Chapter 5
Land Tenure

Rights of Disposal of Land

Although in rituals and on the occasion of ceremonies there still exist vestiges of a system of communal ownership of rice-fields, within living memory the system has always been one of individual title to land with more or less absolute rights of disposal. The significance of the more or less will be discussed later, but for the moment, before we go on to consider transactions involving land, we need to describe how this transition from communal to individual title occurred, and suggest some reason why it should have happened so quickly relative to other areas in Sumatra where the alienation of rice-land, at least to non-family, even today presents problems.

The procedure by which a person makes a request for special rights over land which lies in the village domain and which is not being worked by others is known in Pondok Tinggi as *minta arah*, [1] But in fact, all the lowland area in the territory of the village has long ago been distributed and so has a great portion of the upland area. As far as I know there have been no requests for rights to use land for agricultural purposes since before the Japanese Occupation. In the past, if the Depati of the village in council granted a request for land, which had to be made in the name of a woman who was a member of the village, then their deputies, usually men of the status of Rio, had to look over the land in question, ascertain the boundaries and measure the area. When this had been done a *kenduri* was held to ratify the grant of the land, and, I believe, small token payments may have been made to the Depati. The last occasion on which land appears to have been requested in this way was in the late thirties during the allocation of sections of Renah Kayu Embun.

The land which has been distributed by this procedure is known as land which has been given according to *ajun arah*, which seems to mean given under the advice and authority of the village leaders. This form of land grant to the individual by the community is common in many parts of Indonesia and the rights which individuals enjoy vis a vis the community over such land has been a matter of some discussion by adat law experts. I do not

intend to rehearse the various arguments here concerning whether the most appropriate term to describe such rights is rights of disposal (*beschikkingsrecht*) or rights of exploitation (*genootsrecht*) or rights of preference (*voorkeursrecht*) (see ter Haar, 1962:89-110), but I will state the position as far as it applies to Pondok Tinggi. It seems that the community in the last instance retains a right of disposal over the land even when it has been allocated to an individual. The latter's rights, then, are not - at least in the traditional view - absolute and are held conditionally, even though they are inheritable by the heirs. The most binding condition is that the land once allocated must be put to use and be under cultivation. If it is not, it reverts to the village domain and may be reallocated. The *adat* sayings are very specific about this, defining precisely what being under cultivation means and stating when land which may previously have been exploited may be deemed to be no longer being used. When rights to a plot of land are in dispute, for example, opportunity is given to the individual to prove his claim to land by showing evidence of cultivation or the remains of any building he may have erected on the land. If such evidence is not forthcoming the land is considered to have reverted to the community.

In most cases there is little likelihood of the land reverting, unless it lies in a remote spot in an upland area which an owner has found unprofitable to cultivate. Very recently, however, one or two issues have arisen with respect to Renah Kayu Embun allotments. Some of these have not been under cultivation since 1942 and have now become overgrown patches of secondary jungle. In an effort to encourage young farmers to exploit the land there the local government has tried in the last few years to suggest that those families who had been allotted land there and were not now cultivating it might be deemed to have forfeited their rights to it, and anyone in the village who chose might work the land. Although this is in accord with *adat* practice, this policy has caused some resentment in the village. And in fact people who have thought about taking over land which had been allocated to others in the thirties rather than risk unpleasantness, have approached the people concerned and bought them out for small sums. Despite the provisions of *adat*, then, people clearly feel strongly that land once given according to *ajun arah* becomes personal property over which they have absolute rights of disposal. One can see very easily how this notion has arisen in the present generation as a consequence of their experience with other areas of *ladang* land which were once in the *ajun arah* category.

It appears that the gardens in the hills around the Jembatan Satu region were first allocated about a hundred years ago when coffee was first grown in Kerinci, and so they have been in the possession of families for four or five generations. The original right to use the land may be inherited by the heirs of

the person to whom the land was first given. Furthermore, although only women may be granted *ajun arah* land, nonetheless when husband and wife have jointly worked the garden it is to be considered *harta pencarian* [2], or part of the joint estate which may be inherited both by sons and daughters. Certainly in documents drawn up in the twenties and thirties to settle officially the division of property among heirs there is already evidence that this land was being treated as though individuals had full title to it and could dispose of it as they wished. As *ajun arah* land was passed, then, from generation to generation its original provenance was ignored or conveniently forgotten, and the gardens were considered the personal property of those families who had worked them. In the twenties there is also evidence that individuals could dispose of this land by sale without anyone questioning their right to alienate it in this way (*Adatrechtbundel* XXVIII:311-314).

What happened with respect to the *ladang* land also applied to land within the original square of the village. Families moving out from the *larik* areas in the village centre requested small plots of land on which they might build houses and although this land was always granted under the usual *ajun arah* conditions, in the course of a few years not only the house but also the land on which it stood were taken to belong to individual families. They had the right to dispose of it according to the usual provisions of *adat* law regarding land transactions and inheritance. Although there was no written title to land granted as *ajun arah*, the general knowledge of the community concerning the ownership of the property meant that there was no difficulty about transactions. And once such land had become the subject of a transaction and documents of sale were drawn up, as came to be common in the twenties, then such documents were considered proof of ownership in any future sales. It was, of course, well known that land in the original square of the village was *ajun arah* category, but it was not until recently that this presented any problems in buying and selling.

In order to bring about a more equitable distribution of land in the early sixties the Indonesian Government enacted some legislation dealing with land reform and bringing into effect a number of laws concerning rights and titles to land. The stormy history of this legislation known as the *Undang- Undang Agraria* does not concern us here, but its effects on procedures involving transactions in Pondok Tinggi are of direct relevance to us. Morison in the thirties had noted that an earlier attempt by a central government to produce legislation regarding land in Kerinci had had very little influence on customary practice and implied that this was no bad thing. The *Undang-Undang Jambi*, a codification of *adat* principles in Jambi drawn up in 1905 and intended to apply to Kerinci, was, he said, in opposition to the *adat* practised in Kerinci. For example, the *Undang-Undang* declared - very conveniently

for the colonial government's practice of extending concessionary rights over land to private entrepreneurs - that land within the boundaries of a district which were not currently being exploited by villagers was automatically the possession of the government. This was a version of the well-known Domeinsverklaring of 1870 making the same true in Java. Such land in Kerinci, however, was very much part of the land belonging to the village over which the village council had rights of allocation. Practice in Kerinci went its individual way, then, unaffected by this legislation.

In October 1975, however, the provisions regarding the sale of land as spelled out in the *Undang-Undang Agraria* came into effect in Kerinci.[3] Under these provisions the *ajun arah* category of land is not recognised, nor, it seems, is there any way in which communal land may be bought or sold. This has caused some problem to those who wish to sell property within the village, which they have inherited from parents or grandparents directly, since the only documentary evidence they have shows that they have a title to the house, but hold the land only as *ajun arah*.

This is sometimes a serious stumbling block to transactions, as I witnessed in one case in 1978 when a house had to be sold separately pending negotiations on how to resolve the problem of rights of disposal with respect to *ajun arah* land. In fact the head of the local department of Agrarian Matters (Sub-Direktorat Agraria) to whom problems like this are now being brought with increasing frequency is recommending that rights of use over *ajun arah* land simply be converted as far as possible into rights of individual ownership, but this proposal, which has yet to meet with the approval of the village council and the village head, has not yet been taken up with any seriousness, since, on the surface at least, it does appear to go against traditional practice. In individual cases, however, there does not seem to be any insurmountable objection to the conversion of one type of right to another, although time and patience may be required to convince the relevant village officials - in this case mainly the *nenek-mamak* and the village head - that this is an acceptable procedure. What we are seeing, then, as the national legislation in this respect comes more and more into force in Pondok Tinggi, is the jural confirmation of a practice which violates older principles of *adat* but which in fact had become entirely acceptable in the *adat* view over the last hundred years.

Undoubtedly, the transition from communal to individual title was hastened in Kerinci by the possibility, inherent in the system of inheritance, of heirs taking sole possession of plots of land. True, there was also a system of rotating rights to rice-fields known as *gilir-ganti*, and this certainly prevented individuals from disposing of their land altogether, although in

fact it did not prevent the possibility of the pawning of one's share. The very fact, however, that there was at least some land which was owned outright by individuals meant that, when it came to deciding whether one should sell or pawn land, the individual was not bound, as she appears to be under Minangkabau law, to have the approval of the whole family group - although in most cases as a matter of courtesy to kin the individual would probably inform relatives of her intention. Hence she could arrive at a decision without too much procrastination or difficulty. Furthermore, once a precedent had been established of individuals disposing of land by sale or pledging, this meant that the principle of such transactions had been accepted. And although there might be other practical difficulties involved in particular cases where people might wish to sell their land, an objection on principle to alienalibility was not one of them. Given, then, this notion of individuals being at liberty to dispose of land it is understandable that, when the economic circumstances of the community changed and Kerinci was brought firmly into the orbit of the trade and commerce of the international economy, people should turn to the possibility of pledging and selling their land as the most immediate way of raising money. In Minangkabau the process took a little longer precisely because the principle of alienability had to win general acceptance before this could be done.

There is some evidence from the oldest living members of the community and from accounts of witnesses in court cases that it was relatively common to pawn land before the Dutch entry into Kerinci. We do not know the reasons which might have led people to want to pledge land but we do know that Dutch coinage was already circulating in Kerinci by the middle of the nineteenth century and that gold and silver had for a long time been a medium of exchange. We know, too, that Kerinci men were engaged in a flourishing trade on the coast and that the area was known to be a centre of banditry where there was a lot of gambling centred on cock-fighting. There also seems to have been occurring some slight economic differentiation at the time but the details of this are impossible to discover. It was in these circumstances that there arose a system of pledging of land which may indeed have had its origins further back than the second half of the nineteenth century but of which we know for certain from this period.

The earliest form of cash transaction which we know about is known as *gadai*, usually translated as pledging or pawning. *Gadai* seems to take two forms. The most common form is when one simply releases one's rights over a plot of land for an indefinite time in return for a fixed sum. The possibility of the redemption of the pawn is always open. In the other case a minimum period of time during which the pawned land must be in the possession of the pawn-taker (Dutch = *pandnemer*; Ind. = *pemegang gadai*) is

stipulated and the land may not be redeemed before that time has elapsed. This second type of *gadai* has sometimes led to confusion and dispute. It appears to have come into being during the early twenties when for the first time written records were kept by parties involved in *gadai* transactions.[4] I have one record of a bitter dispute which arose concerning land which had been pledged in the thirties where a four year period was set. The land was not redeemed after the four years had passed, and indeed it was only when both parties in the original transaction had died that the heirs came to dispute the conditions of the agreement. The heir of the original owner of the land collected some money together and expressed a desire to redeem the ricefield which had been pledged. The heir of the pawn-taker pointed to the four year stipulation and maintained that it implied that if the land was not redeemed after the fourth year then it would automatically become the possession of the pawn-taker. This was not accepted by the other party who argued that the four years implied a minimum period for which the land must stay under pawn. A long drawn out dispute ensued with the parties nearly coming to blows in the ricefield which was the subject of the disagreement. The matter was only resolved in 1957 when the son of the original owner decided that rather than go through the long and involved process of litigation he would sell his title to a man from Kumun who had already looked at the issue carefully and had said that he was quite prepared to go to court if the pawn-taker's heir did not concede that the land could be redeemed. (Eventually it appears that he and the other party came to a compromise where it was agreed that they should each have a half share in the land and work it on a rotating basis.)

Returning to details about transactions in the pre-Dutch period, the most reliable information I obtained was from a former village head, Nantan Kamil, who was about eighty years old and had a remarkable memory for figures. He was also a fervent champion of Dutch colonial rule which he said had been very beneficial for Kerinci, and it was often in the context of some point made to illustrate this that he gave me some interesting information about village life in former times. The following extract from my notes is taken from a conversation with him in which he mentioned land transactions in passing.

> Another good thing which had been done by the Dutch was the institution of a regular timetable for planting and harvesting *padi*. He was very interesting about this. According to his account, before the Dutch came there was already a concentration of land in a few hands being built up. People got into debt, or didn't have enough rice so they pawned their land for small sums. Even before the Dutch came money was known. As a result there were landowners

> who possessed as much as 10 *jenjang* (approximately two and a half hectares) who employed labourers to work their land. Because there was no regular timetable of planting and harvesting and people planted at any odd time, there was always labour available. When the Dutch instituted a proper timetable with fines imposed on those who did not work the land, the large landowners were compelled to lease out the land for small sums. Gradually people earned enough to be able to redeem pawned land and there was a more even distribution of wealth. This had happened in his case. He had redeemed land belonging to his grandfather which had been pawned in the pre-Dutch period.

On another occasion I asked him for more information of what went on in the pre-Dutch period and he gave me some details about the sums of money involved in the transactions. *Sawah*, he said, could be pawned for between D.fl.50-60 a *jenjang* depending on the quality of the land. (This is approximately the cost af a full-grown buffalo at about the same time which gives some standard of comparison.) He also mentioned that a D.fl.2 fee on the first D.fl.100 and D.fl.1 for each subsequent D.fl.100 was levied on all transactions and this was paid to the Depati of the village. He did, however, say that his knowledge of this fee was from hearsay and that he himself had had no direct experience of it.

Gadai, then, was the earliest form of cash transaction and continues even today. People are reluctant to part with their land altogether, but may find themselves short of cash. A one-year lease of the land would not realise sufficient money and a *gadai* transaction for a specified length of time seems the ideal arrangement. The most recent *gadai* document which I saw referred to the pledging of a rotating half-share of some *sawah* in 1972 for a period of twelve years i.e. six turns. Although I had been told that these days when cash sums were mentioned in *gadai* documents these were always pegged to a gold standard so that one avoided the unpleasantness which had often arisen in the past (during the Japanese period and the years of revolution which immediately followed) when rampant inflation made a mockery of the figures, in this document there was no mention of gold.

Changes in the law concerning *gadai* were introduced in the *Undang-Undang Agraria*, but these have had only a slight effect on practice in Kerinci to date. According to paragraph 7 of the Regulation No.56 of 1960 concerning the implementation of the Agrarian Laws, land which has been held in pawn for more than seven years must be returned to the original owner without the latter having to make any redemption payment. As von Benda-Beckmann writes (von Benda-Beckmann 1979:420, n.75) the purpose of this

legislation was to prevent the situation which was arising in Java of impoverished families being compelled to pawn their small plots of land and then never being in a position to redeem them. The situation which usually arises in West Sumatra is rather different. There, it is often rich farmers who pawn their land to the less wealthy simply because they prefer to have cash in hand, even though the sum might be quite small, to the arduousness of having to cultivate the land themselves. If this law was to be applied in West Sumatra, then, it would mean hardship for the poorer farmers who would be deprived of the little capital they have which they invested in taking a pawn on land. The situation in Pondok Tinggi resembles that in West Sumatra, nevertheless, in various cases which have come to court mention has been made of paragraph 7 and its provisions have been taken into consideration - see for example, the case discussed in Appendix V where this happened. For the most part, however, especially with regard to those disputes which are never taken to court, no party ever claims that pledged land should automatically revert to the the original owner after seven years and there are several reasons for this. First of all, very few people are aware of the national law. Secondly, however just the provision may seem, it runs contrary to *adat* practice, and although there is nothing new about differences which arise between these two types of law, in this instance it seems that prevailing social conditions are not such to make a change in practice acceptable, and so any attempt to enforce the law on this point would simply meet with tactical evasion. Thirdly, one finds in practice that the great majority of *gadai* transactions are conducted by people who are related, and since the arrangement regarding the pledge is based on the traditional principle of redemption any attempt to renege on this by citing the national law would lead to very bad feeling between families.

It is precisely because the local government officials are so well aware that property disputes in the community are largely intra-family affairs that they are reluctant to take up officially cases which are brought to them for arbitration. As the local head of the Agrarian Department explained to me when I enquired how he was inclined to react to people who came to him for advice in matters of dispute, in particular in relation to paragraph 7, the most sensible policy is to instruct enquirers about the nature of the law, and then simply to suggest that the parties to the dispute get together as members of a family and settle the matter between themselves. Although this expedient of joint discussion has usually been tried before anyone has thought of approaching an official representative, the very fact that it is recommended once more is often sufficient to persuade people to reach some sort of compromise.

The most frequent disputes about who has the rightful title to a plot of land usually turn upon the point whether the original transaction was a sale or a pledge, and it is to a discussion of selling land as being a further type of cash transaction that we now proceed. I have found no evidence which might lead us to suppose that land was ever bought and sold outright during the pre-Dutch period. It is, however, clear that, at the latest by the thirties, rice-land could be purchased. This change in attitude, if it is one, and if my failure to find evidence of earlier sales does reflect that there simply were not any, requires I some explanation, since at first sight it is difficult to understand why someone should sell land which he might just as well pledge for an indefinite period for almost the same sum.

The answer must be sought in the social and economic changes which were occurring at the time. In the first place, a great number of the sales took place, like the *gadai* arrangements, between members of the same family and often meant consolidating family property and avoiding fragmentation. It is easy to perceive that one of the consequences of having a system of inheritable and partible rotating rights to land is that by the time such shares reach the third generation rotating turns to work rice-fields might fall so infrequently as to frustrate people. In these circumstances one of the expedients to prevent the ludicrous situation where turns might fall only once in thirty or forty years was for one member of the family to buy the others out, and with the expansion of the community which was occurring at the time, this is what appears to have happened in many cases. There was no stigma against buying and selling property within the family, indeed quite the reverse: there was strong social pressure to keep such transactions in the family where responsible representatives could keep a proper eye on the interests of all those concerned. Thus as far as the *adat* view of things went the ideal of only pawning land was modified when it came to conceiving of transactions between close kin. Although to anyone on the outside this looked very much like buying and selling, and thus anyone who chose to do so could point to such instances as establishing a precedent for sales in *adat*, to people on the inside within the family this appeared more like a rearrangement of assets between relatives: a sale, then, but honour and *adat* were satisfied.

In the circumstances which arose in the twenties and thirties, however, and for that matter which still arise today, it might well happen that a family found itself in desperate need of cash with none of their close relatives able to assist, and so they might be forced to look for a buyer outside the circle of close kin. At this time in Pondok Tinggi two or three families were managing to accumulate a fair amount of wealth through trade and commerce, and, apart from spending this on the cost of the pilgrimage to Mecca, there were

few avenues open for them to invest their wealth. Education, for example, at a tertiary level for their children did not exist. Many of these rich families therefore turned to the acquisition of real estate. This meant that they were interested in buying land outright, and not so much in taking a pawn. Since they were the only ones in the community with the necessary ready cash they could afford to call the tune when anyone approached them, and so people were obliged to sell.[5] Another way in which land came on to the open market in a manner violently in opposition to *adat* principles was through public auction. This could come about in various ways: the bank could seize the land of debtors who were unable to clear their debts and had offered their land as collateral, or the property of someone found guilty of embezzling public funds might be auctioned by the colonial government. Although it might seem that the occasions on which the inhabitants of a small village might be involved in such matters would be rare, in fact,there were a number of spectacular cases in the twenties and thirties in Pondok Tinggi in which this occurred. Men of the village who had acquired a reputation for their wealth suddenly found themselves bankrupted and disgraced and their property on the open market for sale. The seizing of land by a government body in this way, however, goes very much against the grain of *adat* procedure, as ter Haar has pointed out (ter Haar 1962:125), and in Pondok Tinggi aroused considerable resentment, since the bankrupted parties found it difficult to accept that fellow villagers who had bought their land at auctions were now the new owners of what they still felt was their property. One case illustrates this very strikingly.

> Sometime in the thirties a Pondok Tinggi trader named Rusli was unable to repay the loan which he had taken from the bank. Some of his land was auctioned. There were five *jenjang* of *sawah* located in four different areas: Koto Lebu, Kinun, Siku and KeBangko. All this was bought for D.fl. 209 by H.Achmad one of the wealthiest men in the village and a respected figure. Some of the land was almost immediately disposed of by H.Achmad but he retained the Kinun plot and this was the subject of a bitter dispute between him and Rusli. The matter was further complicated by H.Achmad having married a woman called Asnah who was Rusli's *kemenakan*. What happened was that Rusli and his family wished to buy back the land in question, claiming that an agreement had been made in front of the Mendaporaad (the local Mendapo judicial council) to the effect that the auctioned land could be redeemed at a later date by Rusli. H.Achmad denied very strongly that there had been any such agreement but said that he would be happy to give the land to his wife so that it would remain in the family of the original

owners. This was not acceptable to Rusli who wished to repurchase the land for himself. The situation became rather tense since nobody directed by H.Achmad dared to work the land since they were physically threatened by Rusli and his kinsmen if they did. Finally, things came to a head during the Japanese period when a father-in-law of H.Achmad - not the father of Asnah but the father of another wife - decided that he would risk a confrontation with Rusli and went down to work the field. There was a violent scene with people wielding sticks and *parang* and eventually the police were called. The upshot was that Rusli was fined Rps.5 and made to acknowledge H.Achmad's title to the land.

There was also great pressure from Minangkabau immigrants who were streaming into Kerinci in great numbers during the twenties to persuade villagers to sell land to them outright so that they could build houses. They were prepared to offer relatively high prices for small plots of land, much more than the land was worth if assessed solely as arable fields, and this encouraged villagers to swallow whatever scruples they may have had. In this way the land on either side of the road leading eastwards out of Pondok Tinggi was piece by piece alienated to non-villagers without much protest being raised, since the trickle down effect of the high prices for the land kept almost everyone happy.

The possibility of an individual disposing of land through sale was, then, firmly established in the twenties, but there remained one or two restrictions on the absolute freedom of disposal and it is these which led me to qualify earlier my statement about individual titles to land. Bills of sale drawn up in the colonial period had to contain the signatures of various witnesses to the transaction. The colonial authorities required the signature of the *kepala dusun* or the *kepala mendapo* to testify that to the best of their knowledge the sale had been conducted according to the proper procedures and the land in question really was at the disposal of the seller. From the point of view of *adat*, representatives of the seller's family as well as the *nenek-mamak* of his *lurah* had to sign to say that they approved of the sale. It never seems to have been specified who the family representatives should be, but in general they fall into three categories all of which ideally should be represented: the *teganai* of the seller, the latter's co-heirs and his own heirs. The signatures of these three groups of people were required to show that as far as the family was concerned: the land did belong to the person in question as witnessed by the *teganai*; that his co-heirs, i.e. his brothers and sisters, acknowledged this; and that his own heirs had no objection to the sale of part of the estate which was *in posse* their inheritance. Very often there might be difficulties in persuading members of the family to sign the documents as required,

since there might well be a problem about who held the title to the land, or heirs might resent the purpose for which the land was being sold, e.g. if the money was going to be used for the wedding expenses of a father's intended second marriage. Complicated negotiations would have to be embarked upon usually involving trade-offs with people agreeing to sign on condition that they too benefited financially from the transaction. In the final analysis, however, if after prolonged discussion a family representative persisted in refusing to append his signature, there was nonetheless a possibility of the transaction going through. Everything depended on the willingness of the *nenek-mamak* and the *kepala dusun* to sign.

This, it seem to me, is where the structural breach in the law was made. We should recall that both the position of *kepala dusun* and *nenek-mamak* (Rio Pemerintah) were colonial creations imposed on the traditional government of the community. They had no counterpart in the indigenous system which, as we have seen, appears not to have recognised much authority above the level of the *perut*. Thus there was no traditional ethic or commitment which bound the holders of these offices to the communities for which they were responsible. There was, of course, a commitment to the general notion of responsibility, but there were, for example, no *adat* sayings which referred to the extent of their duties and obligations, as there were for those who held the indigenous titles of Depati or who acted in the capacity of *teganai* in a family. More importantly, there was no long historical tradition which could have taught the community how these institutions were to be interpreted in relation to social obligations. It was left to the first individuals who held the offices to make what they could of their task. Unfortunately, it seems that many of these men - and I am speaking here of the *kepala dusun*, not just in Pondok Tinggi but throughout Kerinci - chose to regard their office not as an extension of the traditional roles of authority, but as an opportunity to enrich themselves. In other words in their scheme of things these new offices were better accommodated within the sphere of business and trading activities (in which there prevailed a highly individualistic ethic fairly well elaborated in *adat* maxims which warned not to let others get the better of you and not to scruple about arranging things to one's own advantage) rather than within the sphere of kinship where there was at least an ideal ethic of mutual support. The consequence of this was, to put it bluntly, that signatures could be bought in difficult circumstances. And when such corruption became apparent to the community at large the office of *kepala dusun* fell into disrepute, and even those who did try to remain honest were tainted.[6]

Despite the changes introduced by the *Undang-Undang Agraria* regarding the documentation required to ensure that a transaction is valid under national law, of which more details will be given below, in effect the

community still abides by the practice established in the twenties. Thus documents with the signatures of the same categories of persons are still drawn up, and the same evasions are resorted to whenever difficulties arise. Let me give some examples of disputes which I got to know about which appeared to be typical.

> Nantan Tuo wanted to raise some money rather desperately at the beginning of 1979. He decided to sell some land in the *Sawahan* area to some Minangkabau immigrants who wanted to build a house there. He sought the advice of the Ketua RT of the neighbourhood in which he lived. The latter offered to act as a broker for him seeking the necessary permissions and getting the proper documents drawn up. Nantan Tuo agreed to this and said that he wanted to get Rps.200,000 net. (*bersih*) out of the sale. The ketua RT eventually persuaded a purchaser to pay Rps. 400,000 for the land and after getting some signatures to a document known as a *surat jual-beli* (bill of sale) as required by custom within the village he set off to get a final signature from the *kepala dusun*. By this time, however, Ani, Nantan Tuo's niece, had got to hear what was going on, and since apparently she had some title to the land she was indignant at the way in which people seemed prepared to deprive her of her inheritance. She had, therefore, written to the *kepala dusun* explaining her case and saying that unless the *surat jual-beli* had her signature the transaction was illegal. The *kepala dusun* investigated the matter and found that her claim was just and so refused to put his confirmatory signature to the document, despite efforts made to persuade him to do so. Eventually, after a great deal of negotiation Ani and Nantan Tuo agreed that there should be a proper settlement of their joint inheritance: Nantan Tuo should be allotted outright the land he wished to sell and Ani should get against this a *ladang* plot in the hills.

This was an example of what might occur if two co-heirs disputed the title to a piece of property. The following account shows what happens when an heir witholds her signature.

> Tino Nek wanted to sell some of her property so that she could send some money to one of her sons who was at university in Jakarta and was being required to pay heavy tuition fees. She decided to sell some *sawah* in the Jembatan Serong area to a Minangkabau bank official who wanted to build a house there. Tino Nek's husband was dead and the property she wanted to sell was *harta pencarian* which had been jointly earned by them both when he'd been alive.

A *surat jual-beli* was drawn up and the required signatures were obtained, all except for that of Mak Ujang, Tino Nek's eldest child. What the reasons were for the latter's refusal to sign were never altogether clear to me. She was however, a formidable woman in the community and people were very wary of crossing her. Consequently, when the bank official heard that she had refused to sign as was required, he backed out of the deal. Tino Nek then turned to one of her *kemenakan* (BD) and in some desperation offered to sell her another plot of land which she knew that the latter had always been interested in. This *kemenakan*, Mak Tuti, was also a strong-willed woman, and even though she knew that there was a good chance that Mak Ujang would not sign in this instance too, she agreed to buy the land. Again a document was drawn up containing all the right signatures except that of Mak Ujang, but including those of most of the latter's siblings. When the matter was taken to the *kepala dusun* he was at first unwilling to sign his approval of the transaction, but when it was pointed out that other heirs had signed and that, furthermore, according to the new procedure under the *Undang-Undang Agraria* the signature of heirs was not necessary anyway, he reluctantly agreed to sign. In the event things turned out well since when the final bills of sale were being arranged Mak Ujang decided that she had no objection to signing. The reason for her change of mind was as obscure as her initial refusal. It seems to have been related to long-standing disputes within the circle of the family which need not concern us here.

The trouble to which people will go to obtain the signatures of heirs *in posse* clearly indicates that there is a conviction in the society that heirs do have some rights with respect to property which they stand to inherit. Now, although we know that this is a common principle in law found in many societies as Maine (1965:165) and others have pointed out, we do not find much mention of it in descriptions of *adat* law in Sumatra. This leads me to think that the general acknowledgement of this principle today reflects the influence of ideas taken from Dutch law where it seems that, unlike English law, the rights of potential heirs can limit the extent of property which a person may give away to outsiders by testamentary disposition. If I am right, it has only taken a short time for this principle to win tenacious acceptance, at least in Pondok Tinggi. Not only are the signatures of heirs necessary on bills of sale where land is to be sold outside the family, but even the *inter vivos* transmission of gifts of property to children can arouse resentment and parents may have to have recourse to subterfuges such as feigning the procedure of a sale in order to satisfy all their children (see the case mentioned

in the discussion of property in the next chapter). This pressure on parents to acknowledge the individual rights of each of their children imposes limits on the final kind of transaction which I want to discuss by means of which property may be alienated, the free gift.

The customary practice in the disposal of property is for parents gradually to relinquish rights of exploitation to the children in turn as they reach adulthood. It seems that as long as the community was principally dependent on agriculture for its livelihood this arrangement worked well, but now, the economic development of the area has brought about the rise of new demands for training and recruitment into non-agricultural professions. The possibility of balancing shares between children by a more or less equal allocation of land becomes exceedingly difficult, and so we find children coming much more into competition with each other, often making their demands in terms of cash rather than land. Each sale of land made in order to accede to the demands of one of the children causes resentment among the others. Thus one finds that although the practice of *inter vivos* transmission is still common, children tend to keep stricter account of what each has received and parents themselves may often draw up lists of expenses which children have incurred. One finds occasionally that parents will use an act of *hibah* as laid out in Islamic law and recognised under the *Undang-Undang Agraria* to make gifts. Even in these cases, however, we find that although such gifts are in principle recognised by the society as a legitimate way of disposing of one's property, nevertheless they arouse much discontent among family members.

A good way of looking at the contemporary situation with respect to land transactions is to observe the procedure which has now to be undertaken as a consequence of the recent implementation of the *Undand-Undang Agraria* in Kerinci. Until 1975 the only document which was required as a valid proof of a sale was the *surat jual-beli* the form of which had become relatively standard in the thirties. The document was usually drawn up on official government franked paper of a kind purchaseable at the local post office and known still today as *zegel* (= the Dutch for seal, referring to the crest stamped on to the heading of the notepaper where the amount of stamp duty paid was written). On the document were recorded the details of the transaction: the name of the two parties involved, i.e. the buyer and the seller, a description of the property being sold, its measurements and exact location; and finally, the sum which was being paid for the land. This was witnessed by: representatives of the family of the seller as outlined above, the *nenek-mamak* of his *lurah* and, lastly, by the village head and the *mendapo* head. With minor variations, for example clauses stipulating that the seller agreed to take full responsibility if a third party claimed a title to the

land and would reimburse the purchaser if the latter found that in view of such an event he was unable to take full possession of the land, this was the formula for all bills of sale until 1975. In that year, the *Akta Penjualan Tanah* (Document for the Sale of Land), the bill of sale laid down in the *Undang-Undang Agraria* as the only acceptable proof of the sale of land, came into force in Kerinci. The form which this document should take had been carefully spelled out in the new legislation. Specially prepared blank forms were to be on sale in the major provincial post-offices. The information required on the form was similar to the details on the *surat jual-beli* with one or two additions, the most important of which was proof that the land for sale had been properly registered at the office of the Agrarian Department. Furthermore, the document had to be signed in the presence of a public notary or, failing that, in the presence of a civil service official whose rank entitled him to authorise such transactions (the so-called Pejabat Pembuat Akta Tanah = Civil Servant for Organising Land Documents, in most cases the local *camat*). The intention seems to have been to make the transacting of sales of land as public and open a matter as possible to avoid all possibility of collusion within the confines of village society. In order that the PPAT could be satisfied of the details completed in the Akta form it was also stated that the village head should be a witness to the document, thus vouching for the truth of what was set down as far as he was aware of the situation. Finally, a 10% fee was charged for the administration of the document and this was to be shared among the PPAT and his staff. The form was to be completed in quadruplicate, one copy going to the *camat's* office, one to the Agrarian Department, one to the purchaser and one to the seller.

In practice, although this requirement to complete an *akta* form was intended to simplify procedure, as well as to create a uniform system which would assist the population at large to understand more clearly the legal nature of land sales, it has proved up till now in Kerinci only to have complicated matters and confused people. One difficulty of the new system is that it places too much responsibility on the *kepala dusun* who is expected to be conversant with the details of the land holdings in the village. In Java where there has been land registration for some time this is not unreasonable, but in Pondok Tinggi and other villages throughout Sumatra this is an impossible task. Traditionally, it is the *teganai* of the individual families who are expected to know about land holdings in detail and the Depati and *nenek-mamak* of the *lurah* are supposed to have a rough general knowledge of the land belonging to their *anak betino*. This was why the signature of a representative of the *lurah* was so important in the old *surat jual-beli*. It was a guarantee of the details of the ownership of the property being sold and if there was any falsification it was this representative who would be held

responsible. Under the new system the *lurah* representatives are excluded. This has upset them not only because their traditional role as guardians is ignored but also for more pragmatic reasons, because they are no longer able to claim the customary fee which they receive for being a witness to the transaction.[7] Their response to the new circumstances has been to employ a certain amount of intimidation on villagers within their *lurah*, to the effect that if they are not consulted when the original transaction goes through, then it should not be expected that they will come to the aid of the parties concerned, should any dispute arise at a subsequent date about the ownership of the land.

The upshot of the difficulties which the new legislation is running into, then, is that most transactions are now conducted in two ways: a *surat jual-beli* is conducted for internal purposes within the village in the traditional way, and then an Akta document is drawn up to satisfy the requirements of the national law. This, of course, involves parties in double expenses for signatures and registration and this has aroused much dissatisfaction, but nevertheless villagers prefer this, it seems, to running the risk of only following one procedure. When I asked the *kepala dusun* what his feelings were about the present state of things he replied that he thought that it was probably for the best since the *teganai* and the *lurah* representatives did perform the important function of confirming the details of transactions and this made him feel happier about putting his own signature to the Akta document. This dual system does, however, make the procedure which one has to go through in buying and selling land exceptionally complicated, and thus creates the opportunity for a system of brokerage in which unscrupulous middlemen sometimes exploit the ignorance of their fellow villagers e.g. the case mentioned above in which the broker obtained twice the value which the owner had put on the land. An example of how complicated the procedure can become is given in Appendix III.

It seems that almost from the beginning when scholars and officials first started to discuss property arrangements in West Sumatra it has been said that the society is undergoing a period of rapid transition. But as some observers have subsequently pointed out the changes which have been forecast have, in fact, been slow in coming about, and the traditional system, in particular in the sphere of kinship, has shown a remarkable persistence in the face of the modernisation of the small village communities which has occurred. In view of this resilience of the indigenous form of social organisation there is, then, no a priori reason for imagining that the introduction of new law regarding land transactions is immediately going to lead to the disintegration of the traditional attitude to land. Legislation per se simply does not have the power to bring about fundamental changes of perception.

We have already seen that the *Undang-Undang Jambi* with its declaration that all land not directly under the cultivation and exploitation of villagers was state property was ignored in Kerinci. And even today disputes about land given up on lease arrangements by villagers to individual entrepreneurs (the so-called *erfpacht* arrangements made during the Dutchperiod) show that the principle of state ownership of land within the village domain is not generally accepted. Nevertheless, changes in the law both reflect, and are a part of, a process of wider socio-economic change, and in this case it does seem that legal innovations will have profound ramifications, certainly for village organisation if not for fundamental perceptions and attitudes.

Whenever change has been readily assimilated into the organisation of the community we note that assimilation has occurred most rapidly in relation to those changes which have tended to strengthen already existing tendencies, and that those changes which have run contrary to social values have had the most difficult passage when successive central governments have tried to introduce them. The arrangement of neighbourhood units cutting across *lurah* divisions, for example, seems to have been an acceptable idea to the community because it corresponds to the ideal of mutual help. The creation of a hierarchical system of government on the other hand still continues to cause problems.

Clearly, one important principle of the social organisation in Kerinci which determines to some degree the speed and direction of development is the autonomy of individual families. One might argue, for example, that the speed with which new ideas of social organisation are accepted in the community are in direct proportion to the degree to which they enhance this principle. Any economic change which permits the individual better to exploit the natural resources at his disposal, e.g. the construction of a communications infra-structure, is immediately welcomed. Any attempt to impede this exploitation is resisted, e.g. taxation. In relation to our discussion of land transactions we see that events of the last one hundred years have made land a highly marketable commodity, and hence individuals have wished to take advantage of this by being free to buy and sell land at their personal discretion. This meant that in the first place those *adat* precepts regarding the undesirability of alienating land and the various prescriptions about procedure which were a hindrance were gradually ignored as being out of keeping with the times and no longer conducive to the welfare of the individuals in the community. In the twenties and thirties the new opportunities which were created for the alienation of land under the colonial government managed to extend the scope for individuals at the same time as preserving, through the elements of the procedure of the *surat jual-beli*, the traditional framework of kinship organisation which supported the roles of the *teganai*

and the elders of the *lurah*. The new system, however, which puts a greater onus on government officials effectively undercuts these roles. By going through brokers and appealing to officials the individual who wants to sell some land knows that he can by-pass the traditional figures of authority.

Thus, it seems to me, for the first time we find that the introduction of government regulations which had always been associated in the past with a curtailment on individual freedoms relative to what existed in the traditional society, now allows in this instance an even greater scope for the individual and the possibility of throwing off the restrictions imposed by village authority. Although the co-existence of the two separate procedures for the sale of land shows that the consequences of this perception have not yet been fully realised, there is already sufficient evidence of the loosening of the traditional structure of authority. What remains to be seen is if the general framework of rights and obligations and the social values of kinship organisation can survive the breakdown of those aspects of kinship relations which have traditionally governed the disposition of land in the community.

Tenancy and Share-Cropping

The economic developments of the last seventy years which have led to the rapid increase in the volume of land transactions and made acceptable the idea of the alienation of land to non-villagers have also brought about a multiplicity of arrangements regarding the tenancy of land and modes of share-cropping. Above all, the easy convertibility of land into cash and the establishment of rice as an eminently marketable commodity have created new opportunities and made possible a variety of combinations and permutations which range from the relatively loose, easy-going arrangements between close kin to carefully calculated transactions between landowner and agricultural labourer. In pre-colonial times the scope for such a diversity of arrangements was simply not available because there was no market for rice and no pressure on the land.

Leaving aside for the moment arrangements between kin, which have, for a number of reasons, begun increasingly to follow the pattern of transactions established on the open market and which are discussed in detail in the next chapter, we find that the classes of landlord and tenant can be conveniently broken down into various smaller groups, and that it is the nature of the dyadic pair of landlord and tenant in each particular case which determines what kind of agreement will be concluded. Those who are landlords can be split up into the following categories: 1) non-villagers who are engaged in various businesses in the town and who have bought Pondok Tinggi *sawah* either as a long term investment or as a potential building site; 2) villagers

who are too old or too busy in their professions to devote their energies to rice-cultivation, and this includes the large class of people in Pondok Tinggi who are *pegawai negeri* (government officials); 3) wealthy villagers who cannot be bothered to work all their plots of land and are prepared to rent out some of this land; 4) villagers who need ready cash in a hurry and therefore occasionally rent out a rice-field, especially, for example, when in a particular year a *giliran* may have come round to them and given them more access to land than they would normally have. In the class of tenants we find the following: 1) farmers who may have sold their land to outsiders but who continue to work it as tenants on a regular basis, thus giving the appearance to all but those in the know that they are still owner-farmers; 2) newly established families who are anxious to cultivate their own rice as an insurance and who, if they are unable to get access to family land, will endeavour to rent land on the open market; 3) poor landless villagers, mainly people from outside Pondok Tinggi, who are unable or unwilling to find casual employment in the town; 4) full-time farmers who besides cultivation for the immediate needs of their families also farm commercially with the intention of marketing the surplus and deriving their principal cash income from this.

Before going on to describe the way in which landlord and tenant come to an agreement over the method of payment and what considerations are uppermost with them, it should be emphasised, for the purpose of seeing the issues in context, that the plots of land which are being rented out are very small, on average between 1/6 and 1/3 hectare with yields ranging from 70 - 200 kaleng (= 700 to 2000 kilos of unhusked rice) depending on the quality of the land. As far as I could gather from my investigations no single landlord had more than 4 hectares of *sawah* and those in the village who had between 1-4 hectares could be counted on the fingers of one hand. The reliability of harvests and the overall standard of living of a community are known to be factors which strongly influence the kind of rent agreements which are made between tenant and landlord in Southeast Asia. Here in Pondok Tinggi, except in the *sawah dalam* (the reclaimed swamp land) areas where there is occasional flooding, harvests can be relied on. (The only occasion in recent years on which there was an absolutely catastrophic harvest was when there was a government campaign to grow an HYV in place of local varieties of rice.) Given, then, this reliability of the harvest and the fact that Pondok Tinggi is a relatively prosperous community, as we might expect there is less emphasis on the safety-first principles described by Scott (1976:44) among others, and more speculation with respect to potential profits, and hence a greater willingness to take risks.

The standard share-cropping arrangement against which all agreements are measured is the familiar *bagi dua* (halves) common throughout Indonesia. Besides providing the land the landlord furnishes the seed and the tenant contributes his labour. At harvest time each is responsible for reaping his own half of the crop. At present, however, in Pondok Tinggi this arrangement is rarely strictly adhered to, since a landlord who is prepared to let out his land because he cannot be bothered to work it himself will seldom want to go to the trouble of harvesting himself. What usually happens, then, is that the tenant harvests the landlord's share for a fee. This often leads to a *bagi tiga* (thirds) arrangement: one third falling to the landlord, two thirds to the tenant.

This type of arrangement must be contrasted to what is known as *sasi*. (The precise meaning and Indonesian equivalent of this word escapes me, although it may possibly be related to the word *saksi* meaning witness.) In essence this is an agreement whereby a tenant pays a landlord in advance for the use of the land. The payment is fixed as a percentage of the estimated crop, usually between 25-30%. In certain circumstances when the arrangement is, for example, between close kin, the landlord may be prepared to accept payment after harvest.

For the outsider who has bought land in the village as an investment, and whose principal source of income is his trading interests in the town the *bagi dua* or *bagi tiga* arrangement is ideal. He is not over-concerned with the yield from the harvest and has no intention of working the land himself and he is not going to quibble over the ten or fifteen kaleng by which his tenant may under-report the harvest. His intention in buying the land in the first place was more as a hedge against inflation than as an investment which would give high annual returns. Furthermore, as an outsider owning land in the village, it is far better for him to remain on good terms with village people rather than jeopardise this relationship by exerting pressure on his tenant. The tenant in these cases is usually the original owner of the land who, needing ready cash for one reason or another at some time in the past twenty years, has been forced to sell the land. Talking to such tenant farmers I had the impression that their feelings appear to be rather ambivalent about the arrangement. Clearly the tenant is distressed that he has had to part with the land, but as long as he continues to work the land which was once his and is required to pay only a nominal rent, then he appears reasonably content, more as though the land was pledged rather than sold. The future possibility that the land may be re-sold and he may find himself completely dispossessed does not seem to worry him unduly, perhaps because as the tenancy agreement endures from year to year the possibility of this happening begins to seem more remote. The village landowners with excess land are perhaps

not so flexible as outsiders, but are, nevertheless, relatively tolerant. What one finds is that they tend to employ agricultural labourers from outside the village to work their most productive land, and other plots, for example in the *sawah dalam* area, they lease out to poor relations or clients on a *bagi dua* arrangement. Problems sometimes arise with landlords who reside outside Kerinci whose land is administered by relatives who are more lenient about terms than the absentees would like.

The arrangements so far discussed are of a semi-permanent character, but in fact many of the tenancy agreements are simply for the duration of a year. This is a natural consequence of the *gilir-ganti* system under which so much of the land is held in rotation. A farmer who, say, has one plot which he owns outright and one which he shares in equal turns with a sister finds that every alternate year he must rent a field to attain self-sufficiency in rice. If his sister is well provided for by her husband, she may be prepared to let her brother work her turn under some sort of *sasi* agreement. Otherwise, he may have to search round for other possibilities, looking for a plot not too distant from the one he owns and the yield of which he knows with some accuracy from personal observation over the years. His ideal landlord match is the man to whom a *giliran* has fallen that year, but who is himself not interested in farming since he has a job as a salaried official or is engaged in a full-time occupation.

Because this will be a one-off agreement and there is no long term reciprocal obligation each party will attempt to get the best terms for himself. The tenant will try to negotiate a *sasi* arrangement which will mean that once the agreed sum has been paid off the whole harvest is his. The landlord on the other hand will hope to realise as much profit as possible by a *bagi dua* arrangement, and, unless he is desperate for cash in hand, this is what he will hold out for. Individual circumstances will decide what the eventual outcome of the negotiations will be.

> I talked to Pak Tuo Zainal about which kind of arrangement he preferred. He was a busy entrepreneur and his multifarious activities gave him no time for farming his land. He was not particularly concerned about having an assured crop of rice at harvest-time, not only because he was quite happy to buy rice, but also because he owned a rice-mill, the rent of which filled his rice-bins adequately on a daily basis. He said that in former times people would have looked askance at him if he had not worked his rice-fields and although there was some degree of this still among the older people, there was less of a stigma today. He always, however, preferred to lease out his land on a *bagi dua* arrangement, since this was more

profitable. We went on to talk about the suitability of PB5 (a HYV) for Pondok Tinggi and the rumour that there was going to be another government campaign to force people to grow it. Pak Tuo, although not a farmer himself, was very opposed to this, since he knew this would mean a great drop in productivity. If the government did go ahead with their intention, he said, the first thing he would do was to see about arranging a *sasi* agreement. This way at least he could be certain of something.

One of the distinguishing characteristics of renting and leasing land as opposed to selling and pledging as ter Haar has pointed out (1962:131) is that the former are informal contracts. They are usually concluded privately between landlord and tenant according to a verbal agreement, and there is no question of there being any solemnity about this or about having the agreement witnessed by *teganai*, as is the case with the selling and pledging transactions. Ter Haar suggests that one of the reasons for the absence of ritual in share-cropping agreements is the very different nature of the latter where the land owner is not giving up his possession of the land and so there is no need to mark the severance of his claim over it, as there is in the other case. Be that as it may, it is certainly true that in Pondok Tinggi there is no formality about the arrangements. As far as the semi-permanent agreements are concerned neither side makes a special point of annually renewing the contract. If things have been running smoothly for three or four years it will be assumed that the old agreement stands. On the whole both parties are satisfied by leaving things open and informal like this, although occasionally circumstances arise which may alter the situation.

Lukman and his wife had been living in Padang for the last fifteen years and although they came back to Pondok Tinggi regularly they were a bit out of touch with things in the village. Lukman had inherited some rice-fields from his grandfather some four or five years previously but since he knew little about farming he had left questions of leasing to his *mamak* and the latter's wife, being simply content to receive from them a certain amount of rice each year. Recently, however, Lukman had gone into a new business venture and was in need of as much capital as he could raise. He thought about his rice-fields and wondered about selling his rice and so began to make enquiries about his land, where it lay, what its productivity was etc. He came to the conclusion that his *mamak* was not getting as much for it as he could. Lukman calculated that the field produced 200 *kaleng* and therefore from a *bagi dua* arrangement he could expect 100 *kaleng brutto*, whereas he was only getting 75 at the moment. He therefore began to make arrangements to

get a new tenant and mentioned this casually to his *mamak*. When the new tenant came to cut the grass before the first ploughing, however, he found that the old tenant had been there ahead of him. He reported back to Lukman and some confusion ensued with Lukman and his *mamak* blaming each other for not speaking clearly. Eventually the matter was settled when the old tenant came to see Lukman on one of his periodic trips back to the village and agreed to pay a slightly higher rent of 80 kaleng.

One of the interesting features of this case is that it shows how the *bagi dua* arrangement may be modified. Strictly, the agreement should relate to a fixed 50% share of the actual harvest each year but since the landowner did not in this case want anything to do with the harvesting it was left to the tenant to see to it and simply deliver the landowner's share to the door. Thus the tenant was the only one of the two who knew the actual harvest. Since the agreement had gone on for a number of years, the landowner had been prepared to take his word concerning the size of the harvest, and there was no difficulty. In circumstances such as these what usually happens is that the tenant slightly underdeclares the harvest to increase his taking, and provided that the margin between the reported harvest and the actual harvest is not too great the landlord is prepared to accept this. When the landlord feels that the margin is too great, however, then, as in this case, he may want to renegotiate the contract. The tenant who knows the *sawah* well and what it is capable of producing is quite prepared to negotiate on the basis of average production which he is confident of achieving.

The one-off arrangements which are negotiated annually involve a little more bargaining between prospective landlord and tenant, the former trying to represent the expected harvest as slightly greater than he would in other circumstances claim, and the latter arguing for a lower yield than he anticipates obtaining. There is never, however, much leeway, since farmers keep a close eye on the productivity of fields, and by comparing figures and discussing the characteristics of individual plots of land they know with some accuracy with a maximum of 10% error either way, what a yield will be. The customary time to negotiate an agreement for the following year is shortly after harvest time. This is when farmers have a certain amount of cash in hand, after having sold some of their rice or perhaps from the sale of produce after the harvesting of tree-crops, which occurs about the same time of the year. The one negotiation which I partially witnessed went something like this.

Dul, a middle-aged, industrious farmer, came to see Pue Ati. After exchanging pleasantries for half an hour Dul said:

"I believe that the *giliran* of the Siku field has fallen to you this year?"
"Who told you that?"
"I went and saw Mak Dewi and she said that it did."
"I had not realised that it was my turn. I'll have to find out."
"I was wondering whether you were intending to work it yourself."
"No. I don't think I will. I have Ati's *sawah* to attend to."
"Has anyone else approached you about working it, or do you intend letting someone in particular work it? If not, then perhaps you would consider letting me work it?"
"No. I hadn't thought about it at all. What do you think the yield is?"
"I don't know. Perhaps 120 *kaleng*."....
And so the negotiation went on. It was not concluded at this meeting. Pue Ati said that he would have to think about the matter, but it seemed that they would come to an agreement and Dul was optimistic that when he came back a second time the final arrangement could be made.

Although the common procedure is for the tenant to approach the landowner it sometimes happens that a man who is in urgent need of cash will approach someone who he knows has money with an offer to let him *sasi* some *sawah*. In such cases the landlord may be willing to let his field at a lower rate than he would otherwise obtain if he was prepared to wait until someone approached him. This circumstance provides the opportunity for sub-letting. The original tenant is often not a full-time farmer but simply someone who has ready cash to spare and sees the possibility of making a small profit. What may happen is something like this. The productivity of the field is 200 *kaleng*. The tenant agrees to *sasi* it for 40 *kaleng*, roughly Rps.40,000. Subsequently he finds a farmer who is prepared to make a *bagi dua* arrangement, from which the first tenant concludes he can make 85 *kaleng* net after all his expenses are paid. He therefore agrees to sub-let and the original owner has no say in the matter. Arrangements such as these, it seems, are quite common.

The new *Undang-Undang Agraria* has something to say about share-cropping arrangements, in particular it states that agreements should be made in writing and signed in the presence of the village head. The intention is to protect the tenant who in the Javanese situation, to which the laws are principally addressed, is in an especially vulnerable position. In Kerinci I knew of no written agreements with regard to the leasing of *sawah*, and certainly there did not seem to be a pressing need for them. In Pondok Tinggi informal arrangements worked very well. From conversations I had with

landowners and tenant farmers it seemed that everyone was more or less content with the present situation. Landlords grumbled uniformly that tenants constantly underrepresented the harvest and, conversely, tenants complained that landlords always tried to exact too much from *sasi* and *bagi dua* arrangements, but I never encountered any strong resentment on these issues. To come back to a point I made earlier, however, the principal reason I feel why things do manage to persist so amicably is the relatively equitable distribution of land in the village. With regard to temporary one-off arrangements it is not difference in wealth or status which distinguishes landowner from share-cropper, nor is it even a difference in absolute land-holdings. It is often simply that in a given year the one has more access to land than the other. Or it may be that the one is a professional farmer and the other not. Here, then, agreements are between equals, and there is no question of a landowning and a landless class. It is true that the civil-servant and the entrepreneur may occasionally be heard making supercilious comments about the ignorance of farmers, and the latter in their turn may be heard chuckling over the business failures of their educated friends. These perceptions of different professional life-styles have not, however, given rise to any deep antagonism precisely because there is little difference in the wealth of the two groups. It is quite possible that as economic circumstances change, especially if these bring about a decline in the prosperity of farmers, relations between landlords and tenants may cease to be so amicable, but in the present situation the mutual understanding between the two maintains the system in relatively harmonious equilibrium.

Even in relation to the more permanent arrangements where it is possible to distinguish between a small set of wealthy landlords and their dispossessed clients, the situation has not developed to a point where resentment has culminated in conflict and tension. In the first place, as we have seen, landowners from outside the village do not over-concern themselves with returns from their property and therefore leave the land very much to the cultivator. And in the case of the wealthy villagers, although resentment does exist, the indirect patronage which they bestow helps to mitigate this. Furthermore, although they are wealthy by village standards, the difference between their income and life-styles and those of their tenants is not great enough to arouse indignation or call for any but the occasional comment. Landlord and tenant inhabit the same social universe with the same normative and cognitive preconceptions which are not as yet fractured by economic differences of interest. Again, however, it is a highly volatile situation which slight changes in the regional economy might modify considerably, but there is nothing at least at present to point to incipient conflict within the village. [8]

So far we have been discussing tenancy agreements in relation to *sawah*. The situation with regard to upland *ladang* plots is different. As one might expect, since one is dealing with perennial crops, the agreements are all of a semi-permanent character of several years duration. The usual arrangement is that the landowner besides supplying the land provides the seedlings of the trees, and the tenant who resides in the *ladang* provides his labour in planting and tending the trees. When the trees fruit (coffee, cloves) or mature (cinnamon) then the harvest is evenly split. In addition, the tenant is also permitted to inter-crop vegetables and bananas on the land and anything he makes from the marketing of this produce is his. For the two years or more until the trees are producing the landowner also supplies the tenant and his family with some rice and other essentials for subsistence. After two years or so the family is expected to be self-supporting.

Very few of the share-croppers who work Pondok Tinggi land are, however, Pondok Tinggi villagers, although there are one or two of the latter in the Sungai Ampoh and Sungai Jeruang areas. Most of the tenants are from neighbouring villages, from Kumun or Rawang. In the Renah Kayu Embun region the share-croppers also come from further afield: there are people from Semerah and other lake-side villages and there are several Javanese immigrant families. The Pondok Tinggi landowners who have invested in *ladang* gardens which they do not work themselves are disinclined to employ fellow Pondok Tinggi villagers, ostensibly because they regard them as lazy and not committed farmers. They will, therefore, try to attract suitable tenants from elsewhere. This is, however, not always easy, and there are frequently repeated stories about disagreements between landowner and share-cropper. This is particularly the case in Renah Kayu Embun.

One also finds in the upland area profit-sharing agreements in relation to small-scale animal farming. Those who reside in the *ladang* depend entirely on their agricultural produce for their living, and with the exception of those one or two who have the good fortune to see their clove trees flourish their income is the lowest of all the groups of villagers in Pondok Tinggi. They themselves do not have enough capital to buy animals such as goats and buffaloes to rear. What happens is that wealthy villagers and sometimes wealthy townsmen from outside the village looking for somewhere to invest their wealth will buy young animals and give them to people in the *ladang* areas to rear on a *bagi dua* arrangement, each taking half the proceeds when the animal is sold. This also occurs in Kampung Lereng where there is a lot of grazing land on the nutrient poor hillsides. I heard of one man - not a villager but a Minangkabau trader - who had more than fifty head of cattle which he had distributed among several families. Most of the richer villagers who invested their money in this way, however, only had one or two, at the most

six, head of beef plus a dozen or so goats which they farmed out.

Although I never saw any documents relating to the tenancy of *ladang* plots, it is conceivable that there may be one or two written agreements binding landlord and tenant especially in the Renah Kayu Embun area. In most cases, however, agreements are verbal, and in the event of disputes arising between landlord and tenant, which in fact occur frequently, matters are settled on an informal basis by traditional *adat* negotiations of compromise. In looking for reasons why there is so much disaffection about share-cropping in upland gardens two peculiar features of the arrangements which distinguish them from lowland share-cropping should be borne in mind. First, for both parties the share-cropping agreement represents a long-term investment which matures only after five or six years. During that time much has to be taken on trust by both parties: the tenant has to be confident that the landlord will ultimately be responsible for his welfare in this period and will not attempt to dispense with his services when the crops are near harvesting; the landlord has largely to rely on the tenant's word that the weeding and replanting are being done thoroughly. Often circumstances arise during this long period which put this mutual trust in jeopardy. That this can easily happen is a consequence of the second feature peculiar to upland share-cropping: it is an agreement between parties who are not of equal social status. The landowner who can afford to support a tenant and his family for two years is clearly a man of means with surplus wealth looking round for a solid investment. The tenant in these circumstances is a landless farmer driven through impoverishment or lack of opportunity to work someone else's land, the disagreeableness of which is not mitigated for him by there being some profit-sharing at the end of four or five years. The striking difference in prosperity and opportunity which is apparent to both landlord and tenant arouses mutual distrust, each suspecting the other's social position requires him to attempt to deceive the other. [9] It is precisely because the nature of contracts in upland sharecropping is universally perceived in this fashion that so few Pondok Tinggi villagers are willing to become tenants. It would put landlord and tenant into the invidious position of having to recognise that despite the principle of the equality of kinship around which village society is organised, there exists, nevertheless, a palpable inequality not only of wealth but of power, which divides one villager from another in a way which threatens to shatter the fellowship of village society.

Summary

We have seen that as a direct consequence of the introduction of a series of new procedures in relation to land transactions the effective control which the *lurah* and the family had over the individual who wished to dispose of

his property has disappeared. At least this is so in theory. We noted that in practice when it came to sales of land individuals still preferred to keep on the right side of *adat* representatives by following the traditional procedures in addition to conforming with the new regulations.

When we examined tenancy arrangements the most immediate and striking impression was of the multiplicity of different types of agreement which seemed to reflect the greater interest in rice cultivation which had arisen since rice had become a marketable commodity in the twenties. Nevertheless, despite this new enthusiasm for rice as a cash-crop, it appears that in the context of semi-permanent arrangements between landlord and tenant the emphasis is less on trying to maximise profits on both sides than on maintaining amicable working relationships which do not jeopardise the harmony of communications between families. In this respect it was suggested that one of the contributory reasons why there should be this premium on maintaining good relations was that landlord and tenant were in more or less the same economic bracket and the disparities of wealth between them were not great.

The same attitudes did not prevail, however, in relation to temporary one-off arrangements because here the consideration was solely a business one, and there was no question of long-term relationships being at stake. Nonetheless, arrangements between fellow villagers were more flexible and more room for negotation was allowed than in the case of agreements relating to upland cultivation where tenants were not usually from Pondok Tinggi.

What we must now consider, then, is whether these same new opportunities for the sale and disposal of land made possible by changes in the accepted legal system and made attractive by the new economic circumstances have affected matters of inheritance and the transmission of property between members of a family. The particular question we must turn our attention to is whether the new laws have led to structural changes in the traditional principles of inheritance or whether, while the modes of transmission of wealth have altered, the principles have remained intact.

Notes

1 This term covers, in fact, any general request made to the *depati* of the village for which their approval is necessary. For example, if a family wishes to hold a *kenduri* and slaughter a four-legged animal, i.e. a goat or a buffalo or a cow, then permission must formally be sought in a *minta arah* ceremony from senior representatives in the four *lurah*. Or again, if someone wishes to erect a house within the inner boundaries of the village, the same ceremony is called for. At least this is traditionally

the case. Today we find that often people neglect to *minta arah*, particularly those who live on the perimeters of the village.

2 Acquired property. See the discussion about this term in the next chapter.

3 Not all the provisions of the legislation were introduced uniformly throughout Indonesia all at once, and in fact it is specifically stated in the law that certain procedures should come into effect only when particular preconditions have been met in areas outside Java where land registration is relatively underdeveloped.

4 Before the Dutch period most transactions seem to have been oral agreements concluded before witnesses. There never at any time appears to have been a village register of *gadai* agreements in Kerinci of the kind discovered by von Benda-Beckmann.

5 One should note here that this tendency to accumulate land differs greatly from the current trend which appears superficially similar. In the twenties and thirties rich families bought land as a capital investment for their children with little thought of the returns to the investment. Land was valued not so much for its productivity in economic terms, which was low at that time because of the low price of rice, but for the psychological security which the possession of land gave. Today wealthy people buy land as a speculation. This is particularly true for land which lies in an area which is to be opened up or used for development. The buying and selling of land has become a quick way of making money for the wealthy.

6 This suspicion of the *kepala dusun* is still strong today. It is sometimes suggested that this is a new post-Independence phenomenon and that corruption was unknown, at least before the Japanese occupation. My own evidence of what occurred in Kerinci where several office-holders were found guilty of embezzlement, and the account which Schrieke gives of the falling reputation of village heads (1960:137) make it clear that in fact corruption and malpractice were known long before that.

7 It seems that the *nenek-mamak* were getting until recently Rps. 20,000 for their signature and so the new system which by-passes them has caused a considerable drop in their income.

8 Some additional remarks are called for here to avoid the impression that the lack of tension or conflict between landlords and tenants indicates that there is no social conflict whatsoever in the community and that there is a universal tolerance of the disparities of wealth which do exist. The point to note is that those who can afford to be tenants are usually

not the least well-off members of the society. The economics of the situation is this. In order to be able to expend one's daily labour on the various processes of rice-cultivation one has to have a certain amount of capital which one can draw upon to support one's family while waiting for the next harvest. Those who do not have any capital are forced to depend on a daily wage. Now, although the rate for daily labour in the town area is high, c.Rps. 750-1000 (1979), in fact there is little margin for saving, and thus the father of a family simply cannot take the time off to cultivate either rice-fields or an upland plot. For as long as they are young and healthy and the present climate of opportunity, which has arisen as a consequence of the export commodity boom, continues, then they are not too worried about being landless, although almost all aspire to the ideal of a plot in the hills with flourishing clove trees. I would argue, then, that although a latent sense of grievance exists among this rural proletariat, it is not until the situation becomes, as it were, over-determined, for example when the present generation of young men reaches middle-age or when there is a slump in the export-commodity market, that one will expect to find any open antagonism or hostility.

9 Re-reading what I have written I am reminded of Brecht's play "The Exception and the Rule" the theme of which may unconsciously have influenced my phrasing here.