

FORUM SHOPPING AND SHOPPING FORUMS:
DISPUTE PROCESSING IN A MINANGKABAU
VILLAGE IN WEST SUMATRA*

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I. INTRODUCTION

A variety of institutions can deal with disputes in Minangkabau.¹ Some derive their legitimation from adat, the indigenous Minangkabau system of normative rules and usages,² others from the national--formerly colonial--legal system. Adat institutions function on the local level only, mainly in villages, but also in urban areas. Some state institutions--the mayor and the Village Council and the officer of the Office of Religious Affairs--also work on the local level, whereas others--state courts, Islamic courts, the public prosecutor--work on the district level. Still other institutions on the sub-district level--the police and the sub-district officer--inevitably become involved in some disputes, although they have no official jurisdiction. The fields of jurisdiction of these institutions overlap. Minangkabau disputants therefore can choose between several institutions. In analogy to private international law I shall speak of "forum shopping" here, because disputants have a choice between different institutions and they base their choice on what they hope the outcome of the dispute will be, however vague or ill-founded their expectations may be.

There is, however, another side to the problem. Not only do parties shop, but the forums involved use disputes for their own, mainly local political ends. These institutions and their individual functionaries usually have interests different from those of the parties, and they use the processing of disputes to pursue these interests. So besides forum-shopping disputants, there are also "shopping forums" engaged in trying to acquire and manipulate disputes from which they expect to gain political advantage, or to fend off disputes which they fear will threaten their interests.³ They shop for disputes as disputants shop for forums. Indeed, manipulating with disputes seems to be a favorite pastime of many functionaries.

In this paper I shall first give a description of the various institutions which play a role in dispute processing in Minangkabau, along with some more general ethnographic background. Then I shall illustrate the bilateral shopping process with an

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extensive case history.

The jurisdiction of a forum depends in principle on the nature of the dispute. But since most disputes have several aspects, the definition of the dispute is a means to establish jurisdiction and thus a means of forum shopping, both for parties and functionaries. Once jurisdiction is established, functionaries compete in their shopping activities mainly with procedural arguments. I shall explain why they prefer these to substantive arguments about the dispute itself, and will suggest that this has to do with the socio-political structure and principles of decision-making of village life. Another question I want to address is whether there is a limit to manipulations and forum shopping. Though village institutions and functionaries are very actively engaged in the processing of disputes, disputes are rarely and only with great difficulty given a final solution on the village level. Yet if functionaries systematically disregarded the interests of parties, villagers would ultimately cease to ask for their services and the shops would soon become empty. Why do villagers still make use of village institutions? In particular, I shall in this connection consider the extent to which the state courts function as an alternative to village institutions and suggest that this is only to a certain extent the case. For village functionaries play such an important role in state court procedures that they can hardly be bypassed by parties. The state courts, by their interpretation of adat law, help to sustain the control and manipulation of disputes by village functionaries, and thus promote forum shopping and manipulation.

II. ETHNOGRAPHIC BACKGROUND⁴

The Minangkabau of Sumatra's west coast number approximately 3 million people, of whom 86% live in villages.⁵ Minangkabau is a predominantly agricultural area. The main subsistence crop is rice, which is cultivated on irrigated or dry land. Coffee, cinnamon, nutmeg and chili peppers are grown as cash crops. Some villages specialize in crafts like weaving, basket making, embroidering, blacksmithing or the like. Bukit Hijau, where my research took place, had no such specialization, though some villagers engaged in petty trade and some women made baskets and embroideries for sale.⁶ Most villages have several fishponds. Fish is generally used only for private consumption, but some is sold.

The village, nagari, is the lowest level of state administration. It usually comprises several hamlets and often has a considerable population. Bukit Hijau is quite a large village,

having some 10.000 inhabitants. But the nagari is also a village republic in the adat sense. Apart from the occasional, loosely structured village federations (lareh), it was in the past the politically autonomous territorial unit par excellence.

Precolonial Time

In pre-colonial times village life was governed by adat. Though the Minangkabau became Moslems some time in the 16th century, the norms of Islamic law were only to a very limited extent accepted as standards for social relationships and behaviour (Taufik Abdullah 1966; Dobbin 1977). The core of Minangkabau social and political organization--the principle of matrilineal descent and of property holding by matrilineal descent groups--was not changed.

Diagram 1

INSTITUTIONS OF DISPUTE SETTLEMENT IN MINANGKABAU

Levels of institution →	village				sub-district		district	
types of disputes → levels of disputes ↓	<u>adat</u> (in the narrow sense)	<u>pusako</u>	<u>buek</u>	all types of disputes	trouble-making	all types of disputes	criminal offences	civil claims criminal offences
<u>nagari</u> (village)	adat council (+ chairman)			village council (+ mayor)				
<u>hindu / suku pusako</u>	<u>panghulu hindu</u> <u>juaro adat</u> (anak mudo)	<u>panghulu suku</u>	<u>buek</u> (+ <u>angku</u>)	village section council (+ village section head)	police / military commander	sub-district officer	public prosecution	state court
<u>buek gadang</u> (lineage)	<u>panghulu</u>							
<u>kam</u> (sub-lineage)	<u>manek</u>							
type of institution →	adat institutions				state institutions			

Each villager is on the basis of matrilineal incorporation into several groups which are generally based on matrilineal descent. The basic social and political unit in Bukit Hijau (see diagram 1) is called buah gadang.⁷ Its members share common inherited property (harato pusako)--mainly land-- and are headed by a panghulu. 100 panghuluships are recognized according to village adat, but only about 20 are now occupied. The buah gadang are grouped into two hierarchies of authority and decision-making, forming two spheres of socio-political competence. First, according to the principle of pusako (common matrilineal heritage) the buah gadang are grouped together in suku pusako, or simply suku, headed by a panghulu suku. In Bukit Hijau there are nine suku pusako. Common suku membership presupposes common matrilineal descent, although a common ancestress cannot always be traced for every buah gadang of a suku pusako. The suku are exogamous. When one buah gadang dies out, another within the suku pusako should inherit its lineage land and the titles of its lineage functionaries. The second principle according to which the buah gadang are grouped is adat, used here in the restricted sense of nagari government. These groups are referred to as hindu, of which there are 12 in Bukit Hijau. The political hindu affiliation crosscuts the pusako divisions. Each hindu has three functionaries: a panghulu hindu, who at the same time is panghulu of his own buah gadang, a juaro adat who is an executive officer⁸ and an anak mudo, who is used as a messenger amongst whose tasks it is to cite the village legend (tambo) at ceremonies. On the lower levels of authority, including the buah gadang, the two spheres have functionaries in common and are not separated. These functionaries are the mamak, the sub-lineage head, and the panghulu, the lineage head. Above the level of buah gadang they split into two hierarchies: the suku pusako hierarchy, concerned mainly with the administration of lineage land and titles of lineage functionaries, and the hindu adat hierarchy, which is involved in village government.⁹

Besides the adat and pusako structures, there is one more pre-colonial structure in Bukit Hijau, which is based on territorial principles. This is the buek structure of the neighbourhoods.¹⁰ These neighbourhoods have their own regulations, buek perbuatan,¹¹ concerning common facilities such as the maintenance of surau, bachelor houses and later prayer houses, and mutual help in daily affairs. Representatives of each sub-lineage together are the urang sabuek who decide in buek affairs. Important decisions are taken by all members of the buek.

The highest authority for all three systems is the Adat Council, which nowadays comprises the representatives of the

12 hindu, be they panghulu or juaro adat.¹²

Two principles lie at the heart of Minangkabau decision making, both being expressed in the adat saying (see R.M. Dt. Rajo Panghulu 1971:80):

Kamanakan barajo ka mamak
 mamak barajo ka panghulu
 panghulu barajo ka mupakat
 mupakat barajo kapado alua
 alua barajo kapado mungkin dan patuik
 patuik dan mungkin barajo kapado bana
 bana itulah nan manjadi rajo.

The kamanakan are subject to the mamak
 the mamak is subject to the panghulu
 the panghulu is subject to the mupakat
 the mupakat is subject to the power of reasoning
 the power of reasoning is subject to what is
 possible and appropriate
 what is appropriate and possible is subject
 to truth
 it is truth which is the highest authority
 (which becomes king).

One principle is hierarchical in character. In the process of decision making a person is subject to his mamak, who in turn is subject to his panghulu, as the first two lines of the adat saying indicate. According to another saying, decisions must be made at the lowest possible level and only if this is impossible, the matter must go up a step and so on until it becomes a nagari matter and the Adat Council handles the case. "Bajan-jang naiek--batanggo turun," you must go up the stairs and go down the ladder. But decisions must in turn have the consent of all persons concerned, down to the lowest level. The mamak or panghulu of the group in which the decision is made leads the deliberations and the way to the next step, if necessary. And in this respect he must be followed by his subjects. Complementing this hierarchical principle there is an egalitarian principle: every decision to be valid must be made unanimously by all members of the institution dealing with the matter: mupakat is always required (see F. von Benda-Beckmann 1979:88 ff.). I shall return to these principles later.

Colonial and Post-Colonial Periods

Bukit Hijau and its political organization have been influenced by the colonial administration since the early 19th century, and the subsequent national and provincial governments have also exerted a strong influence. The Dutch, who had established trade posts in some coastal places in the middle of

the 17th century, conquered the Padang Highlands, the center of Minangkabau, between 1822 and 1837. Village judicial institutions were officially recognized by the Dutch in the first period of the colonial administration. Until the 70s of the 19th century criminal offences were officially tried by adat functionaries (Kahn 1976:86; Taufic Abdüllah 1971:6). However, from 1837 on European administrators handled disputes concerning public order, politiezaken (Couperus 1882:64). Since many disputes concerning land and inheritance involved violence, they exerted considerable influence on the administration of justice. From 1874 - 1935 village administration of justice was officially not recognized, although in practice it never disappeared. In 1935 it was officially rehabilitated, but appeal to the State Court was always possible.¹³ Thus "village justice," dorpsjustitie, has been performed by adat institutions and institutions of local administration the composition of which has undergone several changes before and after Indonesia's independence.¹⁴ The provincial regulation in force during the time of our field research, SK GUB 015/GSB/1968, provided for a mayor, Wali Negeri, appointed by the district head, a council of representatives, Dewan Perwakilan Rakyat Nagari (DPRN), chosen in general elections, and the Village Council, Kerapatan Nagari, of which the mayor was the president. The DPRN was abolished in 1975 and its functions were taken over by the Village Council, which now advises the mayor.¹⁵ The village is further subdivided into village sections, orong, each with a section head, Wali Orong, and a section council, with functions similar to those of the buek, namely in neighbourhood matters. The borders of these two types of neighbourhoods overlap partly and the section head usually is an important member of the buek as well.

Headed by the mayor, the Village Council acts among other things as a mediating body, hakim perdamaian, in disputes. For this mediating task it is divided into three sections: an adat section, a religious section, and a general section. In practice the mayor decides all disputes submitted to the Village Council with his section heads only. These disputes usually concern adat questions, sometimes but not necessarily connected with problems of public order. The Village Council was supposed to act according to the local adat, i.e. observing adat principles of decision making. In fact it decided cases submitted to it in a rather authoritarian way. Matters concerning religious affairs are usually settled in the prayer houses by religious leaders. The village registrar of Marriage, Divorce and Remarriage (Pembantu Pegawai Pencatat Nikah Thalak Rujuk, P3NTR) deals with marriage affairs (F. von Benda-Beckmann 1979:129.) According to the administration kept in the village hall the Village Council decides some 10 disputes per year (see Table 1). It is impossible to assess how many cases are dealt with by the mayor informally.

Table 1

Caseload, village council, 1973 - July 1975*

	Total issues**	relationship of parties				outcome		
		intra-lineage FaB vs Ch	neighbourhood	inter-suku	settled	not settled	unclear	
<u>sawah</u> (wet ricefield)	12	10	-	1	1	5	6	1
garden	2	1	-	1	-	1	1	-
fishpond	3	3	-	-	1	-	2	1
<u>surau</u> (men's house)	1	1	-	-	-	-	1	-
land transactions	4	3	1	-	-	2	1	1
<u>ulayat</u> land***	1	-	-	-	1	1	-	-
<u>wakaf</u> (pious endowment)	1	-	-	1	-	-	1	-
unclear	3	3	-	-	-	2	-	1
Total Issues**	27	21	1	3	2	11	12	4

*The total of registered disputes was 22. The real number of disputes dealt with by the Village Council must have been considerably higher, judging from the numbering on the settlement proposals. In 1973 the highest number was 13, but only 7 cases were registered; in 1974 the highest number was 10, but only 5 cases were registered.

**Some disputes involved more than one issue, which accounts for the difference between the total number of registered disputes (22) and total issues (27).

***Land, not belonging to the pusako of a particular suku, but to the community as a whole. Cf. F. von Benda-Beckmann 1979: 139 ff.

Adat government and the local arms of the state administration exist side by side. The power of the adat leaders has increasingly weakened and many panghuluships are vacant, due to the decreased prestige of the office and the struggles within the buah gadang between rival sub-lineages.¹⁶ Nevertheless, the adat structures still exist, and adat leaders still have enough power to make local administration impossible without them. On the other hand, the institutions of local administration, most members of which usually are also adat or Islamic leaders, are strong enough to make adat government impossible without their cooperation.

Above the village level there are still more institutions to which Minangkabau disputants can bring their cases. Each district in West Sumatra, each comprising 70-80 villages, has a State Court, Pengadilan Negeri. This is the lowest level of the regular State Court hierarchy. Appeal (banding) lies open to the High Court, Pengadilan Tinggi, in Padang and cassation (kasasi) to the Supreme Court, Mahkamah Agung, in Jakarta.¹⁷ Judges are trained lawyers, ideally with the full university law degree, Sarjana Hukum. The lower courts still have a number of judges with only an administrative college degree or the first law degree, Sarjana Muda. At university lawyers are trained mainly in national - and thus western - law. Each student must follow a course in adat law, but this deals with no more than some general principles. Since many judges went to school outside Minangkabau, they have had no training in Minangkabau adat law during their university studies. However, most of them are ethnic Minangkabau and grew up in West Sumatra and thus were socialized there, although generally not in a village. So they have some notion of Minangkabau adat and learn about adat law when acting as judges. All judges, including those who are not Minangkabau, speak and understand the local language fluently. The spoken language in Minangkabau courts is mainly Minangkabau, but the written language, including records taken during the sessions at which Minangkabau is spoken, is Indonesian, or sometimes a mixture of Minangkabau and Indonesian.

The registers of three courts show that of all civil disputes 86% are decided on the basis of adat law, the rest being disputes involving banks suing for outstanding debts, which are decided on the basis of national statutory law. (See Table 2; see also F. von Benda-Beckmann 1979:293.) Thus only rarely is reference made to written law.¹⁸ Nearly all disputes in the adat sphere concern lineage land or houses (often built on lineage land). By contrast, petitions usually do not involve adat law, with the exception of a rare case of adoption and some of the actions for a declaration that the petitioner is the rightful heir or wali of a child.

Table 2

Caseload according to the registers of the state courts in Bukittinggi (1968-1974), Batusangkar (1969-1974) and Payakumbuh (1968-1974)

A. Civil Disputes (contentious)

<u>Type of Dispute</u>	<u>Bukittinggi</u>	<u>Batusangkar</u>	<u>Payakumbuh</u>	<u>Total Issues</u>
house/shop	55	10	6	71
land and/or <u>pusako</u>	157	114	61	332
land transactions	86	53	30	169
other transactions	7	4	3	14
<u>gelar*</u>	-	5	1	6
<u>pancaharian**</u>	12	7	12	31
inheritance	59	31	24	114
distribution (<u>pembagian</u>)	12	7	4	23
divorce	2	1	1	4
debts	68	16	18	102
<u>Total cases***</u>	<u>272</u>	<u>141</u>	<u>86</u>	<u>499</u>
<u>Type of Party</u>				
bank	47	12	12	71
representation by <u>mamak kepala waris</u>	100	110	47	257
<u>Disposition without Final Judgment</u>				
amicable settlement	44	18	11	73
withdrawals	39	27	4	70

*Right to use a particular title.

**Self-acquired property.

***Some cases involved more than one issue, which accounts for the difference between the total number of cases and the total number of issues.

Table 2 (cont.)B. Petitions (pemohonan) (non-contentious)

	Bukittinggi	Batusangkar	Payakumbuh	Total
name change	5	3	-	8
adoption	16	2	3	21
nationality	7	-	1	8
declaration as heir/ <u>wali</u>	29	25	10	64
pension	3	31	13	47
other	4	5	14	23
Total Cases*	65	44	33	142

*Some cases involved more than one issue, which accounts for the difference between the total number of cases and the total number of issues.

Since many disputes involve violence, they may be presented to the court either as a civil claim or as a criminal offence. In criminal cases the public prosecutor seems to settle disputes unofficially. How frequently he does so I do not know. The criminal law officially used in the courts is statutory western law, based on French and Dutch criminal law.¹⁹ The law of procedure is also western law, modelled after the Dutch law of procedure, but with some simplifications and adaptations to the particular situation in Indonesia.²⁰

The state courts do not apply Islamic law. This is left to the religious courts, Pengadilan Agama, which mainly deal with marriage problems. 78% of the caseload of the Pengadilan Agama which I studied is made up of petitions asking the court to declare a previously unregistered marriage valid. Disputes concerning property were only very rarely decided by the religious courts (see F. von Benda-Beckmann 1979:128).²¹

Apart from the courts, there are other state officials to whom disputants may turn: the police, the military commander, the sub-district officer, and the officers of the Office of Religious Affairs.

III. THE FISHPOND OF BATU PANJANG

I want now to illustrate the shopping activities of the various participants with a typical case history. I observed many other similar instances during my research. This case had not yet come to an end by the time I left the village, but the very fact that no consensus had been reached makes the case all the more typical: a characteristic of village litigation is that it is very difficult to reach a final consensus in disputes, especially in the Adat Council but also in the other forums.

One day Katik Basa,²² together with a close junior kinsman, Rajo Putih, approached the chairman of the Adat Council. They complained that they felt ostracized by the neighbourhood. They did not "feel like people from Bukit Hijau any more, but rather as if they were outside Bukit Hijau." It turned out that in the neighbourhood Batu Panjang there was a dispute about a fishpond that originally had belonged to Katik Basa's sub-lineage. The neighbourhood needed money to repair its prayer-house and had decided that Katik Basa's fishpond, which was situated near the prayer-house, should be enlarged and the fish be sold for the benefit of the neighbourhood. The pond had been used for communal purposes since 1950. But now the neighbourhood wanted the pond completely for itself, enlarged with some of the surrounding

land on which members of Katik Basa's sub-lineage had planted 30 banana trees, 2 orange trees and 4 clove trees. Dt. Andiko Rajo,²³ a panghulu of a different lineage within Katik Basa's suku pusako, had given his consent to the enlargement. He had felt entitled to hand over the pond, since the panghuluship of Katik Basa's lineage was vacant and he was the most closely related panghulu. But Katik Basa had refused to cooperate since he, as the head of his sub-lineage, had not been formally asked for the pond.

It was apparently at Dt. Andiko Rajo's instigation that the leader of the neighbourhood, Angku Duo,²⁴ had gone to the mayor to complain about Katik Basa's behaviour. The mayor suggested that they should go to the police. The police commander of the sub-district found that there had been a violation of public order and locked up Katik Basa and Rajo Putiah for three nights. Upon their promise to refrain from making further trouble they had been set free again. The police commander had written a letter to the mayor, with a copy to be handed to the chairman of the Adat Council, saying that the problem should be dealt with "in the family and according to village adat." The mayor, however, did not give the copy to the chairman of the Adat Council, because in his view the Village Council (i.e., he himself) should mediate in the dispute. But the chairman of the Adat Council, being also an information officer of the sub-district whose office was next door to the police, managed to get hold of a copy of the letter. He went to Dt. Rajo Panghulu, an elderly panghulu and highly respected member of the Adat Council, who often acted as his adviser. In a secret meeting, which I was allowed to attend, they decided that the Adat Council should deal with the case. Dt. Rajo Panghulu suggested that the Adat Council should decide to send the matter back to the neighbourhood which should try to find a solution. Should the neighbourhood be unable to do so, the Adat Council could take up the matter once more.

A month later, 9 members of the Adat Council assembled to decide what to do. There was some discussion as to why the Adat Council had come together: because it was ordered to do so from above or because it was asked from below? It was clear to everyone that the reason for taking up the case was in the first place because the police had requested it to do so. This being established, it was agreed that parties be heard. A week later there was another session at which Angku Duo and another member of the neighbourhood, Malano Gadang, Katik Basa, the owner of the land adjacent to Katik Basa's on the other side of the pond, two panghulu of the neighbourhood, and the section head participated, as well as 11 council members. Dt. Kuniang had not come this time, "because no official token had been

handed over,²⁵ symbolizing the formal submission to the Adat Council's jurisdiction. He therefore considered the Adat Council to have no jurisdiction in the case, as he had told us. The two neighbourhood panghulu stayed inside during the whole session and participated freely in the discussions. Angku Duo and his companion and Katik Basa and his neighbour were asked to leave the room and come in one after another to answer questions put to them by the council.

Angku Duo and Malano Gadang were heard first. Angku Duo remained silent most of the time, while Malano Gadang answered the questions put to them by the chairman. He stated that there had been a problem about the fishpond, but that the neighbourhood (umpuek) had brought it to a solution. Pressed about the alleged ostracism, he denied that Katik Basa had been excluded from the neighbourhood (buek perbuatan).²⁶ Although the neighbourhood had already tried three times to meet with Katik Basa, he had never turned up. Therefore no unanimity had been reached yet about measures against Katik Basa. Malano Gadang also explained why the neighbourhood had gone to the police and observed that the police had "returned the matter to where it came from" (kumbali kapado asa mulonyo). When the chairman asked Malano Gadang what the police had meant by saying this, he hesitated and could not give an answer. A short discussion flared up in the Council about the meaning of "to where it came from". Did it mean "back to whom the pond belonged when the dispute (persengketaan) started" or "to the very beginning"? That is, did the police officer refer to the time when Katik Basa tried to prevent the enlargement and thus mean that the pond should go back to the neighbourhood? Or did he mean that the pond should go to Katik Basa, because it belonged to him before the neighbourhood asked for it? This question was asked many times in the course of the proceeding, but was never answered unequivocally.

The second person to be heard was the section head. He explained that the police had been called in because Katik Basa had "made trouble" and that the police had returned the matter to the neighbourhood, which should settle it in such a way that Katik Basa would not suffer any disadvantage. "Does that mean that the pond has been returned to Katik Basa?" the chairman asked. "Yes no!" the section head replied. "The pond has been transferred to the neighbourhood. But it is still Katik Basa's property (hak milik).²⁷ The pond had already been used by the neighbourhood (kampung).²⁸ Therefore, the neighbourhood made a regulation (perbuatan) transferring the pond from the kampung to the neighbourhood." Dt. Rajo Panghulu pressed this point a bit further: "Who took out the fish and brought them to the prayer house and who got the proceeds?" Malano Gadang

started to explain that the fish had been caught by Katik Basa's suku members, but Dt. Putiah cut in and said: "If there are three kitchens (in a kampung) all three must be taken into account. Did you leave out Katik Basa (when making the decision)?" "Yes," Malano Gadang replied, at which he was severely reprimanded. They should not have excluded Katik Basa, not when it came to paying compensation, but above all not when decisions were taken. In an attempt to clear up the problems of the various rights different persons had to the pond someone put forward the question whether the water in the pond belongs to the owner of the pond and vice versa. Dt. Panghulu Rajo quoted a proverb, saying that the water belongs to the owner of the land over whose land it runs, but running water seemed to some of the others present to be a different matter from water in a pond. Nobody really took up the argument and the discussion drifted into an exchange of more general remarks and questions, such as why my husband was not present. After a while the chairman gave a new impulse to the meeting by suggesting that Angku Duo, Malano Gadang and the section head had given enough information. Angku Duo stated emphatically that Katik Basa had not been ostracized by the neighbourhood. After that final statement he and his companion were asked to leave. The section head, however, remained.

Katik Basa and Rajo Putiah had entered the room while the section head was being questioned and had listened silently to the discussion. Upon the chairman's invitation they gave their version of what had happened. The pond and the fish belonged to their suku pusako. The neighbourhood had a right to ask for it, of course, if it needed funds for the prayer house. And of course Katik Basa as a good member of the neighbourhood was prepared to cede the pond. The point was not that he did not acknowledge the neighbourhood's right, but that it had not proceeded properly. There should have been an official session (sidang) to which all members of the neighbourhood were officially invited (diundang). Although others had been invited, he had not been and therefore he had not attended the meetings. The neighbourhood had decided to enlarge the pond without him, but with the consent of Dt. Andiko Rajo. However, Dt. Andiko Rajo had had no right to give his consent, because he was of a different lineage. When the fish had been caught and brought to the prayer house he, Katik Basa, had not interfered. But when people came to enlarge his pond he had tried to prevent this. They had called the police and he had been held for several nights. "Now this all happened before the problem (soal) started," he said. When he was held in custody the neighbourhood had met and decided to exclude him from the neighbourhood. He had only become aware of it when nobody had come to eat and drink with him when he had prepared a communal meal

after his most recent harvest.²⁹

The discussion following Katik Basa's statement moved around the question who had to deal with the problem. It soon became clear that the neighbourhood representatives refused to cooperate any further in the proceedings. They gave no useful information, insisting that the problem was a matter of the neighbourhood and could be handled there perfectly well. Dt. Andiko Rajo had not even shown up for the Council's meeting. He was "ill", they said - which is often a way of indicating that one prefers not to come. Either you are ill or it rains.

The Adat Council decided that it did not yet have enough information to settle the case, and therefore should go have a look in the neighbourhood. The Council went a week later: not all members, but the chairman, Dt. Panghulu Rajo, two juaro adat, Dt. Ketek, who was a friend of the mayor and was probably sent by him to see what happened, and myself. Dt. Putiah, who had reprimanded Angku Duo for leaving out Katik Basa and who on that occasion had also emphasized that the Adat Council had met only because the police had ordered it to do so, did not come along this time "because he could not walk so far" - presumably a polite way of saying that he felt uncomfortable about the involvement of the Adat Council.

At Batu Panjang the small party scattered. The chairman made a sketch of the pond and the houses around it, while the others talked quietly with people who happened to be around. Katik Basa and Rajo Putiah, though present, remained silent most of the time. One of the reasons for taking a look in the neighbourhood was that Dt. Andiko Rajo had let it be known in the meantime that he considered the pond to be pusako property of his lineage. He later dropped this claim when it became clear that his lineage land was not adjacent to the pond, which made his claim quite improbable.

But then something else transpired. Behind the fishpond dispute lurked another dispute about the panghuluship of the lineage to which Katik Basa belonged. Katik Basa, as the head of his sub-lineage, had claimed that he was entitled to it, but other sub-lineages had disputed this claim, and no solution had yet been found. Katik Basa appeared to have used the fishpond as a test case: by establishing his sub-lineage's rights to the pond he hoped to further his claim to the vacant panghuluship. But Dt. Andiko Rajo was not interested in another panghulu in his suku, for as long as there was none he could unofficially represent the other lineage, as he had tried to do in this case. All this became clear in the small chats which are always such an important part of settlement procedures. Information is

gathered in seemingly unstructured conversations, often through intermediaries.

Afterwards everyone went back to the village hall where the neighbourhood panghulu were expected to give further information, so that a solution might be found. Dt. Andiko Rajo again did not turn up and the neighbourhood panghulu successfully sabotaged the session. They merrily produced innumerable adat proverbs, but no concrete information. The chairman did his best to enlist their cooperation, emphasizing that he did "not want 'answers' (jawab) - which is what the courts would ask for - but merely 'information and explanation' (bahan, keterangan)," and that "the Adat Council only wanted to 'give advice' (memberi anjuran perdamaian), not to decide." But to no avail. They simply evaded every question, often giving answers not fitting the question. Dt. Malano, a neighbourhood panghulu, said: "What do you want? We have Katik Basa's admission (to the police). As far as there is an adat issue involved, that will be submitted to the hindu." "What do the neighbourhood members think of the dispute?" the chairman asked. "That is up to them; we cannot decide that," Dt. Malano replied. Dt. Putiah tried to elicit some more information about the ostracism: "According to our findings Katik Basa does not seem to have been excluded. How about that?" to which Dt. Indo Basa, a neighbourhood panghulu of a different suku pusako from Katik Basa's replied: "It is Dt. Malano's and Dt. Andiko Rajo's right and responsibility to mediate in that matter. It is their suku." Gradually everybody became merrier and merrier. And finally Rajo Putiah, Katik Basa's kinsman, brought in tea and fried banana's after which Dt. Putiah once more tried to proceed with the discussion, but without success. The chairman then made an end to the session: "Since Dt. Andiko Rajo is not present, no more information can be expected. We should finish now, I think."

The final solution the Adat Council arrived at was as clever as it was without substance. It decided that, since the dispute concerned a neighbourhood matter, it should "be returned to its source (kapado asa mulonyo), to be settled according to neighbourhood regulations, leaving nobody out." Having thus formally decided, the Adat Council washed its hands of the matter. Of course this was no solution and everybody knew it. When I talked about the case with Dt. Panghulu Rajo, he laughed and said that the case was not settled yet. There would be a lot more trouble, but that was the neighbourhood's problem. And so the dispute still hung in the air when we left several months later.^{29a}

IV. COMMENTS

There were several closely related aspects of the case in dispute:

1. The problem of the panghuluship in Katik Basa's lineage; this dispute was still at the lineage level but could eventually evolve into a conflict in which the suku had jurisdiction.
2. The briefly posed question of whom the fishpond belonged to - a pusako matter which therefore also concerned the suku.
3. The question of whether the neighbourhood was entitled to ask for the fishpond--a neighbourhood matter.
4. The question of who had to give his consent was again a pusako matter, and thus ultimately a suku problem.
5. When Katik Basa did not cooperate with the neighbourhood, it did (or did not) decide to exclude him from neighbourhood activities. This became a matter of concern of the Adat Council since the question of whether the neighbourhood was justified in doing so is an adat matter.
6. Any potentially serious trouble is always a matter of concern of the mayor and the police.

How did parties shop among these institutions? The neighbourhood, through its representative Angku Duo, had from an early stage taken an active part in the shopping. When Katik Basa did not agree with the neighbourhood, Angku Duo went to the mayor and the police, acting as a party. But when the Adat Council moved in, the neighbourhood competed with the council as an institution of dispute settlement, and tried to draw the dispute back to itself. Its members emphasized that the fishpond was a neighbourhood facility. They used every available argument which tended to establish that the Adat Council had no jurisdiction, and observed that for their part they did not try to usurp the jurisdiction of others. They gave no information on the hindu matter, nor on the suku matter, because that could have led to the impression that they wanted to assume the suku's or hindu's competence. Thus, they moved back and forth between the role of a party and that of a forum.

The mayor played the game cleverly, by treating the matter as if it only concerned "trouble making", a matter he and the police had to deal with. He practically ignored the other

elements of the dispute and refrained from further involvement. Although he had refused to hand over the copy of the police's letter to the Adat Council, taking the position that the dispute should have gone to the Village Council instead, he did not really try to draw it to the Village Council.

The head of the police, quite new at his post, was interested in making a good impression on the local village leaders. He kept Katik Basa and Rajo Putiah three nights at the office, to make sure they would refrain from "making trouble", but did not try to decide the case. Rather, he sent it back to be solved according to village adat. He thus had shown on the one hand to be a good guardian of the public order and on the other hand a person with respect for local adat and not an authoritarian police officer.

Katik Basa only started to shop when he was confronted with the neighbourhood, the mayor and the police. The closest related panghulu in his suku, Dt. Andiko Rajo, had taken sides with the neighbourhood, so no help could be expected from that quarter. When he felt ostracized by the neighbourhood, he had a good reason to go to the chairman of the Adat Council, the mayor's main opponent in village politics, hoping to win his support. Ostracism is a serious adat matter and the chairman took it up at once, seeing an opportunity to win a round in village politics from the mayor, who had disregarded adat and had sent Angku Duo to the police instead of the Adat Council.

The Adat Council was not of one opinion as to whether and why it should take up the case. Everybody realized that the main reason for dealing with it was the letter from the police. This was emphasized by several members, whereas the chairman and Dt. Panghulu Rajo stressed the adat question, thus providing an adat basis for the council's involvement. One member stayed away after the first session. He was a good friend of the mayor and also chairman of the adat section of the Village Council. According to him the Adat Council had no business in the matter, since no token had been offered to the Adat Council. The neighbourhood should handle the dispute as the police had said.

Thus far the shopping of the parties and functionaries had been primarily waged in terms of jurisdiction. Everyone involved was concerned to emphasize that aspect of the dispute which justified the involvement of one forum rather than another. But once jurisdiction was assumed, competition between the functionaries was expressed in different terms. Everything a functionary did was scrutinized, every mistake was noted. This in itself is not very remarkable; what is remarkable is the kind of

criticism used in this competition: the arguments concerned adat procedure and hardly ever the norms of substantive law. For example:

- Katik Basa said to the neighbourhood representatives: "Of course you may have my fishpond, but you must ask for it properly."
- The chairman of the Adat Council reproached the mayor for advising the neighbourhood to go to the police, for this is considered to go against adat.
- The elderly Dt. Putiah severely criticized the neighbourhood for having excluded Katik Basa from the discussions.
- When the ostracism was discussed in the Adat Council, the neighbourhood people said: "We have not made a decision yet, because Katik Basa did not attend the meetings. Your (that is Dt. Putiah's) criticism is not justified."
- Katik Basa had not turned up at the neighbourhood discussions because he did not "know" about them. Of course he knew, but he had not been formally invited.³⁰
- The neighbourhood criticized Dt. Panghulu Rajo for coming to Batu Panjang, because no members of his suku lived in the buek and he therefore had no business there.³¹
- The mayor reprimanded the chairman of the Adat Council for going to Batu Panjang without his consent. Even judges of the State Courts were not allowed to do that.
- The mayor also criticized the chairman for trying to impose his personal decision, rather than deliberating until consensus was reached.
- The Adat Council gave a procedural decision when it handed the case back to the buek. Dt. Kuniang even said that this was already more than it should have done since no official token had been handed over symbolizing the formal submission to the Council's jurisdiction.

I could go on giving examples, but think I have made the point sufficiently clear. When behaviour is discussed and

assessed by functionaries, this is mostly done in terms of procedure, and quite detailed interpretations and opinions are given. References to substantive law are made in the form of proverbs, but these usually have an ambiguous meaning. Different interpretations of these adat proverbs are hardly ever used as counter-arguments. On the contrary, functionaries seem careful to avoid discussing rules of substantive law. Only on two occasions during the second session of the Adat Council did something of a concrete discussion about substantive law start to develop. When the buek members were questioned by the council, the functionaries asked for facts and wanted to discuss those, without venturing any opinion on the substantive rights of the parties. The buek members, however, who at that time unequivocally acted as parties, explained and justified their behaviour in terms of substantive rules. Since the buek had a right to claim a fishpond for communal purposes and since Katik Basa had refused to cooperate, they had the right to catch the fish and enlarge the pond without his cooperation. For a moment it seemed as if the Adat Council would take up the argument, but then the discussion was cut short. At a later stage in the session the buek people changed roles from party to institution and from then on refused to argue in terms of substantive law or even talk about facts. Instead they put forward all possible arguments as to why the Adat Council should refrain from further involvement. At the final session the two panghulu representing the buek did not show a trace of willingness to discuss the conflict proper. They left no doubt that they considered themselves as a competing forum and not as a party. The only other brief instance in which an evaluation of behaviour in terms of substantive rules was made was when the ward head talked about the various rights which the persons and groups concerned had to the fishpond. But the discussion quickly shifted from substantive rules to procedural problems, such as whether all "kitchens" should participate in the decision-making process. Katik Basa, who had invoked the Adat Council, was most interested in a discussion about the conflict and lingered quite some time upon his substantive rights. But no functionary took up these arguments whereas procedural points were discussed elaborately.

It is quite unlikely that discussion of the facts of the case could have taken place without the participants having certain substantive rules in mind. These rules were in fact generally known to all, but so were the procedural rules. The point is, however, that substantive rules were not overtly used to evaluate the facts and behaviour, whereas procedural rules constantly were. Proverbs containing principles of both substantive and procedural law were quoted, but that had a different purpose. Whenever they were cited, the tension relaxed and

the threat of open confrontation seemed to recede. Everyone can agree that the proverb is indeed appropriately cited and should be applied to the particular case, without having to agree to or disagree with one interpretation. At the abstract level at which the principles are presented, they are well-known and accepted by all. Disagreement only comes with concrete interpretation and that is carefully avoided. Citing proverbs has a very soothing effect. It is an appeal to the sense of belonging together, which is a welcome change from the tension of obvious disunity caused by the dispute. It also expresses a hope that a solution may be found, however profound the disagreement may seem.

V. ADAT PROCEDURE AS THE FRAMEWORK FOR VILLAGE POLITICS

In order to understand the preoccupation with procedural rules and the unwillingness to discuss substantive rules, we must first take a closer look at adat political organization and the allocation of authority, of which jurisdiction and procedure can be regarded as the legal dimension. The political organization of a Minangkabau village rests on a delicate balance, the scales of which are the two principles of decision-making which have been mentioned earlier: decision by unanimity and leadership by hierarchically-ranked officials.

The hierarchical principle gives a chain of authority vested in offices. Solutions for problems must be found at the lowest level of authority, and if no solution is found the case must be taken higher up, step by step, until a solution is found. As far as disputes between members of a lineage are concerned, its adat officials act exclusively as a forum and must remain impartial. If they cannot solve the dispute, it usually means that one of the parties does not agree with their proposal. When the dispute goes up a step, an official will be tempted to favour the party who agreed with his solution, although ideally he should remain impartial and merely put the problem before the higher forum at the more inclusive level. If the parties do not belong to the same lineage, the functionaries of both lineages together act as a forum. But if the dispute reaches a more inclusive level, each functionary will act as the representative of his lineage member, and thus as a party himself. This dual role structure, with the possibility of switching roles - of which the neighbourhood in our case is a good example - is implicit in the structure of adat procedure.

The other principle is egalitarian in character and thus crosscuts the first. Decisions must be made by a process of joint deliberation which continues until unanimity is reached.

And all participants - all members of a lineage or sub-lineage; the representatives of the buah gadang on higher level - have in principle an equal say. In Minangkabau ideology this principle is based on the fact that different lineages originally founded the nagari on the basis of equality. No lineage should therefore have a higher position than any other.³² Internal lineage problems, mainly pusako matters, are the business of the lineages themselves. Higher adat institutions have only as much authority as has been conceded by the lineages and is necessary to sustain a common government, and decisions can only be made with the consent of the lineages concerned - a demand most scrupulously observed when lineage affairs were concerned.

People thus tried to prevent absolute hierarchies from developing; at least, lineages tried to preserve their own autonomy, which was also safeguarded economically by their lineage property. Wider organization was necessary, of course, but when spheres of socio-political competence were differentiated and entrusted to different institutions, these institutions, though hierarchically structured internally, stood on a more or less equal footing. The Adat Council was the highest authority, but it could assume jurisdiction only after lower officials had been unable to solve a problem, and when parties formally put the problem to the Adat Council by handing over a token (tando), a piece of family property, usually a ring or a kris. Unless both parties had formally submitted themselves to the council, it was not competent to deal with the matter. If one party should continue to refuse to submit to the Adat Council, the council could eventually punish him with a form of ostracism.

The fact that the principles are understandable within the traditional Minangkabau context does not explain why they are still adhered to. The colonial government established a local government system based on adat principles, but it put these principles of adat authority to work in a different framework. It took official political and judicial authority away from adat functionaries, thus restricting their sphere of influence. It also established state courts - to which I shall return shortly - providing villagers with an alternative forum of dispute settlement. That such restriction of traditional authority and the provision of an alternative did not result in a total breakdown of adat authority is in part due to the fact that authority was primarily based on kinship, and kinship in turn was based economic and political relationships. Villagers kept going to adat functionaries with their disputes, and were not concerned whether or not these were officially recognized by the local administration. (See Guyt 1934:127.) Since the colonial administration had taken over most of the functions of government, the field of action of adat leaders was increasingly

confined to the treatment of disputes. Dealing with disputes thus became an important instrument in the struggle for power at local level. Adat being the only source of legitimate power for adat leaders, they had no choice in this struggle but continually to restate adat principles as the legal basis for their activity. This was not difficult, because the principle of "common deliberation until consensus has been reached" had not been attacked from outside the adat system. On the contrary, it was elevated by Sukarno to a principle of Indonesian democracy, and forms an important part of the state ideology.³³ Thus national political and social ideals did not require a change, but rather reinforced the local principles of decision-making in disputes. I do not want to suggest that the way in which decisions are actually made in village institutions has not undergone change. But the changes which have taken place do not have an impact on my assertion that most argumentation is carried out in terms of jurisdiction and procedure.³⁴

It is in the field of dispute settlement that adat functionaries still can exert power. Jurisdictional disputes between institutions and functionaries are thus the legal expression of the struggle for power.³⁵ Given the adat principles of decision-making and the fact that power is being contested it is hardly ever in the interest of an institution or individual functionary to discuss the dispute in the light of substantive rules. Interpreting substantive rules and applying them to the facts under dispute comes very close to imposing an opinion on how a case should be resolved.³⁶ The person who does so would be considered authoritarian. Besides, since the final solution always is a result of giving and taking, and never a clear cut application of definite rules, it might weaken a functionary's bargaining position if he prematurely made substantive statements about a possible solution. It is in the interest of every functionary to take a definite standpoint as late as possible in the process of decision-making.

It is clear then that it is not in the interest of adat functionaries to emphasize substantive rules as long as competition can be carried out in other terms. But they have every reason to scrutinize procedural questions very closely. Given the basic fact that the most important criteria for a valid decision are unanimity and representativeness, it becomes crucial that the procedural rules expressing these two principles be strictly observed. Criticizing others in procedural terms is an effective way to compete for power. On the other hand, it also avoids an overt competition for power, which would too obviously violate the two principles. One protects one's own structural interests while giving the impression of adhering strictly to traditions and the Minangkabau way of life, and

without committing oneself to any opinion concerning the dispute proper. For functionaries in the ambiguous position between party and institutions (such as the buek members were in our case) procedural arguments are particularly attractive because they leave open the option to act as a forum at a later stage. Ordinary people who participate exclusively as parties, such as Katik Basa, have little interest in extensive discussions about procedure. They want a solution of the dispute. But because different solutions can be expected from different forums, they must take part in the discussions about jurisdiction and procedure in order to get the functionary of their choice involved. Therefore, Katik Basa emphasized that he had been ostracized, thus establishing the Adat Council's jurisdiction, and that he had been wrongly ostracized, providing the Adat Council with a procedural argument against the jurisdictional claim of the neighbourhood.

Dispute processing in the Minangkabau village thus is characterized by competition for power among the functionaries involved and carried out in terms of jurisdictional and procedural arguments. It is important to realize that there is not only competition between institutions or individual functionaries but also within institutions. Institutions like the Adat Council or the Village Council are by no means homogeneous bodies. This is in part due to the fact that the various forums overlap in personnel. Some adat functionaries are members of the Village Council as well as of the Adat Council, others are panghulu suku as well as panghulu hindu. Since only about 20 out of 100 panghuluships are occupied, it would be quite impossible to prevent a certain overlap of personnel. The result is that within the Adat Council there are several factions, each centered around one influential person, but changing in exact composition with every dispute or even every session. In the case of the fishpond one faction was formed by Dt. Rajo Panghulu, together with the chairman. Another faction consisted of Dt. Kuniang and Dt. Ketek, two friends of the mayor. Neither of them was very influential in village politics generally. Dt. Kuniang stayed away after the first session. He chose to identify with the Village Council of which he also was a member.

Not all council members become part of a faction. Dt. Putiah, an influential village politician himself, in this case chose to act not as a center of a faction but as intermediary between the various factions. He did not like the Adat Council's involvement and stayed away as much as possible, without washing his hands of the matter completely. Such persons, standing between the factions, and being trusted and respected by all because of previous successful settlements, play an important role in unifying forums and thus in the settlement

of disputes. They participate in many private discussions, which take place at night in the private homes of functionaries and in small circles of three to five persons. During these sessions functionaries talk a great deal about procedure, but they also feel free to give their opinion on the dispute proper. When it becomes clear that opinions of the various functionaries lie too far apart and no agreement can be reached without open confrontation, either the session will break up fairly quickly and be followed by new negotiations in small gatherings, or, if an immediate solution is not absolutely necessary, the matter will be left open until something happens which makes a solution possible or necessary. Successful mediation of this kind brings as much prestige as mediation in public stages of the dispute. Such intermediaries filter information and attitudes from one faction to the other, avoiding an open confrontation. They act as a mediator, not so much between parties, as between functionaries.

But as I have stated before, successful mediation, between the parties and between competing institutions and functionaries, is not easy. Many sessions break up because no consensus can be reached. However, the significance of institutional dispute settlement activities should not only be judged in terms of whether the dispute is successfully settled in substantive terms. Take the case of the fishpond. The Adat Council could not reach consensus and did not decide on the dispute proper, but sent it back to the neighbourhood to be decided there. However, it did so only after reprimanding the neighbourhood for having excluded Katik Basa from the deliberations. The council made clear that it was not prepared to tolerate gross abuse of adat principles and that, if the neighbourhood continued to do so, the Adat Council would step in again and decide. In other words, the Adat Council gave the neighbourhood another opportunity to exercise its autonomy, at the same time indicating the limits of that autonomy.³⁷ So the refusal of the Adat Council to decide the dispute in substantive terms does not mean that it failed altogether as a dispute-settling institution. Rather, it shows how functionaries handle the dilemma between, on the one hand, the difficulties of coming to an agreement when so many persons with different views and interests are involved, and on the other hand the necessity of checking the "faux pas" of lower institutions. I certainly do not want to suggest that the parties involved, or even the functionaries, saw the fishpond case in such a positive light as I try to put it here. But it might give a clue to the answer of the question of why the village system of dispute processing has continued to exist, and why the Adat Council is still in use even though it often is unable to give a final solution to a dispute. Although most decisions are made on lower levels, the Adat Council affords a

check that adat principles are adhered to.³⁸

VI. ALTERNATIVES AND LIMITS TO FORUM SHOPPING

The state courts are an alternative to dispute processing within the villages. Through their mere availability, they form a threat to the authority of village institutions and provide a check on excessive dispute-manipulation at the village level. The villagers are perfectly aware of the fact that courts give judgments which can be executed and that they can overrule previous settlements arrived at in the village. And the courts are by no means only a theoretical alternative. Villagers regularly employ courts in their forum shopping, thus demonstrating the relativity of village dispute settlement.³⁹

Whereas village institutions thus have to compete with the state courts in addition to their rival village institutions, the state courts themselves do not compete with village institutions. The judges always ask the parties whether village institutions have tried to settle the case. If not, they try to persuade the parties to go back and try to settle the case in the village. State courts are even empowered to require a decision of the "village mediator" (hakim perdamaian), but they hardly ever send the dispute back to the village against the wishes of the parties. The judges realize that there is little chance for a successful mediation if both parties do not agree to try to find a solution. Besides, nearly all cases have already undergone a series of unsuccessful attempts at settlement in the village.

We have seen that finding a conflict solution on the village level is no easy matter. The question arises as to whether it would not be easier for the villagers to go to the state courts directly, get a decision, and have done with it, rather than going through the long and painstaking procedures of village institutions without any assurance that a solution will be found. Of course, it is not always in the parties' interest to have their dispute settled quickly. Some parties profit from a long procedure, be it in the village or elsewhere, because they get the material benefit from the disputed property in the meantime. They will exhaust all shopping possibilities in the village and then perhaps go to the state court just to postpone a final decision. But other parties have an interest in a shorter procedure. Why do these people go to village institutions and not directly to the state courts? For one thing, going to court is expensive, time-consuming and hazardous. Villagers find it difficult to calculate their chances, which makes large expenses all the more risky. They tend to conceive of the state courts as

distant and frightening. Parties often feel as if they have lost all influence on their dispute once it is submitted to the court. This is especially so when they have put their dispute in the hands of a representative. The persons who have an interest in the dispute are moved to a passive role, and those who are not involved in the conflict proper - judges and representatives - take over.⁴⁰ The judges, the villagers claim, do not understand adat and are corrupt (although villagers themselves value adat most when it serves their own interests and do not hesitate to deviate from it when that is not the case).

The factors mentioned above do not seem sufficient to explain the continued use of village institutions. My own observations of dispute behaviour in Bukit Hijau suggest that part, at least, of the explanation must be sought in the existence of social control at the village level which is strong enough to keep villagers from taking their problems directly to the state courts. But what sort of social control could this be? Part of the answer can be inferred from court statistics. From the court registers⁴¹ it appears that only 11.4% of the disputes about pusako (lineage) property are between kaum (sublineage) relatives. The rest are disputes between different kaum of the same suku or between kaum of different suku (see also F. von Benda-Beckmann 1979: 307). At first glance, these data support the well-known theoretical proposition that the more multiplex and permanent the social relationships between parties are, the more the solution of a conflict will be sought and achieved at a relatively low and informal level of dispute processing (cf., Gluckman 1955; Kuper 1971; Gessner 1976; Black 1976).

Low "relational distance" (Griffiths forthcoming; Black 1976) does not, however, explain the particular mechanisms by which dispute processing is contained within the village. These mechanisms do not so much lie in the multiplexity of the parties' relationship as such but rather in the control of dispute processing by the adat functionaries and, in particular, by the constant reinforcement of this control by the state courts. For people do go to court directly. Women come to court every day to sue for a plot of rice land, claiming that it is their pusako but that someone else works on it. Such grievances are not accepted by the courts. For according to adat - as interpreted by the courts - only the official representatives of a lineage or sublineage, the mamak kepala waris, may file a suit about lineage property.⁴² Cases in which a mamak appears as representative form an important part of all cases coming to court. In 51.5% of all claims (apart from petitions) at least one of the parties was a mamak kepala waris. If one leaves out the disputes in which a bank was involved, the percentage is 60% (see Table 2). The women are told that they cannot sue on behalf of their family.

Their mamak should do that. If they reply that their mamak refuses to sue, they are told that they can either sue their mamak or go home. Usually they go home, since it takes too much courage to stand up against one's own mamak. And he is not the one they want to sue in the first place. Even if they should win, that would not give them back their plot of land.

The mamak themselves, on the other hand, often do not want to go to court because of the ambiguity of their position as both party and adjudicating authority. Usually they have no direct economic interest in the land in dispute, and they may have political reasons for not wanting to go to court. They may even consider court involvement an infringement on their jurisdiction. The policy of the courts to hear only the mamak kepala waris thus reinforces the control over disputes by the mamak. The considerable number of persons, mainly women, who would be willing to go to court directly, cannot do so.

The control which adat functionaries have over disputes is further strengthened by the role they play in court procedures. Many cases concerning land-transactions are decided on evidence given by witnesses. Land transactions are a main issue in 33,86% of all claims.⁴³ Minangkabau hardly ever have documentary evidence of a transaction. Traditionally, transactions are made before witnesses: if they concern land, before the mamak of the lineages which own land adjacent to the land concerned.⁴⁴ Although there does seem to be a decline in the use of witnesses, transactions are nevertheless usually not recorded in writing. Judges told me that if there is a document, they can be sure that something is wrong. In most cases the only way to prove the existence of a transaction is by providing witnesses. Thus parties are dependent on adat functionaries even when they go to court.

There is another reason why adat functionaries play an important role in court cases. The outcome of many disputes depends on the kinship relations between a deceased person and the parties. Adat functionaries are by definition experts with respect to this kind of knowledge, which includes a detailed knowledge of the history of one's own suku pusako and hindu, as well as of the nagari history and constitution as a whole (see F. von Benda-Beckmann 1979: 134). The exact percentage of cases in which this kind of information was a central issue cannot be inferred from the registers. However, 73,27% of all claims involved either land or pusako or both. Considering that the majority of the decisions we read did indeed involve this kind of information, it is clear that in this respect, too, adat functionaries are very important indeed.

Finally, disputes can often be decided only on circumstantial evidence involving inferences from the fact that a person acted in certain functions during feasts, ceremonies and the like. In order to understand these various roles and functions judges need evidence of local experts on specific village adat. These experts are also by definition adat functionaries. Women, even if they reputedly know the local adat well, cannot be and are not heard as experts.

Adat functionaries thus play a decisive role in many court procedures. They are fully aware of this role and so are the villagers. Both know that adat functionaries are not likely to be very cooperative in court when they have been bypassed in the village. Thus, the state courts are only to a limited extent a real alternative to village institutions. Their own procedural demands tend to help preserve the old patterns of village processing.

VI. SUMMARY

This paper has described how parties in a dispute shop among the various institutions of dispute settlement in a Minangkabau village and how the institutions shop for disputes. This reciprocal shopping proceeds in the first place in terms of arguments over jurisdiction. Depending on which aspect of the dispute is emphasized, a different institution can assume jurisdiction. Once jurisdiction is established, everything that happens and has happened in the case is evaluated in terms of procedural norms. Functionaries from that stage on argue mainly in terms of procedure and so do parties, especially those with an ambiguous role of party and institution. I explained that this is a consequence of the socio-political structure of the village and also of adat principles of decision-making which reflect the socio-political structure. Decisions must be made unanimously and accepted by all persons concerned. It is, however, difficult to reach consensus. Many conflicts remain unresolved due to the manipulations of village functionaries. Yet there are limits to such manipulation. In the village, these limits are mainly drawn by the Adat Council. Though it rarely decides disputes, it does check the other village institutions. The state courts also set limits to jurisdictional and procedural manipulation in the village. But they have a double and contradictory function. On the one hand, villagers can always go to the state courts, which have the power to make and execute decisions. This has weakened the authority of village institutions. On the other hand the state courts do not function as a real alternative. Besides being unpredictable and expensive, their procedural requirements tend to reinforce shopping

activities and manipulation with disputes on the village level. For village functionaries play a decisive role in court procedures and therefore cannot easily be bypassed by the villagers.

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NOTES

¹In her study of Minangkabau disputes Nancy Tanner (1969, 1970, 1971) also paid attention to the existence of a "variety of potential remedy agents and settlement establishments.... (which provide) a context in which disputants may engage in considerable maneuvering and ally-seeking as part of their dispute strategies" (1969:24). However, she discussed the question of how Minangkabau make use of the three bodies of substantive law available to them. She did not go into the question I am concerned with in this paper, namely how people maneuver and seek allies. She explicitly left this question open (1969:67; see also 1971:97-99).

For a general account of the different legal institutions in Indonesia see ter Haar 1948, Gautama and Hornick 1972, and Hooker 1975.

²A more general meaning of adat is culture in its broadest sense.

³For a description of similar shopping activities see Gulliver 1963 and 1973. The choice for Arusha disputants was between three traditional institutions: age group, compound and lineage. There seems to be a definite preference for the age group. In Minangkabau there is no such clear preference. It all depends on the occasion.

⁴On the history of Minangkabau see Dobbin 1975, 1977; De Josselin de Jong 1951, 1975; Joustra 1923; De Rooij 1890; Westenenk 1913, 1916, 1918a and b; Willinick 1909. For recent field research in Manangkabau see F. von Benda-Beckmann 1979; Kahn 1975, 1976; Kato 1977; Mochtar Naim 1973, 1974; Scholz

1977; Tanner 1969, 1970, 1971; Thomas 1977. I have changed the name of the village in which I carried out the main part of my field research.

⁵This was in 1974, when I did my field research; cf. F. von Benda-Beckmann 1979:3. During the sixties this figure was more or less the same, see Tanner 1969:21. There is little reason to believe that it has changed significantly during the past six years.

⁶Dobbin (1977:29f.) reports that Bukit Hijau used to be famous for its gunpowder and for its cassia, a tree closely related to cinnamon, which was sold to American ships from about 1790 on. In the beginning of the 19th century several sources report on the remarkable quality of Bukit Hijau coffee (Nihuijs (1824) and Korthals (1834:70) as cited by Dobbin (1977:30)). During the period of our research hardly any coffee was grown for purposes other than private use. As far as I know there was one cinnamon garden, planted only one or two years before we arrived.

⁷Other terms used in the literature on Minangkabau referring to this group: buah paruik, paruik, famil, kaum. Cf. F. von Benda-Beckmann 1979:61; De Josselin de Jong 1951:49ff.

⁸The juaro adat is the adat functionary responsible for order in the village. He was often likened to a general. Possibly in pre-colonial times he led inter-village wars. Juaro adat have their own council, the rapat juaro adat. During my research I attended one meeting of the juaro adat, and no others came to my attention.

⁹In theory the situation is more complex. Cf. F. von Benda-Beckmann 1979:64ff. For dispute settlement procedures, the other levels do not seem to have a function anymore. I have therefore left them out of my diagram.

¹⁰The buek structure antedates the foundation of the nagari; possibly it is the oldest form of supra-buah gadang structure. It was probably used as the basis for the sidang system, an attempt to establish a theocracy during the Padri era in the beginning of the 19th century. See also Dobbin 1977:30f. Several buek joined to form a sidang, the centre of which was the mosque, and which was governed by mosque functionaries. In the course of time this sidang system was "adatized" and integrated into the adat constitutional system. The functionaries, Angku or Tuangku are now considered to be both adat and Islamic functionaries and usually lead buek decision-making procedures.

¹¹The term buek perbuatan or perbuatan is usually used for regulations, but sometimes to indicate the neighbourhood itself. Umpuek is sometimes used as an equivalent for buek, sometimes to denote a part of the buek. The word kampung is sometimes used to refer to a cluster of houses of the same suku pusako, and in a wider sense synonymously with umpuek or buek. Cf. F. and K. von Benda-Beckmann 1978:12; F. von Benda-Beckmann 1979:79ff. I shall simply use the term neighbourhood in my case history and if necessary add in parenthesis the Minangkabau term used in casu.

¹²The Angku or Tuangku of each sidang are sometimes considered to be a member of the Adat Council. In the case history described below, however, the Angku was definitely not treated as a member. Cf. F. and K. von Benda-Beckmann 1978:12.

¹³Art. 3a, Reglement op de Rechterlijke Organisatie en het Beleid der Justitie in Nederlands Indie, Staatsblad 1935 - 102.

¹⁴The Inlandse Gemeenteordonnantie Buitengewesten of 1938 permitted the village council, perwakilan negeri, to make regulations and even impose a maximum of three days detention or fines up to Hfl. 10,--. If there was an adat court, this was allowed to punish according to adat. See also Sihombing and Sjamsulbahri 1975. This situation did not change until after independence. By Maklumat 20- 1946 general elections were to be held to choose the nagari government: the mayor, Wali Negeri, and the village council of representatives, the Dewan Perwakilan Nagari. During the Sukarno period the provincial administration changed the village government structure several times. Sometimes a model was chosen which was based on western principles. See also Iskandar Kemal 1964.

¹⁵Surat Keterangan Gubernur Sumatera Barat 155 and 156/ GSB/1974.

¹⁶For a discussion of the changes in the strength and authority of panghulu in the 19th century, under colonial influence, see Taufik Abdullah 1971:6ff.; Kahn 1975:88ff. On the role and authority of panghulu in the pre-Pandi period, see Dobbin 1975: 80ff.

¹⁷Undang2 tentang Ketentuan2 Pokok Kekuasaan Kehakiman, law no. 14 of 1970. See Damian and Hornick 1972, Hooker 1975 on the development of the judicial system.

¹⁸However, in urban areas some principles of Dutch law,

such as the principle of bona fides, are occasionally used in judgements. They are incorporated into adat law, as a modern development, rather than being used in a western law context. See F. von Benda-Beckmann 1979:307.

¹⁹I did not include criminal cases in my systematic research at the state courts, but confined myself to civil cases. Therefore I shall leave criminal cases out of this discussion. See for statistics on the criminal caseload of one Pengadilan Negeri, Tanner 1971:235ff.

²⁰Rechtsreglement Buitengewesten of 1927. I intend to deal with problems arising from the dualism--western procedural law, adat substantive law--in civil court cases in Minangkabau in another publication. In one of the three courts studied civil cases are usually handled by a chamber of three judges, although it is not uncommon that during some sessions only one or two judges are present. The other two, smaller, courts acted usually with a single judge and only occasionally with a chamber of three judges. These last courts had several judges without the required law degree, whereas the former had only one without a law degree.

²¹In the 1960's about a third to a half of the caseload was made up of divorce cases. See Tanner 1971:230.

²²In this case history I have replaced the participants' names and titles with fictitious ones.

²³The title of a panghulu consists of at least two components: the title Datuek (Ind.: Datuk), generally abbreviated to "Dt.," which indicates the office of lineage leader (panghulu or panongkek ("assistant panghulu")) and another title belonging to the stock of titles which is the lineage's property.

²⁴Angku Duo is a title (gala, Ind. gelar), used both as a term of reference and as a term of address.

²⁵According to adat the parties have to indicate their willingness to subject themselves to the jurisdiction of a decision-making adat functionary or institution from the lineage level upwards by handing over a token, tando.

²⁶See footnote 11 for the meaning of umpuek and buek perbuatan.

²⁷The term used here was hak milik, a general term for "ownership," usually used by civil servants and in state courts,

but not so often by adat leaders. See F. von Benda-Beckmann 1979:351ff.

²⁸ Kampuang here was used in the sense of cluster of houses. See footnote 11.

²⁹ Katik Basa speaks here as his sub-lineage's representative. The meal is prepared by the women of his sub-lineage the night before the harvest. The men of the sub-lineage and the women's husbands help in cutting the rice and do the threshing, which is exclusively men's work. The women also cut, and they fan and dry the rice after the men have threshed it. The meal usually is served around 11.30, when most of the threshing is done.

Katik Basa may or may not have participated in the harvesting. His presence or absence was not discussed and was unimportant for the matter in dispute, since he spoke for his sub-lineage as a group. If he already had been under the impression that he might be ostracized, his presence would have been very unlikely.

^{29a} When I visited Bukit Hijau in September 1980 Dt. Rajo Panghulu told us that the dispute had come to an end because Katik Basa had died two years before.

³⁰ The word "tahu" is used for official knowledge, acknowledgement, only. Since Katik Basa was not properly invited to a session for which a formal invitation was required in his opinion, he said he did not "know" about the session. There is no doubt that he was fully aware of the session being held, because in neighbourhoods such important happenings cannot and do not remain unknown to anyone. A proper invitation would have been an invitation brought to him by the Angku Duo himself, or by another important member of the neighbourhood, and with a formal speech. In many court procedures one finds the expression that something had been done "tanpa setahu dan seizin" of the plaintiff. What is meant here is also that the plaintiff formally and officially had not known about it and had not given his consent, regardless of whether in fact he was aware of it. Judges tend to take the words in their general meaning and want to know whether in fact the plaintiff knew. See also Logemann 1924:129; F. von Benda-Beckmann 1979:193.

³¹ This argument also concerns the question of jurisdiction. The neighbourhood made it clear that in their opinion a suku matter rather than an adat matter was involved and that the Adat Council consequently had no jurisdiction. Therefore Dt. Panghulu Rajo, as a member of the Adat Council, was not supposed

to come to Batu Panjang.

³²This is true for the founding lineages only, not for "newcomers," who have a somewhat inferior status. Cf. F. von Benda-Beckmann 1979:63-64.

³³Van den Steenhoven 1973:693; Koesnoe 1969; Damian and Hornick 1972:498; F. and K. von Benda-Beckmann 1980:49; Hooker 1975:296. The same principle of decision-making is known under different terms in most societies throughout Indonesia. Under the term musyawarah, of Arabic origin but referring to an Indonesian institution, it was elevated to a principle of state ideology under Sukarno, as one of the elements of the Panca Sila, the five principles of Indonesian society.

³⁴Ter Haar reported as early as 1929 that the actual procedures in the higher adat institutions were strongly influenced by state court procedures (see also K. and F. von Benda-Beckmann 1980:139). For example, the phrases used by the chairman at the beginning of the questioning of the parties were literally the same as used by state courts when questioning witnesses. For reasons of space I cannot go into this matter here.

³⁵This is the case not only between traditional functionaries but also between them and the Village Council, which is appointed to mediate in disputes by Surat Keterangan Gubernur Sumatera Barat 015/GSB/1968 and 115/GSB/1975.

³⁶See Tanner 1971 for other examples of disputes in Minangkabau.

³⁷For a comparable decision of an Adat Council, see Tanner 1971:136. In her discussion of the case she also mentions the role of procedure in the process of settlement (1971:141ff).

³⁸Galanter (1981) pays special attention to what he calls the "centrifugal flow of legal signals." It is not the number of actual decisions which make out the importance of a legal institution, but the signals through which it makes clear what it will do, should the dispute be submitted to it. This greatly influences the bargaining strategies of the parties, even if they do not go to that institution.

³⁹In the period from 1968-1975, 16 cases were submitted to the state court from the village in which we lived. This may not seem like much, but one must bear in mind that the disputes were mainly between lineages or sub-lineages and thus involved 2 to 30 adult persons on each side. This number was the highest of all West Sumatran villages in terms of absolute numbers, and

near the top in relation to the number of inhabitants.

⁴⁰What happens here has a striking similarity with what Christie describes in criminal cases: conflicts which are the "property" of the conflicting persons are taken away from them by emotionally uninvolved professionals (1978:295-297). In other parts of Indonesia where judges belong to a different ethnic group from the parties and do not speak the local language this is said to be an even more striking feature of disputing in state courts.

⁴¹This research comprised the caseload of the courts in Bukit Tinggi and Payakumbuh from 1968-1974 and Batu Sangkar, 1969-1974 (see Table 2).

⁴²For an early critical view of this interpretation see Korn 1941:302.

⁴³The percentage is probably much higher, because a land transaction may play a role even though it is not mentioned in the registers as the main issue.

⁴⁴On the function of the village head in Toeloengagoeng on Java as a witness to land transactions, see F.D. Holleman 1920:393-398. A more general discussion of the function of witnesses, inspired by the observations of F.D. Holleman, is Logemann 1924:114ff.

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