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978-1-107-03859-2 - Political and Legal Transformations of an Indonesian Polity:

The Nagari from Colonisation to Decentralisation

Franz von Benda-Beckmann and Keebet von Benda-Beckmann

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POLITICAL AND LEGAL TRANSFORMATIONS OF AN INDONESIAN POLITY

Political and Legal Transformations of an Indonesian Polity is a long-term study of the historical transformations of the Minangkabau polity of the *nagari*, property relations and the ever-changing dynamic relationships between Minangkabau matrilineal adat law, Islamic law and state law. While the focus is on the period since the fall of President Suharto in 1998, the book charts a long history of political and legal transformations before and after Indonesia's independence, in which the continuities are as notable as the changes. It also throws light on the transnational processes through which legal and political ideas spread and acquire new meanings. The multi-temporal historical approach adopted is also relevant to the more general discussions of the relationship between anthropology and history, the creation of customary law, identity construction, and the anthropology of colonialism.

FRANZ VON BENDA-BECKMANN was Head of the Project Group Legal Pluralism at the Max Planck Institute for Social Anthropology in Halle, Germany, until the end of 2012. He was also an emeritus professor at Martin Luther University Halle-Wittenberg and at Wageningen University.

KEEBET VON BENDA-BECKMANN was Head of the Project Group Legal Pluralism at the Max Planck Institute for Social Anthropology in Halle, Germany, until the end of 2012, to which she is now affiliated as research fellow. She is also an emeritus professor at Martin Luther University Halle-Wittenberg.

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This book is the product of forty years of intense collaboration in fieldwork, learning, discussion and writing that began with our first field research in Minangkabau in 1974–5 when we were young scholars. Franz had become interested in the anthropology of law when he did his Ph.D. research in Malawi in the late 1960s. When we met, it quickly became clear that together we would attempt to make the shift away from law into the exciting world of anthropology of law. And that is what we have done, collaborating first at different academic institutions in Zurich, Leiden, Wageningen, Rotterdam and during the past twelve years while sharing a dream position as head of the Project Group Legal Pluralism at the Max Planck Institute for Social Anthropology in Halle, Germany, from where we conducted our most recent studies in Minangkabau. We continued to work on the book after retirement when we moved to Amsterdam in May 2012 to be closer to our children and grandchildren. To my endless sadness, Franz unexpectedly passed away on 7 January 2013, after a short period of sickness. Until the very end he worked at the manuscript, determined to see it finished. He was so happy that we did manage to finish it and send it to the publisher before the end of 2012, not knowing that he would not live to see the publication.

Keebet von Benda-Beckmann

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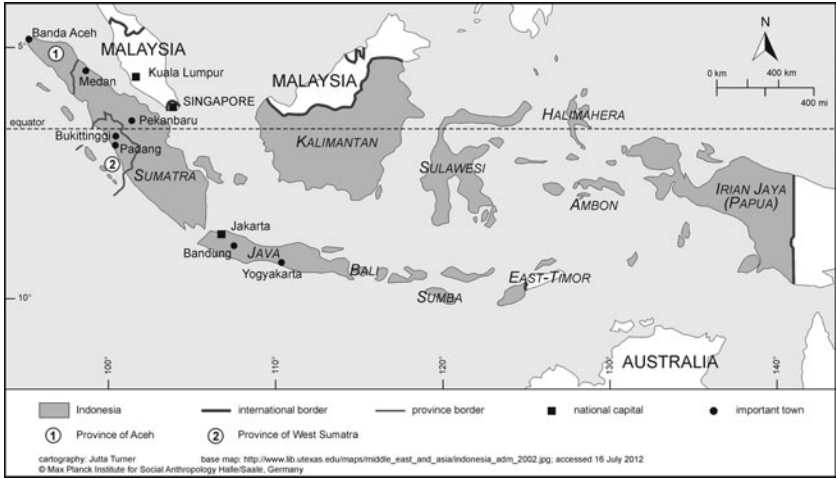
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Map 0.1 Indonesia

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Map 0.2 West Sumatra province

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It would have been impossible to carry out this complex and long-term research project without the support, stimulation and friendship of a wide range of persons and organisations. We are much obliged to the deans of the Faculties of Law and Social Sciences and the various rectors of Andalas University in Padang, West Sumatra, for their sustained support of our research. In the framework of a cooperative project between the Study Centre for Social and Cultural Development (*Pusat Studi Pembangunan dan Perubahan Sosial Budaya*, SCDev) of Andalas University and the Max Planck Institute for Social Anthropology in Halle, in 2004 we conducted a survey on people's experiences with the new *nagari* structure and village autonomy. Alfian Miko (director of SCDev), Aidinil Zetra and Indraddin conducted interviews in forty-nine *nagari*. In 2009 we did a follow-up study in twenty of these forty-nine villages and two additional villages in the newly formed district of Solok Selatan. We thank Miko, Aidinil and Indraddin very much for their work on the survey. We also greatly enjoyed the many conversations we had with them over the years. Driving through West Sumatra and holding interviews in a number of *nagari* together with Miko in early 2005 was a particularly enriching experience.

We are also grateful to Takdir Rahmadi from the Institute for Alternative Dispute Resolution of the Law Faculty at Andalas University for his support. Tasman, lecturer in the Faculty of Law at Andalas University and lineage head in his own *nagari*, took on the laborious task of coordinating the survey on court use, which he conducted together with Narullah, Yuliandri, Mardenis and Zulheri, and some of their students. Tasman helped us in many ways, coordinating the survey and going through the painful process of correcting and completing the database. His work for Padang Cement provided us with valuable insights into the intricacies of the case of Padang Cement. He also introduced us to the emerging field of Islamic banking. We thank both him and his wife Rina for their friendship and hospitality. We are particularly

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grateful to Tasman and his mother for welcoming us into their home in Saning Bakar, where over the years we spent many days interviewing and discussing the transition in their village with various village leaders. Much of the material on the boundary conflict between Saning Bakar and Muara Pinggai (Chapter 11) was obtained with Tasman's help.

Erwin of the Social Faculty has been another friend and colleague both in Minangkabau and in Wageningen. Year after year he travelled with us to his home in Padang Sibusuek and helped us reconstruct its fascinating history (Chapter 9). He also opened doors to district officers and provided us with valuable insights into the transformation processes. The joint visits to sites where private coal mining was emerging in the wake of privatisation opened our eyes to the darker sides of decentralisation.

Nursyirwan Effendi took us to Sungei Pagu, a region where remnants of Hindu religion are still visible. We have greatly enjoyed his company in West Sumatra and in Halle. Alahan Panjang was one of the villages we visited regularly. We thank Ali Amran Kali Bandaro, who was to become the first mayor of Alahan Panjang after it was reunited into a *nagari*, Adwil Adam Dt Tunggang Gagah, the chair of the village adat council, and the council's secretary Hadi Nursalam Dt Malintang Sati for their friendliness and the openness with which they received us over the years. Much information about the intriguing history of Selayo we owe to Chaidir Gani, chair of the adat council, who gave us much support and insight into the judicial system during our first field research in the 1970s, when he was still a judge at the civil court of Bukittinggi. We also thank Musni Hamzar Malin Sutan, mayor of Selayo in 2002, and the then chair of the village parliament, Yulinas Khatib Dt Rajo nan Sati, for their readiness to discuss the transition process with us.

Some Minangkabau colleagues have been with us throughout the entire thirty-five-year period in which we have been involved in research in West Sumatra. We would like to mention some in particular. First of all our thanks go out to a friend from early times, the late Narullah Dt Parpatih nan Tuo. When we first went to West Sumatra in 1973 and looked for a counterpart at the Faculty of Law in Padang, Narullah, then a young lecturer in criminal law and criminology, agreed to work with us as our official counterpart. He helped us a great deal during our research in the 1970s, and we gradually became friends. We attended his installation as *panghulu* in *nagari* Andalas Tigo Balai in 1975. A long-standing and active member of the board of the Provincial Association of Adat

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Councils (*Lembaga Kerapatan Adat Alam Minangkabau*, LKAAM), he became a well-respected adat specialist and was one of the most valiant defenders of adat law and an uncompromising lobbyist for *ulayat* rights during *Reformasi*. Through him we had access to a wealth of documentary material that adat councils or aggrieved parties sent to the LKAAM. We are very much obliged to the board of the LKAAM for providing us access to their archives, and for the many discussions we had over the years. Narullah also took part in the court survey, and his good contacts with former students in the courts paved the way for the researchers to access the registers. Many of the case studies we present in Chapters 4 and 5 are based on material he provided to us. But above all he was an inexhaustible source of information and a tireless discussion partner on the political negotiations over Minangkabau adat. His combination of modesty, wit, keen analysis and strong political convictions made our encounters with him special.

Our good friends Syahmunir and Syofyan Thalib, whom we also first met in the 1970s when they were young men, are now highly respected adat experts and professors in the Faculties of Law at Andalas and Bung Hatta Universities. They have been a constant source of information and inspiration. Syahmunir made sure we always had the latest regulations and information about land issues and village government. The long and intensive discussions with him have been a great joy. It was through him that we got into contact with Mr Busra of the provincial department of village government, from whom we learned in many conversations what coordinating decentralisation meant in practice for the province. The late Professor Aziz Saleh, head of Andalas University's International Relations Department, always facilitated our cooperation with the university, in addition to being a rich informant and lively discussion partner until his premature death in 2004. Two more old friends from the 1970s, Mochtar Naim and his wife Asma, often received us in their homes in Padang and Asma's *nagari* Batipuh, and shared their views on the problems of Minangkabau before and after 1998. In more recent times we had intensive discussions with a number of younger colleagues from Andalas University, most notably Kurnia Warman, Afrizal, Gusti Asnan and Sri Setiawati. During our stays in the guest house at Andalas University we had the opportunity to meet our Japanese colleagues Minako Sakai and Narihisa Nakashima. Over the years we had many conversations with Bernhard May, Tumpal Simanjuntak and Peter Rimmele of the GTZ office in Jakarta, and with Rainer Adam of

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the Friedrich Naumann Foundation, who had been active in organising training courses for Minangkabau administrators.

Our great thanks go to the family we are closest to in Candung Kota Lawas, the village where we conducted research in 1974 and 1975. Etek Hitam and Pak Basa took good care of us at that time, and their daughters Win, Upiek and Yet were among the children who visited us every day. During the years of our current research, the house of their daughter Yet and her husband Malin has been open to us whenever we visited Candung. We are extremely grateful for their hospitality.

Kari Batuah was a young farmer and head of our ward during our first research. Under the *desa* system he became head of *desa* Lubuk Aur-Batu Balantai, and following the reforms was the first elected mayor of the newly established *nagari* Candung Kota Lawas. We learned a great deal from him in the many conversations we had, and owe our deeper insights into the positive and negative sides of the transitions that occurred over the past years to him. We also enjoyed our discussions with Dt Majo Basa and his wife, Dt Pangeran, Dt Batio, Dt Ambasa and our old friend Palimo Putih. The journalist Fauzi shared with us his thoughtful and critical views on the developments in West Sumatra.

We had recurrent contact with Alis Marajo, district head of Limapuluh Kota; Martunus, district head of Tanah Datar; Gemawan Fauzi, district head of Solok before he became governor of West Sumatra and then Minister of Internal Affairs; and with Adirozal, vice-mayor of Padang Panjang. We greatly appreciate the time they took off to discuss their work with us.

Among the Minangkabau emigrants in Jakarta with whom we discussed the recent developments we especially thank Syaafurudin Bahar. We also want to thank Eka Aurihan Dt Endang Pahlawan, Dt Tumenggung, Dt Gompa and other members of the Adat Council of Sulit Air for graciously allowing us to attend a session of the committee for dispute management. Finally, we were greatly stimulated by conversations with Edi Utama, the staff of Qbar, and with Andiko and our other friends at HUMA.

This long-term research project would not have been possible if we had not had the unique opportunity to work at the Max Planck Institute for Social Anthropology in Halle. The Institute generously financed our research and provided an ideal intellectual setting for such long-term research. In particular, being part of the Institute allowed us to engage in writing a book in which we could present the results of our research

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in West Sumatra in quite some detail. Over the years we have written several articles and book chapters dealing with specific issues of the developments in Minangkabau. But the need to assert and summarise rather than being able to include detailed historical and fieldwork material always left us discontented.¹ Gesine Koch, our secretary over the past twelve years, has been of invaluable help, organising our travels, updating our endnote database, preparing the list of references and putting the manuscript into shape. Brian Donahoe was a most remarkably careful editor who did far more than just improve our English. We are also grateful to Alison Walker and Emma Wildsmith from Out of House Publishing who carefully guided us through the publication process. We thank Jutta Turner for creating the maps for this book. Barbara Lenz and Sung-Joon Park helped us with tables and graphs. Vitri put the data of the survey material into manageable tables that allowed us to understand the broad variation of responses to the decentralisation legislation. Harika Dauth, Felix Freigang and Jonas Katzmann prepared the index and glossary. Finally, we thank our colleagues at the Max Planck Institute, in particular in the Project Group Legal Pluralism, and all other colleagues who commented upon papers dealing with selected issues that we presented at conferences or submitted to journals and books.

Franz and Keebet von Benda-Beckmann

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¹ See Handelman's plea for the anthropological monograph (2009).

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NOTES ON SPELLING AND TRANSLATIONS

With regard to the Indonesian and Minangkabau language, we have generally followed the new orthographic convention introduced in 1972. However, in some of the old texts, names and titles quoted by us the old spelling (dj instead of j; oe instead of u; j for what now is y) is retained. Sometimes both spellings are used in the same document. Seeming inconsistencies of the same word being spelt differently (*sungai* or *sungei*) are mainly owing to regional differences. We have generally used the Indonesian or Minangkabau version of originally Arabic words. We therefore consistently use *Sharia* or the Minangkabau term *syarak*. However, different spellings such as *syariah*, *syariat* are also quite common in Indonesia. We have followed these in direct quotations.

Another problem is the use of Indonesian and/or Minangkabau in names of towns and regions where Indonesian and Minangkabau terms are often used side by side and often inconsistently, Sungai Pua or Sungai Puar, Candung Kota Lawas or Canduang Koto Laweh, Padang Sibusuk or Padang Sibusuek. Sometimes, Indonesian and Minangkabau words are even combined in one name, Limopuluh Koto. Such language mixing has become frequent in conversation, meetings, literature and official documents. We have mainly used the official spelling – though often the official spelling is in Minangkabau and not in Indonesian. This accounts for some inconsistencies in our own writing for which we apologise. Fortunately, the Minangkabau language is so close to Indonesian that these inconsistencies should not greatly mislead or irritate the reader.

Unless indicated otherwise, the translations of Minangkabau, Indonesian and Dutch words and texts into English are ours.

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ABBREVIATIONS

| | |
|----------|--|
| AB | <i>Adatrechtbundel</i> |
| ABS–SBA | <i>Adat Basandi Syarak–Syarak Basandi Adat</i> |
| ABS–SBK | <i>Adat Basandi Syarak–Syarak Basandi Kitabullah</i> |
| ADB | <i>Asian Development Bank</i> |
| ADEKSI | <i>Asosiasi DPRD Kota Seluruh Indonesia</i> |
| ADKASI | <i>Asosiasi DPRD Kabupaten Seluruh Indonesia</i> |
| ADN | <i>Alokasi Dana Nagari</i> |
| ADR | <i>alternative dispute resolution</i> |
| AMAN | <i>Alliansi Masyarakat Adat Nusantara</i> |
| AMDAL | <i>Analisa Mengenai Dampak Lingkungan</i> |
| APEKSI | <i>Asosiasi Pemerintah Kota Seluruh Indonesia</i> |
| APPSI | <i>Asosiasi Pemerintah Propinsi Seluruh Indonesia</i> |
| AusAID | <i>Australian Agency for International Development</i> |
| BAL | <i>Basic Agrarian Law</i> |
| BAMUS | <i>Badan Musyawarah</i> |
| BAPPENAS | <i>Badan Perencana Pembangunan Nasional</i> |
| BAPPEDA | <i>Badan Perencana Pembangunan Daerah</i> |
| BKPUI | <i>Badan Kontak Perjuangan Umat Islam</i> |
| BMAS | <i>Badan Musyawarah Adat dan Syarak</i> |
| BMASN | <i>Badan Musyawarah Adat dan Syarak Nagari</i> |
| BMKT | <i>Badan Majelis Kontak Taklim</i> |
| BMPN | <i>Badan Musyawarah Pembangunan Nagari</i> |
| BPAN | <i>Badan Perwakilan Anak Nagari</i> |
| BPN | <i>Badan Permusyawaratan Nagari</i> |
| BPN | <i>Badan Petanahan Nasional</i> |
| BPNK | <i>Badan Pengawal Nagari dan Koto</i> |
| BUMN | <i>Badan Usaha Milik Negara</i> |
| DAK | <i>Dana Alokasi Khusus</i> |
| DAU | <i>Dana Alokasi Umum</i> |
| DAUN | <i>Dana Alokasi Umum Nagari</i> |
| DPR | <i>Dewan Perwakilan Nagari</i> |
| DPRD | <i>Dewan Perwakilan Rakyat Nagari</i> |

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LIST OF ABBREVIATIONS

| | |
|-------------|--|
| DPRW | <i>Dewan Perwakilan Rakyat Wilayah</i> |
| DSE | <i>Deutsche Stiftung für internationale Entwicklung</i> |
| Dt | <i>Datuk</i> |
| FORMASI | <i>Forum Komunikasi Reformasi</i> |
| FPU | <i>Forum Perempuan Minangkabau</i> |
| Gebu | <i>Gerakan Seribu</i> |
| GSB | <i>Gubernur Sumatera Barat</i> |
| GTZ | <i>Deutsche Gesellschaft für Technische Zusammenarbeit</i> |
| G30S | <i>Communist Movement 30 September</i> |
| H | <i>Haji</i> |
| HGU | <i>Hak guna usaha</i> |
| IA | <i>Indisch Archief</i> |
| IAIN | <i>Institut Agama Islam Negeri</i> |
| ICMI | <i>Ikatan Cendekiawan Muslim Indonesia</i> |
| IFES | <i>International Foundation for Electoral Systems</i> |
| IG | <i>Indische Gids</i> |
| IKBAL | <i>Ikatan Keluarga Besar Alumni Angkatan Muda Muhamadiyah Sumatera Barat</i> |
| ILAP | <i>Indonesian Land Administration Program</i> |
| ILO | <i>International Labor Organization</i> |
| IMF | <i>International Monetary Fund</i> |
| InPres | <i>Instruksi Presiden</i> |
| KanWil | <i>Kantor Wilayah</i> |
| KAN | <i>Kerapatan Adat Nagari</i> |
| KAUR | <i>Kepala Urusan</i> |
| KBH | <i>Kelompok Bantuan Hukum</i> |
| KepMendagri | <i>Keputusan Menteri Dalam Negeri</i> |
| KepPres | <i>Keputusan Presiden</i> |
| KKM | <i>Kongres Kebudayaan Minangkabau</i> |
| KN | <i>Kerapatan Nagari</i> |
| KNI | <i>Komite Nasional Indonesia</i> |
| KONMAWAS | <i>Konfederasi Masyarakat Salatiga</i> |
| KPUD | <i>Kantor Pemilihan Umum</i> |
| KUD | <i>Koperasi Unit Desa</i> |
| LAAM | <i>Lembaga Adat Alam Minangkabau</i> |
| LAKM | <i>Lembaga Adat Kebudayaan Minangkabau</i> |
| LAN | <i>Lembaga Adat Nagari</i> |
| LBH | <i>Lembaga Bantuan Hukum</i> |
| LKAAM | <i>Lembaga Kerapatan Adat Alam Minangkabau</i> |
| LKATIKA | <i>Kerapatan Adat Tiga Kabung Air</i> |

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| | |
|------------|--|
| LKMD | <i>Lembaga Ketahanan Masyarakat Desa</i> |
| LKMN | <i>Ketahanan Masyarakat Nagari</i> |
| LMD | <i>Lembaga Musyawarah Desa</i> |
| LPJ | <i>Laporan Pertanggungjawaban Jabatan</i> |
| LPM | <i>Lembaga Pemberdayaan Masyarakat</i> |
| LPMN | <i>Lembaga Pemberdayaan Masyarakat Nagari</i> |
| LPPI | <i>Lembaga Pengawasan dan Pengaduan Independen</i> |
| LuKi | <i>Lubuk Kilangan</i> |
| MA | <i>Mahkamah Agung</i> |
| MUI | <i>Majelis Ulama Indonesia</i> |
| MUNA | <i>Majelis Ulama Nagari</i> |
| MTKAAM | <i>Majelis Tinggi Kerapatan Adat Alam Minangkabau</i> |
| NES | <i>nucleus estate and smallholder</i> |
| NGO | <i>non-governmental organisation</i> |
| OPSTASTA | <i>Operasi Tuntas Sengketa</i> |
| PA | <i>Pengadilan Agama</i> |
| PALAM | <i>Pagar Alam Minangkabau</i> |
| PAN | <i>Pendapatan Asli Nagari</i> |
| PANWASDA | <i>Panitia Pengawas Pilkada</i> |
| PAR | <i>Partai Adat Rakyat</i> |
| PBB | <i>Pajak Bumi dan Bangunan</i> |
| PDAM | <i>Perusahaan Daerah Air Minum</i> |
| PDIP | <i>Partai Demokrasi Indonesia Perjuangan</i> |
| PEBABRI | <i>Persatuan Purnawirawan Angkatan Bersenjata Republik Indonesia</i> |
| PERMENAG | <i>Peraturan Menteri Agraria</i> |
| PerNa(g) | <i>Peraturan Nagari</i> |
| Perti | <i>Persatuan Tarbiyah Islam</i> |
| Perwanest | <i>Persatuan Wali Nagari se Sumatera Tengah</i> |
| PETA | <i>Tentara Sukarela Pembela Tanah Air</i> |
| PII | <i>Partai Islam Indonesia</i> |
| PJS | <i>Pejabat Sementara</i> |
| PKI | <i>Partai Komunis Indonesia</i> |
| PKK | <i>Pemberdayaan Kesejahteraan Keluarga</i> |
| PKPMAJ-BPN | <i>Pusat Kajian Pembangunan Masyarakat Unika Atma Jaya-Badan Pertanahan Nasional</i> |
| PKS | <i>Partai Keadilan Sejahtera</i> |
| PLN | <i>Perusahaan Listrik Negara</i> |
| PN | <i>Pengadilan Negeri</i> |
| PNPM | <i>Program Nasional Pemberdayaan Masyarakat</i> |

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| | |
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| PP | <i>Peraturan Pemerinthah</i> |
| PPDRTU | <i>Peniliti Penyusunan Draft Ranperda Tanah Ulayat</i> |
| PPIM | <i>Pusat Pengkajian Islam dan Minangkabau</i> |
| PPP (P3) | <i>Partai Persatuan Pembangunan</i> |
| PRONA | <i>Proyek Operasi Nasional Agraria</i> |
| PRRI | <i>Pemerintah Revolusioner Republik Indonesia</i> |
| PSII | <i>Partai Syarat Islam Indonesia</i> |
| PT | <i>Pengadilan Tinggi</i> |
| PTBA | <i>PT Tambang Batubara Bukit Asam</i> |
| PURPET | <i>Persatuan Usaha Rakyat Perkebunan Tandikat</i> |
| P2TANRA | <i>Persatuan Persaudaraan Tani Nelayan Nusantara</i> |
| P3N | <i>Pembantu Pegawai Pencatat Nikah</i> |
| P3NTR | <i>Pembantu Pegawai Pencatat Nikah, Thalak, Rujuk</i> |
| SAAM | <i>Serikat Adat Alam Minangkabau</i> |
| SCDev | <i>Pusat Studi Pembangunan dan Perubahan Sosial Budaya</i> |
| SDA | <i>Sumber Daya Alam</i> |
| SDO | <i>Sumbangan Daerah Otonom</i> |
| SeknasMHA | <i>Sekretariat Nasional Masyarakat Hukum Adat</i> |
| SekNeg | <i>Sekretariat Negara</i> |
| SK | <i>Surat Keputusan</i> |
| SMA | <i>Sekolah Menengah Atas</i> |
| SMART | <i>specific, measurable, achievable, relevant, team related (new programme for containing land disputes)</i> |
| SMP | <i>Sekolah Menengah Pertama</i> |
| STAIN | <i>Sekolah Tinggi Agama Islam Nasional</i> |
| StBl | <i>Staatsblad</i> |
| TBB | <i>Tijdschrift voor Binnenlands Bestuur</i> |
| TBG | <i>Tijdschrift voor Indische Taal-, Land- en Volkenkunde, uitgegeven door het Koninklijk Bataviaans Genootschap van Kunsten en Wetenschappen</i> |
| TNI | <i>Tijdschrift voor Nederlandsch-Indië</i> |
| TTS (TTSj) | <i>Tungku Tigo Sajarangan</i> |
| TTS (TTSp) | <i>Tali Tigo Sapilin</i> |
| UNDP | <i>United Nations Development Programme</i> |
| USAID | <i>United States Agency for International Development</i> |
| UU | <i>Undang-undang</i> |
| VOC | <i>Vereenigde Oost-Indische Compagnie</i> |
| WALHI | <i>Wahana Lingkungan Hidup Indonesia</i> |