MAX PLANCK INSTITUTE FOR SOCIAL ANTHROPOLOGY WORKING PAPERS

MAX-PLANCK-GESELLSCHAFT

Working Paper No.19

FRANZ UND KEEBET VON BENDA-BECKMANN

STATE, RELIGION AND LEGAL PLURALISM: CHANGING CONSTELLATIONS IN WEST SUMATRA (MINANGKABAU) AND COMPARATIVE ISSUES

Halle / Saale 2001
ISSN 1615-4568

Max Planck Institute for Social Anthropology, P.O. Box 110351,
06107 Halle / Saale, Phone: +49 (0)345 2927-0, Fax: +49 (0)345 2927-402,
http://www.eth.mpg.de, e-mail: workingpaper@eth.mpg.de

State, Religion and Legal Pluralism: changing constellations in West Sumatra (Minangkabau) and comparative issues[1]

Franz and Keebet von Benda-Beckmann[2]

1. Introduction

With the title of this paper we want to indicate that the relations between state, religion and legal pluralism form a major area of attention in our project group on legal pluralism. The subtitle refers to the research that we intend to carry out over the next few years. In this paper, we want to show how the issue of legal pluralism is related to the general research programme of the Max Planck Institute for Social Anthropology, and how this will be concretized in our own research plans.

The institute's decision to focus on property rights, collective identities and conflict indicates that the research programme is informed by crucial contemporary social, economic and political problems (Schlee 2000). While these are studied in their historical dimension, special emphasis is placed on the contemporary situation and the recent dramatic political and economic changes which have brought them about. To state it in more general terms: the world is going through a period of change that has certain specific features which are often summarized by the term "globalisation". These features are perhaps not altogether new but the intensity, extensity, velocity and impact (Held et al. 1999) of the processes creating interregional and transcontinental relations, transactions and institutions are quite extraordinary and seem to affect the farthest reaches of the world. They have led to a new geography of political and economic power relationships and of cultural meanings. They have also led to a new geography of law and legal pluralism. With that we do not mean that the whole world is becoming one single economic, social and political system or that law is being increasingly homogenized. In some respects there is perhaps more uniformity, but there is sufficient evidence to tell us that the effects of these new global interdependences and configurations are not at all uniform and may even increase regional and local diversity.

[1] This working paper is the revised version of a lecture given at the Max Planck Institute on November, 28, 2000. We thank Susanne Brandtstädter and John Eidson for their helpful comments and suggestions.

[2] Franz and Keebet von Benda-Beckmann are heading the Project Group on Legal Pluralism at the Max Planck Institute for Social Anthropology in Halle. Contact: fbenda@eth.mpg.de and kbenda@eth.mpg.de

As a consequence of transnational economic processes we can observe increasing economic differentiation between, and within states. These processes have some radical, and radicalizing, effects. They go hand in hand with tensions and hidden and open conflicts, that often crystallize around ethnicity and religion, but mostly have strong economic, political and social underpinnings. While we cannot be certain that ethnicity and religion are the main causal factors initiating these tensions, they seem to acquire their own momentum once the processes have been set in motion. For example, the dividing lines in access to property and to political power, and thus also conflicts over property and political decision making, in many instances, run along lines of ethnic or religious affiliation, thereby often intensifying and accelerating ethnic and religious identity formation. These new manifestations and constellations require as much analysis and theoretical work as they deserve empirical research. We have to be suspicious of too broad and simple explanations and generalisations that ignore specific situations.

The state, state law and legal pluralism

One important and much discussed issue is the changing role of nation states in many parts of the world. While in some respects and in some regions nation states are losing influence, in other respects and in other areas they have never in history been as important as at the turn of the 21st century. In many parts of the world there seem to be strong tendencies towards regionalization and decentralization which affect the sovereignty and the actual autonomy of nation states both from without and from within. In other regions, where fully fledged nation states have never really gotten off the ground, the state organisation crumbles under the onslaught of ethnic, religious or criminal violence. At the same time, in many states there is much intensive governmental control by state and supranational institutions over the common population.[3] These developments shape the legal landscapes, property regimes, the ways in which ethnicity and religion are constitutionally and institutionally anchored, the role of the central government in relation to local, regional and transnational government agencies, and the modes in which conflicts are dealt with and claims and decisions are legitimized.

---

[3] The extent to which globalisation has affected state sovereignty and autonomy is hotly debated. For overviews see Held et al. 1999, Featherstone et al. 1995.

Law plays an important and problematic role here. Law lays down normative blueprints for social, economic and political organization; and at the same time provides the legitimation of these organisational forms. Religion and ethnicity are becoming new, legally relevant categories in many parts of state legal systems[4] that are of great social, economic and political relevance. Law, politics, economy, religion or culture thus are not mutually exclusive categories. Law is fundamentally related to social, economic and political power. It is an important resource of power, it consolidates and legitimates power positions, but it can also be a resource for the less powerful, individuals or population groups, in their struggle against oppression. In their generalized and abstract form, normative structures may *constrain* people's actions or, alternatively, open *options for actions*, by offering *patterns of behaviour and criteria for decision making*. Normative structures *legitimize* decisions and claims in cases of conflict. Finally, normative structures allow for *social control and the legitimate use of violence*.

We rarely find ourselves in situations where only one set of norms is available; the situation of legal pluralism is more the rule than the exception. Legal pluralism indicates a condition where more than one legal system or institution co-exist with respect to the same set of activities and relationships.[5] The clearest expression is the co-existence of government law, legal orders based on traditional legitimations and on religion. But often there are also new forms of local legal regulations ("unnamed law") which cannot be subsumed under these larger systems. Furthermore, in the recent past, transnational and international law and conventions have increasingly started to play a role in constellations of legal pluralism. They have introduced human rights issues, they regulate environmental issues, access and exploitation rights, and the legal status as well as political and economic rights of "indigenous peoples".[6] The legal demarcation of the spheres of respective validity of these subsystems has always been dynamic and contested, and the actual significance of the legal systems for socio-economic organisations has changed with the economic and political power of their proponents. This gives people certain choices between normative repertoires and procedures to legitimate their interests. Where state law

[4] When we talk about legal systems and legal structures, this does not mean that there needs to be much coherence. In fact, most legal systems are fragmented and full of contradictions. But we would still maintain that it is important to look into the ways in which individual norms or clusters of norms are set in a wider normative setting.

[5] For discussions of the concept of legal pluralism, see Griffiths 1986, Merry 1988, Vanderlinden 1989, F. von Benda-Beckmann 1997.

makes matters of social or ethnic origin or religious affiliation irrelevant and allocates economic and political rights and duties on the basis of abstract equality, village laws or religious laws may do just the opposite. Conflicts over interests therefore can be carried out as conflicts between different legal systems, and the question of what the relevant legal system is, and what law is, becomes an object of political struggle as well.

The study of cognitive and normative legal conceptions, the extent to which they are systematised, and how different bodies of rules and principles co-exist within one political organisation is one important element in the study of legal pluralism. As legal anthropologists we are particularly concerned to explore what the significance of such systems is for the political, economic and social organisation. This means looking into the ways in which they actually constrain *and enable* interactions; how legal modes of organisation, transaction and procedures are mobilised in the social, economic and political strategies of a variety of actors – international organisations, governmental agencies, social movements, and individual citizens; and how they are *inscribed* into social relationships and institutions.

Legal pluralism in most regions of the world is not a new phenomenon. But constellations of legal pluralism and the relative weight and independence of the various normative orders seem to be changing in important ways. In many regions of the world, and most strongly in many states in South and South East Asia, the Middle East, Africa and parts of the former Soviet Union, the role of religion and of religious law has increased to such a degree that some authors, such as Sheyla Benhabib (1989), talk of a "re-enchantment of social life". This new emphasis on religion impinges on property regimes and inheritance, but has also very much to do with ethnicity, with access to political power and positions in government, with notions of what the nation state should look like, and with what the guiding principles of government and state law should be. Religion and religious law therefore deserve much more attention than has been given to them in most work on legal pluralism.[7]

There is also an increasing significance of transnational and international law. In some fields of economic organisation, financial transactions and trade, there are efforts to develop a globally valid law. Among lawyers and political scientists this has led to a greater interest in legal pluralism, but their discussions of the effects of

[6] UN and ILO conventions, Rio declaration, etc. See van der Fliert 1994, K. von Benda-Beckmann 2001.

globalisation tend to focus on the changing relationships between the state and state law on the one hand, and transnational actors and transnational law on the other. They are mainly concerned with the legal construction of the relative spheres of validity between these systems. They pay little attention to constellations of legal pluralism from the perspective of non-state legal orders, and, more importantly, to the various ways in which the social, economic and political significance of the various legal orders become manifest in people's interactions and uses of these laws. But here we have to assume that at national, regional and local levels, these developments do not supersede the existing constellations of legal pluralism which are themselves consequences of earlier transnational and transcontinental processes. They add a new layer of law to the existing plural systems, and change them. Globalisation may call for uniform regimes of property in order to pave the way for world markets, but new property regimes do not easily supplant old ones. They continue to exist, sometimes in a transformed or weakened form, side by side with new regimes. Claims to property often remain grounded in rival normative settings, which are selectively invoked, depending on the ethnic or religious group one belongs to. Typically thus, new legal forms exist side by side with older ones; transnational and state law co-exists with customary law and with religious law.

The ways in which these developments work out may be quite different, due to the specific historical, political and economic characteristics of the region. In our project group, we are interested in finding out how these general tendencies work out in specific settings. In the future research of the project group the main focus will be on the fields of rights to natural resources, property rights, social security and dispute management. We shall strive towards comparative generalisations over the conditions that influence the relative significance of state, international and transnational law, religious law and local forms of traditional, or perhaps better, neo-traditional law in these fields. Regionally, most attention will be given to the situation in Morocco, the Indian subcontinent and Indonesia.

[7] See F. and K. von Benda-Beckmann 1993. For one of the few systematic approaches to legal pluralism in the Islamic world, see Duprez et al. 1999.

Indonesia and Minangkabau

Our own major research activities will focus on the South East Asian region, and in particular on Indonesia.[8] This region is undergoing significant changes in the relationship between the state and its national law, religion (in particular Islam), traditional legal orders and international and transnational law. The fall of the Suharto regime has accelerated and intensified these changes. Recent years have seen many and sometimes contradictory developments in the configuration of these normative orders and their social significance. The law of the state has lost much of its legitimation, though important steps towards improvement have been initiated and the state is still generally held to be essential for achieving a democratic form of government and for preserving the unity of the state. But the state and state law are contested from two sides: by Islam and by local customary normative orders, called *adat*. The forces that bring about such reinvigorated assertions of non-state normative orders come both from inside Indonesia and are also based on transnational linkages. There are a number of problematic and contradicting tendencies that need further research.

First, decentralisation is a big issue in Indonesia. This is partly due to external pressure by the World Bank and IMF, but there are also strong internal demands pushed by regional politicians and population groups that no longer want to be dominated by Java. This has led to intensive debates about the relationship between the state legal system and local customary laws and to conflicts over a more equal distribution of the revenues from natural resources throughout the regions. Regional political and economic claims are also caught up in violent assertions of ethnic and religious difference, and in several regions there are demands for self-determination or even secession. Many who are in favour of decentralisation, at the same, time are deeply concerned about keeping the country together.

---

[8] This continues earlier research in Indonesia. In 1974 and 1975 we carried out field research in West Sumatra and in 1985 and 1986 on the island of Ambon. Between 1995 and 2000 we co-ordinated a research programme on "*Legal complexity, ecological sustainability and social (in)security in the management and exploitation of land and water resources in Indonesia: comparative perspectives and policy implications*". This was one of the projects funded in the context of the new Cultural Agreement between Indonesia and the Netherlands by the Royal Netherlands Academy of Arts and Sciences (KNAW). It involved the Department of Agrarian Law of Wageningen University and the Faculty of Law of Erasmus University, Rotterdam on the Dutch side, and the universities of Padang, Ambon, Ujung Pandang and Yogyakarta. In 1999 and 2000 we resumed our research in West Sumatra. In the coming years, we shall cooperate closely with the new KNAW-project on "Indonesian responses to the crisis" which starts in 2001.

Second, property rights, especially to natural resources, have assumed new economic and political significance. The rights to control and use natural resources are highly and openly contested. Especially since the fall of the Suharto regime and the weakening of the state administration, the state's rights to resources are being questioned. Claims are often based on different, competing legal orders, varying from customary law, to various levels of state law and international law. Many forces that support *adat* claims are locally situated, but they are also supported and re-created by some transnational ecological organisations, which are promoting community based resource management. Assertions of *adat* rights to natural resources and the policy of decentralisation thus indicate a new revival of *adat*. Ironically this occurs at a time when, generally speaking, authoritative knowledge of *adat* and *adat*-based power has dramatically declined. Though *adat*-based claims are mainly directed against the authority of the central state, they coincide with highly problematic and, at times, violent forms of exclusion of ethnic and also of religious groups within regions such as in Aceh, Maluku, Timor or Irian Jaya (Papua).

Also Islam and Islamic law have gained in importance in many spheres of social life. A critical stance against a government regarded as corrupt is supported by local and national religious leaders and parties as well as by international religious organisations. The constitutional set-up of the state is questioned, with strong voices calling for a theocratic state, though the great majority of Indonesians would not welcome this. The Indonesian government, on the other hand, while preserving the multi-confessional nature of the state and state ideology, has increasingly embraced Islam. In some regions, this is related to tendencies towards political autonomy and a more religiously informed ethnicity as well as to control over natural resources. Here too, globalizing processes are at work. Communication technologies have connected people within the country to an unprecedented extent, and they are acutely aware of developments that are going on elsewhere in Indonesia and in the world. Information that reaches the local political centres via internet and mobile phone is further dispersed orally by people travelling by motorcycle, minibus or boat to places so far away that there is no well-functioning telephone connection. It has been said that the overthrow of the Suharto regime was possible because of mobile phones. For the first time since he came to power, the state institutions could no longer control their subjects. People felt relatively safe to communicate subversive ideas and plans. The liberating effect of modern telecommunication technology is spectacular. For anyone

who was familiar with Indonesia under the Suharto regime, the changes are overwhelming. But the effects have been highly contradictory. There are places with violent conflicts as well as places in relative peace where the potential conflicts over property, in particular natural resources, and access to political power have so far remained under the surface. There are serious attempts to try to improve the quality of the government and to bring back notions of the rule of law into the government, but the degree of corruption seems to be higher than ever. There seems to be an acute sense of uncertainty as to how long one will be able to maintain access to this kind of revenue.

Minangkabau

Our own research in the coming years will mainly focus on West Sumatra, the heartland of the Minangkabau people. Minangkabau has a rather long, relatively well-documented and particularly interesting history of legal pluralism.[9] It began well before the colonisation by the Dutch, which began in 1818. The Minangkabau are the world's largest population with matrilineal descent. They have a long tradition of high education and migration and a high profile in the political formation of the national state. They have also become well known for their elaborated *adat*. The *adat* of the Minangkabau was the *adat pusako*, the *adat* of matrilineal inheritance, or *adat kamanakan*, the *adat* of the (matrilineal) nephews and nieces. Matrilineal principles underlay the political organisation of the *nagari*, village republics, whose constituent units were matrilineal descent groups belonging to the different named localised matri-clans. It was also the primary principle for organising economic life, in particular property and inheritance affairs. But the Minangkabau are also devout Muslims. Of course, Islam and Islamic law have quite a different normative blueprint for social, economic and political organisation. Thus well before the colonisation of Minangkabau began in the early 19th century, Minangkabau had an explicit legal pluralism. With the coming of the Dutch, legal pluralism entered a new phase, and ever since there has been a triangular set of relations between the legal and institutional set-up of the colonial and later the Indonesian administration, *adat* and Islam.

[9] For our research in Minangkabau in the mid-1970s, see F. von Benda-Beckmann 1979, K. von Benda-Beckmann 1984, F. and K. von Benda-Beckmann 1988, 1994.

The relationship between each of these legal systems has changed repeatedly in the past and continues to vary. In the pre-colonial phase, Islam was mainly adopted as a belief system suppressing the mixture of animistic and Hindu beliefs that constituted Minangkabau *adat*, while the socio-political and economic organisation continued to be dominated by matrilineal principles. The religious offices of Imam and Chatib were incorporated into the clan structure and succession occurred according to matrilineal principles. Early in the 19th century, a group of Minangkabau who had been to Mecca, worked in the Ottoman army and became associated with the Wahabite rebellion against the Ottomans in Arabia, brought a much more orthodox version of Islam back to Minangkabau and started to convert the *kafir* Minangkabau to the right belief. This led to a long civil and religious war in Minangkabau, the Padri-war, in which many *nagari* were occupied for more than a decade by Padri forces, who introduced a theocratic and territorially based government. The Dutch, who until then had only occupied some smaller trade posts on the coast, were asked to intervene in this war by the opponents of the Padri and subsequently incorporated West Sumatra into their colony.

Dutch colonial law regulated the relationships between the three systems and their respective spheres of validity. In their indirect rule policy, the Dutch largely relied on *adat* and *adat* leaders and tried to contain the legal and political influence of Islam, Islamic law and Islamic leaders. Colonial law conceded considerable room to *adat* institutions and *adat* law, especially in the field of family law, property and inheritance. *Adat* law was also the official law for Minangkabau in the colonial courts. This applied to substantive rules only. Procedural law was in principle Dutch law with some modifications. Islamic law was hardly recognised at all. *Nagari* government in the indirect rule system was largely based on *adat* and *adat* leaders.

However, the official colonial legal and administrative system did not keep the village population, *adat* and religious leaders from devising their own ideas about the respective validity of the different legal orders and political institutions and from actually using them in socio-economic life. Open aggression, accommodation and the negation of contradictions, and subtle indications of the relative superiority of one system over the other characterise different stages of this history (see F. and K. von Benda-Beckmann 1988). As elsewhere in colonial and post-colonial settings, the recognition and re-regulation of non-state legal systems and institutions contributed to a greater plurality within the bodies of law called *adat* and Islamic law. *Adat*

concepts, rules and principles were frequently interpreted by colonial judges and administrative officials in terms of Dutch legal categories and thereby transformed.[10] Interpretations of *adat*, called *adat* law, by lawyers and courts, and local interpretations of *adat* came to co-exist, each with its own dynamic of change. At the level of village government, two parallel sets of village councils developed: the officially regulated village councils (*Kerapatan Negeri*, KN) that incorporated some, but not all traditional village leaders, and the Village Adat Councils (*Karapatan Adat Nagari*, KAN), which were not recognised but which based their legitimacy on village *adat*. This dualism, in different institutional forms, also remained characteristic of the political organisation of most *nagari* after Indonesia's independence. In the field of religious law, there were similar developments. Already well before the Dutch colonisation of West Sumatra, folk Islamic interpretations and institutions existed side by side with hybrid forms in which Islamic and *adat* elements became compounded, as well as with scholarly interpretations and teachings of Islamic law. But the state added new complexities. The colonial state and later the Indonesian state also engaged in the re-interpretation and regulation of Islamic law, for example by legislation on marriage, the collection and distribution of *zakat*, the Islamic alms tax and inheritance.[11]

There is thus a rather complex constellation of relationships between the different legal orders, in which changes in each of the binary relationships in their turn influenced the total constellation of legal and institutional pluralism, but which were quite different in the different domains of social, economic and political organisation. In the research we carried out in the mid-1970s we described and analysed some of these changes. The research focused on the historical development and contemporary role of legal pluralism in village politics, dispute management at the village level and in Indonesian state courts, and property and inheritance affairs.

[10] This has been much discussed under such labels as the "invention" or "creation" of customary law. However, the extent and pervasiveness of such inventions has sometimes been exaggerated on the basis of very specific and selective evidence such as academic writings and court judgements. These indeed often transformed local legal ideas by interpreting them in terms of European legal categories, or by consciously changing them in line with socio-political and economic policy imperatives. In 1909, three quarters of a century before Asad's (1973) book, Van Vollenhoven, the father of Indonesian *adat* law studies, already diagnosed these transformations when writing about the misrecognition of *adat*. It is often overlooked that at the local level, people continued their own legal traditions. While these were certainly influenced by the changing political, economic and legal environment, many court decisions became "re-adatized" again in village legal politics, see K. von Benda-Beckmann 1984.

The major focus of our new research will be on the changes in the more recent history of the past 25 years. Generally, we shall pursue three major research questions:

1. We are interested in learning how the constellations of legal pluralism have changed.
2. We want to understand the combination of external and internal factors which brought about these changes.
3. We are interested in how these changes affect social and economic behaviour of those (individuals, groups and organisations) operating within the context of legal pluralism.

We want to see how the distribution of power and economic resources and attendant processes of exclusion and inclusion are affected, and how conflicts are carried out. And we want to see how this affects the formation of identities of the Minangkabau, and between Minangkabau and non-Minangkabau residents in West Sumatra. This means that we have to look into the ways in which different categories of actors are influenced in their behaviour by the changes in the constellation of legal pluralism, and how they use different legal repertoires – substantive rules and procedures – in their social, economic and political strategies. We shall focus our research on a number of overlapping and interrelated domains.

Changing governance structures

The changing constellations of legal and institutional pluralism will also be studied in the field of local government. As a result of the political developments in Indonesia in the past two years, and also influenced by the world wide call for democratisation and decentralisation of authoritarian states, the organisation of regional "autonomy" and local government have entered a new phase of political and legal dynamics. Decentralisation policy in Indonesia aims at giving more "autonomy" to the districts, *kabupaten*. It will more or less eliminate the level of sub-districts and may also seriously curtail the power of the provinces. Decentralisation will mean that a number of line ministries with their vertically organised bureaucratic institutions from the capital, via provinces, districts (*kabupaten*) to the sub-districts (*kecamatan*) will be closed down, and it will give more room and authority to regional administrations. It

[11] As we observed on Ambon, a local mix of *adat* and Islamic rules for *zakat*, governmental rules and more Koranic interpretations of *zakat* co-existed even in one village; see F. von Benda-Beckmann 1988.

will certainly involve major changes in resource flows from the centre to the regions, but it will also provide more room to the regional administrations for regional tax collection and spending.

The decentralisation processes in West Sumatra are particularly interesting because they also lead directly to changes in *local* government. In this sphere, too, changes in the relationship between state, religious institutions and *adat* are taking place. The structure of local government is hotly debated and fiercely contested because much economic and administrative power at village level is involved. This mainly concerns the authority and use rights with regard to village land and forest, and decision making powers in village politics and conflict management.

Until the 1980s, state local government was largely based upon the structure of the Minangkabau *nagari*, the pre-colonial village republics that had been incorporated as the lowest level of administration within the colonial state and by and large remained so until 1979. The law on local government of 1979 introduced a new village government system, mainly based on the model of Javanese villages (*desa*). Minangkabau *nagari* were too large and heavily populated for the *desa* model. After some resistance, the *desa* model was eventually implemented in West Sumatra in the early 1980s. Initially the *nagari* were split up into several *desa*. These were usually built upon the previous territorial subdivisions of the *nagari*, the *jorong* (village sections). But many *desa* turned out to be too small and eventually the number of *desa* was reduced again, often by combining two adjacent *desa* to become a new and larger *desa*. Candung Kota Lawas for instance – the *nagari* where we did our main field research in the mid-1970s - was first divided into 12 or 13 *desa* and then into 6. Soon after the introduction of the *desa* system, it became clear that the power and authority structure of the *desa* government was quite different from the old *nagari* government. The *desa* administration was not recognised by villagers as having authority over *adat* matters and especially over the land and forest areas that were formerly under the control of the *nagari*. The provincial government bowed to the voices of protest and in 1983 it issued a new instruction that "recognised" the Village Adat Council (*Kerapatan Adat Nagari*) as a mediating decision making body in *adat* affairs – although the *nagari* as official administrative unit no longer existed. The new Law on Decentralisation in Minangkabau is taken up to rethink and reorganise local government. On the part of the provincial government there is a commitment to "return to the *nagari*", however it is still unclear how the new institutions of local

government are to be formed; whether one will go back to the *nagari* that existed before the introduction of the *desa* system, or whether some of these *nagari* will also be divided or joined to form new *nagari*.[12] The discussion is of great symbolic and political importance. Those in favour of a return to the *nagari* system hope to increase the overall role of *adat* and *adat* functionaries. Opponents fear the power of what they consider to be a reactionary and poorly educated bunch of old men who may try to gain control over large tracts of land.

There are a number of research questions here. Which units will become a *nagari*? In some areas, some *desa* do not want to return to their mother *nagari* and some ex-*nagari* are much too large and too populated to remain one *nagari*.

Another question is what, at the village government level, the role and relative authority and power of state-appointed, elected, *adat* and religious leaders will be in future village affairs. At present, much of the public discussion concerns the role of the Village Adat Council and of the *adat* leaders, especially in exercising village justice and their control over village land and forest. In 1999 and 2000, the process of drafting and redrafting village government regulations was in full swing; when we were in West Sumatra in July, 2000, the 13th draft was being discussed. The *adat* lobby, especially through the Representative Council of Minangkabau Adat Leaders (*Lembaga Kerapatan Adat Alam Minangkabau*, LKAAM), is an active interlocutor of the provincial government in these discussions, also submitting drafts of its own. Less publicly discussed, but relevant for our problem is the question of the role which Islamic officials will have in the new local government.

Rights to natural resources

In Minangkabau as elsewhere, the control and exploitation of natural resources is embedded in a field of tensions between commercial use, subsistence use and ecological governance of land and other natural resources. There are important changes in that field. In the past two decades, the Indonesian state increasingly took control over and engaged in the exploitation of natural resources. This was a continuation of the policy of their colonial predecessors. But due to improved transport facilities and extraction technologies, resources - forests, land and mineral

[12] When the *desa* model was introduced, the 543 *nagari* (including Mentawei) became 3,516 *desa*. After the adaptation of the *desa*, there remained approximately 1700 *desa*. One now expects that ca. 800 new *nagari* will be formed.

resources - that hitherto had not been intensively used were increasingly exploited by state enterprises, often jointly with transnational companies. While most of these areas had officially been state domain resources, owned by the state according to state law, they had been effectively under the control of local communities, who in turn considered themselves to be the legitimate titleholders under their respective *adats*. In addition, areas officially under local *adat* control were expropriated and given to private companies owned by members of the national political and economic elite, to be exploited under concessions and licences. This development had weakened *adat* forms of control and exploitation of natural resources during the colonial period and continued to do so till the end of the Suharto era and even beyond.

In the field of private property relations, the government attempted to reform *adat* land rights through the Basic Agrarian Laws of 1960. In most regions in Indonesia, especially outside Java, there was much resistance to registering and transforming *adat* rights, as registration was more expensive than promised, the agrarian bureaucracy did not function well, and there was no guarantee that the correct person would be registered as titleholder. Many women feared dispossession through registration of land rights. In 1995, the World Bank started a new land registration program in order to improve the implementation of the agrarian legislation. Again *adat* rights came under pressure. But in contrast to earlier attempts that were largely directed at conversion of land titles into private, individual ownership, the World Bank project recognises that registration of "communal lands" presented special problems and initiated research on "communal lands " - though what this was to mean remained rather unclear. This new orientation was certainly in part due to changes in international thinking about development, and in part to a recognition of the continuing force of non-individual property rights.

But there were also countervailing developments. Especially after the fall of the Suharto regime, the legitimacy of state control and exploitation rights to land and forest resources was increasingly contested. With this came a resurgence of *adat* law - especially outside Java - as a means of legitimizing claims to land, forest and mineral resources. This allowed local people to contest claims based on state law as well as emphasised their ethnic identity and political self-determination against the universalistic and centralist claims of state law which is often associated with Javanese domination. This revitalisation of *adat* law was strengthened by changes in the ideology and practice of foreign donor agencies. Instead of earlier outspoken top-

down approaches, governmental and non-governmental development organisations have increasingly turned towards participatory project designs, in which co-management of natural resources, or community-based tenurial arrangements are propagated. This is especially the case in projects in which the protection of the environment is at stake. While these projects often restricted the economic space of local communities, they brought the external recognition that *adat* and *adat* leaders were important for the desired sustainable management of natural resources. This development was also supported by the new ideology of decentralisation advocated by the central government, the World Bank and the IMF. This new, internationally informed recognition of customary law had its own "repugnancy clauses" in that recognition was conditioned by demands for good ecological performance and "traditional" exploitation, that is subsistence and not market-oriented exploitation. In practice, however, community participation often remained a hollow phrase and consisted in co-opting local elites for economically interesting commercial exploitation, while seriously restricting access for the rest of the local population, thereby increasing socio-economic differentiation locally. Nevertheless these developments generally strengthened *adat* as a relevant basis for economic organisation in the domain of resource exploitation.

Part of our research will be to look in more detail at the extent to which claims to property rights are made, in which ways, via which institutions and how successful struggles over property rights to natural resources are. In addition we shall also look into the substantive nature of these legitimations as the latest re-inventions of *adat*. We will also look into the role of Minangkabau migrants, for they seem to be important and sometimes powerful players in these legal claims and conflicts. And finally we want to see how this affects the formation of identities of Minangkabau people, and between Minangkabau and non-Minangkabau residents in West Sumatra.

Property rights and inheritance

The developments mentioned above mainly affect the relationship between *adat* and state law; in this domain Islamic law cannot serve as an alternative legitimisation of land and other resource rights. The situation is different, however, for private property relationships and transfers, especially for inheritance.

In the struggle over the supremacy of *adat* and Islam, inheritance was and continues to be the key issue. The classical conflict of matrilineal societies between a

man's children and matrilineal nephews and nieces over inheritance has been carried out in different contexts, i.e. in village and regional politics, in disputes in state courts as well as in local negotiations between would-be heirs. Also, the interpretation of the gradual change towards inheritance of self-acquired property within the conjugal family, has been the subject of heated discussions. The question of which law was to govern inheritance also stood as *pars pro toto* for the more general question of which legal *system* was superior (F. and K. von Benda-Beckmann 1988). Throughout Minangkabau history, there have been different ways of dealing with this question. One was to treat it as a conflict between *adat* and Islamic law, and attribute the changes to the influence of Islamic law. As early as in colonial times, it was Minangkabau traders and merchants in particular who claimed that inheritance should be along Islamic legal lines. Islamic law was identified as or reduced to "inheritance by the children". The Dutch colonial lawyers, for whom matrilineal inheritance was an "unnatural" survival from former times, supported the development towards greater individual autonomy in the field of gifts and testaments, but declared this to be changes in *adat* law. Minangkabau *adat* purists also accepted the changes in social organisation and inheritance within the conjugal family, but presented them as "change within *adat* law". In the 1950s and 1960s, there were several Minangkabau-wide meetings of *adat* leaders, Islamic leaders and local politicians to discuss the issue. The result was a "cartelization" of the inheritance market: self-acquired property was to be inherited according to Islamic inheritance law, *hukum fara'idh*, and the inherited lineage property according to matrilineal *adat* rules. In 1968, when the Supreme Court of Indonesia officially stated that self-acquired property was to be inherited by a person's children and no longer by matrilineal relatives, this was presented as the new Minangkabau *adat law*.

One of our research questions is to what extent there have been recent changes in inheritance law that may indicate shifts in the relation between *adat* and Islamic law. We will look at inheritance practices as well as at decisionmaking processes at the village level and in Indonesian civil and religious courts.

The differential use of dispute management institutions

Given our earlier research on the differential use of village and state courts by Minangkabau disputants in three court districts during the period of 1968-1975, we are able to give our research on the use of disputes considerable historical depth. In

co-operation with staff members of the Centre for Research on Alternative Dispute Resolution of the University of Padang, we have already started a small research project. In the first phase (1999/2000), quantitative data on court use have been gathered in six court districts in West Sumatra. The period for which data are recorded spans the past 20 years. Research will be expanded in 2000/2001 to include the religious courts in the same districts.

Disputes between village and state

One set of questions will focus on dispute management at *village level*, and examine the relative significance of the various persons, offices and councils involved in dispute management. We hope to be able to find out what the effects of the expected re-establishment of the *nagari* and its new institutions will be, in particular in terms of decisionmaking authority and political and economic power. The question is how the change from the *nagari* system to the *desa* system has worked out, and what the role of the Village Adat Council has been since it was officially recognised in 1983.

Another set of questions concerns the extent to which the different structures of village organisation (*desa* and *nagari*) were and are able to contain disputes within the village (see F. von Benda-Beckmann 1985, F. and K. von Benda-Beckmann 1994). We shall try to find out whether and why there have been changes in the extent to which village disputants litigate in the state court system and whether the types of issues disputed have changed.

Disputes in state courts

As far as disputes are contained within the village, struggles over decisionmaking authority within the village and the differential use of village and state institutions mainly concern the relationship between village *adat* and state institutions. But when disputes are brought into the state court system, another opposition comes into view. In property and inheritance disputes, people can choose between two types of state courts, i.e. civil courts and Islamic courts, both located at district level. At the most basic level, the choice of one court reproduces the legitimacy of the rules and values upon which it is constituted. While civil courts usually apply *adat* law in matters of inheritance, Islamic courts are supposed to base their judgements on Islamic law. Thus while civil courts reinforce the legitimisation of *adat* law, religious courts reinforce the legitimisation of Islamic law. The frequency of the use of these courts therefore is an

important indicator for which type of institution and which underlying constitutional principles are important.

Our research in West Sumatran courts in the mid-1970s showed that in the state courts, Islamic and *adat* inheritance law were viewed as different and contradictory legal rules. The differences were emphasised rather than defined away in an attempt to find a legal-political consensus. When in 1968 the Supreme court officially proclaimed the new inheritance law stating that self-acquired property was to be inherited "by the children" according to changed *adat* law, it also took the position that Islamic inheritance law was not valid law in Minangkabau. At that time, the Islamic courts, for their part, did not want to meddle with inheritance disputes and referred them to the state courts because they were also convinced that these were *adat* matters.

Since then, there have been important changes. As a consequence of the political developments mentioned earlier, the jurisdiction and powers of Islamic courts were expanded in the 1980s and 1990s. In 1989 a uniform system of Islamic courts throughout Indonesia was created which gave the courts power to enforce their decisions. Little is known about the relative significance of ordinary and Islamic courts in the recent past in Indonesia. A notable exception is Bowen (2000) who reported an increasing use of Islamic courts and a more orthodox application of Islamic law, in the Gayo highlands in Central Aceh in Northern Sumatra. Bowen reports considerable changes both in court use and legal interpretation. While Islamic courts earlier have studiously avoided opposing *adat* to Islam, this changed considerably when in a reform of the court system (in 1983) the jurisdiction of religious courts was expanded and the division of estates was reserved for them. Consensuses through which *adat* and Islamic principles were peacefully accommodated became suspect. Religious courts now divide estates according to Islamic law even if prior arrangements have been made (Bowen 2000:116). Furthermore, the provincial appeals court scrutinised lower court decisions and increasingly demanded that gifts, bequests and other transactions be carried out according to the letter of Islamic law (2000:114). It will be interesting to compare the Minangkabau development with the developments in Northern Sumatra which seems to be going through a more extreme period of general Islamization.

The research will explore whether the patterns of "forum shopping" have changed, to what extent disputants choose civil or Islamic courts, and what the substantive elaboration of inheritance law in the different courts is. We want to look at

the extent to which decisions taken by courts of first instance are effective, in the sense that they may contain disputes and in the sense that decisions are in deed followed up in post-decision practices. With respect to the substantive argumentation in both civil and religious court judgements, we shall examine to what extent *adat* and Islamic law are treated as distinct legal systems and opposed to each other, or are interpreted as involving no contradictions, or are compounded in hybrid rules. We shall also explore the extent to which *adat* law and Islamic law are interpreted in a "scholarly" way.

Social (in)security

These and other developments mentioned earlier are also likely to influence the relative significance of *adat*, Islam and state agencies in the field of social (in)security, the normative arrangements and practices of transferring goods and services in times of need and distress.

Adat based institutions and relationships have long been the most important element in the complex arrangements for social security in West Sumatra. In more recent times, other village institutions, religious organisations, and NGOs have become active in the field. Also, the state government has made some limited provisions. *Adat* arrangements for social security were based on neighbourhood and kinship and were largely confined to the *nagari*. This was strengthened by prescriptive *nagari* endogamy. Minangkabau have a long tradition of migration (*merantau*). In the past, this mainly concerned younger men, but more recently it has become a far more general phenomenon. With the increasing and more permanent migration in the last decades, kinship relations have become translocal and connect people over great distances. Yet such kinship-based social security arrangements have remained particularised. Generally, the circles of kinship solidarity seem to have contracted. A stronger tendency towards Islamic inheritance law and gift making may accelerate the process in which intra-kinship transfers are reduced to a smaller set of kin, which is no longer exclusively defined through matrilineal kinship categories but increasingly through those of Islamic law as well.

Moreover, there is a long tradition of Islamic organisations doing much work in this field. Many orphanages, schools and hospitals have been established and run by the Mohammadiyah organisation. The Islamic organisations are nationally organised and generally have a good organisational set-up at the provincial level, while there seems to be considerable transnational support as well.

The recent policy of decentralisation also has consequences in the domain of social security. The Ministry of Social Affairs has been dismantled, and its responsibilities have been transferred to the regional administration, without, however, decentralising the necessary funds or creating an institutional infrastructure that could take over these tasks. This means that the structural financial flows for social security from the national government have more or less dried up. Also the presidential INPRES projects through which the central government provided most financial resources for infrastructure and social development seem to have come to a standstill (F. and K. von Benda-Beckmann 1998). During our last visits to West Sumatra, we got the impression that nearly all activities had ceased. The effects of this on the constellation of social security arrangements at the local level will be one of our research questions.

Given the further retreat of the state, it can be expected that Islamic institutions step in and become a major, and perhaps the major carrier of non-kinship based arrangements of social security. The retreat of the state in the domain of social security is also likely to affect the collection and distribution of *zakat*, the Islamic alms-tax for the poor and needy, in particular the *zakat* of state officials which was collected via compulsory state regulations. According to preliminary data we collected in 1999, the revenue collected via these mechanisms has dramatically decreased. In all likelihood these developments will also affect the way in which social security is organised. They also may have an influence on the relative importance of the related bodies of law. It will be interesting to see what the effects will be on the normative structure and practical significance of these developments for the complex social security system, which traditionally was mainly based on *adat*.

Refere nces

Asad, T. (1973) (ed.) *Anthropology and the Colonial Encounter*. Atlantic Highlands: Humanities Press.

Benda-Beckmann, F. von (1979) *Property in Social Continuity: Continuity and Change in the Maintenance of Property Relationships Through Time in Minangkabau, West Sumatra*. The Hague: M. Nijhoff.

----- (1985) Some Comparative Generalizations about the Differential Use of State and Folk Institutions of Dispute Settlement. in: A. Allott and G. Woodman (eds.) People's Law and State Law-The Bellagio Papers. Dordrecht: Foris,187-205.

----- (1988) Islamic law and social security in an Ambonese village. In: F. von Benda-Beckmann, K. von Benda-Beckmann, E. Casino, F. Hirtz, G. R. Woodman and H. Zacher (eds.) *Between kinship and the state: Social security and law in developing countries*. Dordrecht: Foris, 339-365

----- (1997) Citizens, strangers and indigenous peoples: Conceptual politics and legal pluralism. In: F. and K. Von Benda-Beckmann and A. Hoekema (ed.) *Natural resources, environment and legal pluralism*. Special Issue *Law & Anthropology* 9, Dordrecht: Martinus Nijhoff, 1-42

Benda-Beckmann, K. von (1981) Forum shopping and shopping forums. *Journal of Legal Pluralism* 19: 117-159.

----- (1984) *The broken stairways to consensus: Village justice and state courts in Minangkabau*. Dordrecht: Foris.

----- (2001) Transnational dimensions of legal pluralism. In: W. Fikentscher (ed.) *Begegnung und Konflikt– Eine kulturanthropologische Bestandaufnahme*. München: C.H. Beck Verlag. (in print)

Benda-Beckmann, F. and K. von (1988) Adat and Religion in Minangkabau and Ambon". In: H. Claessen and D. Moyer (eds.) *Time Past, Time Present, Time Future*. Dordrecht: Foris, 195-212

----- (1993) "Islamic law as folk law". In: H. Slaats (ed.) *Liber amicorum Mohammad Koesnoe*. Surabaya: Airlangga University Press, 19-37

----- (1994) Property, politics and conflict: Ambon and Minangkabau compared. *Law and Society Review* 28: 589-607.

----- (1998) Where structures merge: State and 'off-state' involvement in rural social security on Ambon, Indonesia. In: S. Pannell and F. von Benda-Beckmann (eds.) *Old world places, new world problems: Exploring resource management issues in Eastern Indonesia*. Canberra: The Australian National University, Centre for Resource and Environmental Studies, 143-180

Benhabib, S. (1989) Autonomy, modernity, and community. Communitarianism and critical social theory. In: A. Honneth, T. McCarthy, C. Offe und A. Wellmer (eds.) *Zwischenbetrachtungen: Im Prozess der Aufklärung*. Frankfurt am Main: Suhrkamp, 373-394

Bowen, J. R. (2000) Consensus and suspicion: Judicial reasoning and social change in an Indonesian society 1960-1994. *Law and Society Review* 34: 97-127.

Duprez, B., M. Berger and L. al-Zwaini (eds.) (1999) *Legal pluralism in the Arab world*. The Hague: Kluwer International.

Featherstone, M., S. Lash and R. Robertson (1995) (eds.) *Global modernities*. London: Sage.

Fliert, L. van de (1994) *Indigenous peoples and international organisations*. Nottingham: Spokesman

Griffiths, J. (1986) What is legal pluralism? *Journal of Legal Pluralism* 24: 1-50.

Held, D., A. McGrew, D. Goldblatt & J. Perraton (1999) *Global transformations: Politics, economics and culture.* Cambridge: Polity Press.

Merry, S.E. (1988) Legal pluralism. *Law and Society Review* 22: 869-896.

Schlee, G. (2000) *Collective identities, property relations, and legal pluralism.* Halle: Max Planck Institute for Social Anthropology. Working Paper No. 1.

Vanderlinden, J. (1989) Return to legal pluralism. *Journal of Legal Pluralism* 28:149-157.

Vollenhoven, C. van (1909) *Miskenningen van het adatrecht.* Leiden: E. J. Brill.