demanded that the property should be returned to him. If the *kamanakan dibawa lutuik* stopped their disrespectful attitude, they would, of course, be given *sawah* again.

The *Rapat* of the *Tuangku Laras* endorsed RKB's claim (10.12.1901). The defendants, however, did not comply with the judgement. So the plaintiffs invoked the authority of the Dutch district officer (*Assistent Resident*, AR). The AR also endorsed the judgement and ordered its execution by the police. The defendants did not appeal the judgement but adopted another strategy: They made an application to the AR, asking that the *adat* functionaries should be ordered to grant them some part of the *nagari*'s *tanah ulayat* in ownership (*eigendom*; what probably was meant was to give them their own *harato pusako*). When the AR refused to do so, they made an official petition to the Governor General of the Dutch East Indies: The Government, which had freed them as slaves, should also give them some land in the *nagari*. The AR advised against such a measure. He remarked, that the *kamanakan dibawa lutuik* could not break the bonds that tied them to their *mamak*, even if they had been freed as slaves. And it would be contrary to *adat*, if they were given *tanah ulayat* by the government.

The ensuing debate between the Dutch administrative officials illustrates well the reality of socio-political control over *ulayat* property in the West Sumatran *nagari* as well as the position of the *mamak* vis-à-vis his *kamanakan dibawa lutuik*. The highest judicial functionary of the Colony, the *Directeur van Justitie* in Batavia (Jakarta) expressed his view in a letter to the Governor of West Sumatra (8.12.1903) in which he disapproved of the attitude taken by the AR:

1. If the AR had stated that a grant of the *tanah ulayat* was contrary to *adat*, this was a very incorrect view of the problem. For the *tanah ulayat* fell under the *Domeinverklaring* of 1874, according to which all land not held in *eigendom* had been declared the domain of the State. If the rights of the *panghulu* were to be recognized at all, they were in any case subject to the rights of the Government flowing from the Domain-Declaration. Perhaps a grant of *eigendom* could not be given, but a grant of heritable lease (*erfpacht*) should certainly be possible. If in the *nagari* there was no more *tanah ulayat*, then one could find some in the neighbouring *nagari*.

2. The request should in any case be favourably received. For the Government had abolished slavery, and what would remain of the new freedom, if the descendants of slaves continued to be economically dependent on their former masters? Would they not be completely subject to the whims and the grace of their masters? The petitioners wanted to be free, to be free completely, and yet there were Dutch administrative officials like the AR who insisted that the abolition of slavery could never break the relationships between slaves and their former masters! The Government should support the rights of the former slaves as much as possible. The *Directeur van Justitie* concluded that it would be most appropriate if the petitioners would be granted some *ulayat* land, either in *eigendom* or in *erfpacht*.

The AR and the *Resident* of the Padang Highlands contradicted his view and elaborated the *adat*-position in their reports to the Governor (AR to *Resident* 16.1.1904, *Resident* to Governor of West Sumatra 3.2.1904). They advised that the petition should be rejected:

1. In *adat*, the *panghulu* as representatives of their families had the *hak ulayat* (*beschikkingsrecht*). This was, of course, contrary to the Domain-Declaration, which had transferred the right to dispose of *ulayat* land to the Government. But the Domain-Declaration had been brought as little as possible to the attention of the *adat* functionaries, and the Government itself had wisely never pressed the enforcement of the Domain-Declaration in West Sumatra. That had been a wise policy, and it certainly should be adhered to in cases of this kind. Besides, the Government itself did not completely comply to the rules of the Domain-Declaration. For there had been a regulation for West Sumatra that, if a parcel of the

ulayat were to be granted, this should be done only after consultation with the population, and that the grantee should, as a sign of the recognition of the *panghulu*'s rights, pay him the *bunga kayu*-fee (see Chapter 4:143). The administrative officials had even been prohibited from registering a grant if the demanded fee had not been received by the ones entitled to it (AB 11: 88). One should therefore consider the following: If property was given to the petitioners of family A, next would come the *kamanakan dibawa lutuik* of family B and C etc. One would have to realize further, that all these *kamanakan* would be persons who had broken the relationships with "their" families and who would consequently have been expulsed from their families and from *adat* - what would their position be in the *nagari*? And the *panghulu*, who highly valued their right to the fees, would certainly not be willing to accept it from "such people" who stood outside *adat*. If the Government were to disregard all these factors, the consequences would be unforseeable...

2. Both officials also pointed out that, though the abolition of slavery did set people free, it could not do away with the *mamak-kamanakan* relationship. As one could not become a slave in one's own *nagari*, all descendants of former slaves were, in addition, also strangers in the *nagari*. If they were willing to stay in the *nagari* after their freedom, they had to be accepted as *kamanakan* by one of the lineages. Once adopted, they would be given property for their living, but this property would always remain the *harato pusako* of their *mamak*'s lineage. Strangers could be given some *harta tua*, original *harato pusako*, when their *mamak*'s lineage was extinct, but *kamanakan dibawa lutuik* could never inherit such property or the *sako* of their *mamak* (AB 11: 82). Thus if the relationships between the *mamak* and the *kamanakan dibawa lutuik* were broken, at the same time the legitimation on which the latter possessed the property would vanish, for their *kamanakan* status was their only legitimation to property in the *nagari*.

The status of *kamanakan dibawa lutuik* was in some respects, not so different from the status of *kamanakan batali darah*. These, too, owed obedience and respect to their *mamak*, and they, too, could be expelled from their family and could be deprived of their *harato pusako* (*dibuang*) if they persistently behaved disrespectfully towards their *mamak*. The respect which BNH and his *kaum* members owed to RKB was due to their position as *kamanakan*, not as *kamanakan dibawa lutuik*. (NB: The officials here

forget that the *kamanakan* (*batali darah*) become *mamak* themselves in time, whereas the *kamanakan dibawa lutuik* remain *kamanakan* for ever.) Their petition should therefore be rejected.

And it was rejected by the Governor General of the Colony on the basis of these advisory opinions. By Decree of 24.6.1904 it was decided that: "taking into consideration that the petitioners would be given enough property for their living by their *mamak*, if they behaved according to *adat*, there was no reason for the Government to take any measures in the case".

2. *The Descendants of Strangers*

It is difficult, for the reasons already stated, to assess the extent to which, in contemporary Minangkabau, status differences and their legal consequences in property affairs are still observed. In theory (which is derived from interviews) nothing has changed. But there are only a few cases in which the inter-strata relationships and their legal consequences do become relevant in a dispute. The following case, which was decided by the PN Batu Sangkar in 1970 (case 1 of 1970) is an indication that the courts still recognize the status differences.

The plaintiff, one Dt. Tan Majo Lelo (TML), claimed that the title worn by the defendant, Dt. Maminjun (M), was the title of his *kaum*. When his *mamak* was still alive, the title and some *harato pusako* of his *kaum* had been "borrowed" by the defendant's *kaum*. Now he reclaimed both title and property. The defendant denied this and replied that both title and property were *turun temurun* in his *kaum*, and that Dt. TML had the status of stranger (*orang datang*) in his lineage and therefore no rights at all to the *pusako* and *sako*.

During the process, the following document was introduced as evidence. It was a "*Musyawarah* Decision Letter" (*surat keputusan kebulatan*) of the lineage elders of the *suku* of both parties:

We, the *ninik mamak* of *suku* X *nagari* X,

1. Having considered:
   a. The results of the MUBES of all West Sumatra of 1966,
   b. The results of the Decision of the *Kerapatan Adat Nagari* X about the termination of the *panhulu*ship in *adat* of Dt. M,
2. Having read the *Musyawarah* Decision Letter of the *kaum* of Dt. TML,
3. Taking into consideration the genealogy which has been forwarded by Dt. TML, herewith decide:

The *gala* which is used by B. Dt. M. is transferred (*memindahkan*) to B. Dt. TML, and the *gala* Dt. TML is transferred to si L.
Signed: We, the *ninik mamak* of *suku* X.
1. Dt. BNH. 2. Dt. BNK.

According to this document, the title of Dt. M. had been transferred to the plaintiff 4 years ago. Why then did he claim? It seems that the transfer had not worked. B. Dt. M. had continued to use the title and to exercise the function of *panghulu*. So the plaintiff tried a new course of action. In his argumentation, he did not rely on the document just quoted, for from the document one would rather infer that the defendant was the real Dt. M. And he also did not seem to have much faith in the validity of the transfer. Why, is illuminated by a document which was introduced as evidence by the defendant: A letter of Dt. BNK, one of the signatories of the 1966-document:

"Herewith I declare that I withdraw my signature under the letter which is called *Musyawarah* Decision Letter of the *Ninik Mamak* of *suku* X. I do so for the following reasons:
1. What is called the decision letter, in reality does not exist, as there never was a meeting and a *musyawarah* of the *Ninik Mamak* of *suku* X.
2. This so-called decision letter was just given to me for my signature.
3. I was forced to sign this letter, and I know that it contained no truth and did not fulfil the requirements of *adat*. But at that time I was forced by Dt. TML who had become *Wali Jorong* (village district head) then, and thus for the sake of my security I signed the letter which was put before me".

"At that time" was the aftermath of the GESTAPU, the attempted "*coup d'état*" of 1965, after which the members of the Communist Party were persecuted throughout Indonesia. At the MUBES of the LKAAM of 1966 it was decided that members of the PKI could not be *panghulu* any more. Pressure was brought upon the *nagari* to conform to this ruling, and the result of this probably was the decision letter of the KAN mentioned above, by which the *panghulu*ship of Dt. M. had been stopped. Dt. TML, apparently a follower of the New Order, had become village district head, using his new power to make property- and title politics. But, as his court suit shows, *adat* was stronger.

His claim was rejected by the court. The court's main argument, which had been taken over nearly word for word from a rejoinder of the defendant, was:

"The plaintiff obviously has no right to the title. Both parties are members of *suku* X, but the positions of Dt. M. and Dt. TML cannot be said to be equal. Dt. TML (the title) does not belong to the *sako/gala* which are functional (*fungsionil*) in the *payung* Dt. M. Dt. TML belongs to the *payung* of Dt. M., but one cannot say that he is someone 'who sits equally low, and who stands equally high' (*duduk samo rendah, tagak samo tinggi*). His position is rather like that of a *waris orang datang*, who in former times has been accepted as *kamanakan* by Dt. M.".

This is rather strong language for a Minangkabau judge. But the reference to the lower status of the plaintiff had to be made, as to explicate the reasons on which the judgement was based. (Incidentally, the advocate of the plaintiff threatened to file a libel action against the defendant's advocate because his client had been called an *orang datang*.)

V. THE CHILDREN - *KAMANAKAN* CONFLICT

The "classical"conflict in Minangkabau inheritance affairs was the situation in which the children and the *kamanakan* of a deceased *pancaharian* holder disputed the inheritance of their father's/*mamak*'s *harato pancaharian*. In contemporary Minangkabau, these cases more or less belong to the past, as it is now generally acknowledged that "*harato pancaharian* are inherited by the children". Of the 492 property disputes brought before the PN Bukit Tinggi, Batu Sangkar, and Payakumbuh between 1968-1974, only 42 cases (8.5%) concerned *pancaharian* inheritances. In the 25 cases in which the property was disputed between "the children and the *kamanakan*", the legal status of the property object - *pancaharian* or *pusako* - was in dispute. Once the legal status of property objects as *harato pancaharian* has been unequivocally established, no more disputes between children and their father's *kamanakan* arise. But as has been mentioned earlier, this general rule must be qualified. As far as pawnings are concerned, all will depend on the question of to whom it was that the pawner/*pancaharian* holder had intended to give the pawnings. The answer depends on the location where the ceremony was held, or to whom the pawner had given the document by which the transaction was evidenced. In addition, the rule only applies to *harato pancaharian* which are "pure" *pancaharian* and which have not been acquired with the help of *harato pusako*.

1. *The Disputed Legal Status of Harato Pancaharian*

In CKL, there had been only one case recently where the property of a father had been disputed between children and *kamanakan*, and it concerned pawnings. This was the case between Bagindo Endah, the son of Haji Amir of *suku* Caniago, and Taher St. Palimo of *suku* Caniago who claimed to be a close *kamanakan* of Haji Amir. The dispute was about two ricefields which Haji Amir had controlled during his lifetime, and which Bagindo Endah had worked since 1954. According to Bagindo Endah the reason for this was that he had loaned 5 *rupiah emas* to his father, and in exchange his father had let him work the fields. Besides, the fields were his father's *harato pancaharian* and should be inherited by him anyway. It was true that the fields belonged to the *harato pusako* of Haji Amir's *kaum*, which was now extinct, but they had formerly been pawned and Haji Amir had redeemed them with his *pancaharian*-money.

Taher St. Palimo claimed that the fields were *harato pusako* of Haji Amir, and that he and his *kaum* were the heirs to that property. About pawnings and redemption he had never heard anything, and he doubted it as there were no written documents. Besides, nobody had ever heard that Bagindo Endah had loaned money to Haji Amir. His *mamak*, at least, had never mentioned such a thing.

The *Wali Negeri* had unsuccessfully tried to settle the dispute, and a *musyawarah* had been held in the *hindu* Caniago 5 Rumah under the chairmanship of Dt. Panghulu Rajo. The *panghulu* and elders who participated in this meeting had decided that the fields were *harta tambilang emas*, for Dt. Panghulu Rajo had known of the pawning transaction which had taken place in 1942 and of Haji Amir's redemption in 1947. As redeemed property it was *tambilang emas* and should be inherited by the children. The heirs of Haji Amir had, of course, always the possibility of redeeming the fields from Bagindo Endah. But Taher St. Palimo had refused to accept this decision, and the case had gone to the *Camat*. The *Camat* had confirmed the right of St. Palimo. As Bagindo Endah did not think of giving the fields back, Taher St. Palimo took the case to the State Court (case 9 of 1968 PN Bukit Tinggi). Here the problem became even more complicated, as another *kamanakan* of Haji Amir, Ishak St. Palimo had instituted proceedings against Taher St. Palimo at the same time, claiming that his *kaum* was the real heir of Haji Amir (case 18 of 1968 PN Bukit Tinggi), whereas Taher was of a different *kaum* and even *buah gadang*. Many witnesses were heard in court. Most stated that Taher St. Palimo was the closest heir to Haji Amir, and that he and his *kamanakan* Malim

Palimo had acted as Haji Amir's heirs in several instances. Bagindo Endah held to his version. Although Dt. Panghulu Rajo substantiated the story of the pawning and redemption, the court was not convinced, for there was no further evidence, and Dt. Panghulu Rajo had "only heard" it. For the alleged borrowing of the 5 *rupiah emas* there was no evidence either, and so the court decided that the property had been *harato pusako* and should be inherited by the *kaum* of Taher St. Palimo, in disregard of the decision of the *panghulu* of Caniago 5 Rumah.

It should be known, that among the *suku* elders of Caniago 5 Rumah who had given this decision, Ishak St. Palimo acted as representative of Dt. Palimo. One of the wives of Dt. Panghulu Rajo was a *kamanakan* of Dt. Hitam, the *mamak* of Bagindo Endah.

Bagindo Endah appealed (case 20 of 1972 PT Padang). His appeal was rejected and little was added to the judgement of the PN. But when we left CKL in the autumn of 1975, Bagindo Endah still worked the fields, and there was talk about a further appeal to the Supreme Court.

Discussion:
In this case, the *kamanakan* won. But we can note that the *panghulu* (of the *kamanakan*) were willing to acknowledge the *harato tambilang emas* status of the property, even though the land was still *harato pusako* of the recipient's father's *kaum*. It would not have been the *land*, which Bagindo Endah would have inherited, but the money invested in it. If Bagindo Endah had been able to prove the redemption by his father, the court would probably have awarded the property to him.

2. *The "Impure" Harato Pancaharian*
In the following story, the legal status of property objects is in dispute, too. The dispute does not concern the alternative, *pusako turun temurun* or *pancaharian*, but the character of the *pancaharian*-status. The story is from the records of the Religious Court in Bukit Tinggi (case 238 of 1972):

In 1972, a young man approached the Religious Court with a claim against his *bako*. His father, who had been a merchant in Medan, had recently died and he had left some property in the *nagari*: 4 fields which he had bought (worth 234,000 *rupiah*) and another field which he had pawned (worth 26,000 *rupiah*). These fields had been bought and pawned by the father with his own money. The property therefore was the private property of his father (*hak milik dari bapak*) and should be divided according to Islamic law. As the *kamanakan* of his father occu-

pied these fields and did not want to deliver them to him, he had been forced to bring the suit before the court.

His father's *kamanakan* did not deny that their *mamak* had indeed bought and pawned the fields in question. But they stated that when their *mamak* had gone to Medan in 1927, he had been given some money, two *ringgit emas*, by his mother. The money had been acquired through the sale of rice of his mother's (*jurai*'s) *harato pusako*. Before he had left, his mother had made an agreement with him: "If the money which I give to you should increase, whatever you do with it and whatever you buy with it, will be the property of my grandchildren in this house"(i.e. of the grandchildren by her daughters. Her son's children would be *anak dirumah lain*, children in a different house). The *kamanakan* put in a counterclaim: The property mentioned by the plaintiff was not the only property which their *mamak* had left. There was a house in Medan (worth 4 Mill. *rupiah*), his trading store (worth 6 Mill. *rupiah*), and some more rice-fields which their *mamak* had pawned, partly in his own name, partly in the name of his wife (all together worth about 62 *rupiah emas*). They claimed all this property, as it was *harta pusaka tinggi* (*karena keseluruhannya adalah harta pusako tinggi*).

Witnesses were heard. Two old men stated that they had been present when the plaintiff's grandmother had made the agreement with her son, and that its contents were as stated by the defendants. Other witnesses confirmed that they had sold or pawned to the plaintiff's father and that this was done in the house of the defendants. With whose money the fields had been bought, however, they did not know.

The Religious Court did not decide the inheritance question, but denied its jurisdiction and advised the parties to have the matter judged by the State Court. The reaction of the Religious Court is very interesting. One would have expected that it would eagerly accept the chance to try a case over the inheritance of *harato pancaharian*, for undoubtedly the money of the plaintiff's father had been acquired as a result of his trading activities in Medan. But the court adopted a very cautious and conservative approach. It had been proven by the parties, the court stated, that the fields in question had indeed been pawned and bought. But it had not been proven that the money with which this was done had been in the "full ownership" (*hak milik penuh*) of the plaintiff's father. As the witnesses had stated, the money was derived from the *harato pusako* (*adalah barasal dari harta pusaka*).

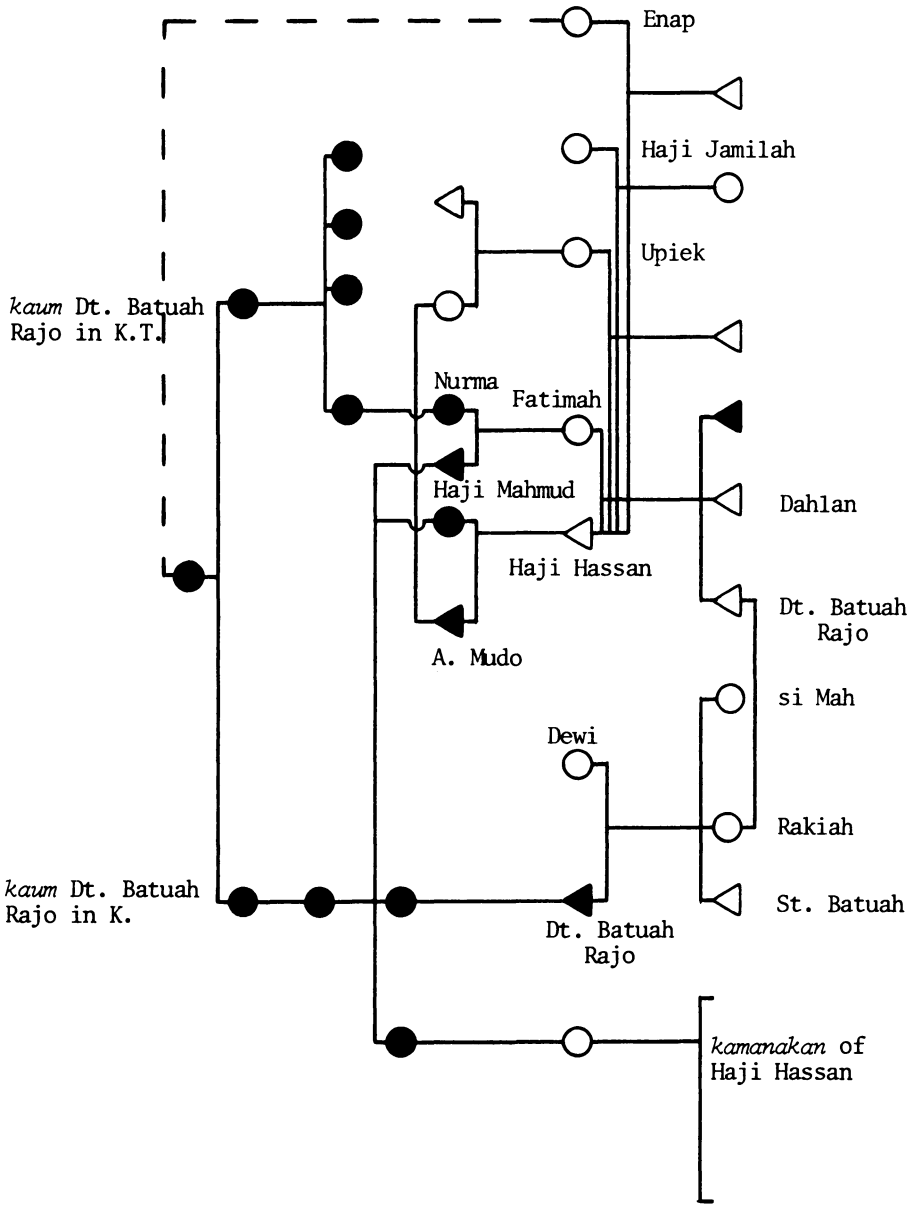
The court rejected claim and counterclaim "as the money of the buyer and pawnee of the fields was not the full ownership of the plaintiff's father, but was part of the defendants' *harato pusako* (... *uang pembeli dan pemagang sawah2 tersebut tidak hak milik penuh oleh bapak penggugat, termasuk harta pusaka dari tergugat*)." The court thus explicitly acknowledged that the money was no "normal" *pancaharian* which would be inherited in accordance with Islamic law, or at least by the children.[5] Although it was not explicitly mentioned by the court, I should like to draw attention to the witnesses' statements that the transactions had been carried out in the defendants' house, in the house of the *kamanakan*. This alone was strong evidence that the pawned or bought property was destined for the *kamanakan* and not for the children.

VI. THE RELATIONSHIPS BETWEEN THE CHILDREN

Since the potential conflicts between the children and the *kamanakan* over their father's/*mamak*'s *harato pancaharian* have lost in importance, a new problem has arisen. Once it has been acknowledged that the *harato pancaharian* are inherited by the children, the question arises: by which children? This can be particularly problematic, if the deceased had been married to several wives during his lifetime and has children by more than one wife. The following story deals with such a situation. It shows a father acting in it, and for a change it is a story almost free of conflict. The central figure is Haji Hassan, the son of Angku Mudo (in the story of "Extinct *Buah Gadang*") and father of Dt. Batuah Rajo.

Haji Hassan was (in 1975) 72 years old. He was rather well off and lived on Bukit Tinggi, and he only rarely visited his *nagari*. His *gala* is St. Nagari, but since he made the pilgrimage in 1957, he does not use the title any more but prefers to be addressed as "Pak Haji". H. Hassan had married four times (see diagram). The first marriage had been with Fatimah from *suku* Selayan. This had been a matrilateral CCM, for his *mamak*, Haji Mahmud, had been married to his wife's mother. With Fatimah he had three sons, one of whom had already died. About Dt. Batuah Rajo we have already heard; his younger brother Dahlan lives in Jakarta. The second marriage had been with Upiek from *suku* Guci. This had been a patrilateral CCM. He had a son from this marriage, but the marriage had already been dissolved for some time. The third marriage, to Haji Jamilah

Kinship Relations of Haji Hassan and Dt. Batuah Rajo



from *nagari* BT (ca. 8 km from CKL), had also been dissolved after some time. Haji Jamilah had borne him one daughter, who lived in Batu Taba. His last marriage was with Enap, who was also from *suku* Selayan, but from a different *buah gadang* than Fatimah. Since Haji Hassan lives in Bukit Tinggi, his two wives stay with him in turn. His grandchildren (by Dt. Batuah Rajo) visit him regularly, but prefer to do so when their grandmother stays there. Amir, the second oldest of Dt. Batuah Rajo's children, goes to school in Bukit Tinggi, and he lives with his grandparents when his grandmother is there. When it is Haji Hassan's younger wife's turn, Amir goes to Bukit Tinggi by bicycle, but there seem to be no great rivalries between the two wives of Haji Hassan.

Haji Hassan had been an administrative official. He had spent most of his active service in Jambi. He had saved money, and he had bought a house in Jambi. He had bought his house in Bukit Tinggi in 1951, "when houses were still cheap". Since his retirement he lives in this house and rents the other rooms out to schoolchildren. The house has 19 rooms, and Dt. Batuah Rajo estimates its value as 3 Mill. *rupiah*. It had been Dt. Batuah Rajo who had told his father: "Sell *sawah*, pawn *sawah*, and buy houses in Bukit Tinggi. They are cheap now, but in the future they will be worth a lot". Besides, Haji Hassan "owns" two *surau*. One is *harato pusako* which he inherited from his mother, the other one is *harato pancaharian*. He also controls some of his *buah gadang*'s *harato pusako*. The fields had formerly been pawned, and Haji Hassan had redeemed them. He has given them in share-cropping to others and thus gets ½ of the harvest for himself and his children. When he dies, this *pusako* will be inherited by his *kamanakan*. Besides, he has also invested some money in his wife's (Fatimah's) *harato pusako*. Fatimah's four grandmothers had common *harato pusako*, about 80 *sumpit* worth. When they grew old, they wanted to pawn it and, as should be done, the *sawah* was first offered to people from their own *suku*. "In the end", Fatimah had it all. She either had pawned it or transferred the pawning to herself with the money of Haji Hassan - who had married the daughter of his *mamak*. When the other *kaum* members grew short of *sawah*, it was decided that there was to be a redistribution. Each of the four *jurai* should have an equal part again. This was decided in a *musyawarah*, in which the four *tungganai* (*jurai*-heads) and Haji Hassan participated. Of course, the other *jurai* had to pay their share of the original redemption money to Fatimah. Fatimah's *sawah* was not worked by herself but was given in share-cropping to (other) *kamanakan*. After her death, Dt. Batuah Rajo will inherit

it (so he presumed), and after his death his *kamanakan* will get it. In addition, Haji Hassan had also bought a *sawah* from a man of *suku* Guci. There had been some trouble about that, as another person had claimed that he was a *kamanakan* of the Guci-man and that the seller had no right to sell the *sawah* to Haji Hassan without his consent (the same situation, only in reversed roles, in which Haji Hassan's father had been vis-à-vis St. Pangeran). But, as Dt. Batuah Rajo put it: "We were clever, for we had registered the sale and the land under the Basic Agrarian Law. It was entered into the register that the *sawah* was *harta pancaharian* and should be inherited by the children. So when the *kamanakan* of that Guci-man wanted to make trouble, we just showed him the document from the Land Registry (*Kantor Agraria*) and he could not do anything about it". The case did not develop into a real dispute (*sengketa*).

In parenthesis we may note that Dt. Batuah Rajo had in previous conversations been very outspoken against the Basic Agrarian Law. Yes, the government wanted the *ninik mamak* of Minangkabau to have their land registered, but the *ninik mamak* did not like that. For they were afraid that the property would then become *harato pancaharian* and be inherited by the children. We asked him, whether he, as *panghulu* of his *buah gadang*, had registered his *buah gadang*'s *harato pusako*? Oh no, nobody had registered any land in CKL, for in CKL "*adat* still is very strong". We always got this reply when we asked about registered land in CKL. But some weeks later, Dt. Batuah Rajo smilingly confided to us under great secrecy, that actually, they had been the first ones to register property. Of course, the others did not and should not know. As we found out by checking the land register ourselves, he had not been the first one. Two plots, comprising 1899 m^2, had already been registered by others.

Before Haji Hassan went to Mekkah in 1957, he had made a testament and given directions about how his property should be distributed after his death. In 1970, a new testament was made, as there was some more property which had to be cared for. The testament had been made during a big family meeting. All his wives, all children and his *kamanakan* had been present. The testament had been signed by all of them, and it had also been signed by the *Wali Negeri* and the Head of the *Sidang* of the *buek* in which Haji Hassan's *kaum* was resident. Most of his property will, according to the testament, be inherited by his children. The divorced wives will not get anything, but the children of the divorced wives will be treated in the same way as the other children. The most valuable property, the houses, will be divided into five equal shares. They are, as Dt. Batuah Rajo put it, *harato pusako rendah*, which according to Islamic law are inherited by the children. According to *hukum faraidh*, the girls should actually only get $\frac{1}{4}$ of the boy's portion, but in his family all

children would get an equal share. In the testament Haji Hassan had also stated that,if one of the children should predecease him, his or her portion would fall to his or her children instead. He had also made specific regulations about his *harato pusako*. "For if he had written: 'for the *kamanakan* in general', there would have been only trouble", and so he had specified the *kamanakan* who would inherit his *harato pusako*. Everyone had been content with the testament.

Discussion:

1. We see that the testament - in principle a unilateral declaration - here is made in a process of preventive law application. The participation of the children and *kamanakan* signifies their assent to the terms of the testament. The participation of the *Wali Negeri* and the Head of the *Sidang* is to validate the testament in the name of the community.

2. Haji Hassan introduced the principle of representation also for his male children. Thus if one of his sons should predecease him, his property would be inherited "patrilineally", although it is *harato pusako rendah*. To whom the portion that falls to his children will eventually go after their death, is of course still open. After Haji Hassan's death, the property will have the status of *harato pusako rendah* and should then be inherited by (the childrens') *kamanakan*. For his daughter, it will most certainly become *harato pusako turun temurun* in her *jurai*. But the sons may well attempt to give it to their children.

3. We should also note Dt. Batuah Rajo's use of the term *harato pusako rendah*. He refers to his father's property in this way, although it will only have this legal status after his father's death. A good example of what I have called the "future perfect-perspective" in property relationships (Chapter 4: 195).

C. THE MODALITIES OF DIACHRONIC TRANSFERS OF PROPERTY RELATIONSHIPS IN HISTORICAL PERSPECTIVE

I. INTRODUCTORY NOTE

In the first part of this chapter, several processes of diachronic transfers of property relationships have been described in their social context. People were seen to employ various means to bring about property transfers, and to legitimate their ends in terms of the cognitive and normative conceptions provided by the Minangkabau legal systems. In the following part of this chapter I shall discuss these means in isolation and try to indicate their functional value for the maintenance of property relationships through time in general. As had been discussed earlier and as had also become apparent from the stories just told, diachronic property transfers are not automatic processes predetermined by law. The law restricts the individuals' autonomy, but it also leaves some room for the exercise of autonomy. The death of the property holders is no fixed time mark in these processes. It marks the end of the holders' activities but not the beginning of the would-be heirs' efforts. The Minangkabau are very property conscious. They know that the problem of diachronic property transfers will present itself sometime, ultimately upon the holders' death, and they will give the problem some thought, both as holders and would-be heirs. They will form some objectives and they will think about the means by which these objectives can be accomplished. The holders will think about the persons whom they would like to see as heirs or donees; the would-be heirs or donees want to be heirs or donees - and they all will devise some strategies. This is not to imply that the formation of the ends logically or temporally precedes the reflection of the means. For the means, provided by prescriptive, facultative, and optional legal rules are known to the actors already when they start thinking about the objectives, and this will generally shut out obviously impossible objectives which cannot be accomplished by any of the available means. Thus the law will influence the deliberations and the consequent actions of the persons engaged in the processes of diachronic transfers as it lays down the means by which these processes can be carried out. But the exercise of the autonomy, the "doing something about it",will generally be influenced by non-legal factors. The emotions, intentions and actions through which the autonomy is expressed, will be influenced by morality, religion, the behaviour

of others, and the concrete socio-political and economic situation in which the actors live. During the historical period about which we have information, the law and these other factors have changed considerably. The most obvious changes which we can observe in the field of property relationships are an increasing individualization of property relationships and growing efforts to have them transferred to one's children. The data on the concrete means employed by the Minangkabau have to be seen and understood against this background.

II. THE MEANS OF THE HOLDERS

1. *The Means*

Property holders have several means at their disposal which they can use to influence the diachronic transfer of their property relationships.

1. They may actively exercise their autonomy in order to anticipate the diachronic transfer during their lifetime or to replace the rules of intestate inheritance by their own directions. They may do so within the limits set by law, and, of course, may also try to do so in violation of the law. The concrete means provided by *adat* have already been described:

a. Anticipation of the diachronic transfer may be by donation which becomes effective during the holder's lifetime and by the investment of his or her property in other forms of property for the direct benefit of his or her preferred persons, such as the planting of cash-crops for the children, the buying of property for the wife and the children, and the transfer of pawned property to the wife and children.
b. The replacement of the intestate inheritance rules can be achieved by way of *hibah* (which is revocable until the property holder's death) or by testament, *wasiyat*.
c. The holders may also preset the stage for future inheritance by changing the legal status of property objects; a possibility now only given for land which can be converted into *hak milik* under the Basic Agrarian Law and to which then the rules of *pancaharian* inheritance will apply.

2. The holders may, of course, do nothing at all and leave the matter of the diachronic transfer to the surviving kin and the rules of intestate inheritance.

3. The holders may further influence the diachronic transfer of property relationships in a manner which adjusts interpersonal relationships in such a way that the general rules for inheritance will bring their property to their preferred persons. The mechanisms employed in this are adoption and marriage.

Which kind of use the property holders make of these possibilities, depends on a variety of factors, some of which will briefly be discussed here. The central theme in the deliberations of the individuals is, of course, the wish to get one's property into the hands of one's preferred persons. Who these are depends on the concrete set of kin and friends which the individuals have and the emotional and rational motivations which select among these persons. As a general principle it can safely be stated that both men and women prefer their children as heirs or donees of their property. Failing children, it is usually one's siblings who are the preferred persons. For women, especially, this is quite normal given the social system. Men, however, are faced with the dual emotional and social obligations towards their children and their *kaum*-relatives. The decision "to do something about inheritance", to some extent depends on the individuals' assessment of a need to do something about it; in this respect, there is a considerable difference between men and women. Women's property more or less always ends up with their children, and women see no need to exercise their autonomy to support or to speed up the inheritance of their property by their children. For men, this is different. For during the times when the inheritance of *pancaharian* property by the children was not yet law, they had to exercise their autonomy in order to achieve their objective, for otherwise their property would fall to the *kamanakan*. What kind of means they chose partly depended on the kind of property they had. *Hibah* was usually employed for the transfer of things like land and houses (see p. 280). The transfers called anticipatory action required money which could be invested for the benefit for one's preferred persons.

From the individual male's perspective, both *hibah* and anticipatory actions have disadvantages and advantages. Anticipatory actions which become effective at the time of their transaction have a particular appeal, for they are less likely to be attacked by the *kaum* members. For the actual contract lies in the synchronic dimension, although its effects are diachronic. The contract is between a man and a third party, and it involves prestation and contraprestation. The man does not make

a gift, he has to pay. His partner does not receive a gift, for he has to make a counterprestation. The beneficiaries of the transaction, the persons to whom the third party makes his prestation, are not parties to the contract. On what legal basis could they be attacked? The Minangkabau are well aware that these transactions are "tricky". In interviews, they were often characterized as *wetsontduiking*, "circumvention of (inheritance) law", but, as was generally recognized, too, it was a circumvention by legal means. There is however a catch to it. For once a man has invested money for the immediate benefit of his wife and children, it is "gone". Such property is not considered to make part of the *harato suarang*, and if the marriage should end in divorce, the invested property is irrevocably gone. The divorce rates in Minangkabau are the highest in Indonesia, and all Minangkabau are aware of the instability of marriages. The men not only run the risk of losing their property in the case of divorce. Once the marriage is dissolved,where must they go and live? Unless they remarry, the only place is the *surau* or the house of their sisters. But will they be welcome there, when they have, as a bad *mamak*, transferred all their property to their wives and children, and have even been so stupid as not to make sure that they could keep it in the case of divorce? Minangkabau men will therefore generally make use of anticipatory actions only when they feel that their marriage is in order, or if they want to transfer property to their children no matter whether their marriage to the children's mother will be dissolved or not.

Hibah, on the other hand, or testaments have the advantage that the property holder keeps control over the property as long as he lives, for he can always revoke the *hibah* or testament. The disadvantage here is that *hibah* or testaments are much more likely to be attacked by the *kamanakan*. In contemporary Minangkabau this is probably less the case than it used to be, but at the time when the requirements for the validity of such transactionswere stricter, the making of *hibah* very often resulted in conflicts between the children and the *kamanakan*, although the *hibah* itself was used as a means to prevent the conflict about a man's *pancaharian* inheritance as far as possible. The stereotype of the children and the *kamanakan* disputing their father's/*mamak*'s *harato pancaharian* has persisted into contemporary Minangkabau, although the inheritance of *pancaharian* by the children is not generally disputed any more. Thus men often exercise their autonomy (even if the intestate inheritance law would also bring their property to the beneficiaries of their *hibah*, testament or anticipatory action) in order "to make sure"

and prevent conflicts between their relatives. To quote a recent judgement: "It is already customary in Minangkabau that a husband who wants to give property stemming from his *harta pancaharian* to his wife and children, does so by way of *hibah* in order to prevent future trouble" (case 49 of 1970 PN Bukit Tinggi). Even most of the judges in the State Courts whom we interviewed use this means in order to make sure that their property will go to their children and not to the *kamanakan* although they regularly ruled that *harato pancaharian* is inherited by the children.

Besides these rational motivations, I think that other impulses also lead Minangkabau men to make use of their autonomy even if they need not do so to achieve their objectives. This is, however, rather a speculation and cannot be supported by concrete data. I think that many men make a *hibah* or testament "for the fun of it", taking gratification from the exercise of autonomy as such. Minangkabau men have so long strived for autonomy in property and inheritance matters that they now, when they have achieved this goal, have the feeling that it would be a pity if they did not make use of it, even if their objective - to have their property inherited by their children - is also reached by intestate inheritance. The attitude increases that "as a modern Minangkabau man you owe yourself a *hibah* or testament". This attitude is further supported by Islamic law and religion. The *syarak* regards the making of a testament as advisable, *mandūb* (Fyzee 1955:301). Islamic law here provides a rationalization for making testaments, and it may also even motivate men to make testaments at all. In this way, Islamic law plays an important role in Minangkabau inheritance as it influences men to exercise their autonomy in a specific way.[6] However, it does not operate as *law* but rather as a moral code. For the testaments made in Minangkabau would regularly be void in terms of Islamic legal conceptions. In Islamic law, testamentary dispositions may only comprise 1/3 of the inheritance and may not be made for the benefit of the legal (Koranic) heirs, whereas in Minangkabau generally a large amount of one's *harato pancaharian* is disposed of, and most of it is given to the new legal heirs, the children (who also would be among the Koranic heirs).

2. *The Exercise of Autonomy*

a. The Replacement of Inheritance Rules by Individual Autonomy

It is difficult to give concrete data on the degree to which the Minangkabau property holders have exercised their autonomy to determine the

diachronic transfer of their property by way of *hibah* or *wasiyat*. *Hibah* and *wasiyat* practices seem to have been much more common in the coastal areas than in the three districts in the highland (Francis 1839: 111; Willinck 1909: 746), and in the highlands the frequency of donations and testaments probably varied considerably from *nagari* to *nagari*. Verkerk Pistorius reported that in the district of Sijunjung no case of *hibah* had occurred during the last 20 years, i.e. approximately between 1860 and 1880 (Pandecten V: no. 1502), whereas Kroesen stated in 1874 that at least as far as newly cultivated land (as *harato pancaharian*) was concerned, it was rare if such land was not given to the children by *hibah* (1874: 20). At the end of the 19th century it seems to have become customary in many regions for Minangkabau men to give about one-half of their *harato pancaharian* property to their children (Andresen in Kielstra 1892: 274; Kroon 1909: 112; Wilken 1912 vol. I: 318; Willinck 1909: 775 f.). At the meeting of the *Tuangku Lareh*, which was held in Bukit Tinggi in 1910, different practices were mentioned. In some areas, like VII Lurah (the present area of Tilatang Kamang) and Sijunjung, about one half of the *pancaharian* property was said to be given to the children, whereas in IV Koto (in Agam) dealers were said to give all their property to their children. It was further stated that also among farmers and administrative officials there was a tendency to have the children profit from their *harato pancaharian* (AB 6: 212 f.). Schrieke in 1928 mentioned that it was possible to obtain control of one's father's self-earned property or part of it by means of *hibah* or *umanat* (1955: 118 f.), a statement echoed by Maretin (1961: 192 f.). De Josselin de Jong quotes Van Ossenbruggen who had noticed the growing popularity of *hibah* in the 1920's (1951: 115). Tanner, who spent 3 years in Minangkabau in the 1960's, reported that the *hibah* was not particularly common (1971: 274), but that new ways of transferring property were increasingly used, for example the buying or building of property for the wife and the children (1971: 275).

The only statistical data available have been collected in 1971 by a team of the University of Padang (Sa'danoer 1971). During this short survey, 1401 respondents were interviewed about the manner in which they had received *harato pancaharian*: whether in the capacity of children, *kamanakan*, or "others"; and whether as inheritance (*warisan*) or by *hibah* or by *hibah-wasiyat*. Only cases in which the property received had not yet been inherited for a second time, were included in the sample. 272 cases were drawn from the capital Padang, the rest was collected in a

sample of *nagari*. Although these data have to be treated with the utmost caution[7], for an interpretation of inheritance practices and social change in general they offer some quite interesting clues. The bulk of the cases in which *harato pancaharian* was transferred or inherited concerned land and houses, which together formed 93.2% of all cases. In 35.5% the *pancaharian* consisted of houses, in 57.9% of land (unspecified), and in 23.3% of irrigated rice-land.[8] Money only constituted 0.5% of all cases (Sa'danoer 1971: 11).

45% of the respondents had received the property as inheritance (*warisan*), 51.5% by *hibah*, and 3.5% by *hibah-wasiyat*. In the following table, which gives the overall result of the survey, and which has to be read with the cautionary remarks made above,[9] the percentages refer to inheritance and *hibah* respectively. *Hibah* and *hibah-wasiyat* are not differentiated.

Recipients / Form of Transfer	Intestate Inheritance	*Hibah*	*Hibah* and Inheritance
Children	399 (64%)	522 (68%)	921 (64%)
Kamanakan	202 (32%)	149 (19%)	351 (25%)
Others	27 (4%)	102 (13%)	129 (11%)
	628 (100%)	773 (100%)	1401 (100%)

These data stem from different periods. The dates of the transfers are given in the report (1971: 9), but the distribution given in the table above has not been differentiated for the different periods. If the data are periodicized, we get the following picture.

Period	Inheritance (100%)			*Hibah* (100%)		
	Children	*Kamanakan*	Others	Children	*Kamanakan*	Others
- 1924	51.0	49.0	-	47.4	47.4	5.2
1924-1934	65.1	34.9	-	72.2	22.2	5.6
1934-1944	53.0	40.2	6.8	63.4	24.7	11.9
1934-1949	56.2	38.4	5.4	63.6	25.0	11.4
1949-1964	71.1	26.3	2.6	68.8	21.2	10.0
1964-1970	63.6	32.5	3.9	76.2	13.8	10.0

The data indicate a slow trend in favour of the children, as has frequently been mentioned in the literature in a more general way. The

peaks in the period between 1924 and 1934 very well correspond to the report by Schrieke that the 20's and 30's were characterized by a period of economic upsurge and extension of individual autonomy, partly in violation of *adat*, by gifts of *pancaharian* property to the children. It should be noted that the increase of "inheritance by the children" is accompanied by an equally strong increase in "*hibah* to the children". This supports my hypothesis that the active exercise of autonomy in favour of the children (the preferred persons) is largely independent of its functional necessity.

b. Conversion of Property Relationships

In Minangkabau, little use has been made of the possibility to convert land held under *adat* rights into land held under Dutch civil code rights or, more recently, into *hak milik* as recognized by the Basic Agrarian Law of 1960. So far as land with *pancaharian* status is concerned, the registration as *hak milik* would offer no difficulties for the holder. In the case of *pusako* land, the consent of the applicant's *ahli warih* and his or her *panghulu* is necessary.

From the Land Registry in Bukit Tinggi, where (at the time of our check in 1974) the registrations had been entered for 1964-1972, the following picture emerged: In the district of Agam, excluding jungle, forest, and land without vegetation, only 0.074% of the remaining area had been registered (90.4 ha out of 122,268 ha). If the registered area is related to the total area used for rice-cultivation (35,149.4 ha), the percentage increases but yet remains an insignificant 0.257%.

At the time we checked the Land Registry, only two plots of land had been registered in CKL; the registration mentioned in the story of Haji Hassan (p. 269 ff.) had not yet been entered. The two registrations comprised 1,899 m^2, which amounts to 0.017% of the area used for rice cultivation in CKL. More use had been made of this means in the town of Bukit Tinggi. Here, 0.85% of the total area had been registered (21 ha out of 2,490 ha). If related to the *sawah* area within the precincts of the town, the percentage increases to 2.35%. But judging from the average size of the registered plots in Bukit Tinggi, primarily houses and house sites would have been registered. The average size for the registrations in Bukit Tinggi is 820 m^2, whereas it is 5,909 m^2 in Agam.

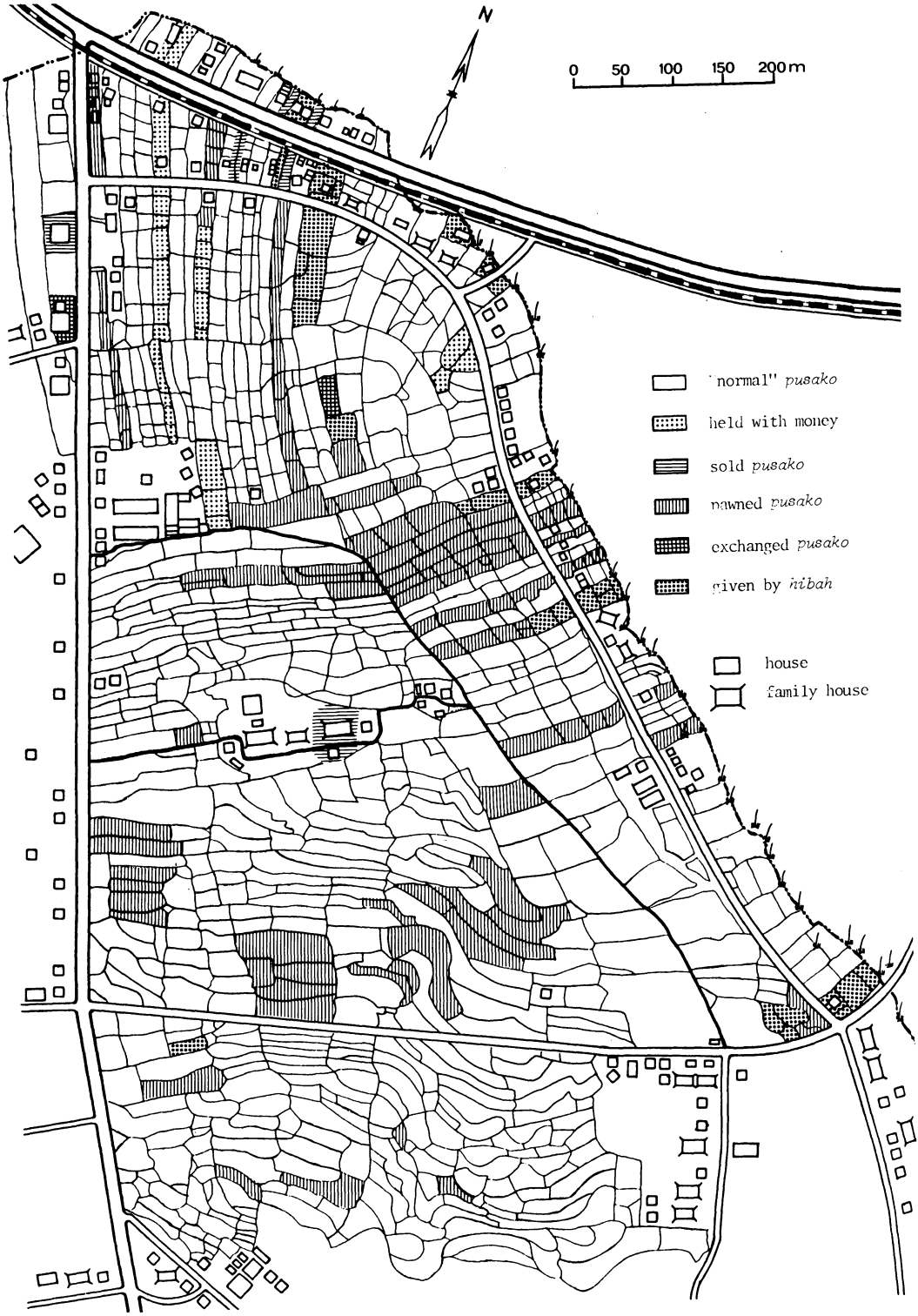
c. Anticipatory Transfers

Few concrete data can be offered on the frequency of anticipatory transfers. Tanner (1971: 275) reports their increase, and this is our general impression, too. In contrast to the exercise of autonomy by the means of *hibah* and *wasiyat*, most anticipatory actions, like buying or pawning for one's wife and/or children, require money. Opportunities to convert one's money into permanent forms of property more or less exist in the towns only, as in the *nagari* the sale of land or houses is still severely restricted and very rare (see map on p. 284). However, in the *nagari* money can be converted into temporary rights to use and to exploit property. It can be invested in cash producing crops like cinnamon or clove trees, and it can be invested in rice-land through the process of pawning or the transfer of pawning. This kind of anticipatory action requires, of course, a relationship to the property object which admits of such exercise of the autonomy. In Minangkabau *adat*, this was the relationship to *harato pancaharian*. The individual was free, to some extent, to do whatever he liked with the property which he had acquired by his own efforts, and the freedom granted to him has increased in the course of time. However, we must emphasize that such freedom nowadays more and more extends to property objects which have the legal status of *harato pusako*, but which are "*pancaharian*ized" temporarily through the investment of *pancaharian* property in the *pusako*, of one's own or of other people's *kaum*. The trees planted for the children on one's own *harato pusako* with one's *pancaharian* money, are *harato pancaharian*. The land on which they stand is *harato pusako* held by one's *kaum*, but in order to reacquire the possibility to use and to exploit the property, one's *kaum* members must first "redeem" the property: they must pay to the holder or his *pancaharian* heirs the value which has been invested in the property. This is a general rule, of course, and the concrete sum of money used for redemption should be agreed upon in a *musyawarah* and, failing an agreement, by the agents of decision making. Similarily, one gets *pancaharian*-like rights to use and to exploit rice-land by virtue of the investment of money in a pawning or a transfer of pawning transaction, no matter whether the property object, i.e. the land, is one's own *harato pusako* or the *pusako* of a different *kaum*.

These *pancaharian*-like rights to use and to exploit property are, however, temporary in two ways: For one, they can be nullified and reconverted into money if the members of the *pusako* holding group decide to redeem the property. Such redemptions, however, often result in a new

form of *pancaharian*ized *pusako* holding, as the redemption in the name of the *kaum* (*tebusan*) is seldom made. Mostly, the redemption turns out to be a transfer of the pawning, through which the *pancaharian*ized relationship to the property object is maintained. It is then either held as "private *pusako*" of the *kaum* member who has transferred the pawnee's rights to him- or herself, or it is given to the *kaum* member's preferred person in an anticipatory action. The *pancaharian*ized use-rights are further of temporary nature insofar as they themselves are subject to the *pusako*ization rule. After the death of a female holder, the rights become *harato pusako rendah* for her children to be *turun temurun* in their *jurai*. In the case of male holders, the rights (in contemporary Minangkabau) become *harato pusako rendah* for their children, too, unless they had been intended for the *kamanakan*. However, men most frequently transfer these use-rights directly to their children in an anticipatory action. In both cases, this inheritance of the father's or mother's use-rights remains temporary, as the rights can always be nullified if the holders of the *pusako* redeem the property. However, while the transfer of the use-rights to the children is temporary, the transfer of the money invested in these rights is definite. When the property is redeemed by the *pusako* holders, the children receive the pawning sum.

It is therefore rather difficult to give a concise description of the legal status of the land in a *nagari*. Except for some small plots, all land is *harato pusako* (see p. 284) but can at the same time be used and also be inherited (in a general manner of speaking) as *harato pancaharian*, and the land used on the basis of *pancaharian*-like rights can be reconverted into proper *harato pusako* at the next moment.[10] Once land has been pawned, the use-rights are quite mobile and can be transferred again without paying regard to the *adat* restrictions on pawning. What is pawned today, may be transferred or redeemed tomorrow. Unfortunately, I have not been able to collect sufficient reliable information on the frequency of such changes in property holding. With the help of the map (p. 284) I can merely give a synchronic impression of the kinds of property relationships pertaining to land in one part of the *nagari*.[11] The map on the next page comprises about 35 ha of the northern part of



The legal status of land

CKL. Except for the house sites and the land north of the railway-line, the land is used for rice cultivation. The fields generally yield one harvest per year. After the fields have lain fallow for some time (3 to 12 weeks), the villagers use them for vegetables, peanuts, or maize before rice is planted again.

All fields shown on the map have the status of *harato pusako*, regardless of the kinds of relationships that legitimate their use and exploitation. Altogether, at least 50 *kaum* belonging to 41 *buah gadang* are involved as *pusako* holding groups. The unmarked fields are "worked by the *kamanakan*", i.e. by *kaum* members who have received the use-rights through the traditional mechanisms of distribution and allocation. These fields are sometimes given to other persons in share-cropping. Share-cropping arrangements are often made for one planting season only, and the *pusako* holders change the share-croppers frequently. My guess is that no more than about 10% of the area is regularly given in share-cropping. Only a small number of fields is held by *kaum* members "with money", but a rather large number of the fields is pawned to persons belonging to other *kaum*. The pawned fields and those held with money together constitute the potential of property which is highly mobile and which may change hands unrestricted by the *adat* rules pertaining to the alienation of *pusako* property. On the map I have only considered those transfers of which I am certain; there may be more about which I have not been told. The villagers generally stated that in this part of the *nagari* comparatively little land was pawned.

The *hibah* transfers shown on the map all concern *hibah* of *harato pusako* to the *anak pisang*. In all cases, the land given is to be *turun temurun* in the childrens' *jurai* and only to revert to the original *pusako* holding group if the childrens' group should become extinct. The map further indicates that sales of land (at least in this part of the *nagari*) are rare and only involve land used as, or adjacent to, house sites.

3. *From Status to Contract in Historical Perspective*

As long as the *pancaharian*-like rights to use and exploit property objects pertain, the objects are, for the purpose of use and exploitation, held individually. Through time, this individualization is undone again by the *pusako*ization rule, but even then the objects are held by only one *jurai* of the group for whom the *pusako* status is of common *pusako turun temurun*. Within this individualized *jurai* then the same traditional

mechanisms of distribution occur, like the *bagi bauntuek* and the allocation of *dapatan* and *pambaoan*. This is certainly done if the holders are females. If the holders are males, however, the *pusako*ization process is or may be deferred for another generation through the anticipatory action and, until then, the *pancaharian*-like right to use and exploit the property may well have been transferred again. The mechanism by which this increasing individualization of property relationships, also to property objects with the legal status of *harato pusako*, has become possible, even without violations of *adat* law, is the process of the transfer of pawnings. Its medium is money. We may well assume that the relative importance of such potential *pancaharian*ized *pusako* and of *harato pancaharian* in general has increased with the growing monetarization of the Minangkabau economic system.

Through the medium of money, property relationships have to a growing extent moved from rights based upon the status of *kaum* member to rights based upon the contracts of pawning and transfer of pawnings. This development is a neat example of what Maine had characterized as the movement from status to contract (1905: 151). It is not the processes of the *bagi bauntuek*, of the allocation of *dapatan* and *pambaoan* which legitimate the individuals' relationships to use and exploit property objects, but the money which had been invested in the property objects. That money and the increasing monetarization of the Minangkabau economic system havehad an important impact on the Minangkabau social system and on the system of property relationships in particular, is of course no new insight. It has been stressed by previous authors, notably by Schrieke (1955), Maretin (1961), and Kahn (1975, 1976). Kahn in a recent study has demonstrated the degree to which the Minangkabau local economic system has been influenced and affected by the economic systems outside Minangkabau (between the Netherlands and the colony, between Indonesia and Minangkabau, and between Minangkabau and the world market in general). Schrieke, Maretin, and Kahn all assumed that the decisive period, in which money made its greatest impact on Minangkabau property relationships, was the time following the abolition of the system of forced cultivation in 1908 and the introduction of a tax system. Money was required, and credit facilities were opened for Minangkabau villagers. With the removal of the restrictions on rice cultivation and the admission of foreign commodities a free commodity production developed in Minangkabau (Schrieke 1955: 98; Kahn 1976: 90 f.). All of this resulted in an economic revolution (Schrieke) and an irrevocable breakdown of the *adat* system.

According to Kahn, it had been the policy of the colonial government in the period before, when the system of forced cultivation was practised, to maintain the isolation of the village communities and hence to preserve the illusion of the autonomy of the *nagari* in West Sumatra. Dutch economic policy aimed at preventing the penetration of external economic influences through imports. A developed commodity sector would have meant a demand for imports, and the Dutch were worried about the effects of this on local conditions. Hence the rice-policy of the Dutch was aimed at preventing rice from becoming a cash-crop, and rice-production was artificially kept at the subsistence level (Schrieke 1955: 97; Kahn 1976: 83). According to Kahn's analysis, this policy more or less safeguarded or even created the "traditional" Minangkabau social and economic system with its holdings of common *harato pusako* by groups and the *kaum/buah gadang* functionaries as administrators of the communal property.

But in my view, both the Dutch policy and Kahn's analysis are based upon a fallacy. The process of individualization and monetarization of property relationships began at a much earlier stage, namely during the period of the system of forced cultivation, although it had even earlier roots as well. It did not come out of the blue, when cash-needs were created in 1908 and a market was developed for commodities. It rather began with money that one had and with which one had to do something: The Minangkabau were forced to cultivate coffee which then was sold to warehouses run by the colonial administration. Coffee was grown individually (Kahn 1976: 82) and the money acquired through the sale of coffee thus was held individually and could serve individual property interests. As the cultivation of rice above the subsistence level had been discouraged by the Dutch, no one did more than the necessary rice cultivation. No new rice-land was cultivated, but one aimed to plant as much coffee as possible. As the import of new commodities had been restricted by the Dutch, the Minangkabau were more or less *forced* to invest the money they had received from the Dutch for their coffee within the *nagari*; and in the *nagari* there was virtually only one possibility to do so, namely in the processes of pawning, redemption, and transfers of pawning. As the pawning register of CKL suggests, pawnings were not infrequent: For the years 1874-1893, 177 transactions were registered, in some years (1884, 1885, 1893) 20 or more. The money, the redemption money, was usually expressed in the currency introduced by the Dutch, in Dutch *rupiah*, and not in the gold standard which was used

formerly and which is also used now. As this money was held individually, it was - we may assume - also much more easily and frequently put to individual investments: investments for oneself, one's *jurai*, one's preferred persons. One probably saw little reason to redeem *pusako* for the whole *kaum* if the other *kaum* members had their individual money, too. If, on the contrary, rice had been allowed to become a commodity, the money acquired through the sale of rice from common *harato pusako*, would have been "the fruit of the *pusako*" and held in common; the likelihood that it would have been used to redeem pawned *harato pusako* for the whole *kaum* would have been much greater. So quite a different result was achieved than had been intended by the policy of the Dutch and than had occurred according to Kahn's analysis. Instead of maintaining the traditional system with its common property holding groups, the foundation was laid for the superimposition of property rights based upon money transactions over the traditional system of property relationships based upon status and their distribution and allocation as *ganggam bauntuek*, *dapatan*, and *pambaoan*.

The monetarization of property relationships brought with it an increase in individual autonomy. It did not, however, mean that the temporary use and exploitation rights to (*pusako*) rice-land had acquired a fixed price. This is evident from the entries in the pawning register of CKL. In 155 of the 177 entered transactions, the "prices" could be ascertained, as the pawning sum and the value of the land demanded for or given for the pawning sum are mentioned. The value of the land is expressed in the average amount of harvested rice in terms of *sumpit*. One *sumpit* is ca. 31 kg. In the following table the prices are expressed as the ratio of *sumpit* of rice per 10 *rupiah Belanda* (Dutch *rupiah*). The table on p. 289 shows, that the amount of land given/demanded for a certain amount of money differed considerably. The diversity of "prices" emerges even more clearly if the total number of one year's pawning transactions is examined:
In the year 1884, for instance, the ratios *sumpit*/ 10 *rupiah* were 1.31, 1.5, 1.0, 1.5, 1.5, 2.85, 1.33, 1.8, 1.23, 2.5 for pawnings between members of the same *suku*, and 1.25, 1.0, 0.85, 1.76, 1.17, 2.0, 1.81, 2.4, 2.3, 1.66, 1.33 for pawnings between members of different *suku*. These data indicate that the price of the use-rights does not vary with the economic value of the property objects. We may assume that the amount

Pawning Transactions in CKL 1874-1893

Year	Minimum (*sumpit* rice per 10 Dutch *rupiah*)	Maximum	Number of transactions
1874	0.52		1
1875	1.2	1.87	3
1878	1.0	1.25	2
1879	1.05	3.2	3
1880	1.0	1.7	2
1882	0.66	1.4	2
1883	1.8	3.0 (6.0*)	4 (5*)
1884	0.85	2.85	21
1885	0.62	3.2	21
1886	0.7	3.3	13
1887	0.61	1.2	5
1888	0.64	3.2	9
1889	1.0	2.66	9
1890	1.08	4.28	13
1891	1.0	2.4	11
1892	0.83	4.0	15
1893	0.6	2.5	20

* In one case, land was pawned to a member of a neighbouring *nagari*, in which case the ratio was considerably higher than for pawnings in CKL.

of land asked/demanded for a given sum of money depended, indeed, on the social relationships between the parties, as is stressed by Minangkabau informants. It was low when the pawning was between close kin, and it was high when it was between unrelated persons. The concrete relationships between the parties are unfortunately not mentioned in the register, and we were not able to reconstruct them during our stay in CKL. The *suku* affiliations of the parties, however, were given. A comparison of the averages of the 94 inter-*suku* with the 62 intra-*suku* pawnings shows a slightly higher average for inter-*suku* pawnings, 1.698 *sumpit*/10 *rupiah* compared with 1.557 *sumpit*/10 *rupiah*. However,we cannot infer too much from these data. For the parties in intra-*suku* pawnings, such as e.g. in *suku* Sikumbang, may be quite unrelated, whereas inter-*suku* pawnings may be between close kin, e.g. the *bako* and the *anak pisang*. Perhaps a little more significant is the fact that the average for pawnings between persons living in Candung and Koto Lawas (N=21) is even

higher, 1.72 *sumpit*/10 *rupiah*. The assumed correlation between increasing prices and the distance in social relationships is most clearly borne out in the one case in which property has been pawned to a member of a neighbouring *nagari*, where the relation is 6.0 *sumpit*/10 *rupiah*.

It is very difficult to assess the extent to which this situation has changed. We could not gather comparative statistical data for contemporary practices. A pawning register was said not to exist and we did not get access to whatever pawning documents might have been kept in the office of the *Wali Negeri*. The information given by informants comprised several general principles. It was repeatedly stated that little had changed and that the amount of land asked for a given sum of money still depended very much on the social relationships between the parties, and that the pawning sum could not be regarded as an equivalent for the economic value of the pawned *harato pusako*.[12] On the other hand, most people stated that there was a sort of thumb-rule for pawnings in contemporary CKL, that one should give land worth 3 *sumpit* of rice per harvest for the sum of two *rupiah emas* (ca. 60.000 *rupiah* in 1975). This may be a rule for pawnings between unrelated persons.

The situation is very complex. For lack of adequate statistical data I can only try to throw some light on the most important aspects of this complexity. People undoubtedly are aware that one can make money out of land and invest it more profitably in other valuables. (Remember Dt. Batuah Rajo's advice to his father: Pawn your *harato pusako* and buy houses in town, p. 271). This encourages people to pawn land to others, but also to redeem *harato pusako* of their *kaum* which had been pawned to others, with the view of "deepening" or transferring the pawning at a higher price. The contemporary economic value, measured in money, is generally higher than the pawning sum agreed upon several years ago. If the pawning sum was expressed in Dutch money, the risk of the considerable inflation is to be carried equally by both pawner and pawnee, following an authoritative judgement of the Supreme Court which usually is adhered to (No. 92 K./Sip./1952, published in Santoso Pudjosubroto 1964: 41 ff.). Nowadays, most pawning sums are again expressed in terms of gold-*rupiah* (*rupiah emas*) which do not inflate but provide a stable standard: During one year, the price of one *rupiah emas* rose from about 30.000 to 37.000 *rupiah* of the national currency. Redemption of pawned *harato pusako* thus is economically interesting, and many of the longest and expensive court-suits were concerned with the problem of which party had the right to redeem some *harato pusako* which had for long been pawned to other people.

In former times, the initiative for pawnings came from those *kaum* which were in need of money. The money was supplied by the "richer" *kaum* who received the land as security, but the "poorer" *kaum* usually still had enough land for their own subsistence. With the population increase and the increase of cash-needs, this situation has changed. Members of poor *kaum*, such as the *kaum* of Dt. Kayo (in the story p. 218 ff.), which probably had enough *harato pusako* to supply all *kaum* members with sufficient land for their subsistence three generations ago, now are forced to leave the *nagari* or to take other people's land on the basis of pawnings or share-cropping arrangements. The richer *kaum* nowadays act as pawners to an increasing extent. But the poorer *kaum* not only need land, they also need money. This situation has led to an increase of transactions which probably were unknown or extremely rare in former Minangkabau: The poor give their land to the rich in exchange for money, and the rich give the land back to the poor on the basis of a share-cropping agreement. This opens the way for "secret" transactions, as the land does not change hands (see the land pawned by St. Mantari Basa to the Caniago-woman in the story of the *kaum* Dt. Kayo, p. 232). In addition, and more importantly, it opens the way for the systematic exploitation of the poor by the rich, which increases with the degree to which the social and kinship relations upon which most transactions over *harato pusako* are still based, lose their emotional and moral quality.

If land is pawned, the money acquired by the transaction is usually - in the case of a richer *kaum* acting as pawner - invested outside the *nagari* or just spent (see story of St. Pangeran, p. 253 ff.). On the other hand, there is a constant influx of money into the *nagari* from outside. Those villagers who have gone *merantau* and have succesfully made money as traders or through other activities, usually redirect some money to the *nagari* and have their sisters and wives redeem pawned *harato pusako*. This money thus is generally put to the benefit of the *kaum* by the Minangkabau in the *rantau*, who often have a rather nostalgic and conservative attitude towards their *nagari* and Minangkabau *adat* (cf. Naim 1974).

Though all these mechanisms keep the land rotating in pawnings and redemptions at an increasing speed, and although they all lead to an increasing temporary individualization of the relationship to *harato pusako*, yet they reinforce the system of the *adat pusako*. The rules of property holding by matrilineal groups and the inheritance of relation-

ships to *harato pusako* in the matriline are constantly restated and applied in these cases.

4. *The Adaptation of Interpersonal Relationships to Property Strategies*

There are two basic ways to adapt interpersonal relationships to property strategies, and to adjust them so that they will bring the property to the preferred persons. The two basic means employed in this are adoption and marriage.

a. Adoption

In traditional Minangkabau society, adoption meant the incorporation of one or more persons into a *jurai* as new *kamanakan*. This was and still is done when the danger arises that the group will become extinct, or when there are no male group members who can effectively lead and represent the group. Through the adoption, the continuity of the *sako* and the *harato pusako* within the group can be ensured, and the danger that it pass to other groups or to group members of lower social and political status is avoided. As has been mentioned above (Chapter 2: 62) the persons preferred as adoptive *kamanakan* are those who are matrilineally related to the adoptive *kaum*. But it is also possible, that a male *kaum* member can adopt or initiate the adoption of his own children, his son, into his *kaum* as his *kamanakan*. This is generally allowed when the children "have no *suku*" (see the story of the adoption of Sur, Chapter 5: 228) and when the man is the last living member of his *kaum* (see Chapter 4: 179, I.H. Dt. Rajo Panghulu 1973: 51 on the *hibah laleh*).[13] Data on such adoption-practices are rare, but the adoption of *anak pisang* into their *bako* seems to have been the exception. Besides, they usually resulted in trouble, as the other *kaum* within the *buah gadang* of the adoptive *kaum* tend to challenge the validity of the adoption and its legal property consequences in the adoptive *kaum* after the person having initiated the adoption had died. This happened in one of the few published cases which was decided by the LR Fort van der Capellen in 1936: The plaintiff had married his father's *kamanakan*. After the older members of his wife's and father's *kaum* had died, a ceremony was held, accompanied by the slaughtering of a buffalo, at which it was publicly declared that the plaintiff would receive the title of Chatib Adat of his wife's *kaum*, and that he was forthwith adopted in her *kaum*. The plaintiff's wife and daughter died in the course of time, and he and his granddaughter were the only *kaum* members left. After his wife's death, the *panghulu*

of the other *kaum/buah gadang* within the *suku* challenged his right to act as *mamak kepala waris* in his father's/wife's/granddaughter's *kaum* and to take control of his new *kaum*'s *harato pusako*. The witnesses heard in the case were able to convince the court that the plaintiff had merely been given the title of Chatib Adat on the occasion mentioned, but that he had not thereby been adopted into the *kaum* and consequently had no right to act as *mamak kepala waris*; the *mamak kepala waris*-ship on the contrary had to be taken over by the defendant(s), the most closely related *mamak* in the plaintiff's granddaughter's *suku*. As the plaintiff could not prove his claim, he lost his case (reprinted in *Berita Pengadilan Tinggi* no. 1, 1968: 33 ff.).

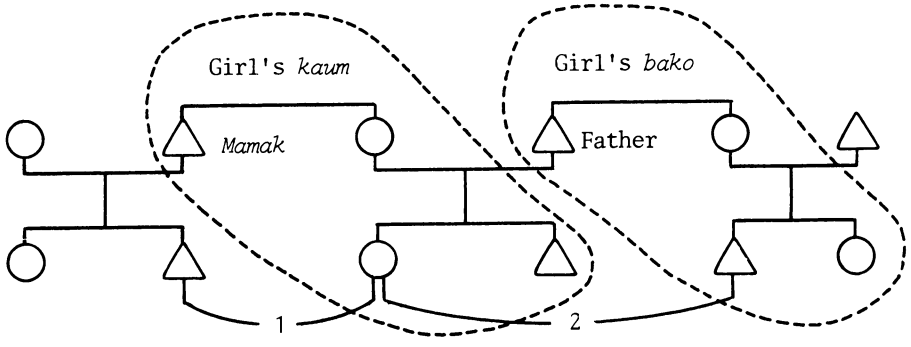
The adoption of children by a married couple was unknown in Minangkabau *adat*. Childless marriages often resulted in divorce; the man looked for a new wife, the wife for a new man or she consoled herself with her other (ZCh, MZDCh) children. Only recently has it been stated that according to Minangkabau *adat* law the adoption of children by a married couple is permissible and that adopted children have the same legal status as real children so far as the parents' property is concerned (PN Padang case 278 of 1961 in *Berita Pengadilan Tinggi* no. 1, 1968: 23 ff., 24). In a later case, the PN Batu Sangkar (case 7 of 1974) acknowledged an adopted child as heir and descendant of his adoptive parents, but specified that the adopted child could not be considered an heir with respect to *harato pusako* inheritance. In contemporary Minangkabau, adoption can therefore be used as a means to have one's *harato pancaharian* inherited by one's preferred persons (chosen by adoption) and prevent it from falling to the *kamanakan*. But as yet, adoptions are rare in Minangkabau. In the period 1968-1974, there were only 26 applications for adoption of children in the jurisdictional districts of the PN Bukit Tinggi, Batu Sangkar, and Payakumbuh. Of these, 2 were submitted by Chinese parents and 13 by Indonesians of other ethnic groups mostly persons serving as administrative and military officers in Minangkabau. As rumour had it, all these applications concerned the adoption of their illegitimate children. Only 11 applications were submitted by Minangkabau.

b. Marriage

The other and more important means to adjust interpersonal relationships to property strategies is marriage. In Chapter 2, I have already mentioned what types of marriage are considered ideal. Cross-cousin marriages (CCM) are

best suited for property strategies. In nearly every discussion of CCM with villagers, the value of these marriages for property and inheritance strategy was mentioned. Also, when future property relationships were discussed as such, informants would bring up the topic of CCM themselves (see the stories pp. 218 ff. and 253 ff.). The property argument is also regularly mentioned in the anthropologists' analyses of the function of the CCM for the Minangkabau social system (e.g. by Maretin 1961: 193; Fischer 1964: 103).

If we deal with CCM as a means to reach one's objective in property and inheritance affairs, we have, of course, to consider primarily the point of view of those persons who arrange the marriage. In Minangkabau, these persons are not the marriage partners but their elder kin. Before we assess the functional value of CCM in property affairs we therefore must briefly recall the context in which Minangkabau marriages are arranged. In *adat*, a husband is sought for a girl. It is the responsibility of her *kaum* to find the husband. A *kaum* meeting must be organized in which the girl's *mamak* and her mother(s) will have the most important voice. The girl's father and her *bako* are not completely excluded in the processes of looking for her future husband, and the girl's father and his *mamak* and sisters will also regularly participate in the meeting in which the candidates, the potential *urang sumando*, are discussed. But the girl's *kaum* will have to decide and have the final word (for a recent illustration of such a meeting in contemporary Minangkabau, see Tanner 1971: 289). The diagram below shows that the participants not only represent the girl's *kaum* and *bako*, but that at the same time the *mamak* and father of the cross-cousin who might be selected as spouse, are present.



(1) patrilateral CCM
pulang ka bako

Boy's view

(2) matrilateral CCM
pulang ka anak mamak

We must proceed from this constellation when we consider the functional value of CCM in the traditional Minangkabau social system. Let me discuss the value of patrilateral CCM first, where a woman's husband is her matrilateral cross-cousin.

The *mamak* who has to find a husband for his female *kamanakan*, is very likely to think that his own son would make a good choice: His *harato pancaharian* ought to be inherited by his *kamanakan*, yet he would like to have his children profit from it as well. In particular, he would like to care for his sons; his daughters will be provided for anyway in their *kaum*, but his sons must go out to look for (*mancari*) property. His *harato pancaharian* ought to become *harato turun temurun* of his *jurai*, by being transmitted through his female *kamanakan*. So the marriage of his son to his female *kamanakan* would solve his problem. His son will profit from his *harato pancaharian* as the husband of his female *kamanakan*, and in the end the property will become *harato pusako turun temurun* in his female *kamanakan*'s *jurai*. Through the organization of a patrilateral CCM the *mamak* will be a "good *mamak*", he can "carry his children and lead his *kamanakan*", as *adat* demands of him. He can satisfy his wife and children, prevent the proverbial conflict between children and *kamanakan*, and yet direct his property to his preferred person, his son.

The patrilateral CCM also has its advantages in strategies concerning *harato pusako*. Through organizing such a marriage, the *mamak* will increase his chances that his *kaum* will agree to give him *harato pambaoan* to work with his wife and children, or that his *kaum* may consent to give the property to his children as *harato hibah*. For there is no danger that the beneficiary will try to make off with this land, as the male *anak pisang* will marry one of the *kamanakan*. Besides, the marriage would lead to economic continuity for two consecutive generations. At first, the *mamak* would work his *harato pambaoan* together with his wife and children. His daughters would soon start to live and work in their mother's *jurai*, but the sons would continue to work with their father. The son would then marry and continue to work on his father's, i.e. his wife's, *harato pusako*. When having children himself, he would continue to work with his children on the same land, now the *pusako* of his children.[14] By making his children, his sons in particular, economically dependent on him, the *mamak* can also exert some pressure so that they might care for him when he is old.

Of course, it is not just the *mamak*'s considerations which matter.

But the arguments just mentioned will also be considered ideal by the females of his *kaum*. They can be generous to their *anak pisang*, as they should be according to *adat* and one need not be afraid that the property will be lost or be used by "strange" persons. In addition, it is good to have a husband returned from the *kaum* to whom one has given a husband a generation before.

If a matrilateral CCM is arranged, i.e. if the female *kamanakan* should be married to her patrilateral cross-cousin, her *mamak* will be less interested, for such a marriage does not offer him any possibility of directing his property to his children. The girl's husband will not be related to him, *unless*, of course, the *mamak* himself had contracted a patrilateral CCM one generation before. The *mamak*'s sisters would not be opposed to such a marriage, for it would mean that in two consecutive generations they would get an *urang sumando*, and perhaps some *harato pambaoan* for their children, from the same group for nothing. But just this factor would be likely to lead the boy's *kaum* to oppose such a marriage.

There would, however, be an advantage for the girl's *father* in a matrilateral CCM. He could give *harato pancaharian* to his daughter and have his male *kamanakan*, his potential successor as *mamak*, profit from it. He thus could avoid the children-*kamanakan* conflict to some extent. As a *mamak* of his male *kamanakan* he could also press his *kaum* to give *harato pambaoan* to his male *kamanakan* and thereby have his daughter profit from it. In this way the marriage would provide him with an additional channel through which he could help, but also control, his male *kamanakan*. I should like to stress that this is a consideration of "the *father*" in the context of marriage-arrangements, and not of "the *mamak*". The *mamak* cannot "give his daughter away" to his male *kamanakan*; this will be done by his daughter's *mamak*!

Whereas the patrilateral CCM could strengthen the bonds between father and son/*mamak* and female *kamanakan*, the matrilateral CCM would rather strengthen the relationships between father and daughter/*mamak* and male *kamanakan*.

It is very difficult to assess which use has been made of CCMs in Minangkabau, as there are hardly any statistical data on the subject. In the older sources it is stated that both forms of CCM are considered

to be ideal marriages and that a slight preference is given to the patrilateral CCM (Van Eerde 1901: 394; Besseling 1904: 349; see also Fischer 1964: 102 f.). For the contemporary situation we have to rely on the few statistical data available. They suggest that little use is made of CCM at all, and that of the two forms contracted, there is a definite preponderance of matrilateral CCM. Thus Kahn reports that in Sungai Puar, out of a sample of 838 marriages, 43 or 5.13% were matrilateral and 10 or 1.2% were patrilateral CCM. Thomas reports from Gurun, that out of a sample of 1527 marriages, there were about 70 or 5% matrilateral and 35 or 2% patrilateral CCM (Kahn 1976: 78; Thomas 1977: 99, 105, provisional figures). With most authors I would agree that CCM were contracted more frequently in former times. The consideration of the future spouses are nowadays much more taken into account than formerly, and the marriages on the *suka sama suka* basis, on the basis of mutual love, increase. But I think that, in addition, the decrease in CCMs should be directly related to the change in the *adat* conceptions of property relationships. With the increase of individual autonomy in property affairs, marriage as a means to direct property to one's preferred persons became less important. The need to reduce or prevent the conflict between children and *kamanakan* over their father's/*mamak*'s property has also lost its importance as this problem was being solved by the changing law of intestate inheritance.

It is my further contention that in former times the patrilateral CCM was the more widely used form and that the preponderance of the matrilateral CCM is a more recent phenomenon. As several authors have hypothesized the opposite development of the frequency of CCM, I must explain my hypothesis in some detail.

The patrilateral CCM is *the* ideal marriage for those persons who according to (old) *adat* have the greatest influence on the choice of marriage partners, for it serves their interests best. I think that it is justified to proceed from this argument, not only if we consider the value of a CCM in terms of the organisers' interests, but also if we view CCM in relation to the structure of the Minangkabau social system in which CCM and the individual marriage-organisers operate. The Minangkabau social system is structured and maintained through time as the principle of matrilineal descent within fixed territorial frameworks (see Chapter 2). As far as possible, real matrilineal descent connections are used to structure groups and property holding units in continuity. Where

this is not possible, social relationships which are to be used in the context of continuity are assimilated to and expressed in the idiom of matrilineal descent. Marriage is not used to structure the relationships between groups in perpetuity; on the contrary, permanent intergroup relationships are constructed by common exogamy, by "non-marriage". The Minangkabau social system may be said to be based upon the principle of "no (permanent) exchange": Group membership and property holding in continuity are achieved through the operation of the matrilineal descent principle, and property and persons (spouses, father's children) cannot be transferred permanently from one group to the other except by rationalization and justification of the transfer through matrilineal descent. The Minangkabau husband is only loaned to his wife's group, and the relationship established through his marriage is temporary. Equally temporary is the relationship based upon patrifiliation. Property transfers based upon marriage and patrifiliation share this temporary nature. Within the stable framework of matrilineal descent the living individuals are given a rather large degree of autonomy to adapt their social and property relationships in a temporary way. As there is no fixed system of exchange, people are free to "trade" spouses and property as they wish. The right of the *kaum* to ask cross-cousins in marriage for their female *kaum* members is quite consistent with this picture. In the absence of a system of bilateral obligations, this option (Chapter 1: 24) is the only legally guaranteed means to recover what one has given. The right to demand a marriage partner from those to whom one has given a marriage partner before, which is allotted to *one* group as an option, is the consequence of the absence of a compelling system of rights and obligations to receive and to give marriage partners. What use is made of the option, i.e. whether the *kaum* looking for a husband for their female *kamanakan* will try to get a cross-cousin as *urang sumando* or not, will then depend on the intentions and short-term interests of those *kaum* members who have the right to exercise the option. What their considerations are likely to be I have already outlined and I have also discussed why the patrilateral CCM offers advantages to the girl's *kaum* members, her *mamak* in particular: In those times when the man's *harato pancaharian* still had to become *harato pusako turun temurun* in his own *jurai*, a patrilateral CCM was the best means to have his children profit from the *harato pancaharian*, too. The strengthening of the bond between father and son, to which such a marriage contributed, was also much more "necessary" economically, as the married young Minangkabau man had no fixed social and

economic position in his or his wife's *kaum*, whereas his sisters from the start were socially and economically integrated in their *kaum*. The matrilateral CCM, on the other hand, is much more in the interest of the person acting as father in the marriage arrangement. The change in importance and frequency of CCMs in the direction of growing preponderance of matrilateral CCMs therefore can be taken to reflect the growing importance of the father's authority over his children. It can also be taken to reflect a greater part played by the individual spouses in the organization of their marriage: From their point of view the patrilateral CCM is not an ideal affair, as in the case of divorce not only their marital relationships but also their relationship to the *bako* would be affected, whereas a matrilateral CCM would be "safe" in this respect (cf. Thomas 1977, for a similar conclusion). We would assume that this consideration also plays a much greater role in the more recent period of Minangkabau history than in earlier times when the marriage partners had but little or no say at all in the marriage arrangement.[15] My interpretation of the former importance of patrilateral CCM and the growing importance of matrilateral CCM in more recent times is in accordance with all that we know about social conditions in early Minangkabau and social change, and it is also supported by the available data, both for the past and the present, concerning the preference for and the statistical frequency of CCM.

Other authors, however, have hypothesized the opposite development. The basis for their assumption is De Josselin de Jong's (1951) cautious hypothesis, that an asymmetric connubium based upon prescriptive matrilateral CCM formed the foundation of Minangkabau social structure. He assumed that "although nowadays marriage with the FZD is considered very acceptable, the really ideal marriage and the one that underlies the Minangkabau social structure is the matrilateral CCM"(1951: 62). The patrilateral CCM is, according to his interpretation, a rather recent development. This hypothesis has been followed somewhat uncritically and with much less caution by later authors, who, however, did not adduce any additional ethnographic data by which it could be justified (see Maretin 1961: 190; Umar Junus 1964: 300 ff.; Kahn 1976: 78). The available data rather contradict their hypothesis, for the statement that the patrilateral CCM is the more ideal and frequent CCM in contemporary Minangkabau is clearly inconsistent with the statistics given by Kahn and Thomas,which show the matrilateral CCM as preponderant. As far as the "development from matrilateral to patrilateral CCM" is concerned,

which is mainly based upon arguments with respect to property, it turns out to be a grave misinterpretation. Maretin writes:

"In order not to incur the displeasure of his kinfolk, a man sometimes built a house for his son, under matriclan laws belonging to his wife's family, and gave him into marriage to his ZD. In this tendency to conclude marriage to his sister's daughter, we clearly observe *the increasing part played by the father's paruik*, in other words the gradual transformation from matrilineality to patrilineality" (1961: 193, italics added).

But Maretin's analysis which has heavily influenced Kahn's later interpretation of the Minangkabau social system and which has been praised as being part of "some modern Soviet anthropological work (which) has been intellectually stimulating as well as ethnographically up to date" (Firth 1975: 42, 56) completely obscures the issue: Maretin seems to have overlooked the fact that in Minangkabau a husband is selected for a girl. The "father who gives his son in marriage to his sister's daughter" is the *mamak* of the group which arranges the marriage! Patrilateral CCM therefore means that the *mamak*'s *kaum* dominates the marriage arrangements. If the father's *paruik* were dominant, this would indicate a preponderance of matrilateral CCM. Thus, if the development leads from the *mamak*'s (*mamak*'s *kaum*'s) influence to the father's (father's *kaum*'s) influence - a proposition with which I fully agree - then its course would be opposite to the one suggested by Maretin, namely from patrilateral to matrilateral CCM, a development supported by the statistical data available and by the social developments in Minangkabau in general.[16]

III. THE MEANS OF THE WOULD-BE HEIRS

1. *The Means*

The objectives of the would-be heirs and donees are clear. They want to become or to remain donees and heirs, as individuals or for the groups of which they are members. The range of activities to further these ends greatly depends on whether the property holder has exercised his autonomy over his property or not, and whether he still can do so.

If the property holder still lives and can exercise his autonomy the would-be heirs (hereafter abbreviated as WBHs) may try to influence the holder to exercise his autonomy in their favour, or, depending on the situation, influence him to abstain from an exercise of autonomy which would be disadvantageous to them. If the holder exercises

his autonomy, this will often require collaborative action on the part of the WBHs intended as beneficiaries. However, other persons, too, may feel themselves to be WBHs, and take adverse action against such anticipatory transfers or the individually directed flow of property. The typical charge of these others then, is that the transaction in question was not valid in law as it violated the *adat* rules,which demand the knowledge or consent of the relatives, *adat* functionaries, etc. The time at which the adverse action is taken can differ. It may be done at once, still during the lifetime of the holder, in order to invalidate the transaction from the start (as we have seen in the stories about the property of St. Pangeran and Haji Batuah),but it may also be done after some time when the WBHs consider it a good opportunity.

But the greatest number of cases in which inheritance strategies of WBHs become public involve situations in which they assert their status as heirs according to the rules of intestate inheritance. In the system of the *adat pusako*, where from the point of individuals no definite border exists between the synchronic and diachronic dimension of property relationships, such assertions can already be made during the holder's lifetime. This is generally done either by cooperating with the holder "as his heir" at formal occasions in which the holder's *ahli warih* have to participate, or by taking adverse action against the holder when he exercises his autonomy. As was clear in the story of Angku Mudo and St. Pangeran (p. 253 ff.), the assertion of one's own status of heir lies in the charge that the holder was not entitled to dispose of his property without one's consent.

For their strategies the WBHs can draw from a large arsenal of conceptions provided by the three legal systems, and they can also use a variety of institutions which can validate their status as heirs. A detailed description and analysis of these two sets of strategies would go beyond the scope of this study. Here, only the most important aspects can be mentioned.

2. *The Legitimation of the Would-Be Heirs' Claims*

The conceptions with which the WHBs rationalize and justify their claims and behaviour are usually taken from *adat*. References to Islamic law or to written law as systems which would or should be used to cover the evaluation of the whole situation-image are practically never made. In CKL, we did not hear of any such case. The few exceptions we know of are more or less confined to those cases in which property disputes are

brought before institutions that apply Islamic law; as already has been stated, such cases are extremely rare. What happens, however, is that elements of western or Islamic law are used in combination with *adat* conceptions. The degree to which this is done, differs with respect to the aspects or spheres of the evaluation process.

a. Standards of Validity

The WBHs generally evaluate the validity of property transfers in terms of the conceptions provided by *adat*. References to written law are extremely rare, and we observed such a reference in just one case: Dt. Batuah Rajo's claim that the *surat kuasa* made by Haji Batuah was valid according "to written law and the constitution" and that he, Dt. Batuah Rajo, therefore could not be blamed for having taken cognizance of it (see p. 244). Islamic law is sometimes adduced in order to support the general principle that donations and testaments may be made at all and that such transfers are not subject to the consent of the donator's/testator's matrikin. Reference to the specific Islamic legal conceptions pertaining to the validity of *hibah* or *wasiyat*, however, is never made. Most probably this is because also the application of these conceptions would invalidate most transfers made in order to evade the *adat* restriction. As the State Courts systematically refuse to apply Islamic legal conceptions, and as the individual autonomy to dispose freely of *harato pancaharian* is recognized now as new *adat* law, also the general references to Islamic law have become very rare.

Within *adat*, several standards of validity are used by the WBHs. With respect to transfers of *harato pusako*, the standard - consent and/or knowledge of all *ahli warih* and the *panghulu* - has been rather stable. The WBHs usually do not operate with the consent - knowledge distinction, although it is often made by the courts. If the WBHs deviate from the *adat* standards, they generally do so in secret, hoping (or enforcing with non-legal means) that the transfer will go unchallenged. The standards of validity of *harato pancaharian* transfers have been set unequivocally by now, but in a few cases people still fight the new standard, unrestricted freedom of disposition, with the old one according to which the consent and/or the knowledge of the *kaum* members is required. The argument is usually raised in the *kamanakan* vs. children dispute. Only in one case decided by the PN Bukit Tinggi (case 49 of 1970), it was "the children" who (in vain) tried to invalidate their father's transfer of *harato pancaharian* to his other children with the argument

that the transfer had not received the consent of the (father's) *pang-hulu* and *ahli warih*.

b. Relevance and Legal Consequences

In the sphere of legal consequences which specify the relevance of death for intestate inheritance one can observe a slightly different picture. *Adat* conceptions dominate here, too, and no use at all is made of statute law. But elements of Islamic law are used to a somewhat larger extent, especially in people's statements that the *harato pancaharian* are inherited or should be inherited according to *hukum faraidh*. Most people who say this are clearly aware of the fact that *hukum faraidh* contains a much more complicated distribution of inheritance portions, and that their reference to Islamic law is a partial one only. If the argument that the children should inherit according to Islamic law is raised in disputes, the invocation of Islamic law is always made only for the legitimation of the *children's* claim and never for the legitimation of other persons who would be heirs according to Islamic law.[17] Even if the inheritance of the children in general, as current inheritance practice or as normative demand, is legitimated in terms of Islamic law, the actual distribution *between* the children is not carried out in accordance with the Koranic rules. In Islamic law, male heirs receive twice as much as female heirs, but the common practice is that the children get equal shares,or that the female heirs receive more than the males "in accordance with *adat*". Thus Haji Hassan, in the story told earlier (p. 272), explicitly had stated that his property should be inherited in accordance with *hukum faraidh*, yet he distributed his property in more or less equal shares. Even in the case of the inheritance of I. Canduang, the foremost Islamic scholar of CKL, the Islamic rules of distribution would not be adhered to. His *harato pancaharian* had not yet been finally distributed among his heirs, but his children, amongst them the *Tuan Kali* of the *Sidang* and the head of the Islamic School in CKL who also was a lecturer in Islamic law at the Islamic University in Bukit Tinggi, stated that in principle his sons and daughters would receive equal shares. Our counterpart, Sdr. Narullah Dt. Perpatih nan Tuo S.H., reported to us the same practices from *nagari* III Balai.

Most Minangkabau, however, conceive of the inheritance of *harato pancaharian* by the children as the "new" *adat*. This view is also held by the State Courts,which never make reference to Islamic Law but only

to *adat* when they legitimate the inheritance right of the children. Occasionally, one may even hear that the inheritance law had not changed at all, and that *harato pancaharian* have always been inherited by the children in accordance with *adat*. Such opinions were only expressed by experts with a reputation of being *adat*-purists, probably in order to minimize the influence Islam may have had on Minangkabau inheritance practices.[18] The consequent court practice and the affirmation of the children's inheritance rights are probably what led to the situation that inheritance arguments are only very rarely based upon Islamic law. The degree to which this was done in times in which the children's inheritance was not a matter of fact, unfortunately is not known.

Principles of Islamic law are occasionally also used to legitimate one's relationships to *harato pusako*. Tanner reports a case in which the internal distribution of a *kaum*'s property was in dispute. One of the disputants tried to achieve a rearrangement with the argument that "according to *syarak*, inherited property is divided" (1969: 45). But the reference and its intended consequences were further discussed by all disputants in the *adat* context of the eventual division of the *harato pusako* between the sisters' *jurai*.

c. Legally Relevant Knowledge

In most cases of diachronic transfers of property relationships the general legal conceptions are not problematic. The standards of validity by which transactions effecting diachronic transfers are judged, the specification of the legal consequences attached to death in terms of the applicable legal system and in terms of its detailed distribution and inheritance rules, are accepted as self-evident in most cases. It is important to emphasize that this holds true as a general rule for all cases of diachronic transfers of property relationships, whether they are disputed or not. What generally *is* problematic in property and inheritance disputes is the content of the situation-image to which legal consequences are to be attached or which should be evaluated in terms of validity. As the research of K.v. Benda-Beckmann in the State Courts of Minangkabau has shown, about 80% of all disputed cases are more or less concerned with the question of what has happened in a concrete situation or who is related to whom in what way. The principle of matrilineal descent is legally relevant insofar as it determines the persons who are

to inherit *pusako property*; the status of heir is specified in terms of genealogical positions. The abstract question of "who are the heirs" in *adat* is usually unproblematic. What is problematic is the determination of the individual persons whose actual kinship relationships are legally relevant for the diachronic transfer of property rights. What is required to solve these questions is the knowledge of the genealogical relations between persons and groups. Most cases which are seriously disputed are inter-group cases of the kind I have described in part B of this chapter, where pawned property or the *harato pusako* of an extinct *kaum* is at stake. The relevant transactions and genealogical relationships are often uncertain, and are only remembered, if at all, by some *panghulu* or other *adat* experts. But even if they are remembered, they often cannot be proved. Most disputed cases therefore are decided with help of the legal conceptions which lay down what constitutes the situation-image to be evaluated for legal consequences, i.e. by the rules of evidence in the widest sense. As the study of K.v.Benda-Beckmann will demonstrate, it is here that written law exerts its greatest influence on the decisions taken by State Courts in matters of property and inheritance. The procedural law in the State Courts, including the law of evidence, is a modified version of Dutch procedural law, which puts quite different demands on factual propositions in terms of plausibility, probability, credibility and certainty than does *adat*. It is here that the position of the *adat* experts in the *nagari* is still so important, for they are regularly called as expert-witnesses in *nagari* internal disputes and in court cases. One also hears more of bribery of witnesses than of corrupt judges. As some of the stories illustrate, the villagers are well aware that different standards operate in the *nagari* and in the courts, and they make skillful use of this in their dispute strategies (see Bandaro Hitam's account of his *mamak*'s case, p. 251 ff. On dispute strategy, see also Tanner 1969, 1971).

3. *The Agents of Validation*

The establishment of one's status as heir or donee is not only a matter of the conceptions through which it is done, but also of the forum in which these conceptions are applied in concrete cases. It is not sufficient to be able to legitimate one's status in terms of the generally acceptable conceptions. One must also get the others to accept the situation-image of continued property relationships, and if the others

refuse it, to seek its enforcement with the means available. This mainly concerns disputed property transfers. In undisputed cases the matter is rather simple. Transactions or unilateral dispositions carried out during the lifetime of the property holder are validated in a ceremonial process in which the *kaum* members, the *mamak*, the *panghulu* or other *adat* functionaries,participate. In cases of inheritance, it is the meeting of the *kaum* of the deceased in which the inheritance, the new distribution, or the reallocation of the deceased's property objects are validated. A special process of validation is only necessary for the diachronic transfer of the *sako*, when an installation ceremony must be held and the new office holder must be acknowledged by "the *nagari*" (see Chapter 2: 86 f.).

When diachronic transfers are disputed, however, the disputants can turn to several agents for the validation of their claims. The hierarchy of the *adat* institutions in the *nagari* has already been described. Besides, there are institutions of the local government system, the *Kerapatan Negeri* and the *Wali Negeri*. Outside the *nagari*, the State Courts can be invoked. Besides the institutions which are officially legitimated to mediate or to judge in property disputes, there are others like the *Camat* and the military and police officers posted at the *Kecamatan* capital, who are not so legitimated but who nevertheless can be, and are, invoked as agents of decision making.

In the *nagari*, the *adat* hierarchy is still adhered to to some extent. Several agents, the *Karapatan Adat Nagari* in particular, refuse to hear cases until the lower agents have tried to settle the disputes. However, due to the many vacancies of *panghulu* offices, the disputants often cannot keep to the ideal *bajanjang naiek* ("one must go up the steps") hierarchy of *adat*. Some *panghulu* and *juaro adat* are quite active in dispute settlement and do not hestitate to handle cases of persons not belonging to their *buah gadang* or *hindu adat*. The frequency of their activity in dispute settlement, and their successes in particular, to a great extent determine their prestige and authority in the *nagari*. But often disputes are taken directly to the higher agents of decision making, the *Wali Negeri* or the *Kerapatan Negeri*. The choice, or rather the first choice, of an agent very much depends on factors such as kinship relations and other social relations one has with the agents, and the relative amounts of political and economic power held by the agents, or which one can bring to bear upon them. In principle, Minangkabau disputants choose the agents from whom they expect the most positive result,

and they do not have many scruples about using the various power sources inside and outside the *nagari*. There seems to have been little change in this respect. Already in the older Dutch sources it is reported that the officially recognized *panghulu* and those who held the offices of village mayor or *Tuangku Laras* used their power in ways contrary to *adat* to enrich themselves and their *jurai/kaum* or children to the disadvantage of others. The same is true for contemporary Minangkabau. The power of the police and the military is often brought into disputes, especially, but not only, in disputes between members of different *kaum*. Each change in the power structure triggers off a multitude of disputes or the reopening of disputes, and the disputants try to gain as much as possible from the shift in political influence of either their opponents or their friends who have acted as agents of validation. The most clear examples come from the time of the Japanese occupation, the Dutch military actions, the PRRI rebellion in 1958-1961, and the change from the Sukarno to the Suharto regime (see Tanner 1969: 45 and the story on p. 263 ff.).

The State Courts are regularly employed in property strategies (see also Tanner 1969, 1971). The disputes that reach the courts have in nearly all cases been discussed in one of the *nagari*-institutions, but often people go straightforwardly to the court if the first attempt to settle the matter in the *nagari* has failed (compare the story of St. Pangeran, p. 253 ff.). Although the number of cases which are decided by the courts cannot be related to the actual number of undisputed and disputed cases of diachronic transfers (since adequate data on the latter are unavailable), the court records offer some interesting clues. Disputes concerning the diachronic transfers of *harato pancaharian* are rare as compared with disputes over *harato pusako*. Only 8.4% of the courts' case load involves disputes about *harato pancaharian*, whereas at least 54% of the cases are concerned with *harato pusako* transfers.[19] Of the disputes over *harato pusako* transfers (N=270), 42.5% were between members of the same *suku*, 34.5% between members of different *suku*, and 23% were between members of the same and different *suku*. However, only 31 cases, or 11.4% of all cases over *harato pusako*, concerned disputes between *kaum* relatives; the rest of the cases involved disputes between different *kaum* of the same *suku* or between *kaum* of different *suku*. These data support the villagers' statements that disputes between "*mamak* and *kamanakan*" should be avoided as much as possible, and that one would be ashamed if such disputes could not be solved at the lowest possible level of decision making. The data also support the hypothesis presented

by several anthropologists and sociologists, that in cases where the parties are linked in multiplex relationships (Gluckman), the solution of a conflict is sought, and generally achieved, on the lowest possible level and in the terms of an amicable settlement, without the invocation of the "foreign" courts and their inflexible law (see Gessner 1976: 202 ff. on intra-family disputes in Mexico; cf. also Gluckman 1973; Kuper 1971).

Once the disputes have come to court, however, there is only a small chance for an amicable settlement. Only 11.4% of the disputes concerning *harato pusako* were solved by a *perdamaian*, an amicable settlement proposed by the judge and accepted by both parties; in comparison, 16.6% of the other cases brought to the State Courts were settled amicably. And once the dispute has come to court, there is a definite tendency to push it up the court hierarchy. Of the 238 cases decided by the *Pengadilan Negeri* in Bukit Tinggi, Batu Sangkar and Payakumbuh in the period 1968-1974, 129 cases (54%) were appealed. The motivations to appeal are various. Appeal is a good means to win time during which the property can be used and exploited; it is also a means to exhaust one's opponents financially. The statistical data which we collected at the *Pengadilan Tinggi* in Padang also show that there is a good chance that the PN judgement will be reversed in appeal. Of the 576 appeal cases (83% of which involved *pusako* property) decided by the PT Padang between 1966-1974, the PN judgements were reversed in 41% of the cases. In 45% of the cases, the judgements were confirmed, and in 14% they were "improved", *diperbaiki*, i.e. slightly amended without basically being changed. Further review applications to the Supreme Court do not - statistically - pay off. Of the 105 PT judgements attacked, only 5.7% were reversed, whereas in 90.5% of the cases the PT judgements were confirmed (rest unclear).

The diversity of the agents of validation means that the contending parties often have different situation-images of transferred property relationships validated by different agents, at the same time or successively. Cases tumble from one temporary settlement to the next temporary settlement. It is very difficult to evaluate the effectiveness of the settlements, as cases that appear to be settled may be reopened the next moment and the previous settlement may be changed completely. In terms of the official hierarchy of the agents of validation, the court system is the highest agent and its validations can be executed with the help of the administrative machinery. According to our research in CKL,

court judgements are adhered to with only a very few exceptions. But also court cases can be, and frequently are, reopened after some time. In principle, the colonial and national courts consider themselves to be bound by the rule that in the same matter only one decision may be given (*ne bis in idem*). But in practice this rule is not generally adhered to. One reason for this is that during the periods of political unrest (Japanese occupation, Dutch military actions, PRRI rebellion, the change of the regime in 1965) a great many court records were destroyed. Another reason is that it is not difficult for the parties, or the descendants of the original parties, to present a new situation-image to the court even if the same legal question is to be solved anew.[20]



A Minangkabau bride



Women eating after the harvest

CHAPTER SIX

THE LEVEL OF PERFORMANCE II: THE PRODUCTION OF LEGAL CONCEPTIONS IN HISTORICAL PERSPECTIVE

A. INTRODUCTORY NOTE

I. THE PRODUCTION OF LEGAL CONCEPTIONS

Before I described the systems of cognitive and normative conceptions which pertain to property relationships and their maintenance through time in Minangkabau (Chapter 4), I had asserted that the material presented needed further differentiation, a) in terms of the various authors/producers of concrete and general legal conceptions, and b) in terms of historical development and change. I shall try to give this differentiated account in this chapter. For lack both of space and of adequate data, I cannot, however, present as full a differentiation as would be indicated by the analytical framework outlined in Chapter 1; neither do I want to repeat myself unnecessarily. By way of introduction I shall therefore briefly indicate how the materials of this chapter relate to the data already given and to my analytical framework as outlined in the beginning of this study.

In this chapter, I shall not try to cover wholly the system(s) of property relationships, but shall restrict myself to those topics which, in my view, are central to property relationships in Minangkabau: The general legal conceptions pertaining to the exercise of society's members' autonomy in property affairs and to intestate inheritance, and the conceptual system in which the Minangkabau think and speak about property relationships. Furthermore, I shall not devote equal attention to elements of the plural systems but rather concentrate on the development of *adat/adat* law. As has been shown in the previous chapters, there

has been little room for the clash of the three systems of property relationships in Minangkabau; that is, little room for clashes in a predefined legal and judicial context. In the courts' practice, *adat* is more or less the only system used to legitimate decisions in property and inheritance affairs. The same can be said for the popular practice (see Chapter 5). Yet the relations between the systems of property relationships deserve more attention than would seem to be warranted by the limited number of concrete situations in which the systems actually clash. For although the contradictions of the systems are minimized in the legal and juridical context, familiarity with all systems is always there as a cultural and political factor (see Chapter 3). The judges and administrators in the colonial courts who legitimated their judgements in terms of *adat* had been socialized in the system of western law, and they understood the *adat* system through the logic inherent in their own system. The same holds true to a large extent for the Indonesian judges in the contemporary State Courts who have been trained in western law during their study at the university. We shall see that this is an important factor influencing the development of and the changes *within* the *adat* system. The relations between *adat* and Islam also are of great relevance. For with the introduction of the Arabic language and the Islamic legal system, *adat* was to some extent redefined in Islamic legal concepts. The conflict and integration of *adat* and Islam played an important role in local politics, and the issue of inheritance was its main topic. Before I describe and analyse the change which has taken place within the *adat* system, I shall therefore deal with the clash of systems.

But given even these restrictions, a completely differentiated analysis would have to operate at least with a set of three closely interrelated and partly overlapping contexts: personal, processual, and substantive.

On the *personal level*, we would distinguish the authors of legal conceptions according to their differentiated social roles. For Minangkabau this would mean that we would have to distinguish between at least:

1. the common people (with additional sex and age differentiation),
2. the *adat* experts (*panghulu* and *cerdik pandai* in particular),
3. the *adat* functionaries in their capacity as official actors in the processes of reactive and preventive law application (with additional differentiation as to the various institutionalized forms in

the *nagari*),
4. the judicial functionaries in the colonial and national State Courts,
5. the political representatives of the population on supra-*nagari* levels,
6. the authors of literature on *adat* and *adat* law (with additional differentiation between Minangkabau, Indonesian, and foreign writers).

On the *processual level*, we would have to distinguish the social processes in which legal conceptions are produced. For Minangkabau, this would mean that we would have to distinguish:
1. the concrete engagement of persons as parties in property and inheritance affairs,
2. the acting as *adat* functionary in such a process,
3. the social processes of reactive and preventive law application (with additional differentiation between at least the court proceedings, proceedings before the institutions still legitimated through *adat* constitutional law in the *nagari*, and those *nagari*-institutions legitimated by local government laws),
4. the social processes aiming at introducing new legal conceptions outside the processes of law application (legislation, conferences),
5. the publishing of a book on *adat/adat* law, and
6. the interview process.

On the *substantive level*, we must distinguish:
1. between statements which proclaim to give a correct interpretation of legal conceptions and those which aim at a description of existing legal conceptions,
2. between concrete and general conceptions.

These legal conceptions, differentiated according to the authors and through the social processes in which they are created, share the same properties by which law is characterized, but they are different social phenomena which should not be confused. In actual description and analysis, it is probably inevitable that data are lumped together across the borders drawn by the distinctions mentioned, but it should be kept in mind *that* they are lumped together. In this chapter I cannot make as much use of this set of distinctions as I would wish. Much of the relevant material has already been presented in a rather undifferentiated manner in the previous chapters, and I do not wish to repeat myself too

much, but rather concentrate upon the most essential aspects of the system of property relationships. Other restrictions are imposed by the available material, for it often does not make the differentiations we would require. For the analysis of the historical development of the property law in Minangkabau, my main material consists of court-cases and literature in which it is not always clear whether the data are a description of legal conceptions or whether they refer to actual behaviour. The material presented in Chapter 5 can be used in this context, too, although much is concerned with concrete rather than with general legal conceptions.

II. CONCRETE AND GENERAL LEGAL CONCEPTIONS AND THE PROBLEM OF CHANGE

The distinction between concrete and general legal conceptions, already discussed in a rather theoretical manner in Chapter 1, here becomes relevant in practice. Whether concrete decisions embody and restate general legal conceptions is a matter for empirical investigation, and it demands a prior investigation of the doctrine of decision-making, i.e. of those general legal conceptions which pertain to the application and the change of general conceptions in concrete cases. As we shall deal with the change of general legal conceptions in this chapter, I shall give some information here about the doctrines of decision making and change in *adat/adat* law which should be kept in mind when the actual judgements are discussed.

In Minangkabau, different doctrines of decision making operate in *adat* institutions and in the colonial/national courts. The *adat* doctrine of decision by common deliberation (*musyawarah*) leading to a unanimous decision (*sakato*) has already been briefly described (Chapter 2: 92 f.). The decision makers are relatively free in their evaluation of situation-images and in their determination of legal consequences within the framework of rather vague and flexible general substantive legal conceptions; but they are bound by some rather strict procedural general conceptions. As the exercise of their autonomy is the essential element of the doctrine, the concrete result of one decision making process cannot be extrapolated to a similar case later; it is imperative that in the later case the decision makers exercise their autonomy anew and, possibly, with a different concrete result. But the, or rather some, general *adat*

conceptions on which the decision makers base their decision are regularly restated during the process. The formalized and ceremonial speech of the decision making process largely comprises combinations of general *adat* conceptions, which are thus explicitly restated even if their truth is self-evident for all concerned. What cannot be extrapolated is that the concrete result of the decision would always follow from their restatement.

In the colonial and State Courts, however, a different doctrine of decision making is used, a doctrine of "law-application". The courts' judgements must be legitimated with reference to preexisting law. The doctrine has its origin in western law, where it was designed for the application of the written law. In Indonesia, it has been adapted to the conditions in which the courts have to apply unwritten *adat* law; particularly with the implicit or explicit acceptance of Ter Haar's decision theory, according to which the *adat* law is embedded in "authoritative decisions within and without disputes", made by the *adat* functionaries and the court judges (see Chapter 1: 35). But independently of the question of what the "true" sources of (*adat*) law are, the theory remains one of "law-application", i.e. a theory working with the assumption that law is preexistent, and asking the judge to find that law and apply it to the facts, leaving him little discretion in the process of application. I have commented upon the theoretical implications of this theory earlier in this study (Chapter 1: 37 f.). In practice it meant and means that the process of common deliberation and exercise of autonomy, which is so closely interrelated with the concrete substantive conceptions in *adat*, is not reproduced in the courts. The general substantive *adat* conceptions thereby acquire a much more rigid character and are divorced from the procedural *adat* conceptions. Although the doctrine of decision making is hardly ever made explicit in court judgements, our interviews with the judges in the contemporary State Courts revealed that they adhered to a hybrid form of Ter Haar's decision theory. They did not care too much about the true sources of law; *adat* is *adat*, and only becomes *adat* law through its application in judgements, for *adat* law is *adat* which has sanctions (Van Vollenhoven). The extent to which general *adat* conceptions are explicitly restated in court judgements, varies. As has been mentioned before, the greatest number of cases involve disputes about the *content* of situation-images, whereas disputes about standards of evaluation or general legal consequences are rare. In those cases where the general

adat conceptions are self-evident for all participants in the court process, they are often implied in the parties' reasonings. The judgements generally contain only a brief statement that they follow from, or are in accordance with, the *adat* law of Minangkabau, without the actual general conceptions being restated in detail. However, when general *adat* conceptions are in dispute between the parties, their correct interpretation is usually given explicitly by the judges in the judgement. Generally, the "correct" interpretation is implicitly legitimated by the judges' socio-political status as authorized decision makers and administrators of the law. However, when the judges themselves want to deviate from existing general conceptions, this deviation - the change of legal conceptions - usually is given additional legitimation. And here, in the matter of change, the difference between the *adat* theory and the courts' theory and practice is most marked.

Adat has its own theory of change. In principle, *adat* (or certain manifestations of *adat* (see above Chapter 3: 115 f.), "do not rot through the rain and do not crack in the sun" (*indak lapuek dek hujan - indak lakang dek paneh*). Even if the *adat* rules are old, they never lose their actuality: "If a *kain* (cloth) is used, it gets worn - if *adat* is used, it remains new" (*kain dipakai usang - adat dipakai baru*). Yet *adat* can change and be changed: "Every time there is a great flood, the shape of the bathing place changes" (*sakali aie gadang, sakali tapian baralieh*). *Adat* must be adapted to changing circumstances. An *adat* saying states (Nasroen 1957: 39 f.; R.M. Dt. Rajo Panghulu 1971: 93 f.):

Usang Usang dipabaharui	What is worn must be renewed
Lapuek-lapuek dikajangi	What is rotten, must be cleaned
Nan elok dipakai	What is good, must be used
Nan buruek dibuang	What is bad, must be thrown away
Kok singkek mintak diuleh	What is (too) short, should be lengthened
Panjang mintak dikarek	What is (too) long, must be shortened
Nan umpang mintak disisit	What is too spacious, must be made smaller

Change in *adat* and of *adat* general conceptions can occur in two ways: There is the *adat nan teradat*, the *adat* which changes with time and place and adapts itself to changing circumstances as a reflexion of changing behaviour patterns. No formal social process of changing *adat* conceptions is necessary in this case (see Chapter 3: 116). But *adat* conceptions of more important and legal character can be changed only by

decisions of the *adat* council. Through the *musyawarah* of the *nagari* leaders it becomes *adat nan diadatkan*, "*adat* which is made into *adat*", or *kato mupakat*, "the rule made by *mupakat*". An instance of such change is the abolition of the rule of *nagari* - endogamy, which was decided in many *nagari* after Independence in the *1950*'s. So far as we have been able to find out, there have been no such decisions in the field of property and inheritance law.

The courts treat the change of legal conceptions differently, but the way in which they have done so has not been uniform during the last 100 years. The idea seems to have once prevailed among Dutch lawyers and judges that, if a given situation could not be dealt with in terms of already existing *adat* conceptions, the lacuna had to be filled with Dutch law and not with a development of *adat*. It only seldom happened that judges were concerned with the question of whether a hypothesized new rule or legally relevant action could be subsumed under a category of *adat* which, according to *adat* theory, is amenable to change and adaptation to changed circumstances.[1] In the late periods of Dutch colonial judicial administration, and also after Independence, the judges generally contented themselves with the knowledge that *adat can* change. An additional legitimation for stating changed *adat* conceptions flowed from their theory about *adat* law and their position as judges: *Adat* law is the law of the people, reflecting their customary behaviour patterns and their feelings of just and right behaviour. When the behaviour patterns and the feelings of justice change, *adat* changes with them. The judges leave no doubt that they are the ones entitled to ascertain this change, and that they are charged with the task to state whether *social change* only has occurred or whether this social change has brought about *change of the law*, too (compare Lev 1962). Social change not in accordance with the judge's conception of how the law should be, must, in their view, be denied the force of legal change. It sometimes happened and continues to happen that the judges draw upon the expert evidence of *adat* experts in the *nagari* in order to determine change, but in recent times they do no more than refer to the unsubstantiated "fact, that it is already customary ..." or "that it is a well known truth of contemporary Minangkabau society ..." (cf. p. 330 f.). Reference may be made to higher ranking law, too, as e.g. to the Constitution of the Republic of Indonesia and the *Panca Sila*, the five basic principles of the state ideology, in order to change *adat* conceptions. Such legitimations of change have played an important role in the change

of inheritance conceptions in other areas of Indonesia.[2] As we shall see later in this chapter, however, the most decisive changes of the Minangkabau *adat* conceptions of property relationships and diachronic transfers have been changed in a rather laconic way.

B. THE CLASH OF THE SYSTEMS OF PROPERTY RELATIONSHIPS

I. *ADAT* AND WESTERN LAW

The first situation in which *adat* and western/written law collided in the field of property relationships was in the introduction of the *pusako-eigendomsakte* (ownership deed) in 1853 (see Chapter 4: 209). From the few available sources it is not possible to assess whether Sarolea's statement, "that everyone agreed that through the registration such *pusako*-land became subject to Dutch formal law only" (AB 27: 275) holds true for all stages of Minangkabau legal history. It may have been correct in his time, around 1928, 75 years after the introduction of the regulation. Right after its introduction, however, two cases involving *pusako-eigendom* caused quite a stir in the colonial administration.[3]

The Case of Puti Priaman - LR Padang, 9.6.1856

Puti Priaman, the woman whose inheritance was in dispute, had had two daughters, Puti Dewi and Puti Maley. Puti Dewi already had died but her daughter, Puti Dihan, and her granddaughter, Puti Banghong Reno, were still alive. Shortly before her death, Puti Priaman had gone to a notary public in Padang and made a testament. She had bequeathed all her property, including some *pusako-eigendom*, to her granddaughter Puti Banghong Reno. In her testament she had also appointed an executor. It was this executor who filed the suit before the court. He complained that he could not execute the testament. He had sold a part of the deceased's estate, but the *panghulu* council had not recognized this transaction as valid and even refused to accept him as executor of the testament. For all this, the executor asserted, Puti Maley was responsible.
Puti Maley, the disinherited daughter, claimed that she was the sole heiress of her mother's property. As the "executor" was trying to violate her inheritance rights, she had applied to the *panghulu* council for an investigation of the matter, and the *rapat* had acknowledged her exclusive

rights.

The LR held that "according to *adat*, Puti Maley was the only heir to her mother's estate, and that her mother's testament was void". The court ordered that the name of Puti Maley was to be entered as the name of the new owner and universal heiress in the register ("... *dat volgens de hadat poesakka tot eenige en universeel erfgename in de nalatenschap van Puti Priaman* ...").

The Case of Si Djidjah - LR Padang, 15.7.1859

Si Djidjah, a woman, complained before the court that her brother had donated a piece of land with a house on it, to his son. But this property had been the property of their common brother, who was dead, and therefore was their common inheritance. As she, Si Djidjah, was the legal heiress to that property, her living brother had had no right to donate it to his son.

The court held that, according to the Malayan law of inheritance, the heritage was received by brother, sister, brother's children (?), sister's children, maternal aunt and maternal uncle. Such inherited property could only be sold, pawned, or otherwise alienated for the benefit of the so-called *waris*, the blood relatives (*stamverwanten*). As the property in dispute was inherited property, the plaintiff's brother was not entitled to donate it to his son, and the donation therefore was void.

These judgements caused quite a stir in the Dutch administration. The Governor of Sumatra's west coast had quite a different opinion on these matters, and he applied to the Governor General of the Colony to have the judgements annulled. In his letter to the Government he explicated his legal view:[4]

"... that the land was not subject to the Malayan institutions of inheritance, but that the transformation into ownership had ocurred in accordance with European law, to which the native authorities, who had witnessed the conversion, had given their consent.
... on this legal basis, a member of the native population group of Sumatra's west coast is completely entitled to dispose of such immovable property as he wishes, and his rights are transferred to the subsequent possessors, whoever they may be. The Malayan rules of inheritance have to be applied only in the case of intestate inheritance."

In his view, the judgement of the LR was wrong for the reason that the property was *eigendom*; Puti Priaman therefore had the right to dispose of it by testament. To avoid further problems, the Governor suggested a change in the regulation: From now on, all property for which an *eigendoms-*

akte has been made, should be subject to European law; the native heads should be cautioned of these consequences at the time the *eigendoms-akte* was established.

The Governor's proposals were not well received in the capital, as they were incompatible with the colonial policy.[5] His legal opinion, however, was fully shared by the highest legal official of the Colony, the *Procureur Generaal* of the Supreme Court:

"There can be no doubt that, since the parties have been established as owners by European officials, and since ownership is a purely European institution, the consequences attached to it have to be governed by European legislation. The *Landraad* Padang has not so much erred in its application of the law of ownership concerning immovable property, but rather in its application of the Malayan law of inheritance, to which it conceded such a wide range of applicability, that any other transfer of ownership, based upon inheritance rights (except intestate inheritance) would be void."[6]

The remark of the *Procureur Generaal* is exactly to the point: The Minangkabau inheritance law (the law of diachronic transfers) would recognize as valid only intestate transfers of property relationships. If it were upheld, the synchronic dimension of Dutch property relationships would be almost completely superseded by the diachronic conception of *adat*: The individual autonomy granted to the individual *eigendom* holder in Dutch law, manifest in the capacity to bequeath or donate the *eigendom*, would not be able to unfold. Whereas the *Procureur Generaal* and the Governor wanted the Dutch synchronic dimension of property relationships to prevail, the *Landraad* Padang upheld the dominant diachronic one of the Minangkabau *adat*.

A good 100 years later, in the new combination of *adat* and western law of the Basic Agrarian Law of 1960, the roles of the temporal dimensions are reversed. Although the law is professed to be based upon *adat* law, the specific property relationships and legal statuses of property are modelled on western law. The *hak milik* status of property objects, the most complete form of individual rights in land, which is translated as ownership (Gautama and Harsono 1972: 39), has no time-limit. Synchrony and diachrony are, as in western law, distinguished by reference to the individual's lifetime. During his lifetime, he has the full autonomy of the ownership/*eigendom* holder: he can transfer his right to another party, he can donate it, he can dispose of it by testament. Only in the case of death will the *hak milik* be inherited by the legal heirs (Gautama and Harsono 1972: 39, 61 f.). *Adat* only determines those legal heirs. Theore-

tically, it is possible to have property held by a matrilineal group registered as *hak milik*/ownership under the new law. But in Minangkabau hardly any property has been registered so far (see Chapter 5: 281). For in general in West Sumatra, *hak milik* property is, for inheritance purposes, treated as *harato pancaharian* and is "inherited by the children". Once registered as *hak milik*, the legal status of the property does not change with or after inheritance, i.e. it would not become *harato pusako*, but be treated as *hak milik/harato pancaharian* in perpetuity. It is obvious that a conversion of *adat* rights into *hak milik* rights would be the doom for the *adat pusako*, and this is fully realized by the villagers and lineage elders.[7] In spite of frequent exhortations by the Government, nobody has had his or her *kaum*'s land registered, for one "is afraid that the land will become *hak milik* and then be inherited by the children", as several informants in CKL put it.

II. *ADAT* AND ISLAMIC LAW

Since their Islamization, the Minangkabau have always been confronted with an alternative system of property relationships. The relation between *adat* and Islam in Minangkabau has changed considerably during the course of history between what might be called phases of adaptation, open conflict, and skilful ideological integration.[8] Matters of property and inheritance were an important topic in that relationship, and those Minangkabau who were or are engaged in propagating strict adherence to the Islamic religion, have always demanded that the Islamic rules of inheritance law should be applied. The development of the relationship between *adat* and Islam will briefly be sketched:

In the period following the Islamization of the Minangkabau population, Islam was mainly adopted as religion, and to a large extent it surpressed the *adat* conceptions relating to the supernatural and sacred world. In secular matters, the *adat* rules remained more or less intact. What was accepted from Islam was adapted to the system of the *adat pusako*. The number of *adat* functionaries was increased to include a religious functionary, the *Malim* or *Chatib Adat*, but these functionaries were *suku* functionaries, and their office was *turun temurun dari niniek ka mamak, dari mamak ka kamanakan* like all other offices. Religious prescriptions concerning marriage and burial were incorporated, not to the exclusion of, but rather as an addition to, the existing *adat* rules. The system of

property relationships was more or less kept intact and the rules of the *adat pusako* pertaining to property were not changed. However, social and legal relationships were expressed to an increasing degree in terms of the Arabic language and in legal terms of Islamic law like *hak, milik, warih, hibah, wasiyyat*. This probably gave *adat* a more systematic character (as there are no data on pre-Islamic *adat*, this is, of course, speculation, cf. Taufik Abdullah 1966: 9 f.); but a comparison of the *adat* expressed in Islamic terms and the meaning these terms have in Islamic law quickly reveals that the older *adat* conceptions were not surpressed by new Islamic institutions. The *warith* in Islamic law are the Koranic heirs and the agnates - in Minangkabau the *warih* are the matrilineal relatives. The *hibah* in Islamic law is a contract which becomes effective during the giver's lifetime, and the individual is not restricted as to the amount of his property which he can give away. In Minangkabau, the *hibah* was revocable and became effective only after the giver's death, and the giver was severely restricted with respect to the amount of his gift. The process of adapting Islamic legal concepts to *adat* institutions has by no means ended. In the discussion of the "*hibah* of *pusako*", for instance, we have seen that this conception apparently did not even exist in the beginning of this century, and that the underlying institution of gifts from *bako* to its *anak pisang* was formerly expressed in older *adat* concepts. Some contemporary experts have taken to classifying the *adat*-heirs in terms of the classification of heirs used by the Ithna Ashari school of Islamic jurisprudence:

1. The *waris nasab*: in Islamic law they are the blood relatives, consisting of the Koranic heirs who are blood relatives (*dhu fard*) and the agnatic blood relations (the *dhu qarabat*). In its adapted form the term denotes the matrilineal blood relatives in Minangkabau, the *waris batali darah*.
2. The *waris sabab*, the persons who are heirs for a special reason: in Islamic law they are the spouses (the *zwajiyyat*) and the persons who are heirs by virtue of a special legal relationship (the *walā*), in Minangkabau they are the *kamanakan* who are descendants of strangers and former slaves.[9]

In the beginning of the 19th century, open conflict broke out between Islamic pressure groups and *adat* leaders. The economic and political objectives of the Padri to a great extent were expressed in terms of Islamic law (see Dobbin 1977), for which supremacy was demanded:

"*Syarak mangato - adat mamakai*" - "Islamic law orders, *adat* carries out". The relationship between *adat* and Islam was expressed as "*adat basandi syarak - syarak basandi kitab'ullah*" - "*adat* is based upon Islamic law, Islamic law is based on the Koran" (cf. Kroesen 1874: 15; Taufik Abdullah 1966, 1972: 200; Dobbin 1977). *Adat* was classified with respect to its conformity with Islamic law into the *adat jahiliah* the "*adat* stemming from the pagan times", and the *adat islamiah*, the "*adat* in accordance with Islam". Although the Padri were finally defeated by the Dutch, the consequences of their reign should not be underemphasized. It has already been mentioned that in several *nagari*, amongst them CKL, new forms of socio-political organization were established which survived the defeat of the movement.[10] Unfortunately, there is no information about the influence which the Padri movement had upon the system of property relationships in Minangkabau in general. Apparently, even the Padri realized that the system of the *harato pusako* "could not" be abolished (HAMKA 1968: 33).

In the aftermath of the Padri-war, *adat* regained much of its lost ground being actively supported by the Dutch colonial administration which used the *adat* system as the basis for its local government administration.[11] The relationship between *adat* and Islam again became one of mutual tolerance: "*Adat basandi syarak - syarak basandi adat*" - "*adat* is based upon Islamic law, Islamic law is based upon *adat*". The spiritual reformation also seems to have lost most of its impact. Travellers' reports from the second half of the 19th century tell of cockfights in the open market, of "immodest" dressing of women, and of alcohol consumption by Minangkabau officials (cf. Bickmore 1869; Von Rosenberg 1878: 82 ff.; Carthaus 1891: 63).

But around the turn of the century, Islam had another renaissance in Minangkabau. One of Minangkabau's most famous Islamic scholars, Syeh Achmad Chatib, started a new orthodox religious movement, and although he never returned from his pilgrimage to Mekkah in his mother-country, he exerted a great influence on the following generation of Islamic leaders, most of whom had been his pupils.[12] For Syeh Achmad Chatib, the matrilineal system was *haram* (forbidden) and the *adat pusako* with its matrilineal inheritance rules was *sjubhāt*, stemming from the pagan times of the *adat jahliah*, and therefore was *halal* for Minangkabau Muslims (cf. Prins 1954: 145; HAMKA 1968: 33; Anas 1968: 107). Syeh Achmad Chatib was unsuccessful insofar as he could not convince his pupils and followers that the *pusako*-system should or could be abolished. Most of them

probably realized that its abolition could not be achieved, and they redefined the *harato pusako* in a way such as to eliminate the conflict with Islamic law: The local Minangkabau Islamic leaders treated the *harato pusako* as "*harta musabalah*" (Anas 1968: 107). This concept, which according to Prins (1954: 145) is only employed by Minangkabau Islamic scholars, gives the *harato pusako* the legal status of "property in the dead hand", a kind of *wakaf*, which cannot be divided or inherited and to which consequently the Islamic inheritance rules need not apply (HAMKA 1968: 33; Anas 1968: 107). The concept seems to be related to the concept of *mushā*, "undivided share", which can be validly dedicated as *wakaf* (Fyzee 1955: 247). But the frontal attack was, since then, directed against the inheritance of the *harato pancaharian* by the *kamanakan*. It has continuously been demanded by Islamic leaders that the *harato pancaharian* should be inherited according to *hukum faraidh*, and the problem of *pancaharian*-inheritence has been, and still is, one of the major issues in Minangkabau local politics.[13] In 1952 and 1968 two conferences which dealt with the problem of *pancaharian*-inheritance were held in Bukit Tinggi and Padang, in which local politicians, leading Islamic personalities and *adat* leaders participated.[14] The 1952-conference had been organized by a "Deliberation Committee of the Religious Experts, *Adat* Elders, and Intellectuals" (*Badan Permusyawaratan Alim Ulama, Ninik Mamak dan Cerdik Pandai*). The committee was to work out a plan concerning how the *fatwa*, the legal opinion of the Islamic Teachers, that *hara pancaharian* should be inherited according to the *fiqh*, could be carried out. It was given the task to define what should be understood under "*harta pancaharian*" and to propose how the rules of the *fiqh* could be attached to it. The proposals of the committee were the following:

1. The *harta pancaharian* are those property objects which
   a. stem from the *pusako* in accordance with *syarak*,
   b. which one has received by Islamic testamentary dispositions, with the exception of *harato pusako*,
   c. which one has received by way of *hibah*,
   d. which one has acquired by one's own work,
   e. which are the fruit (*hasil*) of the *harato pusako*, and which have been added to the *harato pancaharian* with the consent of the *kamanakan*.
2. The committee had come to the conclusion that the *kamanakan* should be allowed to inherit 1/3 of their *mamak*'s *pancaharian* through testamentary dispositions. The other 2/3 should be distributed among the heirs

according to the rules of the *fiqh*. The *harato pusako* should continue to be administered in accordance with *adat*.

In the case of *pancaharian* of kinds a - d, the committee advised each Minangkabau to make a testament for the benefit of his *kamanakan*. For *pancaharian* of kind e, a testament for the benefit of the *kamanakan* was proposed as obligatory (cf. Prins 1953: 324).

The conference which was held in Padang in 1968 built upon these proposals, but finally came up with somewhat different and less ambiguous[15] conclusions. It was stated:

1. The valid law for the inheritance of *harta pancaharian* is the *hukum faraidh*, whereas for *harta pusaka* the *hukum adat* shall apply.
2. All judges of West-Sumatra and Riauw (the I.K.A.H.I., the Judges' Organization had been a participant in the Conference) are called upon to take this decision to heart (*memperhatikan*) (Naim (ed.) 1968: 241).

About the inheritance law it was said in detail:

1. The *harta pusako* in Minangkabau are a legal property complex which is administered (*diurus*) and represented (*diwakili*) by the *mamak kepala waris* inside and outside the institutions of dispute settlement (*peradilan*). The *anak kemanakan* and the *mamak kepala waris*, who are both part of this property complex, are both not the owners (*pemilik*) of it.
2. a. The *harta pancaharian* are inherited by the heirs according to *hukum faraidh*.
   b. By *harta pancaharian* is meant: one half of the property which a person (or rather: a couple) has acquired during his/her marriage, and his/her "brought property", *harta bawaannya*.
   c. A person may make a testament for the benefit of his *kemanakan* or other persons, but only to the extent of maximally 1/3 of his *harta pancaharian* (Naim (ed.) 1968: 243).

These decisions have been widely publicized throughout Minangkabau, and the foreigner is often told that following the decisions of the Conference the *harta pancaharian* are inherited in accordance with *hukum faraidh*. On the level of ideological combat between *adat* and Islam, Islam has finally become a full partner in the "inheritance market", which has been "cartelized" (Berger 1973: 147). *Adat* controls the *pusako*, Islam the *pancaharian*.

It has already been mentioned, that the judges did not "take to their heart" the decisions of the conference but continued to apply *adat* law in their judgements. But the proposals and decisions of the two conferences are nevertheless important. For they constitute a clear attempt to break through, on the conceptual level, the system of the *adat pusako*; aiming at the elimination of the retrospective-diachronic element in the *pancaharian* concept. The *harta pancaharian* should not be "self-acquired" property objects only, but also property which - contrary to the semantic implication of the concept - had been received by *hibah* and testament. This would guarantee that *harta pancaharian*, even if already subjected to a case of diachronic transfer, remains *harta pancaharian* and can again be inherited according to *hukum faraidh* instead of becoming *harta pusako rendah* in line with *adat*. The consequence that *all* property inherited according to Islamic law (not just the goods inherited through testament or received by *hibah*) would remain *harta pancaharian* and thus inheritable in perpetuity according to Islamic law, has not yet explicitly been demanded, but it is the logical next step.

In the legal and judicial context, the threats to *adat pusako* from outside, from written and Islamic law, have been rather ineffective. But it must not be forgotten that these two systems have provided alternative frames of reference toward which the "agents of objectification" could orient themselves in their efforts to create new conceptions within *adat*. The description and analysis in the following section of the changes which have occurred within the *adat* system, will show that quite similar ideas have developed within *adat*.

C. THE DEVELOPMENT OF THE *ADAT* SYSTEM: LEGAL CONSEQUENCES

In contemporary Minangkabau, the individual is free to dispose of his or her *harato pancaharian*. If explicit disposition is not made, the property is inherited by his or her children. According to our field data, this statement covers both practice and law. There are only a few disputes over *harato pancaharian* inheritance. Of the disputes we heard of in CKL, only one case concerned a conflict between a "son" with his father's brother over *pancaharian*-pawnings, and in one case the legal status of rice-fields (*pancaharian* or *pusako*) was disputed. The former case was decided by the *Kerapatan Negeri* (case 5 of 1973); the latter could not

be solved in the *nagari* and was finally decided by the State Court (see Chapter 5: 266 ff.). The inheritance of *harato pancaharian* in CKL is not problematic.

Pancaharian inheritances also only play a minor role in the State Courts. Of the 492 cases concerning property, which were brought to the courts in Bukit Tinggi, Batu Sangkar, and Payakumbuh in the period 1968 - 1974, only 42 or 8.4% concerned diachronic transfers of *harato pancaharian* (inheritance, *hibah*, *wasiyat*, distribution among the *pancaharian* heirs). In 25 of these cases, the contending parties were "the children and the *kamanakan*", and in 8 cases the *pancaharian* inheritance was disputed between children of the same father (in 9 cases the exact relationships between the parties could not be determined). It must be noted that in all 25 cases in which the children and *kamanakan* disputed their father's/*mamak*'s inheritance, the legal status of the property objects was in dispute, the inheritance being claimed as *harato pancaharian* by the children and as *harato pusako* by the *kamanakan*. Once the legal status of property as *harato pancaharian* has been unequivocally established, no more conflicts arise.

This situation is in definite contrast with nearly all reports given by the Dutch scholars in the 19th and 20th centuries, and to the information referring to past practices given by contemporary Minangkabau. The tenor of all reports is that the *harato pancaharian* are inherited by the *kaum*, the *familie*, the *kamanakan*. The change which has taken place in *adat* has frequently been predicted (see Van Vollenhoven 1918: 271; Joustra 1923: 127) and its first manifestations have been eagerly noted by foreigners as signs of the "inevitable break-down" of the matrilineal inheritance system and of the Minangkabau social system in general (Schrieke 1955: 118 f.; Maretin 1961: 193). Yet these statements often are superficial and not always supported by ethnographic facts. In the following I shall retrace in some detail the development which has taken place in the Minangkabau system of property relationships. I shall distinguish between intestate inheritance and diachronic transfers made during the lifetime of the property holder(s), as quite different sets of conceptions are involved.

I. THE RECOGNITION OF AUTONOMY IN PROPERTY AFFAIRS IN HISTORICAL PERSPECTIVE

1. *The Individual's Autonomy over Harato Pancaharian*

The exercise of autonomy over *harato pancaharian* in the form of dispositions during one's lifetime in Minangkabau was predominantly a problem for men (Chapter 5: 276). If women wanted to give their *harato pancaharian* away - to whom would they want to give it other than to their children? As their children would inherit it anyway, what did it matter whether or not they gave them their *pancaharian* property already during their lifetime? Minangkabau *adat* has not developed any conceptions which explicitly deal with this situation; its solution was always self-evident. In the case of men, however, the situation was different, for men often wanted to give their *harato pancaharian* to persons other than their *ahli warih*. In principle, Minangkabau *adat* allowed such transfers. There can be no doubt that the relationship to *harato pancaharian could* be diachronically transferred to a man's children during his lifetime; as has been mentioned already, even *harato pusako* held by a man could be given to his children. But the mere possibility recognized by *adat* did not give the individual full autonomy over his *harato pancaharian*. His autonomy was restricted by other criteria: In order to be valid, such transfer had to be carried out with the cognizance or the consent of his *kaum* members. The actual question therefore is, whether a man could transfer his *harato pancaharian* against the wishes of his *kaum* members. If the literature on this topic is reviewed, it becomes apparent that the differentiation just made is usually not considered.[16] The reports differ in their statements about how much *harato pancaharian* may be given to the children, how much property is given to the children in general, and what the requirements of such a transaction are. As for the latter, two general kinds of statements are made: it is either the "knowledge" (*medeweten, kennis, setahu*) of the *mamak*, the *ahli waris*, and the *panghulu* which is necessary to validate the transaction,or the "consent" (*toestemming, saizin*) of these persons. Often the rules given are less clear, such as statements that the transfer has to be made with the "cooperation" (*medewerking*) of the *kamanakan* or that the *warih*-group mustnot be passed" (Korn 1941: 315). Statements, that consent is required, are more frequent than those according to which the "knowledge" or "cooperation" only is necessary.[17]

It is almost impossible to ascertain what "the people" thought of

this question, and it is equally difficult to assess the opinions of the *panghulu* and other *adat* experts in the course of time. In 1910, the Governor of West Sumatra summoned 18 *Tuanku Lareh*, 2 *panghulu* from Padang, and the Minangkabau head of the Teachers' Training College to Bukit Tinggi to discuss problems of the *adat pusako* with them (see AB 6: 207 ff.). More or less all complained about the *adat pusako* and demanded that it should be changed. Asked about their proposals, the *Tuangku Lareh* were of the unanimous opinion that one part of the *harato pancaharian* should "fall to" the children. There was some disagreement about the amount some considered 1/2, others 2/3, the appropriate amount. They thought that in cases where a man had neither wife nor children, all *pancaharian* should be inherited by the *kaum* (AB 6: 215). The *adat* leaders stated that they felt justified to speak for the whole population, and also mentioned that more and more *harato pancaharian* was surreptitiously given to the children. It is, however, remarkable that these *Tuangku Lareh*, who wished for a change in *adat*, at the same time stated the *adat* conceptions in a quite conservative version. The most conservative voice came from the *panghulu* of Padang where *adat* and practice supposedly was most progressive. Asked about the requirements for a transfer of *harato pancaharian* by *hibah* to the children, he said:

"... that according to the general opinion, the consent of the *waris* (*saizin waris*) was required. For the *pusako* is the basis of *pancaharian*, and the man has grown up on and is living through the help of the *pusako*. The *pancaharian* thus has to be considered as the 'fruit of the *pusako*'. Without the consent (*toestemming*) of the *waris*, one cannot dispose of the *pancaharian* to the advantage of the children. If one of the *waris* does not agree, the *hibah* is void" (AB 6: 214).

In pre-war court judgements, the tendency towards increasing individual autonomy is most marked. Particularly for the areas in the coastal plain the courts promoted this autonomy at a very early time. The RvJ Padang stated in a case in 1895:

"that nowadays, according to the Malayan *adat* which is in force in Padang, each Malayan can dispose by gift *inter vivos* of his *pancaharian*, even without the cooperation or knowledge of his *adat* heirs, if the property concerned is not property which has been acquired with the help of capital provided by the family" (Guyt 1936: 85; AB 6: 252, 254).

And a similar statement is found in a later judgement of the RvJ Padang from 1932 where it was said:

"that the *adat* at the coast ... in contemporary times recognizes as valid the disposition (by *umanat*) to the advantage of the wife and children, even in cases where the rule,that this should not be done without the knowledge of the *waris*, has not been adhered to, for this rule has be-

come obsolete in the course of time" (T 140: 227).[18]

However, in a different case the LR Padang, confirmed by the RvJ, took to a more restricted interpretation of *adat*, and demanded the knowledge of the *waris* (cf. T 131: 78).

There are not many published judgements on the *adat* in the Padang Highlands. A decision of the *Rapat* of the *Tuangku Laras* of Fort van der Capellen (Batu Sangkar) from 1874 demands, that the *kaum* and the *panghulu* be given notice of such a transaction (AB 28: 189). In a later judgement of the LR Solok in 1933 it was stated that such a gift of *harta pancaharian* required the cooperation (*medewerking*) of the *kaum* and had to be carried out in the presence (*ten overstaan*) of the *panghulu* and the *orang 4 jenis* (T 140: 205; cf. Guyt 1936: 79 ff.). It was in the *cause celèbre* of the inheritance of Dr. Muchtar in 1930, that the principle was firmly established, that the cooperation of the *waris* was not a requirement for the validity of an *umanat* for the benefit of wife and children (T 131: 82 ff.). This rule was upheld by the judgement of the Supreme Court of the Netherlands Indies. Later judgements followed suit (see LR Fort de Kock 1933 in T 140: 234). Guyt, who acted as judge in the LR of Fort de Kock and Payakumbuh in the 30's reports that in the jurisdictional districts of Agam and 50 Koto it had by then become the rule that the *pancaharian* holder could freely dispose of his *pancaharian* property, provided that it was no "impure" *pancaharian*. For as far as the latter was concerned, a previous *mupakat* with the *ahli waris* was still required (Guyt 1936: 87 f.).

In the Dutch colonial courts, unlimited autonomy thus already had been established in the 30's of this century, and the courts most probably were a step ahead of the rules as reported in the literature. In the post-Independence period, this practice seems to have been continued by the judges in the State Courts.[19] In the contemporary period (from 1968 onwards), the courts whose work we studied applied the principle. In case 49 of 1970 of the PN Bukit Tinggi, in which the *harta pancaharian* of a trader were disputed, the court held:

"Haji A. was a trader, and as such he needed financial mobility. As a Minangkabau, he was bound by the rules that obtained in the sphere in which he lived. It is a basic truth of the development of the modern world, and also of the development in Minangkabau, that the traditional bonds between the members of the society undergo change. Haji A. lived separated from his *kaum*, which stayed in a village. He lived, together with his wife, in a conjugal family as a trader. It is already customary in Minangkabau that a husband who wants to give property which stems

from his *harta pancaharian* to his wife and children, does so by way of *hibah* in order to prevent future trouble. It is reasonable and appropriate (*sepantasnyalah*) that a member of the Minangkabau legal community, who lives together with his wife and children separated from his *kaum*, may dispose of his *harta pancaharian* as he wishes, the more so if he is a trader."

In a later judgement of the same court (case 16 of 1972) the principle was upheld without any remarks that could be interpreted as restricting the rule to the urban situation of the trader.

In contemporary *nagari* life this rule is also generally recognized. A man is thought to be free to dispose of his *pancaharian*. Morality however requires that he should do so after consultation with his *kamanakan*.

In order to understand fully the importance of these changes in *adat* conceptions I must draw attention to a fact which has, as far as I know, been overlooked completely in all discussions about this change. The individual's autonomy in contemporary *adat* is much greater than for example in Dutch law or western legal systems in general! As in Dutch law there are no restrictions in the synchronic dimension, but neither are there restrictions in the diachronic dimension, unlike in Dutch law where, for the protection of the "legitimate heirs", the exercise of the autonomy can be retroactively invalidated (see Chapter 4: 208). The two judgements just quoted illustrate that a dramatic change has occurred in the conceptualization of diachronic transfers. Heavily influenced by Dutch thinking about property relationships, it actually "overtakes" Dutch conceptions. Inheritance now is a matter of processes following death, so diachronic continuation is restricted to inheritance. The *hibah* is treated as purely synchronic, and as in Dutch law, no restrictions are placed upon the individual's autonomy, neither as regards the old legal heirs, the *kamanakan*, nor as regards the new legal heirs, the children. This was stated quite explicitly in case 16 of 1972 of the PN Bukit Tinggi. The plaintiffs, widow and children of the deceased, had claimed that the *jual* and *hibah* transactions, by which the deceased had transferred most of his property to his other wife and children during his lifetime, were void as they had been carried out without their consent. The court rejected this argument:

"It is true that according to Minangkabau *adat* law, the widow and the children are the legal heirs of a husband and father. But the right to inherit comes into existence only upon the death of the property holder.

So in this case, the plaintiffs' rights had not yet come into existence during the deceased's lifetime. The deceased therefore had all freedom and legitimation to dispose of his *harato pancaharian* during his lifetime without having to ask the consent of the plaintiffs in their capacity of wife and children. In the *adat* of Minangkabau, it has never been the case that, as far as dispositions over *harato pancaharian* are concerned, the consent (*persetujuan*) of the children and the wife were required for the validity of the transaction."

Though this statement is quite in line with the Dutch conception of property law, in Dutch law a safeguard of the legal heirs is embodied in the diachronic dimension, in the protection given to the legitimate heirs In the contemporary *adat*, there is no such protection. The argument was raised in case 49 of 1970 of the PN Bukit Tinggi. The plaintiffs, widow and children, claimed that the *hibah* and *jual* transactions which the deceased had carried out during his lifetime for the benefit of his other wife and children, were fictitious actions (*perbuatan pura 2, scheinhandelingen*), made in order to cheat them of their inheritance rights. This raised the question of whether some protection should not be given to the wife and children as the "new legal heirs", comparable to the one that is given in most western systems. But the court did not consider this argument, nor did the court of appeal which upheld the judgement (PT Padang case of 52 of 1972). Both courts here recognized the complete autonomy of the individual. It should be noted that this point was also not considered by the Dutch judges at the time when the *kamanakan* were still considered the legal heirs.

It is probably premature to abstract "the law" from the few decided cases. The situation in the two decisions was probably influenced by the fact that the beneficiaries of the transactions were new legal heirs. Though it is, of course, dangerous to speculate in such matters, I am quite convinced that the courts would have decided differently if all legal heirs had been passed completely in favour of other persons, e.g. the man's *kamanakan*. In interviews, most interviewees took the position that some protection should be given to the children, if they were really "cheated" of their inheritance. But the legal situation remains open. Cases of that kind are rare, both in the courts and in the *nagari*, as it does not frequently occur that individuals dispose of more or less all their *pancaharian* during their lifetime.

2. *The Autonomy Over Harato Pusako*

In the *adat* conceptions concerning society's members' autonomy over their *harato pusako* there has been only little change. With respect to pawnings, the four classical cases in which *adat* permitted a pawning of *harato*

pusako by and in the name of the *kaum* are not adhered to any more, either in the courts or in the *nagari*. The new conceptions are formed by the basic principle that nowadays such transaction must be for the benefit of the whole *kaum* and have the consent of all *kaum* members. But apart from this most general principle concerning the exercise of autonomy over *harato pusako*, somewhat different conceptions are held in the *nagari* and in the courts.

In the *nagari*, a differentiated view prevails. In Chapter 4 it was mentioned that the exercise of autonomy over *harato pusako* is primarily the right of the persons for whom the property objects are *harato pusako turun temurun*, and that by no means all "*harato pusako tinggi* of *kaum* X" is the *harato pusako turun temurun* for the whole *kaum* (Chapter 4: 152 ff.). Even if the presence of the *mamak kaum* is necessary for transactions regarding such property, this cooperation "cannot" be withheld, for in principle the persons holding their separate *harato pusako* can dispose of it. Villagers therefore maintain that representation by *a mamak*, and not necessarily by *the mamak kaum*, is required. This definitely holds true for synchronic transfers like pawnings and the transfer of pawnings. As *pusako* (one's own or another *kaum*'s) becomes *pancaharian*ized to an increasing extent, the importance of the old *adat* restrictions pertaining to temporary or permanent alienations of *harato pusako* decreases. For these transactions actually do not concern *pusako* rights, but the rights to use the property objects on the basis of the money invested. They are temporary per se and do not affect the residual relationship of the other persons for whom the property objects are *harato pusako kaum* or *harato pusako turun temurun*: their rights can always be reasserted through redemption. The temporary character of these rights to use and to exploit also makes the transfer of these rights to one's children possible without having to pay attention to the constraints upon permanent alienation of *harato pusako*. However, if a permanent and definite transfer of such property is intended, if the transfer concerns the residual right to the *harato pusako* in the form of a sale or a *hibah*, the *adat* restrictions are held to apply. The transaction must have the consent of all *kaum* members, be carried out by the *mamak kaum*, and be witnessed by the *panghulu* and other *adat* elders.

The courts usually do not make this differentiation, for they adhere to the cliché of the "*harato pusako tinggi* of *kaum* X", so X must be

represented in all matters by the *mamak kepala waris*. For the validity of transactions involving *harato pusako*, therefore, the consent of the *kaum* members and the representation through the *mamak kepala waris* are required without exception. Most judgements additionally demand the co-operation as well as cognizance of the *adat* elders, at least of the *panghulu* of the *kaum*. According to our research in the State Courts, these conceptions, which pertain to the validity of synchronic and diachronic transfers, are restated in regular court practice.

But there are indications of a change in the direction of a more differentiated view in the courts, too. The PN Batu Sangkar, in a judgement which will be discussed in detail later (Case 39 of 1969, see p. 344 ff.) proclaims a differential standard of validity for transactions of "private *harato pusako*" and "*harato pusako* of the *kaum*". It was held that dispositions over "private *pusako*" - in this case it concerned inherited *pancaharian* which was held by one *jurai* - in the form of a permanent diachronic transfer (*hibah*) required only the knowledge of and the witnessing (*pengetahuan dan penyaksian*) by the other *kaum* members and the *panghulu*, but for dispositions over "*pusako* of the whole *kaum*", the consent (*persetujuan*) of the *kaum* members and the *panghulu* was demanded in addition.

This judgement and the new conceptions stated therein should not be taken as being representative. As I have shown earlier (Chapter 4: 191 ff.), it is questionable whether a categorical distinction in terms of substantive *adat* conceptions can be drawn at all between "consent" and "knowledge". As the story of Haji Batuah (Chapter 5: 235 ff.) illustrates, in the *nagari* such "knowledge" is still conceived of as a social process of taking cognizance, i.e. of information given and received. Besides, the judgement was invalidated by the appeal court, albeit on different grounds. But it does mark a new tendency of thinking about property relationships to *harato pusako*, the further implications of which will be dealt with later in this chapter (p. 358 ff.).

II. INHERITANCE

1. *The Inheritance of Harato Pancaharian in Historical Perspective*

a. The Inheritance of Individual *Harato Pancaharian*

The legal prescription that a man's *harato pancaharian* property is inherited by his children is quite a new development in Minangkabau. The frequent statements in the literature which speak of a growing inheritance right in the father's line (Van Vollenhoven 1918: 271; Joustra 1923: 127; Schrieke 1955: 118 f.; Maretin 1961: 193; De Josselin de Jong 1951: 115) should be read as referring primarily to growing practices of giving *harato pancaharian* to one's children by way of *hibah*. In fact, until the second world war, in the huge body of literature on the inheritance of *harato pancaharian, not one single statement* upon which such an interpretation could be based refers to Minangkabau proper. The passage from Kooreman, written in 1892 (AB 11: 147) "that the *harato pancaharian* property becomes the property of the conjugal family and is inherited by the children", refers to Indrapura. The rest of the pre-war literature unanimously affirms the rule of *adat* that the *harato pancaharian*, or that part which a man had not disposed of during his lifetime, becomes the property of his *kamanakan* as *pusako rendah* (see Guyt 1936: 88 with references, and the sources collected in the Pandecten).

Court decisions, as far as accessible, show a very similar picture. Three judgements have been published which have been quoted for an early recognition of the childrens' inheritance rights in their father's *harato pancaharian*. But these judgements cannot be said to establish a new prescriptive *adat* rule for *pancaharian* inheritance. The judgement of the LR Padang of 1917, according to which "*pancaharian* is inherited by the children" (T 112: 134), concerned the inheritance from a female *pancaharian* holder (see also Guyt 1936: 89). In 1931, the RvJ observed in a rather general manner that, in the area of Padang, *harato pancaharian*, or at least a part of it, *could* in some cases be inherited in the father's line (T 135: 313). And the third case concerned property which had been pawned by a married couple for the benefit of (*ten behoeve van*) their children. When after the mother's death her (other) *kaum* members claimed the property as *harato pusako*, the LR Padang Panjang held that it went to the children only (T 140: 237).

But apart from these three decisions, the published court judgements in general are quite in accordance with the statements given in the literature: as long as the person has not disposed of his property *inter vivos*, the *pancaharian* are inherited by his family (*kaum*) and *kamanakan* (see LR Solok, RvJ (1932) in T 138: 480; LR Padang (1932) in T 140: 240; LR Padang and *Raad* (1929) in T 131: 78). It should further be emphasized that this principle was also upheld in the famous case of dr. Muchtar, as this case is often quoted by contemporary lawyers as marking the new inheritance rule "from father to the children". The case concerned the validity of a testament (*umanat*) from a father to his children which was disputed by the *kamanakan* (see also p. 330). The validity of the testament was ackowledged, but as far as the matter of inheritance was concerned, the *Raad* held:

"The court agrees with the two advisory opinions and makes the views and conclusions expressed therein its own, and therefore states as its opinion that the plaintiffs (the *kamanakan*) would be the only persons entitled to the inheritance of dr. Muchtar ... if it had not been the case that dr. Muchtar had validly disposed of them."[20]

It must further be stressed that the two advisory opinions given in this case by the leading professors in *adat* law, Ter Haar and Carpentier Alting, also declared that the *adat* rule of the *kamanakan*'s inheritance of *harato pancaharian* was still intact. To quote Ter Haar:

"My conclusion is the following: according to the *adat* law of the Minangkabau society, the money saved by dr. Muchtar is *harato pancaharian* and as such it falls into the inheritance of dr. Muchtar and should therefore be inherited by Mr. Machmoed, the *mamak kepala waris* of dr. Muchtar's *kaum*, if it had not been the case that dr. Muchtar had disposed of it in a valid manner for the benefit of his children" (T 131: 96).[21]

Before the war, neither in the literature nor in the judgements of the courts, was a change in the *adat* rules of inheritance of *harato pancaharian* reported. The change came later. Tanner, to whom we owe the first post-war data on this matter, reports a case which was decided in 1961 (1971: 309). In this case a widow had sued her husband's *kamanakan* for her *suarang*-share. In addition, she claimed that the *suarang*-share of her husband should be divided between his/her children and his *kamanakan*. Whereas the court granted her her own part of the *harato suarang* (as a division of marital property, not as inheritance) the claim to an inheritance portion of her husband's *surang* part for the children was denied. The court still in 1961 upheld the principle that a man's *harato pancaharian* are inherited by his *kamanakan*. The change only came with

the other *cause célèbre* of Minangkabau inheritance law, the so-called *kincir*-(rice-mill) case, which went through all stages in the national court system and was finally decided by the Supreme Court of Indonesia. Since the three judgements given in this case reflect three different opinions on the problem of *pancaharian* inheritance, and at the same time are an interesting example of the interpretations of *adat* sayings, they should be reported in some detail (the three judgements are reprinted in "Jurisprudensi Indonesia" 1969 III: 17-33).

PN Padang Panjang, case 11 of 1962

In this case, a widow and her children sued the *kamanakan* of her deceased husband for the delivery of a piece of land upon which a *kincir padi*, a rice-mill, was located. This land and the mill, the widow claimed, had been the *suarang* of her husband and herself. The defendants, however, claimed that both land and rice-mill were *harato pusako* and had already been the *harato pusako* of their *mamak*, the deceased husband of the plaintiff.

After weighing the evidence, the court concluded that the property had indeed been the *harato pancaharian/harato suarang* of the deceased and his wife. On this basis, ½ was awarded to the widow. The other half had been the *suarang* of the husband, and on the inheritance of this portion the court gave the following ruling (also discussed at length in Tanner 1971: 309 f.):

"With respect to the half of Dt. M. (the deceased) we shall decide upon a division, thereby giving recognition to the rights of the heirs (*hak alhi waris*), that is of the heirs who are the children, and of the heirs according to *adat*, who in this case are the defendants. For such a division we consider to be just (*memenuhi prinsip keadilan*): (It is true) that according to the system of Minangkabau *adat* law named *mamak kemanakan*, the *kemanakan* have the right to a man's *suarang* part, whereas his children do not receive anything. But this principle has already undergone change in the direction of the recognition of a right of the children. This is revealed by the fact that fathers, before they die, often make *hibah* of property to their children. In this case, the defendants can be lucky to receive ½ of their *mamak*'s *suarang* part, as they are not close *kemanakan* (*kanduang*)."

For the first time it is here made explicit that the development of closer relationships between father and children not only has led to the recognition of a man's autonomy to dispose of *harato pancaharian* during his lifetime, but also to the recognition of an intestate inheritance right (*hak waris*) of the children.

PT Bukit Tinggi, case 46 of 1967

The judgement was appealed, and in appeal, the PT Bukit Tinggi awarded all the property to the defendant *kamanakan* of Dt. M. However, the principle which was established by the PN was not explicitly revoked. For the PT reversed the judgement on the ground that the legal status of the property had not been *harta suarang/pancaharian*, but had belonged to the deceased before he married the plaintiff. The PT therefore found it appropriate to apply the *kata adat*: "*Harta yang didapati tinggal - yang dibawa kembali-suarang diagih - sakatu dibalah*" - "the property which has been received, remains - the property which has been brought, returns - the *suarang* is divided - the alliance is dissolved". In the PT's interpretation, the rice-mill was "*harta yang didapati*" of the widow, which must be left (*tinggal*) to the defendants, as this was part of the inheritance of Dt.M. to be received by his *ahli waris*, his *kamanakan*: "*...sehingga dengan demikian maka kincir padi sebagai harta yang didapati oleh penggugat harus ditinggalkan penggugat karena adalah sebagai harta peninggalan I. Dt. M. bagi ahli warisnya dalam hal ini Tergugat2.*"

The judgement of the PT was then appealed before the MA (No. 39K/Sip/1968), which reversed both previous judgements on the following grounds:

1. The PT had given a wrong judgement, as
   - the PT had attached wrong legal consequences to the *harta tepatan* (*dapatan*) according to Minangkabau *adat*;
   - the *harta tepatan* is the property which has been acquired by husband and wife during their marriage, and must be inherited by the children;
   - the property which has to be returned to the *kaum* are the *harta bawaan*;
   - according to the development of Minangkabau *adat* law, there is now a division of property into two kinds: *harta pusaka* and *harta pancaharian*. The *harta pusaka* are the property and riches of the *kaum*, and the *harta pancaharian* are the properties handed down to the children by their owner.
2. The PN had given wrong judgement, as due to the growth of Minangkabau *adat* law an inheritance right of the *kamanakan* with respect to *harta pancaharian* did not exist anymore.

The final message of the MA is clear: The *harta pancaharian* are inherited by the children, the *kamanakan* do no longer inherit their *mamak*'s *harta pancaharian*. Minangkabau had its new *adat* law for *pancaharian*-inheritance. It is this new rule which is important. Yet the courts' interpretations of the *adat*-sayings so blatantly contradict my description and interpretation as given in Chapter 4, that some comments must be made on this conceptual usage and the rationalization of the judgements in general. Of course it is not the task of the social scientist to declare court judgements to be "wrong". But in order to forestall any critical comments upon my interpretation, I should like to point out that the conceptual usage of the courts is not supported by either *adat* or logic. This is the less understandable as both the chairman of the PT as well as the judge in the MA are highly reknown Minangkabau *adat* experts.

The PT judgement:
The PT interprets the *harta yang didapati* (*dapatan*) as those property objects which came into the possession of the widow, but had been the property of her husband before his marriage. This is very unusual, and I have never heard or read of such an interpretation. The *harta dapatan* in Minangkabau *adat* is commonly understood to be the property the *wife* brings to marriage, and it remains (*tinggal*) with her or her *kaum* after the marriage has been dissolved. The PT rather gives the contrary meaning to it: property the *husband* had before the marriage, and to be returned to his *kaum*. But this is commonly expressed by: "*pambaoan kembali*" or "*yang dibawa kembali*" - "what had been brought in, returns". Although the PT's interpretation runs contrary to the general terminological usage, it must be noted that, if the PT had employed the "correct" usage, it would have arrived at the *same* result.
The property would then have been "*yang dibawa*", and had to "*kembali*", be returned, to the defendants in this case.

The MA judgement:
The MA judgement increases the confusion. It quite correctly states that the property to be given back to the *kaum* is the *harta bawaan* (*pambaoan, yang dibawa*). But to the *harta yang didapati* it attributes yet another meaning: property acquired by husband and wife during their marriage, which generally is called *harta suarang*. On the basis of this interpretation it states that

- the PT attached the wrong legal consequences to the concept *harta dapatan*,
- the property to which these legal consequences should be attached are the *harta bawaan*,
- that the *harta dapatan* are the property objects acquired by husband and wife, which must be inherited by the children, as it has the status of *harato pancaharian*.

The logical fault is obvious: Without reconsidering the factual situation, which the MA is not expected to do, the MA should only have noted that the property, which the PT had stated as belonging to the husband before his marriage, was not - as the PN had wrongly assumed - *harta dapatan* but *harta bawaan*. The result would have been the same as that reached by the PT, whose conceptual usage, however, would have been corrected. But what the MA did was to construe a different factual situation-image (i.e. of the rice-mill being property acquired during the marriage - for which no evidence at all was quoted), under the guise of a reinterpretation of the *adat* concepts. The MA not only failed to correct the terminological usage of the PT, but used the wrong term and in its reinterpreted meaning attached to it the consequences which it wanted to lay down.

A short comment is also appropriate on the laconic manner in which the MA established the new conceptions concerning *pancaharian*-inheritance. It refers to "the present stage of the development in Minangkabau", a statement which is not further elucidated or supported by facts or precedents. This judgement then is quite contrary to other MA judgements concerning changes in inheritance law (cf. Lev. 1962). In a case from Pasamah (7/Sip/1953, reprinted in Subekti and Tamara 1965: 198), the MA held:

"In order to state a development in *adat* law, true evidence based upon facts is required, from which the conclusion can be drawn that a change has really occurred. The fact, that here and there a new way of the division of the inheritance is used, does not yet mean that the *adat* law has already really changed".

With the MA decision in the rice-mill case, however, Minangkabau had its new general *adat* conceptions concerning the inheritance of *harato pancaharian*. Whereas the reasoning and the terminological usage employed in the judgement is not followed, the new general rule is quite consistently applied by all State Courts in Minangkabau, sometimes with an explicit reference to the MA-judgement (as in case 4 of 1970 PN

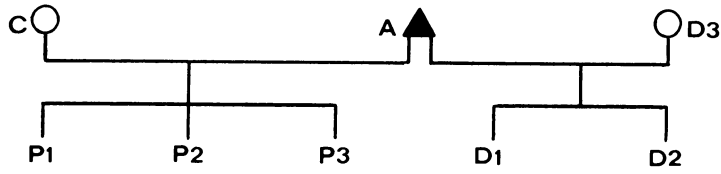
Payakumbuh, cases 49 of 1970 and 16 of 1972 PN Bukit Tinggi). But in case 16 of 1972, the PN Bukit Tinggi stated that "according to Minangkabau *adat* law, the widow and the children are the legal heirs of a husband and father". The inclusion of the widow calls for a clarification of who the new intestate heirs are, the children, or the widow and the children? As far as I can judge this question on the basis of the available material, the children only are the heirs of their parents' *harato pancaharian*, but spouses do not inherit from each other. We have found no single case (case 16 of 1972 of the PN Bukit Tinggi included), in which the widow (let alone a widower) actually inherited her (or his) spouse's *harato pancaharian*. The expression, "the new heirs are the wife and children", is sometimes used as a general reference to the new inheritance law. But the same speaker, when specifically asked whether a spouse is an heir to *harato pancaharian*, will emphatically deny this. He will also point out that the division of the *harato suarang* is a division of the commonly held marital property and not inheritance. The reference "to the wife and children" may well reflect the Minangkabau way of thinking of inheritance as of a process occurring in a group. By mentioning all members of the increasingly important social group, the conjugal family, *pancaharian* inheritance is assimilated to *pusako* inheritance within the *kaum*. However, this conception has no legal relevance (yet).

b. The Inheritance of *Harato Pancaharian* in the Polygamous Family

Since 1968 and with the new inheritance rule for *harato pancaharian*, the classic trouble-cases in which the children and *kamanakan* of a deceased man dispute the inheritance of his *harato pancaharian* have more or less disappeared from the court-scene. But new problems have arisen with the new rule. How is the property to be distributed between the children, and particularly, how is it to be distributed when a man has children by different wives?

Although there are not many cases in which the problem arises, it is the courts' practice (and the opinion of informants) that each child, regardless of his or her sex, inherits an equal part (see e.g. case 11 of 1964 PN Padang Panjang). The general *adat* rule (see Chapter 4 : 152), that a man married to several wives forms separate complexes of *harato suarang* with each wife, is also followed by the courts. This is implicitly recognized in case 11 of 1964 of the PN Padang Panjang[22], and clearly expounded in the judgement of the PN Payakumbuh in case 4 of 1970:

Diagram of the parties' relationships



The plaintiffs P 1-3, children of A by wife C, claimed several property objects, worth about 1.8 Mill. *rupiah*, from the defendants D 1-3, A's other wife and her two children. By the plaintiffs' interpretation, the properties were *harta peninggalan* (heritage) left by their father A, who had recently died. The defendants denied this, stating that only a few objects had been acquired by A and D3 together; the rest of the claimed property objects belonged to D3 in her own right (*hibah* from her sister, inheritance from her mother, etc.). Whatever common property there was had largely been acquired by A and D3, who had been married from 1929 to 1934 and then again from 1944 until A's death. A's marriage to C, on the other hand, had already been dissolved in 1944.

The court first restated the rule according to which common *harato pancaharian (harta pancaharian bersama)* is for the wife and children, and then went on:

"It is a well known truth of contemporary Minangkabau society that men who are polygamists usually form separate property units with each wife. The children who are born in one marriage have no right to inherit the property of another property unit." [23]

c. Inheritance of *Harato Pancaharian* of Childless Property Holders

According to the new inheritance rule for *pancaharian* in Minangkabau *adat* it is inherited by the children. But what if the *pancaharian* holders had no children? The transfer of property in such cases is, of course, of great interest for the discussion of the question to what degree the new rules have changed the Minangkabau inheritance (or even social) *system*. Unfortunately (for the social scientist) most Minangkabau have children. No court case dealing with the inheritance of childless *pancaharian* holders could be found, and also in the pertinent discussions with villagers and *adat* experts nobody remembered one single case in which there had been no children to inherit the

harato pancaharian.

It therefore was only possible to discuss the problem in hypothetical terms to find out some rules on the problem. The answers, however, were quite unanimous. If *harato pancaharian* holders have no children, the property will be inherited by the sisters (or by the brothers, the *kamanakan*, or by the mother), i.e. according to matrilineal principles (see Guyt 1936: 88 with similar information on these hypothetical questions). The widow will not inherit, but may,of course, claim her part of the *harato suarang*.

In the case of predeceased children, the principle of representation will apply only in the female line: If a person leaves grandchildren by both male and female children, only the predeceased daughter's children will inherit. The predeceased son's children are *anak dirumah lain*, "children in a different house" and will not inherit. If the *pancaharian* holder dies, his property will be in the house of his wife (wives) and her children. Her daughters will remain there and her granddaughters also will remain and marry there. But her sons will have to move to the houses of their wives, and their children therefore will be "children in a different house".

It should be remembered, however, that the principle of representation can be introduced by individual autonomy. E.g. Haji Hassan directed in his testament that, if any of his children should predecease him, his or her part should be inherited by his or her children (Chapter 5: 273).

2. *The Pusakoization of Harato Pancaharian*

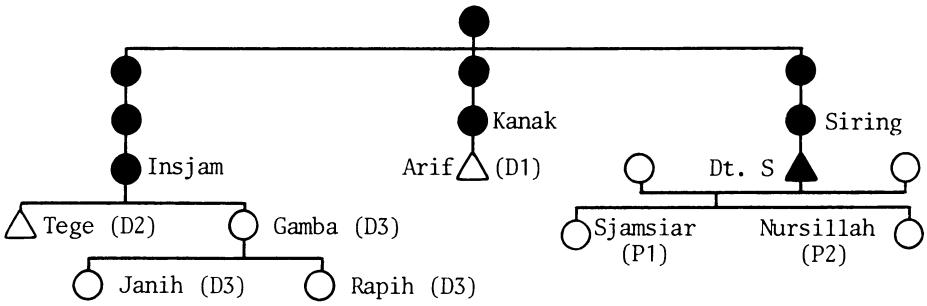
Pancaharian inheritance not only concerns the problem of who shall receive the deceased's property objects. In addition, the *adat* rule of *harato pancaharian* becoming *pusako* upon the death of its holder predetermines also the future diachronic transfers of these property objects. This "*pusako*ization of *harato pancaharian*" - rule is of basic importance for the maintenance of the *pusako* system, for it guarantees that, through time and inheritance, all property will be *harato pusako*. This rule can still be regarded as a valid conception of contemporary *adat*, unaffected by the changes in the inheritance rules. While in former times the *harato pancaharian* became *harato pusako* for the *kamanakan* of the property holder, they now become *pusako* for his children, to be *turun temurun* in their *jurai*.

When villagers and judges in Minangkabau speak about the *pusako*ization

of *harato pancaharian*, they usually do so in a rather abstract manner, without reference to a concrete problematic case. Either one speaks of property objects which already are *harato pusako*, and there is no (more) problem; or one speaks about property objects which still are *harato pancaharian*, and then the problem is not yet acute. People assume that such property will become *harato pusako* after the holder's death. What primarily happens in concrete cases of *pancaharian* inheritance is that the property objects "are inherited by the children". Whether they are *harato pusako* and actually treated as *harato pusako*, will generally only become apparent in the more distant future. The courts, the agents of objectification from whom we most likely might expect statements about the contemporary validity of the *pusako*ization rule, do not usually deal with the question explicitly either. They decide who in a concrete case inherits the property, and they usually do not care about what will become of it in the next generation.

However, there are first indications of a further change which may not leave the *pusako*ization rule untouched. Under the conditions just described, it is difficult to present much evidence. I have found only one case in which the problem is dealt with explicitly:case 30 of 1969 PN Batu Sangkar. For the presentation of my hypothesis it is a beautiful case, and I consider it symptomatic for the development which is going on in Minangkabau. Yet one must be careful not to take this single case as being representative of contemporary Minangkabau *adat* in general, nor expect that all courts would decide likewise in this matter.
But since the change of the *pusako*ization rule is likely to have a profound effect upon the whole system, I shall pay more attention to it here than its rarity so far would seem to justify.

The case concerns the inheritance of property objects the legal status of which was disputed by the contending parties. The relationships between the parties are shown in the diagram on the next page.



The two plaintiffs, Sjamsiar and Nursillah, are the daughters of Dt. S. who died recently, in 1969. They sue their *bako*, the *kaum* of their father, for the delivery of two plots of land. One plot, A, has a *surau* on it. Plot B is mainly agricultural land, but there is a house on it, too. Dt. S. had controlled both plots until his death. In 1963, Dt. S. had apparently tried to dispose of the two plots, but in vain, as is evidenced by a "Decision Letter" of the *Niniek Mamak* of his *suku*. There had been some trouble about this attempted transaction which had not yet been finally resolved.

The plaintiffs claimed that the property was *harato pancaharian* of their father and should therefore be inherited by them as heirs according to Minangkabau *adat* law. As evidence, they presented a "letter of sale" concerning plot B, dating from 1919, of which the most important entries are the following:

Nan manjual (The one who sells) : Upik gadang
Nan mambali (The one who buys) : Siring
It was signed by:
Kami nan manjual (we who have sold) : Upik, Engku Etek
Kami nan mambali (we who have bought): Siring, Duka (the later Dt.S.)

With this letter they wanted to prove that their father, Dt. S., had bought the land in 1919, and that it therefore was his *harta pancaharian*. As additional basis for their claim, they presented a "Letter of Gift of Land to the Children" (*surat pemberian tanah kepada anak*). In this letter Dt.S. states that he has given the land to his daughters already during his lifetime. Of this letter, however, only a copy was produced. This copy bears the signatures of Dt.S. and his daughters. The names and titles of the *adat* functionaries of Dt. S.'s *suku* are typed on the copy, but there are no signatures.

The defendants' version was different: Dt. S. had not bought plot B, but Siring and Kanak had done so. After their death the property had become *harta pusaka* of their *kaum*. Plot A had not been bought at all by Dt. S. but had been given to him as *wakaf* for his *kaum* by a man from *suku* J. Finally, it should be evident that the plaintiffs' claim was unfounded because the other children of Dt. S. had not joined the suit.

The PN Batu Sangkar considered the problems in the following way:

- That the other children of Dt. S. had not joined the suit was declared irrelevant.
- The plaintiffs had not procured any evidence concerning the plot A (the one with the *surau*) and this plot did not play a role in the subsequent reasoning.
- With respect to plot B, the court had to determine first:

1. Whether the property had the status of *harta pancaharian*, or of *harta pusaka* stemming from the *harta pancaharian* of the defendants' *mamak* (Dt. S.). For this question, the letter of sale was decisive. In the court's interpretation, the sale had actually occurred between Upiek Gadang and Siring, Dt. S.'s mother. The property therefore could not be regarded as Dt. S.'s *harta pancaharian*, for

"in Minangkabau there is a basic division of property, namely between *harta pusaka tinggi* and *harta pusaka rendah*. The distinction lies in the origin of the property: *Harta pusaka tinggi* originates from the result of the hard work of the patrilineal ancestors and has been handed down through the generations in the matriline. *Harta pusaka rendah*, however, is property which does not originate from the ancestors' efforts but has been acquired by sale or other legal means."

The property therefore was *harta pusaka rendah*, being the plaintiffs' grandmother's former *harta pancaharian*.

2. Once the status of the property had been determined, it was then necessary to decide whether the property should be regarded as (belonging to) the property of the defendants' whole *kaum* or as the *harta pusaka rendah* of one *kaum* member only, namely of Dt. S. As the property originally had been *harta pancaharian*, the court now had to determine whether (a) it had been inherited by Dt. S. individually (*telah diwarisi oleh ibu bernama Siring kepada anaknya sendiri Dt. S. pribadi...*), or (b) whether it had been intended for Dt. S. and his *kaum*.

a) If the former were the case, then the following considerations would have to be taken into account:

"That it could not be prohibited in Minangkabau to give property to the children, by *hibah* or other means, which had been *harta panca-*

harian originally and which, according to its development, had obviously and definitely become individual property (*hak milik pribadi*) of a *kaum* member. In such a case, the gift has to be carried out with the knowledge and the witnessing (*pengetahuan dan penyaksian*) of the giver's as well as the receiver's *kemanakan* in order to foreclose future quarrels."[24]

b) If, however, the latter was the case, and the property had been intended (*ditentukan*) for Dt. S. and his *kaum*. If in this case Dt. S. wanted to give the property to his children, then this should have been carried out in accordance with *adat* law, which means that Dt. S. needed the consent, the knowledge, and the witnessing (*persetujuan, pengatahuan, penyaksian*) of his *kaum* members, including the defendants in this court case.

3. In order to decide which of these two possibilities would apply, two facts were regarded as relevant and conclusive:

a) The house of the defendants stands on the plot B. It had already been used by them during Dt. S.' lifetime.

b) Dt. S. had already tried to sell the land once, but had not succeeded as his *kamanakan* had prevented the sale.

4. On the basis of these facts the court took the position that the property had been intended for (*ditentukan*) and inherited by Dt. S. and his *kaum*. The rules elaborated under 2 b therefore applied. As the plaintiffs could not prove that their father's gift had occurred with the consent of the Dt. S.' *kaum* and in the presence of the *adat* functionaries, the transfer had been void. The plaintiffs'claim was consequently rejected.

The defendants appealed. The PT took a different view in this matter and awarded the property (plot B) to the plaintiffs (PT Padang 36 case of 1972). The PT could not agree with the PN that Siring had intended the property for Dt. S. and his *kaum*:

"For the land, as *harta pancaharian* of Siring, had after her death gone over to her child; in other words, to Dt. S. as her one and only heir. This was so in accordance with the development of Minangkabau *adat* law concerning *harta pancaharian*. This development, which runs parallel with the development of the social structure of Minangkabau in general, had already begun before Independence and has continued since: The family ties between husband, wife, and children become closer while the ties between the *kaum* members become looser. This

has the consequence that the division between *harta pancaharian* as the property of the conjugal family (*Keluarga*) and the *harta pusaka* as the property of the *kaum* gets sharper, too. As a result of this development *harta pancaharian* can become *harta pusaka* of the *kaum* only if it is the wish of the *pancaharian* holder, i.e., if it can be proven in a clear way that the property holder wanted his property to become *harta pusaka* of the *kaum* and that it should not be inherited by the children, as it, in principle, should be".[25]

In the case under consideration the defendants had not been able to prove this. The transfer therefore had not required the presence and the consent of the *kaum* members but was valid without it.

The courts take different points of view. The PN still recognizes the process of *pusako*ization of *harato pancaharian*, although it states differential rules concerning the individual's autonomy over "private *harato pusako*" and over the "*harato pusako* of the *kaum*". The PT, however, seems to be abolishing the *pusako*ization as a matter of law. It declares it to be the exception, and makes it dependent upon the intention of the property holder: the *pancaharian* holder is free to determine what legal status his or her property is to have after his or her death! When referring to the property it has awarded to the plaintiffs, the court speaks of "property". It does not express the legal status of that property in terms of *adat* concepts, for the conceptual system of *adat* cannot accommodate this construction of property. The argument, that the ties between husband, wife and children get stronger, and that there is a sharper division between *harato pancaharian* and *harato pusako* is, in my view, not decisive in this case. Nobody would have disputed it, and both plaintiffs and defendants assumed that the *harato pancaharian* of Siring were legitimately inherited by her son. Actually, with female *pancaharian* holders such a case does not present a problem at all. The problem was that of the legal status of the property after it had been inherited by Dt. S. The PT states that "in these times" it depends on the intention of the *pancaharian* holder whether the property is to become *harato pusako* of the *childrens' kaum*, and finds no such intention in this case. But what is the alternative? The property once inherited can hardly be called *harato pancaharian*, for it is no "*pancaharian*", self-acquired property. On the other hand, it cannot be called *pusako* if its actual legal status is one of private property the disposition of which is unrestricted. In practice,

this leads to the recognition of property, either as *pancaharian* through the generations and through cases of inheritance, or as a kind of *pusako rendah*, to be treated as *pancaharian* with respect to its legal consequences. Clearly, the conceptual system of *adat* has no word for such property.

The PN,with its distinction between "private *harato pusako*" and "*harato pusako* of the *kaum*",is also ahead of "classical" *adat*. The way the court arrives at the distinction is much more interesting than the rules it lays down with respect to the validity of dispositions of such property. For the latter are not unknown in the *adat* system, whereas the kind of distinction made by the court is. According to *adat*, Siring's *harato pancaharian* would have become *harato pusako rendah* in the *jurai* of which she is the apical ancestress; i.e., Dt. S. alone would have the exclusive right to use and exploit the property during his lifetime. Upon his death Siring's *jurai* would be extinct and the property would then be inherited by the other *jurai* in Siring's *kaum*, i.e. by the defendants in this case. As it has since long been acknowledged that the last members of an extinct group have a rather large degree of autonomy over their group's *harato pusako*, the PN's statement, that a *hibah* as intended by Dt. S. required the knowledge and witnessing of the *kaum* members, cannot be regarded as very progressive. In posing the alternative between the private *harato pusako* and the *harato pusako* of the *kaum*, however,the PN adopts a different line of reasoning. This distinction is not conceptualized in terms of *adat* inheritance rules. The legal status of the property objects is more or less inferred from what happened after Siring's death, from occurrences *after* the inheritance. Where one would assume that the legal status of the property would be determined in *adat* at the time the inheritance occurs, the PN takes refuge in an *ex-post* evaluation. Or what else must we conclude from the statement that the relevant facts were that Dt. S. in vain tried to sell the land, and that it had been used by the defendants? It is definitely not a reference to some presumptive wishes which Siring may have had with respect to her property; the only reference is to the social processes which took place after her death. As Siring had no other children it was quite natural that her sisters and sisters' children would use the house, for Dt. S. would live in the houses of his wives. The PN makes this *ex-post* evaluation further explicit by speaking of "properties which originate from the *harato pancaharian* and which have, *according to their development*, become private property".

The determination of the legal status of inherited *harato pancaharian*, the traditional process of *pusako*ization by virtue of *adat* is thus not treated as something occurring automatically any longer, but as dependent upon intentions and social processes. In this, both judgements are equally dangerous for this key-principle of *adat*. The only difference is that the PN is conservative and leaves the determination more or less to the autonomy of the heirs/*kaum* members, whereas the PT makes it dependent upon the autonomy of the *pancaharian* holder.

3. *The Inheritance of Relationships to Harato Pusako*

In the conceptions pertaining to the inheritance of relationships (residual or provisional) to *harato pusako* there has been little change, both in the *nagari* and in the courts. All rights which are based upon one's status as a member of a *pusako* holding group are inherited strictly according to the matrilineal inheritance system described in Chapter 4: 157 ff. It must be kept in mind, though, that in cases where *pusako* property has been *pancaharian*ized by pawnings or transfers of pawnings, only the right to redeem, the *hak menebus*, is inherited by the matrikin in the *pusako*-holding group, whereas the right to work and exploit the property object is inherited in accordance with the rules pertaining to the inheritance of *harato pancaharian*.

Many conflicts arise about *harato pusako* which has been given as *harato pambaoan* to a marrying male *kaum* member. When the man dies, the *kaum* members often reclaim the property, whereas the man's wife and children or their *kaum* do not want to give it back, often claiming that it is their *harato pusako*. The *adat* conception of *pambaoan kembali*, that "brought" property must return, is in principle upheld in the courts and in the *nagari*. But I have found one case in which, in terms of concrete conceptions, the general rule is modified under the special circumstances. In case 18 of 1969 of the PN Bukit Tinggi, the plaintiff *mamak kepala waris* reclaimed property which had been given as *pambaoan* to his granduncle (MMB) at his marriage. The court established in the course of the proceedings, that the property in question had been *harato pusako pambaoan* of the plaintiff's *kaum*, indeed, but then proceeded to state:

"As the property in dispute is controlled and worked by the defendants for such a long time already, and as there are family relations between the *kaum* of plaintiff and defendant which cannot be severed just like that, the court is of the opinion that it is fair (*pantas*) and natural (*wajar*) if only one half of the property is given back and the other

half is kept by the defendants".

The court thus transforms an originally temporary/provisional transfer into a permanent transfer of the residual right. That the judge speaks of the 30 odd years, during which the plaintive *kaum*'s *pusako* were worked by the defendants as of "such a long time", well reflects the modern Minangkabau attitude towards time and continuity, in which 30 years are considered to be a "long", instead of a brief period in the continuous existence of the property holding *kaum*.

D. THE MINANGKABAU CONCEPTUAL SYSTEM OF PROPERTY RELATIONSHIPS IN HISTORICAL PERSPECTIVE

I. INTRODUCTORY NOTE

The degree of autonomy which is granted to individual property holders in contemporary Minangkabau - both in respect of *harato pancaharian* and of *harato pusako* - is difficult, if not impossible, to express in terms of the conceptual system of the *adat pusako*. In practice, the conceptual problems which arise are largely neglected or not dealt with explicitly. The courts have to decide concrete cases in which property and inheritance is disputed. They usually express their judgement in terms of the concrete interests and claims of the parties and are not concerned with the construction of a new conceptual system. It is symptomatic that the PT Padang, when it more or less abolished the principle of the *pusako*ization of *harato pancaharian* as a matter of *adat* (p. 347 ff.) did not conceptualize the legal status of *harato pancaharian* which, after the death of its holder, did not become *harato pusako*.

Another way to resolve the conceptual problem is to employ the concept of *hak milik*. The use of *hak milik* is quite frequent in contemporary Minangkabau, although it is by no means the statistical rule. Characteristic is the judgement of the PN Batu Sangkar already quoted. In order to arrive at its concept of *harato pusako pribadi*, "private *harato pusako*" - a term which does not exist in the *adat pusako*- it had to speak of property objects "which have become *hak milik pribadi*", i.e. private "property", "ownership", "*eigendom*". Usually, only property objects which have the status of *harato pancaharian* are character-

ized this way, but as the PN Batu Sangkar shows, the use of *hak milik* is also extended to the *harato pusako*.

It is extremely difficult to give an adequate translation of *hak milik* in this usage. The terms *hak* and *milik*, and also *hak milik*, are of course not new in Minangkabau. *Hak milik* is the Indonesian translation for the Dutch concept of *eigendom*, and it is also used in the Basic Agrarian Law to denote the most complete form of autonomy over land, which to a great extent corresponds to the Dutch conception of *hak milik/ eigendom* (cf. Gautama and Harsono 1972: 39 ff., see also Koesnoe 1977: 207 ff. on the various meanings of the concept *hak milik* in contemporary Indonesia). *Hak* and *milik* had also been employed in Minangkabau *adat*, but not in its combined form (see Chapter 4: 162 ff.). But the use of *hak milik* in contemporary Minangkabau is different. The term is used as a figure of speech, and its concrete meaning must be inferred from the way in which it is used. From its practical usage it can be concluded that it shares most of the connotations of the western conception of ownership/*eigendom*: It expresses the highest degree of autonomy recognized over a property object. These relationships are further reified: *Hak milik* not only denotes the *relationship* the *hak milik* holder has to the object, it denotes the *object* as well. It also shares the dominant characteristic of western notions of *eigendom*: it is abstract in terms of time. *Hak milik* is and will remain *hak milik* in perpetuity, no matter how it was acquired or by whom it has been or will be inherited.

Reification and the elimination of the diachronic dimension from the conceptual world of property relationships are new in Minangkabau *adat* (if compared to the system of the *adat pusako* as analysed in Chapter 4). They are the result of a longer process which shall be described in the following, and they reflect the increasing individualization of property relationships in the conceptual world.

II. THE ELIMINATION OF DIACHRONY FROM THE CONCEPTUAL SYSTEM AND THE REIFICATION OF PROPERTY RELATIONSHIPS

Hak milik remains *hak milik*, irrespective of its manner of acquisition. Its use permits a "clean" distinction between synchronic and diachronic dimensions as tied to the lifetime of the individual, thus making inheri-

tance the only form of diachronic continuation. This is, of course, quite foreign to the system of *adat pusako*. The *adat pusako* distinguished property objects in the diachronic dimension. Within this dimension, the distinctions were achieved by reference to the mode of acquisition of the property objects and the relative distance in time of such acquisition (see Chapter 4: 194).

Harato pancaharian probably was no *legal* concept at all in the early *adat*. It was rather that the categories of *harato pusako*, i.e., *harato pusako tambilang basi* and *tambilang ameh*, were defined with reference to the fact that they *had been "pancaharian"*, self-acquired. *Harato pancaharian* was an *explanans* rather than an *explanandum*. One could speak interchangeably of *tarukoan*, newly cultivated land, and *pancaharian*, self-acquired land. Both terms indicated the way in which some *pusako* property had been acquired. It is symptomatic of this (hypothesized) state of *adat*, that in the immense wealth of proverbs and *adat* sayings there was and is not a single one which mentions *harta pancaharian* or *pancaharian*. Even in the *adat* saying pertaining to the division of marital property,only *harato suarang* is spoken of, and *pancaharian* again is an *explanans*: *Harato suarang* is such property as has been acquired as *pancaharian* during the marriage. Likewise, *dapatan* and *pambaoan* contain no mention of *harato pancaharian*, although they may consist in part of the *pancaharian* which the spouses acquired before marriage. In the whole literature, and during all interviews in which I searched for sayings in which reference was made to *pancaharian*, I have found only one, namely in the recent publication of I.H. Dt. Rajo Panghulu (1973: 58) :"*Anak dipangku jo pancaharian - kamanakan dibimbiang jo pusako*" - "The Children are carried with the *pancaharian* - the *kamanakan* are led with the *pusako*". But this clearly is a recent invention, for the line, "*anak dipangku, kamanakan dibimbiang*", is part of a 6-line *papatah petitih*, which rhymes on the -u and the -iang.[26] I therefore think it justified to assume that *pancaharian* was not an *adat* concept denoting a specific legal status of property objects, but an acquisitive reference. The time-restricted *pancaharian* was submerged in a conceptual system of property relationships dominated by the diachronic dimension. Yet, as an acquisitive concept, *pancaharian* provided the link with an incipient individualization which in the course of time became also legally important.

A new phase of development began with the coming of the Dutch judges and administrators. This phase is characterized by a greater importance

given to *harato pancaharian* and the beginning of the devaluation of the diachronic dimension. This was no radical deviation from *adat*, since no alternative terminological system was introduced. It was rather that a new way of thinking about property relationships was introduced into *adat* when the Dutch imposed their colonial judicial system on Minangkabau. The Dutch lawyers and administrators interpreted the *adat* system in terms of their own basic assumptions on property relationships, property relationships being distinguished synchronically and by reference to the individual property holder, and the legal status of property objects being defined by rights which are reified. The basic division of property in Minangkabau *adat* was consequently seen in the distinction between *harato pusako* and *harato pancaharian*, as only this distinction could be used in reference to individual lifetimes.

This is the dominant tenor of nearly all Dutch publications and judgements. The *harta* that were *pancaharian*, were from the start conceived of as "private ownership", individual *eigendom*.[27] The *pusako* property by contrast, was conceived of as communal ownership held by the *familie*. The kind of ownership most authors had in mind was a form of common ownership, the *gebonden mede-eigendom* of Dutch law, which had developed out of the Germanic notion of the *Gesamthandseigentum*, characterized by the institutions of accrual and decrease. Van Bosse and Smits described the *harato pusako* complex exactly in these terms: Each time an individual family member dies, the shares of the remaining group members increase automatically. Each time a group member is born, the respective shares of the others decrease automatically. In this thinking, there was no room for individual inheritance within the family, and it was frequently stated that, in the Minangkabau *adat*, the institution of inheritance devolving upon individuals was unknown, and that it could only occur between *pusako* holding groups, between *sabuah paruik* (*buah gadang* in terms of CKL), the *suku*, or the *nagari*.[28] It was only a minority which opposed this view. Willinck, in particular, pointed out the significant differences between the *harato pusako* complex and western notions of common ownership. In western law, the individual co-owners always have the right to ask for the division of the common property.[29] The fiction, that each individual co-owner is the full owner of the whole property but restricted by the equally full rights of the other co-owners, cannot be maintained for the *adat pusako*, as the individual can never come into the position of full owner of the *harato pusako* (Willinck 1909: 575 f., 769 ff.). In *adat*, "*pusako indak buliek diagieh*", "*pusako* may not be

divided". Should a division occur, this meant a group split, through which again only communally held *pusako* can come into existence. In *adat* the group relationship to *harato pusako* can not be reduced to a sum of individual *eigendom*. A further decisive difference is that, in *adat*, the residual relationship between the group and the *harato pusako* is not conceptually specified. We have seen that, besides the "having" character, there is only a dual characterization of this relationship in terms of the *hak* held by the *mamak* and the *milik* held by the *kamanakan* (Chapter 4: 162 ff.). However, the provisional relationships *within* the *pusako* complex are well specified conceptually in the form of *dapatan*, *pambaoan*, and *ganggam bauntuek*. The *ganggam bauntuek* is even treated like a thing which can be inherited. In *adat*, the relationships operating *within* the group-*pusako* relationship are reified. In contrast, it is the group-holder relationship which is reified in the conception of common ownership in western law, whereas the internal relationships are not, and not even conceptually, specified but are treated under the general heading of "administration" (for German law see par. 2038 BGB). These internal provisional relationships could well be inherited in Minangkabau. Thus there was no question of accrual or decrease. If a new *kaum* member was born, this did not affect the shares of the other *kaum* members at all. Their part in the "having" relationship could not be affected, as the birth had no direct relevance for what property objects they were allowed to use and exploit. The relationships legitimating their use and exploitation of the property objects, on the other hand, were regulated by the *ganggam bauntuek*, *dapatan* and *pambaoan*. On this level, nobody was affected by the birth of a new *kaum* member, and only a few persons were affected by the death of a *kaum* member, namely the heirs of the *ganggam bauntuek*. This again was only emphasized by a minority, particularly by Willinck (1909) and later by Sarolea (1920). Willinck correctly stated: "It just depends what you call inheritance", and called the diachronic transfer of the *ganggam bauntuek* "inheritance", with the justification that in Dutch law, too, other rights than *eigendom* (i.e. provisional property rights) could be inherited (1909: 771 f.).

The way of thinking in which most Dutch judges and administrators approached Minangkabau property relationships did not remain without impact on the conceptual system of the *adat pusako*. The old distinctions of the different kinds of *harato pusako*, which denoted the property objects according to the means and time of their acquisition were ne-

glected and hardly ever used in court. The concept of *ganggam bauntuek*, not fitting well the ideas of communal ownership of *harato pusako*, was increasingly less employed, although it was the concept coming most close to the Dutch notion of common ownership. This had practical consequences, too. Only with the trivialization of the *adat* conceptual system and of the differential property relationships could notions be upheld and enforced such as "that the *harato pusako* is the property of the whole *kaum*", "that all disputes over *harato pusako* must be in the name of the *kaum* and be represented by the *mamak kepala waris*","that only the whole *kaum* and not its subbranches, the *jurai*, were property holding 'legal communities'", "that the *harato pancaharian* became the common property of the whole *kaum* after the death of the *pancaharian* holder" (see Chapter 4: 152, 190).

Through the construction of a basic division of property on the synchronic level by the Dutch, the concept of *harato pancaharian* gained in importance. As one of the basic categories of property, it had to be defined in terms of normative consequences in order to contrast it with the normative consequences attached to the concept of *harato pusako*. Whereas in former times, *pancaharian* had been the *explanans* for the *pusako* categories of *tambilang ameh* and *tambilang basi*, it now became an *explanandum*, which had to be explained in terms of legal consequences. In consonance with this,*harato pancaharian* also became the dominant concept to be used in marital property relationships. In former times one spoke of the *harato suarang*, which was explained as being the *harato pancaharian* which husband and wife had jointly acquired during their marriage. But in the courts one generally spoke of the *harato pancaharian* of the spouses and was concerned with the legal consequences attached to it. With the dominance given to the synchronic dimension of property relationships the diachronic dimension was consequently devaluated. A distinction in the diachronic dimension was still retained - the distinction between *harato pusako tinggi* and *harato pusako rendah* - but in the courts' view this was not the basic distinction of property in Minangkabau.

This interpretation of Minangkabau property relationships has to a great extent been continued by the Indonesian judges, mainly Minangkabau themselves, who act in the post-Independence State Courts. The old *adat* logic is still applied by some judges. Thus the judge in the PN Batu Sangkar whose decision has already been mentioned several times, still declared the difference between *harato pusako tinggi* and *harato pusako*

rendah to be the basic distinction of Minangkabau property categories. He employed the diachronic dimension, in which *harato pusako rendah* and *harato pancaharian* can be equated. Significantly, the judge in this case was a *panghulu*. Most State Court judges, however, keep to the distinction in the synchronic dimension, and adopt a purely prospective attitude towards inheritance as in the MA-judgement in which the new inheritance rule for *harato pancaharian* was established (see p. 338 ff.). I should like, of course, to give a more representative picture of the correlation between socialization in western law and the dominant thinking about property in the synchronic dimension. The judgements, in which such distinctions are elaborated at all, are, unfortunately, too rare for this to be done.

It is difficult to assess the influence the conceptual usage in the courts has had, and still has, on the conceptual usage in the *nagari*. The villagers still are, and probably always were, somewhat confused by the courts' inability to understand their property relationships as far as *kaum*- or *buah gadang*-internal relationships are concerned - a misunderstanding mainly resulting from the conceptualization of *harato pusako* as a form of communal ownership. But cases where internal group relationships are disputed in court are extremely rare (Chapter 5: 307). Most disputes concerning *harato pusako* are inter-group disputes, generally cases in which pawnings are disputed or the inheritance of groups that are extinct. Since the villagers know their *adat* well enough not to be misled by the conceptual usage of the courts, it may be assumed that they were able to express their claims in a manner that the courts could understand, and yet retain their more differentiated conceptual system to deal with property relationships in the *nagari*. Yet the new way of thinking about property will have had its general impact on the conceptual usage inasmuch as the new style of thought is increasingly employed, as it proves to be the most suitable one to express the new degree of autonomy over property recognized also in the *nagari*. In contemporary Minangkabau, so far as we can judge from our discussions with villagers in CKL and other *nagari*, both attitudes towards property relationships and their diachronic transfers are employed. People distinguish *harato pancaharian* and *harato pusako*, but they also speak in terms of the *pusako tinggi - pusako rendah* distinction. The old quadrupartition of the *harato pusako* is still used, but the employment of the "shortened" version, "*tinggi-rendah*", is much more frequent.

Through the increasing autonomy over *harato pancaharian* and finally through the establishment of *harato pancaharian* inheritance by the children as matters of law, however, a new threat is posed for the remaining distinction in the diachronic dimension. The concept of *pusako* firmly embodies the idea of property which has been and will be inherited in the matriline. As long as the *kamanakan* inherited their *mamak*'s *pusako*, this principle remained unaffected. But it becomes difficult to maintain the idea when *harato pusako rendah* are inherited by the children. I have mentioned that this difficulty is partly solved by speaking of inheritance with the future perfect-perspective, by equating *pancaharian* and *pusako rendah* in the diachronic dimension. But just because the speakers are forced to employ the diachronic dimension, which in Minangkabau thought embodies the pro- and retrospective, the statement becomes illogical and impossible, for the connotation of matrilineal inheritance can be attached to the property objects in question only in one direction. When the prospective heirs themselves die, the property which they inherited and which became their *harato pusako rendah*, will be inherited by their *kamanakan*. But they themselves have not inherited in accordance with the principle of matrilineal inheritance. In terms of the prospective attitude towards inheritance, which slowly gains dominance in Minangkabau, the statement that *harato pusako rendah* are inherited by the children is "impossible" anyway.

These two factors put a great strain upon the use of the concept *harato pusako rendah*. Combined with another factor, the explicit or implicit wish to stop the *pusako*ization of *harato pancaharian* in general, this leaves little room for the employment of the concept *harato pusako rendah*. The consequence of this, namely the abandonment of the concept, has already been demanded. At a conference on Minangkabau *adat* and history held in Batu Sangkar in 1969, it was explicitly proposed by a Minangkabau lawyer (Damciwar S.H.) that in the Minangkabau *adat* of property relationships only the concepts of *harato pusako* and *harato pancaharian* should be recognized in the future, and that the concept of *harato pusako rendah* should be abolished. The consequences were stated quite explicitly:

"The *harato pusako* (which generally have been called *harato pusako tinggi*) which already exist, will be left in peace. I.e., there will be no further possibility for the existence of *pusako rendah*, as this would lead to an increase in *pusako tinggi*."[31]

Another important consequence, not explicitly mentioned so far, is that the *harato pancaharian* which have been inherited have no defined

legal status in *adat*. They cannot be called *harato pancaharian*, as they have not been acquired by their holders' own efforts. They are not to be called *pusako rendah* anymore. The conceptual gap is filled by the use of *hak milik: Harta pancaharian* is *hak milik*, and *hak milik* remains *hak milik* after it has been inherited. The diachronic dimension is eliminated completely.

It is important to remember that *hak milik* is not used only to denote the rights of the property holders, but the things themselves as well. It is the *harato*, the material property objects, which are denoted as *hak milik*, not just the relationships the property holders have with respect to the property objects. In contemporary Minangkabau the *harato - hak milik* equation is generally used only for *harato pancaharian*, which in this way can be treated as *harato pancaharian = hak milik* in perpetuity. But the judgement of the PN Batu Sangkar indicates that also *harato pusako*, at least "private" *harato pusako*,can be denoted as *hak milik*. If this tendency should develop into the dominant way of speaking and thinking about property relationships, the scene is set for a conceptual system in which *hak milik* is the common denominator for all property. In this system, a distinction between *hak milik* with *pancaharian* character and *hak milik* with *pusako* character, may be maintained. But this distinction would only be relevant for prospective inheritance, for a limited set of legal consequences. This would mean an essential reversal of the logic of the *adat pusako*. The rights which formerly did not denote things, are now reified, and the property concepts which formerly did denote things are now de-reified and transformed into legal consequences.

In this reification of the *hak milik* concept and the de-reification of the *harato*-concepts lies a great potential for the further development of the *adat pusako*. Once property relationships have been reified, it becomes quite easy to change the legal consequences that are attached to the property object without changing its legal status. The development of the concept of ownership/*Eigentum* in contemporary Europe provides a good example. The concept denotes a property *relationship* which expresses the highest degree of autonomy over property objects. But once the relationship has been reified, the property *objects* will remain *Eigentum* even if the legal consequences attached to it are drastically changed. In Europe, the individual autonomy over *Eigentum*-property objects has been increasingly restricted, yet *Eigentum* has remained *Eigentum*. If the actual property relationships were to be reified *now*,

probably no one would arrive at a concept that carries the connotations which *Eigentum* as a legal concept had in former times. A similar development *might* occur in Minangkabau. Once the relationships signifying individual autonomy have been reified in the new *hak milik* status of property objects, the *pancaharian*- and *pusako*-like consequences may easily lose their legal character. *Pusako* may become such family property as we know it in western societies; a kind of property which carries strong moral and nostalgic connotations, but which has become legally irrelevant.

CHAPTER SEVEN

CONCLUSIONS

In this last chapter I shall draw some conclusions from the material presented in my study. My main concern is with the change which has occurred in Minangkabau in the domain of property relationships, and in this final chapter I want to give my interpretation of this change. I shall adopt two different perspectives. In the first part I shall summarize the factors which have contributed to this change and interpret their functional interconnections. In the second part, I shall offer my interpretation of what this change means in relation to the Minangkabau social system in general. Finally, in the last part of this chapter, I shall briefly revisit some of my basic assumptions and evaluate them in the light of their usefulness for the description and analysis of the empirical data on Minangkabau.

A. THE FACTORS OF CHANGE: CONCLUDING REMARKS ON THE DEVELOPMENT IN THE DOMAIN OF PROPERTY RELATIONSHIPS IN MINANGKABAU

From the materials presented in this study it is obvious that there has been a considerable change in Minangkabau within the domain of property relationships during the historical period over which we can look. The most important changes in the law have been described in Chapter 6. They involve the development of prescriptive intestate inheritance rights of children as regards their father's *harato pancaharian* and the recognition of a nearly unrestricted autonomy to dispose of one's *harato pancaharian* both in the synchronic and diachronic dimensions. The law concerning relationships to *harato pusako* has not changed all that drastically. The restrictions pertaining to temporary and permanent alienation have

been lessened but by no means abolished, although in practice these restrictions have lost much of their former force through the increasing *pancaharian*ization of use-rights to *harato pusako*.

The stories told in Chapter 5 show that, in comparison with reports in the older Dutch sources, the practice in property and inheritance affairs also has changed significantly. Minangkabau men and women act quite individualistically and manage property affairs for their own interest and for the benefit of their closest kin, their children in particular. The interests of the *kaum* and the more distantly related *kaum* members only play a small role and are generally respected only if the pursuit of *kaum* interests is in the personal interest, too. The stories also illustrate the individual motivational attitudes towards relatives in property and inheritance matters. Most people express a definite preference for small social units, for their conjugal family, their spouse, their children and grandchildren. To an increasing extent, they are emotionally indifferent towards their other kin. In summarizing the change I would put the greatest emphasis on this individualization and attachment to small social groups and the complementary disintegration of the larger social groups, the *kaum* and the *buah gadang*, rather than on the change "from the *kamanakan* to the children". The change "from the *kamanakan* to the children" is the aspect of the individualization process seen from the point of view of Minangkabau married men. It is a very evident illustration, for it transcends the borders of matrilineal descent and *kaum* exclusiveness. But it should not be overlooked that from the point of view of women, too, there is a change of focus from "one's children in the *kaum* to one's own children". Women definitely prefer their own children to their sister's children and act accordingly in property and inheritance affairs; women, too, are much more attached to their conjugal family than before. This individualization and attachment to smaller social groups is only somewhat less evident, as the social group is a segment of the larger social group within the framework of matrilineal descent. A certain preference for one's own children is, of course, nothing new in Minangkabau. For women, it was the normal state of affairs and quite in accordance with *adat*. For men, too, it cannot be looked upon as something unusual in "old" *adat*. It was always recognized in *adat* that close bonds exist between a father and his children, and between the father's *kaum*, the *bako*, and its *anak pisang*. As the *adat* saying states: "*Anak dipangku - kamanakan dibimbiang - urang kampuang dipatanggangkan - jago nagari jan*

binaso" - "The children are carried - the *kamanakan* are led - the people of the *kampung* are cared for - in order to safeguard the order of the *nagari*".

Villagers who interpreted this saying for us stressed that in *adat* (meaning "old" *adat*) it meant that the children had to be carried and to be cared for as long as they needed to be carried, i.e. as long as they were children and not adults. The *kamanakan*, on the other hand, were to be led throughout their lives. This interpretation brings out different emotional attitudes towards one's own children and *kamanakan*. The relationships towards one's children is warmer and more affectionate, the *kamanakan* are emotionally more remote. These different emotional attitudes fit very well with the general pattern which anthropologists have observed in matrilineal societies.[1] The relationship between MB and ZS in particular is one of authority and potential enmity. The picture of the nephew waiting for his mother's brother to die in order to inherit his property and to succeed to his position of socio-political authority was also present in Minangkabau and well expressed in the *adat* saying: "*mamak badagiang taba - kamanakan bapisau tajam*" - "the *mamak* has thick flesh, the *kamanakan* have a sharp knife" (Nasroen 1957: 87).

In contemporary Minangkabau, the attitudes towards *kamanakan* and children have changed, and particularly as regards the authority-aspect. The relationship between *mamak* and *kamanakan* has become less authoritative and more affectionate. The more recent interpretation of the saying "the children are carried, the *kamanakan* are led" does not make any difference in emotional value. It stresses that the children have to be carried with what one can carry, i.e. the, generally movable, *harato pancaharian*, whereas the *kamanakan* are led where people can be led, on the land, i.e. on the, generally immovable, *harato pusako*. This interpretation found its expression also in a changed version of the *adat* saying, which has already been reported earlier: "*anak dipangku jo pancaharian - kamanakan dibimbiang jo pusako*" - "The children are carried with the *pancaharian* - the *kamanakan* are led with the *pusako*" (I.H. Dt. Rajo Panghulu 1973: 58). The man's relationship towards his children has also changed. When the children are small, the Minangkabau fathers are probably no less affectionate towards their children than in former times, but when the children grow older, the relationship, especially towards their male children, becomes more authoritative, a reflex of the greater authority the contemporary Minangkabau father has over his children. As has been mentioned already, however, the *mamak*'s loss of authority is

only in part absorbed by the father's new authority, for much authority is wielded by the mother.

The growing individualization of social and property relationships, the attachment to smaller social groups and the complementary disintegration of the larger social units is a very summary description of the development which has taken place and which continues to take place in Minangkabau. The changes in the domain of property relationships are but one aspect of this change. The development can be attributed to a series of factors, of which the property and inheritance law and the behaviour in property and inheritance affairs take part, too: the increase of the population and the growing scarcity of land occasioned by it; the establishment of a new system of power and authority by the Dutch, which in a modified manner was maintained by the National Indonesian government, thus weakening the authority system of *adat*, and putting the task of law interpretation and application officially into the hands of *nagari*-external judges; the imposition of a new economic system on West Sumatra, which had a great impact on the *nagari*-internal economy; new residential arrangements, etc. Enumerating these factors is, of course, no more than a description of the change; it is no explanation in terms of operative causal connections. On the basis of my present knowledge of Minangkabau history I would not attempt such a causal explanation of the development except in the most general way. For there are only a few factors which we may assume to have had a one-way influence upon the others and for which we can show their logical and historical priority, like the influences (political, economic and others) which affected the *nagari*-internal relationships from the outside without being conditioned by the *nagari*-internal situation. Like all other factors, the significance of these influences varied considerably in the course of history and, once incorporated in *nagari* life, they became also internal factors influencing and to some degree reinforcing each other. I therefore would speak rather of an interpretation of the change, not of its explanation. What I can do is to assess the interdependence of the factors and the logical and functional link between them.

The imposition of a new power and authority system by the Dutch colonial administration was an important factor contributing to the disintegration of the traditional socio-political units and the growing individualization. The *panghulu*, the leaders of the political and property holding social units, whose position had just been attacked and partly

successfully demolished during the Padri-war, were slowly divested of most of their traditional political and juridical authority. To some extent they were incorporated into the new power structure, which made their function attractive as it provided them with a new source of power which they could use within the *nagari*. But only a limited number were thus privileged. The consequent distinction between recognized and unrecognized *panghulu* led to a loss of prestige and authority on the part of the unrecognized *panghulu*. Those recognized by the colonial administration tended to abuse their power which adversely affected the traditional mechanism of *buah gadang*-cohesion. And in relation to the colonial administrative system, the position of all *panghulu* was relative, they had become servants and tools of a higher power.[2] But the position of authority and prestige of the *panghulu* was not only reduced by the superordinate colonial power system. The new economic system and administrative machinery offered alternative positions of authority and prestige to their fellow *nagari* men, positions which were accessible independent of social status based upon descent. The same holds true for the developing system of religious functionaries, former *adat* functionaries who since the Padri-war had emancipated themselves from the *adat* system of status acquisition and succession. The mere existence of these new positions of social and economic authority already put an end to the exclusiveness of the *adat* system of authority. Besides, the incumbents of the new authority statuses competed with the *adat* authorities for power and influence, and thereby decreased the actual power wielded by the latter. Minangkabau informants frequently stated that this loss of power and prestige of the *panghulu*, together with the high expenses connected with a *panghulu* installation, were the main reason why so many *panghulu*ships were vacant in the present situation, and why there was consequently no real authority exercised over the *buah gadang* and *kaum* members. Whilst this is probably partly true, there is another reason for the many vacancies. In CKL, there were several *panghulu*ships for which there were interested potential successors, who did have the means to finance the installation ceremony. They were not installed because no consensus could be reached as to who of the various claimants really "owned" the title and should succeed to it. This was mainly due to the difficulty of the claimants to trace back and prove their actual genealogical relationship to the former *panghulu*. When the Dutch prohibited the creation of new *panghulu* titles in the 1880's, they also inhibited the traditional mechanism of group formation. Instead of splitting the

group of "one *sako* and one *harato pusako*" in accordance with the *adat* principle of "what has become too large must be shortened, what has become unclear must be clarified" (Chapter 2: 66), the *buah gadang* could not effectively split any longer, and this just happened during the period of the most massive population increase. Thus, "one property" holding groups became too large, and within them, subdivisions developed with a great degree of autonomy in property matters, although in *adat* they remained subject to the final authority of the *panghulu*. The more *kaum* developed in a *buah gandang*, and the more often these *kaum* split themselves, the more difficult it became to settle the question of the succession to the *panghulu*ship. As the *musyawarah*-until-*sapakat*-principle of decision making still functions well in that no *panghulu* is installed unless there is an agreement between all units of the *buah gadang*, many *panghulu*ships stayed vacant. And the more *panghulu*ships stayed vacant, the more independent the *kaum* under their *mamak kepala waris* became. This led to the ambiguity which surrounds the legal status of so many contemporary *buah gadang* and *kaum* in CKL. It further greatly contributed to the feeling that being "of one property" in *adat* with the other *kaum* of one's *buah gadang* has only little to do with actual property relationships. The political and socio-economic units are practically dissociated in contemporary CKL.

Within the smaller social units, the *kaum*, which appeared as *the* property holding groups, the cohesion of property and authority was further dissolved through the increasing monetarization of property relationships to the "common" property. This was the result mainly of Dutch economic policy. Through the system of forced cultivation of coffee, money - held individually and mostly by men - became important. For lack of alternative possibilities it was invested within the *nagari*, mainly in land through pawnings, redemptions, and transfers of pawnings. This started the monetarization of property relationships to *harato pusako*, which provided the investors with a legitimation to use and to exploit *harato pusako* independent of the traditional mechanisms of allocation and distribution.

The new Dutch economic policy introduced in the beginning of this century brought new changes (cf. Kahn 1975, 1976, Dobbin 1977). The system of forced cultivation was abandoned, a tax-system introduced, and West Sumatra was opened to the influx of foreign commodities. A need for cash was created along with increased opportunities to earn cash through wage labour, trade, and the cultivation of cash crops; activities in

which mainly men were engaged. *Harato pancaharian* increased in economic importance, and it made the men increasingly independent of their *kaum*'s *harato pusako*. But the monetarization of relationships to *harato pusako* also gained in importance as land was increasingly used to procure money through pawnings and, on the other hand, as an object of investment of money through redemptions and transfers of pawnings. The traditional mechanisms of distribution and allocation of *harato pusako* lost in importance as they were increasingly replaced by the acquisition of exploitation rights through the investment of money. They were increasingly limited in their operation to a smaller circle of kin within the *kaum*, namely to those persons for whom the formerly monetarized relationship to *harato pusako* became *harato pusako turun temurun* in the course of time. This gradual dissociation of the legitimation to receive use-rights from the status of *kaum* member also contributed to a further decrease of the authority that could be exercised in decision making processes about *harato pusako* in which all *kaum* members participated; it also affected the *mamak*'s authority whose task it was to see to it that such decisions were taken.

The growing disintegration of the authority and property relationships within the *kaum* led to, and was reinforced by, the increasing spatial dissociation of the *kaum* members, a process accompanied and speeded up by the population increase. In former times, when there were small groups, nearly all *kaum* members could live in one or two *rumah gadang*. Living together probably contributed significantly to the feeling of belonging together. The concentration of the individual *kaum* members on the smaller *kaum* segments and their conjugal families, facilitated by their separate holding of *harato pusako*, and the increasing number of such segments as a consequence of the population increase, led people to prefer living in smaller houses. The monetarization and individualization of property relationships facilitated the building of smaller houses. The investment of money held separately in the building prevented it from being invested in the interest of the *kaum* as a group. When smaller segments of the *kaum* started to live in smaller houses, the conjugal families gained in importance. In most daily affairs the husbands were confronted with a smaller set of their wives' kin. Common residence of husband and wife in a smaller house also led to an increasing individuation of the wives within their *kaum*. Husbands lived in with their wives in small houses more permanently,and consequently less opportunities existed for them, as *mamak*, to stay in their mother's or

sisters' house(s). Sleeping in the open room of a small house is a much greater intrusion on the privacy of one's sisters than sleeping in the large front room of a *rumah gadang*. The more men lived together with their wives, and the more their *mamak* functions decreased in importance, the more they directed their economic activities to the house and property of their wives and children, applying most of their labour force and their *harato pancaharian* for the benefit of those with whom they lived. The new economic residence pattern and the increasing investment of men's *harato pancaharian* for the benefit of their conjugal family - generally in and on the *harato pusako* of their wives - led to an increasing individualization of their wives' *harato pusako* and a greater influence and autonomy of the conjugal family vis-à-vis their wives' matrikin.

This series of interrelated and mutually reinforcing aspects does not only affect the *kaum*-internal relationships and the conjugal families. It also is visible in the relationship between the *bako* and its *anak pisang*. Within the *kaum*, viewed as *bako*, social and property relationships are increasingly individualized, with the *urang sumando* playing a greater role. The land is held by smaller *jurai* more independently and, owing to population increase, it has become scarce. There is not much common *bako* property left, which could be given to outmarrying *kaum* members as *harato pambaoan*, or to *anak pisang* as *harato hibah*. There is less willingness and less opportunity for the group to show its generosity. If such property is still given from time to time, it is rather given by *jurai* out of their separately held *harato pusako*, and then only to *jurai* members and their children. But if a male *kaum/jurai* member stays with his wife anyway, working on her fields and bringing all his *harato pancaharian* to the house of his wife and children, why should he be given *pambaoan* as well if his *kaum* has barely enough land to live on? The men counter this decrease of *pambaoan* and *hibah* by investing their *harato pancaharian* in their *harato pusako* through redemptions and transfers of pawnings for the benefit of their children, by stressing the latter's inheritance rights within the *ganggam bauntuek* complex, and simply by cheating their sisters and mothers. So the *bako* - *anak pisang* relationship is gradually reduced to the individualized relationship between father and children.

I have summarily described the process of individualization and the attachment of the Minangkabau to smaller social units, and discussed the factors which contributed to this development. The change of property

and inheritance law and the change in the Minangkabau behaviour in property and inheritance affairs are one aspect of this process. I mentioned other factors which, through history, have influenced this process and, in turn, have been influenced by it. Thus if we wish to focus on the development within the domain of property relationships we cannot treat the dialectical relationship between law and behaviour in isolation. It is behaviour, and not only within the domain of property relationships, which influences and eventually changes property and inheritance law; and it is not only property and inheritance law, but other law and other conceptions as well, which influence and eventually change the behaviour in property and inheritance affairs. All the factors mentioned must be kept in mind when the relationship between law and behaviour and its development through history are analyzed. Their analysis is often approached through the question of whether practice was "ahead" of law, and of whether and when the "gap" or the "lag" between behaviour and law was closed; or conversely, whether in certain historic periods law was ahead of practice. The conceptualization of law outlined in the first chapter, however, demands a different approach which in my view leads to a much better appreciation of the changes which have taken place.

To begin with, we should note that the change in property and inheritance behaviour to a large extent has happened wholly in accordance with established general *adat* conceptions. The mechanisms of pawning and transfer of pawning are not new in *adat*, and the legal conceptions pertaining to them have scarcely changed. But through the growing infusion of money into the *nagari* and its investment in property relationships to *harato pusako*, the frequency and importance of these mechanisms have drastically changed the social and economic life in the *nagari*. This is an excellent example of what Renner, in his analysis of the development of the institutions of private law in Europe, called "change of function" (*Funktionswandel*): a considerable change in the "basis" or "infrastructure", due to non-legal factors, without a consequent or necessary change in the law (Renner 1929: 5 ff.).

Secondly, much change in practice could be achieved within the framework of unchanged general conceptions through a differently directed exercise of autonomy in property and inheritance matters. We must remember that the autonomy of the property holding group, which became manifest in its unanimous decisions, covered a wide range of potentially highly diverse results. The *kaum* could give property to its *anak pisang*;

the *kaum* members could give their consent to or take cognizance of the gift of property from a *kaum* member to his children. When in the course of history men tended to give their property to their children and the children could effectively keep this property after their father's death, this did not yet amount to a change of general law, nor was this necessarily contrary to *adat*. It primarily meant that the *kaum* recognized a greater autonomy in property affairs for their individual male *kaum* members. It is useful to recall the statistical data on *pancaharian* inheritance and *hibah* collected by Sa'danoer (1971). Sa'danoer reported an increasing amount of *pancaharian* inheritance and cases of *hibah* by the children, from which he concluded a change in inheritance *law*. But his data on *pancaharian* transfers (given for 81.8% of the transfers) show that in nearly all cases such transfers by inheritance or *hibah* were based upon unanimous decisions or agreements by the recipients' matrilineal and/or patrilateral kinsmen. Only 0.3% of all cases were decided by a State Court, and only 3.9% by the *adat* council (1971: 12). So the direction of inheritance was changed as the Minangkabau tended to exercise their autonomy, but this did not yet change the general *adat* conceptions. The probable reasons for this change in practice have been discussed above. The *de facto* individualization of property relationships was recognized by the *kaum* members in concrete decision making processes, but the decisions reached were still "*tergantung situasi dan condisi*", depending on the situation and conditions of the concrete cases. The possibility of different decisions in future similar cases was thereby not excluded.

New, however, was the rule that individuals could also dispose of their *harato pancaharian* for the benefit of their children *against* the wishes of their *kaum* members. We should note again, that this new general rule did not so much affect, or run counter to, the *adat* conceptions concerning the direction of the diachronic flow of property, but primarily liberated the individual's autonomy from his *kaum*'s former restrictions. It confirmed the *de facto* individualization in terms of general legal consequences. Though individual autonomy was thus strengthened at the expense of the *kaum*, the latter's restrictive powers were also transferred to "society" as a whole. This autonomy transfer from the social group to "society" is manifest in the new general legal conceptions, restricting the autonomy of both individuals and groups in the name of society and its law. The Colonial and State Courts played a prominent role in this process, for they transformed the, probably statistically

dominant, contents of concrete decisions made in the exercise of *kaum* autonomy into a general legal rule ignoring *kaum* autonomy. The economic, moral, and political factors which influenced the decision making interaction of the *kaum* members in concrete cases to an increasing extent produced the same concrete result: the recognition of individual autonomy in concrete cases. These results were given general and prescriptive character by the courts. Two factors were decisive for this transformation:

1. According to the theory of law to which the judges adhered, law was or should be either the recognition of normative principles reflected in statistically preponderant behaviour (in the sense of the theory of customary law), or the recognition of normative principles embodied in the decisions of the courts and village judges in concrete cases (in the sense of Ter Haar's *beslissingenleer*). In both alternatives this thinking involves the transformation of the concrete results into a general rule: either directly as in Ter Haar's decision theory, or indirectly via the recognition of the statistical behavioural rule as in the theory of customary law. The essentially different doctrine of law and decision making in *adat* which stresses the uniqueness of each decision as being dependent upon the concrete situation, was thereby ignored (compare F.D. Holleman 1938).

2. The *adat* process of reaching and legitimating decisions through the adherence to procedural conceptions and the demand for unanimity *cannot* be reproduced in the State Courts. The courts cannot legitimate their decisions in terms of an interaction process but must do so by reference to conceptions outside this process. According to the judges' theory of law and decision making, such "external" conceptions must necessarily be the general law.

The most obvious change in the law of property relationships is the general prescription that a man's *harato pancaharian* in intestate inheritance falls to his children. Yet this change is not as drastic as it is often made to be. For one thing, the rule only operates within the relationship between father and children, whereas in all other cases of *harato pancaharian* inheritance the rules of matrilineal inheritance still apply; for another, the patrifiliative relationship upon which the new intestate inheritance rule was based, did not have to be "invented" for diachronic property transfers. In Minangkabau *adat*, a man's *harato pancaharian could* be diachronically transferred along the patrifiliative link, if he wished to do so *and* if his *kaum/jurai* members agreed. The

man's matrikin had, based upon common group membership, an "expectancy" to inherit their *mamak*'s *harato pancaharian*. Their expectancy was manifest in their power to restrict his autonomy to dispose diachronically over his *harato pancaharian*, whether the transfer occurred during his lifetime or after his death. When this power was gradually abolished and his unrestricted autonomy became recognized, also this expectancy vanished. If, as Willinck writes, in former times the children could never receive more *harato pancaharian* after their father's death than during his lifetime, now the reverse was true. What the *kamanakan* could not assert during their *mamak*'s lifetime, they could not demand after his death either. *Harato pancaharian* intended for, used or kept in the house of the children, "remained" there and "fell to" the children after their father's death. Moreover, a man always had and still has the option to "intend" *harato pancaharian* for his *kamanakan*, e.g. through pawning it in "the house of the *kamanakan*", in which case it still falls to them after his death. This "falling of *harato pancaharian* to the children" was then called inheritance.

Although data on the problem are nearly non-existent, I think that the "falling to the children" was only slowly identified with the technical western legal conception of "intestate inheritance". Remember that in former times the *harato pancaharian* received by the children were not incumbered by the *pancaharian* holder's debts. This seems to have changed, too, for children tend to be held responsible for their father's private debts in contemporary Minangkabau. But the uncertainty which still surrounds the inheritance of debts in contemporary Minangkabau indicates that the filial inheritance of *harato pancaharian* is still somewhat different from that of the *kamanakan* in former times, when the latter inheriting *harato pancaharian* were fully liable for the *pancaharian* holder's private debts. The recent case described earlier (Chapter 4: 184) in which a debt case was construed as a pawning case by the court, shows that there may well be different attitudes towards *pancaharian activa* or *passiva*.

I would therefore say that the conceptualization of the childrens' inheritance right in their father's *harato pancaharian* presents a systematic development of the old law recognizing the individual's autonomy over his *harato pancaharian* and of the use made of this autonomy under the prevailing socio-economic conditions, rather than a radical break of the *adat* conceptions regarding intestate inheritance.

B. THE MINANGKABAU SOCIAL SYSTEM AND THE MAINTENANCE OF PROPERTY RELATIONSHIPS THROUGH TIME

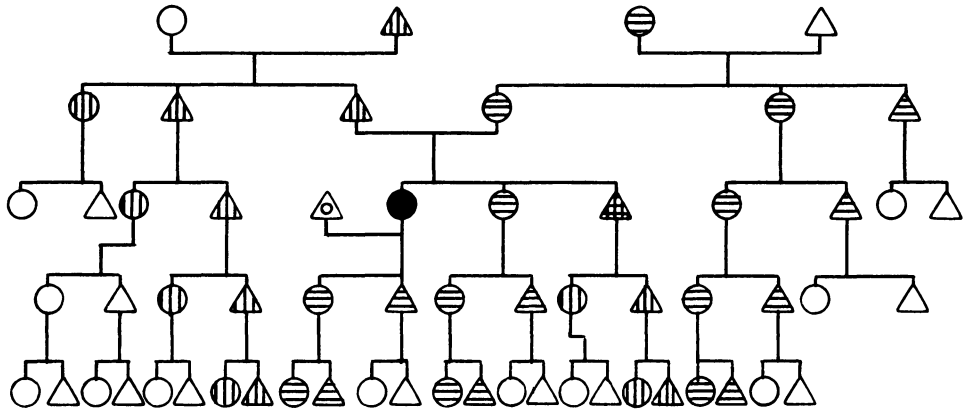
I shall now try to consider the system of property relationships in general as part of the social organization of the *nagari*, and give my interpretation of the changes which have occurred in the more recent past. Some previous interpretations of social change in Minangkabau shall be briefly discussed first.

For most authors commenting upon social change in Minangkabau, the change in the inheritance law concerning the *harato pancaharian* has been the central topic. The development of intestate *pancaharian* inheritance "from the *kamanakan* to the children" was regarded as indicative of a radical change in the Minangkabau family and social system in general. Already in 1909, Van Vollenhoven mentioned closer bonds between father and children (1918: 271), echoed by Joustra, who spoke of a growing inheritance law "in the father's line" (1923: 127). Later authors observed a change from matrilineality to patrilineality (Maretin 1961: 193). Although these statements do not, of course, embody the complete analyses which these authors have given, the label which they have put upon the change in Minangkabau is highly misleading, superficial, and not supported by ethnographic facts.

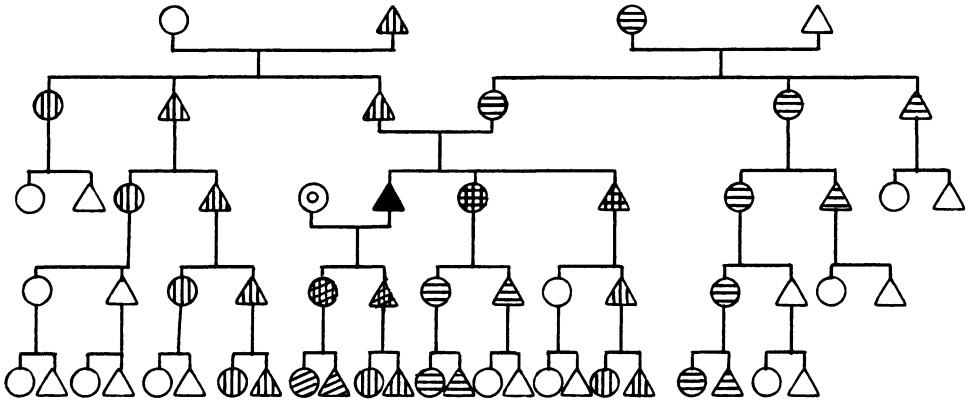
For the sake of greater clarity, I present two diagrams (p. 374), showing the matrilineal, patrilineal, and bilateral connections between a deceased female/male and those persons who can become actual heirs to their property according to the contemporary inheritance system. Already a brief glance at the tables shows that statements about patrilineal or bilateral inheritance *as a new system* are completely unfounded. The table for the inheritance from a deceased female indicates that, for females, there has been no change at all, and references to bilateral or patrilineal inheritance are obviously nonsensical in this respect. They reveal not only a viricentric view of change, but do not even hold true for male deceaseds either. A "patriline" is only used in the descending direction for inheritance between a male ego and his children. The classical patrilineal heirs, BS, FB, FBS, etc., are completely excluded in the Minangkabau system. Equally marked is the difference between actual inheritance and assumed patrilineal or bilateral inheritance on the -2 generation level. The designated patrilineal heirs would be the SS and SD or, bilaterally, SS, SD, DD, DS; in fact, only the DS and DD can

Table of Lineal Inheritance Systems

Deceased Female



Deceased Male





Potential heirs in an assumed patrilineal system

Potential heirs according to Minangkabau *adat*

"New heirs" according to Minangkabau *adat*

Potential heirs in an assumed bilateral system
(in addition to the three categories mentioned above)

Deceased

Spouse

become actual heirs in Minangkabau. The only thing one can say is that, within an otherwise unchanged matrilineal system of inheritance, the patrifiliative link in the descending direction is now also used for intestate inheritance.

This misinterpretation of the development in the *adat* of inheritance can hardly be explained by the authors' superficial use of the concept of lineality. In my view, it rather reflects most authors' ideological bias. Many interpretations of the Minangkabau social system and such change as could be observed appear to be given by persons opposed to the *adat* system or who looked upon it as something "unnatural". Within Minangkabau, such interpretations were mostly given by experts with a strong Islamic background. Most foreigners adhered to conventional anthropological or Marxist evolutionary ideas. All were convinced that after the unnatural state of matriarchal and heathen Minangkabau *adat* the patriarchal, Islamic, or capitalistic stage would follow. These biases become manifest, on the one hand, in a dramatization of the matrilineal principle as more or less the only one which structured "old" Minangkabau society; on the other hand in an equally strong dramatization of any change or deviance from this hypothesized matriliny. Any change from pure matriliny was interpreted as a change towards the desired and expected direction of an Islamic, bilateral modern, or capitalist society. This should be stressed, because much of the "description" given by some authors prove to be ideologically biased when the original sources, upon which these descriptions rest, are examined. Among the non-Indonesian writers, Maretin offers the most obvious example, and his descriptions have already been commented upon in other parts of this study.[3] In Minangkabau it was the persons with the closest attachment to Islam who put the greatest emphasis upon the change in the inheritance law. They held that in former times, the whole *pancaharian* was inherited by the *kamanakan*, whereas now it is inherited by the children in accordance with Islamic law. The opposite attitude, namely to play down any changes in the *adat* system, can be observed among the *adat*-"purists". So R.M. Dt. Rajo Panghulu, one of the most reknown contemporary *adat* experts who is regarded as an adherent of "pure" *adat*, writes that it was the law in Minangkabau that *harato pancaharian* should be inherited by the children (1971: 51).[4]

The truth probably lies somewhere between these extremes. In terms of *descent* and *lineality* the change in *pancaharian* inheritance is certainly not as drastic as it has been made out to be. Many of the apparent elements

of change are in fact integral parts of the traditional social system, as has also been stressed by a few writers. So the traditional system recognized bilateral kinship (a point particularly stressed by Djojodigoeno 1968: 262 ff.), but these ties were not loaded with social functions. The patrifiliative link was always an integral part of the Minangkabau social system, and it could be used for property transfers - similar to matrifiliative links being commonplace in patrilineal societies. Korn (1941) and Fischer (1964) in particular stressed the importance of the father-children/*bako-anak pisang* relationship as part of the social organization, and cautioned against the superficial interpretation in terms of "pure" matriliny and "exceptions". De Josselin de Jong's interpretation of the Minangkabau social system as being based upon a system of double unilineal descent (1951), is exceptional insofar as it does not subscribe to the naive notion of a formerly exclusively matrilineal Minangkabau, and in that it does not treat the "deviations" from the matriliny as "changes". But instead of concentrating upon the bilateral kinship elements and the patrifiliative link, it postulates the existence of a patri*line*, for which the evidence adduced remains unconvincing.[5]

Most of the changes which have occurred during the last 150 years could in fact be absorbed by the traditional social system. An analysis of how these changes were actually absorbed reveals the main factors which permitted matriliny to survive in Minangkabau in spite of its frequent obituaries.

The Minangkabau social system is upheld through time by the principle of matrilineal descent, which embodies the Minangkabau notion of social continuity within the territorial framework of the *nagari*. Social relationships which are not in accordance with this principle are skilfully and consciously adapted. Those contributing to continuity are assimilated with matrilineal descent and expressed in descent terminology: hence, the incorporation of group members not related by genealogical descent, as well as permanent inter-group relationships like the *hindu* system. The other relationships not in accordance with matrilineal descent, i.e. affinal and patrifiliative relationships, are recognized, but are only of a temporary nature. Though they are an integral part of the social organization of the living persons, they are not used to structure the system in continuity. Marriage establishes only temporary affinal bonds, which usually are very important for the persons concerned, but unimportant for the continuity of the social organization.

This continuity is structured in terms of descent, and other permanent bonds between groups are created by common exogamy or "non-marriage". The filiative relationships between the *bako* and its *anak pisang*, though highly valued and functionally relevant, are also temporary, for they end with the death of the individual *anak pisang*. For the temporary existence of the individuals a larger set of relationships is therefore provided. They are not completely bound by descent principles; on the contrary, within the unchanging framework of continuity, the individuals are granted a certain amount of freedom.

This parallel existence of permanence in terms of matrilineal *pusako* continuity and temporary non-matrilineal relationships, also obtained in the field of property relationships. In continuity, all property was, or was destined to become, *harato pusako turun temurun*. But temporarily, property could be transferred across the borders of the *pusako* holding groups. *Harato pusako* could be pawned, but the right to redeem could never be abrogated. The *bako* could allot property to its *anak pisang*, but after the *anak pisang*'s death the property reverted to the *bako*. A person's *harato pancaharian* could be given to his children, crossing the line of his matrilineal property holding group, but once it had crossed the line, it again became and remained *harato pusako* in matrilineal continuity.

The recent change in the inheritance law from the *kamanakan* to the children does not, as such, greatly affect the system, for the use of patrifiliative links for property transfers is by no means new. What has happened is that the functional value of the patrifiliative link has increased, but this only concerns the temporary relationship between a father and his children. Whether *harato pancaharian* becomes *harato pusako* in the man's *jurai* or in his children's *jurai*, is irrelevant for the system; what matters is *that* it becomes *harato pusako*, and as such follows the continuity outlined by matrilineal *pusako* inheritance after its short patrifiliative interlude.

The same holds true more or less for the changes which, for economic reasons, have occurred in the residential pattern and in the individualization of the residential units. No matter for whom a man might work, or where he might spend most of his time, he was and is attached to a group in which matrilineal continuity is represented by women. As Tanner has stated, the new arrangement of the men's residence and economic activities in the *nagari* has led to a shift *within* the matrilineal system, but has not affected the matrilineal system as such

(1971: 34). Whereas in former times men were more attached to their own matrilineal groups, in contemporary Minangkabau they are increasingly more closely attached to their wives' matrilineal groups. The new forms of individualized residence of conjugal families in small houses, which is generally thought to be detrimental to a matrilineal system, has supported rather than weakened matriliny in Minangkabau, for it has eliminated the only alternative for uxorilocal residence. Residence is rooted in *pusako* property and *adat*, and since both still prevail in the whole *nagari*, there is practically no chance to establish neolocal residence in the *nagari*. I fully agree with Tanner who speaks of an even increasing matrifocality in the Minangkabau *nagari* (1971: 34). To some extent this even fulfils part of the modern man's wishes. He wants to live together with wife and children, he wants to work with and for them, and he wants to emancipate himself from the bonds of his *kaum* membership. But the more he does so, the more he lives and works with his wife on his wife's *harato pusako*, the more he also contributes to the maintenance of the *pusako* system, and the less he is a danger to it or to his sisters through whom the *pusako* is continued. The medium of economic emancipation, money, and its investment for the benefit of women (whether wives or sisters) is absorbed in the *pusako* system. Those men who really want to emancipate themselves by controlling property and money which is not at once absorbed in the *pusako* system and who want to establish households whose residence is not determined by *pusako* and *adat*, leave the *nagari* to seek some freedom in the towns or in other areas of Indonesia. The Minangkabau tradition of voluntary temporary emigration (*merantau*) has gradually assumed a new quality. In former times, *merantau* would bridge only that period in a Minangkabau man's life in which he had not yet a stable position in his social system. In contemporary Minangkabau, *merantau* increasingly provides the outlet for those Minangkabau who do not wish to conform at all to the *pusako* system in the *nagari* (cf. Naim 1974). The conflict thus is not carried out within the *nagari* but is exported. As more men leave the *nagari*, so the importance and dominance of women increase within it, while the chances of Minangkabau men ever breaking the *pusako* system of property and residence in the *nagari* get even more slender. We have seen that in contemporary CKL even the staunchest opponents of the *pusako* system, the leading Islamic functionaries who are economically largely independent of their wives' and their own *harato pusako*, have not yet had the chance of evading residence on their wives' *harato pusako*.

It is property which is the main carrier of the *pusako* ideology. That the maintenance of the *pusako* ideology is possible at all, largely depends on the natural characteristic of that property. Basically, it is land and not consumable. It would be difficult to maintain such a system on the basis of consumer goods. But the natural characteristics only facilitate the continuous existence of the *pusako* system; the decisive factor is the socio-legal definition of the *pusako* land as something essentially immobile (i.e. inalienable) and inconsumable. The example of western societies shows that land can easily be transformed into a highly mobile commodity which is socially "consumable"; in other societies, however, property objects which seem movable and consumable to us, like cattle, may be transformed into virtually inconsumable and legally immobile property which greatly contributes to the continuity of social groups.[6]

In Minangkabau we can observe an important change in this respect. The monetarization and consequent individualization of property relationships, the increasing evaluation of property relationships in terms of money, has been mentioned as the most important factor of change. I agree with Schrieke, Maretin, and Kahn that these changes in the economic system will be the most decisive factors which, in the end, may contribute to the destruction of the *pusako* system. This has not yet occurred, however. Until now, the system has been strong enough to absorb most of the impact which the monetarization of property relationships has had. So far, it has only become effective on the temporary level. The *pusako* status of the property objects to which the monetarized relationships pertain is maintained through time, and the individualized relationships themselves become *harato pusako* through time. New groups come into existence which hold the formerly individualized property relationship as *harato pusako turun temurun*, and within which the traditional mechanisms of property allocation and distribution are used. In some respects the increased monetarization has even supported the *pusako* system by the increase of pawnings, redemptions and transfers of pawnings, and the *pusako* status of the property and the rules of matrilineal *pusako* inheritance are thus regularly restated. Temporary games with money and land can easily be played within a matrilineal system.

The *adat pusako* system is, of course, not only a system of property relationships but also one of socio-political authority. Although the actual authority of the heads of the matrilineally structured groups

has decreased heavily, the little authority still left greatly supports the system. In the field of property relationships, the lineage head's authority has been weakened by the growing dissociation of the rights to use and to exploit property from the individual's status as a group member. Yet this loosening of authority has in part been counteracted by the conception of the "*harato pusako tinggi* of the *kaum* as represented by the *mamak kepala waris*", which was and is systematically enforced in the Colonial and Indonesian State Courts. If authority over persons is considered in isolation, the authority of the *mamak* and *panghulu* has decreased, too, by the superimposition of the colonial/national system of local government. But these systems of authority, though skilfully manipulated by the Minangkabau, have remained a foreign element through their lack of social relevance.As regards authority relationships which are both social *and* political, there is no alternative (yet) for the *adat* system. In the domestic and property domain, authority still is too much bound to *pusako*. Men as fathers can exercise some authority within their domestic household, but they have no chance of building up a larger group of persons over whom they could exercise authority. In the political domain, all efforts to bind political representation and government to political party relationships have more or less failed, which probably is also due to the fact that the Central Government does not permit really free political party association. It is symptomatic that the DPRN (*Dewan Perwakilan Rakyat Negeri*), the elective village government councils, have recently been abolished by the Provincial Government for their ineffectiveness. Recourse is made again to a *Kerapatan Adat*, in which the *Ninik Mamak*, the *adat* lineage elders, play a dominant role. This new prestige given to the *adat* functionaries makes their position more attractive again. It may now be easier to fill the many vacant *panghulu*ships, and to bolster the declining authority of *adat* functionaries in general.

With the analysis of the factors which maintain the system of the *adat pusako* I have also indicated those aspects in which change, or continuing change, may prove to be fateful for it. The analysis provides a good frame of reference in which the development trends outlined in Chapters 5 and 6 can be properly assessed.

In the last resort, it is the conception of the *pusako* continuity of property relationships which gives the Minangkabau social system its distinctive character. All actual property transfers are related to the

notion of *pusako* continuity and thereby assume a temporary quality. The notion of continuity "infuses" these temporary affairs with the past and future. The inalienability of residual property relationships through time, and the rule that all property must become *harato pusako* through time, are the basic functional safeguards of the system. In contemporary Minangkabau, there is no evidence that the idea of *matrilineal* continuity is to be replaced by any other conception of *lineal* continuity. But there is sufficient evidence that the conception of continuity itself will disappear. It is probable that, if the notion of *pusako* continuity fades away, the hitherto temporary holding of property, and the temporary character of property transfers, will gradually assume a different quality. They will lose their temporary character in relation to predefined continuity. The presents in which they occur will become discrete periods of time which follow each other successively and the sum of which constitutes "continuity".

There are definite signs which indicate this development. The conception of *pusako*-continuity forms part of the knowledge and consciousness of the Minangkabau. As such, it is to a great extent embodied in language. In Chapter 6 I have shown how language, the conceptual system in which the Minangkabau think and speak about their property relationships, changes. The diachronic dimension is gradually eliminated from the conceptional system, which finds its culmination in the transformation of the *harato* categories into the *hak milik* category. The *hak milik* status of property objects is not affected by time or property transfers, synchronic or diachronic. Nothing in the *hak milik* conception transcends the holding and the inheritance of property. Looked at retrospectively, it is and was *hak milik* regardless of the way it had been acquired. Prospectively, it will keep its legal status also when inherited. *Hak milik* holding and *hak milik* inheritance will be successively repeated in the same way through time, and continuity of property holding can only be inferred from such successions.

The tendency to employ *hak milik* for *harato* is most marked when people refer to *harato pancaharian*. This leads to a conception in which *harato pancaharian* is equated with *hak milik*, and in which the property relationship no longer becomes a *harato pusako* relationship but keeps its abstract legal status through time. As could be illustrated by a court judgement (p. 345 ff.), there is a tendency to make this explicit and to abolish the *pusako*ization rule for *harato pancaharian* as a matter of

law and to ban it from conceptual objectifications. Thus, at least as regards *harato pancaharian*, the future will have no place in the thinking about property. This will not only have the effect that no new *harato pusako* will be created, it will also gradually diminish existing *harato pusako* through its *pancaharian*ization. We could see that, through the monetarization and individualization of use-rights, *pancaharian*ized relationships to *pusako* property are increasingly divorced from the matrilineal system of inheritance and *pusako* continuity. There is also a tendency to extend the use of *hak milik* to *harato pusako* if the latter is individualized through monetarization or even through intra-*jurai* inheritance (see p. 347 f.). The rights to use *harato pusako* are reified in the concept of *hak milik*. As a consequence, the rights themselves - and not the land to which they pertain - tend to be treated as things. Through this mechanism the legitimation of holding and using property is increasingly dissociated from the natural characteristics of the property as well as from its original acquisition and previous transfers. In short, the past is being eliminated from property relationships.

The weakening of *adat* socio-political authority likewise has important consequences for this development, for the continuity of *pusako* is also expressed in the socio-political control over property. *Pusako* property was held in common by a group defined as "one" within the wider socio-political domain. The distributions and allocations of use-rights in such a group were temporary in relation to the permanent division of the residual "group-*pusako*" relationship, a division which involved property and political group alike. Such permanent divisions of the group-*pusako* relationship have lost in importance with the decline of *pusako*-based authority and the disturbance of the traditional mechanisms of group splitting and formation of new groups (see p. 78). Seen against the decreasing relevance of permanent property divisions, the formerly temporary distributions and allocations appear to be less temporary, and the holding of distributed *pusako* property will increasingly be regarded as more individualistic and permanent. The old allocations and distributions turn out to become final divisions, and the provisional character of these property relationships tends to develop into a residual one.

As the notion of *pusako* continuity fades away from the language and consciousness of the Minangkabau, the present in which they live gains in importance, and with it, all activities which occur in that present.

Here, individuals hold individualized property relationships. Rights to land are highly mobile. Even if they are still considered to be of a temporary nature only, the effectiveness of transfers often transcends the lifetime of individual persons. Individualized property relationships are inherited by the children, and if the individualized character of the relationships can be maintained through time, they will later be inherited by their children, too. If the Minangkabau were to consider only this when conceptualizing their system of property relationships, they probably would not retain a system like *adat pusako*. But the notion of *pusako* continuity is still strong and as yet absorbs an ever expanding present. A new notion of continuity could only be derived from the present, and this would require a present similar to the past and the future. It would require that the mechanisms maintaining the continuity of property relationships in the present were similar to the ones used in the past and expected to be used in the future. Before a notion of continuity can be established which is different from the old one and more in line with the activities in contemporary Minangkabau, the association of property holding and inheritance with the past and the future must be completely abolished first. As we have seen, the Minangkabau are well on their way to doing so and to reducing the past and the future in favour of the present - at least as far as the system of property relationships is concerned. But we have also seen that many factors which on the one hand weaken the *pusako* system, reinforce it again on the other. If left to further evolution, it may still have a long existence in Minangkabau. Those who are opposed to it probably rightly believe that a revolution would be necessary to cut short its life (HAMKA 1946).

C. CONCLUDING NOTE ON THE APPROACH EMPLOYED

Finally, I briefly wish to revisit some of my basic assumptions and hypotheses in order to evaluate them in the light of the empirical data and analyses which I have presented.

As a whole, my study illustrates an important lesson in anthropological theory, which is neither new nor generally taken to heart. The presentation of the Minangkabau material shows that it would be naive to assume that systems of objectified conceptions, the *adat pusako* in particular, would be an adequate representation of what really happens

in property and inheritance affairs. Such assumptions would be particularly unwarranted, if the systems were to be forced into the straightjacket of a structural-functional model in which the internal contradictions were smoothed away and the "gaps of uncertainty", left open for the exercise of society's members' autonomy, were filled. The disregard with which British social anthropologists like Radcliffe-Brown and Evans-Pritchard treated the actual behaviour of society's members was based upon the assumption that the structure which they described was, essentially, a representation of actual behaviour. Conduct not conforming to this patterned set of roles and relationships was dismissed as exceptional or deviant.[7] During the last two decades several anthropologists have demonstrated that this assumption cannot be upheld. They stressed that "the ideal order tends to be a constant which is reinterpreted to fit the changing circumstances of economic and political fact, ... but that the latter, the facts of empirical reality, are, in every variation, constrained by the ideas which people hold about what is supposed to be the case" (Leach 1954, 1961 b: 9). They focussed attention on the fact that people could, through such reinterpretations, substantially change the ideal order. Other authors have stressed the superficiality of the structural-functionalist assumptions as regards the nature of rules and structures, demonstrating that society's structures and general legal conceptions rarely, if ever, form a logically consistent system nor are prescriptive in character only. More attention was consequently given to the study of social processes in which people were shown to manipulate existing conceptions and to create their own innovations. A variety of conceptual frameworks was designed to analyse such processes, like case-method, situational analysis, processual analysis, network analysis, etc.[8] The comparison of the Minangkabau systems of objectified conceptions given in Chapter 4, and the stories told in the 5th Chapter, reemphasize the need of such studies if social organization is to be described comprehensively.

But my own study illustrates, too, that social organization cannot be treated as a system of overt human activities only, and that the nature of a social system cannot simply be inferred from the human conduct observed in concrete cases. As Leach already stressed in his *Political Systems of Highland Burma* (1954) and as has been outlined systematically by Berger and Luckmann (1967), human behaviour is only understandable in terms of the body of objectified conceptions which

provides the means by which the actors explain and justify their actions. If we observe 100 cases where children inherit their parents' *harato pancaharian* in Minangkabau, this does not make the inheritance system for *harato pancaharian* bilateral. Such bilaterality would only exist in the anthropologist's head. The generalization of concrete behaviour and its projection into structures or general legal conceptions which lies at the root of action theories in sociology and of the case-methods in legal anthropology, is no less misleading and distorting than was the former structuralist-functionalist assumption. For it creates structures or general legal conceptions where there are none, and induces the anthropologist to substitute the people's general system by his own interpretations of concrete cases. The greater emphasis which in recent studies has been laid upon the diachronic aspect of social processes is an important step towards improving their analysis. But the study of "diachronic micro-sociology" (Turner 1957: 328), too, only makes sense in relation to the system of objectified conceptions and the notions of time which are embodied therein.

The anthropologist must take a step back, and look at both the actual behaviour of society's members and the system of objectified conceptions. He must try to assess how the system of conceptions influences human activity and how human activity influences the conceptional system through historical time. He is in the position which Gluckman, with reference to legal anthropology, has characterized with the words: "We are caught in a circle, in which law, it is true, can only be understood through cases - but cases can be understood only through law, and both have to be set in the matrix of social process" (1973 b: 622).

All reality is subject to social definition, and all social definition of reality has its legal aspect. This holds true for all domains of social organization which have been defined with reference to universal problems, and it holds equally true for the three factors which constitute the field in which all human societies exist: the psychobiological character of man, the temporal continuum, and the environment. The Minangkabau system of property relationships and the changes which have occurred therein illustrate this point in a manner which is not very exotic. Let me briefly clarify the point in comparison with the conclusions which Leach has drawn in a study dealing with a situation similar to Minangkabau. In *Pul Eliya* (1961 b) he stressed that the

ecological situation, and the use made of it for production, are factors which determine what people will do, and that the constraints of economics are prior to morality and law (1961 b: 9). I should rather say that these factors determine *that* people do something about them; they pose problems to be solved by social definition and activity. *What* people do, however, is not so determined. It is true, that "water evaporates and flows downhill" and that land cannot be extended in space (Leach 1961 b: 9), but the immovable character of land can be accommodated by creating socio-legal mobility of property relationships to it. Besides, the constraints of economics are part of the social definition of reality, too. To some extent, they exist in the form of law and morality, although they may be "prior" to the law and morality in other domains of social organization.

Though Leach's description and analysis rests upon assumptions which are basically similar to mine, I find irritating his insistence that the social structure he describes for Pul Eliya is, in principle, a statistical notion, and that Pul Eliya is a society in which locality and not descent forms the basis of corporate grouping (1961 b: 300 f.). For this would imply that locality, in contrast to kinship, would not be a subject for social definition and legal conceptions. That locality, in its abstract sense, is the basis of the continuity of human societies, is a commonplace which holds true as long as people live on earth. It is always socially defined locality, in terms of property relationships and residence, which are basic to continuity. The character of these social definitions can no more be inferred from the mere fact that people live on the land - the Minangkabau residence rules here provide a good example to illustrate this point - than it can be inferred from the fact that a man begets children, that he will be treated as a father in his society. Though Leach later speaks of "the environmental context as a social construct" (1961 b: 306), he does not incorporate this notion into his analysis, but rather suggests an alternative between the legally/morally defined kinship system and the natural continuity of the environmental layout and mode of economic production. His analysis does not make it sufficiently clear that the "alternative" here is between two aspects and domains of the objectified system of social reality and its legal dimension.[9]

What Leach actually means, of course, is that locality, conceived in terms of property relationships to land, is of much greater importance

for the continuity of Pul Eliya society than is Pul Eliya kinship. But his conclusion, "that kinship systems have no 'reality' at all except in relation to land and property" and that "what anthropologists call kinship structures is just a way of talking about property relations" (Leach 1961 b: 305), does not help to clarify the matter. It rather conceals the specific problems about which we would want to make generalizations. For one thing, it confuses descent/kinship as an ideology of identities (Moore 1969) with the legal consequences which can be attached to this ideology. As Moore has pointed out in her brilliant analysis of "Descent and Legal Position" among the Lango (1969: 375 ff.), and as the Minangkabau data also illustrate, such a distinction is crucial for the understanding of social systems in which descent/kinship is a dominant element. Secondly, it is a misleading restatement of Maine's *dictum* that primitive law does not sharply distinguish between the law of persons and the law of things. In a most general and superficial way Leach's aphorism would seem to hold true for both Pul Eliya and Minangkabau; yet there are important differences which are concealed by it. In both societies there is more than one mechanism of incorporation into the socio-political group, as a result of which kinship terms and group membership are extended to persons who are not related to the core-members of the group who are inter-related by common descent. In Minangkabau, the incorporation into the group by formal adoption is a precondition for the acquisition of property rights. In Pul Eliya rather the contrary is the case, the critical test of membership in the "descent-group" being whether or not a person can assert a claim to any kind of property right (Leach 1961 b: 303). This presupposes that a person can acquire such property rights by means other than his prior group membership. These means are indeed provided in Pul Eliya through the mechanisms of sale and outright gift, and this probably led to the dissociation of descent and property holding and to a relatively greater importance of property law as distinct from the legal consequences of descent. So in Pul Eliya "property is a way of talking about kinship", rather than *vice versa*. But note the difference with Minangkabau. Here, too, kinship and property are increasingly divorced. But whereas property can be acquired by means other than those provided by the legal consequences attached to kinship, kinship cannot be acquired by establishing rights to property.

The relation between kinship and property is also crucial if the maintenance of kin groups and of property relationships through time is considered. I think that the approach proposed towards this problem in the first chapter is justified by its practical application to the Minangkabau system of property relationships. I do not want to repeat myself unnecessarily here, but will only indicate the difficulties into which we would have run if the alternative approach, as exemplified by Goody, had been followed.

When speaking of inheritance in the widest sense, the definitional restriction of the category to property transfers *after* the death of a property holder has to be given up. This much was indicated by the ethnographic data referred to in Chapter 1 and in most social and legal anthropological writing. So inevitably, property transfers made during the lifetime of the property holder have to be associated with the "inheritance in its widest meaning" or, as I would have it, with "diachronic transfers". Admittedly, this primarily concerns donations to persons who would, after the property holder's death, receive this property as legally prescribed heirs anyway, the donations in the holder-heir situation (Goody). Yet if we were to follow Goody's suggestion and only treat donations from holder to prospective heirs as inheritance in its widest sense, where would we stand in Minangkabau and how could we analyze the change in Minangkabau inheritance law?

Hibah transfers of *harato pancaharian* from a father to his children at the time when the *kamanakan* still inherited such property intestately, would not be subsumed under Goody's "inheritance" but under "alienation". Yet a) the transfer would only be effective after the father's death, b) the property would be held by the children during their whole lifetime, and c) we can safely assume that such transfers were made "*propter mortem*" by Minangkabau men. It is true that such transfers *are* an alienation of property from the corporate group, but they also are clearly diachronic or inheritance-like in character. Important as the distinction between in-group and out-group property transfers is, it should not be the decisive element in the definition of "inheritance" but be subordinate to the synchronic/diachronic distinction. Inheritance within the group, donations in the holder-heir situation, and donations and testamentary dispositions to non-intestate heirs (to non-group members) are, of course, different kinds of property transfers and should be distinguished, but they are all diachronic in character and should therefore be distinguished as sub-categories of the wider category of

diachronic transfers.

This approach is even more plausible if the change in Minangkabau *pancaharian* inheritance law is considered. The contemporary intestate inheritance of *harato pancaharian* by a man's children should be included in the anthropological category of inheritance, probably no one would contradict this. And, in terms of Goody's argument, the *hibah* to the children in contemporary Minangkabau would have to be included as a donation in the holder-heir situation. Yet, in Goody's conception, these transfers would be "alienations" from the corporate group?! And how should we categorize a *hibah* transfer of *pancaharian* property to the *kamanakan* in contemporary Minangkabau: as "inheritance", because it is a transfer to members of the matrilineal descent group? Or as "alienation", since it is an alienation of property from the new legal heirs? Clearly, Goody's categories fail us here. Through the implicit identification of unilineal descent with inheritance (which is in contrast with Goody's explicitly stated intention, see 1962: 316), it cannot deal adequately with situations where the one changes differently from the other. As the Minangkabau example illustrates, the change in intestate *pancaharian* inheritance law, though changing the functional relevance of the matrilineal descent principle and of the patrifiliative relationship, has not changed the latter as such: it has neither changed the composition of the Minangkabau matrilineal descent groups nor added new persons to a man's kin. Is it therefore not much more reasonable to define "inheritance" by reference to the character of a property transfer (diachronic, no counter-prestation) than by focussing on the beneficiaries?

It should be noted that the same objections would hold true if a less rigid approach than Goody's were followed and the "corporate group" were to be replaced by "kin" or "legal intestate heirs" in general. Again, it cannot be denied that all legal systems predefine a set of persons as intestate heirs, usually selecting a person's kin (by descent, filiation, marriage) as beneficiaries of his property, and that donations or testamentary dispositions to non-kin are legally and emotionally treated differently from those made for the benefit of kin or legal heirs. But there would again be the identification of inheritance with transfers to the legal heirs. In other words, such a conception of inheritance is implicitly based upon a predefined system of prescriptive inheritance law. It would only embrace the restriction of society's members' autonomy in property affairs. It would ignore that even in the most traditional

societies society's members have some legally recognized autonomy to determine by whom their property is to be held after their death; or,if it is transferred during their lifetime, who may keep it after their death. Any change in prescriptive inheritance law would directly affect such a concept of inheritance. Consequently, the concept would not be suitable as an analytical framework for dealing with culturally and historically variable inheritance laws and practices.

This brings me to what I believe to be the primary question in the study of social organization and its legal dimension. It is not *how* the social system, in its various domains, is structured, but *how far* or *to what degree* it is structured at all; or conversely, to what extent society's members, be they individuals or groups, are free to exercise their autonomy. My study of Minangkabau property relationships has, I hope, demonstrated that such an approach has a larger heuristic and analytical value than an approach centering upon institutions as units of study and comparison.

NOTES

NOTES TO CHAPTER ONE

1 In this introduction I can only give a brief and partly rather superficial account of these assumptions. Basically, I have tried to apply the methodological ideas of Leach (1954, 1961 a) and Goldschmidt (1966) and the conceptualization of social reality as outlined by Berger and Luckmann (1967) to the study of property, inheritance, and law. A more detailed discussion of the ideas underlying Berger and Luckmann's reformulation of the sociology of knowledge and of alternative methodological approaches would have been far beyond the scope of this study.

2 Moore has pointed out that the problem can partly be solved by using "neutral" terms which do not or not only have a legal meaning in western societies, 1969: 342. The reader interested in the history of metaphorical polemics should know that the remark which had been made with respect to Gluckman's work - "Gluckman's work has been characterized as analogous to that of a linguist who attempts comparison by jamming Barotse grammar into Roman Dutch categories" (Nader 1965: 11), and which Gluckman (1969: 352 FN 5) traced to Vansina's statement: "Kuba law is thus different from any European legal system, and to try to define it in terms of European legal concepts is like trying to fit a Bantu grammar into a Latin model of grammatical categories (1965: 17)," - had also already been made by Van Vollenhoven in 1909, who stated "... that it would be a strange sort of nonsense if one pressed the Sundanese language into a Latin grammar" (1909: 59).

3 For law: Radin 1938: 1145, Frank 1970: VII, Llewellyn 1930: 432; for marriage: Leach 1961 a: 105.

4 Goody (1962: 285 f.) gives an overview concerning the ways lawyers and anthropologists have arranged this bundle. For the discussion on marriage see Gough 1952, 1959, Leach 1961 a (1955) and Goldschmidt 1966.

5 Thus Goldschmidt, when delineating the social function which is to replace the institution of marriage, has to admit: "Since we do not start with institutions but rather with functions, we must develop out of our theoretical presuppositions those functions which generally revolve around what anthropologists intuitively call marriage" (1966: 93).

6 Semi-autonomous group here would closely correspond to what Van Vollenhoven, and following him most Dutch scholars of *adat* law, have called "legal communities" (*rechtsgemeenschappen*) and what was later discussed as "corporate groups" in social anthropology, see Smith 1975, Fortes 1970 a: 276 ff.

7 For an overview of the terminology see Mitchell 1969 and Barnes 1969. On quasi-groups see Mayer 1966.

8 Compare Bohannan 1967a:46 f. In contrast to Bohannan, however, procedural (or adjectival) rules here do not only refer to institutions which settle disputes, but to institutions in general.

9 This is, to a large extent, also the Minangkabau theory of decision making, see F. v. Benda-Beckmann 1977. On the *musyawarah* (decision by common deliberation) principle in the Indonesian societies in general,compare Koesnoe 1969 and Van den Steenhoven 1973.

10 Only a few writers define law as internalized conceptions, for instance Elias, who speaks of "the body of rules which are recognized as obligatory by its (the community's) members" (1956: 55).

11 Compare note 3.

12 Twining (1973: 561 ff.) gives an interesting account of Llewellyn's and Hoebel's opinions on this problem. In the "Theory of Investigation", outlined in *The Cheyenne Way*, the question of whether the trouble case approach should be framed in terms of theory or methodology was left open (Twining 1973: 570). Llewellyn considered a definition of law based upon the trouble case approach as too selective, Hoebel tended to base the definition of law on the proposed methodological approach. In *The Law of Primitive Man* (1954), Hoebel then systematically developed his original ideas.

13 See also Fortes "Toward the Jural Dimension" (1970 a: 60 ff.). However, Fortes does not always distinguish clearly between the jural *dimension* and the politico-jural *domain*. Whereas on the analytical level of domains, the politico-jural and the kinship domains may be conceived as complementary, on the level of the dimension, the jural dimension should refer to all domains. In his analysis, Fortes sometimes uses dimension with the connotations of domain, e.g. on pp. 69, 72 f., 80. For a more severe critique of these ambiguities, see Löffler 1971.

14 Barkun, who also conceives of law as "if-then statements made up of concepts that are woven into rules" (1968: 85), also emphasizes the distinction between value and fact components (1968: 90). Fact components can further be distinguished into "perceptual categories" and "modal behaviour". Cancian speaks of "reality assumptions" (1975: 3, 108, 142).

15 In the words of Needham "prescriptive marriage connotes that the category or type of persons to be married is precisely determined and this marriage obligatory" (1962: 9).

16 In a similar way, this was expressed by Lounsbury: "It is not the incidence of marriages according to a given rule that is decisive, but the consequences of such marriage. We would think that the

distinction should rest rather on an aspect of the legal structure of a society" (1962: 1308).

I would not dare to stress the obvious so much if distinguished anthropologists did not find it so difficult to keep these two spheres of conceptions apart. Thus Maybury-Lewis, in an article purporting to clarify the issue of the prescriptive marriage systems, confuses the whole matter again when he writes: "It is characteristic of prescriptive marriage systems that they prescribe marriage for a given ego within a relationship category. All marriages which take place in such societies are therefore (?) treated as being marriages within the prescribed categories" (1971: 218). With the distinction elaborated above, the choice-element as discussed by Needham (1962: 9), Maybury-Lewis (1971: 220), and Schneider (1965: 65 f.) can be satisfactorily dealt with. It only falls into the first sphere, i.e. the behaviour which is evaluated for legal relevance, and not within the sphere dealing with the consequences which are attached to the evaluation.

17 Gluckman, who has demonstrated the analytical and heuristic advantages of such an approach in his still unparalleled treatment of Barotse law, states: "For the time being I am concerned with law's existence in two senses: as a *corpus iuris*, a body of rules, and as adjudication, a process in which cases are tried and judgements or legal rulings are given on them" (1973 a: 227).
For a similar approach to law as "a complex of rules pertaining to a field of action" see Moore 1969: 391 f.; compare also Tanner 1970: 379 ff., who, however, limits law to the ideas pertaining to conflict. In my elaboration of "concrete law" I rather follow the ideas developed by the Dutch scholars of *adat* law, Van Vollenhoven, Logemann, Ter Haar, F.D. Holleman, and J.F. Holleman. For more detailed references see below pp. 34 f.

18 I have employed the "transformation"-metaphor in a paper read at a conference of legal sociologists held in Bielefeld, Germany, in 1973, see F. v. Benda-Beckmann 1976.

19 See also Cochrane 1972 for a critique of the "unidecisional" approaches of Pospisil and Hoebel.

20 It is surprising, therefore, that Hoebel treats Ter Haar as an adherent of the so-called "ideological approach" (1954: 33); particularly, if one considers that Hoebel co-edited and translated Ter Haar's *Adat Law in Indonesia* (1948).

21 Already Gluckman stated clearly, that these two manifestations of law may not only diverge, but that they cannot coincide because they are quite different kinds of social phenomena (1973 a: 325).

22 For a similar critique of Pospisil's attribute of intention of universal application see Fried 1967: 91 and Cochrane 1972: 50 ff. Cochrane rightly notes that a decision is law only in one concrete case and not afterwards, and critically relates this to the imputed function of social control by law. It should be noted that the similar assumptions which were embodied in Ter Haar's *beslissingenleer* (1937) had been incorporated consciously. The anthropological description of a society's legal system was not Ter Haar's primary aim. He was mainly concerned with the creation of a doctrine of *adat* law application suitable for the Dutch colonial courts in Indonesia,

cf. F.D. Holleman 1938, Logemann 1939.

23 For most discussions of the concepts of property and ownership, Hooker's comments are fully appropriate: "The anthropological data adduced in a description of a social system are organized around and in terms of various usages of the ideas of 'obligation' or of related terms such as 'rights', 'duties', and so on. The elements of these ideas are partially determined by whatever knowledge of his own legal system the social scientist has and partially by formulations made by himself and others in ethnographic studies and in the theoretical analyses which these studies have occasioned. This characteristic, if no other, is a persisting feature of legal ethnography and explains the constant difficulties in the application of concepts of western jurisprudence" (1975: 23).

Allegedly analytical concepts are usually a de-westernized form of a western legal concept denoting an institution, and thus are based upon a very different approach than is taken in this study. Most analytical concepts suffer from the inherent disadvantages of such an approach. What Goody, for instance, describes as his analytical concept of property relationship, is little else than a mixture of doctrinal western legal thinking and functional anthropological theory: His property relationship is an equilibrium model of society in miniature, an equilibrium between rights and concomitant and correlative duties which is upheld by sanctions (1962: 288). Not surprisingly, he takes his cue from Hohfeld's fundamental legal conceptions, which divide all legal relations into four fundamental reciprocal relations denoted by eight concepts (Hohfeld 1923, cf. Hoebel 1954: 48 ff., Goody 1962: 289, Hooker 1975: 28). And this is exactly what they are: fundamentally legal. That any right have a correlative duty is a demand put up by someone engaged in doctrinal legal thinking. There may be societies in which property relationships are socially constructed in this way, but there may also be systems where this is not the case. To include such a demand into one's analytical apparatus means answering the question before one has asked it. No wonder then, that such an approach can only be of "peripheral importance" and "without much result on the empirical level", as Goody himself admits (1962: 289). So why fill pages with it?

24 That this distinction is arbitrary and should not be projected into non-western legal systems, had already in 1909 convincingly been put by Van Vollenhoven (1909: 49 ff.).

25 If one derives one's analytical notion of property from western law, one can, of course, use property as property relationship (see e.g. Goody 1962: 284 f.) or as property object (see e.g. Derrett 1965: 9 f.) with equal justification. However, the multiple meaning of the concept in Anglo-American law should be avoided in anthropological usage.

26 Gluckman has criticized Goodenough's neologisms for not expressing the distinction between what he calls "estates of administration" and "estates of production" (1972: 94 f.). He is right in so far as his distinction and the one made by Goodenough are quite different. Gluckman's distinction expresses the two levels upon which property relationships are expressed, and this distinction is not inherent in the one made by Goodenough. In fact, Goodenough does not give attention to this aspect in his analysis of property relationships on Truk. Gluckman, on the other hand, fails to realize

that the conceptions of residual and provisional rights can be applied on *both* levels of socio-political authority and of use and exploitation. The hierarchy of the estates of administration, which Gluckman describes for the Barotse system, can also be well expressed in terms of residual and provisional rights of socio-political authority over property objects.

27 "For a social system to maintain itself its two vital resources - the human and the social capital - must be maintained at an adequate level by continuous use and replacement" (Fortes 1966: 1).

28 The term "capacity" is used here in the sense elaborated upon by Allott, Epstein, and Gluckman 1969: 46.

29 Cf. Goody 1962: 321 ff. with further references. The transcendence of social relationships beyond physical death is not only known from the field of property relationships, but also from the field of marital relationships, e.g. in the form of the levirate. In "actual life", the wife's husband is dead and it is the husband's brother who is married to the widow and who may beget further children; in social definition, however, the widow is still married to the deceased and any children begotten by the levir are "the deceased's children".

30 Most works on the temporal aspect of social relationships owe a "certain generic relationship" (Leach 1966: 120) to Fortes' essay "Time and Social Structure" (1970b). As Fortes has put it recently, "the most promising advance in recent research on the social structure of homogenous societies has been the endeavour to isolate and conceptualize the time-factor" (1966: 1). The time-factor is considered in most systematic approaches to property and inheritance but in a different way than is done in my study (compare Maine 1905, Goody 1962, Gluckman 1972, Gray 1964, Derrett 1965).

31 Leach (1961 a: 124 ff.) has demonstrated how differently societies conceive of the notion of "continuity". The Kachin distinguish "vertical" and "lateral" continuity, which are expressed by different social relationships (Leach 1957 a: 54).

32 This, of course, has important implications for the discussion of the typology of reciprocities. An extensive consideration of the relevant opinions would go beyond the scope of my study, and only a few remarks will be made here:

The anthropologists who have concerned themselves with "the gift" and the classification of reciprocity have usually not taken the temporal dimension of property transfers into account. When Mauss wrote his famous essay he was quite aware of the fact that the term *don*, gift, might be a misnomer (1968: 167) and he only employed it in want of a better one. Those gifts which were diachronic property transfers were not discussed at all in his essay. In his understanding, the notion of the gift was firmly connected with reciprocal property exchanges. These exchanges were not always socially or legally defined as "exchange" but could also be effected by a series of property transfers which were formally defined as involving no counter-prestation. Hence the term gift.

The conception of reciprocity also provided the frame of reference within which Malinowski's notion of the "pure" or "free" gift (1922: 176) was discussed and criticized (Mauss 1954: 71, Panoff 1970: 62, cf. Malinowski 1926: 41 FN 1, Leach 1957 b: 134). This style of

thought has persisted, and "deviants" such as Sahlins, who builds upon Malinowski's notion of the pure gift in his classification of reciprocities (1965: 141 ff.) are treated with considerable indignance by the self-appointed administrators of the Maussian heritage (see Panoff,who criticizes Sahlins with the argument that "already Mauss has established that there are no pure gifts" (1970: 62).

The whole discussion is framed against an implicit synchronic conception of reciprocity. Authors like Sahlins (1965) and Firth (1957), who value Malinowski's distinction, mention the time-factor but fail to explicate that the distinction between gifts or forms of reciprocity should be determined by reference to the temporal dimension in which the property transfers are located. Thus Sahlins says about what he calls "generalized reciprocity":
"Generalized reciprocity refers to transactions that are putatively altruistic, transactions in the line of assistance given and, if possible and necessary, assistance returned. The ideal type is Malinowski's 'pure gift'. Here ... the expectation of an immediate return is at best implicit. The material side of the transaction is repressed by the social: Reckoning of debts outstanding cannot be left overt and is typically left out of account. This is not to say that handing over things in such form even to the 'loved ones' generates no counter-obligation. But the counter is not stipulated by time, quantity, or quality: The expectation of reciprocity is indefinite" (1965: 147).

Firth, another author who found some value in Malinowski's original distinction, writes:
"But his original distinction has some validity. His conception of 'pure' or 'free' gift should have been rephrased, but it differentiates a category of Trobriand transfers of goods and services of a special kind. They are not characterized by expectation of *immediate* return, there is no *specific* equivalent to which they correspond, and they are empirically characterized as things which the owner *wants* to give" (1957: 221 f.).

These are important points, but Sahlins and Firth fail to specify *why* there cannot be an expectation of immediate return and *why* the counter is not stipulated by time. In my view, the answer is to be found in the diachronic character of the transfers: There cannot be an expectation of return, as the giving person, to whom something might be returned, will, roughly speaking, not exist anymore and will not have the capacity to receive a counter-prestation. These gifts are "through time" and therefore non-reciprocal. The notion of reciprocity, on the other hand, includes that the counter-prestation is given "in time", even if it is temporally deferred.

33 In many western legal systems, like in Dutch law, the "legitimate heirs" can invalidate donations made by the testator during his lifetime after the testator's death, art. 967 B.W. See Chapter 4: 208.

34 A pertinent illustration is given by Goodenough (1951, 1974) in his description and analysis of property relationships on Truk. On Truk, it was customary that "provisional titles" were given from the father's corporation to the childrens' corporation, which was the father's corporation's presumptive heir. This transfer has to be considered as a synchronic one. Goodenough, too, does not treat it as a case of inheritance (diachronic transfer), of which he only speaks when the father's corporation has become extinct and the residual title is fused with the provisional title.

35 For such an attitude in the older German legal anthropology see Thurnwald 1934: 80 ff.

36 A well known ethnographic example which will illustrate the analytical advantages of the provisional/residual and the synchronic/diachronic differentiation is the "gratis gift" from father to son among the Trobriand Islanders, concerning which we have an excellent reanalysis by Fortes. Fortes concluded his assessment of Malinowski's analysis with the words: "What I want to seize on is that his picture (i.e. Malinowski's analysis, v.B.B.) represents a father's gift as outright alienation contrary to the laws of inheritance" (1957: 183). And he then proposes an alternative interpretation:

" ... we should regard the gift as being in reality a sharing with his sons, by the father, of his possessions and rights on the same principle as a child is permitted and indeed entitled to share any food offered to his father.
This sharing, or lending, is for the time being only, and holds only during the father's lifetime. It arises quite naturally out of the father's duty to rear his children to adulthood; and is not a 'circumvention' of the laws of inheritance. On the contrary, it is an aspect of the rightful employment by a father, in his capacity of legal holder for his lifetime, of any properties and privileges that accrue to him as a member of his lineage and his uncle's heir. While he is the holder he is entitled to use the inheritance as he pleases, provided that his heir is not deprived when he in turn comes to inherit.

When he dies the rights of the lineage, in the person of his heir, are immediately reasserted. The whole estate, including the portions of which the sons have had temporary benefit, reverts to the lineage by right of inheritance" (1957: 183 f.).

Clearly, what Fortes suggests here is a distinction similar to the one which I have made between synchronic and diachronic transfers. The Trobriand gift is no inheritance and neither is it a circumvention of inheritance. In my words, it does not fall into the category of diachronic transfers. The father only derives another provisional relationship for the benefit of his sons. Though this endures a certain time, it is not diachronic, but synchronic because of its provisional and temporary nature.

We must not get confused here by the impression of the father-son relationship which usually carries a diachronic connotation. Whether the provisional right is given to the son (the son's corporation on Truk) or to the father (the father's corporation) makes no difference in the temporary character of the transaction, as little as a sale from an old man to a young man is diachronic in character because it is between persons of different generations. It is therefore quite misleading to characterize "inheritance in its widest sense" as "intergenerational transmission", as e.g. Goody does (1962: 311 f.). If Goody states that "although transfers may also occur laterally, in the end they must take place between the generations" (1962: 273), and later restricts the discussion of his ethnographic data to "the ways in which property passes between rather than within generations" (1962: 313), this is not suitable for an analytical concept. For it is either a metaphor for the fact that *any* transfer "in the end" must occur through time and through the generations of persons who live in the temporal continuum, and achieves no distinction between specific kinds of transfers of property relationships; or it refers to an ethnocentric

definition of the rules of diachronic transfers. But diachronic transfers need not occur between the generations; in fact, in some societies inter-generational transfers are avoided as much as possible. For the transfer of rights over women, Goody himself reports this from the LoDagaa (1962: 314).

NOTES TO CHAPTER TWO

1 For further information about Minangkabau political history the reader may be referred to the following sources: Couperus 1855, Dobbin 1975, 1977, Francis 1839, De Haan 1897, Van Hasselt 1882, De Josselin de Jong 1951, Joustra 1923, Kemal 1964, Kielstra 1887 a, 1887 b, 1888, 1889, Kroesen 1873, Leyds 1926, Van der Linden 1855, Mansoer et al. 1970, De Rooij 1890, Stibbe 1869, TNI 1839, TNI 1855, Taufik Abdullah 1971, Verkerk Pistorius 1868, Westenenk 1913, 1916, 1918 a, 1918 b, Willinck 1909.

On the *tambo*, see Dt. Batuah Sango and Haji Dt. Tuah 1966, Dt. Majoindo 1956, Dt. Maruhum Batuah and Bagindo Tanameh 1954, Dt. Nagari Basa 1966, Netscher 1850, Dt. Sangguno Dirajo 1920, Dt. Sidi Bandaro 1965, Stapel 1935, TNI 1859.

Dobbin's impressive reconstruction of Minangkabau economic and political history (1977), unfortunately only came to my notice after my manuscript had been finished.

2 I refer here only to the "traditional system of social stratification", see De Josselin de Jong 1975: 10 ff. The national system and the aristocratic principles of stratification, which developed in the coastal areas under Achenese and later under Dutch domination will not be discussed here.

3 Some *adat* experts differentiated between *batali darah* and *satali darah*, "having blood relationships" and "sharing one blood relationship", roughly: between group external and group internal matrilineal descent relationships (R.M. Dt. Rajo Panghulu, interview 1974).

4 Freedom could be of two kinds: either one was "free as a bird" (*lepas unggei*) or "free as a chicken" (*lepas ayam*). In the latter case, the freed slaves had to stay with their former masters and to continue to render some services to them, see Verkerk Pistorius 1868: 435 f.

5 Cf. Verkerk Pistorius 1868, Umar Junus 1964, Kielstra 1892, AB 11: 82 ff.; Verkerk Pistorius reports that in the region of Lubuk Basung (in Agam), a whole district, *laras*, was founded by descendants of former slaves with the help of the Dutch governor (1868: 443).

6 Divergent terminological use of the group terms by the parties and the judges in the State Courts leads to frequent misunderstandings. The problem will be dealt with in detail in the thesis of K. v. Benda-Beckmann. In *nagari* III Balai, for instance, the groups called *buah gadang* in CKL were called *kaum*, and its subgroups (*kaum* in CKL) *buah paruik*; the *buah paruik* in CKL are a group of *buah gadang*.

7 It should be noted that De Josselin de Jong has given a very different interpretation of the *kok limo kali turun*-rule. In his opinion, the *adat* rule has to be regarded as a "five generation rule" which indicates that group splits occur in each fifth generation. This is then linked to Lévi-Strauss' discussion of the "rythme d'extinction exogamique", the periodical extinction of exogamy, and to the double-unilineal descent system which he (De Josselin de Jong) assumes to be one of the basic structures of Minangkabau social organization (1951: 86 f.). That this interpretation is not tenable will be shown in a different publication treating in detail the *adat* social organization of Minangkabau.

8 In the literature, the various forms of *panghulu* installation generally are treated under one heading. For the reason given above, however, one must clearly distinghuish between those installations which are held for the successor of an already existing *panghulu*ship and those installations in which new *panghulu*ships are created and which affect the *buah gadang* structure.

9 For an extensive overview of the forms of *panghulu* installations and the labels given to them see "Panghoeloeverheffing" (1888-1889) in AB 11: 91-114. In nearly all writings on Minangkabau *adat* by Minangkabau authors an overview of the basic forms is given, see e.g. R.M.Dt.Rajo Panghulu 1971: 72, I.H. Dt. Rajo Panghulu 1974: 36 ff.

10 The question of which was the primary meaning in Minangkabau cannot be answered with certainty. The linguistic evidence suggests that it is the residential meaning, as the word *kampung*, *kampong*, has a territorial meaning in most Malayan languages. One could therefore hypothesize that the genealogical meaning in Minangkabau was derived from the territorial one. However, as far as one can trace back the use of *kampuang* in Minangkabau, non-resident individuals or groups have been designated as being "of one *kampuang*".

11 For the view that the *suku* were originally clans, see Stibbe and Kroesen in Résumé 1872; for the contrary view, that *suku* were administrative associations of clans at the very beginning of Minangkabau *nagari* organization see De Rooij 1890 and Leyds 1926.

In my view, both kinds of groups must have existed in the early stages of Minangkabau political organization. For the recognition of the two different kinds of groups in early CKL, see the account of the *nagari* foundation given below. The same distinction is reported in the account of the foundation of *nagari* Tanjung Sungayang, which is considered one of the oldest *nagari* in Minangkabau. Dt. Sangguno Dirajo describes how the leaders of the genealogical groups "make" *suku adat* (1920: 82 ff.).

12 The distinction apparently obtains in all Minangkabau *nagari*, although the two sorts of groups are often labelled with the same term *suku*. In the *nagari* with Koto-Piliang *adat*, all genealogical clan groups are grouped together in four administrative units. In the district 50 Koto, these administrative units are called *suku*, whereas the component genealogical groups are called *kampuang*. The *suku* are named through reference to the number of their component *kampuang*. Thus there is the *suku nan 5* or *suku nan 9*, the *suku* of the 5 or 9 (*kampuang*). There is, among several *nagari* in different parts of Minangkabau, a certain uniformity with respect to the number of

the component clan-units within the administrative units, which suggests some greater political uniformity and centralisation in pre-Dutch times. In some *nagari*, the administrative units are called "big *suku*", and the clan-units "small *suku*", see Kemal 1964: 101 ff. In other *nagari*, both groups are called by the matriclan names, see De Waal 1889.

13 These data were collected from the tax-register of CKL.

14 The description of the *hindu* composition is based upon the *tambo*-excerpts and the information given by several *adat* experts during interviews. These data were not always in accordance, but there was a general consensus about the degree of complexity which I have described below. The "real" composition probably was much more complicated.

15 *Cupak* is a measure made of bamboo. It is also used for "measure, standard, rule" in *adat*. Here, the *cupak usali* and the *cupak buatan* (the newly made measure) are contrasted, see also below Chapter 3: 115).

16 The proper Koto-Piliang system knew four *adat* dignitaries, the *urang ampek jinih*: *Panghulu*, *dubalang* (police officer and military leader), *malim* (religious functionary) and *manti* (judicial functionary), see Joustra 1923: 100, R.M.Dt.Rajo Panghulu 1971: 76 f.

17 That *buek* antedates *adat* was the opinion of CKL *adat* experts. This statement may not only refer to the development of *buek* and *adat* in the concrete history of the *nagari*, where *adat* (in this restricted meaning) is only "made" with the foundation of the *nagari*. It may also refer to an historical sequence in general. According to R.M. Dt. Rajo Panghulu, *buek* was the term for regulations, and for the area in which the regulations were in force, before the term *adat* was used at all in Minangkabau, and perhaps before the *nagari*-system in general (1971: 86). The term *buek* still appears in several *adat* sayings which are frequently quoted in the works of Minangkabau *adat* experts (compare R.M. Dt. Rajo Panghulu 1971: 86).

18 Korn reports that in the census of 1930, in which a.o. the "family heads" were counted, a large number of "female *mamak*" were given, who in some *nagari* amounted to 30% and more of the total number of family heads (1941: 304). In Oud Agam, the district in which CKL is located, only 2% female *mamak* were counted. Korn discusses these findings in the light of the general statement "that a woman cannot be *mamak kepala waris*". According to his interpretation, the census data indicate that women can become "acting" *mamak kepala waris*, at least in property matters, and also assume the function of outward representation. He cites a decision of the *Kerapatan Adat Nagari* Simanau, in which the oldest female of a *kaum* was recognized as "*kapalo warih*" for the control of the *kaum* property (1941: 321 f. N.B.: Not *mamak kapalo warih*). He further mentions that in *nagari* Pianggu, there even was a female *panghulu suku adat* (1941: 323).

19 The only (and rare) exceptions which we found during our research at the State Courts concerned cases in which women as representatives of their *jurai* or *kaum* took legal action against a *mamak kepala waris* who, according to their allegation, unjustly claimed to be

their *mamak kepala waris*.

20 In the literature, both western and Indonesian, the border between these two sets of rules has only seldom been drawn, resulting in rather indiscriminate descriptions of "*panghulu* installations" and in some quite contradictory statements, depending on which set of rules the writer or his informant had concentrated upon.

21 According to information given in interviews, the MB - ZS succession rule seems to be (or to have been) a prescriptive rule in Koto-Piliang *adat*.

22 Nearly all Minangkabau publications on *adat* contain elaborate descriptionsof the tasks of the *panghulu* and of the personal qualifications which a *panghulu* should have. Tasks and qualifications of the *panghulu* are the subject of a multitude of *adat* sayings. A good example is offered by R.M. Dt. Rajo Panghulu 1971: 69 ff. and I.H. Dt. Rajo Panghulu 1974.

23 According to *adat* experts in CKL, 15 steps had to be followed according to the "real and old *adat*" of CKL, but no one could (or wished to?) enumerate more than 9. At the last *panghulu* installation held in CKL, only the four "most important" ceremonies had been held: meetings with the 5 *hindu* of Candung, 7 *hindu* of Kota Lawas, "the *nagari*" (meaning all 12 *hindu*-leaders, the 12 *juaro adat* and the 14 *anak mudo*); finally the ceremony in which the "*7 suku*" (meaning the 12 *panghulu* acting as *hindu*-leaders) invested the new *panghulu* with his title.

With respect to the number and character of the ceremonies there is a considerable variation between *nagari*. In CKL, the ceremonies were said to be closed to the "public"; in *nagari* Padang Tarab, where we attended two *panghulu* installations, the *buah gadang*'s women were given an official part in one of the most important ceremonies, and women and children attended all ceremonies as spectators.

24 See above Notes 8 and 20. There are also differences between *adat* Koto-Piliang and *adat* Bodi-Caniago. In Koto-Piliang *adat*, the *hiduik bakarilahan*-variant is not allowed (I.H.Dt. Rajo Panghulu 1974: 38). The *Mati batungkek budi*-variant is somewhat different in *adat* Koto-Piliang: Before the corpse of the deceased *panghulu* is buried, the successor must be chosen and officially be declared *panghulu*. The official installation ceremony then follows later (see I.H. Dt. Rajo Panghulu 1974: 38).

25 As has happened in case 1 of 1970 PN Batu Sangkar; compare also Chapter 3: 123. The problem will be dealt with in more detail by K.v. Benda-Beckmann.

26 For a philosophical elaboration of the Minangkabau theory of decision making see Nasroen 1957. The *musyawarah* principle is a trait of most Indonesian *adat* systems (see Koesnoe 1969, Van den Steenhoven 1973) and has also been incorporated into the state ideology, see Damian and Hornick 1972: 498.

27 This will also be apparent in some of the stories told in Chapter 5 and the cases to be discussed by K. v. Benda-Beckmann. For further examples see Tanner 1969: 40 ff. and 44 ff.

28 See also Tanner 1971: 265 f. The judges in the State Courts told us that they were frequently asked for advice by older women who felt cheated by their *mamak* and did not know what to do about it.

29 Against the unwarranted overemphasis on matrilineal kinship and the neglect of the bilateral kinship elements and the important patrifiliative link between ego and his father's lineage, see Korn 1941, Fischer 1964, Djojodigoeno 1968.

30 On the term *waris* as category of personal kin see Firth 1974. On the term *warih* as used in Minangkabau thinking about inheritance see below Chapter 4: 196 ff.

31 For a systematic description and analysis of the kinship terms collected in one *nagari*, see Thomas 1977. With respect to the actual terms used, there is quite a variety between and among the Minangkabau *nagari*, although in general the same pattern seems to be followed. For an earlier discussion of Minangkabau kinship and an extensive overview of the terminology given by other writers see De Josselin de Jong 1951. Cf. Umar Junus 1964, Fischer 1964, Djojodigoeno 1968.

32 The more differentiated statistics are as follows (source: Marriage Registry of CKL, N = 186) :

Age of Marriage Partners	Male Sex	Female Sex
- 16	0	1
17 - 19	15	68
20 - 22	65	69
23 - 25	44	14
26 - 29	19	13
30 - 34	14	8
35 - 39	11	5
40 - 49	13	7
50 - 59	4	1
60 -	1	0

Unfortunately, the number of second or further marriages could not be determined.

33 One of the last cases concerned a woman from *nagari* Koto Gadang in Agam, who had married someone not from Koto Gadang in Tebing Tinggi (North Sumatra). She was punished by the *nagari* council with the permanent expulsion from the *nagari* (*buang tingkarang*). For the full text of the decision see AB 20: 143-146; excerpts are given in Chairul Anwar 1967: 130 ff. and in Koesnoe 1977: 49 ff.

34 In CKL, the endogamy rule was abolished by the *Karapatan Adat Nagari* in 1950 for men and in 1954 for women. Thomas reports, that in Gurun the rule was abolished for women between 1952 and 1955, but that "men have not been proscribed from marrying out within memory" (1977: 104).

35 I could not determine whether the marriages between members of *suku* Sikumbang were in accordance with or in violation of the Sikumbang exogamy rules.

36 See De Josselin de Jong 1975: 9, Maretin 1961: 195.

37 Compare Van Eerde 1901 and Besseling 1904. The following quotation from Besseling (1904: 349) in my view can be regarded as supportive for my arguments about the former option-character of the CCM-rule and the bias in favour of the patrilateral CCM:
"Many a Malayan, who is already married, is constantly bothered by his *induek bako* (in the sense of: head of the father's matrilineage, v.B.B.) to choose another wife from his (the father's) *kamanakan*. To resist this demand without good reasons would be against the good and appropriate manners (*kurang babaso*)".

38 Minangkabau has the highest divorce rate in all Indonesia, see Naim 1974: 426-428.

39 This was definitely the case in CKL, and Thomas reports the same from Gurun. In contrast, De Josselin de Jong maintained that *urang sumando* was conceived as "bride receivers/husband givers"-group in Minangkabau (1975: 18 f.). His references to Korn (1941: 324, 328), however, by which he justifies his opinion, cannot support it adequately. Korn speaks of the "*urang sumando* group" which consists of "the husbands of the female household members" (1941: 324). Although he later vaguely mentions an extension to all matrilineal relatives of individual *urang sumando*, no single incidence is reported where the several *urang sumando' kaum* would act as a group. On the contrary, when Korn proceeds to describe the activities of the *urang sumando* group it is evident that this "group" consists of the individual *urang sumando* (1941: 328).

40 Compare De Josselin de Jong 1951: 46 ff., Umar Junus 1964. For a recent comprehensive overview of the literature see Thomas 1977: 228-233.

41 The main ideas outlined in this section have already been published in an article by K. and F. v. Benda-Beckmann (1978).

42 The Minangkabau have a saying "*bak dirumah bako*" - "like in the house of the *bako*", which they use with the same connotation as we do when speaking of "living like God in France": meaning that the *anak pisang* have a wonderful life in the house of their *bako* and are spoilt by the members of the *bako*.

43 This has some important implications for the discussion of marriage systems in Minangkabau. From the above statement we could expect a preference for a tendency toward *buek* endogamy, the husbands wishing to retain their political rights in the *buek* in which they are to spend most of their married life. From the relatively small number of marriages, for which I could determine the spouses' *buek* residence (N=159), 42% were within the same *umpuek* and 67% within the same *buek*. 82% of the marriages were either within Candung or Kota Lawas.

In the study of marriage systems in Minangkabau, more attention therefore should be given to smaller-than-*nagari* territorial units, the *buek* and *koto*. It must also be remembered that not each permanent settlement was a *nagari*, yet marriage arrangements must have existed before the *nagari* foundation.

NOTES TO CHAPTER THREE

1 Not being a Sanskritist I am not in a position to judge how far the linguistic evidence supports this interpretation. It strikes me as plausible. In any case it is much more in accordance with the meaning the word *adat* undoubtedly has had in the Indonesian languages. It would further help to explain some other peculiarities connected with the word *adat* in Indonesia. As Van Vollenhoven noted, in the Moluccas the "*adat kebiasaan*" - the *adat* which is custom - is contrasted with other forms of *adat*(1918: 7). In his interpretation, this is just a clarification of the word. Yet if we take the Sanskrit etymology, it would be quite understandable if "*adat* which is custom" would be distinguished from other forms of *adat*.

A much better understanding could also be achieved of a frequently quoted Minangkabau *adat* saying, in which the *adat* is divided into eight kinds (see R.M. Dt. Rajo Panghulu 1971: 89, I.H. Dt. Rajo Panghulu 1973: 109, Nasroen 1957: 63, Westenenk 1918 a: 80).

Dibalah-balah patigo
Sirauik pambalah rotan
Luhak dibaginyo tigo
Adat dibaginyo salapan
Nan ampek tabang kalangik
Nan ampek tingga didunie
Nan ampek tabang ka langik
Aso bulan, duo mantari
Tigo timue, ampek salatan
Nan ampek tingga didunie
Rumah gadang lumbueng bapereng
Sawah gadang banda buatan

The rotan is cut into three with a knife
The country is divided into three *luhak*
The *Adat* is divided into eight
Four fly to heaven
Four remain on earth
The four which fly to heaven are:
One: the moon, Two: the sun
Three: the East, Four: the South
The four which remain on earth, are:
The family house, the carved rice-granaries
The great rice-fields and the irrigation works

This saying can hardly be understood if *adat* is taken to mean "custom" as had been done by many scholars. The surprised Westenenk stated: "From this fantastic expression we seem to have to conclude that anything which is seen, done, and experienced by man is put into *adat*"(1918 a: 80). True, but the saying is "fantastic" only if one thinks of *adat* as custom. Taken in its Sanskrit meaning, the division of *adat* into a heavenly and earthly sphere would make much more sense. There is, of course, the possibility that the Arabic word *adat*, *adah* is also derived from the Sanskrit word *adat*. In this context I should like to stress that most scholars of Islam do not

translate the Arabic *adat* as "custom", but as "customary law" which was in force before the introduction of the Islamic religion, see Juynboll 1903: 2, 8.

2 On the Malayan *perbilangan* see Hooker 1972.

3 The most elaborate distinctions are given by Dt. Sidi Bandaro 1965.

4 The development of these classifications is not very clear. In many Sumatran societies, lists of laws (*undang2*) were only drawn up by the indigenous experts after the confrontation with the Europeans, see Moyer 1975. But the same may, at least in Minangkabau, have already happened after the coming of Islam, cf. Taufik Abdullah 1966: 9 f.

5 With the exception of *adat nan sabana adat* (which is always used for natural and/or divine law) and *adat istiadat* (which is the only of the concepts used to mean *adat* in contrast with Islam), the Minangkabau *adat* categories are used interchangeably by Minangkabau *adat* experts. The reference to "general" or "frequent" use on p.116 is based upon a survey of 27 literary sources.

It should be noted, that Koesnoe claims that the three analytical categories of *adat* which he has developed in several articles can be identified with the Minangkabau *adat* categories (1971: 8 ff., 1975: 277 ff., 1977: 66 ff.). In Koesnoe's interpretation, the categories *adat istiadat*, *adat nan taadat*, and *adat nan diadatkan* represent three different degrees of generality: custom in general, specific custom, and custom accepted by decision (1971: B 5). In my view, however, the categories distinguish *adat* according to its sources. They indicate, how and through whom *adat* was made or given.

6 Cf. Koesnoe 1969, Van den Steenhoven 1973, F. von Benda-Beckmann 1977. See also the descriptions of actual decision making in Minangkabau in Tanner 1969, 1970, 1971.

7 On Van Vollenhoven's ideas about the concept of law cf. Van Dijk 1948: 13 ff. and Sonius 1976: 25 ff.

8 The two outstanding exceptions are the definitions offered by Djojodiguno and Koesnoe. Djojodiguno (1969) stresses the social process character of law. For Koesnoe, law is a dimension of *adat* which can become manifest in the form of rules and decisions, independent of the functional attribute of sanction (1971: 10). His approach is quite similar to the one which I have outlined in the first chapter. However, Koesnoe chooses to define the dimension of law by reference to "what is just and proper in the field of social relations" (1971: 10), whereas I have done so by reference to the way society's constituents' autonomy is restricted and recognized.

9 This problem will be dealt with in detail in the thesis of K. von Benda-Beckmann.

10 See Jaspan 1964/65: 252. In a critique of Jaspan 1964/65, Stirling comments, that the concept *hukum adat* would date back to the introduction of Islamic law (1965/66: 52). It should be noted, however, that Islamic law is generally referred to with the terms *syarak* or *fiqh*.

11 Compare the judgement in the well-known Allahabad case Aziz Bano v. Md. Ibrahim (1925), Fyzee 1955: 35, where the same distinction is drawn.

12 Koran literally means "what is recited in the right way" (Juynboll 1903: 10). It is the body of God's own words as they have been revealed to the Prophet Mohammed. The Koran is divided into 114 chapters (*surah*) which are subdivided into verses (*ājah*, pl. *ājāt*). The *ḥadīth* are traditions of the Prophet's behaviour which have been witnessed by eye-witnesses. The *sunnais* the practice of the Prophet as deduced from the *ḥadīth*. The *qiyas* is the principle of analogical deduction. It allows the Imām, the founder and head of a legal school, to exercise his faculty of reasoning and to deduce legal principles which are in accordance with the word of God and the actions and words of the Prophet.
The *ijmā'* is the consensus of the learned in matters which are held not to be clearly regulated by one of the other sources. See Juynboll 1903: 11, 17 f., 44, 54 ff., Fyzee 1955: 10, 17 f.

13 The first period is counted from the year 1 (the *Hidjrah*, Mohammed's migration from Mekkah to Medinah, in the year 622 A.D.) until the year 10. This is the period in which the Koran was revealed to the Prophet, and it is also the time of many *ḥadīth*.
The second period is counted from 10 to 40 A.H. This is the time of the first three caliphs (successors) of the Prophet. Into this period fall most of the *sunna*, and the collecting and editing of the Koran was carried out under the third caliph 'Uthmān. The Koran has since then been transmitted in unchanged form.
The third period is counted from 40 until the third century. In this period, most of the traditions were collected. In this time, the four schools of Islamic jurisprudence were founded:
1. The Hanafī-school, founded by Imām Abū Hanīfa (80/699-150/767), who laid great stress upon the principle of analogical deduction.
2. The Mālikī-school, founded by Imām Mālik ibn Anas (90/713-179/795) who stressed the principle of the consensus of the learned.
3. The Shāfi'ī-school, founded by Imām Shāfi'ī, a pupil of Imām Mālik. Shāfi'ī (150/767 - 204/820) is generally acknowledged as one of the greatest jurists which Islam has produced.
4. The Ḥanbali-school, founded by Imām Aḥmad ibn Ḥanbal(164/780 - 241/855), a pupil of Shāfi'ī. He is regarded more as a traditionalist than a lawyer, but is recognized as Imām.

The fourth period is counted from the 4th century onwards. In this period the *fiqh* has been systematized and laid down in many standard works of Islamic jurisprudence. Cf. Juynboll 1903: 16, 26, 38, Fyzee 1955: 22 f.

14 For an overview of Dutch law and its development see De Smidt 1972.

15 By the *Provisioneel Reglement op het Binnenlandsch Bestuur*, 4.11.1823.

16 On the dual court system and its development see Couperus 1882, Mieremet 1919, Carpentier Alting 1926, Kleintjes vol. 2 1929, de la Porte 1933, Ter Haar 1948: 1 ff.

17 In 1927, the *Rechtsreglement voor de Buitengewesten*, R.B.G., established the *distriktsraad* in the villages and the *landraden* in the province's main places, without bringing any important changes

to the judicial system.

18 The credit for the official recognition is mainly due to the politically active members of the *adat* law school of Leiden university.

19 *Ordonnantie* of 9.3.1935, S. 1935: 102, which amended the R.B.G. by inserting a new art., 3a R.B.G. The full text of the ordinance is published in T 142: 109 ff.

20 On Java and Madura, Islamic religious councils with limited jurisdictional powers had been recognized since 1808. The regulation issued by Daendels in 1808 was incorporated into art. 78 *Regeringsreglement* (R.R.) of 1854, and later into art. 134 *Indische Staatsregeling* (I.S.), the constitutions of the Colony, see Lev 1972 a: 8 ff., Hooker 1975: 269).

21 The *Algemene Bepalingen van Wetgeving*, S. 1847: 23, had established the two categories. The tripartite division was introduced by the R.R., see Ter Haar 1948: 1 ff., Gautama and Hornick 1972: 1 ff., Hooker 1975: 250 ff.

22 Art. 163 I.S. had first been promulgated as an amendment to art. 109 R.R.

23 The law declared applicable to the native group included:
The regulations of the Dutch Commercial Code concerning shipping, S. 1876: 119, later replaced by the provisions in the new Commercial Code, S. 1933: 49, which came into force in 1938;
The provisions of the Dutch Civil Code concerning labour contracts, art. 1601 - 1603, S. 1876: 256;
The provisions of the Dutch Civil Code concerning gambling and the placing of bets, art. 1788 - 1791, S. 1907: 306.

24 See Tobi 1927. Art. 109 (5) R.R., and later art. 163 (5) I.S. authorized the Governor General to issue a declaration that a given applicant was henceforth a member of the European group. Natives also had opportunities to submit to European law without a change of group membership by total, partial, ad-hoc, and presumptive submission, art. 131 (4) I.S. and Royal Decree, S. 1917: 12. Partial submission was excluded for the fields of family law and inheritance. The fields of inheritance, wills, and land law were excluded for ad-hoc submission to European law, see Ter Haar 1948: 35 ff., Gautama and Hornick 1972: 16. On the conflicts of law pertaining to the interracial and interreligious relationships see Kollewijn 1930, 1955, Schiller 1942, Lemaire 1934, 1952.

25 The transitional provisions of the 1945-constitution specified that all laws and regulations in force at the time of Independence should continue to be in force until and unless they were replaced by statute. The legal situation is somewhat ambiguous, as an Executive Order issued in 1945 (P.P. 1945: 2) interprets the constitution to mean that pre-Independence regulations continue to be in force only to the extent to which they are not contrary to the constitution. On the basis of this order it has been argued that the arts. 131 and 163 I.S. are no longer valid. Most legal scholars, however, hold that they are still in force, see Gautama and Hornick 1972: 6, 180 ff., Damian and Hornick 1972: 522.

26 For an explicit reference to these provisions see case 278 of 1961 in the PN Padang, published in "Berita Pengadilan Tinggi" no. 1 (1968): 24. Cf. Hooker 1975: 276. For a case, in which arts. 131 and I.S. are declared to be invalid see"Yurisprudensi Indonesia" 1969 I: 33.

27 Arts. 24 and 25 of the 1945-constitution declared that the jurisdiction should be exercised by a Supreme Court and other courts. The three types of courts were officially introduced by law no. 13 of 1965. In 1970, the judicial system was revised through the Basic Law of the Judicial Administration (*Undang2 tentang Ketentuan2 Pokok Kekuasaan Kehakiman*, law no. 14 of 1970). On the development of the judicial system see Lemaire 1952, Logemann 1955, Damian and Hornick 1972, Hooker 1975.

28 For an overview of the development of the colonial and national local government systems see Kemal 1964, Sjofjan Thalib 1974. The texts of the various decrees and regulations are published in Sihombing and Sjamsulbahri 1975. In 1915, the *laras*-system had been abolished, and in 1914/1918 a new ordinance on *nagari* government had been introduced. In 1938, these regulations were repealed by the *Inlandsche Gemeente Ordonnantie voor de Buitengewesten*,(I.G.O.B., S. 1938: 490). Art. 1 I.O.G.B. stated that the *nagari* was a legal person which was represented by the *Kerapatan Adat*, the organization of which should be in accordance with *adat*.

Post-Independence saw a multitude of regulations which mostly were preliminary in character. *Maklumat* 20 of 1947 established an Office of Daily Affairs (*Dewan Harian Nagari*) and a Council of *Nagari* Representatives (*Dewan Perwakilan Nagari*). In these provisions it was declared that all population groups within the *nagari* should be represented in the *Kerapatan Adat* and the other *nagari* institutions. In 1963, a new preliminary regulation was issued by the Governor of West Sumatra (SK/desa/GSB/1963), in which the *adat* group, the *panghulu* and lineage elders, was recognized besides nine other groups. The *nagari* government consisted of a mayor, the *Kerapatan Nagari*, and a *Nagari* Deliberation Committee (*Badan Musyawaratan Nagari*). Each of the main population groups had its own sub-council, the *adat* group the *Kerapatan Adat Nagari*, and the religious group the *Kerapatan Agama*.

29 See arts. 30 - 33 SK 015/GSB/1968 and art. 1 (4) SK 149/GSB/1970.

30 But not all members of the KAN are members of the KN as well. In CKL, there is much rivalry between the two institutions. On the relationship between recognized and unrecognized *adat* councils in Minangkabau in general see Amilijoes Sa'danoer 1973 and Sjofjan Thalib 1974.

31 On the situation on Java and Madura see Lev 1972 a: 75 ff.

32 This problem will be dealt with in the thesis of K. v. Benda-Beckmann.

33 These findings are similar to the data given by Tanner(1969: 50 ff., 1971: 163, 181 ff.) for the same court's case-load in the period 1964 - 1966.

34 The LKAAM was founded in 1966 at the instigation of the Provincial

Government. It is the successor to previous *adat* organizations, the SAAM and MTKAAM, which were much freer of government influence. The SAAM was founded during the Dutch colonial rule as an *adat*-pressure group against colonial rule and the Islamic pressure groups. For an excellent account of the formation of these pressure groups see Taufik Abdullah 1971, 1972.
In the provincial LKAAM, each *nagari* has one representative, generally the head of the *Kerapatan Adat Nagari*. The LKAAM is a "functional group" in the sense of GOLKAR (*Golongan Karya*), the assemblage of functional groups which acts as the strongest political party in post-Sukarno Indonesia; GOLKAR is pro-government. The top positions of the LKAAM are filled by *panghulu* who hold higher administrative posts. Most of the *nagari*'s representatives also hold administrative appointments on *nagari* or *kecamatan* level. Yet it also functions as a pressure group for the *panghulu* who are trying to regain some of the power which they lost after Independence, and who are not at all shy in uttering their grievances against the government's policy at the general meetings (*Musyawarah Besar*, MUBES). Concerning the 1974 meeting, which we were allowed to attend, see Keebet von Benda-Beckmann 1975; on the previous meeting of 1969 see Naim 1973.

The success of the LKAAM is limited. Information is given, and the *adat*-functionaries realize that the government pays at least some respect to their authority. But most Minangkabau perceive the LKAAM as a government organization, something that "comes from above", and the regulations proposed through the LKAAM channel usually are quite unpopular in the *nagari*. One of the main topics discussed at the last meetings was the necessity to have the village land (*tanah ulayat*) registered and to have genealogies (*ranji*) drawn up for each *kaum*, with the aim of reducing land disputes. In spite of the solemn agreement of all MUBES-participants, nothing has yet come out of these plans. In CKL, not a single *panghulu* had made a *ranji* (including the LKAAM representative) and no land has been registered as *kaum* land.

35 Islamic schools are quite popular as they do not demand school fees. In CKL, there was a *Sekolah Tarbiah Islam*, a secondary Islamic school, which was famous throughout Indonesia, and which was attended by pupils from all over Indonesia. It had been founded by Syeh Suleiman ar Rassuli, a well known Minangkabau Islamic leader. In 1974, it was directed by two of his sons, one of whom was a lecturer for Islamic law in the Islamic University in nearby Bukit Tinggi. The school leaving certificate of the secondary Islamic schools entitles the pupils to study at the Islamic university. On the role of Islamic schools in Minangkabau and Indonesian politics see Taufik Abdullah 1971.

36 The classic account of a teacher - pupil relationship is given by Dt. Sanggoeno Dirajo in *Mustiko Adat Alam Minangkabau* (1920).

37 In the framework of the new local government regulations of 1968 and 1974, the *cerdik pandai* constitute the third group to be represented in the *Kerapatan Negeri* besides the *adat* and religious groups, cf. Sjofjan Thalib 1974: 28. In CKL, however, there was no consensus about who the *cerdik pandai* actually were. Both *adat* and Islamic functionaries tried to claim their followers as *cerdik pandai*. The *adat* group held that "actually" the *juaro adat* were the *cerdik pandai*.

38 The secrecy with which some knowledge is kept and the differentiation of knowledge heavily influence the anthropologist's attempts to elicit information in these matters. Even when experts want to make an exception for the foreign guest, care must be taken that the information does not reach the "wrong" ears. If, e.g., persons from another *suku* are present, the expert will usually not discuss their *suku* problems or the status of their *buah gadang* in the *nagari*. As it is difficult to speak with a *panghulu* alone - it would be beneath his rank to appear or receive without at least a small following of pupils or senior lineage members - it is often very difficult to establish a situation in which the information can be given at all, even if he is willing to give it.

39 In the State Courts, by contrast, it is considered as hearsay evidence. The conflicts between the *adat* and the Dutch conceptions of evidence will be dealt with by K. v. Benda-Beckmann.

40 For instance in *nagari* Bayur, personal communication from Fred Errington, and *nagari* Gurun, personal communication from Lynn Thomas. In CKL, this was not often the case.

41 A more detailed analysis will be given by K. v. Benda-Beckmann.

NOTES TO CHAPTER FOUR

1 Minangkabau *adat* thus contradicts the assumption which has already been mentioned in Chapter 1: That the fact that primitive law does not distinguish the system of property relationships from social relationships in general would imply that property relationships are expressed as what they "really" are, namely relationships *between* persons with respect to things, Bloch 1975: 204.

2 Westenenk, in particular, called attention to similar usages of the word *rajo* in other contexts, where *rajo* is used to denote "the master", as e.g. in the *adat* saying in which the wife is referred to as "the queen in the house and kitchen", "...*adopun padusi nan rajo pado tampeknyo tatakalo batanak dan manggulai*..." (1918 a: 20).

3 See Résumé 1872: 11 ff., Kroesen 1874: 15, Westenenk 1918 a: 15, Van Vollenhoven 1918: 263, 1919, Logemann and Ter Haar 1927. For a summary of the references to the *beschikkingsrecht* see Pandecten I: nos. 92-145, 728-749, 1016-1073, 1381-1394, 1712-1718, 1779-1790.

4 Van Vollenhoven's use of the term *beschikkingsrecht* or *hak ulayat* fully corresponds with my notion of socio-political control over property as outlined in Chapter 1. In his treatise *De Indonesiër en zijn grond* (1919) (The Indonesian and his Land), he spoke of it as "the *adat* restrictions of the native right of possession, the *inlandsch bezitrecht*", as the rights on the level of use and exploitation were labelled by the Dutch (1919: 7 ff.).

5 The confusion probably arose as the native term *ulayat*, signifying only part of the area to which the *beschikkingsrecht* pertained, was employed to denote the *beschikkingsrecht* in general as an analytical

concept. My interpretation is fully supported by Ter Haar's analysis in "Het beschikkingsrecht in het adatrecht" (Logemann and Ter Haar 1927: 12 f.). He draws attention to the fact that neither in Minangkabau *adat* sayings nor in the writings of the Minangkabau *adat* expert Dt. Sangguno Dirajo, was the concept of *hak ulayat* used. Only the *ulayat panghulu* was mentioned, which according to Ter Haar should best be translated as "the territory over which the guardianship of the *panghulu*, which is based upon the *beschikkingsrecht*, extends" (1927: 12, cf. Dt. Sangguno Dirajo 1924: 71 ff.). Willinck claims that the conception of the *hak ulayat* as vested in the *panghulu* or in the *nagari* as a corporation was an invention of the late 19th century under the influence of Islam (1909: 637 ff.). In Willinck's interpretation, the land outside the cultivated area belonged to the *nagari* community in general.

6 According to most scholars, see Willinck 1909: 573, Loeb 1935: 108. Kern, however, claims that the etymology of the word is unknown, and that *pusako* is not derived from Sanskrit (AB 22: 445).

7 *Patah tumbueh* and *hilang baganti* is often used as a succession rule for *panghulu* offices. In the area of Solok, *patah tumbueh* is a label for what has been described as *hidup berkarilahan* and *hilang baganti* is used for *mati batungkek budi* (see Chapter 2: 87 f. and AB 11: 93 ff.).

8 R.M. Dt. Rajo Panghulu distinguishes *pusako kebesaran* and *pusako harato* (1971: 131). Dt. Sidi Bandaro makes a distinction between the *pusako* which are *harato* and the *pusako* which are *sako*-things (1965: 76 ff.). Under the immaterial *pusako* also fall special kinds of knowledge like the *tambo* of Minangkabau or of the *nagari*. The *pusako kebesaran* can be the heritage of a *buah gadang* but also of larger groups. The offices of the Minangkabau empire, the *Basa nan Ampek Balai*, are also treated as *pusako kebesaran* of the *lareh* Koto-Piliang, see R.M. Dt. Rajo Panghulu 1971: 115 ff.

I have only found one instance of a quadrupartition of *pusako*, where *pusako darah* (the heritage of the blood), *pusako bangsa* (the heritage of the nation), *pusako gala* (the heritage of titles), and *pusako harta* (the heritage of property) are distinguished, see Dt. Majoindo 1956: 89.

9 The fourth category is sometimes replaced with *harato pusako tambilang budi*, "the property which has been acquired by good social relationships", usually the *pusako* given to strangers or the descendants of slaves. For a similar classification of *milik*, see AB 41: 379.

10 But see R.M. Dt. Rajo Panghulu (1971: 131 f.), who attributes a different meaning to the *tinggi - rendah* distinction. For him, the *harato pusako tinggi* is the *ulayat*, and the *harato pusako rendah* the "*pusako*", which would comprise both the high and low *pusako* property of the common usage.

The appendices *tinggi* and *rendah* are also used in a different way, much to the confusion of foreigners, see Tanner 1971: 262. So one often speaks of *pusako tinggi* and *pusako rendah*, meaning the *pusako kebesaran* and the *pusako harato* respectively. We often noticed that persons switched from the one way of classifying *pusako* to the other within one interview. But note that in the latter

classification, one speaks of *pusako*, not of *harato pusako*.

11 In modern Indonesian usage one can also speak of immaterial *harta*.

12 For a different interpretation of these concepts see the decisions of the PT Bukit Tinggi and the *Mahkamah Agung* in the rice-mill case, which are discussed in Chapter 6:338 ff.

13 Van Vollenhoven (1918: 262) and following him, Joustra (1923: 113) wrote that *harta pancaharian* become "family property" after the death of the *pancaharian* holder as *harta manah* or *harta sako*, and only in the second generation of heirs become *harta pusako* (cf. Raad Padang in AB 6: 168). Willinck held that the *harta pancaharian* become *harato pusako* with the death of the *pancaharian* holder, but spoke of *harta sako* in the case where *harato pancaharian* had been given to the *pancaharian* holder's children by way of *hibah* (1909: 772, 750). But I have nowhere else heard or read of such conceptual usage. When *harta manah* or *harta sako* are employed at all to denote the legal status of property objects, they are used to indicate the oldest lineage property which may never be divided (Kemal 1964: 66 for *harta sako*, Loeb 1935: 108 for *harta manah*) or for *pusako* the origin of which is not clearly remembered anymore (Van den Toorn 1881: 514). In most publications on Minangkabau *adat* and according to the contemporary conceptual usage in the *nagari* and the State Courts, *harato pancaharian* becomes *harato pusako rendah* with the death of the *pancaharian* holder.

14 In the Dutch literature, most statements on *pancaharian* inheritances are rather undifferentiated and speak of "inheritance by the *kaum*", "by the *kamanakan*", or "by the heirs (*waris*)"; for an overview see Pandecten V: nos. 689 - 871. The most differentiated statements are given by Willinck (1909: 776 ff.), Sarolea (1920: 120 ff.) and in AB 6: 119 ff., the latter reproduced in De Josselin de Jong 1951: 57 f. Note, that the fault in the rules given in AB 6: 120, which De Josselin de Jong calls an "obvious inconsistency" (1951: 58), had already been rectified in AB 18: 253.

15 The division of the *suarang* property in the case of the death of one spouse has nothing to do with inheritance or other forms of diachronic transfers. For one half of the property was the, albeit undivided, property of the surviving spouse already during the lifetime of both spouses, see Van Vollenhoven 1918: 262 f., Willinck 1909: 553 ff. For an overview of the Dutch writers' statements on the division of *suarang* property see Pandecten VIII: nos. 2610 - 2633.

16 Note, that the distinction has been emphasized by Willinck (1909: 547 f., 782 f.) and Sarolea (1920: 120 ff.).

17 We have to understand in this context the statements contained in several judgements of Dutch colonial courts, that the *pusako* property may only be "divided" if there is an irreconcilable quarrel between the *kaum* members, see LR Padang (1927) in T 112: 132 and (1927) in T 126: 130, and LR Fort de Kock (1933) in T 140: 202.

18 In CKL, the split occurs on the *kaum* level at which two new *kaum* with common *harato pusako* and independent property control are established.

On the *buah gadang* level, the component *kaum* remain "of one *pusako* property in *adat*" unless the *buah gadang* itself should be divided.

19 Compare the system of the rotation of the *panghulu* title, the *gadang balega*, Chapter 2: 86.

20 Besides the *sako* and the *gala pusako*, other titles can be used. There are honorific titles which express honorific addresses to older men, such as Angku and Inyiek, which are conferred upon the individuals by the community in a ceremony.

In addition, also "nick-titles" (*gala panggilan*) are used, which mostly contain an ironical undertone but can also express particular respect. Thus an elderly man in our neighbourhood was called Datuek Harimau. He was not entitled to wear the *gala* Datuek (as he was no *adat* functionary) and Harimau (Tiger) was not a *gala* used in CKL. But people liked to call him this way as he had been a fierce and brave resistance fighter.

I was often addressed by *gala* invented on the spot, as people felt unwilling to address me by name. This is because I was married and occupied a position which was at least important enough that it could provide me with the money to come to Minangkabau - so I should have a *gala*. In the later part of our stay, a *gala* was conferred upon me in a mock *adat* ceremony, which was afterwards used by several men to address me, partly jokingly, partly in earnest. The *gala panggilan* or *gala kiasan* (allusionary titles) are not conferred in a formal ceremony. On the system of *gala* 100 years ago see Mansveld 1876.

21 In CKL, titles like Mangkuto, Palimo, Sinaro, etc. were considered the *pusako* of particular *suku*. The titles which were general *pusako* of all *suku* were Sutan, an "*adat*"-*gala* usually given to young men who do not hold an *adat* office, and titles indicating particular abilities in the religious world, like Pakih (*fiqih*, the one learned in law), Malin(m) (*yang berilmu*, the learned). Malim could also denote the religious office of the *suku*.

Most of the *gala* have some functional/office connotations, like *mantari* (minister), *palimo* (military commander), *bandaharo* (treasurer). It may well be, that in former times, these titles were only given to the holders of such offices. But since information on Minangkabau titles is available, these titles had in any case lost their functional connotations. If a man wears the title of Palimo Putih (the white military commander), nobody expects him to be a military commander in the same sense as nobody will suspect that a Mr. King in England is a king or a descendant of a king. In other parts of Indonesia, the Minangkabau titles have caused quite a surprise (see AB 27: 258 ff.) as titles such as Raja or Maharaja Diraja had still connotations of rank and nobility.

In historical perspective, the titles which are considered *pusako* of a *suku* may well point to a greater importance of the *suku* in former times. If the title of Dt. Sati e.g. was the property of *suku* Sikumbang in CKL and of *suku* Tanjung in another *nagari*, this could, and sometimes was, attributed to the fact that in former times *suku* Sikumbang and *suku* Tanjung were "one".

22 This makes the recording of a genealogy extremely difficult for the anthropologist, as the same persons are often referred to by their different titles.

23 This custom was probably developed in the Padri-era. In other *nagari*, as in *nagari* Gurun, such a practice was unknown, and the young men received their title only from their *kaum* or from their father's *kaum* (Thomas 1977: 88).

24 So Thomas, in his preliminary study of genealogies from *nagari* Gurun, could not detect any specific pattern of father-children or *mamak-kamanakan gala*-inheritance (1977: 87).

25 This is not quite in accordance with the data given by Naim 1973: 20. At the MUBES - 1969 of the LKAAM, 92% of the respondent *panghulu* had answered that they had received their title from their "*mamak kandung*", which Naim translates as "direct MB". Although it may seem somewhat inappropriate to contradict a Minangkabau who himself is a western trained sociologist, I suggest that these numbers should be read with caution. Though "*kandung*" usually denotes the closest blood relatives, and *mamak kandung* usually would denote the MB, I am quite convinced that in this context *mamak kandung* comprised a wider range of *mamak*, an impression which was drawn from interviews with several *adat* experts. In a common (with Naim) interview with Dt. Mangkuto Sati, a *panghulu* and recognized *adat* expert and former chairman of the PN Bukit Tinggi, Dt. Mangkuto Sati stated, that a Minangkabau *panghulu* would in principle insist that he had received his title and office from his *mamak kanduang*, even if this *mamak* should be a *mamak* in a different *kaum* of the *buah gadang*. A negative reply to the answer might imply that the present holder was not fully entitled to the *gala*.

In CKL, *panghulu* referred to their predecessor as their *mamak*, also if this *mamak* was a MMMZDDDS. More in line with my statement are the data given by Thomas on the basis of a sample check of genealogies. In *nagari* Gurun, closer descendants were often passed over in favour of more distant descendants, such as classificatory *kamanakan*, grandchildren, or even great-grandchildren (1977: 89). Note that Gurun follows *adat* Koto-Piliang.

26 Compare case 1 of 1936 of the LR Fort van der Capellen in "Berita Pengadilan Tinggi" no. 1, 1968: 33 ff. In this case the *gala* of Chatib Adat had been given to an *anak pisang* after *mufakat* and *sakato* had been reached in the father's group and a ceremony had been held.

27 Note that Gluckman has asserted that in all legal systems a fundamental distinction is made between movable and immovable property (1972: 113 ff.). As the Minangkabau example and others indicate, the distinction between self-acquired and inherited property is much more fundamental in many systems of property relationships (cf. Fortes 1950, 1963 for the Ashanti, Goody 1962 for the LoDagaa; see also the societies described in Derrett (ed.) 1965. In contemporary Minangkabau State Courts at least, the holder's autonomy over *pancaharian* land in no way is distinguished from his autonomy over *pancaharian* movables (see cases 39 of 1969 and 16 of 1972 PN Bukit Tinggi , 7 of 1970 and 36 of 1972 PN Batu Sangkar).

28 In the pawning register of CKL, which was kept by the *Tuangku Lareh* of Candung between 1873 and 1897, a sale of rice-land is recorded. This transfer seems to have been approved by "the whole community", judging from the impressive number of witnesses' signatures: 27

persons in all, among them 8 *panghulu*.

29 In the literature it is not always clearly stated which group must be extinct. The terms *kaum*, *familie*, *sabuahparuik* are mentioned interchangeably (see the references in the Pandecten V: nos. 1629 - 1646 and the judgements in T 140: 205 and 215). We must keep in mind that the terms denote different groups in different *nagari*. The basic principle is that as long as there are still persons "of one property", the *pusako* must be inherited. If all *urang saharato sapusako* are extinct, the property could be alienated with the cognizance of the related *buah gadang*.

30 On the *adat* of pawning see in particular Guyt's thesis *Grondverpanding in Minangkabau* (1936).

31 "... *istilah untuk memindahkan hak atas tanah buat sementara waktu*" (Dt. Maruhum Batuah and Bagindo Tanameh 1954: 54).

32 The *Westkust-rapport* of 1927 mentions 9 cases in which pawning was regarded as permissible. Guyt, however, reduced these to various manifestations of the four classical cases (1936: 61).

33 The general principle seems to have been, that *all kaum* members had to agree to the transaction, also those who did not live in the *nagari*. A *mamak* returning from the *rantau* could therefore claim the invalidation of the transaction on the basis that his consent had not been asked. If he was away, his consent should have been asked by mail (see Willinck 1909: 614, 616, 700, De Rooij AB 20: 128, AB 27: 276, De Waal van Anckeveen AB 1: 114, Dt. Sanggoeno Dirajo 1920: 104). But there are also modified statements which exclude the younger *kaum* members (see Guyt 1936: 65).

Guyt has developed the thesis, that the *mamak kepala waris* could pawn the *harato pusako* in the four classical cases in his own right, and that he was bound by the *sakato*-requirement only in other cases (1936: 70 ff.). This opinion, in the literature only found with Wienecke (AB 11: 120), is mainly based upon two judgements (LR Fort de Kock (1933) in T 140: 218 and LR Payakumbuh (1933) in T 140: 226 ff.), which, however, had been given by no other than Guyt himself! (This is not mentioned in his thesis). It can safely be stated that this was not the *adat* rule. Even in the more liberal contemporary situation, the *mamak* cannot pawn without the consent of the *ahli warih*, a rule which is regularly restated in the *nagari* and State Courts.

34 This procedural element usually is not mentioned in the Dutch literature on *pagang gadai*, though it is of considerable importance for the diachronic transfer of the pawnee's rights, see below p. 171.

35 Guyt reports that this system had been introduced in Batipuh and X Koto in 1888 (1936: 45, cf. AB 33: 289). *Gadai*-deeds dating back as far as 1870 are reprinted in AB 41: 406 ff.

36 " ... *minta tambah uang gadaian pada yang memagang semula*" (Dt. Maruhum Batuah and Bagindo Tanameh 1954: 55).

37 Van Vollenhoven mentions that in *jual gadai* cases, the redemption sum amounted to twice the original pawning sum, to which an additional

token gift (*toegifte*) was added (1918: 266).

38 In Guyt's characterization of the property relationships in terms of rights, the pawner keeps the *hak*, whereas the pawnee received the *milik* on the property object (1936: 15 f.). Different is the *Raad van Justitie* Padang according to which the pawner keeps the *hak milik* whereas the pawnee only gets a use right, *hak pakai* (T 140: 262).

39 See *Raad van Justitie* Padang in T 133: 183 and the expert opinions given in AB 6: 223 - 233, which are quite in accordance with the rules given in interviews in CKL.

40 On Lombok, for instance, the term *gadai* is nowadays usually used to denote pawnings, but the older people still use the (presumably) older term *sande* (Koesnoe 1975: 154).

41 The explanations given by *adat* experts in 1911 differed: One expert considered *sando* a *pagang gadai* transaction in which the right of redemption was restricted. For another expert it depended on the value of the pawning sum, whether a transaction was *sando* or *pagang gadai*: below 20 *real*, it was *gadai*, in excess of 20 *real*, it was *sando*. Of the *sando agung* it was said that the property in question could only be redeemed by the direct ascendants and descendants of the pawner (see AB 6: 235 ff.).

42 The term *kudo*, horse, seems to indicate a special relationship between *bako* and *anak pisang*. At *panghulu* installations in CKL, it was the task of the *bako* to give the *adat kudo*, "the *adat* of the horse". According to villagers, a horse was given in former times. In contemporary CKL, a symbolic money payment has replaced the horse.

43 *"Hibbah ialah berlaku kapada anak kanduang dengan jalan menjadikan anak tersebut manjadi kamanakan, tetap tinggal dan hidup berketurunan didalam suku dan koroang kampuang pusaka yang dihibahkan oleh si bapak".*

44 *"Hibah ten opzichte van harato pusako of ten aanzien van het ganggam bauntuek zijn dan van zelf ab ovo nietig".*

45 Willinck has analyzed the character of the Minangkabau *hibah* in terms of western conceptions of donation. He concludes that *hibah* cannot be called a donation (*schenking*), as the donation always has the consequence that the donor loses the property to the donee. In western law (and in Islamic law, too) the donation is a contract which requires the acceptance of the property by the donee, whereas in *adat* such acceptance is not necessary. The *hibah* can neither be compared to the *donatio mortis causa* of the Roman law (which is not allowed in most contemporary western legal systems) as different consequences are attached to the *hibah*: The property given by *hibah* could never be used to fulfil the claims of the deceased's creditors, even if the *hibah* was made with the aim to evade the creditors' claims. In Roman law, the property donated *mortis causa* could be held liable for certain claims of the donor's creditors (1909: 750 f.).

46 For an overview see Pandecten V: nos. 1489 - 1532.

47 This *adat* rule was in contrast to the regulations introduced by the

R.B.G. (*Rechtsreglement voor de Buitengewesten* 1875), art. 208 and 216. According to these provisions, the *harato pusako* of a debtor's *kaum* could be held liable for debts if there was not sufficient *harato pancaharian* to satisfy them, see Der Kinderen 1875: 197, 199. In practice, however, *adat* prevailed. Dutch lawyers interpreted the provisions as "formal" law only, which could be applied only, if according to material law *pusako* could have been used to fulfil the creditor's claim. As the material law in this case was *adat* law, according to which this was not possible, the provision of the R.B.G. could not be applied in Minangkabau, cf. Guyt 1936: 57. The Dutch colonial courts followed this interpretation and did not enforce the provisions, see LR Padang (1929) in T 133: 238, LR Solok (1932) in T 138: 480.

48 But even if the *kaum* members of the debtor agree to the giving of *harato pusako* as security, the bank may run into serious trouble if it tries to sell the property in public. In a CKL case, a bank had already twice tried to do so, but without any result, and the property was worked by the debtor's *kamanakan* in spite of the seizure.

49 Conversely, the payment of another person's debts such as hospital bills etc. is often adduced as evidence as to who the heir of the deceased is. This generally happens in cases where the legal status of the property, *harato pancaharian* or *harato pusako*, is disputed. These problems of evidence will be described by K. v. Benda-Beckmann.

50 This differentiation is also made by Van Vollenhoven in another context but he does not relate it to his conception of *rechtsgemeenschap* (1918: 252).

51 In a later publication, Goody expresses himself more cautiously: "In using the word 'corporate' to describe a group I do not even imply that its members hold equal rights in common property" (1973: 26). In *Death, Property and the Ancestors* he did so explicitly.

52 One of the few authors who make the distinction is Lloyd in his study of Yoruba property law, in particular 1959: 29 ff. and 1965: 170 ff. He distinguishes the "corporate holding of the title" and the "entailment of self-acquired interests in property", which after the death of their creator cannot pass by bequest or inheritance outside the group descended from the creator, or, on the extinction of this group, outside his own kin group (1959: 32).

Derrett also warned of the "deceptive appearance of a merger of all assets into a common indistinguishable mass" (1965: 25). Moore has illustrated the importance of the distinction with respect to cattle holding groups (1969: 390).

53 Evers' statement could be excused if it had been based upon a rather undifferentiated description of Minangkabau property relationships. But ironically enough, Evers just quotes Willinck, the author, who had "detected" this "new" form of property holding already in the beginning of this century. However, Evers rather misquotes Willinck, when he writes:

"Willinck (1909: 57) claims that *harta pusaka* or *tanah ulayat* can be owned either by a sub-clan (*jurai*) or an extended family (*paruik*). I did not come across any property that was effectively owned by a *jurai* in Padang" (1975: 88 FN 1).

He did. For "the recent form of communal ownership" which he found

in Padang is nothing else than what Willinck had described as *pusako* held by a *jurai*. How Evers came to impute that Willinck meant a "sub-clan" when writing about a *jurai*, is incomprehensible to me, for Willinck is quite explicit in stating that he means a sub-branch of the *paruik*, when he speaks about the *jurai* on p. 574 f. and p. 782 f. Evers' p. 57 must be a typing error.

54 This was very evident in a dispute about *pusako*- and *buek* rights which was brought to the *Karapatan Adat Nagari* of CKL in 1975. This case will be described in the thesis of K. v. Benda-Beckmann.

55 Firth (1974) discusses the use of the concept *waris* among the Kelantan Malays as a category of personal kin. Unfortunately, he does not consider inheritance among the "operational categories" (1974: 48 ff.), although "in general it is only consanguine links which entitle people to be included among someone's *waris*" (1974: 38) and the system of inheritance is essentially between consanguinal kin relations based upon common descent (1974: 34). His failure to consider inheritance may well be motivated by a subconscious addiction to the temporal attitude towards inheritance in western societies.

56 On the consequences of the *ribā*-prohibition on the *pagang gadai* transactions see above p. 174.

57 But like all kinds of property relationships, the *eigendom*, too, has never been unrestricted, and it therefore would be misleading to speak of it, as is sometimes done, as of an "absolute" or "complete" right. This is fully recognized by Dutch lawyers (see Pitlo 1965: 120, 1966: 296).

58 Even this is subject to an exception, for the Dutch legal culture has produced a "temporary *eigendom*" in the case where *eigendom* is transferred as security for a debt under the condition that it must be retransferred after the payment of the debt (Pitlo 1965: 123 f.).

59 In making the basic distinction along these lines, I follow the exposition of Pitlo (1965: 148 ff., 1966: 309 ff.). There is, however, no unanimity among Dutch legal experts as to the basic criteria according to which the *vrije* and *gebonden mede-eigendom* should be distinguished. The prevalent opinion makes the distinction according to the possibility of division of the property. But this results in inconsistencies, as e.g. inherited property, though divisible, is always considered to be *gebonden mede-eigendom* (see Pitlo 1965: 149 ff.).

60 Except for the rules concerning inheritance, art. 1112 ff. B.W., there are no more rules in the B.W. that regulate the form and consequences of *mede-eigendom*. If *mede-eigendom* is mentioned elsewhere in the Civil Code, one is referred to the inheritance provisions. The rules described in the text have been elaborated by the legal experts and the courts. Cf. Pitlo 1966: 310 ff.

61 It is estimated that only about 10% of all married couples make such contractual agreements (Pitlo 1966: 272, Klaassen, Eggens and Luijten 1973: 130.).

62 See Pitlo 1966: 271 ff., Klaassen, Eggens, and Luijten 1973: 88.

The law of marital property has undergone several changes in the recent past. Until 1957, the married woman was not entitled to dispose of marital property without her husband's consent. In 1957 this was changed. The new form of marital property was only created in 1969 (S. 1969: 257).

63 See arts. 880 and 1002 B.W. The continuation of the holder's capacity occurs through law. This principle is called *saisine*. "*Le mort saisit le vif*". In Germanic law, *saisine* only governed the inheritance of property relationships by blood relatives, the legal heirs. Roman law considered legal heirs and heirs by testament on an equal basis. This principle has been adopted into most continental European legal systems.

Inheritance is restricted to property relationships. Personal relationships and public status-relationships are discontinued with the death of their holder (cf. Pitlo 1966: 423 ff.).

64 In addition, there is a class of persons who may not inherit at all as testamentary heirs, like guardians, priests, doctors, or notaries who stood in a professional relationship with the deceased, arts. 951, 953, 954 B.W. This principle is also extended to donations *inter vivos*, art. 1718 B.W. Until 1969, second wives and recognized natural children could only inherit a limited portion of the heritage by testament, arts. 949, 955 B.W.

65 The legitimate portion is generally taken to be a right to a fraction of the property *objects* and not of its value (Pitlo 1966: 448). In art. 972 B.W. it is explicitly stated with respect to immovable property that it must be given back *in natura* if it is required to fill up the legitimate portion.

66 In German law, for instance, such retroactive invalidation of gifts can only be claimed with respect to donations made during the last ten years of the property holder's lifetime, art. 2325 BGB.

67 " ... *dat, bij eigendoms-overgang van het geheel of van een gedeelte van eenig onroerend goed, toebehoorende aan een lid der oorspronkelijke bevolking van Sumatra's Westkust, en waarvan een wettig eigendomsbewijs opgemaakt is, de bewijzen, welke tengevolge van erfenis, boedelscheiding als anderzins mogten vereischt worden, door de eerste plaatselijke autoriteit zullen worden verleend, na vooraf te hebben ingewonnen het advies van de bevoegde regenten, soekoe- en familiehoofden*".

68 The Domain-Declaration (*Domeinverklaring*) was contained in the Agrarian Decree (*Agrarisch Besluit*) of 1870 (S. 1870: 118. Cf. Gautama and Hornick 1972: 80).

69 Art. 1 is reprinted in Logemann and Ter Haar 1927: 106: "*Alle woeste gronden in de gouvernementslanden op Sumatra behooren, voor zoover daarop door leden der inheemsche bevolking geen aan het ontginningsregt ontleende regten worden uitgeoefend, tot het Staatsdomein. Over die tot het Staatsdomein behoorende gronden berust, behoudens het ontginningsregt der bevolking, de beschikking uitsluitend bij het Gouvernement.*"

70 The provisions of the Domain-Declaration created a state of considerable legal uncertainty. The concept *eigendom* was not further

defined and permitted several interpretations. Van Vollenhoven noted that four different interpretations were held by the colonial administration. These ranged from the opinion that all land except civil code *eigendom* fell under the domain of the State to the view that all rights according to *adat* had to be subsumed under *eigendom* (1919: 53 f.). The position taken on Java was that all land which was held according to *adat* law fell under the domain, except for the land which had been converted into *agrarisch eigendom* (cf. Gautama and Hornick 1972: 80 f.). In the areas outside Java and Madura the situation was even less clear, as separate Domain-Declarations had been issued, and it was uncertain to what degree the 1870-declaration applied to these areas at all (see Van Vollenhoven 1919: 54).

71 See also the opinion of the *Directeur van Justitie* in his letter of 8.12.1903 to the Governor of the West Coast (AB 11: 74 ff.).

72 The mortgages on European land followed the Dutch law about the *hypotheek* as laid down in Book 2 B.W. In 1908, the system of forced cultivation had been abolished, and the system of taxation been introduced. The creation of mortgages on Indonesian land thus was no coincidence.

73 On the Basic Agrarian Law see Gautama and Harsono 1972, Harsono 1973 with the texts of all laws and further regulations, Gautama and Hornick 1972, Tan 1977.

74 The conversion-provisions were contained in the *Peraturan Menteri Agraria* no. 2 of 1960.

75 Section 7 of law 56 of 1960 had been devised to meet the situation on Java. On Java, rich people often pawned property from poor people. The poor were generally not able to repay the *uang tebusan*, and the pawning therefore often amounted to a *de facto* permanent alienation: The pawner, once forced to pawn his property in need of cash, pawned his property to the rich who had it worked by wage labour. Once the cash had been spent, the original holders were usually not in the position to redeem their land.
Section 7 represents an attempt to put a stop to these practices.

In Minangkabau, however, the situation is generally different. Pawned land is usually taken by people who do not have enough property of their own for subsistence farming. The pawners are usually persons (or *kaum*) who have sufficient *harato pusako* and who can afford to give away some of it without losing their own subsistence basis. If section 7 had been applied in Minangkabau, this would have meant that the poor were even deprived of the money which they had invested in the rich man's property.

In 1964, Land Reform Courts(*Pengadilan Landreform*) had been established by law no. 21 of 1964 to deal with conflicts arising out of the implementation of the Basic Agrarian Law. They did not function well and were officially abolished again in 1970 (law no. 11 of 1970).

76 The new marriage law severely inhibits polygamy. The consent of the first wife is necessary if the husband wants to marry a second wife. This consent must be in writing and be given before the court. The husband must also prove that he is economically able to support more than one wife.

NOTES TO CHAPTER FIVE

1 I do not share the view that the "typicality" of extended cases is irrelevant (Mitchell 1964: XIII). The functional value of a particular form of problem-solving human behaviour cannot be determined by its relation to the structural regularities. It only becomes clear through the comparison of the frequency of its incidence with the other forms of behaviour aimed at solving the same problem.

2 I have changed the names and titles of the CKL-villagers who appear as actors in the following stories.

3 Contrary to Tanner's statement (1971: 286), cases over *sako* are sometimes taken to the State Courts in Minangkabau. In the years 1969-1974, 5 cases involving the right to the *sako* were brought before the PN Batu Sangkar. But such cases are rarely finally decided in court. Since 1960, the question of whether the State Courts may entertain a suit over *sako* at all cannot be answered clearly. The PT Medan, in the appeal decision quoted in this story, denied the jurisdiction of State Courts in *sako* matters. However, not all contemporary State Courts keep to this decision (or do not know about it). In case 1 of 1970 of the PN Batu Sangkar, for instance, the jurisdiction of the court in *sako* matters was acknowledged.

The three judgements from which I have extracted the events are 1. the judgement of the *Rapat* of the *Tungku Laras* of IX Kota of 5.5.1910, 2. case 28 of 1951 of the PN Solok, and 3. case 213 of 1960 of the PT Medan. Some additional information was given by the younger brother of the present Dt. B.

4 The document, comprising 84 pages with entries from 1873 - 1897, was written in Malayan letters. After the PN's judgement, the document was kept in the court records. The chairman of the PN allowed us to make photocopies of the documents, and we had all entries transcribed into Indonesian. For a partial analysis of the entries see p. 288 f.

5 A very similar decision was given in case 34 of 1973 which concerned the property of the plaintiff's father's brother, who also had been a trader in Medan.

6 This influence of Islamic law is also apparent in the decisions of the 1952-conference on Minangkabau inheritance law. It was declared that testators should be obliged to give 1/3 of their "pure" *harato pancaharian* by testament to their *kamanakan* (see Chapter 6: 325).

7 One of the greatest deficiencies of the report, as already Evers has noted (1975: 99), is the fact that the sex of the testators has not been given. The sex ratio among the recipients is 52.2% for females and 47.8% for males (1971: 16). Given a speculative ratio of 50:50 % among the testators, the significance of the data as indicators of social change and change in the inheritance law would have to be altered. With respect to the overall result, it

would mean that the 202 cases of inheritance by the *kamanakan* and the 149 cases of *hibah* to the *kamanakan* would be drawn from only 50% of all cases, as only men have *kamanakan*. The significance of these data should therefore be doubted. If one wants to interpret the data in terms of lineality, as Sa'danoer does, half of the cases of inheritance and *hibah* to the children would be quite in accordance with matrilineality, as stemming from female testators/ donors.

Another deficiency of the report is that it has not been mentioned (asked) in which network of interpersonal relationships the testators lived. For if a person had had no children, it would be quite in accordance with *adat* that the *pancaharian* would pass to the *kamanakan*.

In addition it is not mentioned whether the property received by the respondents was the total or only a part of the testators' *pancaharian*, and whether he or she was the only recipient of the property.

8 In the case of land we would like to know, of course, whether it was a residual or a provisional relationship which was transferred, taking into account that Minangkabau villagers usually refer to the land which they have pawned as to "my *pancaharian*".

9 See note 7.

10 Only if this is known,one can understand some highly contradictory reports on Minangkabau landholding. In 1928, Schrieke reported that in the area of Solok "all the family land has been done away with and has been transformed into self-earned land as a consequence of pledging" (1955: 110). 25 years later, Prins repudiated this statement, drawing attention to recent research which had shown that most property in this area still was *harato pusako* (AB 41: 392 ff.). Prins correctly commented that the use-rights could be regarded as falling among the *harato pancaharian* but that this did not affect the *pusako* status of the land to which the use-rights pertained (1954: 52).

11 I have mapped this area without the help of geodetic instruments on the basis of an older Dutch military map which gives the exact location of the roads and paths. The borders between the rice-fields are given correctly, but the exact measures and sizes of the fields are approximations only. The many hours spent on the fields offered ample opportunities to talk with the farming villagers, and I have collected much information on their property relationships during these casual conversations. Additional information was given by an informant living in this area and by some *panghulu* with whom I made a systematic check of the kinds of property relationships pertaining to the land which I had mapped. Unfortunately, the information which I could collect during our stay in CKL was not sufficient for a systematic reconstruction of the property history of the whole area.

12 Compare Bohannan on "The Impact of Money on an African Subsistence Economy" (1967 b), in particular pp.123 ff., 133. There is a strong parallel between the impact of "all-purpose money" on the relationships to women among the Tiv and the relationships to *harato pusako* among the Minangkabau, which cannot, however, be explored systematic-

ally in this study.

13 Thomas (pers. communication) reported several cases of this kind to me.

14 For similar arguments with respect to Minangkabau see Fischer 1964: 103. For matrilineal societies in general compare Fortes 1957: 183.

15 De Josselin de Jong cites this argument as evidence against the patrilateral CCM in early Minangkabau social organization (1951: 62), a necessary corollary to his hypothesis of prescriptive matrilateral CCM. But I would think that in early Minangkabau the wishes of the young spouses would be much less taken into account than in contemporary Minangkabau.

16 Firth therefore should rather apply another of his remarks on Soviet anthropologists to Maretin's analysis, namely "that nowhere is the distortion of observations by evolutionary hypotheses so marked as in the works of Soviet ethnographers in the sphere of kinship, where the hunt for 'survivals' has concentrated attention ... on unusual, sporadic deviations of custom" (1965: 362 FN 2).

17 I must report one exception from the Religious Court in Bukit Tinggi. In an uncontested case, two sisters demanded that the court confirm their status of heirs in accordance with *hukum faraidh* (case 82 of 1974).

18 These opinions were voiced during an interview session with several *panghulu* in *nagari* III Balai. See also R.M. Dt. Rajo Panghulu 1971: 58.

19 These data are based upon our research of the court records of the PN Bukit Tinggi and Payakumbuh from 1968-1974, and of PN Batu Sangkar from 1969-1974. The percentage of disputes concerning *pusako* property probably is even higher. I have only considered those disputes where *pusako* is explicitly mentioned in the records.
A more systematic differentiation of the courts' case load will be given by K. von Benda-Beckmann.

20 Several instances of such cases will be described by K. von Benda-Beckmann.

NOTES TO CHAPTER SIX

1 Like in the proceedings of the LR Padang, T 140: 273 ff.

2 See Lev 1962 on the development of *adat* inheritance law in the *Mahkamah Agung*.

3 The two judgements and the documents relating to them are recorded in the Dutch National Archives in Schaarsbergen, File no. 4/23/ 1862 no. 9.

4 Letter of 24.8.1861: "... *dat de gronden niet vallen onder de maleische instellingen of het maleisch erfregt, maar dat de eigening daarvan inderdaad volgens het Europeesch regt heeft plaats gevonden en de hoofden, ten aanzien wier overstaan die eigening heeft plaats gevonden, daarmede hebben ingestemd.*
... neemt men dit als waarheid aan, ..., dan heeft ook een lid der oorspronkelijke bevolking van Sumatra's Westkust volkomen het regt om naar verkiezing over dien grond te beschikken en gaan zijne regten onveranderd op de volgende bezitters, wie die ook zijn, over, terwijl alleen bij afsterven ab intestato de maleische erfopvolging dient in acht genomen te worden."

5 The *Directeur van Middelen en Domeinen* (in his letter of 1.9.1860) and the *Procureur General* (in his letter of 20.11.1861) both held that an annulment of the judgements was out of the question, as such measure would be contrary to the principles of the administration ("... *het bevel tot schorting van het vonnis ... is te zeer in strijd met de bestaande regeringsbeginselen dan dat de regering dat bevel zoude kunnen goedkeuren*"). The *Procureur General* further advocated that the regulation should not be changed: "It seems advisable in my opinion not to regulate too much in these matters where conflicts with the customs of the population can so easily arise" (letter of 20.11.1861). The regulation was, however, changed by the Governor General in a decree of 15.2.1862. In the reasons given for the amendment it was stated that it was neither the aim of art. 2 of the old regulation nor of the Government's policy to subject all transactions over *pusako-eigendom* to the consent of the administrative authorities, but that this rule should only apply to intestate inheritance.

6 Letter of 20.11.1861: " ... *het kan wel niet twijfelachtig zijn, dat, daar partijen in den eigendom worden bevestigd door een Europeesch ambtenaar naar de Europeesche wetten, en dit eigendomsregt eene zuiver Europeesche instelling is, de gevolgen aan hetzelve verbonden naar de Europeesche wetgeving moeten beoordeeld worden ...*
De Landraad te Padang heeft trouwens minder gedwaald in de toepassing van de regten aan den eigendom van den grond ontleend, als wel in de toepassing van het Maleische versterfregt, waarvan die regtbank eene zoo uitgebreide werking heeft toegekend, dat elke andere eigendomsovergang op grond van het versterfregt zoude nietig zijn."

7 Thomas reports the same from *nagari* Gurun (personal communication).

8 On the relation between *adat* and Islam in Minangkabau cf. Taufik Abdullah 1966, 1971, 1972; Prins 1953, 1954; HAMKA 1946; Lev 1972 a, 1972 b for an excellent account of the role of Islamic law and Islamic courts in Indonesia in general; Dobbin 1977.

9 The Ithna Ashari school is a Shi'ite Islamic school. The Shi'ites are the followers of Ali, the Prophet's son-in-law, who regard Ali as the only legitimate successor of Mohammed, whereas the Sunnites recognize the caliphs, see Fyzee 1955: 28 ff. On the legal rules of this school see Fyzee 1955: 379 ff.
Already Verkerk Pistorius reported that the descendants of former slaves were called "*kemanakan dengan sabab*" (1868: 437). The con-

temporary classification of heirs is made in I.H. Dt. Rajo Panghulu 1974: 39 ff. In CKL, it was given by one *adat* expert. Note that I.H. Dt. Rajo Panghulu had held *adat* lectures at the Islamic secondary school of CKL some years ago.

10 See the description of the *sidang* system in CKL earlier in this study. In Lubuk Sikaping, the *nagari* government was formed by the *Besar nan IX*, the "9 Great Ones", who consisted of the *Datuek nan V* and the *Tuangku nan IV*, see AB 39: 213. Cf. Dobbin 1975, 1977.

11 This resulted, however, in the institutional emancipation of Islam. The Islamic functionaries have since then stood outside the *adat* system. The role of the religious *suku* functionaries decreased and the importance of the Islamic functionaries acting as Mosque personnel and religious teachers outside the *adat* system has steadily increased.

12 See HAMKA 1946: 15 f., Taufik Abdullah 1972: 203. Achmad Chatib had made the pilgrimage as a boy of 15. He later became one of the most influential Islamic teachers in Cairo. He refused to return to Minangkabau unless its pagan institutions had been abolished.

13 For an excellent account of the local politics between the *adat*- and Islamic pressure groups in the first half of this century see Taufik Abdullah 1971, 1972.

14 On the 1952-conference see Prins 1953, Tanner 1969: 65. The committee's proposals were published on 20.1.1952, see Prins 1953: 323.
The 1968-conference is well documented. All papers given at and the conclusions taken by the conference are given in full in Naim (ed.) 1968.

15 As Prins already noted there were several ambiguities in the proposals made in 1952: The position of female property holders was not considered at all and no mention was made of *harato suarang*. It also was not stated what "the property derived from the *pusako* in accordance with *syarak*" might mean (see Prins 1953: 323 f.).

16 For a good overview of the Dutch literature see Pandecten V: nos. 1489 - 1532.

17 See Pandecten V: nos. 1489-1532. On the difference between "knowledge" and "consent" see Chapter 4: 191 ff.

18 For a similar decision referring to the coastal town of Pariaman, see LR Lubuk Begalung (1905) in AB 6: 259.

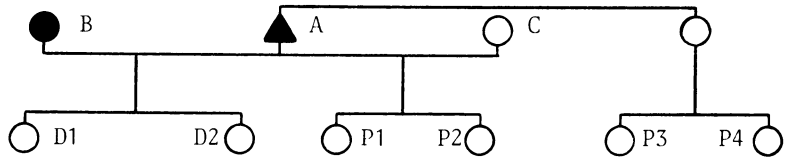
19 For the period following the war and Indonesia's independence no published judgements have been found.

20 "*Overwegende, dat echter de Raad zich vereenigende met de uitkomsten van het deskundigen onderzoek en de motieven en conclusien van dat rapport overnemend en tot de zijne makend van oordeel is, dat eischers de eenige rechthebbenden op de nalatenschap van dr. Muchtar dus op meerbedoelde geldsom (zouden) zijn (de pancaharian), ware het niet ... dat deze bij beschikking ... deze geheele nalatenschap op wettige wijze aan zijn kinderen ... had vermaakt*" (T 131: 85).

The Supreme Court in its appeal judgement left this question open because it did not consider it relevant to the dispute: " ... *daargelaten of deze wijziging zich reeds zoverre heeft voltrokken, dat aan de kinderen een erfrecht bij versterf ten aanzien van het geheel of een gedeelte van de harta pancaharian van hun vader toekomt* ..." (T 131: 91).

21 "*Mijn conclusie is deze: Naar het adatrecht der Minangkabausche maatschappij zijn de gelden ... door hem persoonlijk gewonnen goed (harta pentjarian), vallen als zodanig in zijn nalatenschap en zouden daarmee vererven op den heer M.* (the *mamak kelala waris* of dr. Muchtar's *kaum*, v.B.B.) *ware het niet dat dr. Muchtar ... op wettige wijze aan zijn kinderen had vermaakt*" (T 131: 96). Carpentier Alting stated: "*Van een uit eigen hoofde aan de kinderen toekomend erfrecht is echter geen sprake*" - "That the children have a right of inheritance is out of the question" (T 131: 102).

22 Case 11 of 1964 PN Padang Panjang:



A had died in 1960. In 1959 he had given his *harta pancaharian* worth 1.5 Mill. *rupiah* by way of *hibah* to his 4 children and his 2 *kamanakan*. After his death, the children of his predeceased wife B had taken all the property and refused to share it with the plaintiffs. The plaintiffs claimed 4/6 of the property, whereas the defendants stated that all the property had been common property of A and B, and that A therefore had had no right to dispose of it by *hibah*.

The court gave the following ruling: As far as the *harta pancaharian* are concerned the respective rights of husband and wife are to ½ each. As B was predeceased, her ½ fell to her children, the defendants. The *hibah* was valid only in as far as the husband could dispose of his ½ of the *pancaharian*. All the parties therefore were entitled to 1/12 of that property (to 1/6 of the father's *suarang* part). Thus the court accepts as self-evident the principle that only the children of the marriage in which the property was acquired are entitled to the inheritance.

23 "*Menimbang, bahwa dari kenyataan yang hidup dalam masyarakat Minangkabau sekarang bahwa orang2 yang berpolygamie pada masing2 isteri sudah terbentuk unit2 kekayaan pada masing2 rumah tangga maka sudah selanyaknya anak2 yang lahir dalam perkawinan polygamie itu tidak berhak terhadap unit2 kekayaan lain diperoleh dalam perkawinan.*"

24 "*...bahwa tidak jaranglah terjadi di Minangkabau suata harta yang bersal dari harta pancaharian yang terang dan nyata menurut perkembangannya sudah menjadi hak milik pribadi dari seorang anggota kaum, dapat dihibahkan atau diberikannya kepada anak2nya sendiri, yang akan tetapi dalam hal demikian pengetahuan dan penyaksian kemanakan2 yang patut didalam kaum yang akan menghibahkan atau pemberi dan demikian pula sebaliknya dari pihak sipenerima diperlukan*

juga adanya untuk mencegah ganggu gugatan dikemudian hari."

25 "*Oleh karena sebagai harta pancaharian dari pada Siring, maka menurut hukum adat Minangkabau telah mengalami perkembangan sekarang ini, dengan meninggalnya Siring harta itu diturunkan kepada anaknya sah dit. satu kata Dt. S sebagai satu2nya ahli waris;*
... bahwa perkembangan hukum adat dimaksud adalah paralel dengan perkembangan yang terjadi dalam susunan (struktur) kemasyarakatan orang Minangkabau yang telah berjalan sejak masa sebelum kemerdekaan dan masih berjalan terus sampai sekarang ini, yaitu semakin kokoknya ikatan keluarga yang unsur2nya terdiri dari suami, isteri dan anak2nya, disamping semakin lemahnya ikatan kaum yang membawa akibat pula pada pemisahan yang semakin tajam antara harta pancaharian sebagai kekayaan dalam keluarga, dan harta pusaka sebagai milik atau kekayaan kaum;
... (PT) berpendapat, bahwa harta pancaharian seseorang hanyalah mungkin diturunkan menjadi harta pusaka dalam kaum, manakala hal itu secara khusus memang sudah menjadi kehendak dari yang bersangkutan sendiri, yaitu manakala dapat dibuktikan secara nyata bahwa oleh sipemiliknya harta tersebut sudah diperuntukkan sebagai pusaka dalam kaum, bukan untuk diwariskan kepada anak2 sebagaimana harusnya."

26 "*Kaluak paku kacang balimbiang - Pucueknyo lenggang-lenggankan - Dibao ka Saruaso - Anak dipangku kamanakan dibimbiang - Urang kampuang patenggankan - Jago nagari jan binaso*" (see Nasroen 1957: 176). The saying is, by the way, quoted by Dt. Rajo Panghulu in the same publication without the additions (1973: 195). It is symptomatic that I.H. Dt. Rajo Panghulu, though undoubtedly recognized as one of the leading contemporary *adat* experts, is generally counted among the proponents of an Islamic *adat*. The additions incorporated into the *adat* saying serve to legitimate the inheritance of *harato pancaharian* by the children "in accordance with Islamic law and *adat*". The same new version was given during one interview with *adat* experts in *nagari* Simabur. It is my assumption that the interviewee had got hold of the new version from the book or from the author himself: Both persons were leading members of the LKAAM.

27 So already Wilken in 1883: "*De harta pancaharian is, gelijk van zelf spreekt, individueel eigendom*" (1926: 54).

28 See Smits and Van Bosse as quoted by Willinck 1909: 770 f.; AB 1: 87; AB 10: 15, 160. Even Van Vollenhoven (1918: 262 f.),and following him, Joustra (1923: 114) subscribed to this view.

29 According to contemporary Dutch law, the division can be deferred maximally for 5 years. In German law, the maximal period is 30 years.

30 It should be noted, that the *harato pusako* complex was also defined in this differential way in the proposals of the 1968-conference on Minangkabau inheritance law: Neither the *mamak* nor the *kamanakan* are the "owners", *pemilik*, of the *harato pusako* (Naim (ed.) 1968: 243).

31 According to a manuscript on "*Pusako Tinggi*", written by R.M. Dt. Rajo Panghulu for the author in 1974.

NOTES TO CHAPTER SEVEN

1 Compare Rattray (1929:20) and Fortes (1950: 272) on the Ashanti, Malinowski (1927: 80 f.) on the Trobriand Islanders, Goody (1962: 429 ff.) on the LoDagaa.

2 Cf. Taufik Abdullah 1971: 6 f. For the view, that the imposition of Dutch colonial rule did on the whole not have a deleterious effect on the position of the *panghulu*, see Kahn 1976: 85 ff.

3 See my comments on the "increase of patrilineal inheritance" (p. 327) and on the "increase of patrilateral cross-cousin marriages as signifying the change from matrilineality to patrilineality" (p. 300).

4 We had a similar experience during an interview session with several *panghulu* in *nagari* III Balai. All *panghulu* insisted that there had been no change at all in the *adat* of inheritance. This was quite a surprise in the light of what we had read and heard about Minangkabau inheritance law elsewhere. My explanation for this attitude is, that the inheritance of *harato pancaharian* is to be legitimated by *adat* at all costs. If the Islamic leaders proclaim a change of inheritance law "from the *kamanakan* to the children" due to the influence of Islamic law, the best way to counter this argument is by denying that there has been any change at all.

5 It should be noted, that de Josselin de Jong in a later publication treats the childrens' inheritance of their father's *harato pancaharian* as a manifestation of patrifiliation (1964: 189) and not anymore as a patrilineal mode of inheritance (1951: 85).

6 See Tuden 1969 on the importance of the *chibuwe*-cattle among the Ila; cf. Gulliver 1955 and Krige 1964.

7 The *locus classicus* is Radcliffe-Brown 1952: 192. For critiques of this assumption Van Velsen 1964: XXIII ff., 1967: 129 ff.; Boissevain 1974: 9 ff.

8 The concept "extended case-method" goes back to Gluckman 1961. The concept of "situational analysis" was developed by Van Velsen 1964 and 1967. The use of the concept "network" goes back to Barnes (1954) and Bott (1957). For an overview of the development of network analysis see Mitchell 1969. Turner (1957: 91 ff.) developed the notion of the "social drama" and speaks of "processual analysis" (1968: XXVI) or "diachronic micro-sociology" (1957: 328).

9 I may be wrong in my interpretation, but Leach's way of expressing himself is at least ambiguous. Bloch seems to share this view, although it is related to his own assumptions, when he writes: "While Leach talks of property *as through it equalled the mode of production*, I see it here as already part of the superstructure. For me, property in these systems is already 'talking about' production and indeed misrepresenting it. The link between property and kinship *is between two aspects of the superstructure*"(1975: 211, my italics).

GLOSSARY

aanwas (D.)	accrual
adat	tradition, custom, law, morality, political system, legal system
- *islamiah*	*adat* which is in accordance with Islam
- *istiadat*	general, ceremonial *adat*
- *jahiliah*	the heathen or pagan *adat*, *adat* inconsistent with Islam
- *kamanakan*	the *adat* of the nephews and nieces, the matrilineal system
- *nan diadatkan*	*adat* which has been made *adat* (through council decision)
- *pusako*	the *adat* of matrilineal heritage, the matrilineal system
- *nan sabana adat*	*adat* which is truly *adat*, natural law, divine law
- *nan taadat (yang teradat)*	*adat* which has developed into *adat*
adatrecht (D.)	*adat* law
adiek (adik)	younger sibling
ahli warih (waris)	the heirs, the group members
alam	world, nature
Alam Minangkabau	the Minangkabau World
alim ulama	religious expert(s)
amak	mother
anak	child(ren)
- *cucu*	grandchild(ren)
- *kamanakan*	the nephews and nieces, members of a matrilineal kin group
- *mudo*	functionary of the *hindu adat*
- *pisang*	child(ren) of the male members of one's matrilineal kin group
angku, Angku	Islamic functionary, adviser to the *penghulu*, honorific title, respectful form of address for older men
'āriya (Isl. law)	donation of profits
'aṣabāt (Isl. law)	agnates
'ayn (Isl. law)	the substance of property objects
bagi (membagi)	divide, split
bagi bauntuek (bagi beruntuk)	distribution of the use-rights to the *harato pusako*

bako	a child's father's matrilineal descent group
balahan	matrilineally related kinship group in a different *nagari*
bapak	father, address for older males
Basa nan Ampek Balai	the Great Ones of the Four Council Halls; the four ministers of the Minangkabau empire
batal	void
batali	connected, related
- *adat*	related in terms of *adat*
- *ameh*	related through gold
- *budi*	related through good social relationships
- *darah*	related through blood
batimbang baluek	balanced exchange, sibling exchange in marriage
bay' (Isl. law)	sale
beschikkingsrecht (D.)	common right of control and disposition
beslissingenleer (D.)	decision theory
bilik	sleeping-room in the family house
bini	wife
biyaik	mother, address for older women
bloedverwanten (D.)	blood relatives
Bodi-Caniago	one of the two *lareh* and *adat* systems with an egalitarian and democratic tradition
buah gadang	matrilineal descent group under a *panghulu* (in CKL)
buah paruik	group of related *buah gadang* (in CKL); matrilineal descent group
(di) buang	to ban, to punish by expulsion
budak	slave
buek	neighbourhood
buek perbuatan	neighbourhood regulations
Bupati	District Head, Head of a Kabupaten
Camat	sub-District Head, head of a *Kecamatan*
caradiek (cerdik) pandai	the "intellectuals"
Chatib	religious *adat* functionary, title of religious *adat* functionary
corian barih (coreng baris)	the "streak of lines", the property constitution
cupak	measure made of bamboo, standard
- *buatan*	the new standard
- *usali*	the original standard
cultuur stelsel (D.)	system of forced cultivation
dakek (dekat)	close, near
dansanak	sibling(s)
dapatan	the received property of a female
darek	the nucleus of the Minangkabau world, formed by the three *luhak* Tanah Datar, Agam, and 50 Koto
dilipek (dilipat)	(a title) is put aside
dionjokkan	(persons) are accepted as heirs
distriktsgerecht (D.)	district court
dubalang	*adat* functionary, military and police officer in *adat*

eigendom (D.)	ownership
Eigentum (G.)	ownership
Eigentümer (G.)	owner
familie (D.)	family, matrilineal kinship group
faraidh	inheritance (law)
farḍ (Isl. law)	inheritance portion; prescribed religious injunctions
fatwā (Isl. law)	explanation(s) of law given by religious experts
fiqh (Isl. law)	intelligence, Islamic jurisprudence
(meng) gadai	pawn, pledge
gadang balega	the greatness rotates, system of title-rotation between *kaum* or *buah gadang*
gala (gelar)	title
- *Kiasan*	nick-title
- *panggilan*	unofficial title
- *pusako*	title which is part of the *pusako*
- *sako*	the title(s) of higher *adat* functionaries
ganggam bauntuek	the handful for use, use-right to the *harato pusako*
ganti lapiek	to replace the mat, reference to sororate and levirate
Gesamthandseigentum (G. law)	common ownership
hadīth (Isl. law)	traditions of the Prophet
hak	right
hakim perdamaian	arbitrator, village judge
hak milik	ownership
harām (Isl. law)	forbidden
harato (harta)	property objects (material)
- *bersama*	common property
- *dapatan*	property a wife brings into marriage
- *pancaharian*	self-acquired property
- *pambaoan*	property a husband brings into marriage
- *pusako*	inherited property
- *pusako rendah*	"low" inherited property
- *pusako tinggi*	"high" inherited property
- *suarang*	common marital property
hibah	donation, gift
hidjrah	Mohammed's migration from Mekkah to Medina in 622 A.D.
hindu (adat)	association of matrilineal descent groups based upon political arrangements
hukum	law
- *adat*	*adat* law
- *faraidh*	Islamic inheritance law
- *tertulis*	written law
ibu	mother
ījāb (Isl. law)	offer
ijmā' (Isl. law)	the consensus of the learned
'ilm uṣūl (Isl. law)	the science of the four sources of law
imām (Isl. law)	head of a school of Islamic law; title of religious functionary
indisch recht (D.)	the law of the Colony of the Dutch East Indies

induek	mother
- *bako*	the *bako* of the *bako*
ipa	sibling in-law
isteri	wife
jā'iz (Isl. law)	indifferent, no value judgement expressed
jaminan	security (for debts)
	distant, far
jorong	village district
jua bali (jual beli)	sale
juaro adat	*adat* champion, functionary of the *hindu adat*
jurai	matrilineal descent group
kabul (Isl. law)	acceptance (of an offer)
kabupaten	district
kakak	older sibling
kamanakan	sister's child(ren); members of a matrilineal descent group
- *dibawa dado*	sister's children below the breast, adopted group members
- *dibawa dagu*	sister's children below the chin, blood relatives
- *dibawa lutuik*	sister's children below the knee, descendants of slaves
- *dibawa pusek*	sister's children below the stomach, descendants of strangers
kampuang	settlement cluster (in CKL), matrilineage, matriclan
kaum	matrilineal descent group, subunit of a *buah gadang* (in CKL)
kato	world, rule, decision
kebulatan	"round" decision, meeting in which a unanimous decision is taken
kecamatan	sub-district
keizer (D.)	emperor
kepala nagari	village mayor
ketek	small, younger
keturunan garis ibu	descent in the mother's line
kiasan	allusion
kisah (mengisah) gadai	to transfer the pawning
koto	settlement center, fortification
Koto-Piliang	one of the two *lareh*, the one with the more autocratic tradition
ladang	dry field, garden
laki2	male
lantak nagari	the original official *nagari* territory
lareh (nan duo)	the two *lareh*, political parties, *adat* systems
legaat (D.)	legate
legitimaris(sen) (D.)	legitimate heirs
locieh	slaves
lukak (nan tigo)	(the three) districts, the nucleus of the Minangkabau world
Mahkamah Agung	Supreme Court
makrūh (Isl. law)	not advised, one should abstain from

malakok — to associate with a descent group
māl (Isl. law) — ownership, property
mālik (Isl. law) — owner
malim — religious *adat* functionary
malu — shame, ashamed
mamak — mother's brother, group head
- *kapalo warih (kepala waris)* — the *mamak* who is the head of the heirs, *kaum* head
- *kaum* — the *kaum* head
- *rumah* — the head of a family house, *mamak kaum*

mamang — *adat* saying
mandūb (Isl. law) — advised, positively looked upon
manfa'at (Isl. law) — to take profit
mangaku kamanakan — to accept as group members
manti — *adat* functionary, judicial official
mede-eigendom (D.) — communal ownership
vrije - — joint ownership
gebonden - — common ownership
menantu — children in-law
menebus — to redeem (pawnings)
mengetahui — to take cognizance
menggarek gombak — to cut the hair lock
memperdalami (gadai) — to deepen (the pawning)
merantau — to go to the *rantau*, to leave one's village
milk (Isl. law), *milik* — property
mintuo — parents in-law
mupakat — unanimous decision
musyawarah — common deliberation process aiming at a unanimous decision

nagari — village state, village
nikah — marriage
nini(e)k, inyiek — grandparent, honorific title, polite form of address for old men
nini(e)k mamak — the *adat* elders

padusi — wife, female
pagang gadai — pawning
pancaharian (pencarian) — self-acquired (property)
pandai — expert, clever, knowing
panghulu — *adat* functionary, head of a *buah gadang* (in CKL)
panungkek, tungkek — *adat* functionary, aide to the *panghulu*
pambahagian (pembagian) — division (of property)
pambarian (pemberian) — donation of property
parampuan (perempuan) — wife, female
pariuk — rice pot, the people who eat together
paruik — womb, matrilineal descent group
pasambahan — ceremonial rhetoric
pasumandan — wife (wives) of one's male group members
pemagang — pawnee
Pengadilan — court
- *Agama* — Religious Court
- *Negeri* — State Court
- *Tinggi* — State Appeal Court

pengesahan nikah — validation of an unregistered marriage
penggadai — pawner

penyaksian	the witnessing
pepatah petitih	*adat* maxim
persetujuan	consent
pidato	ceremonial *adat* recital
pitua adat	*adat* saying
piutang	debts outstanding
pulang ka anak mamak	to return to the child of one's *mamak*, marry one's MBD
pulang ka bako	to return to the *bako*, marry one's FZCh
punah	extinct (of a matrilineal descent group)
pusako	heritage
- *dapatan*	the *pusako* allotted to a female lineage member for her conjugal household
- *harato*	inherited property
- *kebesaran*	immaterial heritage
- *pambaoan*	the *pusako* allotted to a male lineage member for his conjugal household
putus	extinct (of a matrilineal descent group)
qiyas (Isl. law)	principle of analogical deduction
rabb (Isl. law)	owner
rahn (Isl. law)	pawning
rajo	king, master
ranji	genealogy
rantau	the area beyond the *darek*
rechtsgemeenschap (D.)	legal community
ribā (Isl. law)	usury
rujuk (Isl. law)	remarriage
rumah	house
- *gadang*	family long house
rupiah	*rupiah* (Ind. currency)
- *ameh (emas)*	gold *rupiah*
sa- (se-)	of one, with common
sadapo (sedepa)	one fathom, from fingertip to fingertip
sahina	being offended together
saizin	with the consent
sajari (sejari)	one finger ('s length)
sakato, sapakat	unanimous decision
sako	the titles of *adat* functionaries
samalu	being ashamed together
sando	pawning
sapandam sapakuburan	sharing one graveyard
satampo (setempap)	the breadth of one hand
satahu	with the knowledge
sawah	irrigated rice-field
selama hidup anak	for the lifetime of the children
shirā' (Isl. law)	barter
sidang	religious council
suami	husband
suku	matriclan, administrative unit composed of several (related or unrelated) matrilineal descent groups
sumpit	measure for harvested rice, ca. 31 kg.
sunna (Isl. law)	the practices of the Prophet
surat	letter
- *gadai*	pawning document

- *keterangan* official declaration
- *kuasa* letter giving power of authority
surau bachelors' dormitory, prayer house
syah, sah valid
syarak Islamic law

tambang adat the mine of *adat*, chairman of the KAN
tambilang spade, dug up with a spade
- *ameh* (property) acquired with gold
- *basi* (property) acquired with the iron hoe
- *kai'tan* (property) given by donation
- *ruyuang* (property) dug up from the tree stumps, the land cultivated by the ancestors

tambo legend, folk history
tanah land
- *jajahan* colonial land
- *parampasan* land won in war
- *rajo* no-man's land between adjacent *nagari*
- *ulayat* uncultivated *nagari* territory

tando sign, object given as evidence or acknowledgement of one's intentions or one's guilt
tarukoan newly cultivated land
tatarueh (tertaruh) deposited
tebusan redemption
thalak (Isl. law) divorce
thalak taklik the suspended divorce
Tuangku lord, title of religious functionaries
- *Lareh (Laras)* head of a *laras* (district)

tumpak large rice-fields, a cluster of rice-fields

tungganai head of the group living in a *rumah gadang*, *kaum* head

tuo old, elder
turun temurun continually descending (in the matriline)

uang money
- *gadaian* the pawning sum
- *tebusan* the redemption sum

uda elder brother
ulayat uncultivated *nagari* area
umpuek territorial group, subdivision of a *buek*
undang2 law, codification
uni elder sister
urang person(s), people
- *datang* strangers, descendants of strangers
- *sumando* husband(s) of one's female lineage members
- *usali* the original people, the first settlers

utang debts

vruchtgebruik (D.) usufruct

wakf (Isl. law), *wakaf* property in the dead hand
wali guardian
- *adat* *adat* guardian, the *mamak*
- *syarak* guardian in Islamic law, the father

Wali Negeri village mayor

warih (waris)	heir(s), group members
warith (Isl. law)	heirs
wasiyya (Isl. law), *wasiyat*	testament

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ABBREVIATIONS

AA	*American Anthropologist*
AB	Adatrechtbundels
AJCL	*The American Journal of Comparative Law*
BKI	*Bijdragen tot de Taal-, Land- en Volkenkunde*
CSSH	*Comparative Studies in Society and History*
IA	*Indisch Archief*
IG	*Indische Gids*
JAL	*Journal of African Law*
JRAI	*Journal of the Royal Anthropological Institute*
KITLV	Koninklijk Instituut voor Taal-, Land- en Volkenkunde
KS	*Koloniale Studiën*
KT	*Koloniaal Tijdschrift*
SWJA	*South Western Journal of Anthropology*
T	*Indisch Tijdschrift voor het Recht*
TBB	*Tijdschrift voor het Binnenlands Bestuur*
TBG	*Tijdschrift voor Indische Taal-, Land- en Volkenkunde, uitgegeven door het Koninklijk Bataviaas Genootschap van Kunsten en Wetenschappen*
TNI	*Tijdschrift Nederlandsch Indië*

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