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FRANZ AND KEEBET VON BENDA-BECKMANN

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Max Planck Institute for Social Anthropology, P.O. Box 110351,
06017 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

Struggles over Communal Property Rights and Law in Minangkabau, West Sumatra[1]

Franz and Keebet von Benda-Beckmann[2]

The Minangkabau of West Sumatra, Indonesia, are well known for their two forms of communal property, the inherited property complexes of matrilineages (*harato pusako*) and the village commons (*ulayat*). The paper shows how these have undergone very different developments in colonial and postcolonial economic, political and legal environments.

We first discuss the complex of *pusako* property and inheritance and show how categorical and concretised relationships to *pusako* have been influenced by the struggle over inheritance law between adat and Islamic law, and its incorporation into the state administration and social and economic changes. We then turn to the village commons for a similar analysis. The history of these two Minangkabau property forms shows interesting but different continuities and discontinuities in both categorical and concretised property rights. This illustrates that a remarkable continuity in categorical property relations and of the basic principles of matri-lineal organisation can coexist with quite different constellations of concretised property relationships, in which conjugal and patrifiliative relationships play a considerable role. This helps to understand why the disappearance or breakdown of matriliny in Minangkabau, predicted for the past hundred years, has not occurred. Our discussion will also help to clarify current legal and political debates over the place of communal property in Minangkabau.

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[2] Franz von Benda-Beckmann; Tel.: +49 345 2927-303; Email: fbenda@eth.mpg.de and Keebet von Benda-Beckmann; Tel.: +49 345 2927-301; Email: kbenda@eth.mpg.de, Max Planck Institute for Social Anthropology, PO Box 110351, 06017 Halle/Saale, Germany.

1. Introduction

In the summer of 2002, farmers, fishermen and academics from the local university protested openly in the building of the West Sumatran provincial government against a draft law concerning village common lands, *tanah ulayat*. Heated discussions over the status of such lands had flared up in the late 1990s with the widening political freedom after the decline and fall of the Suharto regime. While decentralisation policies adopted by the Indonesian government in 1999 had led to a far-reaching reorganisation of local village government (F. and K. von Benda-Beckmann 2001a, b), the issue of village lands had not been resolved by 2003. Village land had been a bone of contention ever since colonial times. Large scale expropriation during the last decades of the Suharto regime had intensified the feelings of discontent, but the political situation did not allow for open protest. By the time open protest became possible without risking severe punishment, emotions had heated up considerably.

Village land, however, was not the only type of communal land under discussion in the 1990s; most natural resource property, and especially the irrigated rice fields, was inherited property of matrilineages. These Minangkabau people-property complexes were characterised by differentiated mixes of rights held and inherited by individuals or groups within the matrilineage. These adat[3] property constructions have been under constant pressure since the region became Islamicised in the 16th century. The attempts to change the property regime of inherited property had come from two sides, from Islam and from the colonial administration after incorporation in the Dutch East Indies early in the 19th century. While Islamic protagonists tried to make it compatible with Islamic notions of property and inheritance, the Dutch had tried to bring it closer to Dutch notions of ownership rights. In line with its colonial predecessors, the Indonesian state demanded conversion of adat rights into categories of rights modelled on Dutch legal categories with the enactment of the Basic Agrarian Law in 1960. With a series of facilitating mechanisms it followed an active land registration policy from that time on. In 1994 the World Bank started a massive programme for land rights registration again, this time also with a focus on the registration of communal lands (World Bank 1994). These programmes have been rather unsuccessful until now.

The current decentralisation policy has increased interest in Minangkabau adat. It has increased its role in the construction of the new structure of village government and for both types of property (F. and K. von Benda-Beckmann 2001a, b). These developments have also

[3] adat in the most general sense means "the way of life". It is sometimes translated with "customs". adat comprises law, morals, customs and conceptions. On the four categories of Minangkabau adat and the extensive adat philosophy see Sanggoeno Dirajo (1920); Nasroen (1957); Rajo Panghulu (1971, 1973).

attracted the attention of foreign donor agencies and of politicians throughout Indonesia. This high interest is not new for Minangkabau. Their matrilineal social and economic organisation has always puzzled the imagination of outsiders, whether from other regions in Indonesia or from Europe. It certainly puzzled 19th and early 20th century observers, travellers, scientists and civil servants, who had taken part in the colonisation effort after the region had been incorporated into the colony of the Dutch East Indies in the early 19th century.[4] Like most of their contemporaries they were accustomed to think in evolutionist terms. If communal property stood for an evolutionary "early" and therefore backward mode of social (property) organisation, matrilineal relations were doubly backward, given their "unnatural" neglect of the father-child relationship. Yet the "matriarchal" Minangkabau were obviously much more "advanced" culturally, economically and technologically than many patrilineal communities the Dutch had encountered elsewhere in the Indonesian archipelago. Moreover, they were devout Muslims. How could these seemingly contradicting principles of social organisation and inheritance patterns be reconciled? With their two very different types of communal property and three legal orders pertaining to different aspects of political control, use and acquisition rights, the Minangkabau pose interesting challenges to theoretical and policy debates on communal property. In most literature on property, communal property figures as one of four major categories, beside private individual ownership, state ownership and open access. These categories are building blocks in the construction of theoretical propositions concerning the evolution of property rights and of the relationships between property types and their economic and/or ecological significance.[5]

"Communal" or "common" property is perhaps the most general and most misleading concept pervading interpretations of property systems, academic theories and policies. In the older evolutionist discussions in the 19th and early 20th century, the core meaning of communal property was property held by kinship or descent groups. More recently under the influence of the common property discussions following Hardin's (1968) "tragedy of the commons", the core meaning of communal property has become the commons (see Peters 1987; Schlager and Ostrom 1992; Dietz et al. 2003). Common property, like that of the Minangkabau, is generally deemed unsuitable for economic development and for production in the market economy and thus inferior to individual private ownership, but very suitable

[4] For some earlier descriptions and discussions, see Francis (1839); Kroesen (1874); Willinck (1909); Kohler (1910); Lublinsky (1927). Classical descriptions are Loeb (1935); De Josselin de Jong (1951). See also Tanner (1971); Dobbin (1977); Kahn (1980, 1993); Kato (1982); F. von Benda-Beckmann (1979); K. von Benda-Beckmann (1984); Kahin (1999).

[5] There is an immense literature on these issues. See e.g. F. and K. von Benda-Beckmann (1999). On changes in socialist states, see Hann (2003).

for subsistence production and the modern equivalent, nature conservation. It had mainly negative economic and civilisational connotations ever since the 19th century. Individual private ownership was taken as an important indicator of social and legal evolution as well as the backbone of capitalist economic progress. Communal property rights, by contrast, were dismissed as a sign of backwardness and economic inefficiency, as an obstacle to economic development and commercial production.

As in many other parts of the world, government policies against communal property in Minangkabau were inspired and legitimated by similar assumptions. Theories and policies based on these assumptions have not been very successful.[6] A basic reason is that the category of communal property is not well suited as a descriptive device or as a basis for theories or policies. For example, like in Minangkabau, communal property may comprise different kinds of rights, as in ownership to complexes of inherited lineage property, village commons, state land, or "the heritage of mankind". Furthermore, it comprises a wide variety of collectives, ranging from a few individuals, to larger groups, entire villages, the state, and even "mankind". And the rights of the members of such collectives, and the resultant complex combinations of groups to the common property vary considerably. Moreover, communal or common property was mainly theorised at the level of categorical property rights, that is abstract categories and general rule sets that define generalised types of property objects, the holders of such objects and the relationships between the property objects and holders.[7] Little attention was given to the nature and distribution of concrete property relations that connect actual property objects and holders. Moreover, other functions of property, such as its significance for social security, the continuity of social groups and its source of political power were not considered. Assuming more or less uniform intrinsic functions for such a broad category is not warranted. These same assumptions also bedevilled state policies aiming at the conversion and registration of adat rights to land. In many contemporary discussions about the recognition of adat land rights, and about the desirability of registering communal land and the difficulties encountered, the two different types of communal property are not sufficiently distinguished. This is a cause of much confusion.

As we shall demonstrate with the example of the Minangkabau, very different co-existing types of communal property may undergo radically different developments, while the economic function they obtain in concrete social and economic settings is more a result of

[6] See e.g. Wiber (1993); Bruce and Mighot-Adholla (1994); Van Meijl and F. von Benda-Beckmann (1999). For a recent discussion of the institutional requirements for successful management of common property, see Dietz et al. (2003).

[7] On the distinction between categorical and concretised property relations, see F. and K. von Benda-Beckmann (1999); F. von Benda-Beckmann (2001).

government misrepresentation and regulation than of intrinsic characteristics of the property rights per se. We shall first deal with the complex of *pusako* property and inheritance and discuss how categorical and concretised relationships to *pusako* have been affected by the struggle over inheritance, its incorporation into the state administration and social and economic changes. Then we shall turn to the village commons for a similar analysis. The history of the Minangkabau types of property shows interesting differential continuities and discontinuities in both categorical and concretised property rights. We demonstrate that a remarkable continuity in categorical property relations and of the basic principles of matrilineal organisation can coexist with a wide range of constellations of concretised property relationships, in which conjugal and patrifiliative relationships play a considerable role. This helps us to understand why the disappearance or breakdown of matriliny in Minangkabau, predicted for the past hundred years, has not occurred.[8] Our discussion will also help to clarify current legal and political debates over the place of communal property in Minangkabau, debates that do not distinguish sufficiently between the quite different sets of rights to *pusako* and *ulayat.*

2. The *Pusako* Complex

The Minangkabau are the world's largest matrilineal people. They lived in relatively autonomous villages (*nagari*) with common village land (*ulayat*). Observers referred to these villages as village republics. They were organised in localised matriclans, consisting of matrilineages headed by a titled lineage head (*panghulu*). The council of the lineage heads of the founding matrilineages formed the village government. Villages were endogamous, post-marital residence being uxorilocal. In adat law and philosophy, the lineage members form a social, political and economic unit. They are 'one' in many respects. They are descended from 'one womb'. They share the leadership of one lineage head, the hereditary title of their lineage and their common inherited property, *harato pusako.* This lineage property-people complex is a constituent unit in the economic and political constitution of Minangkabau villages.

a. External Unity and Internal Differentiation

The category of inherited property comprises material and immaterial goods, the most important of which are the titles of lineage heads, immovable goods, especially irrigated rice fields and lineage houses, and movables such as ceremonial clothes and jewellery. What in external relations is conceived of and treated as common or shared, is internally a highly

[8] Schrieke (1955); Maretin (1961). See also Kahn (1976).

differentiated property complex. Different kinds of inherited property are distinguished according to who originally acquired it and the means by which it had been acquired. Subgroups thus have different rights to different parts of the property. First and foremost is the property that the ancestors of the lineage members created through their cultivation of the jungle, which descends and is to be shared in continuity through the generations of all lineage members who can trace their matrilineal descent from these ancestors. This property, also called "high *pusako*", is distributed as primary allocation (*ganggam bauntuek*) to sublineages identified by the eldest female and in principle is held and transmitted within this specific sublineage for perpetuity. Upon marriage young women are usually given some part of the property held in *ganggam bauntuek* for their own use. This is called *harato dapatan*, the property (she has) received. It remains subject to the authority of the *ganggam bauntuek* holder. When a male lineage member marries, he may be given some of his sublineage's or *ganggam bauntuek* holding group's property. This is called *pambaoan*, the property "brought" to his wife's sublineage's house. Both *dapatan* and *pambaoan* are temporary allocations.

Primary allocations revert to the whole lineage only if the sublineage 'dies out', that is, when the women in the group have no more female descendants to continue the descent line. High *pusako* can be subject to redistribution if the demographic and economic developments of the sublineages make redistribution desirable. Such attempts to reallocate *pusako* regularly led to serious conflicts between sublineages and often resulted in splits of lineages and their *pusako* property. A second internal differentiation of property rights is the result of the inheritance of property that has been acquired by one of the lineage members (*harato pancaharian*). This form of property subsequently accrues to the inherited property of the members of their sublineage. In lineages that have incorporated strangers from other villages or descendants of former slaves, there is a third differentiating mechanism. The rights to those parts of the *pusako* awarded to them remain conditional on their proper behaviour towards the original lineage, and they have no claims to the lineage *pusako* of those who trace their descent from the common matrilineal ancestress (see Verkerk Pistorius 1868; F. von Benda-Beckmann 1979).

In all matters of external relationships and political authority, the people-property complex is treated as 'one' and is represented by the lineage head in transactions and disputes. Decisions about external transactions, such as pawning of *pusako* rice fields, or intra-group allocation and inheritance of rights to *pusako* have to be taken by processes of common deliberation of all adult lineage members. In these processes the responsible lineage or

sublineage head has to take care that these procedures are followed. The senior women who control the *pusako* rice-land also have an important say in these procedures.[9]

The main function of *pusako* was to provide economic resources for the subsequent generations of lineage members. Permanent alienation of property was prohibited; only temporary transfers through pawning and donation were allowed and pawned property could always be redeemed. In principle, the whole (sub)lineage should redeem pawned *pusako,* individuals or subgroups contributing equally. The property would retain then full *pusako* status and primary allocation rights to it would be distributed to the sublineages. If, however, the group as a whole did not want to redeem a rice field, individual members of the *pusako* holding group could do so. While the redeemed property retained its residual status as *pusako* of the whole group, the right to economically exploit the rice fields was treated as self-acquired property for the person or sublineage that had redeemed it. After death, such *pancaharian* rights to *pusako* property would form a separate *pusako* complex for the redeemer's heirs. Other group members, however, could at any time pay their share of the redemption costs and thus acquire a share in the land.

b. Communalising and Individualising Mechanisms: The pusakoisation of pancaharian and the pancaharianisation of pusako

Lineage members had considerable freedom over their self-acquired property but they could not give it away for free to non-lineage members, the classical case being a father wanting to give property to his children.[10] Such transactions would require the consent of all lineage members. Self-acquired property was destined to become inherited property, and the future heirs would have to consent to any transfer which threatened their future inheritance. In Minangkabau conceptualisation, self-acquired property therefore was often referred to as "low *pusako*" during the property holder's lifetime and thus was treated as if it had already been inherited. It was "inherited property in chrysalis state" (Willinck 1909: 584). The *pusako* system is thus predominantly conceived in diachronic terms. For any holder of a right to *pusako* property, the term implies past and future inheritance according to matrilineal rules.

There also was an individualising mechanism, when self-acquired money was invested into rights to *pusako* property. Redemption of pawned property with a person's own money would give that person the exclusive right to use the property in question, usually rice fields, for the

[9] See Willinck (1909); Tanner (1970); F. von Benda-Beckmann (1979); K. von Benda-Beckmann (1981).
[10] The self-acquired property acquired by husband and wife during marriage is called *harato suarang*. It is divided equally in case of divorce or the death of one spouse.

conjugal family. Such property therefore had a double status, because it retained its residual *pusako* status, while the economically more relevant status was that of self-acquired property.

3. Challenges to the *Pusako* System

The *pusako* system has been challenged for a number of reasons and by various influences, including Islam, the colonial government and later the Indonesian government. In addition, socio-economic factors also put pressure on the system.

a. Changing Inheritance and Islamic Law

Islamic law was a competitor to property adat well before colonisation.[11] For the proponents of true Islam, the *pusako* system with its dominant matrilineal principles for structuring political authority over people, resources and succession was a heathen practice and therefore prohibited for Muslims. Matrilineal rules of inheritance were in flagrant contradiction to the rules of Islamic inheritance law with its strong patrilineal bias. But the property struggles and negotiations between Islamic and adat leaders changed in intensity over time. The fiercest struggle took place in the beginning of the 19th century during the Padri war in which orthodox Islamic leaders attempted to establish a theocracy in Minangkabau.[12] This war led to Dutch intervention and the incorporation of Minangkabau into the Dutch East Indies. The Dutch colonial government supported the adat proponents against the orthodox Islamic movement as they thought that the latter would present a greater danger to colonial rule. They built their indirect rule on the basis of the *nagari-pusako* system, and recognised and maintained the adat *pusako* as the valid property law in Minangkabau. Around the turn of the 20th century, *pusako* and inheritance came under a renewed attack by Islamic scholars, notably by Syeh Achmad Chatib, a famous Minangkabau Islamic scholar living in Mecca, who had a strong influence on the following generations of Minangkabau religious leaders. His radical ideas were, however, tempered by his pupils, who redefined *pusako* in such a way as to eliminate its contradiction with Islamic law. The local Minangkabau religious leaders treated it as "*harta musabalah*", a kind of property in the dead hand, similar to *wakaf,* which cannot be divided or inherited and to which Islamic inheritance law therefore need not apply.[13]

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[11] On the changing relation between adat and Islam in Minangkabau see Abdullah (1966, 1972); Naim (1968); F. and K. von Benda-Beckmann (1988); Huda (2003).

[12] It is not known, however, to what extent the Padri managed to change the *pusako* property system in that period. According to Hamka (1968: 33) the Padri leaders did not attempt to abolish the *pusako* system.

[13] Huda 2003 has given an exhaustive account of Achmad Chatib's views and the reactions to them in Minangkabau. See also Prins (1953, 1954: 145); Hamka (1968: 33); Anas (1968: 107).

The leading edge of Islamic attack was on the inheritance of self-acquired property. It was a double attack against the communal nature of kin property and against the limitations of individual freedom over self-acquired property. Its main proponents were Islamic scholars and urban merchants and businessmen. The main bone of contention was men bequeathing property by gifts or testament to their children. Islamic pressure was aimed at transforming inheritance rules from the matrilineal to the Islamic system. The classical conflict in matrilineal societies between a man's children and his matrilineal nephews and nieces thus was exacerbated by Islamic law. It was also fuelled by social and economic changes. The new educational system and migration had led to changing patterns of residence in nuclear families and closer social and economic bonds between spouses and their children. Social and economic authority began to gradually shift away from the mother's brother to the parents, with a resulting desire to transmit properties within the conjugal family. This development was supported by Dutch administrators and judges, in whose eyes the matrilineal inheritance was "unnatural" anyway. Inheritance law and practice for self-acquired property gradually changed. An important development was the recognition in the 1930s that a man could bequeath his self-acquired property by gift or testament to his children without the consent of his matrilineal relatives.[14] In practice, the children and the matrilineal relatives usually worked out some form of compromise about the inheritance of self-acquired property. Depending on the quality of family relations this could be a friendly process but it could also result in serious and protracted disputes before village authorities or the state courts (K. von Benda-Beckmann 1981, 1985).

After Independence, two major meetings were held in 1952 and 1968 in which religious and adat leaders, university academics, judges, and local politicians participated.[15] They agreed that *pusako* property should remain governed by matrilineal rules of inheritance. Property acquired during marriage was to be divided by half between the surviving spouse and the heirs. The latter would inherit according to Islamic inheritance law. In line with Islamic inheritance law, a person would be allowed to make a testament for up to one third of the self-acquired property (Naim 1968: 243). These meetings and their conclusions attempted to undermine the conceptual and temporal logic of the *pusako* system by redefining self-acquired property, including self-acquired property in the traditional sense, and property received by gift *(hibah*) and testament. Self-acquired property would retain its status after inheritance. It would continue to be inherited according to Islamic law and not become "low

[14] The famous case of the inheritance of Dr. Mochtar stated both the freedom of testation, but also the continuation of intestate matrilineal inheritance. See on the development of the law of donations and testamentary dispositions F. von Benda-Beckmann (1979: 328 ff).
[15] See Prins (1953); Tanner (1970); Naim (1968); F. von Benda-Beckmann (1979); Huda (2003).

pusako" property as it would in adat. There would be no more growth of *pusako*. These far reaching consequences have not come true. Today, it is a generally accepted practice that children inherit at least the major part of self-acquired property from their father. When inherited, whether by a man's children or his matrilineal heirs, it will become *pusako* for the heirs' respective sublineages. However, it still is a major issue in legal political debates whether this is done according to Islamic law or according to new adat law. Contrary to the conclusions of the 1952 and 1968 meetings, the Supreme Court validated the change in intestate inheritance of self-acquired property as "new adat law" in 1968 (F. von Benda-Beckmann 1979: 338). The state courts maintain these rules as adat law. The alternative to apply Islamic law to inheritance, which can be done in the Islamic courts, is hardly ever used.[16] Among ordinary people opinions are divided, but most people consider the change as changed adat and not as a replacement of adat by Islamic law. And even those who consider "the inheritance by the children" as due to, or in accordance with Islamic law, do not bequeath property to all Islamic heirs. [17]

b. Administrative and Judicial Transformation of the Pusako System

The general principles and rules of the categorical adat *pusako* system have remained dominant for allocation, use and distribution of *pusako*. However, the (post-)colonial administration and courts made several attempts to change the system.

Standardisation and the Dissociation of Political and Property Units

One of the first major interventions was that the Dutch prohibited the establishment of new positions of lineage head in the 1880s. This led to a gradual dissociation of the *panghulu* headed lineages and the emergence of sublineages, which became largely autonomous in *pusako* affairs. They had their own representative in property affairs (the mother's brother who is the head of the heirs, *mamak kepala waris*) without the official status of lineage head. A *panghulu* headed linage could comprise one or more such sublineages. Although in village practice lineage splits continued and new *panghulu* titles were established, the status of such new groups and their relations to the sublineages became increasingly ambiguous, an

[16] This is a development quite different from North Sumatra, see Bowen (2000). Our survey of the registers of all courts of first instance (*Pengadilan Negeri*) and Religious Courts (*Pengadilan Agama*) in the province of West Sumatra since 1980 shows that there is no change in the pattern of inheritance disputes over self-acquired property. The research is carried out in cooperation with the Centre for Alternative Dispute Resolution of Andalas University in Padang. We gratefully acknowledge the help and stimulating suggestions of Narullah Dt. Parpatiah nan Tuo, Takdir Rahmadi, Tasman, Yuliandri, Zulheri, and Mardenis.

[17] This, at least was the situation in the 1970s and 80s. While the court data are clear in the continuing use of adat rules for inheritance, we have to be careful when making statements about contemporary inheritance practices. In the past 20 years, only little research has been done on inheritance practices in Minangkabau.

ambiguity which continues into the present time. It was exacerbated by the fact that *kaum* became the standard term for *pusako* holding units in the administrative and court system, while in different regions of Minangkabau, the term was used for different social and political units (K. von Benda-Beckmann 1984).

This intervention mainly affected the external status of lineages and sublineages and the composition of subunits within lineages. For the major part of the 19th century the Dutch had little interest in internal-lineage affairs, so long as they delivered coffee to Dutch marketing agencies under the policy of forced coffee production. [18] This changed dramatically after the first decade of the 20th century for a number of interrelated reasons. When the system of forced coffee production was abolished and a tax system was introduced, smaller and more coherent social groups with a clear representative were required. Besides, the *pusako* system became more important to the colonial government as it saw the *pusako* based rice-economy as the basis for subsistence and restricted local trade (Kahn 1993). This coincided with a more systematic exploration and systematisation of Minangkabau adat by Dutch administrators and scholars of the adat Law School.

The colonial legal scholarship and administration introduced three major important changes. First, the property holding lineages were uniformly called *kaum*, to be represented by the "mother's brother who is the head of the heirs" (*mamak kepala warris*). This led to misunderstandings because in many *nagari*, *kaum* referred to a *panghulu*-headed lineage while in other *nagari* it meant a sublineage.[19] Second, lineage property was reinterpreted as communal or family ownership with the help of the interpretative schemes of Dutch common ownership and the distinction between public and private law. [20] *Pusako* was interpreted as family ownership, located in the domain of private law. The family (lineage) was a legal community with common property and common administration. This external unity was translated into the internal structure of the group. The group internal rights of primary allocation (*ganggam bauntuek*) and the separate pool of inherited self-acquired property were suppressed and replaced with the notions of equal shares for all members in the pool of communally owned property. [21] Third, the authority of the lineage and sublineage heads in external property affairs was strengthened. This reflected the Dutch desire to also have one

[18] For the purposes of supervision and implementing this system, the Dutch created a limited number of special *panghulu*ships in each village, called *panghulu rodi* (the *panghulu* for corvée labour) to avoid having to deal with all lineage heads (up to 100) in a village.
[19] For a good description of the conceptual variations, see Kemal (1964).
[20] Similarly *pusako* was referred to by the neologism *inlandsch bezitrecht,* intended to avoid the connotations of full ownership.
[21] Adatrechtbundel (6: 179). These interpretations were largely endorsed by van Vollenhoven and standardised in the *Pandecten van het Adatrecht*. Earlier and more differentiated accounts of Minangkabau adat, for instance by Verkerk Pistorius (1871) and Willinck (1909), were refuted.

person responsible for the *pusako* complex in non-tax affairs. The representative could now pawn *pusako* without the consent or acknowledgement of his matrilineal relatives in the cases allowed for in adat (Guyt 1936; F. and K. von Benda-Beckmann 1985: 264). This became standard adat law in the courts. It also became a rule that in disputes before a court, group members had to be represented by their group head. In the courts and in villages the limitations for pawning were also loosened. "Modern needs" such as paying school fees or paying for the costs of the pilgrimage were increasingly recognised as legitimate reasons for pawning. And the conditions under which the last members of an extinct lineage could sell *pusako* were softened.

These instances of Minangkabau "lawyers' folk law" were not always followed in the village or in disputing processes within the village. Their rules pertaining to inheritance of *pusako* remained largely confined to cases brought to courts. What was decided in court was often "re-adatised" in village politics (K. von Benda-Beckmann 1985).[22] But the re-interpretations increased the ambiguities of the *pusako* system and opened up new strategic avenues for manipulating claims in the courts.[23] Especially the strengthening of the role of the group representatives *vis-à-vis* their group members opened opportunities for manipulating dispute procedures; women with property grievances with their group head had particular difficulties in claiming their rights (see K. von Benda-Beckmann 1981; F. and K. von Benda-Beckmann 1994).

Pusako-ownership Deeds

Besides these measures that influenced the interpretation and change of adat property law, there were also attempts to combine the adat of *pusako* or fully replace it with European legal property forms. Dutch practical concern with *pusako* started as early as the 1850s, very soon after they had put down the last military resistance in Minangkabau. In 1853, a Governmental Decree was issued for the Westcoast of Sumatra that allowed the establishment of an "ownership deed" for *pusako* property.[24] Immovable *pusako* could be registered as private ownership (*eigendom)* and partly become subject to Dutch law. Registration was carried out by the Governor's office. The oldest living female of a lineage was registered as owner. After

[22] Such transformations should not be generalised into "the" customary law. See F. von Benda-Beckmann (1979); K. von Benda-Beckmann (1981) and F. and K. von Benda-Beckmann (1985). For similar transformations in other colonial legal systems, see Clammer (1973); Chanock (1985); Woodman (1987).

[23] Women had particular difficulties claiming their rights against (sub)lineage members, see K. von Benda-Beckmann (1981).

[24] *Pusako eigendomsakte,* see Sarolea (1920); F. von Benda-Beckmann (1979: 210 and 318 ff); K. von Benda-Beckmann (1990).

her death, the names of her daughters were (to be) entered as heiresses and new owners and a note was added that they had received the property as inheritance. In 1910, the decree was amended. The registration was to be carried out by a judge (*rechter commissaris*) and the method of registration was changed. Now the whole sub-lineage (usually called *kaum* by the Dutch administration) was entered as owner, specified by its *mamak kepala waris* acting as family head. The boundaries of the property were registered in the cadastre.

Disputes brought to the colonial courts in 1856 and 1859 about the legal character of such property showed the tension between the adat rules pertaining to *pusako* in which "property law", could not be divorced from "inheritance law" and the Dutch notions of ownership. The Dutch judges in both cases gave primacy to the Minangkabau diachronic notions. However, the attorney general in Batavia (*Procureur Generaal*) severely criticised the judgements and propagated the dominance of Dutch legal principles.

> "There can be no doubt that, since the parties have been established as owners by European officials, and since ownership is a purely European institution, the consequences attached to it have to be governed by European legislation. The *Landraad* Padang has not so much erred in its law of ownership concerning immovable property, but rather in its application of the Malayan law of inheritance, to which it conceded such a wide range of applicability that many other transfers of ownership based upon inheritance rights would be void". (cited in F. von Benda-Beckmann 1979: 320)

These attempts to merge adat and Dutch notions of registered land ownership did not really take off in West Sumatra and therefore are mainly of historical interest. But they foreshadow many of the problems that were to emerge with registration of land under adat law and the conversion of adat titles into property categories created in the Basic Agrarian Law of 1960.

The Basic Agrarian Law and the Push for the Conversion of Property Rights

Fifteen years after Independence, the Basic Agrarian Law of 1960 introduced a powerful alternative to the *pusako* system. Its main political purpose at the time was to replace the pluralistic land law with a uniform agrarian law, and to introduce ceilings on wealth in land. This was important for regions in which land accumulation in the hands of a few wealthy people had occurred. But land accumulation was not a problem in Minangkabau. Here the main purpose of the Law was to promote individualisation of communal land by introducing individual titles and demanding conversion of adat land rights into the legal categories of the

Law that were largely modelled after Dutch law.[25] The most important category, *hak milik,* more or less corresponded to the notion of ownership. Self-acquired property was the closest equivalent. Registration of *pusako* was possible, but there was no provision for the registration of the internal differentiation of communally held land.[26]

The system of registration has been rather unsuccessful so far in West Sumatra. It has proven to be a source of many legal uncertainties and disputes. Despite recurring exhortations by the provincial government, programmes for cheap and efficient registration (PRONA) and a World Bank Project giving special attention to the registration of communal land, the programmes have largely remained an "empty dream castle". Very little land with *pusako* status has been registered in rural areas.[27] The little land that has been registered concerns specific plots of land, usually for houses. Beside the rather bureaucratic, time-consuming and often corrupt registration practices that are mainly held responsible for this failure,[28] we think that a major reason lies in the nature of the Minangkabau property system and in the ways villagers interpret and compare this with the likely consequences of registration. Since *pusako* forms a single unit in its external relations, it would be extremely difficult and lead to innumerable severe conflicts, if someone were to attempt to register the entire property complex of a lineage (or *kaum*). One problem is that different concretised rights to *pusako* based on money investment would become involved. If at all, registration would only be feasible for certain pieces of land, houses or rice fields with *pusako* status. If it is only registered in the name of the group representative, people are afraid of losing their rights. Moreover, people fear that with registration land would acquire ownership status and would then be inheritable by the children. These concerns are certainly realistic, for registered land is

[25] Harsono (1994: 167-168), the mastermind behind the Agrarian Law, stated that it would be desirable, in order to reduce communal rights, first to register lineage land (*tanah kaum*) as communal lineage land (*tanah milik bersama*), and in a next step divide it and register it as individual ownership *(hak milik*) of the individual *kaum* members. See Kurnia Warman (1998).

[26] Government Regulations 10-1961 and 24-1997. Kurnia Warman (1998) raises the question whether primary allocation could be registered as ownership and how this would relate to the rights of the *pusako* holding group.

[27] See for registration programmes F. von Benda-Beckmann (1986); World Bank (1994); Haverfield (1999: 57); Slaats (1999, 2000: 44). 40 years after registration was introduced, it is thought that only 22 % of all estimated 58 million land parcels in Indonesia have ever been registered (Badan Pertanahan Nasional 1993: 10). At this rate, it would take more than 100 years to register all potential parcels (USAID 1992, Haverfield 1999: 57). In Minangkabau, the pace of registration is even slower. By 1972, less than one percent of all land in the central Minangkabau district of Agam was registered, and most of this land was house sites in the townships. By 1975, only two parcels had been registered in the village in which we had done research, and this had been done in great secrecy. According to Evers (1995: 21) by the early 1990s only 7 % of the territory was registered (Slaats 2000: 44). According to recent research in the village of Anduring, 27 certificates had been issued, which comprised 0,009 % of the total village territory, but none of this was lineage land (Pusat Kajian 1998: 44ff).

[28] The failure to register land and the consequent continued prevalence of indigenous tenure systems is largely attributed to "the dysfunction of the registration system itself" (Haverfield 1999: 57).

often treated as freely disposable and inheritable by the children.[29]

c. Economic Change and Changing Concretised Property Relationships

*Pusako*isation of self-acquired property and the restrictions on transfers create the image of an ever-expanding *pusako* complex through the continuous addition of self-acquired property. But under the umbrella of lineage property, a variety of concretised rights to parts of that property could exist, changing over time through redistribution, pawning, redemption and inheritance. Pawning and redemption were the primary mechanism through which concretised rights to *pusako* could be temporarily and provisionally withdrawn from the normal allocation within the lineage under the control of the elder women and the lineage head. This seems to have occurred on a rather grand scale already in the 1880s (Kroesen 1874; F. von Benda-Beckmann 1979: 289). Increasing monetisation of the economy through the system of forced coffee cultivation and limited possibilities to invest money outside the village infused money into pawning and redemption cycles. Over time, new needs for cash and new ways of earning money through wage labour, trade and the cultivation of cash crops, in the private and public salaried employment sector and remittances from migrants enhanced investment in land. These activities in which men were engaged as individuals generated money that could be invested in land. The monetisation of property relationships increased further with the growth of the salaried employment sector, an explosion of the bureaucracy and the further monetisation of the agricultural economy. Migrants concerned with their *pusako* provided money for redemption, or helped lineage members to pawn the *pusako* of others (Naim 1974; F. von Benda-Beckmann 1979: 291). To avoid problems with inheritance, Minangkabau men preferred to pawn or redeem land "for their wife and children". Pawning and redemption became a dominant way of getting access to land, as uncultivated land had become ever scarcer, especially in the densely populated core areas of Minangkabau. This process has been fraught with frequent and heated conflicts, especially after the inheritance rules for self-acquired property changed in the 1960s.[30] When use rights to individually redeemed *pusako* property are inherited, they now cross the boundaries of a lineage.

Through these mechanisms much agricultural land rotated and a market for individualised temporary rights to *pusako* developed. The flow of property from a man's matrilineage to his

[29] A good glimpse of the contemporary reality of property relationships, at least in one village, is provided by a recent research project on communal land (Pusat Kajian 1998). It shows striking similarities with the situation we encountered in the mid 1970s (F. von Benda-Beckmann 1979; K. von Benda-Beckmann 1984). The internal differentiations within *pusako* holding groups were still relevant and the descendants of newcomers and former slaves still had no right to inherit or share in the *pusako* of the lineages.

[30] For case histories see F. von Benda-Beckmann (1979) and K. von Benda-Beckmann (1984). For an earlier account of Minangkabau disputes, see also Tanner (1969, 1970, 1971).

conjugal family also strengthened the bonds within the conjugal family at the expense of the multiplex relationships within the matrilineage. Within the matrilineage, most property is held by small lineage segments. The older mechanism of primary allocation thereby lost importance, because the stock of *pusako* common for all members has decreased. The authority of group heads and older women over *pusako* has been weakened as a result.

4. *Ulayat* Property

a. The Right of Avail, Sovereignty and State Domain

Ulayat denotes village land or territory and comprises land, forest, water and minerals. Village land was mostly under the socio-political control of the village government, but it could also be distributed among the founding clans of the villages, and then administered by the heads of the clans (van Vollenhoven in Holleman 1981: 137). *Ulayat* was mainly used for collecting forest products or grazing. It also served as a reserve for the expansion of agriculture or horticulture. Village land could thus be converted into irrigated rice fields or permanent tree gardens. Over time, it became inherited lineage property for the original cultivator's descendants.[31]

Ulayat was usually freely accessible to the members of the village or clan respectively. It could not be alienated. Temporary access and withdrawal rights could be given to non-residents against a fee of recognition. The Dutch called this right of socio-political control *beschikkingsrecht*, right of disposition or right of avail (Holleman 1981: 287, 431). The Dutch adat law scholars interpreted this right of avail as an expression of Minangkabau political-economic constitutional theory, as a right extending over all resources of the village territory. The *ulayat* right was most prominent for village territory that had not been allocated to matriclans or lineages. It was weakest for land which had become the *pusako*, for which it was merely a residual right.[32]

Early 19th century agrarian legislation in the Dutch East Indies had more or less recognised *all* the land rights of the local population, including the rights of avail. But in a gradual process starting when forced cultivation of market crops was abandoned, and the founding of

[31] For an early description see Wienecke (1915). Contemporary discussions are sometimes confused because *ulayat* is used with wider meanings. People speak of *ulayat* of the village (*nagari*), *ulayat* of the matriclans (*suku*) and *ulayat* of the matrilineage (*kaum*), see Anas (1968). This may be a new development, but it could also be an old local usage. adat kin and property terminologies are notoriously locally specific. The new West Sumatran drafts on *ulayat* land follow this three-tiered terminology. *Ulayat nagari* and *ulayat suku* refer to village and clan commons, while *ulayat kaum* is synonymous for *pusako* property.

[32] Referring to land with the status of *pusako* land as *ulayat* land is thus often an indication of its historical background, because in practical terms the *pusako* status dominates and the *ulayat* status no longer means much. For more detailed discussions see van Vollenhoven (1919); Logemann and Ter Haar (1927); F. von Benda-Beckmann (1979); Burns (1989).

European plantations and agribusiness started being encouraged, these rights were systematically reduced. Rights held by the state were also held to be important for legitimating mineral extraction and forest exploitation and conservation. The Domain Declaration of Sumatra's West Coast of 1874 declared land, for which "ownership" could not be proven, to be the domain of the state.[33] The State could decide that this land be put to economic use, usually in the form of a long lease (*erfpacht*) of 75 years. The first leases in West Sumatra were granted in 1876. The Agrarian Regulation promulgated in 1915 differed very little from the 1874 Domain Declaration and also vested rights of disposal over uncultivated land in the state.

The Domain Declaration created considerable legal uncertainty and became an important issue in legal-political debates.[34] The major question was whether the resources subject to the communities' right of avail could be taken over by the state and reallocated to public or private companies, or whether the land had to be officially expropriated with compensation for the communities. In the dominant view of the colonial administrators, expropriation and compensation was regarded as a matter of private law rights. In their opinion, the rights of avail did not conform to the criteria of private law ownership. Consequently, these were not regarded as "rights" but as mere "interests", subject to the state's political consideration of the "common good", i.e. capitalist economic development by European entrepreneurs. Since each piece of land needed to have an owner in the colonial legal logic, it was considered "inevitable that the state became the owner of that land given the absence of any other owner" ('s Jacob 1945). In this interpretation the right of avail was regarded as a purely public right of the village government. Such public rights had been superseded and absorbed by the new, overriding public rights emanating from the state's sovereignty. Whatever public rights could be exercised by village governments over public village territories could only be derived from and remain subject to the state's rights.

Thus, whether or not Minangkabau property rights had to be recognised by the state was determined by reference to Dutch notions of private-law-ownership (*eigendom*) and sovereignty.[35] The intimately connected bundles of adat public and private rights were

[33] The Domain Declaration was contained in the Agrarian Decree (*Agrarisch Besluit*) of 1870. The colonial administration also enacted a Domain Declaration for each province. The Domain Declaration for Sumatra of 1874 is reprinted in Logemann and Ter Haar (1927: 106).

[34] Van Vollenhoven (1919) and later Logemann and Ter Haar (1927) were exceedingly critical of colonial legal policies. Protest also came from Dutch administrators, including the governor of Sumatra's West Coast and even the Dutch Minister for the Colonies. See further Adatrechtbundel (11, 88, 35: 223-230); Kahn (1993: 189-212); Oki (1977: 105-110); F. von Benda-Beckmann (1979); Manan (1984: 186); Burns (1989: 36). 's Jacob (1945) gives the most systematic exposition and justification of the state policies.

[35] Van Vollenhoven (1919) characterised this period as a "century of injustice". He noted disapprovingly (1919: 72): "The administration only supports those rights that fit well into our categories, the rest are imagined claims or rights which only exist in the imagination of the population" (author's translation).

separated, and the respective rights reallocated in the distinct legal spheres of European legal thought. Opponents of this view such as van Vollenhoven and his followers in what became known as the Leiden School of adat Law argued that such interpretations could not be sustained since they were based on a fundamental misunderstanding of the nature of adat rights. These rights, they pointed out, could not simply be understood in terms of mutually exclusive public or private rights. Rather, the right of avail had both public and private character and therefore fell under the protection clause of the Domain Declarations.[36] While not arguing against state administrative rights over these resources based upon sovereignty in principle, the assumption of private law ownership was a "transmutation of an undeniable and unchallenged right of socio-political control into an ambiguous and confusing right of ownership" (van Vollenhoven 1919: 103).[37]

b. The Domain Declaration in Practice

Despite heated legal debate, the adat rights over village land continued in practice to be widely recognised in West Sumatra. The Domain Declaration for Sumatra's West Coast was even called the 'secret' declaration because the government for some time did not dare publicise the text or put it into practice for fear of popular uprisings.[38] Unless there were overwhelming economic interests at stake, the government refrained from asserting its rights.

A good illustration is a case from 1903-1904. A group of former slaves had asked the colonial government to be given some *ulayat* land. Opinions were sharply divided between the local and central representatives of the colonial administration. The highest civil servant of the Ministry of Justice, the *Directeur van Justitie* in Batavia, supported the claim, stating that this *ulayat* land fell under the 1874 Domain Declaration. Any rights which the *panghulu* may hold would be subject to the right of the government. The Assistant Resident and the Resident of the Padang Highlands, however, expressed a contrary opinion. They noted that the land was *ulayat* under the right of avail of the *panghulu*. This, they admitted, was contrary to the Domain Declaration. But in West Sumatra this declaration had not been brought to the attention of the adat functionaries, and the government had never pressed for enforcement. In their opinion this was a wise policy and should be adhered to in the future. Moreover, they

[36] The governor of Sumatra's West Coast, Ballot also challenged the Domain Declarations, but gave a slightly different interpretation. He characterised the *ulayat* rights as communal ownership rights (Dutch: *zamenlijk eigendom*), placing it squarely in the realm of private law altogether (Kahn 1993: 189, 208).

[37] Van Vollenhoven (1919: 100ff), unmasking this transformation of public control into private economic rights, continued: "Agrarian rent and lease (*erfpacht*) are private rights only in name. We do not deal here with rent or lease according to the civil law. They are concessions to land exploitation, or mining concessions […] Also the allocation of agrarian ownership to private companies is not a transfer of land from owner to owner, but the installation of an owner. It cannot be based on private law" (author's translation).

[38] See van Vollenhoven (1919); Adatrechtbundel (11: 88); Oki (1977: 105, 109); F. von Benda-Beckmann (1979); Manan (1984: 186); Kahn (1993: 191).

stated that the government itself did not fully comply with the rules of the Domain Declaration. For there was a regulation for West Sumatra that a parcel of *ulayat* land could be granted to an outsider, only after consultation with the population. The grantee should pay an adat fee (*bunga kayu*) as a sign of recognition of the *panghulu*'s rights. Administrative officials had even been instructed not to grant a claim if the fee demanded had not been given. On the basis of the latter opinions, the Governor General of the Colony rejected the claim.[39]

Where land or forest concessions were given to outsiders, agreement with village governments was sought. The number of Dutch plantations created in this way, however, was relatively small. In the central, densely populated regions, *ulayat* rights remained largely unchanged.[40] Unless there were overwhelming economic interests at stake, the government refrained from asserting its rights. Here the Domain Declaration largely remained a legal fiction. West Sumatra never became a major area for state production in colonial Indonesia and the number of Dutch plantations remained relatively low. This was also largely due to the reluctance of Dutch officials, especially in the densely populated Highlands, to grant concessions or leases to European entrepreneurs.[41] In the more sparsely populated regions, however, more concessions were given to plantations, and the Dutch also assumed rights to mine coal. In the late 19th century, there emerged something of a plantation belt with migrant labour from Java. Exploration permits and mining concessions for coal, gold, silver, zinc, copper, lead and tin were granted to Dutch firms, usually also for a period of 75 years. [42]

The Dutch forest reserve policy had a greater practical impact on *ulayat*. It was meant to protect forests from uncontrolled timber extraction but also to provide cheap timber for public works. In 1923, 35% of the total area of Minangkabau was forest reserve. Resentment against these measures by Minangkabau villagers and leaders grew, because it diminished their possibilities to bring new land under cultivation. In the central parts of West Sumatra demographic developments had necessitated expanding rice fields into forests that were declared protected by the forestry department, fuelling the Communist uprising in 1925-6. As a result, the Commission investigating the uprisings issued a regulation that the government

[39] See Adatrechtbundel (11: 88); F. von Benda-Beckmann (1979: 261-262).
[40] See Oki (1977: 105-110) on forest policies. Oki (1977: 113); Adatrechtbundel (35: 223-230) reports a court case between two Minangkabau and a Dutch company from 1931, in which the court stated that the Domain Declaration had not been strictly applied in West Sumatra. European companies could only keep their rights as long as the land was used.
[41] See Oki (1977: 111, 114). This led to great tensions with the central administration of the colony in Batavia, but they held to their policy. By 1926, an area of 113,600 ha was on leasehold. For more details on the size of leases between 1877 and 1926, see Kahn (1993: 202ff).
[42] Kahn (1993: 217-219) gives an overview of the concessions awarded between 1898 and 1924. In some regions, especially the southern frontier, the area around Sawah Lunto and Alahan Panjang, large tracts were given out as mining concessions (Kahn 1993: 237).

and European companies exploiting timber were to pay 25% of the timber value to the concerned villages.[43]

After Indonesia's independence the legal situation only changed gradually, and the state operated on the same legal and political logic as its colonial predecessor, handing out titles as it deemed fit. The Basic Agrarian Law of 1960 professed to be based upon adat law (Gautama and Harsono 1972). The right of avail (*hak ulayat*) was recognised in a rather ambiguous way, subject to the state's regulatory control and the 'common interest'. The legal basis for concessions was broadened by Presidential Decree 32 of 1979 on the conversion of "western rights" into state land.[44] This Decree stated that all land leased to Dutch plantations would fall back to the state as state land after expiration of the lease; the status as adat land was erased. Forestry legislation imposed ever more restrictions on the use of forest, while the area under state control widened, deepening the conflicts with *ulayat* claims. During the last twenty years of the Suharto regime his family members and loyal political supporters received liberal timber, mining and agricultural concessions, leases and ownership titles. These titles encroached both upon state forestry and *ulayat* land. Claims of local populations were usually ignored.[45] The result is a situation fraught with uncertainty and with resentment against the old regime, but also against village leaders who were accused of having privately profited from these transactions.

c. Developments since 'Reformasi'

The demise of the Suharto regime and the ensuing new political freedom in Indonesia led to a number of changes, including general calls for more regional autonomy and claims for greater recognition of adat rights to village resources. This led to a policy of decentralisation with more rights and obligations for districts and villages. In West Sumatra this has been accompanied by a restructuring of village government that has evoked a region-wide debate about the position of traditional leaders and control over *ulayat* (see F. and K. von Benda-

[43] In 1936, therefore, the resident of West Sumatra admitted that the Domain Declaration was *de facto* a dead letter. See for Dutch forest policies Oki (1977: 114-116); Kahn (1993: 220-240), who reports that in the district of Solok, 75% of land was protected forest.

[44] Expropriation was regulated formerly through the colonial *Onteigeningsordonnantie* (Ordinance on expropriation, Stbl. 1920/574). It is now regulated through Article 18 of the Agrarian Basic Law (*Undang undang pokok agrarian*) of 1960 and the Law No. 21-1961, which later was elaborated through Governmental Regulation (*Peraturan Pemerintah*) 39 of 1973 and the Presidential Instruction No. 9 of 1973. The government made new regulations through the Regulation of the Minister of the Interior No. 15 of 1975 on the Regulations of Freeing Land (*Kententuan Mengenai Tata Cara Pembebasan Tanah*). In 1993, Regulation 15 was withdrawn and replaced by Presidential Decree 55 of 1993 on the Acquisition of Land for Development of the Public Good (*Tentang Pengadaan Tanah Bagi Pelaksanaan Pembangunan untuk Kepentingan Umum*).

[45] In 1997, 606,863 ha of village land were in the hands of plantations as opposed to an area of 113,600 ha in 1926, *Suara Rakyat* (2001). Between 1990 and 1999 the area for oil plantations more than quadrupled, see Kahn (1993: 202ff).

Beckmann 2001a, b). During colonial times and until 1983, local government in West Sumatra had been based upon the Minangkabau *nagari.* While Dutch and Indonesian governments had interfered and transformed the *nagari* governance structure, the influence of adat leaders and the ideology of an adat governed *nagari* had remained very strong. However, with the implementation of the Law on Local Government of 1979, the *nagari* had ceased to be an official administrative unit. Each *nagari* was split up into a number of purely administrative *desa* villages modelled after villages on Java. However, provincial regulation 13 of 1983 allowed for the *nagari* as "adat law community" and acknowledged the Village adat Council as the institution representing this community. Implementing regulations gave detailed instructions on how the Village adat Council was to be constituted according to adat, and how it was to exercise its main tasks: strengthening traditional values, maintaining the unity of the *nagari* population, managing its riches and settling disputes on adat matters.[46] *Ulayat* rights remained under the control of adat Councils, but they had lost almost all practical meaning. Villages drew their income almost entirely from the central government, so there was no immediate practical reason to press for claims to *ulayat*. And because it was also dangerous to oppose the government, which also claimed control over state land, people lost interest in *ulayat*. In the course of the *reformasi* politics and decentralisation, the provincial government decided to "return to the *nagari*" as basic local government units according to state law and adat. After the province had enacted its regulation on village government in 2000, the districts followed suit with their specific district regulations. Between 2001 and 2003, *nagari* were reconstituted all over Minangkabau as local government units, and the new structure of *nagari* governance institutions was set up and implemented (see F. and K. von Benda-Beckmann 2001a, b). These developments led to an increased interest in adat law and in rights to *ulayat* resources. When the central government cut back on services, villages were forced to seek other sources of revenue, and *ulayat* moved to centre stage. *Ulayat* was no longer an issue of the past, but one on which the future seemed to rest. The greater political freedom in Indonesia made it possible to voice this concern, in Minangkabau as elsewhere, in ways which had been unthinkable before that for fear of repression (see also Biezeveld 2002).

Responding to increasing local pressure, in 1999 the central government issued a Ministerial Regulation Concerning the Recognition of Village Land, in order to resolve the problems of *ulayat* land within adat law communities.[47] The regulation was heavily criticised because it only recognises *ulayat* land that "continues to be held as in the past by the *nagari*, where

[46] A circular of the West Sumatran Appeal Court stated that adat disputes would not be accepted unless the Village adat Council had passed a decision.

[47] From 1994 to 1999 the World Bank carried out an ambitious project to revise and improve the agrarian legal system in which the status of the communal lands was to be explored, see Slaats (1999, 2000).

ulayat land still exists in reality, and where the relationships between adat law community and *ulayat* have not been severed in the course of time".[48] The regulation, Kamal (1999) concludes, thus validates all actions on *ulayat* taken by the government in the past, including the legal transfer of former Dutch plantations to the state.[49]

The provincial government in its decentralisation legislation on village government (2000) had not succeeded in regulating the matter of *ulayat* rights. But the growing protests forced it into taking the initiative for a provincial regulation on *ulayat*. It proposed a draft regulation that more or less restated the disputed ministerial regulation of 1999. This is unacceptable to those such as the Association of adat Village Councils, who demand the reversion of land with expired state leases and use rights to its former *ulayat* status. They presented an alternative draft for a provincial regulation. It defines *ulayat* as those natural and environmental resources that have been received by the people of the adat law community from the ancestors, are communally owned and under the authority of the adat law community to use and extract products for the continuity of the community's livelihood. *Ulayat* has a social function for the welfare of the *nagari* community, the members of the clan and lineage. It can be used by the members of the village, clan or lineage, but also by private companies and the government, provided they fulfil certain conditions set by the holder of the *ulayat* right. The crucial point is then advanced in Article 10 of the ministerial regulation of 1999. It states that *ulayat* that has been used by non-village companies under state law rights (exploitation rights, *hak guna usaha,* or use rights, *hak pakai*) or on other grounds, must be returned to the *ulayat* holder when the period of such use rights has expired (Narullah 2000). The current holders of such rights should discuss with the holders of the *ulayat* rights how to clarify their mutual rights and obligations according to adat law.[50] This is the most extreme position in favour of adat. Not surprisingly, this demand in turn is unacceptable to the central ministry and the provincial government. The central government, aided by the National Land Administration Board, has proposed its own draft regulation in which the disputed regulation

[48] See Syahmunir (2000); F. and K. von Benda-Beckmann (2001a, b).

[49] At a workshop organised on August 5th and 6th, 1999 by the Legal Aid Bureau in Padang to discuss this regulation, commentators spoke of an "injection to kill the *adat* law communities" Kamal (1999), although in the government's rhetoric this regulation was presented as safeguarding adat law communities. Syahmunir (2000) draws the same conclusions as Kamal and traces the legislative history of legal expropriation from the *Domeinverklaring* to the Agrarian Basic Law of 1960 and the later acts through which inroads in *ulayat* have been made.

[50] Such disputes over *ulayat* first have to be dealt with by the Village adat Council. If the parties cannot accept the council's mediating decision, they cannot go directly to the state court but have first to submit their claims to the Association of adat Councils according to the adat principle "you have to go up the stairs" (*bajanjang naik*, see K. von Benda-Beckmann 1984). Article 13 states that *ulayat* can be registered with the National Land Administration Board (BPN), if all members of the matrilineage (*kaum*), or clan (*suku*), or the heads of all clans agree (*atas kesepakatan*). Such titles can only be used as security for loans with the consent of all members of the respective communities (Article 14).

of the ministerial regulation of 1999 is restated. Article 11 states that former *ulayat* land on which a right according to the Basic Agrarian Law has once been given shall become land directly controlled by the state after the expiration of such rights (concessions or leases). Further regulation and management rights are given to the district and municipal governments, which will take into account the assets held by the former holder of the rights. This, in turn, is unacceptable to those who demand the reversion of such land to its former *ulayat* status. The presentation of this draft led again to the protests mentioned in the introduction.[51] The government operates cautiously and emphasises that the draft has not yet been officially submitted to the provincial parliament and that "all shareholders and stakeholders" must first be given the opportunity to criticise the draft (Haluan 25.9.2002). Apart from the land issue, there are also increasing calls for a provincial regulation that clarifies the rights of villages to forestland. In 2003 the issue was still unresolved.

There are other attempts apart from these legal politics to bring *ulayat* resources back under village or clan control. In the past, fear of repression had kept the local population from filing complaints, but now open conflicts, court proceedings and negotiations about forest areas, plantations, water resources and sub-soil resources such as coal, sand and gravel have emerged.[52] Sometimes the villagers' intention is to regain full control over the land to be able to exploit it. More often, however, negotiations are aimed at regaining a say in the use of the resource or getting some benefits out of it. *Ulayat* rights then are used to levy taxes. Some land and village markets have been restored to villages by the district administration. Markets used to be *nagari* property.[53] However, most markets today were built or modernised under the Presidential Programme *Inpres* and came under district authority, which collected market fees (Effendi 2003: 77). According to the new village autonomy, the markets, including the right to collect and control market fees should be handed over to the villages. Solok has handed over all markets to the villages, but other districts have not done so yet. Since many markets were joint markets of several *nagari*, a new problem emerges around the distribution of market fees among villages. It seems that in practice the *nagari* in which the market is

[51] In 2000, the leadership of the Association even issued a "*fatwa adat*" on the issue in connection with the struggles around the land and resources used by the Cement Factory in Padang, see Pimpinan LKAAM Sumatera Barat (2000).

[52] See F. and K. von Benda-Beckmann (2001a, b). There are some famous cases regularly commented upon in the newspapers. One is the case of the land and stone resources used by the Cement Factory in Padang, see F. and K. von Benda-Beckmann 2001. See also Sakai 2002. In Padang adat elders claimed back a school building from the government (Padang Ekspres 26.8.2002). And in the Ombilin region, people have started to mine coal on their *ulayat* land.

[53] On Minangkabau markets, see Effendi (2003); Kahn (1993); Oki (1977). When the *desa* system was introduced, according to the Governor's Decree 103/GSB/1985, *nagari* markets were managed by a market committee that collected the market tax. After deducting 10 percent for wages, the revenue was to be given to the Village adat Council instituted in 1983, see Effendi (2003: 73, 77).

located controls the fees. Some clans have successfully reclaimed (some of) their land or negotiated a share in the profits made by enterprises exploiting natural resources on the village territory. Influential migrants in Jakarta and elsewhere also play an important role in these struggles and help to balance the power relationships between state agencies and villagers (see Biezeveld 2002). Nevertheless, despite these first successes, it is difficult to predict the eventual outcomes, defeats, victories and compromises of these struggles.

d. Whose Communal Property Is It?

Struggles over *ulayat* resources not only concern the relationship between villages and the state. Due to the decentralisation policy, there is an increased focus on adat law and on village resources in the new village organisation. This has given new life to internal village struggles. At stake is the legal and political question of who has the legitimate control over the villages' resources and revenues: the mayor as the head of village government or the Village adat Council as holder of traditional adat authority?

The 1979 Law on Local Government and the 1983 division of villages (*nagari*) into small administrative villages (*desa*), put and end to the *nagari* as an official administrative unit, but it continued to be recognised as an "adat law community". The Village adat Council was the institution representing this community with the task of managing the riches of the *nagari* (mainly *ulayat* resources) and of settling the disputes on adat matters. With the 2000 regulation on village government in which the *nagari* were re-installed as state local government units, this 1983 regulation was repealed. It is an open and contested question who now has such control, the mayor as the head of the official *nagari* government, or the Village adat Council as holder of traditional adat authority. According to a circular of the governor, final control should be with the village government, which should administer it jointly with the Village adat Council. Actual practice varies. In some villages, the authority over village resources has been officially handed over by the chairman of the Village adat Council to the village government. In other villages compromises between the two are negotiated.[54] But many mayors have difficulties getting their hands on the resources still controlled by the adat elders or the Village adat Council.[55] The issue is complicated further, by the fact that there is also *ulayat* of clans and lineages, which is not under village control. It is not always clear who

[54] Apart from the authority over *nagari* resources, there are also some struggles over the distribution of the assets of the former *desa*. There is agreement that the buildings of the *desa* administration now fall under the *nagari*. But what should happen to the motorcycles of the *Desa* Heads, and with their office land (*tanah bengkok*) is contested. In contrast to Javanese villages, office land in Minangkabau is a post-1983 invention and never had great economic significance.

[55] Mayors from the district Agam, associated in the Forum Warga Agam, complained about this, stating that the village wealth belong and should be under the control of the *nagari* government, not of the adat elders (Haluan 31.8.2002).

the legitimate claimant is: the village government, the Village adat Council, the head of one particular clan, all lineage heads within the clan, or even one particular lineage. In the last case, outside investors would have to negotiate directly with the representatives of the clan or lineage, by-passing the *nagari* government or the Village adat Council. This is likely to spark new conflicts about interpretation and actual control over the nature and holders of *ulayat* rights. Every little victory against the state thus tends to lead to new, village internal struggles over the distribution of land and resources.

5. Conclusions

The two different forms of communal property in Minangkabau highlight some of the fundamental problems that have plagued debates about common property in Minangakabau, as well as in general theorectical and policy discussions.

a. Communal Is Not Communal

As the history of *ulayat* and *pusako* shows, communal property can mean very different categories of property relationships even within the same society. Moreover, in both cases, legal status as communal property (*ulayat, pusako*) does not adequately characterise the bundle of rights people have to that property. Communal property constructions are mixtures of individual and group rights. Thirdly, looking at property as layered structures, we have seen that the way concretised rights to actual *ulayat* and *pusako* resources are distributed cannot be inferred from the categorical bundles of rights. Under the category of *pusako* as communal property, a wide variety of actual exploitation rights can exist, held by larger and smaller groups, married couples and individuals. To *ulayat,* too, a variety of actual concretised rights may pertain: no rights in the case of unused resources, rights of exploitation according to adat, and licenses and use rights according to national legislation. Discussing "communal rights" as more or less homogeneous and theorising over how people are likely to deal with property under a "common property" regime, without detailing the kind of communal property and the very different possible constellations of concretised rights, does not make much sense.[56]

[56] The co-existence of large tracts of lineage land and common village lands declared state domain is also frequent in former colonies in Africa. See Bruce (1988); Peters (1987).

b. Misinterpreting Adat Categories

The two main property categories of Minangkabau adat in the adat law literature were misinterpreted. The colonial interpretations of *pusako* as family ownership or of *pancaharian* as individual ownership did not greatly trouble the Minangkabau themselves. While *pusako* was subject to strategic interpretations in trying to adapt it to colonial economic policies, at least the government recognised *pusako* resources as the property of the Minangkabau. Ordinary people were confronted with these misinterpretations only when dealing with government institutions, such as courts, and later with the land registration and extension services. Dutch misinterpretations of *ulayat* had far wider implications, because they legitimated the state appropriation of rights over an enormous resource complex and the actual loss of access. Land of economic value was "privatised" through leases and concessions to planters and mining and logging companies, often with inadequate compensation to local communities. This was similar to other former European colonial empires where "wastelands" had been declared state (or crown) lands.[57]

Misinterpretations of adat categories also contributed to confusion over the analysis of social and economic change in Minangkabau. The interpretation of self-acquired property as individual ownership led Schrieke (1955) to diagnose an imminent breakdown of the matrilineal system, due to ever increasing individualisation of land rights and inheritance of such rights by a man's children.[58] He based his conclusion on the breakdown of the matrilineal system largely on the fact that nearly all land had been pawned and thus converted into self-acquired property. Assuming that such property, like Dutch ownership, would retain its legal status after inheritance and redemption, he concluded that the stock of *pusako* was dwindling away. Schrieke (1955) and Maretin (1961) even spoke of a transition from matrilineal to patrilineal inheritance, especially when self-acquired property of a man fell to his children. They first of all overlooked the fact that pawned *pusako* could be redeemed with the residual *pusako* rights becoming full rights again. Secondly, they overlooked the fact that self-acquired property would become *pusako* for this person's heirs and henceforth be inherited matrilineally within the *pusako* pool.[59] So there were mechanisms to reproduce the matrilineal principle in kinship, property and inheritance law. The categorical system was sufficiently flexible to accommodate quite different patterns of actual property relationships, in terms of the amount of property resources held under classical *pusako* allocation principles

[57] See for instance for Kenya Okoth-Ogendo (1984). See further for Shiva (1989), Lynch and Talbott (1995).
[58] See e.g. Schrieke (1955: 118), similarly Maretin (1961); Kahn (1976, 1980). For a critical analysis, see F. von Benda-Beckmann (1979); F. and K. von Benda-Beckmann (1985).
[59] Later research in the same region showed, that most property was *pusako*, see Adatrechtbundel (41: 392); Oki (1977: 126).

or under individualised and monetised *pancaharian* rights, and in terms of the actual person(s) and groups holding these rights.

Our analysis of this misinterpretation of property rights thus illustrates at least two important points. First, misinterpretations are an eminently political issue. They served very different economic and political purposes depending on the type of communal property. Second, the example of Minangkabau shows how problematic it is to extend conclusions drawn from changes in concrete relationships to changes at the categorical level, and vice versa.

c. Property and Economic Development

The Minangkabau example suggests that there is no inherent economic function of communal property. We have shown that the two types of Minangkabau communal property have undergone very different developments in the economic history of West Sumatra, and that their economic significance has differed as well. The assumption that communal property is unsuitable for economic development is certainly not supported by the Minangkabau example. The function of *pusako* for the social security and continuity of lineages has always been strong, but that mainly related to the non-alienability of the *pusako* stock. The internal differentiation of rights within a *pusako* complex allows for much flexibility and economic, market-oriented initiative. The great economic changes that have occurred took place not because of changes at the level of categorical property rules, but as a result of changes in concretised property relationships, notably the increase of pawning of *pusako* land and production on a household basis. In the past, economic stagnation was primarily due to restrictive policies of the government that suffocated economic initiatives in rice production in order to boost coffee production and protect (colonial) entrepreneurs. It was not a result of the *pusako* structure itself. Most Minangkabau today farm on a household basis and this, too, is entirely compatible with the internal differentiation of the *pusako* structure. Indeed, some of the most advanced farms are on *pusako* land. There are few Minangkabau farmers who favour abolition of the *pusako* system because it hinders economic development.

Ulayat, on the other hand, never had the chance to prove its potential for economic growth. The Minangkabau regarded its function as a reserve for future needs as more important than short-term economic exploitation. The colonial government then assumed control over large resource areas and passed these “waste lands” on to European entrepreneurs. In addition, forestry policies put severe restrictions on the use of forest reserves. Under decentralisation, villages are now starting to exploit newly restored *ulayat* resources economically. It is still too

early to decide in which ways economic development can be supported under these new exploitation patterns.

d. Struggles over Rights – Struggles over Law

Struggles over communal property are usually treated as reflecting the opposition between communal and individual *rights*. But as our examples show, they may also concern struggles over which *law* is applicable, that is, about the wider normative, ideological and political systems of which property rights are a part. That property rights are "embedded" in a wider set of social relationships has become generally acknowledged, but the degree of embeddedness in legal systems deserves much more attention. This is particularly important in plural legal systems where the communal property rights that are being contested are usually based in local, ethnic or territorial laws that are more or less traditional, more or less customary. By contrast, individual private ownership rights, promoted or rejected as the main alternative, are based in state law. Our examples show that struggles over communal property in important ways have been struggles over which law – adat, state or Islam – is the valid frame of reference for determining legitimate categories of property holders, objects, rights, and the rules governing appropriation, allocation, transfers and inheritance. The struggle over property and inheritance are often *pars pro toto* disputes in which the question whose law and whose decision making authority should prevail becomes the major issue.

In the current literature on land rights in Minangkabau and Indonesia in general, with its focus on *ulayat,* these legal struggles over communal land are reduced to the relationship between adat and the state. Debates about the recognition of adat rights and registration of communal land are a case in point. While discussing communal property, they only address *ulayat;* the arguments do not hold for *pusako*. Islamic law is largely absent in these discussions.[60] This makes sense for *ulayat* rights, for the colonial past and for the current struggles in the context of decentralisation. Islamic law cannot provide a basis to legitimise claims to natural resources on village territory. But it does not make sense when *pusako* is presented only as adat law in a struggle with state law. This leaves out the ongoing tensions and struggles with Islamic law. Islamic law remains invisible in land rights issues, because that struggle seems to be over "inheritance" only, not about landed property. But

[60] Haverfield (1999: 69), for example, states that the acknowledgement of adat rights is one of the greatest challenges for the state. When discussing how state definitions of state land and state forest relate to adat rights (1999: 62), she has *ulayat* and not *pusako* in mind. See also Fitzpatrick (1999). The fact that discourses in West Sumatra themselves are often framed mainly in terms of *hak ulayat*, but distinguish between *ulayat* of the village, of clans and of lineages, makes the discussion more complicated: *Ulayat kaum* is often identical with the *pusako* of a lineage. See Naim (1968). In the discussions about recognition of adat rights it is overlooked that the official law in state courts pertaining to *pusako* property, pawnings and inheritance is adat law.

Minangkabau property law must be seen in its temporal dimension, including inheritance. Systematic application of Islamic law would put a stop to the *pusako*isation of *pancaharian*, and would withdraw resources from the *pusako* complex. But we have seen that Islamic influences in adat have not fundamentally undermined the *pusako* logic and that Islamic law has not replaced adat inheritance rules.

The Minangkabau examples show the importance of looking at property regimes as embedded in larger social, economic and political developments, but also in wider legal structures. But this embeddedness, too, may play out very differently for different types of communal property. Ignoring that fact has meant that theories and policies based on a simplistic assumption about communal property has led to many policy failures. Treating "communal rights" as a more or less homogeneous category and theorising over how people are likely to deal with property under a "common property" regime, without detailing the kind of communal property and the very different possible constellations of concretised rights, is bound to fail.

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