

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 suppressed 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 became 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 pancaharián*, 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 (Westenck 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. Westenck (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, Westenck, 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).

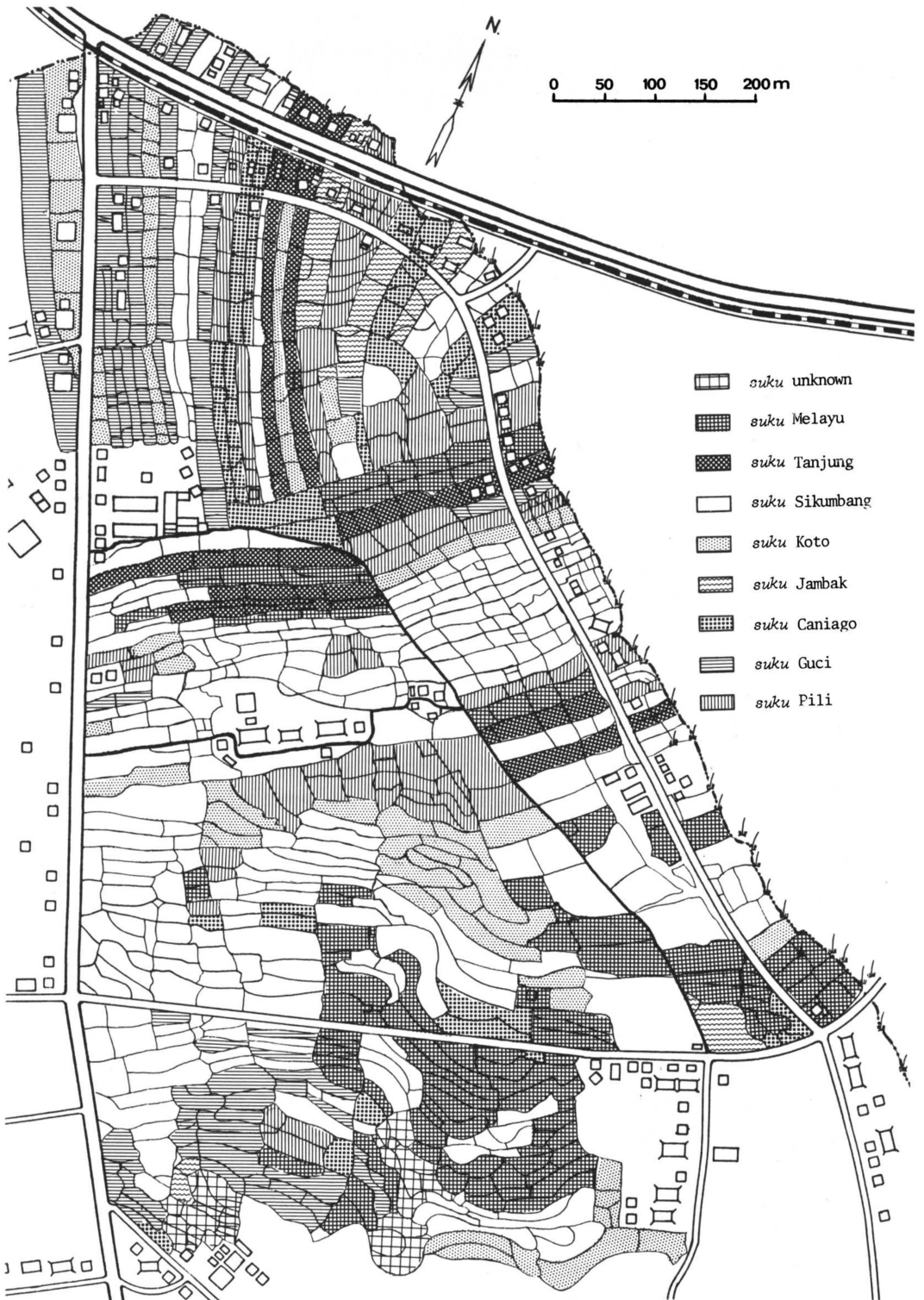
This interpretation is plausible. Yet the translation of *rajo* meaning *nagari* government could not be extended to the *tanah rajo* - the "king's land". The *tanah rajo* was a strip of land between adjacent *nagari* which had the status of no-man's land. Nobody was allowed to cultivate it, and it was 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



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 param-pasan*, 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 tumbuhan, 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 again⁷

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*, *mencari* - 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 pancaharien*, though they do recognize the distinction. Their point of view is that, as far as *harato pancaharien* 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 pancaharien*, 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 pancaharien* 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 pancaharien* 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 Pancaharien*

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 bauntuek*, "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 woman 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 pancaharihan*: 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 property 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 inheritance 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 lutwik*. 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 occurred 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 pariuk* 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):

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

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

<i>hak adalah bersama</i>	the <i>hak</i> (right) one has together
<i>harta adalah milik</i>	the <i>harta</i> are possessions
<i>hak adalah bergantung</i>	the <i>hak</i> is hanging
<i>milik adalah bermasing</i>	the <i>milik</i> 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 banamo - 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 - buahnya bulieh dimakan - batangnya 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 pancahari* 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 sahari*, 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 tengah 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 tengah 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 gadai*) 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. *Memperdalam* - 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 *memperdalam 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 *Ninieks 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. Majoin-do (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. Majoin-do, 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 (Fysee 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 sajadi*, 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 *kampung* 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 pampéh*: 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 *pampéh* (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 pancaharián* (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 acknowledged. 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 pancaharián* 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 pancaharián* and *harato pusako* respectively.

6. *Umanáik, 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 pancaharián* 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 (umanáik)*, 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 pancaharián* 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 pancaharián* 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 pancahari*. 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 pancahari*, 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 penggugat? 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 dibebankan 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 kondisi*", 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 occurred 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 *panghuluship* 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 Daga. 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 corporate-ness, 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" (*onderhouds-voorrang*) 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 kondisi*"; 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 *ma'lu*, ashamed, if others were to take notice of it, or even if others decided the conflict. It would also be a sign of poor *mamakship*, if the *mamak* could not lead his *kamamakan* 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 pancaharien diwarisi oleh anak*", or "*harato pancaharien 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 unflinchingly 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 pancaharien*, 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 pancaharien* 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 pancaharien* 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 dalam pembahagian pokok, yaitu harta pusaka tinggi dan harta pusaka rendah, dimana perbedaannya terletak pada asal usul harta 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 harta yang diperoleh bukan sebagai hasil cancang letih oleh nenek moyang sendiri, melainkan mungkin diperdapat karena jalan beli maupun karena hubungan 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 *pancaharisan*, 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 *'ariya* (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 (*kaḅul*). 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 (*wasīyya*) 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 *mandūb*, 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 *wasīyya* (Fyzee 1955: 314 f.; Juynboll 1903: 257).

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

The concept *wakf* (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. *FARAIÐH* - INTESTATE INHERITANCE

The Islamic inheritance law (Ind.: *hukum faraiðh*) is derived from the inheritance portions which are laid down in the Koran. In Arabic, these portions are called *farīdah*, pl. *farā'id*. The Koranic heirs are called "members of the *fardh* - portions (*dzawu'l - farā'id*)". 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'id* (Ind.: *ilmu hukum faraiðh*), the science of the inheritance portions (Fyze 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; Fyze 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 matrilineal and patrilineal 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 (Fyze 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.; Fyze 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 $\frac{1}{2}$ of their parent's inheritance. A set of more than one daughters inherit $\frac{2}{3}$ 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 $\frac{1}{6}$ 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 $\frac{1}{6}$, 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 $\frac{1}{6}$, if she inherits together with children, son's children, or two or more brothers and sisters. In all other cases her portion is $\frac{1}{3}$ of the inheritance.
6. The grandmothers' share is $\frac{1}{6}$. 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 $\frac{1}{2}$, two or more sisters together inherit $\frac{2}{3}$. 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. Patrilineal half-sisters inherit like full sisters, but are excluded by full sisters who together inherit $\frac{2}{3}$. If there is one full sister and one half-sister, the full sister gets $\frac{1}{2}$ and the half-sister $\frac{1}{6}$ of the inheritance.
- 9./10. The matrilineal half-brothers' and -sisters' part is $\frac{1}{6}$. If two or more come together, they inherit $\frac{1}{3}$ together. They are excluded by the children, the son's children, the father, and the paternal grandfather.
11. The widower's portion is $\frac{1}{2}$. If he inherits together with a child or a son's child, his portion is $\frac{1}{4}$.
12. The widow's portion is one half of what the widower would inherit, thus $\frac{1}{4}$ and $\frac{1}{8}$ 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 $\frac{1}{2}$ 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 *'awl*, *'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 proportion 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 patrilineal, one for the matrilineal 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 $\frac{1}{2}$ 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 $\frac{1}{2}$ of its intestate share. Two children are entitled to $\frac{2}{3}$ of their share, and in the case of three or more children, the legitimate portion amounts to $\frac{3}{4}$ 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 *legitimarisissen* "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 contained⁶⁸ 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-provisions⁷⁴ 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