

## 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 Riau 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 Wilinck'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 volcano 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



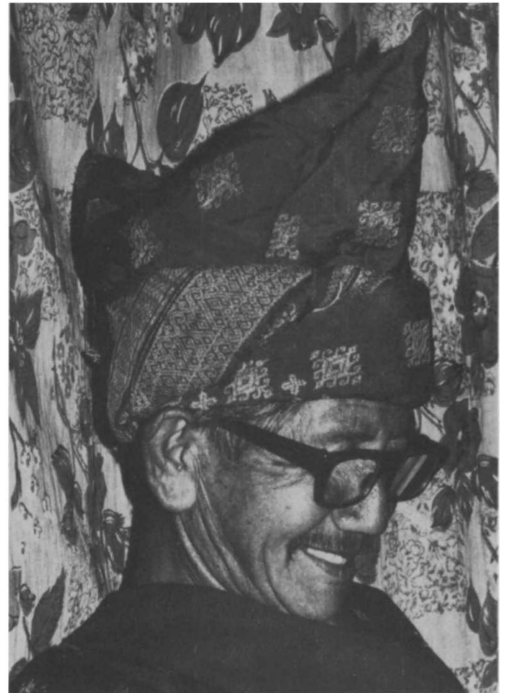
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Sidi Katik



Palimo Putih



Haji Dt. Bagindo Basa

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.