

NOTES

NOTES TO CHAPTER ONE

- 1 In this introduction I can only give a brief and partly rather superficial account of these assumptions. Basically, I have tried to apply the methodological ideas of Leach (1954, 1961 a) and Goldschmidt (1966) and the conceptualization of social reality as outlined by Berger and Luckmann (1967) to the study of property, inheritance, and law. A more detailed discussion of the ideas underlying Berger and Luckmann's reformulation of the sociology of knowledge and of alternative methodological approaches would have been far beyond the scope of this study.
- 2 Moore has pointed out that the problem can partly be solved by using "neutral" terms which do not or not only have a legal meaning in western societies, 1969: 342. The reader interested in the history of metaphorical polemics should know that the remark which had been made with respect to Gluckman's work - "Gluckman's work has been characterized as analogous to that of a linguist who attempts comparison by jamming Barotse grammar into Roman Dutch categories" (Nader 1965: 11), and which Gluckman (1969: 352 FN 5) traced to Vansina's statement: "Kuba law is thus different from any European legal system, and to try to define it in terms of European legal concepts is like trying to fit a Bantu grammar into a Latin model of grammatical categories (1965: 17)," - had also already been made by Van Vollenhoven in 1909, who stated "... that it would be a strange sort of nonsense if one pressed the Sundanese language into a Latin grammar" (1909: 59).
- 3 For law: Radin 1938: 1145, Frank 1970: VII, Llewellyn 1930: 432; for marriage: Leach 1961 a: 105.
- 4 Goody (1962: 285 f.) gives an overview concerning the ways lawyers and anthropologists have arranged this bundle. For the discussion on marriage see Gough 1952, 1959, Leach 1961 a (1955) and Goldschmidt 1966.
- 5 Thus Goldschmidt, when delineating the social function which is to replace the institution of marriage, has to admit: "Since we do not start with institutions but rather with functions, we must develop out of our theoretical presuppositions those functions which generally revolve around what anthropologists intuitively call marriage" (1966: 93).

- 6 Semi-autonomous group here would closely correspond to what Van Volkenhoven, and following him most Dutch scholars of *adat* law, have called "legal communities" (*rechtsgemeenschappen*) and what was later discussed as "corporate groups" in social anthropology, see Smith 1975, Fortes 1970 a: 276 ff.
- 7 For an overview of the terminology see Mitchell 1969 and Barnes 1969. On quasi-groups see Mayer 1966.
- 8 Compare Bohannan 1967a:46 f. In contrast to Bohannan, however, procedural (or adjectival) rules here do not only refer to institutions which settle disputes, but to institutions in general.
- 9 This is, to a large extent, also the Minangkabau theory of decision making, see F. v. Benda-Beckmann 1977. On the *musyawarah* (decision by common deliberation) principle in the Indonesian societies in general, compare Koesnoe 1969 and Van den Steenhoven 1973.
- 10 Only a few writers define law as internalized conceptions, for instance Elias, who speaks of "the body of rules which are recognized as obligatory by its (the community's) members" (1956: 55).
- 11 Compare note 3.
- 12 Twining (1973: 561 ff.) gives an interesting account of Llewellyn's and Hoebel's opinions on this problem. In the "Theory of Investigation", outlined in *The Cheyenne Way*, the question of whether the trouble case approach should be framed in terms of theory or methodology was left open (Twining 1973: 570). Llewellyn considered a definition of law based upon the trouble case approach as too selective, Hoebel tended to base the definition of law on the proposed methodological approach. In *The Law of Primitive Man* (1954), Hoebel then systematically developed his original ideas.
- 13 See also Fortes "Toward the Jural Dimension" (1970 a: 60 ff.). However, Fortes does not always distinguish clearly between the jural *dimension* and the politico-jural *domain*. Whereas on the analytical level of domains, the politico-jural and the kinship domains may be conceived as complementary, on the level of the dimension, the jural dimension should refer to all domains. In his analysis, Fortes sometimes uses dimension with the connotations of domain, e.g. on pp. 69, 72 f., 80. For a more severe critique of these ambiguities, see Löffler 1971.
- 14 Barkun, who also conceives of law as "if-then statements made up of concepts that are woven into rules" (1968: 85), also emphasizes the distinction between value and fact components (1968: 90). Fact components can further be distinguished into "perceptual categories" and "modal behaviour". Cancian speaks of "reality assumptions" (1975: 3, 108, 142).
- 15 In the words of Needham "prescriptive marriage connotes that the category or type of persons to be married is precisely determined and this marriage obligatory" (1962: 9).
- 16 In a similar way, this was expressed by Lounsbury: "It is not the incidence of marriages according to a given rule that is decisive, but the consequences of such marriage. We would think that the

distinction should rest rather on an aspect of the legal structure of a society" (1962: 1308).

I would not dare to stress the obvious so much if distinguished anthropologists did not find it so difficult to keep these two spheres of conceptions apart. Thus Maybury-Lewis, in an article purporting to clarify the issue of the prescriptive marriage systems, confuses the whole matter again when he writes: "It is characteristic of prescriptive marriage systems that they prescribe marriage for a given ego within a relationship category. All marriages which take place in such societies are therefore (?) treated as being marriages within the prescribed categories" (1971: 218). With the distinction elaborated above, the choice-element as discussed by Needham (1962: 9), Maybury-Lewis (1971: 220), and Schneider (1965: 65 f.) can be satisfactorily dealt with. It only falls into the first sphere, i.e. the behaviour which is evaluated for legal relevance, and not within the sphere dealing with the consequences which are attached to the evaluation.

- 17 Gluckman, who has demonstrated the analytical and heuristic advantages of such an approach in his still unparalleled treatment of Barotse law, states: "For the time being I am concerned with law's existence in two senses: as a *corpus iuris*, a body of rules, and as adjudication, a process in which cases are tried and judgements or legal rulings are given on them" (1973 a: 227).
For a similar approach to law as "a complex of rules pertaining to a field of action" see Moore 1969: 391 f.; compare also Tanner 1970: 379 ff., who, however, limits law to the ideas pertaining to conflict. In my elaboration of "concrete law" I rather follow the ideas developed by the Dutch scholars of *adat* law, Van Vollenhoven, Logemann, Ter Haar, F.D. Holleman, and J.F. Holleman. For more detailed references see below pp. 34 f.
- 18 I have employed the "transformation"-metaphor in a paper read at a conference of legal sociologists held in Bielefeld, Germany, in 1973, see F. v. Benda-Beckmann 1976.
- 19 See also Cochrane 1972 for a critique of the "unidecisional" approaches of Pospisil and Hoebel.
- 20 It is surprising, therefore, that Hoebel treats Ter Haar as an adherent of the so-called "ideological approach" (1954: 33); particularly, if one considers that Hoebel co-edited and translated Ter Haar's *Adat Law in Indonesia* (1948).
- 21 Already Gluckman stated clearly, that these two manifestations of law may not only diverge, but that they cannot coincide because they are quite different kinds of social phenomena (1973 a: 325).
- 22 For a similar critique of Pospisil's attribute of intention of universal application see Fried 1967: 91 and Cochrane 1972: 50 ff. Cochrane rightly notes that a decision is law only in one concrete case and not afterwards, and critically relates this to the imputed function of social control by law. It should be noted that the similar assumptions which were embodied in Ter Haar's *beslissingenleer* (1937) had been incorporated consciously. The anthropological description of a society's legal system was not Ter Haar's primary aim. He was mainly concerned with the creation of a doctrine of *adat* law application suitable for the Dutch colonial courts in Indonesia,

cf. F.D. Holleman 1938, Logemann 1939.

- 23 For most discussions of the concepts of property and ownership, Hooker's comments are fully appropriate: "The anthropological data adduced in a description of a social system are organized around and in terms of various usages of the ideas of 'obligation' or of related terms such as 'rights', 'duties', and so on. The elements of these ideas are partially determined by whatever knowledge of his own legal system the social scientist has and partially by formulations made by himself and others in ethnographic studies and in the theoretical analyses which these studies have occasioned. This characteristic, if no other, is a persisting feature of legal ethnography and explains the constant difficulties in the application of concepts of western jurisprudence" (1975: 23).
Allegedly analytical concepts are usually a de-westernized form of a western legal concept denoting an institution, and thus are based upon a very different approach than is taken in this study. Most analytical concepts suffer from the inherent disadvantages of such an approach. What Goody, for instance, describes as his analytical concept of property relationship, is little else than a mixture of doctrinal western legal thinking and functional anthropological theory: His property relationship is an equilibrium model of society in miniature, an equilibrium between rights and concomitant and correlative duties which is upheld by sanctions (1962: 288). Not surprisingly, he takes his cue from Hohfeld's fundamental legal conceptions, which divide all legal relations into four fundamental reciprocal relations denoted by eight concepts (Hohfeld 1923, cf. Hoebel 1954: 48 ff., Goody 1962: 289, Hooker 1975: 28). And this is exactly what they are: fundamentally legal. That any right have a correlative duty is a demand put up by someone engaged in doctrinal legal thinking. There may be societies in which property relationships are socially constructed in this way, but there may also be systems where this is not the case. To include such a demand into one's analytical apparatus means answering the question before one has asked it. No wonder then, that such an approach can only be of "peripheral importance" and "without much result on the empirical level", as Goody himself admits (1962: 289). So why fill pages with it?
- 24 That this distinction is arbitrary and should not be projected into non-western legal systems, had already in 1909 convincingly been put by Van Vollenhoven (1909: 49 ff.).
- 25 If one derives one's analytical notion of property from western law, one can, of course, use property as property relationship (see e.g. Goody 1962: 284 f.) or as property object (see e.g. Derrett 1965: 9 f.) with equal justification. However, the multiple meaning of the concept in Anglo-American law should be avoided in anthropological usage.
- 26 Gluckman has criticized Goodenough's neologisms for not expressing the distinction between what he calls "estates of administration" and "estates of production" (1972: 94 f.). He is right in so far as his distinction and the one made by Goodenough are quite different. Gluckman's distinction expresses the two levels upon which property relationships are expressed, and this distinction is not inherent in the one made by Goodenough. In fact, Goodenough does not give attention to this aspect in his analysis of property relationships on Truk. Gluckman, on the other hand, fails to realize

that the conceptions of residual and provisional rights can be applied on *both* levels of socio-political authority and of use and exploitation. The hierarchy of the estates of administration, which Gluckman describes for the Barotse system, can also be well expressed in terms of residual and provisional rights of socio-political authority over property objects.

- 27 "For a social system to maintain itself its two vital resources - the human and the social capital - must be maintained at an adequate level by continuous use and replacement" (Fortes 1966: 1).
- 28 The term "capacity" is used here in the sense elaborated upon by Allott, Epstein, and Gluckman 1969: 46.
- 29 Cf. Goody 1962: 321 ff. with further references. The transcendence of social relationships beyond physical death is not only known from the field of property relationships, but also from the field of marital relationships, e.g. in the form of the levirate. In "actual life", the wife's husband is dead and it is the husband's brother who is married to the widow and who may beget further children; in social definition, however, the widow is still married to the deceased and any children begotten by the levir are "the deceased's children".
- 30 Most works on the temporal aspect of social relationships owe a "certain generic relationship" (Leach 1966: 120) to Fortes' essay "Time and Social Structure" (1970b). As Fortes has put it recently, "the most promising advance in recent research on the social structure of homogenous societies has been the endeavour to isolate and conceptualize the time-factor" (1966: 1). The time-factor is considered in most systematic approaches to property and inheritance but in a different way than is done in my study (compare Maine 1905, Goody 1962, Gluckman 1972, Gray 1964, Derrett 1965).
- 31 Leach (1961 a: 124 ff.) has demonstrated how differently societies conceive of the notion of "continuity". The Kachin distinguish "vertical" and "lateral" continuity, which are expressed by different social relationships (Leach 1957 a: 54).
- 32 This, of course, has important implications for the discussion of the typology of reciprocities. An extensive consideration of the relevant opinions would go beyond the scope of my study, and only a few remarks will be made here:

The anthropologists who have concerned themselves with "the gift" and the classification of reciprocity have usually not taken the temporal dimension of property transfers into account. When Mauss wrote his famous essay he was quite aware of the fact that the term *don*, gift, might be a misnomer (1968: 167) and he only employed it in want of a better one. Those gifts which were diachronic property transfers were not discussed at all in his essay. In his understanding, the notion of the gift was firmly connected with reciprocal property exchanges. These exchanges were not always socially or legally defined as "exchange" but could also be effected by a series of property transfers which were formally defined as involving no counter-prestation. Hence the term gift.

The conception of reciprocity also provided the frame of reference within which Malinowski's notion of the "pure" or "free" gift (1922: 176) was discussed and criticized (Mauss 1954: 71, Panoff 1970: 62, cf. Malinowski 1926: 41 FN 1, Leach 1957 b: 134). This style of

thought has persisted, and "deviants" such as Sahlins, who builds upon Malinowski's notion of the pure gift in his classification of reciprocities (1965: 141 ff.) are treated with considerable indignance by the self-appointed administrators of the Maussian heritage (see Panoff, who criticizes Sahlins with the argument that "already Mauss has established that there are no pure gifts" (1970: 62)).

The whole discussion is framed against an implicit synchronic conception of reciprocity. Authors like Sahlins (1965) and Firth (1957), who value Malinowski's distinction, mention the time-factor but fail to explicate that the distinction between gifts or forms of reciprocity should be determined by reference to the temporal dimension in which the property transfers are located. Thus Sahlins says about what he calls "generalized reciprocity":

"Generalized reciprocity refers to transactions that are putatively altruistic, transactions in the line of assistance given and, if possible and necessary, assistance returned. The ideal type is Malinowski's 'pure gift'. Here ... the expectation of an immediate return is at best implicit. The material side of the transaction is repressed by the social: Reckoning of debts outstanding cannot be left overt and is typically left out of account. This is not to say that handing over things in such form even to the 'loved ones' generates no counter-obligation. But the counter is not stipulated by time, quantity, or quality: The expectation of reciprocity is indefinite" (1965: 147).

Firth, another author who found some value in Malinowski's original distinction, writes:

"But his original distinction has some validity. His conception of 'pure' or 'free' gift should have been rephrased, but it differentiates a category of Trobriand transfers of goods and services of a special kind. They are not characterized by expectation of *immediate* return, there is no *specific* equivalent to which they correspond, and they are empirically characterized as things which the owner *wants* to give" (1957: 221 f.).

These are important points, but Sahlins and Firth fail to specify *why* there cannot be an expectation of immediate return and *why* the counter is not stipulated by time. In my view, the answer is to be found in the diachronic character of the transfers: There cannot be an expectation of return, as the giving person, to whom something might be returned, will, roughly speaking, not exist anymore and will not have the capacity to receive a counter-prestation. These gifts are "through time" and therefore non-reciprocal. The notion of reciprocity, on the other hand, includes that the counter-prestation is given "in time", even if it is temporally deferred.

- 33 In many western legal systems, like in Dutch law, the "legitimate heirs" can invalidate donations made by the testator during his lifetime after the testator's death, art. 967 B.W. See Chapter 4: 208.
- 34 A pertinent illustration is given by Goodenough (1951, 1974) in his description and analysis of property relationships on Truk. On Truk, it was customary that "provisional titles" were given from the father's corporation to the childrens' corporation, which was the father's corporation's presumptive heir. This transfer has to be considered as a synchronic one. Goodenough, too, does not treat it as a case of inheritance (diachronic transfer), of which he only speaks when the father's corporation has become extinct and the residual title is fused with the provisional title.

- 35 For such an attitude in the older German legal anthropology see Thurnwald 1934: 80 ff.
- 36 A well known ethnographic example which will illustrate the analytical advantages of the provisional/residual and the synchronic/diachronic differentiation is the "gratis gift" from father to son among the Trobriand Islanders, concerning which we have an excellent reanalysis by Fortes. Fortes concluded his assessment of Malinowski's analysis with the words: "What I want to seize on is that his picture (i.e. Malinowski's analysis, v.B.B.) represents a father's gift as outright alienation contrary to the laws of inheritance" (1957: 183). And he then proposes an alternative interpretation:

"... we should regard the gift as being in reality a sharing with his sons, by the father, of his possessions and rights on the same principle as a child is permitted and indeed entitled to share any food offered to his father.

This sharing, or lending, is for the time being only, and holds only during the father's lifetime. It arises quite naturally out of the father's duty to rear his children to adulthood; and is not a 'circumvention' of the laws of inheritance. On the contrary, it is an aspect of the rightful employment by a father, in his capacity of legal holder for his lifetime, of any properties and privileges that accrue to him as a member of his lineage and his uncle's heir. While he is the holder he is entitled to use the inheritance as he pleases, provided that his heir is not deprived when he in turn comes to inherit.

When he dies the rights of the lineage, in the person of his heir, are immediately reasserted. The whole estate, including the portions of which the sons have had temporary benefit, reverts to the lineage by right of inheritance" (1957: 183 f.).

Clearly, what Fortes suggests here is a distinction similar to the one which I have made between synchronic and diachronic transfers. The Trobriand gift is no inheritance and neither is it a circumvention of inheritance. In my words, it does not fall into the category of diachronic transfers. The father only derives another provisional relationship for the benefit of his sons. Though this endures a certain time, it is not diachronic, but synchronic because of its provisional and temporary nature.

We must not get confused here by the impression of the father-son relationship which usually carries a diachronic connotation. Whether the provisional right is given to the son (the son's corporation on Truk) or to the father (the father's corporation) makes no difference in the temporary character of the transaction, as little as a sale from an old man to a young man is diachronic in character because it is between persons of different generations. It is therefore quite misleading to characterize "inheritance in its widest sense" as "intergenerational transmission", as e.g. Goody does (1962: 311 f.). If Goody states that "although transfers may also occur laterally, in the end they must take place between the generations" (1962: 273), and later restricts the discussion of his ethnographic data to "the ways in which property passes between rather than within generations" (1962: 313), this is not suitable for an analytical concept. For it is either a metaphor for the fact that *any* transfer "in the end" must occur through time and through the generations of persons who live in the temporal continuum, and achieves no distinction between specific kinds of transfers of property relationships; or it refers to an ethnocentric

definition of the rules of diachronic transfers. But diachronic transfers need not occur between the generations; in fact, in some societies inter-generational transfers are avoided as much as possible. For the transfer of rights over women, Goody himself reports this from the LoDagaa (1962: 314).

NOTES TO CHAPTER TWO

- 1 For further information about Minangkabau political history the reader may be referred to the following sources: Couperus 1855, Dobbin 1975, 1977, Francis 1839, De Haan 1897, Van Hasselt 1882, De Josselin de Jong 1951, Joustra 1923, Kemal 1964, Kielstra 1887 a, 1887 b, 1888, 1889, Kroesen 1873, Leyds 1926, Van der Linden 1855, Mansoor et al. 1970, De Rooij 1890, Stibbe 1869, TNI 1839, TNI 1855, Taufik Abdullah 1971, Verkerk Pistorius 1868, Westenenk 1913, 1916, 1918 a, 1918 b, Willinck 1909.

On the *tambo*, see Dt. Batuah Sango and Haji Dt. Tuah 1966, Dt. Majoindo 1956, Dt. Maruhum Batuah and Bagindo Tanameh 1954, Dt. Nagari Basa 1966, Netscher 1850, Dt. Sangguno Dirajo 1920, Dt. Sidi Bandaro 1965, Stapel 1935, TNI 1859.

Dobbin's impressive reconstruction of Minangkabau economic and political history (1977), unfortunately only came to my notice after my manuscript had been finished.

- 2 I refer here only to the "traditional system of social stratification", see De Josselin de Jong 1975: 10 ff. The national system and the aristocratic principles of stratification, which developed in the coastal areas under Achenese and later under Dutch domination will not be discussed here.
- 3 Some *adat* experts differentiated between *batali darah* and *satali darah*, "having blood relationships" and "sharing one blood relationship", roughly: between group external and group internal matrilineal descent relationships (R.M. Dt. Rajo Panghulu, interview 1974).
- 4 Freedom could be of two kinds: either one was "free as a bird" (*lepas unggai*) or "free as a chicken" (*lepas ayam*). In the latter case, the freed slaves had to stay with their former masters and to continue to render some services to them, see Verkerk Pistorius 1868: 435 f.
- 5 Cf. Verkerk Pistorius 1868, Umar Junus 1964, Kielstra 1892, AB 11: 82 ff.; Verkerk Pistorius reports that in the region of Lubuk Basung (in Agam), a whole district, *laras*, was founded by descendants of former slaves with the help of the Dutch governor (1868: 443).
- 6 Divergent terminological use of the group terms by the parties and the judges in the State Courts leads to frequent misunderstandings. The problem will be dealt with in detail in the thesis of K. v. Benda-Beckmann. In *nagari* III Balai, for instance, the groups called *buah gadang* in CKL were called *kaum*, and its subgroups (*kaum* in CKL) *buah paruik*; the *buah paruik* in CKL are a group of *buah gadang*.

- 7 It should be noted that De Josselin de Jong has given a very different interpretation of the *kok limo kali turun*-rule. In his opinion, the *adat* rule has to be regarded as a "five generation rule" which indicates that group splits occur in each fifth generation. This is then linked to Lévi-Strauss' discussion of the "rythme d'extinction exogamique", the periodical extinction of exogamy, and to the double-unilineal descent system which he (De Josselin de Jong) assumes to be one of the basic structures of Minangkabau social organization (1951: 86 f.). That this interpretation is not tenable will be shown in a different publication treating in detail the *adat* social organization of Minangkabau.

- 8 In the literature, the various forms of *panghulu* installation generally are treated under one heading. For the reason given above, however, one must clearly distinguish between those installations which are held for the successor of an already existing *panghuluship* and those installations in which new *panghuluships* are created and which affect the *buah gadang* structure.

- 9 For an extensive overview of the forms of *panghulu* installations and the labels given to them see "Panghoeloeverheffing" (1888-1889) in AB 11: 91-114. In nearly all writings on Minangkabau *adat* by Minangkabau authors an overview of the basic forms is given, see e.g. R.M.Dt.Rajo Panghulu 1971: 72, I.H. Dt. Rajo Panghulu 1974: 36 ff.

- 10 The question of which was the primary meaning in Minangkabau cannot be answered with certainty. The linguistic evidence suggests that it is the residential meaning, as the word *kampung*, *kampong*, has a territorial meaning in most Malayan languages. One could therefore hypothesize that the genealogical meaning in Minangkabau was derived from the territorial one. However, as far as one can trace back the use of *kampung* in Minangkabau, nonco-resident individuals or groups have been designated as being "of one *kampung*".

- 11 For the view that the *suku* were originally clans, see Stibbe and Kroesen in Résumé 1872; for the contrary view, that *suku* were administrative associations of clans at the very beginning of Minangkabau *nagari* organization see De Rooij 1890 and Leyds 1926.
 In my view, both kinds of groups must have existed in the early stages of Minangkabau political organization. For the recognition of the two different kinds of groups in early CKL, see the account of the *nagari* foundation given below. The same distinction is reported in the account of the foundation of *nagari* Tanjung Sungayang, which is considered one of the oldest *nagari* in Minangkabau. Dt. Sangguno Dirajo describes how the leaders of the genealogical groups "make" *suku adat* (1920: 82 ff.).

- 12 The distinction apparently obtains in all Minangkabau *nagari*, although the two sorts of groups are often labelled with the same term *suku*. In the *nagari* with Koto-Piliang *adat*, all genealogical clan groups are grouped together in four administrative units. In the district 50 Koto, these administrative units are called *suku*, whereas the component genealogical groups are called *kampung*. The *suku* are named through reference to the number of their component *kampung*. Thus there is the *suku nan 5* or *suku nan 9*, the *suku* of the 5 or 9 (*kampung*). There is, among several *nagari* in different parts of Minangkabau, a certain uniformity with respect to the number of

the component clan-units within the administrative units, which suggests some greater political uniformity and centralisation in pre-Dutch times. In some *nagari*, the administrative units are called "big *suku*", and the clan-units "small *suku*", see Kemal 1964: 101 ff. In other *nagari*, both groups are called by the matriclan names, see De Waal 1889.

- 13 These data were collected from the tax-register of CKL.
- 14 The description of the *hindu* composition is based upon the *tambo*-excerpts and the information given by several *adat* experts during interviews. These data were not always in accordance, but there was a general consensus about the degree of complexity which I have described below. The "real" composition probably was much more complicated.
- 15 *Cupak* is a measure made of bamboo. It is also used for "measure, standard, rule" in *adat*. Here, the *cupak usali* and the *cupak buatan* (the newly made measure) are contrasted, see also below Chapter 3: 115).
- 16 The proper Koto-Piliang system knew four *adat* dignitaries, the *urang ampek jinih*: *Panghulu*, *dubalang* (police officer and military leader), *malim* (religious functionary) and *manti* (judicial functionary), see Joustra 1923: 100, R.M.Dt.Rajo Panghulu 1971: 76 f.
- 17 That *buek* antedates *adat* was the opinion of CKL *adat* experts. This statement may not only refer to the development of *buek* and *adat* in the concrete history of the *nagari*, where *adat* (in this restricted meaning) is only "made" with the foundation of the *nagari*. It may also refer to an historical sequence in general. According to R.M. Dt. Rajo Panghulu, *buek* was the term for regulations, and for the area in which the regulations were in force, before the term *adat* was used at all in Minangkabau, and perhaps before the *nagari*-system in general (1971: 86). The term *buek* still appears in several *adat* sayings which are frequently quoted in the works of Minangkabau *adat* experts (compare R.M. Dt. Rajo Panghulu 1971: 86).
- 18 Korn reports that in the census of 1930, in which a.o. the "family heads" were counted, a large number of "female *mamak*" were given, who in some *nagari* amounted to 30% and more of the total number of family heads (1941: 304). In Oud Agam, the district in which CKL is located, only 2% female *mamak* were counted. Korn discusses these findings in the light of the general statement "that a woman cannot be *mamak kepala waris*". According to his interpretation, the census data indicate that women can become "acting" *mamak kepala waris*, at least in property matters, and also assume the function of outward representation. He cites a decision of the *Kerapatan Adat Nagari* Simanau, in which the oldest female of a *kaum* was recognized as "*kapalo warih*" for the control of the *kaum* property (1941: 321 f. N.B.: Not *mamak kapalo warih*). He further mentions that in *nagari* Pianggu, there even was a female *panghulu suku adat* (1941: 323).
- 19 The only (and rare) exceptions which we found during our research at the State Courts concerned cases in which women as representatives of their *jurai* or *kaum* took legal action against a *mamak kepala waris* who, according to their allegation, unjustly claimed to be

their *mamak kepala waris*.

- 20 In the literature, both western and Indonesian, the border between these two sets of rules has only seldom been drawn, resulting in rather indiscriminate descriptions of "*panghulu* installations" and in some quite contradictory statements, depending on which set of rules the writer or his informant had concentrated upon.
- 21 According to information given in interviews, the MB - ZS succession rule seems to be (or to have been) a prescriptive rule in Koto-Piliang *adat*.
- 22 Nearly all Minangkabau publications on *adat* contain elaborate descriptions of the tasks of the *panghulu* and of the personal qualifications which a *panghulu* should have. Tasks and qualifications of the *panghulu* are the subject of a multitude of *adat* sayings. A good example is offered by R.M. Dt. Rajo Panghulu 1971: 69 ff. and I.H. Dt. Rajo Panghulu 1974.
- 23 According to *adat* experts in CKL, 15 steps had to be followed according to the "real and old *adat*" of CKL, but no one could (or wished to?) enumerate more than 9. At the last *panghulu* installation held in CKL, only the four "most important" ceremonies had been held: meetings with the 5 *hindu* of Candung, 7 *hindu* of Kota Lawas, "the *nagari*" (meaning all 12 *hindu*-leaders, the 12 *juaro adat* and the 14 *anak mudo*); finally the ceremony in which the "7 *suku*" (meaning the 12 *panghulu* acting as *hindu*-leaders) invested the new *panghulu* with his title.
 With respect to the number and character of the ceremonies there is a considerable variation between *nagari*. In CKL, the ceremonies were said to be closed to the "public"; in *nagari* Padang Tarab, where we attended two *panghulu* installations, the *buah gadang*'s women were given an official part in one of the most important ceremonies, and women and children attended all ceremonies as spectators.
- 24 See above Notes 8 and 20. There are also differences between *adat* Koto-Piliang and *adat* Bodi-Caniago. In Koto-Piliang *adat*, the *hiduik bakari lahan*-variant is not allowed (I.H.Dt. Rajo Panghulu 1974: 38). The *Mati batungkek budi*-variant is somewhat different in *adat* Koto-Piliang: Before the corpse of the deceased *panghulu* is buried, the successor must be chosen and officially be declared *panghulu*. The official installation ceremony then follows later (see I.H. Dt. Rajo Panghulu 1974: 38).
- 25 As has happened in case 1 of 1970 PN Batu Sangkar; compare also Chapter 3: 123. The problem will be dealt with in more detail by K.v. Benda-Beckmann.
- 26 For a philosophical elaboration of the Minangkabau theory of decision making see Nasroen 1957. The *musyawarah* principle is a trait of most Indonesian *adat* systems (see Koesnoe 1969, Van den Steenhoven 1973) and has also been incorporated into the state ideology, see Damian and Hornick 1972: 498.
- 27 This will also be apparent in some of the stories told in Chapter 5 and the cases to be discussed by K. v. Benda-Beckmann. For further examples see Tanner 1969: 40 ff. and 44 ff.

- 28 See also Tanner 1971: 265 f. The judges in the State Courts told us that they were frequently asked for advice by older women who felt cheated by their *mamak* and did not know what to do about it.
- 29 Against the unwarranted overemphasis on matrilineal kinship and the neglect of the bilateral kinship elements and the important patrilineal link between ego and his father's lineage, see Korn 1941, Fischer 1964, Djojodigono 1968.
- 30 On the term *waris* as category of personal kin see Firth 1974. On the term *warih* as used in Minangkabau thinking about inheritance see below Chapter 4: 196 ff.
- 31 For a systematic description and analysis of the kinship terms collected in one *nagari*, see Thomas 1977. With respect to the actual terms used, there is quite a variety between and among the Minangkabau *nagari*, although in general the same pattern seems to be followed. For an earlier discussion of Minangkabau kinship and an extensive overview of the terminology given by other writers see De Josselin de Jong 1951. Cf. Umar Junus 1964, Fischer 1964, Djojodigono 1968.
- 32 The more differentiated statistics are as follows (source: Marriage Registry of CKL, N = 186) :

Age of Marriage Partners	Male Sex	Female Sex
- 16	0	1
17 - 19	15	68
20 - 22	65	69
23 - 25	44	14
26 - 29	19	13
30 - 34	14	8
35 - 39	11	5
40 - 49	13	7
50 - 59	4	1
60 -	1	0

Unfortunately, the number of second or further marriages could not be determined.

- 33 One of the last cases concerned a woman from *nagari* Koto Gadang in Agam, who had married someone not from Koto Gadang in Tebing Tinggi (North Sumatra). She was punished by the *nagari* council with the permanent expulsion from the *nagari* (*buang tingkarang*). For the full text of the decision see AB 20: 143-146; excerpts are given in Chairul Anwar 1967: 130 ff. and in Koesnoe 1977: 49 ff.
- 34 In CKL, the endogamy rule was abolished by the *Karapatan Adat Nagari* in 1950 for men and in 1954 for women. Thomas reports, that in Gurun the rule was abolished for women between 1952 and 1955, but that "men have not been proscribed from marrying out within memory" (1977: 104).
- 35 I could not determine whether the marriages between members of *suku* Sikumbang were in accordance with or in violation of the Sikumbang exogamy rules.

- 36 See De Josselin de Jong 1975: 9, Maretin 1961: 195.
- 37 Compare Van Eerde 1901 and Besseling 1904. The following quotation from Besseling (1904: 349) in my view can be regarded as supportive for my arguments about the former option-character of the CCM-rule and the bias in favour of the patrilateral CCM:
 "Many a Malayan, who is already married, is constantly bothered by his *induek bako* (in the sense of: head of the father's matrilineage, v.B.B.) to choose another wife from his (the father's) *kamanakan*. To resist this demand without good reasons would be against the good and appropriate manners (*kurang babaso*)".
- 38 Minangkabau has the highest divorce rate in all Indonesia, see Naim 1974: 426-428.
- 39 This was definitely the case in CKL, and Thomas reports the same from Gurun. In contrast, De Josselin de Jong maintained that *urang sumando* was conceived as "bride receivers/husband givers"-group in Minangkabau (1975: 18 f.). His references to Korn (1941: 324, 328), however, by which he justifies his opinion, cannot support it adequately. Korn speaks of the "*urang sumando* group" which consists of "the husbands of the female household members" (1941: 324). Although he later vaguely mentions an extension to all matrilineal relatives of individual *urang sumando*, no single incidence is reported where the several *urang sumando*' *kaum* would act as a group. On the contrary, when Korn proceeds to describe the activities of the *urang sumando* group it is evident that this "group" consists of the individual *urang sumando* (1941: 328).
- 40 Compare De Josselin de Jong 1951: 46 ff., Umar Junus 1964. For a recent comprehensive overview of the literature see Thomas 1977: 228-233.
- 41 The main ideas outlined in this section have already been published in an article by K. and F. v. Benda-Beckmann (1978).
- 42 The Minangkabau have a saying "*bak dirumah bako*" - "like in the house of the *bako*", which they use with the same connotation as we do when speaking of "living like God in France": meaning that the *anak pisan* have a wonderful life in the house of their *bako* and are spoilt by the members of the *bako*.
- 43 This has some important implications for the discussion of marriage systems in Minangkabau. From the above statement we could expect a preference for a tendency toward *buek* endogamy, the husbands wishing to retain their political rights in the *buek* in which they are to spend most of their married life. From the relatively small number of marriages, for which I could determine the spouses' *buek* residence (N=159), 42% were within the same *umpuek* and 67% within the same *buek*. 82% of the marriages were either within Candung or Kota Lawas.

In the study of marriage systems in Minangkabau, more attention therefore should be given to smaller-than-*nagari* territorial units, the *buek* and *koto*. It must also be remembered that not each permanent settlement was a *nagari*, yet marriage arrangements must have existed before the *nagari* foundation.

NOTES TO CHAPTER THREE

- 1 Not being a Sanskritist I am not in a position to judge how far the linguistic evidence supports this interpretation. It strikes me as plausible. In any case it is much more in accordance with the meaning the word *adat* undoubtedly has had in the Indonesian languages. It would further help to explain some other peculiarities connected with the word *adat* in Indonesia. As Van Vollenhoven noted, in the Moluccas the "*adat kebiasaan*" - the *adat* which is custom - is contrasted with other forms of *adat* (1918: 7). In his interpretation, this is just a clarification of the word. Yet if we take the Sanskrit etymology, it would be quite understandable if "*adat* which is custom" would be distinguished from other forms of *adat*.

A much better understanding could also be achieved of a frequently quoted Minangkabau *adat* saying, in which the *adat* is divided into eight kinds (see R.M. Dt. Rajo Panghulu 1971: 89, I.H. Dt. Rajo Panghulu 1973: 109, Nasroen 1957: 63, Westenenk 1918 a: 80).

Dibalah-balah patigo
Sirauik pambalah rotan
Luhak dibaginyo tigo
Adat dibaginyo salapan
Nan ampek tabang kalangik
Nan ampek tingga didunie
Nan ampek tabang ka langik
Aso bulan, duo mantari
Tigo timue, ampek salatan
Nan ampek tingga didunie
Rumah gadang lumbueng bapereng
Sawah gadang banda buatan

The rotan is cut into three with a knife
 The country is divided into three *luhak*
 The *Adat* is divided into eight
 Four fly to heaven
 Four remain on earth
 The four which fly to heaven are:
 One: the moon, Two: the sun
 Three: the East, Four: the South
 The four which remain on earth, are:
 The family house, the carved rice-granaries
 The great rice-fields and the irrigation works

This saying can hardly be understood if *adat* is taken to mean "custom" as had been done by many scholars. The surprised Westenenk stated: "From this fantastic expression we seem to have to conclude that anything which is seen, done, and experienced by man is put into *adat*" (1918 a: 80). True, but the saying is "fantastic" only if one thinks of *adat* as custom. Taken in its Sanskrit meaning, the division of *adat* into a heavenly and earthly sphere would make much more sense. There is, of course, the possibility that the Arabic word *adat*, *adah* is also derived from the Sanskrit word *adat*. In this context I should like to stress that most scholars of Islam do not

translate the Arabic *adat* as "custom", but as "customary law" which was in force before the introduction of the Islamic religion, see Juynboll 1903: 2, 8.

- 2 On the Malayan *perbilangan* see Hooker 1972.
- 3 The most elaborate distinctions are given by Dt. Sidi Bandaro 1965.
- 4 The development of these classifications is not very clear. In many Sumatran societies, lists of laws (*undang*?) were only drawn up by the indigenous experts after the confrontation with the Europeans, see Moyer 1975. But the same may, at least in Minangkabau, have already happened after the coming of Islam, cf. Taufik Abdullah 1966: 9 f.
- 5 With the exception of *adat nan sabana adat* (which is always used for natural and/or divine law) and *adat istiadat* (which is the only of the concepts used to mean *adat* in contrast with Islam), the Minangkabau *adat* categories are used interchangeably by Minangkabau *adat* experts. The reference to "general" or "frequent" use on p.116 is based upon a survey of 27 literary sources.
It should be noted, that Koesnoe claims that the three analytical categories of *adat* which he has developed in several articles can be identified with the Minangkabau *adat* categories (1971: 8 ff., 1975: 277 ff., 1977: 66 ff.). In Koesnoe's interpretation, the categories *adat istiadat*, *adat nan taadat*, and *adat nan diadatkan* represent three different degrees of generality: custom in general, specific custom, and custom accepted by decision (1971: B 5). In my view, however, the categories distinguish *adat* according to its sources. They indicate, how and through whom *adat* was made or given.
- 6 Cf. Koesnoe 1969, Van den Steenhoven 1973, F. von Benda-Beckmann 1977. See also the descriptions of actual decision making in Minangkabau in Tanner 1969, 1970, 1971.
- 7 On Van Vollenhoven's ideas about the concept of law cf. Van Dijk 1948: 13 ff. and Sonius 1976: 25 ff.
- 8 The two outstanding exceptions are the definitions offered by Djojodiguno and Koesnoe. Djojodiguno (1969) stresses the social process character of law. For Koesnoe, law is a dimension of *adat* which can become manifest in the form of rules and decisions, independent of the functional attribute of sanction (1971: 10). His approach is quite similar to the one which I have outlined in the first chapter. However, Koesnoe chooses to define the dimension of law by reference to "what is just and proper in the field of social relations" (1971: 10), whereas I have done so by reference to the way society's constituents' autonomy is restricted and recognized.
- 9 This problem will be dealt with in detail in the thesis of K. von Benda-Beckmann.
- 10 See Jaspan 1964/65: 252. In a critique of Jaspan 1964/65, Stirling comments, that the concept *hukum adat* would date back to the introduction of Islamic law (1965/66: 52). It should be noted, however, that Islamic law is generally referred to with the terms *syarak* or *fiqh*.

- 11 Compare the judgement in the well-known Allahabad case Aziz Bano v. Md. Ibrahim (1925), Fyzee 1955: 35, where the same distinction is drawn.
- 12 Koran literally means "what is recited in the right way" (Juynboll 1903: 10). It is the body of God's own words as they have been revealed to the Prophet Mohammed. The Koran is divided into 114 chapters (*surah*) which are subdivided into verses (*ājah*, pl. *ājāt*). The *ḥadīth* are traditions of the Prophet's behaviour which have been witnessed by eye-witnesses. The *sunna* is the practice of the Prophet as deduced from the *ḥadīth*. The *qiyas* is the principle of analogical deduction. It allows the Imām, the founder and head of a legal school, to exercise his faculty of reasoning and to deduce legal principles which are in accordance with the word of God and the actions and words of the Prophet. The *ijmā'* is the consensus of the learned in matters which are held not to be clearly regulated by one of the other sources. See Juynboll 1903: 11, 17 f., 44, 54 ff., Fyzee 1955: 10, 17 f.
- 13 The first period is counted from the year 1 (the *Hidjrah*, Mohammed's migration from Mekkah to Medinah, in the year 622 A.D.) until the year 10. This is the period in which the Koran was revealed to the Prophet, and it is also the time of many *ḥadīth*.
The second period is counted from 10 to 40 A.H. This is the time of the first three caliphs (successors) of the Prophet. Into this period fall most of the *sunna*, and the collecting and editing of the Koran was carried out under the third caliph 'Uthmān. The Koran has since then been transmitted in unchanged form.
The third period is counted from 40 until the third century. In this period, most of the traditions were collected. In this time, the four schools of Islamic jurisprudence were founded:
 1. The Hanafi-school, founded by Imām Abū Hanīfa (80/699-150/767), who laid great stress upon the principle of analogical deduction.
 2. The Māliki-school, founded by Imām Mālik ibn Anas (90/713-179/795) who stressed the principle of the consensus of the learned.
 3. The Shāfi'i-school, founded by Imām Shāfi'i, a pupil of Imām Mālik. Shāfi'i (150/767 - 204/820) is generally acknowledged as one of the greatest jurists which Islam has produced.
 4. The Hanbali-school, founded by Imām Aḥmad ibn Ḥanbal (164/780 - 241/855), a pupil of Shāfi'i. He is regarded more as a traditionalist than a lawyer, but is recognized as Imām.
 The fourth period is counted from the 4th century onwards. In this period the *fiqh* has been systematized and laid down in many standard works of Islamic jurisprudence. Cf. Juynboll 1903: 16, 26, 38, Fyzee 1955: 22 f.
- 14 For an overview of Dutch law and its development see De Smidt 1972.
- 15 By the *Provisioneel Reglement op het Binnenlandsch Bestuur*, 4.11.1823.
- 16 On the dual court system and its development see Couperus 1882, Mieremet 1919, Carpentier Alting 1926, Kleintjes vol. 2 1929, de la Porte 1933, Ter Haar 1948: 1 ff.
- 17 In 1927, the *Rechtsreglement voor de Buitengewesten*, R.B.G., established the *distriktsraad* in the villages and the *landraden* in the province's main places, without bringing any important changes

to the judicial system.

- 18 The credit for the official recognition is mainly due to the politically active members of the *adat* law school of Leiden university.
- 19 *Ordonnantie* of 9.3.1935, S. 1935: 102, which amended the R.B.G. by inserting a new art., 3a R.B.G. The full text of the ordinance is published in T 142: 109 ff.
- 20 On Java and Madura, Islamic religious councils with limited jurisdictional powers had been recognized since 1808. The regulation issued by Daendels in 1808 was incorporated into art. 78 *Regeringsreglement* (R.R.) of 1854, and later into art. 134 *Indische Staatsregeling* (I.S.), the constitutions of the Colony, see Lev 1972 a: 8 ff., Hooker 1975: 269).
- 21 The *Algemene Bepalingen van Wetgeving*, S. 1847: 23, had established the two categories. The tripartite division was introduced by the R.R., see Ter Haar 1948: 1 ff., Gautama and Hornick 1972: 1 ff., Hooker 1975: 250 ff.
- 22 Art. 163 I.S. had first been promulgated as an amendment to art. 109 R.R.
- 23 The law declared applicable to the native group included:
The regulations of the Dutch Commercial Code concerning shipping, S. 1876: 119, later replaced by the provisions in the new Commercial Code, S. 1933: 49, which came into force in 1938;
The provisions of the Dutch Civil Code concerning labour contracts, art. 1601 - 1603, S. 1876: 256;
The provisions of the Dutch Civil Code concerning gambling and the placing of bets, art. 1788 - 1791, S. 1907: 306.
- 24 See Tobi 1927. Art. 109 (5) R.R., and later art. 163 (5) I.S. authorized the Governor General to issue a declaration that a given applicant was henceforth a member of the European group. Natives also had opportunities to submit to European law without a change of group membership by total, partial, ad-hoc, and presumptive submission, art. 131 (4) I.S. and Royal Decree, S. 1917: 12. Partial submission was excluded for the fields of family law and inheritance. The fields of inheritance, wills, and land law were excluded for ad-hoc submission to European law, see Ter Haar 1948: 35 ff., Gautama and Hornick 1972: 16. On the conflicts of law pertaining to the interracial and interreligious relationships see Kollewijn 1930, 1955, Schiller 1942, Lemaire 1934, 1952.
- 25 The transitional provisions of the 1945-constitution specified that all laws and regulations in force at the time of Independence should continue to be in force until and unless they were replaced by statute. The legal situation is somewhat ambiguous, as an Executive Order issued in 1945 (P.P. 1945: 2) interprets the constitution to mean that pre-Independence regulations continue to be in force only to the extent to which they are not contrary to the constitution. On the basis of this order it has been argued that the arts. 131 and 163 I.S. are no longer valid. Most legal scholars, however, hold that they are still in force, see Gautama and Hornick 1972: 6, 180 ff., Damian and Hornick 1972: 522.

- 26 For an explicit reference to these provisions see case 278 of 1961 in the PN Padang, published in "Berita Pengadilan Tinggi" no. 1 (1968): 24. Cf. Hooker 1975: 276. For a case, in which arts. 131 and I.S. are declared to be invalid see "Yurisprudensi Indonesia" 1969 I: 33.
- 27 Arts. 24 and 25 of the 1945-constitution declared that the jurisdiction should be exercised by a Supreme Court and other courts. The three types of courts were officially introduced by law no. 13 of 1965. In 1970, the judicial system was revised through the Basic Law of the Judicial Administration (*Undang2 tentang Ketentuan2 Pokok Kekuasaan Kehakiman*, law no. 14 of 1970). On the development of the judicial system see Lemaire 1952, Logemann 1955, Damian and Hornick 1972, Hooker 1975.
- 28 For an overview of the development of the colonial and national local government systems see Kemal 1964, Sjoefjan Thalib 1974. The texts of the various decrees and regulations are published in Sihombing and Sjamulbahri 1975. In 1915, the *laras*-system had been abolished, and in 1914/1918 a new ordinance on *nagari* government had been introduced. In 1938, these regulations were repealed by the *Inlandsche Gemeente Ordonnantie voor de Buitengewesten*, (I.G.O.B., S. 1938: 490). Art. 1 I.O.G.B. stated that the *nagari* was a legal person which was represented by the *Kerapatan Adat*, the organization of which should be in accordance with *adat*.
Post-Independence saw a multitude of regulations which mostly were preliminary in character. *Maklumat* 20 of 1947 established an Office of Daily Affairs (*Dewan Harian Nagari*) and a Council of *Nagari* Representatives (*Dewan Perwakilan Nagari*). In these provisions it was declared that all population groups within the *nagari* should be represented in the *Kerapatan Adat* and the other *nagari* institutions. In 1963, a new preliminary regulation was issued by the Governor of West Sumatra (SK/desa/GSB/1963), in which the *adat* group, the *panghulu* and lineage elders, was recognized besides nine other groups. The *nagari* government consisted of a mayor, the *Kerapatan Nagari*, and a *Nagari* Deliberation Committee (*Badan Musyawaratan Nagari*). Each of the main population groups had its own sub-council, the *adat* group the *Kerapatan Adat Nagari*, and the religious group the *Kerapatan Agama*.
- 29 See arts. 30 - 33 SK 015/GSB/1968 and art. 1 (4) SK 149/GSB/1970.
- 30 But not all members of the KAN are members of the KN as well. In CKL, there is much rivalry between the two institutions. On the relationship between recognized and unrecognized *adat* councils in Minangkabau in general see Amilijoes Sa'danoer 1973 and Sjoefjan Thalib 1974.
- 31 On the situation on Java and Madura see Lev 1972 a: 75 ff.
- 32 This problem will be dealt with in the thesis of K. v. Benda-Beckmann.
- 33 These findings are similar to the data given by Tanner (1969: 50 ff., 1971: 163, 181 ff.) for the same court's case-load in the period 1964 - 1966.
- 34 The LKAAM was founded in 1966 at the instigation of the Provincial

Government. It is the successor to previous *adat* organizations, the SAAM and MTKAAM, which were much freer of government influence. The SAAM was founded during the Dutch colonial rule as an *adat*-pressure group against colonial rule and the Islamic pressure groups. For an excellent account of the formation of these pressure groups see Taufik Abdullah 1971, 1972.

In the provincial LKAAM, each *nagari* has one representative, generally the head of the *Kerapatan Adat Nagari*. The LKAAM is a "functional group" in the sense of GOLKAR (*Golongan Karya*), the assemblage of functional groups which acts as the strongest political party in post-Sukarno Indonesia; GOLKAR is pro-government. The top positions of the LKAAM are filled by *panghulu* who hold higher administrative posts. Most of the *nagari*'s representatives also hold administrative appointments on *nagari* or *kecamatan* level. Yet it also functions as a pressure group for the *panghulu* who are trying to regain some of the power which they lost after Independence, and who are not at all shy in uttering their grievances against the government's policy at the general meetings (*Musyawarah Besar*, MUBES). Concerning the 1974 meeting, which we were allowed to attend, see Keebet von Benda-Beckmann 1975; on the previous meeting of 1969 see Naim 1973.

The success of the LKAAM is limited. Information is given, and the *adat*-functionaries realize that the government pays at least some respect to their authority. But most Minangkabau perceive the LKAAM as a government organization, something that "comes from above", and the regulations proposed through the LKAAM channel usually are quite unpopular in the *nagari*. One of the main topics discussed at the last meetings was the necessity to have the village land (*tanah ulayat*) registered and to have genealogies (*ranji*) drawn up for each *kaum*, with the aim of reducing land disputes. In spite of the solemn agreement of all MUBES-participants, nothing has yet come out of these plans. In CKL, not a single *panghulu* had made a *ranji* (including the LKAAM representative) and no land has been registered as *kaum* land.

- 35 Islamic schools are quite popular as they do not demand school fees. In CKL, there was a *Sekolah Tarbiyah Islam*, a secondary Islamic school, which was famous throughout Indonesia, and which was attended by pupils from all over Indonesia. It had been founded by Syeh Suleiman ar Rassuli, a well known Minangkabau Islamic leader. In 1974, it was directed by two of his sons, one of whom was a lecturer for Islamic law in the Islamic University in nearby Bukit Tinggi. The school leaving certificate of the secondary Islamic schools entitles the pupils to study at the Islamic university. On the role of Islamic schools in Minangkabau and Indonesian politics see Taufik Abdullah 1971.
- 36 The classic account of a teacher - pupil relationship is given by Dt. Sanggoeno Dirajo in *Mustiko Adat Alam Minangkabau* (1920).
- 37 In the framework of the new local government regulations of 1968 and 1974, the *cerdik pandai* constitute the third group to be represented in the *Kerapatan Negeri* besides the *adat* and religious groups, cf. Sjoefjan Thalib 1974: 28. In CKL, however, there was no consensus about who the *cerdik pandai* actually were. Both *adat* and Islamic functionaries tried to claim their followers as *cerdik pandai*. The *adat* group held that "actually" the *juaro adat* were the *cerdik pandai*.

- 38 The secrecy with which some knowledge is kept and the differentiation of knowledge heavily influence the anthropologist's attempts to elicit information in these matters. Even when experts want to make an exception for the foreign guest, care must be taken that the information does not reach the "wrong" ears. If, e.g., persons from another *suku* are present, the expert will usually not discuss their *suku* problems or the status of their *buah gadang* in the *nagari*. As it is difficult to speak with a *panghulu* alone - it would be beneath his rank to appear or receive without at least a small following of pupils or senior lineage members - it is often very difficult to establish a situation in which the information can be given at all, even if he is willing to give it.
- 39 In the State Courts, by contrast, it is considered as hearsay evidence. The conflicts between the *adat* and the Dutch conceptions of evidence will be dealt with by K. v. Benda-Beckmann.
- 40 For instance in *nagari* Bayur, personal communication from Fred Errington, and *nagari* Gurun, personal communication from Lynn Thomas. In CKL, this was not often the case.
- 41 A more detailed analysis will be given by K. v. Benda-Beckmann.

NOTES TO CHAPTER FOUR

- 1 Minangkabau *adat* thus contradicts the assumption which has already been mentioned in Chapter 1: That the fact that primitive law does not distinguish the system of property relationships from social relationships in general would imply that property relationships are expressed as what they "really" are, namely relationships *between* persons with respect to things, Bloch 1975: 204.
- 2 Westenenk, in particular, called attention to similar usages of the word *rajo* in other contexts, where *rajo* is used to denote "the master", as e.g. in the *adat* saying in which the wife is referred to as "the queen in the house and kitchen", "...adapun padusi nan rajo pado tampeknyo tatakalo batanak dan manggulai..." (1918 a: 20).
- 3 See Résumé 1872: 11 ff., Kroesen 1874: 15, Westenenk 1918 a: 15, Van Vollenhoven 1918: 263, 1919, Logemann and Ter Haar 1927. For a summary of the references to the *beschikkingsrecht* see Pandecten I: nos. 92-145, 728-749, 1016-1073, 1381-1394, 1712-1718, 1779-1790.
- 4 Van Vollenhoven's use of the term *beschikkingsrecht* or *hak ulayat* fully corresponds with my notion of socio-political control over property as outlined in Chapter 1. In his treatise *De Indonesiërs en zijn grond* (1919) (The Indonesian and his Land), he spoke of it as "the *adat* restrictions of the native right of possession, the *inlandsch bezitrecht*", as the rights on the level of use and exploitation were labelled by the Dutch (1919: 7 ff.).
- 5 The confusion probably arose as the native term *ulayat*, signifying only part of the area to which the *beschikkingsrecht* pertained, was employed to denote the *beschikkingsrecht* in general as an analytical

concept. My interpretation is fully supported by Ter Haar's analysis in "Het beschikkingsrecht in het adatrecht" (Logemann and Ter Haar 1927: 12 f.). He draws attention to the fact that neither in Minangkabau *adat* sayings nor in the writings of the Minangkabau *adat* expert Dt. Sangguno Dirajo, was the concept of *hak ulayat* used. Only the *ulayat panghulu* was mentioned, which according to Ter Haar should best be translated as "the territory over which the guardianship of the *panghulu*, which is based upon the *beschikkingsrecht*, extends" (1927: 12, cf. Dt. Sangguno Dirajo 1924: 71 ff.). Willinck claims that the conception of the *hak ulayat* as vested in the *panghulu* or in the *nagari* as a corporation was an invention of the late 19th century under the influence of Islam (1909: 637 ff.). In Willinck's interpretation, the land outside the cultivated area belonged to the *nagari* community in general.

- 6 According to most scholars, see Willinck 1909: 573, Loeb 1935: 108. Kern, however, claims that the etymology of the word is unknown, and that *pusako* is not derived from Sanskrit (AB 22: 445).
- 7 *Patah tumbueh* and *hilang baganti* is often used as a succession rule for *panghulu* offices. In the area of Solok, *patah tumbueh* is a label for what has been described as *hidup berkarilahan* and *hilang baganti* is used for *mati batungkek budi* (see Chapter 2: 87 f. and AB 11: 93 ff.).
- 8 R.M. Dt. Rajo Panghulu distinguishes *pusako kebesaran* and *pusako harato* (1971: 131). Dt. Sidi Bandaro makes a distinction between the *pusako* which are *harato* and the *pusako* which are *sako*-things (1965: 76 ff.). Under the immaterial *pusako* also fall special kinds of knowledge like the *tambo* of Minangkabau or of the *nagari*. The *pusako kebesaran* can be the heritage of a *buah gadang* but also of larger groups. The offices of the Minangkabau empire, the *Basa nan Ampek Balai*, are also treated as *pusako kebesaran* of the *lareh Koto-Piliang*, see R.M. Dt. Rajo Panghulu 1971: 115 ff.
I have only found one instance of a quadrupartition of *pusako*, where *pusako darah* (the heritage of the blood), *pusako bangsa* (the heritage of the nation), *pusako gala* (the heritage of titles), and *pusako harta* (the heritage of property) are distinguished, see Dt. Majoino 1956: 89.
- 9 The fourth category is sometimes replaced with *harato pusako tambilang budi*, "the property which has been acquired by good social relationships", usually the *pusako* given to strangers or the descendants of slaves. For a similar classification of *milik*, see AB 41: 379.
- 10 But see R.M. Dt. Rajo Panghulu (1971: 131 f.), who attributes a different meaning to the *tinggi - rendah* distinction. For him, the *harato pusako tinggi* is the *ulayat*, and the *harato pusako rendah* the "*pusako*", which would comprise both the high and low *pusako* property of the common usage.

The appendices *tinggi* and *rendah* are also used in a different way, much to the confusion of foreigners, see Tanner 1971: 262. So one often speaks of *pusako tinggi* and *pusako rendah*, meaning the *pusako kebesaran* and the *pusako harato* respectively. We often noticed that persons switched from the one way of classifying *pusako* to the other within one interview. But note that in the latter

classification, one speaks of *pusako*, not of *harato pusako*.

- 11 In modern Indonesian usage one can also speak of immaterial *harta*.
- 12 For a different interpretation of these concepts see the decisions of the PT Bukit Tinggi and the *Mahkamah Agung* in the rice-mill case, which are discussed in Chapter 6:338 ff.
- 13 Van Vollenhoven (1918: 262) and following him, Joustra (1923: 113) wrote that *harta pancaharian* become "family property" after the death of the *pancaharian* holder as *harta manah* or *harta sako*, and only in the second generation of heirs become *harta pusako* (cf. Raad Padang in AB 6: 168). Willinck held that the *harta pancaharian* become *harato pusako* with the death of the *pancaharian* holder, but spoke of *harta sako* in the case where *harato pancaharian* had been given to the *pancaharian* holder's children by way of *hibah* (1909: 772, 750). But I have nowhere else heard or read of such conceptual usage. When *harta manah* or *harta sako* are employed at all to denote the legal status of property objects, they are used to indicate the oldest lineage property which may never be divided (Kemal 1964: 66 for *harta sako*, Loeb 1935: 108 for *harta manah*) or for *pusako* the origin of which is not clearly remembered anymore (Van den Toorn 1881: 514). In most publications on Minangkabau *adat* and according to the contemporary conceptual usage in the *nagari* and the State Courts, *harato pancaharian* becomes *harato pusako rendah* with the death of the *pancaharian* holder.
- 14 In the Dutch literature, most statements on *pancaharian* inheritances are rather undifferentiated and speak of "inheritance by the *kaum*", "by the *kamanakan*", or "by the heirs (*wari's*)"; for an overview see Pandecten V: nos. 689 - 871. The most differentiated statements are given by Willinck (1909: 776 ff.), Sarolea (1920: 120 ff.) and in AB 6: 119 ff., the latter reproduced in De Josselin de Jong 1951: 57 f. Note, that the fault in the rules given in AB 6: 120, which De Josselin de Jong calls an "obvious inconsistency" (1951: 58), had already been rectified in AB 18: 253.
- 15 The division of the *suarang* property in the case of the death of one spouse has nothing to do with inheritance or other forms of diachronic transfers. For one half of the property was the, albeit undivided, property of the surviving spouse already during the lifetime of both spouses, see Van Vollenhoven 1918: 262 f., Willinck 1909: 553 ff. For an overview of the Dutch writers' statements on the division of *suarang* property see Pandecten VIII: nos. 2610 - 2633.
- 16 Note, that the distinction has been emphasized by Willinck (1909: 547 f., 782 f.) and Sarolea (1920: 120 ff.).
- 17 We have to understand in this context the statements contained in several judgements of Dutch colonial courts, that the *pusako* property may only be "divided" if there is an irreconcilable quarrel between the *kaum* members, see LR Padang (1927) in T 112: 132 and (1927) in T 126: 130, and LR Fort de Kock (1933) in T 140: 202.
- 18 In CKL, the split occurs on the *kaum* level at which two new *kaum* with common *harato pusako* and independent property control are established.

On the *buah gadang* level, the component *kaum* remain "of one *pusako* property in *adat*" unless the *buah gadang* itself should be divided.

- 19 Compare the system of the rotation of the *panghulu* title, the *gadang balega*, Chapter 2: 86.
- 20 Besides the *sako* and the *gala pusako*, other titles can be used. There are honorific titles which express honorific addresses to older men, such as Angku and Inyiek, which are conferred upon the individuals by the community in a ceremony.

In addition, also "nick-titles" (*gala panggilan*) are used, which mostly contain an ironical undertone but can also express particular respect. Thus an elderly man in our neighbourhood was called Datuek Harimau. He was not entitled to wear the *gala* Datuek (as he was no *adat* functionary) and Harimau (Tiger) was not a *gala* used in CKL. But people liked to call him this way as he had been a fierce and brave resistance fighter.

I was often addressed by *gala* invented on the spot, as people felt unwilling to address me by name. This is because I was married and occupied a position which was at least important enough that it could provide me with the money to come to Minangkabau - so I should have a *gala*. In the later part of our stay, a *gala* was conferred upon me in a mock *adat* ceremony, which was afterwards used by several men to address me, partly jokingly, partly in earnest. The *gala panggilan* or *gala kiasan* (allusionary titles) are not conferred in a formal ceremony. On the system of *gala* 100 years ago see Mansveld 1876.

- 21 In CKL, titles like Mangkuto, Palimo, Sinaro, etc. were considered the *pusako* of particular *suku*. The titles which were general *pusako* of all *suku* were Sutan, an "adat"-*gala* usually given to young men who do not hold an *adat* office, and titles indicating particular abilities in the religious world, like Pakih (*fiqih*, the one learned in law), Malin(m) (*yang berilmu*, the learned). Malim could also denote the religious office of the *suku*.

Most of the *gala* have some functional/office connotations, like *mantari* (minister), *palimo* (military commander), *bandaharo* (treasurer). It may well be, that in former times, these titles were only given to the holders of such offices. But since information on Minangkabau titles is available, these titles had in any case lost their functional connotations. If a man wears the title of Palimo Putih (the white military commander), nobody expects him to be a military commander in the same sense as nobody will suspect that a Mr. King in England is a king or a descendant of a king. In other parts of Indonesia, the Minangkabau titles have caused quite a surprise (see AB 27: 258 ff.) as titles such as Raja or Maharaja Diraja had still connotations of rank and nobility.

In historical perspective, the titles which are considered *pusako* of a *suku* may well point to a greater importance of the *suku* in former times. If the title of Dt. Sati e.g. was the property of *suku* Sikumbang in CKL and of *suku* Tanjung in another *nagari*, this could, and sometimes was, attributed to the fact that in former times *suku* Sikumbang and *suku* Tanjung were "one".

- 22 This makes the recording of a genealogy extremely difficult for the anthropologist, as the same persons are often referred to by their different titles.

- 23 This custom was probably developed in the Padri-era. In other *nagari*, as in *nagari* Gurun, such a practice was unknown, and the young men received their title only from their *kaum* or from their father's *kaum* (Thomas 1977: 88).
- 24 So Thomas, in his preliminary study of genealogies from *nagari* Gurun, could not detect any specific pattern of father-children or *mamak-kamanakan gala*-inheritance (1977: 87).
- 25 This is not quite in accordance with the data given by Naim 1973: 20. At the MUBES - 1969 of the LKAAM, 92% of the respondent *panghulu* had answered that they had received their title from their "*mamak kandung*", which Naim translates as "direct MB". Although it may seem somewhat inappropriate to contradict a Minangkabau who himself is a western trained sociologist, I suggest that these numbers should be read with caution. Though "*kandung*" usually denotes the closest blood relatives, and *mamak kandung* usually would denote the MB, I am quite convinced that in this context *mamak kandung* comprised a wider range of *mamak*, an impression which was drawn from interviews with several *adat* experts. In a common (with Naim) interview with Dt. Mangkuto Sati, a *panghulu* and recognized *adat* expert and former chairman of the PN Bukit Tinggi, Dt. Mangkuto Sati stated, that a Minangkabau *panghulu* would in principle insist that he had received his title and office from his *mamak kanduang*, even if this *mamak* should be a *mamak* in a different *kaum* of the *buah gadang*. A negative reply to the answer might imply that the present holder was not fully entitled to the *gala*.
 In CKL, *panghulu* referred to their predecessor as their *mamak*, also if this *mamak* was a MMMZDDDS. More in line with my statement are the data given by Thomas on the basis of a sample check of genealogies. In *nagari* Gurun, closer descendants were often passed over in favour of more distant descendants, such as classificatory *kamanakan*, grandchildren, or even great-grandchildren (1977: 89). Note that Gurun follows *adat* Koto-Piliang.
- 26 Compare case 1 of 1936 of the LR Fort van der Capellen in "Berita Pengadilan Tinggi" no. 1, 1968: 33 ff. In this case the *gala* of Chatib Adat had been given to an *anak pisang* after *mufakat* and *sakato* had been reached in the father's group and a ceremony had been held.
- 27 Note that Gluckman has asserted that in all legal systems a fundamental distinction is made between movable and immovable property (1972: 113 ff.). As the Minangkabau example and others indicate, the distinction between self-acquired and inherited property is much more fundamental in many systems of property relationships (cf. Fortes 1950, 1963 for the Ashanti, Goody 1962 for the LoDagaa; see also the societies described in Derrett (ed.) 1965. In contemporary Minangkabau State Courts at least, the holder's autonomy over *pancaharian* land in no way is distinguished from his autonomy over *pancaharian* movables (see cases 39 of 1969 and 16 of 1972 PN Bukit Tinggi, 7 of 1970 and 36 of 1972 PN Batu Sangkar).
- 28 In the pawning register of CKL, which was kept by the *Tuanku Lareh* of Candung between 1873 and 1897, a sale of rice-land is recorded. This transfer seems to have been approved by "the whole community", judging from the impressive number of witnesses' signatures: 27

persons in all, among them 8 *panghulu*.

- 29 In the literature it is not always clearly stated which group must be extinct. The terms *kaum*, *familie*, *sabuaiparuk* are mentioned interchangeably (see the references in the Pandecten V: nos. 1629 - 1646 and the judgements in T 140: 205 and 215). We must keep in mind that the terms denote different groups in different *nagari*. The basic principle is that as long as there are still persons "of one property", the *pusako* must be inherited. If all *urang saharato sapusako* are extinct, the property could be alienated with the cognizance of the related *buah gadang*.
- 30 On the *adat* of pawning see in particular Guyt's thesis *Grondverpanding in Minangkabau* (1936).
- 31 "... istilah untuk memindahkan hak atas tanah buat sementara waktu" (Dt. Maruhum Batuah and Bagindo Tanameh 1954: 54).
- 32 The *Westkust-rapport* of 1927 mentions 9 cases in which pawning was regarded as permissible. Guyt, however, reduced these to various manifestations of the four classical cases (1936: 61).
- 33 The general principle seems to have been, that *all kaum* members had to agree to the transaction, also those who did not live in the *nagari*. A *mamak* returning from the *rantau* could therefore claim the invalidation of the transaction on the basis that his consent had not been asked. If he was away, his consent should have been asked by mail (see Willinck 1909: 614, 616, 700, De Rooij AB 20: 128, AB 27: 276, De Waal van Anckeveen AB 1: 114, Dt. Sanggoeno Dirajo 1920: 104). But there are also modified statements which exclude the younger *kaum* members (see Guyt 1936: 65).
Guyt has developed the thesis, that the *mamak kepala waris* could pawn the *harato pusako* in the four classical cases in his own right, and that he was bound by the *sakato*-requirement only in other cases (1936: 70 ff.). This opinion, in the literature only found with Wienecke (AB 11: 120), is mainly based upon two judgements (LR Fort de Kock (1933) in T 140: 218 and LR Payakumbuh (1933) in T 140: 226 ff.), which, however, had been given by no other than Guyt himself! (This is not mentioned in his thesis). It can safely be stated that this was not the *adat* rule. Even in the more liberal contemporary situation, the *mamak* cannot pawn without the consent of the *ahli warih*, a rule which is regularly restated in the *nagari* and State Courts.
- 34 This procedural element usually is not mentioned in the Dutch literature on *pagang gadai*, though it is of considerable importance for the diachronic transfer of the pawnee's rights, see below p. 171.
- 35 Guyt reports that this system had been introduced in Batipuh and X Koto in 1888 (1936: 45, cf. AB 33: 289). *Gadai*-deeds dating back as far as 1870 are reprinted in AB 41: 406 ff.
- 36 "... minta tambah uang gadaian pada yang memagang semula" (Dt. Maruhum Batuah and Bagindo Tanameh 1954: 55).
- 37 Van Vollenhoven mentions that in *jual gadai* cases, the redemption sum amounted to twice the original pawning sum, to which an additional

token gift (*toegifte*) was added (1918: 266).

- 38 In Guyt's characterization of the property relationships in terms of rights, the pawner keeps the *hak*, whereas the pawnee received the *milik* on the property object (1936: 15 f.). Different is the *Raad van Justitie* Padang according to which the pawner keeps the *hak milik* whereas the pawnee only gets a use right, *hak pakai* (T 140: 262).
- 39 See *Raad van Justitie* Padang in T 133: 183 and the expert opinions given in AB 6: 223 - 233, which are quite in accordance with the rules given in interviews in CKL.
- 40 On Lombok, for instance, the term *gadai* is nowadays usually used to denote pawnings, but the older people still use the (presumably) older term *sande* (Koesnoe 1975: 154).
- 41 The explanations given by *adat* experts in 1911 differed: One expert considered *sando* a *pagang gadai* transaction in which the right of redemption was restricted. For another expert it depended on the value of the pawning sum, whether a transaction was *sando* or *pagang gadai*: below 20 *real*, it was *gadai*, in excess of 20 *real*, it was *sando*. Of the *sando agung* it was said that the property in question could only be redeemed by the direct ascendants and descendants of the pawner (see AB 6: 235 ff.).
- 42 The term *kudo*, horse, seems to indicate a special relationship between *bako* and *anak pisang*. At *panghulu* installations in CKL, it was the task of the *bako* to give the *adat kudo*, "the *adat* of the horse". According to villagers, a horse was given in former times. In contemporary CKL, a symbolic money payment has replaced the horse.
- 43 "*Hibbah ialah berlaku kapada anak kanduang dengan jalan menjadikan anak tersebut manjadi kamanakan, tetap tinggal dan hidup berketurunan didalam suku dan koroang kampuang pusaka yang dihibahkan oleh si bapak*".
- 44 "*Hibah ten opzichte van harato pusako of ten aanzien van het ganggam bauntuek zijn dan van zelf ab ovo nietig*".
- 45 Willinck has analyzed the character of the Minangkabau *hibah* in terms of western conceptions of donation. He concludes that *hibah* cannot be called a donation (*schenking*), as the donation always has the consequence that the donor loses the property to the donee. In western law (and in Islamic law, too) the donation is a contract which requires the acceptance of the property by the donee, whereas in *adat* such acceptance is not necessary. The *hibah* can neither be compared to the *donatio mortis causa* of the Roman law (which is not allowed in most contemporary western legal systems) as different consequences are attached to the *hibah*: The property given by *hibah* could never be used to fulfil the claims of the deceased's creditors, even if the *hibah* was made with the aim to evade the creditors' claims. In Roman law, the property donated *mortis causa* could be held liable for certain claims of the donor's creditors (1909: 750 f.).
- 46 For an overview see Pandecten V: nos. 1489 - 1532.
- 47 This *adat* rule was in contrast to the regulations introduced by the

R.B.G. (*Rechtsreglement voor de Buitengewesten* 1875), art. 208 and 216. According to these provisions, the *harato pusako* of a debtor's *kaum* could be held liable for debts if there was not sufficient *harato pancaharian* to satisfy them, see Der Kinderen 1875: 197, 199. In practice, however, *adat* prevailed. Dutch lawyers interpreted the provisions as "formal" law only, which could be applied only, if according to material law *pusako* could have been used to fulfil the creditor's claim. As the material law in this case was *adat* law, according to which this was not possible, the provision of the R.B.G. could not be applied in Minangkabau, cf. Guyt 1936: 57. The Dutch colonial courts followed this interpretation and did not enforce the provisions, see LR Padang (1929) in T 133: 238, LR Solok (1932) in T 138: 480.

- 48 But even if the *kaum* members of the debtor agree to the giving of *harato pusako* as security, the bank may run into serious trouble if it tries to sell the property in public. In a CKL case, a bank had already twice tried to do so, but without any result, and the property was worked by the debtor's *kamanakan* in spite of the seizure.
- 49 Conversely, the payment of another person's debts such as hospital bills etc. is often adduced as evidence as to who the heir of the deceased is. This generally happens in cases where the legal status of the property, *harato pancaharian* or *harato pusako*, is disputed. These problems of evidence will be described by K. v. Benda-Beckmann.
- 50 This differentiation is also made by Van Vollenhoven in another context but he does not relate it to his conception of *rechtsgemeenschap* (1918: 252).
- 51 In a later publication, Goody expresses himself more cautiously: "In using the word 'corporate' to describe a group I do not even imply that its members hold equal rights in common property" (1973: 26). In *Death, Property and the Ancestors* he did so explicitly.
- 52 One of the few authors who make the distinction is Lloyd in his study of Yoruba property law, in particular 1959: 29 ff. and 1965: 170 ff. He distinguishes the "corporate holding of the title" and the "entailment of self-acquired interests in property", which after the death of their creator cannot pass by bequest or inheritance outside the group descended from the creator, or, on the extinction of this group, outside his own kin group (1959: 32).
Derrett also warned of the "deceptive appearance of a merger of all assets into a common indistinguishable mass" (1965: 25). Moore has illustrated the importance of the distinction with respect to cattle holding groups (1969: 390).
- 53 Evers' statement could be excused if it had been based upon a rather undifferentiated description of Minangkabau property relationships. But ironically enough, Evers just quotes Willinck, the author, who had "detected" this "new" form of property holding already in the beginning of this century. However, Evers rather misquotes Willinck, when he writes:
"Willinck (1909: 57) claims that *harta pusaka* or *tanah ulayat* can be owned either by a sub-clan (*jurai*) or an extended family (*paruik*). I did not come across any property that was effectively owned by a *jurai* in Padang" (1975: 88 FN 1).
He did. For "the recent form of communal ownership" which he found

in Padang is nothing else than what Willinck had described as *pusako* held by a *jurai*. How Evers came to impute that Willinck meant a "sub-clan" when writing about a *jurai*, is incomprehensible to me, for Willinck is quite explicit in stating that he means a sub-branch of the *paruik*, when he speaks about the *jurai* on p. 574 f. and p. 782 f. Evers' p. 57 must be a typing error.

- 54 This was very evident in a dispute about *pusako*- and *buek* rights which was brought to the *Karapatan Adat Nagari* of CKL in 1975. This case will be described in the thesis of K. v. Benda-Beckmann.
- 55 Firth (1974) discusses the use of the concept *waris* among the Kelantan Malays as a category of personal kin. Unfortunately, he does not consider inheritance among the "operational categories" (1974: 48 ff.), although "in general it is only consanguine links which entitle people to be included among someone's *waris*" (1974: 38) and the system of inheritance is essentially between consanguinal kin relations based upon common descent (1974: 34). His failure to consider inheritance may well be motivated by a subconscious addiction to the temporal attitude towards inheritance in western societies.
- 56 On the consequences of the *riba*-prohibition on the *pagang gadai* transactions see above p. 174.
- 57 But like all kinds of property relationships, the *eigendom*, too, has never been unrestricted, and it therefore would be misleading to speak of it, as is sometimes done, as of an "absolute" or "complete" right. This is fully recognized by Dutch lawyers (see Pitlo 1965: 120, 1966: 296).
- 58 Even this is subject to an exception, for the Dutch legal culture has produced a "temporary *eigendom*" in the case where *eigendom* is transferred as security for a debt under the condition that it must be retransferred after the payment of the debt (Pitlo 1965: 123 f.).
- 59 In making the basic distinction along these lines, I follow the exposition of Pitlo (1965: 148 ff., 1966: 309 ff.). There is, however, no unanimity among Dutch legal experts as to the basic criteria according to which the *vrije* and *gebonden mede-eigendom* should be distinguished. The prevalent opinion makes the distinction according to the possibility of division of the property. But this results in inconsistencies, as e.g. inherited property, though divisible, is always considered to be *gebonden mede-eigendom* (see Pitlo 1965: 149 ff.).
- 60 Except for the rules concerning inheritance, art. 1112 ff. B.W., there are no more rules in the B.W. that regulate the form and consequences of *mede-eigendom*. If *mede-eigendom* is mentioned elsewhere in the Civil Code, one is referred to the inheritance provisions. The rules described in the text have been elaborated by the legal experts and the courts. Cf. Pitlo 1966: 310 ff.
- 61 It is estimated that only about 10% of all married couples make such contractual agreements (Pitlo 1966: 272, Klaassen, Eggens and Luijten 1973: 130.).
- 62 See Pitlo 1966: 271 ff., Klaassen, Eggens, and Luijten 1973: 88.

The law of marital property has undergone several changes in the recent past. Until 1957, the married woman was not entitled to dispose of marital property without her husband's consent. In 1957 this was changed. The new form of marital property was only created in 1969 (S. 1969: 257).

- 63 See arts. 880 and 1002 B.W. The continuation of the holder's capacity occurs through law. This principle is called *saisine*. "*Le mort saisit le vif*". In Germanic law, *saisine* only governed the inheritance of property relationships by blood relatives, the legal heirs. Roman law considered legal heirs and heirs by testament on an equal basis. This principle has been adopted into most continental European legal systems.

Inheritance is restricted to property relationships. Personal relationships and public status-relationships are discontinued with the death of their holder (cf. Pitlo 1966: 423 ff.).

- 64 In addition, there is a class of persons who may not inherit at all as testamentary heirs, like guardians, priests, doctors, or notaries who stood in a professional relationship with the deceased, arts. 951, 953, 954 B.W. This principle is also extended to donations *inter vivos*, art. 1718 B.W. Until 1969, second wives and recognized natural children could only inherit a limited portion of the heritage by testament, arts. 949, 955 B.W.

- 65 The legitimate portion is generally taken to be a right to a fraction of the property *objects* and not of its value (Pitlo 1966: 448). In art. 972 B.W. it is explicitly stated with respect to immovable property that it must be given back *in natura* if it is required to fill up the legitimate portion.

- 66 In German law, for instance, such retroactive invalidation of gifts can only be claimed with respect to donations made during the last ten years of the property holder's lifetime, art. 2325 BGB.

- 67 " ... dat, bij eigendoms-overgang van het geheel of van een gedeelte van eenig onroerend goed, toebehoorende aan een lid der oorspronkelijke bevolking van Sumatra's Westkust, en waarvan een wet-tig eigendomsbewijs opgemaakt is, de bewijzen, welke tengevolge van erfenis, boedelscheiding als anderszins mogten vereischt worden, door de eerste plaatselijke autoriteit zullen worden verleend, na vooraf te hebben ingewonnen het advies van de bevoegde regenten, soekoe- en familiehoofden".

- 68 The Domain-Declaration (*Domeinverklaring*) was contained in the Agrarian Decree (*Agrarisch Besluit*) of 1870 (S. 1870: 118. Cf. Gautama and Hornick 1972: 80).

- 69 Art. 1 is reprinted in Logemann and Ter Haar 1927: 106:
"Alle woeste gronden in de gouvernementslanden op Sumatra behooren, voor zoover daarop door leden der inheemsche bevolking geen aan het ontginningsrecht ontleende regten worden uitgeoefend, tot het Staatsdomein. Over die tot het Staatsdomein behorende gronden berust, behoudens het ontginningsrecht der bevolking, de beschikking uitsluitend bij het Gouvernement."

- 70 The provisions of the Domain-Declaration created a state of considerable legal uncertainty. The concept *eigendom* was not further

defined and permitted several interpretations. Van Vollenhoven noted that four different interpretations were held by the colonial administration. These ranged from the opinion that all land except civil code *eigendom* fell under the domain of the State to the view that all rights according to *adat* had to be subsumed under *eigendom* (1919: 53 f.). The position taken on Java was that all land which was held according to *adat* law fell under the domain, except for the land which had been converted into *agrarisches eigendom* (cf. Gautama and Hornick 1972: 80 f.). In the areas outside Java and Madura the situation was even less clear, as separate Domain-Declarations had been issued, and it was uncertain to what degree the 1870-declaration applied to these areas at all (see Van Vollenhoven 1919: 54).

- 71 See also the opinion of the *Directeur van Justitie* in his letter of 8.12.1903 to the Governor of the West Coast (AB 11: 74 ff.).
- 72 The mortgages on European land followed the Dutch law about the *hypotheek* as laid down in Book 2 B.W. In 1908, the system of forced cultivation had been abolished, and the system of taxation been introduced. The creation of mortgages on Indonesian land thus was no coincidence.
- 73 On the Basic Agrarian Law see Gautama and Harsono 1972, Harsono 1973 with the texts of all laws and further regulations, Gautama and Hornick 1972, Tan 1977.
- 74 The conversion-provisions were contained in the *Peraturan Menteri Agraria* no. 2 of 1960.
- 75 Section 7 of law 56 of 1960 had been devised to meet the situation on Java. On Java, rich people often pawned property from poor people. The poor were generally not able to repay the *uang tebusan*, and the pawning therefore often amounted to a *de facto* permanent alienation: The pawner, once forced to pawn his property in need of cash, pawned his property to the rich who had it worked by wage labour. Once the cash had been spent, the original holders were usually not in the position to redeem their land.
Section 7 represents an attempt to put a stop to these practices.
In Minangkabau, however, the situation is generally different. Pawned land is usually taken by people who do not have enough property of their own for subsistence farming. The pawners are usually persons (or *kaum*) who have sufficient *harato pusako* and who can afford to give away some of it without losing their own subsistence basis. If section 7 had been applied in Minangkabau, this would have meant that the poor were even deprived of the money which they had invested in the rich man's property.
In 1964, Land Reform Courts (*Pengadilan Landreform*) had been established by law no. 21 of 1964 to deal with conflicts arising out of the implementation of the Basic Agrarian Law. They did not function well and were officially abolished again in 1970 (law no. 11 of 1970).
- 76 The new marriage law severely inhibits polygamy. The consent of the first wife is necessary if the husband wants to marry a second wife. This consent must be in writing and be given before the court. The husband must also prove that he is economically able to support more than one wife.

NOTES TO CHAPTER FIVE

- 1 I do not share the view that the "typicality" of extended cases is irrelevant (Mitchell 1964: XIII). The functional value of a particular form of problem-solving human behaviour cannot be determined by its relation to the structural regularities. It only becomes clear through the comparison of the frequency of its incidence with the other forms of behaviour aimed at solving the same problem.
- 2 I have changed the names and titles of the CKL-villagers who appear as actors in the following stories.
- 3 Contrary to Tanner's statement (1971: 286), cases over *sako* are sometimes taken to the State Courts in Minangkabau. In the years 1969-1974, 5 cases involving the right to the *sako* were brought before the PN Batu Sangkar. But such cases are rarely finally decided in court. Since 1960, the question of whether the State Courts may entertain a suit over *sako* at all cannot be answered clearly. The PT Medan, in the appeal decision quoted in this story, denied the jurisdiction of State Courts in *sako* matters. However, not all contemporary State Courts keep to this decision (or do not know about it). In case 1 of 1970 of the PN Batu Sangkar, for instance, the jurisdiction of the court in *sako* matters was acknowledged.
 The three judgements from which I have extracted the events are 1. the judgement of the *Rapat* of the *Tungku Laras* of IX Kota of 5.5.1910, 2. case 28 of 1951 of the PN Solok, and 3. case 213 of 1960 of the PT Medan. Some additional information was given by the younger brother of the present Dt. B.
- 4 The document, comprising 84 pages with entries from 1873 - 1897, was written in Malayan letters. After the PN's judgement, the document was kept in the court records. The chairman of the PN allowed us to make photocopies of the documents, and we had all entries transcribed into Indonesian. For a partial analysis of the entries see p. 288 f.
- 5 A very similar decision was given in case 34 of 1973 which concerned the property of the plaintiff's father's brother, who also had been a trader in Medan.
- 6 This influence of Islamic law is also apparent in the decisions of the 1952-conference on Minangkabau inheritance law. It was declared that testators should be obliged to give 1/3 of their "pure" *harato pancahari*an by testament to their *kamanakan* (see Chapter 6: 325).
- 7 One of the greatest deficiencies of the report, as already Evers has noted (1975: 99), is the fact that the sex of the testators has not been given. The sex ratio among the recipients is 52.2% for females and 47.8% for males (1971: 16). Given a speculative ratio of 50:50 % among the testators, the significance of the data as indicators of social change and change in the inheritance law would have to be altered. With respect to the overall result, it

would mean that the 202 cases of inheritance by the *kamanakan* and the 149 cases of *hibah* to the *kamanakan* would be drawn from only 50% of all cases, as only men have *kamanakan*. The significance of these data should therefore be doubted. If one wants to interpret the data in terms of lineality, as Sa'danoer does, half of the cases of inheritance and *hibah* to the children would be quite in accordance with matrilineality, as stemming from female testators/donors.

Another deficiency of the report is that it has not been mentioned (asked) in which network of interpersonal relationships the testators lived. For if a person had had no children, it would be quite in accordance with *adat* that the *pancaharian* would pass to the *kamanaan*.

In addition it is not mentioned whether the property received by the respondents was the total or only a part of the testators' *pancaharian*, and whether he or she was the only recipient of the property.

- 8 In the case of land we would like to know, of course, whether it was a residual or a provisional relationship which was transferred, taking into account that Minangkabau villagers usually refer to the land which they have pawned as to "my *pancaharian*".
- 9 See note 7.
- 10 Only if this is known, one can understand some highly contradictory reports on Minangkabau landholding. In 1928, Schrieke reported that in the area of Solok "all the family land has been done away with and has been transformed into self-earned land as a consequence of pledging" (1955: 110). 25 years later, Prins repudiated this statement, drawing attention to recent research which had shown that most property in this area still was *harato pusako* (AB 41: 392 ff.). Prins correctly commented that the use-rights could be regarded as falling among the *harato pancaharian* but that this did not affect the *pusako* status of the land to which the use-rights pertained (1954: 52).
- 11 I have mapped this area without the help of geodetic instruments on the basis of an older Dutch military map which gives the exact location of the roads and paths. The borders between the rice-fields are given correctly, but the exact measures and sizes of the fields are approximations only. The many hours spent on the fields offered ample opportunities to talk with the farming villagers, and I have collected much information on their property relationships during these casual conversations. Additional information was given by an informant living in this area and by some *panghulu* with whom I made a systematic check of the kinds of property relationships pertaining to the land which I had mapped. Unfortunately, the information which I could collect during our stay in CKL was not sufficient for a systematic reconstruction of the property history of the whole area.
- 12 Compare Bohannan on "The Impact of Money on an African Subsistence Economy" (1967 b), in particular pp.123 ff., 133. There is a strong parallel between the impact of "all-purpose money" on the relationships to women among the Tiv and the relationships to *harato pusako* among the Minangkabau, which cannot, however, be explored systematic-

ally in this study.

- 13 Thomas (pers. communication) reported several cases of this kind to me.
- 14 For similar arguments with respect to Minangkabau see Fischer 1964: 103. For matrilineal societies in general compare Fortes 1957: 183.
- 15 De Josselin de Jong cites this argument as evidence against the patrilineal CCM in early Minangkabau social organization (1951: 62), a necessary corollary to his hypothesis of prescriptive matrilineal CCM. But I would think that in early Minangkabau the wishes of the young spouses would be much less taken into account than in contemporary Minangkabau.
- 16 Firth therefore should rather apply another of his remarks on Soviet anthropologists to Maretin's analysis, namely "that nowhere is the distortion of observations by evolutionary hypotheses so marked as in the works of Soviet ethnographers in the sphere of kinship, where the hunt for 'survivals' has concentrated attention ... on unusual, sporadic deviations of custom" (1965: 362 FN 2).
- 17 I must report one exception from the Religious Court in Bukit Tinggi. In an uncontested case, two sisters demanded that the court confirm their status of heirs in accordance with *hukum faraidh* (case 82 of 1974).
- 18 These opinions were voiced during an interview session with several *panghulu* in *nagari* III Balai. See also R.M. Dt. Rajo Panghulu 1971: 58.
- 19 These data are based upon our research of the court records of the PN Bukit Tinggi and Payakumbuh from 1968-1974, and of PN Batu Sangkar from 1969-1974. The percentage of disputes concerning *pusako* property probably is even higher. I have only considered those disputes where *pusako* is explicitly mentioned in the records. A more systematic differentiation of the courts' case load will be given by K. von Benda-Beckmann.
- 20 Several instances of such cases will be described by K. von Benda-Beckmann.

NOTES TO CHAPTER SIX

- 1 Like in the proceedings of the LR Padang, T 140: 273 ff.
- 2 See Lev 1962 on the development of *adat* inheritance law in the *Mahkamah Agung*.
- 3 The two judgements and the documents relating to them are recorded in the Dutch National Archives in Schaarsbergen, File no. 4/23/1862 no. 9.

- 4 Letter of 24.8.1861: "... dat de gronden niet vallen onder de maleische instellingen of het maleisch erfregt, maar dat de eigening daarvan inderdaad volgens het Europeesch regt heeft plaats gevonden en de hoofden, ten aanzien wier overstaan die eigening heeft plaats gevonden, daarmee hebben ingestemd.
... neemt men dit als waarheid aan, ..., dan heeft ook een lid der oorspronkelijke bevolking van Sumatra's Westkust volkomen het regt om naar verkiezing over dien grond te beschikken en gaan zijne regten onveranderd op de volgende bezitters, wie die ook zijn, over, terwijl alleen bij afsterven ab intestato de maleische erfopvolging dient in acht genomen te worden."
- 5 The *Directeur van Middelen en Domeinen* (in his letter of 1.9.1860) and the *Procureur General* (in his letter of 20.11.1861) both held that an annulment of the judgements was out of the question, as such measure would be contrary to the principles of the administration ("... het bevel tot schorting van het vonnis ... is te zeer in strijd met de bestaande regeringsbeginselen dan dat de regering dat bevel zoude kunnen goedkeuren"). The *Procureur General* further advocated that the regulation should not be changed: "It seems advisable in my opinion not to regulate too much in these matters where conflicts with the customs of the population can so easily arise" (letter of 20.11.1861). The regulation was, however, changed by the Governor General in a decree of 15.2.1862. In the reasons given for the amendment it was stated that it was neither the aim of art. 2 of the old regulation nor of the Government's policy to subject all transactions over *pusako-eigendom* to the consent of the administrative authorities, but that this rule should only apply to intestate inheritance.
- 6 Letter of 20.11.1861: " ... het kan wel niet twijfelachtig zijn, dat, daar partijen in den eigendom worden bevestigd door een Europeesch ambtenaar naar de Europeesche wetten, en dit eigendomsregt eene zuiver Europeesche instelling is, de gevolgen aan hetzelfde verbonden naar de Europeesche wetgeving moeten beoordeeld worden ...
De Landraad te Padang heeft trouwens minder gedwaald in de toepassing van de regten aan den eigendom van den grond ontleend, als wel in de toepassing van het Maleische versterfregt, waarvan die regtbank eene zoo uitgebreide werking heeft toegekend, dat elke andere eigendomsvergang op grond van het versterfregt zoude nietig zijn."
- 7 Thomas reports the same from *nagari* Gurun (personal communication).
- 8 On the relation between *adat* and Islam in Minangkabau cf. Taufik Abdullah 1966, 1971, 1972; Prins 1953, 1954; HAMKA 1946; Lev 1972 a, 1972 b for an excellent account of the role of Islamic law and Islamic courts in Indonesia in general; Dobbin 1977.
- 9 The Ithna Ashari school is a Shi'ite Islamic school. The Shi'ites are the followers of Ali, the Prophet's son-in-law, who regard Ali as the only legitimate successor of Mohammed, whereas the Sunnites recognize the caliphs, see Fyze 1955: 28 ff. On the legal rules of this school see Fyze 1955: 379 ff.
Already Verkerk Pistorius reported that the descendants of former slaves were called "*kemanakan dengan sabab*" (1868: 437). The con-

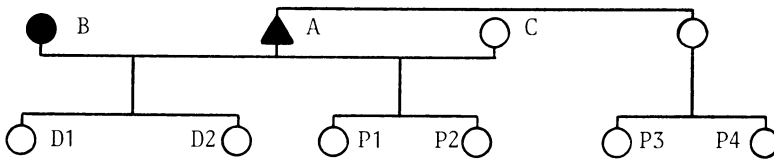
temporary classification of heirs is made in I.H. Dt. Rajo Panghulu 1974: 39 ff. In CKL, it was given by one *adat* expert. Note that I.H. Dt. Rajo Panghulu had held *adat* lectures at the Islamic secondary school of CKL some years ago.

- 10 See the description of the *sidang* system in CKL earlier in this study. In Lubuk Sikaping, the *nagari* government was formed by the *Besar nan IX*, the "9 Great Ones", who consisted of the *Datuek nan V* and the *Tuangku nan IV*, see AB 39: 213. Cf. Dobbin 1975, 1977.
- 11 This resulted, however, in the institutional emancipation of Islam. The Islamic functionaries have since then stood outside the *adat* system. The role of the religious *suku* functionaries decreased and the importance of the Islamic functionaries acting as Mosque personnel and religious teachers outside the *adat* system has steadily increased.
- 12 See HAMKA 1946: 15 f., Taufik Abdullah 1972: 203. Achmad Chatib had made the pilgrimage as a boy of 15. He later became one of the most influential Islamic teachers in Cairo. He refused to return to Minangkabau unless its pagan institutions had been abolished.
- 13 For an excellent account of the local politics between the *adat*- and Islamic pressure groups in the first half of this century see Taufik Abdullah 1971, 1972.
- 14 On the 1952-conference see Prins 1953, Tanner 1969: 65. The committee's proposals were published on 20.1.1952, see Prins 1953: 323. The 1968-conference is well documented. All papers given at and the conclusions taken by the conference are given in full in Naim (ed.) 1968.
- 15 As Prins already noted there were several ambiguities in the proposals made in 1952: The position of female property holders was not considered at all and no mention was made of *harato suarang*. It also was not stated what "the property derived from the *pusako* in accordance with *syarak*" might mean (see Prins 1953: 323 f.).
- 16 For a good overview of the Dutch literature see Pandecten V: nos. 1489 - 1532.
- 17 See Pandecten V: nos. 1489-1532. On the difference between "knowledge" and "consent" see Chapter 4: 191 ff.
- 18 For a similar decision referring to the coastal town of Pariaman, see LR Lubuk Begalung (1905) in AB 6: 259.
- 19 For the period following the war and Indonesia's independence no published judgements have been found.
- 20 "Overwegende, dat echter de Raad zich vereenigende met de uitkomsten van het deskundigen onderzoek en de motieven en conclusien van dat rapport overnemend en tot de zijne makend van oordeel is, dat eischers de eenige rechthebbenden op de nalatenschap van dr. Muchtar dus op meerbedoelde geldsom (zouden) zijn (de pancaharian), ware het niet ... dat deze bij beschikking ... deze geheele nalatenschap op wettige wijze aan zijn kinderen ... had vermaakt" (T 131: 85).

The Supreme Court in its appeal judgement left this question open because it did not consider it relevant to the dispute: " ... *daargelaten of deze wijziging zich reeds zoverre heeft voltrokken, dat aan de kinderen een erfrecht bij versterf ten aanzien van het geheel of een gedeelte van de harta pancaharian van hun vader toekomt ...*" (T 131: 91).

- 21 "*Mijn conclusie is deze: Naar het adatrecht der Minangkabausche maatschappij zijn de gelden ... door hem persoonlijk gewonnen goed (harta pentjarian), vallen als zodanig in zijn nalatenschap en zouden daarmee vererven op den heer M. (the mamak kelala waris of dr. Muchtar's kaum, v.B.B.) ware het niet dat dr. Muchtar ... op wettige wijze aan zijn kinderen had vermaakt*" (T 131: 96). Carpenter Alting stated: "*Van een uit eigen hoofde aan de kinderen toekomend erfrecht is echter geen sprake*" - "That the children have a right of inheritance is out of the question" (T 131: 102).

- 22 Case 11 of 1964 PN Padang Panjang:



A had died in 1960. In 1959 he had given his *harta pancaharian* worth 1.5 Mill. *rupiah* by way of *hibah* to his 4 children and his 2 *kamanakan*. After his death, the children of his predeceased wife B had taken all the property and refused to share it with the plaintiffs. The plaintiffs claimed 4/6 of the property, whereas the defendants stated that all the property had been common property of A and B, and that A therefore had had no right to dispose of it by *hibah*.

The court gave the following ruling: As far as the *harta pancaharian* are concerned the respective rights of husband and wife are to $\frac{1}{2}$ each. As B was predeceased, her $\frac{1}{2}$ fell to her children, the defendants. The *hibah* was valid only in as far as the husband could dispose of his $\frac{1}{2}$ of the *pancaharian*. All the parties there-fore were entitled to 1/12 of that property (to 1/6 of the father's *suarang* part). Thus the court accepts as self-evident the principle that only the children of the marriage in which the property was acquired are entitled to the inheritance.

- 23 "*Menimbang, bahwa dari kenyataan yang hidup dalam masyarakat Minangkabau sekarang bahwa orang2 yang berpolygamie pada masing2 isteri sudah terbentuk unit2 kekayaan pada masing2 rumah tangga maka sudah selanyaknya anak2 yang lahir dalam perkawinan polygamie itu tidak berhak terhadap unit2 kekayaan lain diperoleh dalam perkawinan.*"
- 24 "...bahwa tidak jaranglah terjadi di Minangkabau suatu harta yang bersal dari harta pancaharian yang terang dan nyata menurut perkembangannya sudah menjadi hak milik pribadi dari seorang anggota kaum, dapat dihibahkan atau diberikannya kepada anak2nya sendiri, yang akan tetapi dalam hal demikian pengetahuan dan penyaksian kemandakan2 yang patut didalam kaum yang akan menghibahkan atau pemberi dan demikian pula sebaliknya dari pihak sipenerima diperlukan

juga adanya untuk mencegah ganggu gugatan dikemudian hari."

- 25 "Oleh karena sebagai harta pancaharian dari pada Siring, maka menurut hukum adat Minangkabau telah mengalami perkembangan sekarang ini, dengan meninggalnya Siring harta itu diturunkan kepada anaknya sah dit. satu kata Dt. S sebagai satu2nya ahli waris; ... bahwa perkembangan hukum adat dimaksud adalah paralel dengan perkembangan yang terjadi dalam susunan (struktur) kemasyarakatan orang Minangkabau yang telah berjalan sejak masa sebelum kemerdekaan dan masih berjalan terus sampai sekarang ini, yaitu semakin kokohnya ikatan keluarga yang unsur2nya terdiri dari suami, isteri dan anak2nya, disamping semakin lemahnya ikatan kaum yang membawa akibat pula pada pemisahan yang semakin tajam antara harta pancaharian sebagai kekayaan dalam keluarga, dan harta pusaka sebagai milik atau kekayaan kaum; ... (PT) berpendapat, bahwa harta pancaharian seseorang hanyalah mungkin diturunkan menjadi harta pusaka dalam kaum, manakala hal itu secara khusus memang sudah menjadi kehendak dari yang bersangkutan sendiri, yaitu manakala dapat dibuktikan secara nyata bahwa oleh sipemilikinya harta tersebut sudah diperuntukkan sebagai pusaka dalam kaum, bukan untuk diwariskan kepada anak2 sebagaimana harusnya."
- 26 "Kalauak paku kacang balimbiang - Pucueknyo lenggang-lenggakan - Dibao ka Saruaso - Anak dipangku kamanakan dibimbiang - Urang kampuang patenggankan - Jago nagari jan binaso" (see Nasroen 1957: 176). The saying is, by the way, quoted by Dt. Rajo Panghulu in the same publication without the additions (1973: 195). It is symptomatic that I.H. Dt. Rajo Panghulu, though undoubtedly recognized as one of the leading contemporary *adat* experts, is generally counted among the proponents of an Islamic *adat*. The additions incorporated into the *adat* saying serve to legitimate the inheritance of *harato pancaharian* by the children "in accordance with Islamic law and *adat*". The same new version was given during one interview with *adat* experts in *nagari* Simabur. It is my assumption that the interviewee had got hold of the new version from the book or from the author himself: Both persons were leading members of the LKAAM.
- 27 So already Wilken in 1883: "*De harta pancaharian is, gelijk van zelf spreekt, individueel eigendom*" (1926: 54).
- 28 See Smits and Van Bosse as quoted by Willinck 1909: 770 f.; AB 1: 87; AB 10: 15, 160. Even Van Vollenhoven (1918: 262 f.), and following him, Joustra (1923: 114) subscribed to this view.
- 29 According to contemporary Dutch law, the division can be deferred maximally for 5 years. In German law, the maximal period is 30 years.
- 30 It should be noted, that the *harato pusako* complex was also defined in this differential way in the proposals of the 1968-conference on Minangkabau inheritance law: Neither the *mamak* nor the *kamanaan* are the "owners", *pemilik*, of the *harato pusako* (Naim (ed.) 1968: 243).
- 31 According to a manuscript on "*Pusako Tinggi*", written by R.M. Dt. Rajo Panghulu for the author in 1974.

NOTES TO CHAPTER SEVEN

- 1 Compare Rattray (1929:20) and Fortes (1950: 272) on the Ashanti, Malinowski (1927: 80 f.) on the Trobriand Islanders, Goody (1962: 429 ff.) on the LoDagaa.
- 2 Cf. Taufik Abdullah 1971: 6 f. For the view, that the imposition of Dutch colonial rule did on the whole not have a deleterious effect on the position of the *panghulu*, see Kahn 1976: 85 ff.
- 3 See my comments on the "increase of patrilineal inheritance" (p. 327) and on the "increase of patrilateral cross-cousin marriages as signifying the change from matrilineality to patrilineality" (p. 300).
- 4 We had a similar experience during an interview session with several *panghulu* in *nagari* III Balai. All *panghulu* insisted that there had been no change at all in the *adat* of inheritance. This was quite a surprise in the light of what we had read and heard about Minangkabau inheritance law elsewhere. My explanation for this attitude is, that the inheritance of *harato pancaharian* is to be legitimated by *adat* at all costs. If the Islamic leaders proclaim a change of inheritance law "from the *kamanakan* to the children" due to the influence of Islamic law, the best way to counter this argument is by denying that there has been any change at all.
- 5 It should be noted, that de Josselin de Jong in a later publication treats the childrens' inheritance of their father's *harato pancaharian* as a manifestation of patrification (1964: 189) and not anymore as a patrilineal mode of inheritance (1951: 85).
- 6 See Tuden 1969 on the importance of the *chibwe*-cattle among the Ila; cf. Gulliver 1955 and Krige 1964.
- 7 The *locus classicus* is Radcliffe-Brown 1952: 192. For critiques of this assumption Van Velsen 1964: XXIII ff., 1967: 129 ff.; Boissevain 1974: 9 ff.
- 8 The concept "extended case-method" goes back to Gluckman 1961. The concept of "situational analysis" was developed by Van Velsen 1964 and 1967. The use of the concept "network" goes back to Barnes (1954) and Bott (1957). For an overview of the development of network analysis see Mitchell 1969. Turner (1957: 91 ff.) developed the notion of the "social drama" and speaks of "processual analysis" (1968: XXVI) or "diachronic micro-sociology" (1957: 328).
- 9 I may be wrong in my interpretation, but Leach's way of expressing himself is at least ambiguous. Bloch seems to share this view, although it is related to his own assumptions, when he writes: "While Leach talks of property as *through it equalled the mode of production*, I see it here as already part of the superstructure. For me, property in these systems is already 'talking about' production and indeed misrepresenting it. The link between property and kinship *is between two aspects of the superstructure*" (1975: 211, my italics).