Chapter 6

Inheritance

The Interpretation of Kerinci Principles of Inheritance

Any discussion of changes in principles governing inheritance must clearly begin with a description of the situation which existed in the past. One has to try one way or another, through an examination of codes of law, for example, or, a difficult procedure, through reconstruction from contemporary evidence, to discover what precisely the principles were. Moreover, one has also to assess to what extent the principles were simply social ideals which were never in fact realised and how far they did indeed correspond to practice in the community. Having established what used to be the case one proceeds to contemporary arrangements following either a chronological path or straightaway juxtaposing the present with the past, again distinguishing carefully between what is said should occur and what really does take place.

The conceptual problems which arise as a consequence of following this seemingly straightforward procedure of analysis and comparison have always been very evident in discussions about changes in laws of inheritance among the Minangkabau. The debate between Kahn and von Benda-Beckmann is only the most recent example of long-standing disagreements between scholars about what has occurred during the last one hundred and fifty years in Minangkabau society. The difficulties centre in the first place on what one takes the ideal system to have been, and whether the practice at any stage during the period in question has reflected pristine Minangkabau *adat*. In trying to answer this question writers have discussed the economic and administrative changes which have occurred and tried to link these to what they perceive as changes in principles of kinship and inheritance, but the arguments have never been conclusive and the disagreements continue.

Another strand to the debate has been the attempt to gauge the influence of Islamic law on questions of inheritance and the division of property. The assumption has been that with the increasing Islamization of the society and the constant pressure towards orthodoxy gaining in momentum one would expect there to be changes in the law which would reflect the desire to

conform to Muslim practice. It is known, for example, that in Aceh in north Sumatra there are attempts to accommodate Islamic prescriptions within traditionally accepted norms, and one would imagine that in West Sumatra, too, there must be attempts to reach compromises with Islamic orthodoxy.

The influence of national law has also to be taken into consideration. Even though the move to codify *adat* law was successfully resisted during the colonial period by van Vollenhoven and his followers, and even though procedural law under *adat* seems not to place the same weight on legal precedents as is the case in European law, nonetheless, the cases which came to the colonial courts and were widely reported did leave some impression on legal experts. Furthermore, the progress towards uniformity and away from the vagaries of legal syncretism throughout Indonesia (see Jaspan 1964/65 for a brief discussion of the term and the problems of legal pluralism in Indonesia) seems to have been hastened during the last two decades. One might cite the Agrarian Laws (1963) and the Marriage Laws (1974) as instances of this. Here, then, is a further dimension to the discussion of change, since one has now to disentangle the influence of this new national law and the new concepts of jurisprudence which underlie it from both Muslim law and traditional precepts.

In cases which come to the courts today it is very clear that disputants are prepared to quote all three sources of law to support their claims. Von Benda-Beckmann has usefully summarised the several issues which arise in matters of property and inheritance as a consequence of this legal pluralism in West Sumatra, and his discussion of the present situation reveals plainly the difficulty of extrapolating back into the past to arrive at the original laws of inheritance. And even though there exist written traditional codes of law of an earlier period which deal with delicts, there is no mention in them of the division of property. There is, therefore, no written evidence of the way things ought to have been, and for any account of the accepted ideals of the past one has to rely on the dubious testimony of individual indigenous *adat* authorities.

One might have expected that the situation in Kerinci would not have been so complex as in Minangkabau, since first contacts with the Dutch came relatively late in Kerinci and the influence of Islamic reformism, too, dates only from the early years of this century. One is dealing, therefore, with the history of only the last seventy five years and it would seem on the surface comparatively simple to reconstruct what the original principles of inheritance were, and to chart the history of recent developments which have affected them. Appearances are, however, deceptive, and there are problems of interpretation peculiar to the situation in Kerinci which make

reconstruction difficult.

As I hope the analysis of kinship has shown, there are considerable differences between Kerinci and Minangkabau organisation despite the superficial similarity of one or two kinship terms and some kinship institutions. And in some areas the influence of practice in Jambi and South Sumatra seems equally as strong as that of Minangkabau. Despite the distinctiveness of *adat* in Kerinci, however, the tendency has been to see social organisation in Kerinci as akin to that which exists in Minangkabau. This is an error made not only by scholars, but is common to the lay observers who have come to Kerinci and noted the superficial similarities. Consequently, despite the strenuous protests on the part of the Kerinci people themselves that their organisation is unique, the belief has grown up that in matters of *adat* and general outlook Kerinci and Minangkabau cultures differ little. One of the unfortunate consequences of this widespread notion has been that recently, within the last generation or so, people in Kerinci have come to believe this themselves and are often unable to distinguish between those principles or adages which are native to Kerinci and those which have been introduced within the last seventy five years. One might sum this up by suggesting that the period of Dutch colonisation was also a period of Minangkabau cultural colonisation in relation to traditional institutions.

This has been especially true of legal concepts. Let me give one example of this. During a period of research in Kerinci in 1975 I was introduced to the concepts of *pusaka tinggi* and *pusaka rendah* in relation to the inheritance of property. The former referred to property which had been in a family for generations which had passed down from parent to child from the time of remote ancestors. The latter was property which had been recently acquired; sometimes it was taken to mean property which had come into a family's possession only as late as two generations ago; sometimes it was considered to be property of even more recent origin. The distinction between these two categories of property is crucial since the mode of their transmission through inheritance is fundamentally different, I was given to believe. It should be stressed at this point that one of the cardinal principles governing rules of inheritance throughout Sumatra is that the status of an item of property -- and consequently the class of heirs who may have rights to it -- is often determined by reference to its origins. *Pusaka tinggi*, it was stated, could only be inherited by daughters; *pusaka rendah* on the other hand could be equally divided among sons and daughters.

In the course of interviews and discussions I made much use of these concepts, especially when I was trying to discover local variations within Kerinci in matters of inheritance. I found that the terms were almost universally

understood and people had no difficulty in following the points I was making, although sometimes there were differences of opinion on matters of interpretation. I therefore assumed that the concepts were native to Kerinci. Subsequently, however, during my most recent period of fieldwork I encountered a number of situations in which the principles of *pusaka tinggi* and *pusaka rendah* appeared not to have held and I was perplexed about how to explain these anomalies. I investigated the matter further and eventually became convinced of the truth of what one knowledgeable informant suggested to me: this two-fold classification was in fact not native to Kerinci but was a relatively late Minangkabau import. It had become widely accepted during the colonial period when officials responsible for administration and justice had introduced it either *faute de mieux* or because they could not grasp what Kerinci principles were. The rapid spread of knowledge throughout the region and the speed and ease with which ordinary villagers became familiar with the concept could be explained by the intense interest which arose during the twenties and thirties in questions of property. Villagers not only became *au courant* with the new procedures of litigation under the colonial administration, they also learned very rapidly how to manipulate legal concepts. By the seventies, then, notions of *pusaka tinggi* and *pusaka rendah*, so frequently bandied about the courts, had become thoroughly incorporated within the range of ideas common to most senior men in the villages, and they discussed them with the volubility usually reserved for debating the finer points of only the most well-established of traditional ideas. Hence I was easily deceived.

In the actual dispositions of property, however, it was clear that the provisions of the *pusaka tinggi-pusaka rendah* principle were simply ignored, and it was this discrepancy between professed principle and existing arrangements which had made me unsure of the real nature of the situation. Initially, when I enquired why there was this discrepancy I was told that it arose because people today no longer practised the traditional code and there had been a general corruption of principles. But on further investigation it gradually became clear to me that it was the principle itself which was new, and that contemporary practice, although it did perhaps deviate from what had earlier been the case, was not so contrary to the spirit of traditional provisions as I had been led to believe.

This brief example illustrates, then, the problem of trying to establish what the principles of Kerinci *adat* are. The assumption that one might simply be able to abstract a set of principles from a commonly held core of ideas and notions about property turns out to be ill-founded. As an anthropologist would have expected, there are no short cuts, and one is compelled to follow painstakingly and methodically the guidelines of anthropological research

methodology. This has meant in this case examining meticulously both beliefs and practice, exploring the discrepancies, looking at particular cases, constructing ad hoc hypotheses, and then discussing these and testing them by application to new evidence which has been sought for corroboration. And finally, an attempt has been made to provide a satisfactory explanation which pulls together everything into a coherent whole.

The particular issue which has to be dealt with is the effects of Minangkabau ideas on Kerinci principles. When it is a question of new terms and concepts being introduced, as was the case with the *pusaka tinggi - pusaka rendah* distinction, then the matter is relatively simple and the true nature of the situation soon comes to light after a thorough investigation. More intractable problems arise, however, when one encounters legal terms which are common to both Kerinci and Minangkabau and where in the past, both among scholars and indigenous law experts, there has been a tendency to assume that identical terms denote the same concepts and provisions for application in practice. As a way of understanding the dimensions of the difficulty, and in order to introduce at this stage some of the relevant terms in the various debates, I want to look briefly at some of the points which scholars have raised in relation to *adat* in Kerinci, commenting on them when necessary.

In his comprehensive 962 page account of Minangkabau law written in 1909 Willinck includes a description of laws of inheritance in Kerinci (pp.790-792) since he considers the region to lie within the area where Minangkabau ideas are dominant. Although he concedes that practice there from a Minangkabau view of things sometimes differs from what is commonly found in Minangkabau areas he thinks that these variations do not indicate differences in principle. Unlike van Vollenhoven, then, who assigned Kerinci to the *adatrechtskring* of South Sumatra (van Vollenhoven 1918:274), Willinck located it firmly within the sphere of West Sumatra. The concepts of property and inheritance which he discusses in relation to Kerinci are those which are familiar in the Minangkabau context and have been described at length in von Benda-Beckmann's book (1979). I list them with only brief descriptions here in order to put the discussion of Kerinci in context and I am omitting much of the debate about the terms which is only relevant to the situation in Minangkabau.

Harta pusaka -- This is property which has been in a family for at least two generations. In Minangkabau society it is usually held that this land may only be pawned under very special circumstances and it may never be sold. No individual has absolute rights of disposal over this property and it belongs to members of the minimal matrilineal segment -- in Minangkabau variously known as the *parui* or the *kaum*. Rights of access to this property

are determined by the members of the segment in council and women in the family are usually given priority in the use of the land. In the light of this practice it is often said, somewhat misleadingly, that in Minangkabau property passes from the MB to ZS. What in fact is indicated by this is that the major say in determining who has access to the property passes from MB to ZS as one would expect according to matrilineal descent principles.

Harta pencarian -- Property which is the joint estate of husband and wife which they have acquired since their marriage and which is considered to belong to them both equally. There has been constant debate dating at least from the beginning of this century about whether in Minangkabau a man's children may inherit their father's share of *harta pencarian* or whether it must pass to members of his own matrilineage, i.e. his sisters' children. [1]

Harta Pembawaan - This is sometimes called *harta surang*. As a general term it refers to the property which husband and wife bring into a marriage and which remains their individual possession, The property of the wife is often called *harta dapatan* or *harta gadis* and the property of the husband *harta bujang*. There are several local variants of these terms. Since this property is clearly the possession of the individual and is often itemised in a marriage contract, on divorce it usually reverts without any dispute to the individuals.

Discussing these concepts in relation to Kerinci Willinck states that *harta pusaka* here is inherited by the children and there is no question of it passing to the *kemenakan*. And indeed he goes on to add that *harta pusaka* as it is understood in Minangkabau no longer exists in Kerinci, since it is the essence of this category of inheritance that it may not be divided up, whereas in Kerinci there is no type of legacy of land which is not divided (*onverdeeld blijft in de Korintjilanden geen enkele erfenis meer*). Willinck is undoubtedly correct on these points and this needs to be stressed, since it appears to be one of the few issues on which all Kerinci *adat* experts agree: in Kerinci *harta pusaka* passes directly to the children, and indeed all property is divisible. *Harta pencarian*, according to Willinck, also passes to the children, but he notes that it is traditional for the children to appease the *kemenakan* by giving them a suit of their late *mamak*'s clothes. This, he suggests, is in line with his conclusion that Kerinci *adat* has developed out of Minangkabau, since it is a ritual acknowledgement of the earlier tradition according to which *kemenakan* inherited this type of property. [2]

A further point which Willinck makes, the significance of which is greater than he seems to realise, is that there is a distinction made in Kerinci between what is known as *harta berat* (heavy property = immovables) and *harta ringan* (light property = movables) and this distinction is used in

determining what sons and daughters may inherit. The daughters have rights to *harta berat* and the sons are entitled to *harta ringan*. It will immediately be appreciated that this type of classification according to the nature of the property and not according to its provenance introduces a principle of inheritance which is unlike any which prevail in Minangkabau, and hence makes rules of inheritance in Kerinci quite distinctive in this respect. [3] I hope the implications of this will become clearer in the course of the argument below.

In his work on *adat* in Hiang in which he devotes a lot of space to the way in which property is inherited Morison prefaces his remarks by pointing out that although Islamic precepts are conscientiously followed in the region, nevertheless with regard to rules of inheritance, Islamic law, which in this respect is so contrary to traditional practice, is simply ignored. It is a pity that after raising this issue Morison does not develop it further, since in fact there are one or two Islamic provisions regarding the disposition of property which are commonly followed, in particular those relating to *hibah* which will be discussed below. Unfortunately this omission in Morison's discussion creates the misleading impression that in matters of inheritance it is only *adat* principles with which people are concerned.

The most important point which Morison makes is to reaffirm Willinck's statement that property -- Morison says *pusaka* property -- is classified according to whether it is movable or immovable and "as a basic rule it holds that land (*gronden*), houses and granaries only come to the daughters, and cattle, furnishings, paddy (unhusked rice of which there was an unusually large stored surplus at that time, c.1938) and cash fall exclusively to the sons." This is useful because it specifies what types of things fall under each category. He goes on to explain that where there are no daughters to a marriage then the sons inherit all the property. On one matter, however, Morison takes issue with Willinck. As quoted above the latter had said that there was no property which was not divided (*onverdeeld blijft*), but, says Morison, he is mistaken. There is one important exception to the general division of property, that is *sawah*. Although rights of access to land are divided equally among the daughters, in fact the land is not divided and a system of rotating rights is employed known as *giliran*. Thus each daughter in turn gets the opportunity to work the land for an agricultural year, i.e. from the first breaking of the soil to the harvesting of the rice. In some circumstances however, where not having access to land in one year may cause hardship, it may be agreed that all the heirs work the land together thus in fact bringing about a de facto division.

This latter strategy is fairly common today although Morison suggests that it was infrequent in his time because it created problems if one wanted to pawn

one's *giliran*, since one's fellow heirs would not want to be working the land along with someone who was not a close kinsman. [4] Morison goes on to describe how in fact, when *giliran* are inherited by succeeding generations, the turn may come round as seldom as once in every thirty years. But since this arrangement is little good to anyone, what often happens is that some share-holders buy out the others and thus there is a contraction of the number of people who share turns. In many cases often after numerous transactions which often require the redemption of pawns the land eventually comes back into the possession of a single family. [5] In these circumstances, Morison explains, the land is no longer considered *harta pusaka* but the *harta pencarian* of the person who bought out the others and redeemed the various pledges.

Morison's description, then, confirms that the law in Kerinci differs from that in Minangkabau, but nonetheless, despite the emphasis he places on the movables-immovables distinction, he has continued to use the classifications of *harta pusaka* and *harta pencarian*. His discussion, however, is confused on this point and it is difficult to understand from his explanation how the principle underlying this latter distinction is made operative in matters of inheritance. For further elucidation we must turn to an account written by someone in Kerinci.

In 1973 Iskandar Zakaria an official of the Department of Education and Culture in Kerinci brought out a mimeographed booklet entitled "Risalah Kerinci Selayang Pandang" in which he described various aspects of Kerinci *adat*. Iskandar, although a Minangkabau, has resided most of his life in Kerinci and has written a number of articles on Kerinci for local newspapers based on his own research and extensive interviewing of informants. As far as I can gather, the sections on the traditional law of inheritance in his booklet are based on information which he obtained from M. Sulut who at that time was the Ngabehi Teh Setiobawo in Sungai Penuh and one of the recognised *adat* experts in Kerinci. Thus the information on inheritance refers to the practice in Sungai Penuh which to all intents and purposes is identical to that prevailing in Pondok Tinggi. Iskandar's account is noteworthy because it is not written like the others in the tradition of *adat* law studies with its tendency to organise material into a systematic scheme of classification. Whereas even some contemporary Minangkabau experts have been unable to escape the unconscious influence of Western anthropological and legal concepts, to the extent that they are happy to phrase their discussions in terms of matriliny, rights and obligations etc., Iskandar is mercifully free from this. There is an attempt to present information systematically, but this is subordinate to getting down on paper what he has heard from informants. Consequently, the text appears to ramble occasionally and one discovers

discrepancies, but the compensations are that one gets a relatively unhampered version of what are said to be the rules, replete with the details and examples which the scholars have either ignored or subsumed into a classificatory scheme of their own.

Iskandar commences not with the usual tripartite division of property according to its provenance but with a classification according to the nature of the object. In this respect he goes one step further than Morison who had in fact suggested that it was this criterion which was crucial in matters of inheritance, and not the property's status as *pusaka* or not. Iskandar distinguishes four types of inheritance (*warisan*): of honorific titles; of houses; of land; of movable objects (*benda ringan*). He then adds as an aside -- misleadingly it seems to me -- that all these items are known as *harta pusaka*. Describing the transference of titles he points to regional differences within Kerinci noting that in some areas including Sungai Penuh and Pondok Tinggi - the title passes from *mamak* to *kemenakan* and that in other areas e.g. Hiang where Morison did his research, the title is in possession of the women but is "worn" by husbands to whom it is loaned, as it were. With regard to the inheritance of houses Iskandar's remarks are worth quoting in full because they differ in their detail from what has been written by the other authorities. He writes:

> What is referred to as the *pusaka* of the house or the *pusaka* house is a house which is passed on to women and this house can not be bought or sold. For example, a man leaves three or four houses. One of them must be given to a woman (*anak betino*) and the other two may be shared out in such a way that the woman who has inherited the *pusaka* house also has a right to share in the other two houses. The point of the *pusaka* house is that if a son (male heir, *anak jantan*) does not get on well with his wife then he will certainly return to his parents' house or to the house of his sister (*anak betino*). The *pusaka* house although it is occupied by the sister is the refuge (*pengawan*) of the brother. It is he who organises everything to do with it. It is he who decides who will live in it (sc. which of the sisters) and if it needs repair he will see to it. In short he sees to everything. (Zakaria 1973:6).

This description seems to me exceptionally significant because what is implied is that the *pusaka* category, at least as far as it applies to houses, is not defined as we might expect in terms of the status of the property according to its origins, but in terms of the use to which it may be put. It is excluded deliberately from the other types of property which may be divided up on inheritance and remains in a very real way the communal property of

the family. Rights of access to it and use of it may not be equal, but it is property over which the sibling group exercises joint control. Thus as corporate property it serves to integrate the family through a relationship mediated through joint ownership. The same principle operates with respect to *sawah*. Here is Iskandar's account once more:

> The inheritance of *ladang* land is divided equally among sons and daughters, whereas for *sawah* the same applies as for houses. One plot of *sawah* may not be sold; this becomes *pusaka*. If there are five plots of *sawah* to be inherited then one may not be sold or divided whereas the other four may be. If there are a lot of children, whereas the land to be inherited is limited, then that sawah is worked according to a system of rotations (*gilir-ganti*). If it is the case that there is no one to inherit what is *sawah pusaka* then it is returned higher up (i.e. to an ascending generation) and a search is made for whoever has daughters. All this is arranged by the men. This is called *pusako guntung*. (ibid.)

Here we meet a refinement of the system described by Morison, but it should be remembered that the two writers are describing the situations at different times at a distance of thirty five years from one another, and are dealing with areas which, although contiguous, nevertheless differ in important details concerning *adat* prescriptions. The principle which Iskandar describes, which it is important to remember when contemporary arrangements in Pondok Tinggi are examined, is that it is only one plot of *sawah* which is set aside from the general inheritance; the other plots of land may be divided up and disposed of. Iskandar does not say what the force behind the arrangement is in this case, but in fact it is the same as that obtaining in relation to the house. If a brother is going through a difficult time, then he knows that he may always apply to his sister who is obliged to give him a roof and provide him with meals. It is the profit she has made or the grain which she has harvested from the *sawah pusaka* which is held to compensate her for the expenses. [6] The system operates, then, as a family welfare arrangement, and the idea is expressed in the frequently quoted adage:

Bakemban Lapaik	To spread the seating mat
Batungkou jarua	To keep a broad based brazier
Bapariok gedue	To have a large cooking pot

Dealing with the relinquishing of rights to property Iskandar wrotes:

> Rights may be relinquished in these ways:
>
> 1. Through buying and selling.

2. Through a free gift [This may be a veiled reference to gifts according to Islamic prescriptions but there is no elaboration to make this clear. C.W.W.]
3. Through a decision of the king (*raja*). [This is rather mysterious since there are no *raja* in Kerinci. Perhaps it is a reference to the Jambi princes who occasionally in historical times claimed authority over Kerinci which in fact they were never in a position to exercise. C.W.W.]

> If a sale of land occurs the buyer must give a contribution [*pupou*= Ind. *iuran*] to the owner as an initial payment, as a tax. This means that the *harta pusaka* is not relinquished (*lepas*); for example, if a *kenduri seko* [major village ceremonial feast] is held, then the buyer of the *pusaka* must pay a contribution to a committee or to the owner. He, the buyer, must also contribute to the proceedings all those things which are usually provided by the people of the village. The reason for this is that in addition to the *harta pusaka* not losing its connection, those in authority (in the village) can also protect the property. (Zakaria 1973:10).

This custom of an obligatory payment to be made by those outside the village who hold village land is still in force, and, though I never witnessed it myself, I believe it is also customary on occasions of *kenduri sko* for there to be an official recitation of the details of property holdings of rice-land in the village, in which *lurah* representatives are held accountable for land originally allocated to the *lurah*. This, however, is more important for the ritual than for any practical consequences. The value of Iskandar's description here is that it does suggest that as well as there being a domestic significance for the family in having a category of *pusaka* property, so, too, at the level of the socio-political organisation of the village community, the historical origins of the village land are recalled and the territorial unity of the society celebrated.

Summary of the Discussion of Principles of Inheritance

The confusion which has led to the assimilation of Kerinci practice with that common in Minangkabau derives largely from the use of the word *pusaka* in both societies. European minds accustomed to concepts of heritage and tradition and seeing the high ceremonial value placed on objects called *pusaka* which resemble nothing so much as heirlooms in European culture: gold jewellery, *kris*, cloth of various descriptions, have understandably tended to associate *pusaka* land with these notions. One can detect, it seems to me, the unconscious assumption that the aristocratic European idea of

passing on a heritage of land and the obligation for each inheriting generation to preserve that land and maintain it in its turn has insidiously crept into the descriptions of attitudes to land in Minangkabau. In fact this association of *pusaka* with a heritage is misleading for a number of reasons. In Minangkabau it is true that there is some concept of land passing down over generations but the concept of land is never allowed to become reified as in the European system, where through primogeniture among the upper classes a man finds himself a lord of an estate which defines his status. In Minangkabau the relationship between man and land is more pragmatic -- one is tempted to say down to earth. In Europe ancestors are important because through them one has not only a rightful title to property but also because they establish one's estate -- in the sense of class -- in the society. All this is palpably not the case in Minangkabau and I do not think that the *adat* law experts ever thought it was, but nevertheless, I do find that it is the conceptual implications of the European model which have influenced their description. In Minangkabau ancestors are important not because they establish one's estate -- fictive kinship can get round most problems which arise in this respect -- but because in a very minor way there still lingers a belief in their supernatural power, a belief that may have been stronger in earlier times -- although there is no evidence to suggest that it was -- but which is today at any rate very weak. Any arrangements which are made concerning *pusaka* property take no thought of supernatural sanction, nor, even, is there any pause, as there may be in the European context, for what one's forebears might have thought. As I understand it, then, the force of having a *pusaka* category in Minangkabau is that it establishes the corporate identity of matrilineal groups at various levels, and, within this group framework, sets up an economic organisation of mutual support. The idea seems to be, and to have been from the time we have records, to create an economic system in which basic food needs were catered for by self-subsistence ensured through access to land by a right to use corporate property, and then, superimposed on that, another economic sphere depending on trade, migrant labour and cultivation of cash-crops, where the focal figure was the individual man and not the group. It is these principles we should bear in mind when thinking of the division of *harta pusaka* and *harta pencarian* in Minangkabau society.

As far as Kerinci is concerned the circumstances are different. Perhaps because Kerinci villages are of relatively recent settlement, and demographic expansion has not led to the complex degree of segmentation which has occurred in most Minangkabau *nagari*, matrilineal descent group property never seems to have developed to the same extent. All property is inherited by children. (But where the principle of land going to daughters holds, this of course may in practice be no different from the Minangkabau scheme,

provided rights are flexibly allocated and men of the group have occasional access to land.) There is a category of *pusaka* property which is best described in Iskandar's account, but the meaning which seems attached to it has nothing to do with ancestors or origins. It is an especially ad hoc created category of property within an estate to be inherited which, by according rights to all brothers and sisters in a joint property, strengthens the sibling bond and creates a domestic infrastructure of economic and psychological security. The rights over the property are not the same since the men exercise rights of disposition whereas the women have rights of use. Nevertheless, there is a strong sense of corporateness among those who are sharers in such an arrangement. As Morison, however, points out in discussing what happens to rotating rights of access, by the time one reaches the second and third descending generation from the original holders of the property, rights are so dispersed that the sense of unity, too, becomes diffuse, and so there is a tendency to reaggregate the property through buying out others. And so the cycle of creating a *pusaka* category anew for the small family is recommenced. For each generation, then, there is a specific range of kin with whom they are associated through an on-going series of *pusaka* arrangements.

As far as one can trace any development in the past hundred years in matters of legal principle concerning inheritance in Kerinci, it seems to be the gradual abandonment of the movables and immovables distinction. In Morison's account, for example, there is some doubt about what is the proper classification for *ladang* and hence about whether it passes to women or not. Morison simply stressed that rice-fields, houses and granaries passed to the women. I was once informed that *ladang* land was usually inherited by men and not considered part of the women's portion. But it is, of course, only by the cultivation of cash-crops on *ladang* that one can hope to create surplus wealth in Kerinci, so perhaps this appropriation of *ladang* into what is fittingly part of a man's portion occurred at the same time as the recognition of the economic value of this type of land in the second decade of the century. [7] The category of women's goods is thus reduced to *sawah* and houses and rice-granaries, but this too changes. Rice-granaries ceased to exist from the fifties since there was no longer surplus rice to store. The value of *sawah* increased, and, finally, it seems it, too, was excluded from the category of women's goods. Only the house is left and it remains to be seen how the construction of new cement and brick houses will affect the evaluation put on this category, too, in the future. Although this gradual process of whittling down the objects which fall into the category of women's goods has had the inevitable corollary of loosening the family structure of divided rights and obligations for mutual welfare, since there is no reason for

a sister to feel she owes a debt to her brothers, nevertheless there is one mechanism which maintains the link which they have with one another through property, namely the *gilir-ganti* system of rotating rights.

The fact that one has to take it in turns to work a piece of land may not be a very compelling reason for one to muse over blood being thicker than water, but when the question arises of disposing of that land by selling or pledging, then share-holders become quickly aware of the links which bind them. There is usually no difficulty about selling one's rotating share in land or pawning it (*pace* Morison), but it is understood that one should first look for a buyer among the other share-holders. There is no absolute rule about this, although disgruntled family members may try to annul a transaction on the grounds that it has taken place without the share being offered in the first place to members of the family. Another expedient sometimes employed in this kind of dispute is to claim that since the land is *pusaka*, it is ipso facto inalienable and so any sale transaction is void. Thus there is an appeal to something very like the Minangkabau principle of *harta pusaka* being the inviolable property of the descent group. But as we have seen there is nothing to indicate that this principle holds in Kerinci, and Morison makes it very clear by his examples that rights to *pusaka* property can be bought and sold. The situation is made exceedingly complicated, again as Morison indicates, by the common practice of pawning. Because disputes usually arise only many years after the original transaction there is always a problem of establishing the nature of that transaction: was it an outright sale or was it pledging? Again in these circumstances both parties to a dispute will pull out any argument they can to substantiate their case, but it always appears that the crucial point is the nature of the transaction itself, and rarely does the question of the status of the land as *pusaka* or *pencarian* become significant whereas in Minangkabau this would be a major issue. (An example of a typical dispute is given in Appendix IV.)

In all the accounts discussed above, however, there have been two omissions, the consequence of which is that we have in fact been working with a distorted picture of the situation in Kerinci. The first has been to ignore the influence of Islamic provisions in relations to inheritance. We have seen that Morison states that Islamic laws are simply dismissed and this is certainly true as far as the *fara'id* prescription of allotting two thirds to sons and a third to daughters is concerned. [8] On the other hand much use is made of the *hibah* provision which allows a person to donate property to another. One knows that in Acehnese society the exploitation of the *hibah* provision is often employed as a strategy to favour daughters (Hoesin 1970:179), as *adat* traditionally does, without violating Islamic principles, and it is surprising that more attention has not been paid to this phenomenon in Kerinci. Perhaps

this has been a consequence of scholars concentrating too exclusively on *adat* law as a system in isolation and not perceiving it as syncretic or at least open to modification from external influences, This would also explain why other features of contemporary practice have escaped the notice of observers. For example, no mention is made of the testamentary disposition of property, although this has become relatively common and the *surat wasiat*, the will, is a document which often finds its way into the courtrooms.

The other serious omission is the neglect of the transmission of wealth *inter vivos* which plays such an important part in the economic organisation of the community. Again it is easy to see how this neglect has occurred. Writers have been over-concerned with a body of rules and this had led to description, definition and careful classification with due allowance made for divergences from the norms. Such a discussion, however, fails to perceive that *post mortem* inheritance is only part of the general economic system of a community by which property is accumulated and transferred between generations. To put the issue of inheritance into its proper perspective one must consider it in the context of the other economic arrangements which obtain between kin. This means examining questions such as land tenure arrangements among kin, strategies for giving up one's property to one's children during one's lifetime and property arrangements contingent on marriage alliances. All these are matters which have been discussed in previous chapters and I mention them here once more to stress that problems of inheritance must always be considered in a wider context.

Having discussed concepts and ideas relating to property in the abstract, I want now to illustrate how rules and prescriptions regarding inheritance find expression in concrete instances.

Contemporary Arrangements in Pondok Tinggi

It is notoriously difficult to get people to discuss matters of inheritance within their own family and in this respect the situation in Pondok Tinggi is similar to elsewhere. People appear quite willing to talk about what occurs in other families but tend to be reticent and close when asked about details of arrangements in heir own. Under these circumstances it was difficult to collect sytematic information about dispositions of property, but from the evidence I gleaned from conversations, from the occasional perusal of testamentary documents and from the frank accounts of one or two informants I feel I learned enough to be able to give a representative picture of what happens currently.

One feature of the division of property which is immediately striking is that the *de jure* allocation of property among the heirs usually only takes place

several years after the death of the original property holders. The reason for this is that during the lifetime of parents there has been a gradual relinquishing of property to their children. Daughters, for example, will have been given houses on their marriage, or at least will have been given family land on which they may build. Sons may have been given some initial capital to start them off in business enterprises, or they may have been given responsibility over a plot of land in the hills. Rights of use over *sawah* will have been given to both sons and daughters as the need has arisen for each in turn. Parents retain ultimate authority over the property but in cases where their children have invested their own capital in family property, for example in building a house on family land or by doing the backbreaking work of clearing an upland plot, then both parents and children share rights of disposal and, in fact, parents usually concede absolute de facto control to the children.

As far as *sawah* is concerned parents are in a better position to retain full control till their deaths and will usually do so, both because they fear that to give up all their property would put them in an invidious position of dependence on their children, and because the regular income which they may expect to derive from the renting out of their fields ensures that they will have something for their old age. Although prepared to assist their children, then, they are reluctant to hand over total control, and should the need arise they will play off one child against another to safeguard their own interests, maintaining that one is getting more than her fair share of family property.

> Timah was an elderly widow who had a number of rice-fields and three married daughters. As each of the daughters set up house in turn Timah allowed them rights of access to *sawah* charging them no rent for the first few years of their married life. When the third daughter came to get married Timah wished to reassert her proprietary rights over the land which she had allowed the first daughter to use free of charge for several years. There was a great deal of bitterness over this since the first daughter resented having to give up her rights, She maintained that her mother had more than enough *sawah* to parcel out and still live quite comfortably without claiming back this property. The third sister, however, took her mother's part saying that the eldest had made use of the land rent free long enough and now it was the turn of herself and her husband. The dispute grew quite bitter and there was a lot of bad feeling between the sisters. Although their *mamak*, Timah's brother, tried to settle the matter as amicably as possible the tension was only resolved when Timah took direct possession of the fields when the planting season came round and went down herself to see the

land worked by the men she had hired. This expedient of being the first party to work a plot of disputed land in a new season is often resorted to in order to lay a strong claim to it, possession being nine-tenths of the law.

Except in the case of *sawah*, then, property has often been disposed of during the lifetime of the owners, so that unless there is a strong reason why an immediate settlement should be made after the death of the parents, brothers and sisters will usually be satisfied with the de facto existing arrangements, many of the battles, as it were, having been fought during the lifetime of the parents. Thus the formal division of property, known as the *kuak agoi* (split and divide), may be postponed for several years. It may even be postponed until the following generation comes to inherit and then, because there has been such a great lapse of time, and grandchildren are uncertain of the details of their grandparents' wealth, distrust and suspicion quickly surface, as a number of cases illustrate.

Nantan Ibrahim had been a successful merchant and had accumulated a lot of wealth which he had invested in valuable land in the Sungai Penuh market area which shop-keepers rented for considerable sums. Nantan Ibrahim had two daughters and a son, all of whom had families of their own. One daughter died before her father, leaving two sons and a daughter who were brought up by their grand-father. He himself died in 1970 and his surviving daughter died five years later leaving several children. The son is still alive today. Disputes broke out between the grandchildren and their *mamak*. There had been no formal division of property when Nantan Ibrahim died because the surviving daughter was satisfied by the arrangements and her interests were strongly supported by her husband. The latter was an energetic man and although he had no direct say in the disposition of his father-in-law's property he made it his business to keep an eye on his children's interests, and so watched his brother-in-law carefully. When he died shortly after his wife the *mamak* was the only one who had the details of the property arrangements at his finger tips, and his *kemenakan*, particularly the girls, felt that they were being cheated out of their inheritance. They therefore brought a great deal of pressure to bear so that a formal settlement could be made. Their *mamak* was unhappy about this because he said that it implied that he was being dishonest in his trusteeship and that present arrangements were not equitable. Eventually a formal division was made but some of the *kemenakan* remained dissatisfied.

This case provides a good example of the kind of situation under which a formal division takes place. Dissatisfaction may arise on the part of an heir or a group of heirs. What happens is that a person finds himself in difficult financial straits and casts his eye on the various avenues open to him to get ready cash. His first thoughts will be of his inheritance. Up till now he may have been satisfied to countenance a state of affairs which was slightly to his disadvantage and to the benefit of his sisters, but now pressing circumstances make him decide to demand a greater share. This is particularly likely to be the case if his sisters are well off and he is doing rather miserably. Some of the current arrangements he may not be able to alter. It would be difficult to throw his sister out of the family house, but at least he can use this as a strong bargaining counter. He might argue that she already has a larger share than him and, if necessary, he might make his brother-in-law feel so uncomfortable about living in the house that the latter persuades his wife to accede to her brother's demand for a bigger share of the cake; perhaps giving him a rotating right in some *sawah* or giving some land up to him altogether.

The other common situation in which a demand for a division arises is when, acting on the strength of the informal arrangements, someone attempts to dispose of property to which he has been accorded de facto rights of use. The sale of land under these circumstances is not allowed because the property has not been formally divided, and although de facto arrangements may have been passively accepted, there may be those who feel that these are not entirely equitable, and that if property is sold, then this would imply that they have given their consent to existing arrangements. Thus a demand is made for a proper division or, if this is not deemed to be necessary, the person selling the land must get a document from all his co-heirs and their common *teganai* saying that it has been agreed by all that this property, formerly in the hands of their common parent, has by agreement been allocated to the person desiring to sell the land, and there is no objection to his disposing of it as he wishes. The document must then be counter-signed by the *nenek-mamak* (Rio) of the *lurah*. Unless there is some document of this kind, or evidence that a *kuak-agoih* division has taken place, a potential buyer will be wary of purchasing inherited land.

In both examples of circumstances which will lead to a formal division of property pressures arise when an heir finds himself in need of money. It is usually a brother who is in this situation, because sisters would be in an invidious position if they tried to lay a claim to an inheritance over and above what existing arrangements have allotted to them. They would immediately be exposed to the taunt that their husbands should provide for them, and indeed the latter would be unhappy about appearing, even tacitly, to be

prompting their wives to encroach upon her family property. Widows or divorcees could conceivably be in a different category, but in fact it is rare that the initial de facto arrangements are unfair to the women. At that stage of the domestic cycle when the siblings are getting married one by one, the sisters first, the brothers are usually in a generous frame of mind having few responsibilities of their own and eager to see to the welfare of their *kemenakan*. They are thus quite happy to accept allocations of land made by the parents which tend to become semi-permanent arrangements. It is only when they have families and responsibilities of their own that lack of material success may push them to challenge their sister's share. Clearly under these circumstances, when it may come to a heated dispute and an insistent demand for a division, it is unlikely that much concession would be made to the old principle that movables should automatically fall to the women, nor even that there should be a category of *pusaka* land to which the sister should have exclusive rights of use.

As far as I can make out, the kinds of pressure which were making brothers insist on an equal division of property were already being felt in the twenties and thirties when the monetisation of the economy and a strongly enforced system of taxation created a need for cash liquidity even in the peasant sector of the economy.

> During the course of an interview with a man who had been the village head during the colonial period for a number of years I asked him whether he recalled anyone in the village being involved in property disputes. He replied in a general way that there were always disputes. I pressed him to give me some instances but he seemed reluctant to mention names and contented himself with describing types of dispute. I kept on pressing him since I knew him quite well and didn't think I was being bad-mannered. Eventually, seeing what I was after he gave one example. He remembered that the dispute had caused rather a stir at the time. It was in the thirties. Haji Ahmad and his sister had been quarrelling for some time over an inheritance which they shared. A formal settlement was agreed and under its provisions one plot of *sawah* was declared *pusaka* and the sister was given rights of use over it. The rest of the property was divided equally. This arrangement had, however, only lasted a few years because H. Ahmad became dissatisfied with it and forced the issue, so that the *pusaka* land was divided in two as well.

It seems very likely, too, that one of the reasons which was making brothers less tolerant of the traditional system of division was that the goods which

fell into the class of movable objects were shrinking. For one thing there was much less cattle than there had been. Towards the end of the nineteenth century cattle trading to the coast and to the gold mines in South Sumatra had been an important source of wealth, and in Pondok Tinggi in particular there appears to have been a large number of buffaloes. These herds were almost completely destroyed as a consequence of epidemic diseases in the first twenty five years of this century. There was an especially severe outbreak of disease in 1909 from which stocks never recovered. At the same time stocks of surplus rice had become depleted with the gradual growth of rice as a commodity of cash value, since after 1922 it was possible to use the newly completed road out of Kerinci to export rice to the coast. Furthermore, gold was no longer hoarded to the same extent that it had been previously. In the twenties and thirties there were more opportunities for people to buy goods for consumption and in addition many went on the pilgrimage. In some cases what money was available was immediately given to sons to embark on trading ventures. The consequence of all these developments was that at the death of parents the amount of movable goods in the estate was small, and, since it appears that at this time, too, the drift of men out of Kerinci to seek work was also declining, there were more people among whom these goods had to be shared.

These aspects of development which were already present in the colonial period have become even more pronounced today. It is true that other opportunities for employment have been created, particularly in the sphere of the civil service, from which development Pondok Tinggi has benefited, but the demand for cash has increased out of all proportion. There is no question of there being any surplus wealth for savings or investment. This situation differs markedly from the pre-colonial one, not because the Kerinci economy was not monetised before then, but because the scale of the monetization has changed the circumstances incomparably. Brothers are now far less inclined to waive their rights over property. In earlier times this would not have been to great economic disadvantage but it now means being prepared to sacrifice an important source of cash income. One more example of current attitudes can perhaps illustrate my point.

> When their parents died in the mid-sixties two brothers and three sisters had to share an inheritance. One sister was immediately given rights over the parents' house where she and her husband had been living. The elder of the two brothers who was a well-placed civil-servant decided that he would not make any demands on the rest of the family land and assisted his sisters in making an equitable division among them. The other brother who was less well off asked for rights of access to *sawah* and was given the usual rotating

right of access. In addition, it was decided to let him have a plot of land in the nearby hills which he intended to make into *sawah*. The arrangement was that he would be entitled to make full use of the land after he had converted it into *sawah*, a task that would take a year or two. Then, after he had been compensated for the labour he had invested by being allowed to make use of the *sawah* for a number of years, the property should again revert to the joint estate and all the siblings be allowed rotating turns to use it. The land has, however, now been in his hands for thirteen years and he shows no sign of intending to let it go. Recently the sisters went to the elder brother and complained about this, but when it was put to the younger brother that he should return the land he replied that his sisters were all relatively well off, that he had put a lot of labour into converting the land to *sawah*, and he was only prepared to return it to the joint estate if he was given some financial compensation. The sisters have grumbled about this, but there is little they can do without causing a major rift in the family, so he seems to have won his point and there is now talk of getting together to pay compensation.

We find, then, that today brothers will demand an equal share of the property and as far as the *sawah* of the village is concerned this inevitably means that the land is becoming increasingly fragmented, since there is no possibility of opening new lowland rice-fields. Previously, when *sawah* did not have the economic value which it has today, men would not have thought it worth the trouble of disputing to obtain access to a relatively small plot of land or to a small share in it with a rotating right only coming round once every five or six years. Now, however, when even a small 1/5 hectare plot can be rented out for a small cash sum, thus realising immediate cash in hand, men are more ready these days, it seems, to make themselves unpopular with their sisters. Of course the tendency to reaggregate still exists, but given the increased economic value of land people are much more reluctant to sell their shares than they were previously, not because they conceive of their holding as some sort of insurance, but more because they want to hold out for a higher price.

It is quite common in Pondok Tinggi to come across situations where a person's rotating right to some *sawah* falls only once in thirty years and under these circumstances it can be imagined that disputes often arise when people disagree about when turns should fall. If both parties are intransigent then the expedient of being the first to work the land that year is resorted to. Sometimes a sibling group, instead of further dividing a parent's rotating right in property originally belonging to grandparents, will simply allocate

their group share to one of themselves, although this allocation is usually traded off against rights of access to other goods. Once shares have been allocated it seems theoretically possible to alienate one's share by selling or pawning it to whoever one chooses, but in practice it is rare that a *giliran* is owned by a non-family member and every effort is made to keep the property entirely within a family. The whole procedure of assigning shares can become excessively complex, so much so, that even share-holders may be mystified. An example of one highly elaborate arrangement of sharing in relation to a water-mill (*kincir* or *lesung*) is given in Appendix V.

In cases where *giliran* are not at issue, disputes over property can take several forms among which one or two common patterns may be discerned. In general, problems arise when someone wishes to change existing arrangements which may have been in force for several years. Where pawning transactions or sales of land are concerned it may be the case that a claim is being made for land to revert to the ownership of a family which was last in possession of it some thirty or forty years ago. The individuals or families who have enjoyed possession of it for this long interim period will be loathe to surrender it, since they have come to look upon it as their property. In these cases the party in current possession may resort to two strategies. First, they may claim that the land under dispute never belonged to the family of claimants: that it was never the object of any transaction between the two families and that it had always been part of the *pusaka* property of the current possessors - see the case in Appendix IV. Since the matter is concerned with transactions which may have occurred some fifty years ago or more when the practice of drawing up written contracts was rare, the only way in which either side may establish its case is by reference to genealogies and the recitation of family property history, and the production of witnesses to confirm accounts. [9]

There were two cases of this type of dispute occurring in Pondok Tinggi in court files. In both the ultimate decision of the Indonesian Supreme Court to which both cases were referred was that the claim of the plaintiffs was upheld and the land had to be returned. In other words the Court believed that pawning had taken place. In both instances the parties to the dispute were of different families, which perhaps explains their determination to settle the matter through the national legal machinery, rather than through the traditional *adat* procedure and the mediation of the *teganai*.

The other strategy often employed under these circumstances is for the current holders of the property to maintain that the transaction which led to the land changing hands was not a pawning but a sale. Here the matter is not so clear cut as it usually is in the category of cases just mentioned above. For

one thing there is every possibility that this is true, that it was a sale and not a pawn which was intended. I have no evidence of sales of land in the pre-colonial period, but by the twenties and thirties it is clear that property was being bought and sold. I have notes of two cases which were not brought to court in which the nature of the transaction was disputed. In one, the current holders of the property refused to acknowledge that the document held by the family regarding the original transaction allowed them the right to redeem the land. They claimed that a clause indicating that a period of four years should elapse meant that if the land was not redeemed by then it would become the automatic possession of the family who had taken the land.

In the second case the dispute was between two brothers. One claimed that in the early thirties he had pawned some land to the other and a few years later wished to redeem it. There were said to be documents substantiating this version of the events. The other brother strongly denied that it was a matter of pawning and said that from the start it had been a sale. The brother who had sold/pawned the land became so incensed when the other refused to return it that he threatened to kill the man. Finally, a compromise was reached when the son of the brother holding the land who was an only child promised that, if his father was allowed to enjoy possession of the land during his lifetime, he would ensure that it reverted to the family of the original owner after his death. Both brothers have now been dead for a long time but in fact the land has not been returned. The matter has not been forgotten, at least not by the family of the original owner, but up till now, perhaps because they are all fairly prosperous and value keeping on good terms with the other family, they have not bothered to take the matter any further.

Among close kin, where disputes are seldom taken to court, differences arise, as I have described above, between brothers and sisters arguing about the division of an inheritance. In one case which I knew of and which I got the impression was representative of a common type of dispute the issue arose from one party trying to alter a de facto arrangement. A brother tried to get his sister to give up some land to him which he wanted to sell. This land was in fact a plot in the central area of the village and was intended for a house site. Its ownership had never really been decided since there had been no formal division between the brother and sister. The brother had on one or two occasions tried to convert the land to *sawah* but there had been difficulties and it had been allowed to revert to waste land. The sister and her children were firmly convinced that there had been a tacit agreement that this land would fall to her and that another parcel of land matching this had been given to the brother. There was a violent disagreement about the matter which caused a great deal of emotional stress, since before that the brother and sister had been close to each other. After a great deal of family

consultation in which the *teganai* were called in, it was agreed that the land should be divided in two and so each would get a share. Furthermore, in order to avoid future repercussions of similar disputes, it was decided also that a formal division of the parent's property should be made and the goods itemised. This would then allow the heirs to dispose of the property as they might wish at any future date without the need for consulting each other first. This appears to have been very much what the brother wanted.

Disputes involving siblings and parents and evoking much more passionate feelings can arise in relation to property transfers *inter vivos*. Although few brothers and sisters would argue about what is given to others in marriage portions post-marital gifts are sometimes resented, as when a sibling is allowed to make use of family capital. Another cause for resentment, which is new, is the expenses which one sibling may have incurred during the course of tertiary education which may be quite considerable and which are borne by the parents. I heard one girl bitterly complain that her elder sister had been given a chance to go to Java for her education and that this had cost a lot, whereas the parents were unwilling to give her a lump sum which she needed to join her fiancé, get married and set up house in Padang. So long as the parents are still alive the feeling of disaffection may not lead to open dispute, but after the death of the parents when an inheritance is to be divided a tally will be made of property which adult children derived from the parental estate.

Parents are aware of the dissension which may arise between siblings if they feel that there has been some discrimination in the allocation of property and sometimes try to make provisions to forestall arguments. I once saw a will written in 1930 in which a woman, foreseeing that her son might try to get more than his fair share from her estate after her death, itemised the money which she had given him during her lifetime. The items included such things as the payment of fines he had incurred, capital given for trading ventures etc. and came to a total of D.fl.1035. The will was in the safe-keeping of the woman's daughter's son who was always afraid that his *mamak* was going to make further demands on the family estate.

Another common set of problems is that which occurs in the event of polygynous marriages. Iskandar in his booklet sets out the rules regarding the division of property when a man has several wives and these rules find fairly general acceptance as guiding principles. In practice, however, it may become very difficult to distinguish the origins of the property which a man leaves in his estate after his death, whereas it is precisely those origins which will determine the shares allotted to each of the wives and their children. It is often the case, too, that a man will tend to favour one wife more than

another. This favouritism may be reflected in the dispositions he has made of his property during his lifetime and in the provisions he has made, either through leaving a will, or by other means for the division of the inheritance after his death. I knew of one particular instance where a man had had three wives and children from each, and today, some thirty years after his death, all the children are still disputing with their half-siblings who has rights to what and whether a certain plot of land fell into the category of *harta pencarian*, and if it did, with which of the three wives should it be considered to have been jointly earned. There was a document which I saw in which the husband had tried to list the property which he had acquired and how it had come into his possession, but this was disputed by the children of two of the wives, who claimed that it was not an accurate representation and unfairly favoured the third wife.

So far all these disputes have centred on issues which originate from points of *adat* law. We also have to consider what happens when Islamic practices and the provisions of the national law are employed for the purpose of transmitting property. Rather as we might have expected remembering the Acehnese example, it appears that the methods of disposing of property which are borrowed from these legal systems are selectively adopted in such a way to enhance the principles of *adat* rather than displace them. *Adat* subverts the new law by acceptance, accommodation and realignment. This is, for example, clear in the way in which *hibah* seems to he manipulated. In Islamic law *hibah* is a free gift from one person to another, but in Minangkabau, as von Benda-Beckmann (1979:178-181) shows, the term is used to cover a number of specific types of giving, in particular a gift from the FZ's group (*anak bako*) to the MB's children (*anak pisang*), usually a gift of land of the *pusaka* category to be enjoyed by the *anak pisang* group in perpetuity. The other principal type of *hibah* appears to be a strategy devised to forestall criticism of this devolution of property to the *anak* rather than the *kemenakan*, something which we have seen has been a matter of dispute in Minangkabau. By invoking the authority of Islam to justify dispositions in this way there is an attempt to steal the critic's thunder. One notices a similar strategy in operation when couples, whose marriage would have been prohibited under *adat*, maintain in their defence that such marriages are permitted under Islamic law.

In Kerinci *hibah* is used to allocate property to close relatives whom one fears would stand in danger of being deprived of an equitable inheritance, if matters were left to a *post mortem* split and divide arrangement. Of the two or three cases of *hibah* transmissions which I encountered in Pondok Tinggi two were gifts bestowed by grandmothers in their last illnesses to granddaughters. There was an especial bond of affection in both cases between

grandmother and granddaughter, and the grandmothers wished to mark that special tie by excluding some of their property from the estate which would be inherited after their death, and passing it directly to the granddaughters who otherwise would not necessarily have acquired that property through inheritance. In one case the bestowal of the property in this way caused some dissatisfaction among other members of the family. Another case I noted was the gift of some land for the construction of a house from a mother to a son. This happened in 1978 and seemed to me rather unusual in that a formal *hibah* donation was executed for an *inter vivos* transmission of property which was fully in accord with locally accepted *adat* principles. The drawing up of a *hibah* document did, however, give the transaction double force, since not only was the transaction valid under Islamic law but under the provisions of the Agrarian Laws the registering of a *hibah* donation by a properly authorised person gives the transaction the sanction of national law.

It is this latter feature which appears to be a significant influence in bringing about changes in the way in which property transactions are currently being negotiated in Pondok Tinggi. This has already been described in the discussion of the effects of the development of the national law on land transactions in Kerinci. Here I want to note that finding one's way around the new laws appears to be a contemporary equivalent of manipulating *hibah* arrangements in order to allow the owners of property to dispose of it as they wish. Curiously enough, this often means disposing of it in a way which is fully in accord with traditional principles, but it is thought to be necessary precisely because those principles are coming under attack. One example should be sufficient to illustrate this.

> Haji Mahmud had three daughters and two sons. He wanted to bestow some land on two of his daughters who were married so that they could build houses. He did not know how to do this without annoying the eldest son -- the other was still a young boy -- who he knew would certainly demand a gift. If any sort of document was drawn up, according to *adat* practice it was recognised that the eldest son would have to countersign it. Eventually, it was decided that the father would nominally sell the land to his daughters and with the bills of sale properly registered under national law the son would not be able to invalidate the transaction. It remains to be seen whether this expedient succeeds and what the son's reaction will be if he learns that the sales were only nominal.

What I find interesting about the above account is that what has happened is that the father has used the machinery of the national law to enforce the *adat*

principle of establishing, as it were, a *pusaka* category for his daughters, whose rights will not be open to the arbitrary authority of his son. He fears that the latter will not allow them the extra portion to which traditionally they are entitled. Rather than leave the matter to the risk that after his death the daughters might be treated ungenerously, as he sees it, he has decided to ensure that the property is inherited as he desires. In the same way, it appears to me, a generation ago people made use of the expedient of *hibah*. In the course of interviews and discussions I found that nominal sales of this kind were frequently conducted and the case described above was not an isolated incident as I at first suspected.

The analysis of principles of inheritance in Kerinci indicated that there were problems in taking over unreservedly definitions of property common in Minangkabau, and that in Kerinci it was not so much the origins of property which determined modes of transmission but the nature of the goods themselves. Nevertheless, traces of the Minangkabau distinctions between inherited and acquired property are evident, although here again in Kerinci the distinction plays more on the way property was created and came into an estate, either through labour or purchase, than upon its provenance in the family property of either mother or father. The reasons why the Kerinci situation differs so markedly from that in Minangkabau is clearly that in Kerinci property is transmitted directly to the children and divided among them. Although the contrast between movables and immovables would seem to suggest that in some special way landed property is associated with daughters, it is more likely that the distinction was expressive of what was a convenient mode of division at a certain historical juncture, when men tended to look beyond the land for the acquisition of wealth. When circumstances changed and first upland cultivation and then rice became potential sources for earning a cash income, then the principle of equal shares was stressed to the exclusion of the old criterion of division. The matter was, however, partially obscured by the persistence of the *pusaka* institution which did make extra provision for daughters allotting them special rights to *sawah* and houses, although today only the concession of the house remains in force.

Turning to contemporary arrangements we see how the development of land as a marketable commodity has brought about changes in attitudes to property. The concept of *sawah* as a capital asset open to individual exploitation, which appears to have existed even before the development of modern communications in the colonial period, rapidly became the motive behind changes in practice regarding property transactions. Previously, long-lasting pawning of land was tolerated because of the limited market value of rice, but when the demand for cash and the concurrent marketability of rice

suddenly developed out of all proportion in the twenties and thirties, it became important to introduce a more contractual basis into arrangements, and the disputes which arose were both a reflection of the change in attitude and a factor prompting people to put matters of property and inheritance on a more formal footing. To begin with, this meant establishing more rigorously what the principles of *adat* were, and working them into a more definitive and inflexible code of precepts; but as this was doomed to be an abortive enterprise, going against the very nature of the elasticity of *adat* law and not contributing to the diminution of disputes, attempts were made to incorporate principles from other legal systems to clarify issues. In the first instance people looked to prescriptions in Islamic law which could be accommodated to the framework of the social organisation without overturning it altogether. Latterly, it has meant the adoption of sections of national law for the same purpose, although it is not yet clear whether it will prove possible to be so selective here as was the case with the borrowings from Islam.

Notes

1 Throughout this chapter I use property according to common English usage to mean where the context requires either the objects over which rights are exercised or the rights to the objects themselves. Despite the slight possibility of confusion I find this preferable to talking about property-objects or using some other cumbersome phrase.

2 Since the distinction between *harta pusaka* and *harta pencarian* is based on the provenance of the property which is held to determine the range of heirs who may inherit it, it is clear that disputes will arise through differences of opinion between the groups of children (*anak*) and sisters' children (*kemenakan*) precisely about the origins of items of property. One can illustrate the complexity by remarking that a common dispute is between one group claiming that the property is *harta pencarian*, and therefore in principle partible among the father's children, another claiming that according to another principle the father's *harta pencarian* share should fall to his sister's children, and a third party claiming that the property in question was acquired through the investment of the mother's *harta pusaka* and therefore should be considered *pusaka* and come under different principles governing inheritance.

3 I am not convinced of his interpretation on this point. See my remarks on this custom in the context of the joking relationship between *dua piak*. The request of the *kemenakan* for a keepsake of their *mamak* does not, it seems to me, indicate that they consider themselves the rightful

heirs to his property.

4 Although in fact there is some similarity here with the situation in Jambi (Tideman 1938:141).

5 This suggests that Morison was under the impression that a single plot of land was worked jointly, whereas what is usually the case is that an actual physical division is made, e.g. lengthwise into two narrow strips if there are two heirs who wish to work the land every year. Arrangements can, it seems become quite complicated. For example, if there is one plot of land and four heirs, ABCD, it may be decided to divide the land into four small plots, 1,2,3,4. In the first year A works 1, B2, C3, D4. In the following year A works 2, B3, C4, D1, and so on for the years after. The reason for rotating the small plots is that the quality of the land may differ from one plot to another, so in this way each gets a turn at the different qualities of soil. This arrangement also serves to maintain the concept that this is family land and, as Morison observes, has not yet been divided into individual possessions. One. can, however, imagine the complexity when the rights of A,B,C,D are inherited by their daughters.

6 See the explanation on pawning (*gadai*) in the previous chapter.

7 Another writer, Hatim Mursalin (1965:37), who is from Sungai Penuh and whose source is, I suspect, the same as Iskandar's, has expressed succinctly this idea, which he refers to as *paskoa paltak* as follows:

If the *paskoa paltak* is conceded by the brothers (*pihak laki-laki*) once it is surrendered it may not be touched later. Its use is:
Panantaik nasanak dateang,
Palappeah nasanak bajaleang,
Pijouk nasai bilea tapassak kalapoa

Indonesian:
Penanti dusanak datang
Pelepas dusanak berjalan
Periuk nasi bila diserang lapar
[To await brothers who come
To send off brothers who depart
A bowl of rice if they are hungry]

Concerning *paskoa paltak* the following applies:
Hak taganteung milek tasangkauk
Pake padou ngan batinoa kuaso paduo ngan djanteung
[The right is dependent, possession conditioned,
Use is for the women, authority for the men.]"

It is interesting to note that Hatim suggests that the creation of the *paskoa*

paltak is not automatic and depends on the agreement of the brothers.

8 Hatim gives a broad sociological explanation to cover the changes in practice which he, too, notes:

> "Liberal (sic) and individualistic (sic) concepts in scientific thought cause the slackening of roles and obligations and of connections between members of a family group. On the other hand they also give rise to an intimate, close, family life with the consequence that the function and meaning of common property in a *pintu*, that is in relation to *paskoa* which is *ajun arah* and *paskoa paltak*, becomes veiled and unclear.... all inheritances are now divided equally between all the heirs both sons and daughters without distinction and including *paskoa* property." (Mursalin, 1965:49). I think he overstates his case and does not pay sufficient attention to the *giliran* system which I describe.

9 Curiously, however, Hatim (Mursalin 1965:44) mentions that in several of the lakeside villages in Kerinci *fara'id* law obtains. I was never able to get confirmation of this and when I questioned him in 1975 Hatim himself seemed unsure about the point.

10 Morison, incidentally, had already pointed out in the thirties that the testimony of such witnesses was not always reliable in these circumstances (Morison 1940:95).