CHAPTER 1

TOWARDS AN ANTHROPOLOGICAL UNDERSTANDING OF POLITICAL AND LEGAL CHANGE

This book deals with the long-term political and legal transformations of the Minangkabau polity known as the *nagari*[1] in West Sumatra, Indonesia. West Sumatra, a region also referred to as Minangkabau, is the homeland of the Minangkabau, the world's largest matrilineal ethnic group. Since their conversion to Islam, which started in the sixteenth century, the Minangkabau have combined their matrilineal organisation with adherence to Islam. Since early colonial times they also have been renowned for their tradition of migration (*merantau*), high level of education and active involvement in national intellectual life and politics. They have been famous for their distinctive plural legal order, founded in adat (a generic term for the way of life or 'culture' in the widest sense), Islam and the state. When the Dutch incorporated Minangkabau into their colony in the early nineteenth century, the *nagari* became the lowest unit of state administration. From then on *nagari* became increasingly embedded into supra-*nagari* arenas, in state, social and political organisations, and acquired their Janus-face character of being simultaneously a neo-traditional institution and an administrative unit of the state. This continued until a uniform model of village government called *desa* was introduced throughout Indonesia in 1979 (implemented in West Sumatra in 1983), which split up each *nagari* into several administrative villages. With the end of Suharto's New Order (*Orde Baru*) in 1998 and the ensuing constitutional changes and decentralisation policies, the *nagari* again became a focal reference for negotiations about autonomy,

[1] From Sanskrit and old Malay *negara*, state.

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control over resources and ethnic identification in the chaotic begin-
ning of the era of reforms known as *Reformasi*. Today, the *nagari* serve
as the epitome of regional autonomy, kinship, inheritance and property
relations, and of Minangkabau ethnic identification.

The fall of Suharto shook Indonesia like an earthquake, unsettling
the very foundations of the state as it had operated for three and a half
decades. In the wake of the South-East Asian financial crisis of 1997,
the Indonesian financial system on which Suharto had built his empire
crashed. International financial institutions had made it clear that they
would only continue support on the condition of fundamental reforms.
At the same time, economically strong regions within Indonesia were
tugging at the central government, demanding a larger share of the rev-
enues from their natural resources and more political independence in
general, threatening to secede from the Indonesian state. The political
landscape changed profoundly. Golkar, Suharto's political party and
trusted ally throughout his autocratic rule, lost its dominant position,
uprooting the firm patronage networks on which Suharto had built his
power and which had characterised the state's governing style for so
long.[2] Political parties that had been either banned or put under tight
state control regained their freedom, and a wide array of new political
parties was founded. The new political freedom allowed Indonesians
to openly discuss corruption in the political system and publicly voice
long-standing demands for regional autonomy and democracy. Voicing
these demands became possible because the mass media also underwent
a spectacular metamorphosis. From being the mouthpiece of the regime,
the media transformed into a numerous and diverse set of local, regional
and national printed media, radio and TV outlets that became sites of
intense political debate, changing the public arena beyond recognition.
In addition, the revolution in telecommunications quickly made its way
to the countryside. Within a few years' time, access to mobile phones and
the Internet had become an integral part of urban and rural life, creat-
ing unprecedented linkages between rural, urban, regional and national
political spheres.

In response to these pressures, the presidents following Suharto initiated
a process of constitutional and administrative transformation. The finan-
cial structures were remodelled.[3] The judiciary was made independent from

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[2] See Holtzappel 2009: 2, 15. Robison and Hadiz (2004: 5) discuss Suharto's Indonesia in terms of
a 'patrimonial administrative state'.
[3] See, e.g., Robison and Hadiz 2004; Halliday and Carruthers 2007.

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the state administration, and a number of specialised types of courts were introduced. Indonesia also embarked upon 'big bang style' decentralisation.[4] The thoroughly centralised state administration was to be decentralised, under the assumption that greater regional autonomy would curb corruption and bring about more democracy and equity among the regions.[5] Law 22/1999 on regional governance and Law 25/1999 on regional finances granted districts, municipalities and villages considerable autonomy. While the decentralisation policy was mainly directed at repositioning political and fiscal relations, in many regions the lowest-level administrative units, the *desa*, were also fundamentally reorganised. These developments were supported by a variety of political parties, civil organisations and a growing non-governmental organisation (NGO) sector that slowly put more distance between themselves and the government and Golkar (Uhlin 1997). International donor agencies such as the World Bank, the International Monetary Fund (IMF), the Partnership for Governance under the umbrella of the United Nations Development Programme (UNDP), the Ford Foundation, the Australian Agency for International Development (AusAID), the United States Agency for International Development (USAID) and the German Agency for Technical Cooperation (GTZ) provided influential advice and support for the reforms and decentralisation processes.[6] The high degree of decentralisation that was initially granted could not be maintained for long. President Megawati Sukarnoputri initiated a revision of the decentralisation laws, and Law 32/2004 returned some of the powers to the national administration. Nevertheless, more than a decade after the initial decentralisation laws were passed, Indonesia remains a far more decentralised state than it was under Suharto.

The political and constitutional transformations quickly affected ever-widening spheres of society. In most regions, it sparked off a revival of adat and adat law, as the legal rules and institutions of adat are usually referred to.[7] This renewed interest in adat primarily concerned

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[4] Asia Research Centre 2001: 18; Hofman and Kaiser 2002.

[5] Bakti 2000; Holtzappel *et al.* 2002; Sakai 2002; Aspinall and Fealy 2003; Kingsbury and Aveling 2003; Schulte Nordholt and Asnan 2003, 2007; Turner and Podger 2003; Erb *et al.* 2005; McLeod and MacIntyre 2007; Schulte Nordholt and Klinken 2007; Holtzappel and Ramstedt 2009; Klinken and Barker 2009; Aspinall and Mietzner 2010.

[6] For a good overview of all foreign and international donor activities, see GTZ 2001. See also USAID 2004.

[7] On adat revival, see Davidson and Henley 2007; F. and K. von Benda-Beckmann and Turner 2007.

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restructuring local government on the basis of neo-traditional political principles. It was also connected with the claims of local population groups, adat leaders and NGOs to land and other natural resources that the Suharto regime had expropriated from the local population.[8] In 1999 political activists representing a number of small marginal ethnic groups formed an association, AMAN (*Aliansi Masyarakat Adat Nusantara*), with the goal of achieving self-governance and control over their natural resources.[9] It was not only local communities that began to make claims against the national state. In many regions of Indonesia the old aristocracies, including the *raja* of the kingdom of Minangkabau that had been extinguished in the early nineteenth century, launched a movement with political and economic claims that has become known as the 'return of the Sultans' (Klinken 2007; Smith 2009). These transformations also spawned struggles over identity that emphasised ethnic localism or religious affiliation, or both. In some regions of Indonesia, this took the form of violent processes of exclusion.[10] The political freedom also sparked public debates between those in favour of entrenching religion more deeply into the political and legal arena, and those advocating more distance between the state and the several religions of the Indonesian population.[11] Interest in religious matters grew in response to worldwide developments, and religion became a core issue in regional and local politics and in the media.[12]

In West Sumatra these developments occurred in a relatively peaceful way. The provincial government was quick to implement decentralisation policies. In particular, the 'return to the *nagari*' was adopted in 1998 as the official provincial policy. This drew the attention of politicians and NGOs in other provinces and of the international actors who had become involved in guiding the decentralisation process. The return to the *nagari* became a prime example nationwide of successful decentralisation at the lowest level of administration.

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[8] See the contributions in Davidson and Henley 2007; F. and K. von Benda-Beckmann 2001, 2006b, 2009b.

[9] On AMAN, see Colchester 2001; Li 2001, 2007; Acciaioli 2007; Bourchier 2007; Sangaji 2007; Moniaga 2007; F. and K. von Benda-Beckmann 2011; AMAN n.d.

[10] Klinken 2001, 2004; Davidson 2003, 2008; Avonius 2004; Sidel 2006.

[11] See Vel 2001, 2007; Bruinessen 2002; Warren 2007; Ramstedt 2008; Avonius 2004; Sidel 2006; Bakker 2009.

[12] See Watson (2005) on the diversification in publishing and the enormous increase in literature on religious issues.

REORGANISATION OF VILLAGE GOVERNMENT AND DECENTRALISATION IN WEST SUMATRA

The first ideas for this study emerged during a seminar in 1999 in Padang, the capital of the province of West Sumatra. While discussions over adat had been rather subdued in the last two decades of the Suharto regime, the freer political atmosphere and the liberated media landscape unleashed passionate debates about what decentralisation and a possible return to a *nagari* structure would mean, how adat could be mobilised in the struggle for rights to natural resources, and what the role of Islam in public life and Minangkabau ethnic identity should be. Besides calls for a greater role for adat institutions in village government, an issue mainly advanced by adat leaders, adat was most often invoked in the increasingly strident demands of adat leaders and democracy-oriented NGOs that the government return the vast areas of land, mainly village commons (*ulayat*), that it had expropriated for the benefit of state-owned or private companies. These demands were accompanied by a wave of mass demonstrations, and people often took the law into their own hands by occupying plantations (see Chapter 11).

In addition to this revitalisation of adat, and partly as a reaction to it, there was an intensification of Islam going on in the public sphere. In the context of the reorganisation of village government, this was expressed in terms of a 'return to the prayer house' (*surau*), a slogan designed to invoke the 'return to the *nagari*' discourse. It highlighted the apparent contradiction between the pronounced intensification of Islam in social and public life on the one hand, and the resistance of the Minangkabau to proposals to introduce *Sharia* into the state legal system, a reflection of their allegiance to their matrilineal adat, on the other hand. The urge to reappraise the relationship between adat and Islam led to a *hausse* of workshops, conferences, journals and books about the 'correct' Minangkabau identity, understood as the 'proper' balance between adat, Islam and state (Chapter 14). These issues were vehemently debated, especially among politicians and intellectuals. In contrast to ethno-politics in other parts of Indonesia, the Minangkabau ethnicity discussions appeared to be quite self-contained and inward looking, and were mainly concerned with the question of what Minangkabau ethnicity means and should mean within the ever-changing triad of adat, Islam and state, and in the cross-cutting discourses of modernity and conservatism, regionalism and nationalism.[13] This occurred at a time

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[13] Abdullah 1966. The focus on the cultural contents of Minangkabau-ness contrasts with the more commonly studied identification processes related to ethnic boundary making (Barth

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when Minangkabau bureaucrats, politicians and intellectuals had an acute sense of having lost their former prominent position in the political and educational system of Indonesia. The feeling that they had been bypassed by other regions was so painful that various prominent Minangkabau called for an actual policy aimed at regaining self-esteem.

We realised that such exciting times would provide a unique research opportunity to engage in a longitudinal study of how constitutional changes, the decentralisation policy and the reorganisation of village government would affect the eternally contested and dynamic relations between Minangkabau adat, Islam and state law and authority. Such a study would show how the decentralisation policy and legal regulations were understood, transformed, accepted and rejected in a wide array of social arenas at different scales, including courts, regional politics, the national, provincial and district administrations, and village government. In particular, we could study the social significance of laws as they unfolded in places where local people would directly experience the effects, and not only at the regional level that was the focus of most studies. At the same time, such a study would help us to redress some of the shortcomings of the analyses of decentralisation in Indonesia published in the years immediately following 1999. We also believed that our study of the transitions of the *nagari* and the systemic implications of the specific Minangkabau plural legal order would help to understand the Minangkabau response to the global upsurge of their religion and the intriguing co-emergence of an increasingly assertive Islam and the resurgent politics of adat. It could correct some of the major flaws in the renderings of regional autonomy, adat, *nagari*, communal property and an intensifying Islam.

We followed the processes in West Sumatra very closely over a period of seven years, returning to the field once or twice a year between 1999 and 2005 and for a last spell of fieldwork in 2009. As time went on we gradually began to realise that we were observing a new phase in a long transformation process, and that this was the major reason why the Minangkabau population became so intensely interested in the process. We felt that it would be more appropriate to look at the transformations over a longer term, and to make the history of transformation since colonisation an integral part of our analysis rather than simply include the standard brief historical context chapter. Our decision to adopt a

1969; Vermeulen and Govers 2000). On the concept of identity, see also Ewick and Silbey 1998; Engel and Munger 2003: 12f.; Cooper 2005. See Donahoe *et al.* 2009: 2 on 'collective identity'.

long-term historical perspective was also inspired by experiences during the early phase of our fieldwork. While regional autonomy vis-à-vis the centre was important to most persons in West Sumatra, it did not mobilise the same overwhelming interest and emotions as the return to the *nagari*. We were struck by the sudden change in public attitude that occurred between summer 2000 and early 2001. Large parts of the population, including many urban intellectuals who until then had been extremely sceptical about the plans to return to the *nagari*, shifted from a generally critical and distanced stance to unambiguous support for the return to the *nagari*. The very idea of going back to a *nagari* structure stimulated the imagination of such a wide cross-section of the population that it cried out for an explanation that we could not find in the recent transition from the Suharto period to the era of *Reformasi* alone. Images of a past *nagari* formed the template against which critical and nostalgic voices alike imagined and planned the new *nagari* to which Minangkabau would 'return'.[14] For some this history referred to an unspecified pre-colonial past. Others took an image of the nineteenth-century *nagari* as a point of departure. But a surprisingly large number of people referred to the mid 1970s, the period that was generally regarded as the last time in which adat had still been strong, before the splitting up into *desa* had 'destroyed adat and the *nagari*'. The idea of the *nagari* as the embodiment of adat values and leadership structures became an important factor in shaping policy and the ways in which the new '*nagari* to be' was understood by villagers, government officials and donor agencies. In this romanticised reconstruction, the imposition of what was seen as 'the Javanese' village government of the *desa*, devoid of adat participation, was closely identified with the Suharto regime. This very point of reference happened to be the period in which we had carried out our first fieldwork in West Sumatra. We therefore found ourselves unwittingly in a somewhat privileged position that allowed us to compare the current reconstruction of the *nagari* organisation with the *nagari* of the 1970s. Having lived in a Minangkabau *nagari* for nearly a year in the mid 1970s and having studied village politics, property relations and conflicts battled out in village and state courts, we had come to understand village politics, the role of adat leaders and their relationship to the official *nagari* government quite well. This knowledge now allowed us to ask questions

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[14] Most actors engaged in 'actualising history for binding the future' (F. and K. von Benda-Beckmann 2001), or 'reprocessing the past while struggling over the future' (Moore 1993: 127).

and discuss differences between what we had experienced in the 1970s and today's circulating images of that same period. This coincidence, therefore, provided an excellent opportunity to adopt a middle-range historical perspective, allowing us to inquire more deeply into the process of reinventing tradition than would otherwise have been possible, and to question the often romanticised reconstructions of adat leadership and *nagari* government that proliferated with the return to the *nagari* agenda.

Thus what began as a straightforward study of decentralisation and administrative reforms at the lowest level after 1998 evolved into a long-term study of the transformations of the *nagari*, property relations and the ever-changing relationships between the three major bodies of law based in state government, religion and adat. This perspective would also throw light on the current transnational processes through which legal and political ideas spread over the globe and acquire new meanings in national and local settings and arenas of negotiation within Indonesia.[15] Indonesia and West Sumatra have a long history of such transnational flows.[16] The developments of the past ten years are part of longer-term globalising processes, and the new programmes of foreign donor agencies often become just the most recent version of a legal and political model that would typically be 'stacked' on top of earlier ones that had become part of local organisation and memory.[17]

In the next section of this chapter we briefly introduce Minangkabau and outline the methodological and theoretical assumptions that have guided our analysis. The main issues we discuss in this chapter are the conceptualisation of the *nagari* as a polity embedded in a wider and changing environment, the social working of law and the dynamics of plural legal orders, property relations, the problem of temporality, and the interpretation of historical (particularly colonial) literature. While our main concern is to understand the political and legal transformations of the *nagari* and decentralisation and legal pluralism in West Sumatra, these issues are also relevant to more general anthropological discussions. Our perspective on the dynamics of legal pluralism is a contribution to the study of 'law in society' and of legal engineering processes that so often lead to unexpected and variegated results. The history of the dynamic processes within the plural legal order in West Sumatra also qualifies the

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[15] Held *et al.* 1999; F. and K. von Benda-Beckmann 2005; Merry 2006.
[16] For transnational religious connections, see F. and K. von Benda-Beckmann 2005.
[17] For the notion of 'stacked law', see Roquas 2002.

influential proposition that in the reign of neo-liberalism we are living in a world of increasing 'lawfare' and juridification of the political and religious world.[18] We hope to show that the tendency to consider current processes of decentralisation as new modes of globalising governance has to be treated with caution. The historical approach we adopt is also relevant to more general discussions of the relationship between anthropology and history, the creation of customary law[19] and the anthropology of colonialism.[20]

WEST SUMATRA AND THE MINANGKABAU

West Sumatra is one of the thirty-three provinces of Indonesia. When the reforms started, the province had nine districts, three townships and 1,700 villages (*desa*). Today it has twelve districts, seven townships and around 600 villages (*nagari*). The government of the province is seated in Padang, the provincial capital, and consists of a governor with an administrative staff and a provincial parliament. The province's civil and religious high courts, an administrative court, and police and military headquarters are also located in Padang. Each district has a district head with an administrative staff, a district parliament, a civil and a religious court, and police and military district headquarters. The core of village government basically consists of a mayor with an administrative staff, a village parliament and an adat council.

The economy is for the most part based on trade, agriculture and horticulture, logging and fishing. The only large industry is the cement factory on the outskirts of Padang. The coal mines around Sawahlunto produce fuel for the cement industry and for export. On the narrow strips of lowlands along the west coast are large oil palm and rubber plantations. Towards the sparsely populated south, logging companies have been able to access the primary forests since the trans-Sumatra highway was built in the 1970s. The majority of the rural population lives in the central highlands, where they cultivate wet rice, potatoes, vegetables, coffee, tea, cocoa and cinnamon. The market of Padang Luar, close to Bukittinggi, is a major interregional vegetable market. Major exports include palm oil, rubber, cocoa, coal, wood and cement.[21]

[18] Davidson and Henley 2007; Comaroff and Comaroff 2009.
[19] See, e.g., Clammer 1973; Hobsbawm and Ranger 1983; Chanock 1985; Ranger 1993.
[20] See Thomas 1994; Cooper 2005; Inda 2005; L'Estoile 2008; Pels 2008.
[21] Badan Pusat Statistik (BPS; see http://sumbar.bps.go.id/?page=index_2&fd=artikel&idtopik=2 07&jdl=Ekspor%20Impor; accessed 7 March 2013).

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When the reforms started in 1999, the population of West Sumatra was 4.2 million and has slowly grown to 4.8 million in 2010.[22] The total size of the Minangkabau ethnic group is much larger; it was estimated at approximately 6 million in 2003.[23] One-quarter of the province's population lives in Padang on the west coast. This figure is a bit misleading, however, as the municipality also comprises a large rural and agricultural territory. Most of the residents of West Sumatra identify themselves as Minangkabau. While there are sizeable urban Christian and Buddhist Chinese communities, several Muslim Javanese transmigrants' settlements, and some Christian Batak and Mandahiling villages in the region bordering North Sumatra, the population on the mainland is relatively homogeneous.[24] This accounts for the fact that the transition after the fall of the Suharto regime was carried out without much violence, though there were some violent attacks on Chinese residents.

The Minangkabau have a long tradition of outmigration, which helps to explain the slow growth of the population.[25] A major reason for outmigration is education. Altogether the province has twenty institutions of higher education, including seven universities and a number of teachers' colleges and technical colleges. Several of these institutions are private, and many draw students from outside the province and even from Malaysia. Nevertheless, there is a general consensus that universities in Jakarta, Bandung and Yogyakarta are superior. Many people also leave the region to find jobs in neighbouring provinces, and many more are dispersed throughout the major towns in Indonesia, working as traders, religious teachers and preachers, and employees in the service sector, the educational system and the state administration.

Owing to their high level of education, their tradition of migration and regional and interregional trade, Minangkabau were actively involved in national intellectual life and politics throughout the first half of the twentieth century and the period following the gaining of independence (Naim 1974; Kato 1982). A look at the street names on a

[22] Census 2010 (www.bps.go.id/aboutus.php?sp=0; www.bps.go.id/aboutus.php?sp=0&kota=13; accessed 7 March 2013).
[23] See Bahar and Tadjoeddin 2004: 5, quoting from the analysis of the 2000 census by Suryadinata *et al.* 2003. The statistical yearbook of the province puts the population at 4,456,800 as of 2003 (BPS Sumatera Barat 2004: 43).
[24] The Mentawai Islands along the coast of West Sumatra, under the administrative control of the West Sumatran government, have a completely different ethnic make-up, but we do not include them in this study. On decentralisation on the Mentawai Islands, see Eindhoven 2007.
[25] BPS (www.bps.go.id/sector/population/table8.shtml; accessed 7 March 2013). In 2000 the net outmigration was half a million.