

Inheritance Law in Minangkabau: A Comparative Study of the Application of Islamic and Customary Inheritance Law in Koto Tengah Subdistrict and Nanggalo Padang City

(Hukum Waris di Minangkabau: Studi Komparatif Penerapan Hukum Waris Islam dan Adat di Kec. Koto Tengah dan Nanggalo Kota Padang)

Rahmadanil

Universitas Nahdlatul Ulama Sumatera Barat

Email: rahmadanil.lc.ma@gmail.com

Rifka Zuwanda

Universitas Nahdlatul Ulama Sumatera Barat

Email: rifkazuwanda2017@gmail.com

Abstract: Inheritance, according to Minangkabau custom, is given to girls, not boys. In Islam, property inheritance is regulated by *Fiqh Farā'id*, which gives to daughters, sons, spouses of heirs (husband or wife) and even the inheritor's parents. Property inherited from generation to generation in the Minangkabau community is called "pusaka tinggi" which means high heritage. In contrast, the legacy of the parents' livelihood is called "pusaka rendah" which means low inheritance. This article wants to answer about how the inheritance of the Minangkabau community in Koto Tengah Subdistrict and Nanggalo Padang City Subdistrict. The authors use a qualitative research model and an empirical juridical approach, with the data in this article obtained from interviews, observations and document studies. The result is that the distribution of the Minangkabau community's inheritance in Koto Tengah Subdistrict and Nanggalo Padang City Subdistrict is divided into two categories. "Pusaka tinggi" which is the people's property and cannot be traded, will always be inherited, controlled and owned from generation to generation from the traditional female line. While the "pusaka rendah" is individual property, the inheritance distribution follows the Heir religion; if Moslem, then *Fiqh Farā'id* can be applied.

Keywords: Inheritance Law, High Heirloom, Low Inheritance, Minangkabau Custom.

Abstrak: Harta peninggalan menurut adat masyarakat Minangkabau diberikan kepada anak perempuan bukan kepada anak laki-laki. Sedangkan dalam Islam, peninggalan harta diatur oleh ilmu *Farā'id* yang memberikan kepada anak perempuan, anak laki-laki, pasangan pewaris (suami atau istri) bahkan orang tua pewaris. Harta hasil warisan turun temurun di masyarakat Minangkabau disebut "pusaka tinggi" sedangkan peninggalan hasil pencaharian orang tua disebut "pusaka rendah". Artikel ini ingin menjawab tentang bagaimana pembagian harta waris masyarakat Minangkabau di Kecamatan Koto Tengah dan Nanggalo Kota Padang. Penulis menggunakan model penelitian kualitatif dan pendekatan yuridis empiris, dengan data dalam artikel ini diperoleh dari hasil wawancara, observasi dan studi dokumen. Hasilnya, bahwa pembagian harta waris masyarakat Minangkabau di Kecamatan Koto Tengah dan Nanggalo Kota Padang dibedakan menjadi dua. "Pusaka tinggi" yang merupakan harta Kaum dan tidak dapat diperjualbelikan akan selalu diwariskan, dikuasai dan dimiliki secara turun

temurun dari garis perempuan secara Adat. Sedangkan “pusaka rendah” yang notabennya harta individual, pembagian warisnya mengikuti agama Pewaris, jika Muslim maka ilmu *Farāid* dapat diterapkan.

Kata Kunci: Hukum Waris, Pusaka Tinggi, Pusaka Rendah, Adat Minangkabau.

INTRODUCTION

The Minangkabau community adheres to the matrilineal kinship system, namely the lineage that looks at the mother or female line. Anthropologists consider a westernized system to be the oldest of the other lineages. The ancestors of the Minangkabau people have decided to calculate their lineage based on the mother's lineage. The kinship system is challenging to argue with because this system is a proposition that has lived, grown and developed in Minangkabau from generation to generation. Even in Minangkabau society, the principle of the matrilineal kinship system contains the following characteristics: lineage is calculated according to the mother's lineage, the child's tribe according to the mother's tribe, *Basuku kabakehibu, Babangso kabakeh ayah. Jauah mencari suku dakek mencari ibu, Tabang basitumpu Hinggok mancakam, Pusako tinggi turun dari mamak ka kamanakan, pusako randah turun dari bapak kapado anak* (Tribe is from mother, nationality is from father. If the situation is far looking for the tribe if the situation is close looking for the mother. If flying is a gripping focus, the high inheritance goes to uncle, uncle to nephew, and the low inheritance goes from father to son). In the case of “*ganggam bauntuak*” (the clear part), the right to power belongs to women and the right to care for men.¹

The lineage and community groups that form the core of the matrilineal kinship system in Minangkabau are the *paruik*. After Islam entered Minangkabau, it was called the *kaum* (clan). Another social group that is a fraction of the *paruik* is the *jurai*.² The part of social interactions between people, or a person with his group, can generally be seen in a people. In the past, they initially lived in a *Gadang* house. Even in the past, it was inhabited by dozens of people or heads of families. The bond between members of the clan is very significant, and this is not only based on blood ties but also outside of these factors. The factors that bind these people are as follows; 1) People of the same clan are the same descendants; 2) People who are of the same clan are as shameful; 3) People of the same clan are as *sepandam*

¹ Misnal Munir, “Sistem Kekerabatan dalam Kebudayaan Minangkabau: Perspektif Aliran Filsafat Strukturalisme Jean Claude Levi-Strauss”, in *Jurnal Filsafat*, Vol. 25, No. 1, February 2015.

² A clan is a collection of *jurais* and each *jurai* does not have the same number of members. Each *jurai* makes a *Gadang* house (big house) as well, but the original *Gadang* house is still maintained together as a people's heirloom house. The leader of each *jurai* is called *Tungganai* or *Mamak* of a member of the *jurai*. The fraction of the *jurai* is called the *samande* (one mother), i.e. the mother and her children, while the husband or *sumando* does not belong to the *samande*. *Samande* is given a *ganggam bauntuak, pagang bamasieng* (handles that have been assigned, and each one has been given a handle). It means, each *Samande* already has a share of the inheritance belonging to the people. For them, they are only given the right to collect the results and are not allowed to pawn, let alone sell if they disagree with the members of the clan. Read Misnal Munir, p. 18-19.

sepekuburan (one grave); 4) People of the same clan are as light as weight; 5) People of the same clan are as wealthy as heirlooms.³

In terms of marriage, Minangkabau traditions do not allow people of the same clan to marry even though they have grown to hundreds of people. It is given the safety of social relations and genetic damage. If there is a marriage between clan members, it will result in inheritance and the matrilineal kinship system. Therefore, until now, marriage is still carried out with people outside their tribe (exogamy). Marriage customs in Minangkabau society have several characteristics, namely; 1) The initiative comes from the woman's family; 2) The desired prospective son-in-law is the mother of the groom, is a traditional holder or a respected leader in the indigenous community or whose economy is well established; 3) The tendency to look for a son-in-law from the closest family relationship; 4) After the marriage, the husband stays at the wife's house; and so forth.⁴

With the arrival of Islam, which was embraced by the majority of the Minangkabau community starting in the 17th century,⁵ made several traditional leaders and religious experts of the Minangkabau community compromise to adapt Islamic sharia teachings that are adaptive to traditions that have been passed down from generation to generation. One that is discussed and becomes the focus of this article is the article on inheritance. In Islamic sharia, lineage is bilateral (from the father and mother line) and the inheritance model.⁶

Islamic inheritance law has an adaptive power to the context, as contained in the *naşş*, which only contains details, emphasising the part information obtained by each heir. In the Indonesian context, there are efforts to formulate an Islamic inheritance legal system that is more relevant to the personality of the Indonesian people so that the legal structure that is formulated does not conflict with the *naşş* relating to rights, parts and principles of Islamic inheritance. It is, of course, based on considerations by taking into account the qualifications to achieve the legal objectives that were formed so that Islamic sharia inheritance law brings benefits to the community with the ability to resolve disputes in the field of inheritance in the community.

Islamic inheritance law stipulates that certain heirs must inherit if they meet the conditions and there are no obstacles, namely father, mother, husband, wife, sons and daughters. The position of father and mother is determined as absolute heirs because father and mother are parents who bequeath offspring, namely children. In contrast, the husband's position is determined as an absolute heir because he becomes a companion when his wife is still alive. He is even responsible for

³ Ibid., 16-19.

⁴ Ibid., 20-24.

⁵ Rizqa, Hasanul. *Awal Mula Islam Masuk ke Ranah Minang*. 11 Maret 2019 . <https://www.republika.co.id/berita/po7c98458/awal-mula-islam-masuk-ke-ranah-minang> (Accessed on August 29, 2021).

⁶ *Kompilasi Hukum Islam (KHI) Buku II Hukum Kewarisan Bab I Besarnya Bahagian Pasal 176 4 P.N.H.*

providing protection and providing financial support for household operations. Likewise, the wife is the absolute heir because when her husband is still living as a companion and with her husband in taking care of the household. The capacity of boys and girls is determined as absolute heirs because children are the liaison in continuing offspring and are the fruit of their parents' love.

Based on the provisions of *naṣṣ*, we can see that if the heirs only consist of father and mother, then the mother's share is determined to be one-third of the inheritance, the father's remaining two-thirds share.⁷ If no children are left behind, then the husband gets half the inheritance of his late wife. At the same time, the wife gets a quarter of the property of her late husband. However, if there are children, the husband gets one-fourth, and the wife receives one-eighth.⁸ The share of children is divided between boys and girls, provided that the share of boys is twice the share of girls.⁹

In the basic concept of Islamic inheritance law, there is an explicit distinction between male heirs and female heirs. It was revealed by *Maqāṣid al-Sharī'ah* expert that this was due to the burden of the obligations of men as breadwinners and women were not subject to the obligation to earn a family living according to the provisions of Islamic law. Therefore, men burdened with material obligations are more significant than women, so, logically, the share of men is greater than the share given to women. In this case, the provisions of the share of boys with girls are two to one, or it can be one to one, or maybe the share of boys is bigger than girls because there is a difference between the provisions of the share between boys and girls.

Over time, there has been awareness of customary inheritance law in Minangkabau, marked by the development of grant institutions in the Minangkabau community. The Grant Institution entered Minangkabau along with the awareness of the Minangkabau people who had embraced Islam to be morally and materially responsible for their wives' homes. Before grant institutions began to develop, there was no clear separation between high inheritance and livelihood assets. Thus, donating the property to children was interpreted by the community at that time as bringing the wealth of the people out of the people's environment. So after there is a dichotomy between inheritance which is referred to as "high inheritance", and livelihood property, called "low inheritance", then grants to livelihood assets are easier to implement. The separation of livelihood assets from inheritance took effect gradually. It only reached the final stage with the formal ratification of a joint agreement with the *Ninik Mamak* (tribal elders), the Islamic scholars and the younger generation who came as envoys throughout the Minangkabau world, known as the *Kerapatan Orang Empat Jenis*.

⁷ QS. Al-Nisā' [4]: 11

⁸ QS. Al-Nisā' [4] : 12

⁹ QS. Al-Nisā' [4] : 11

Judging from the distribution of the population in Minangkabau, it started from an increasingly dense tribal village, so some of the tribal families looked for vacant land to be used as fields, rice fields and settlements. They started clearing new land together and made a simple hut or house to live in. As time went by, the new place continued to be improved and eventually became a new village. From the village's growth, which later became a *koto* (villages), then from the *koto* association became a *nagari* (districts). In other words, the spread of the tribes, which were later called clans, along with the development of *taratak* (RT) into hamlets (RW), hamlets into *koto* and some *koto* into a *nagari*. Geographically, Nagari Nanggalo is located in the middle of the city, so that besides being a village, there are also offices and shopping centres.

Nagari Koto Tengah (Koto Tengah Sub-district) is not much different from Nagari Nanggalo (Nanggalo Sub-district) in terms of customs and the application of the applicable laws in this *Nagari* but prioritizes the opinion of *Ninik Mamak* in the *Nagari* when deciding to be implemented in this *Nagari*. The role of the *Ulama* (Muslim scholars) also becomes essential in carrying out the law, as evidenced by the strength of the applied customs compared to the *Fiqh Farāid* (inheritance) that is applied. It is a reference for the community when there are problems of inheritance and inheritance in their settlement in this area.

Education is proliferating in this Nagari, with the existence of pesantren being a provision for the preparation of scholars in this place in addition to other educational centres such as schools and other educational centres. This area is also a recreation centre with the Lubuk Minturun river as a tourist attraction. The plurality of the Minangkabau community with the majority of inheritance given to daughters, not to sons. It is the concept of the injustice of a *Ninik Mamak* in Minangkabau by not prioritizing inheritance (in the form of items that are not worth money) so that boys are not counted in Minangkabau. The wealth given is the result of the mother's inheritance which is a high heirloom.

In Islamic law, inheritance of property is regulated in *Fiqh Farāid*, and there are rules in the *Qur'ān*. It is the confusion in society that in Islam, the rights of boys are twice that of girls. From this, the problem arises. There is no compatibility between customary law and Islamic law that applies as a guide for many people who state that Minangkabau customary law regarding inheritance cannot be accepted by Islamic law. The second opinion states that the inheritance of property in Minangkabau does not conflict with Islamic law but is under the provisions contained in the Shari'a.¹⁰

¹⁰ This opinion was conveyed by Abdul Malik Karim Amrullah, a student of Ahmad Khatib Al-Minangkabawy (the Grand Syekh of Minangkabau). He thinks that the inheritance of property in Minangkabau is not against Islamic law. He said that inheritance is the same as waqf property or *Musabalah* property (the property of a people or a group of people). This *musabalah* treasure originally appeared during the time of Caliph Umar bin Khattab, namely the property of the Khaibar Tribe, which came from the spoils of war. Read Amir MS, *Pewarisan Harato Pusako Tinggi dan Pencaharian* (Jakarta: Citra Harta Prima, 2011), p. 23

The third opinion is that which separates inheritance and livelihood assets. For inheritance, customary law is applied, which is inherited from generation to generation collectively according to the maternal lineage. As for livelihood assets, Islamic inheritance law (*Farāid*) applies. This opinion was used in the congress of the *Alim Ulama*, *Ninik Mamak* and *Cerdik Pandai* (Scientific) Minangkabau Consultative Body from 4 to 5 May 1952 in Bukittinggi, as well as the Minangkabau Customary Law Seminar held in Padang on 21 to 25 July 1968.¹¹ However, in researchers' observations in two sub-districts in the city of Padang, which became the object of research, there were still differences in the application of inheritance. Therefore, researchers are interested in examining the application of Islamic and Customary Inheritance Law in two areas of Padang, namely the districts of Koto Tengah and Nanggalo.

The theme of inheritance of property in Minangkabau society has been discussed by several researchers, including Prasna, who discusses inheritance of Minang people's property from the perspective of the Compilation of Islamic Law.¹² Larasati, who studied the Painan District Court Decision No. 14/Pdt.G/2013 juridically regarding the ownership of the Painan Minangkabau Indigenous People's Heirlooms.¹³ Then there is Eric, who examines the relationship between Islamic Law and Customary Law in the Distribution of Inheritance in Minangkabau Society.¹⁴ Then there is Putri et al. which examines the inheritance of the Minangkabau Matrilineal kinship system from the perspective of Islamic Inheritance Law.¹⁵ Also Yonnadi, in his thesis which discusses the implementation of the distribution of Inheritance Assets from Livelihood Assets for Boys in the Minangkabau Customary Law Community in Pariaman Timur District, Pariaman City.¹⁶ From these previous studies, it can be said that the theme that the author has raised in this article has never been discussed primarily on the object of research chosen by the researcher on this occasion. For this reason, this article wants to answer how the distribution of the Minangkabau community's inheritance in Koto Tengah and Nanggalo Districts, Padang City?.

¹¹ Ibid.

¹² Adeb Davega Prasna, "Pewarisan Harta di Minangkabau dalam Perspektif Kompilasi Hukum Islam", in *Kordinat: Jurnal Komunikasi Antar Perguruan Tinggi Agama Islam*, Vol 17, No 1. (2018).

¹³ Acintya Heruka Larasati dan Endang Pandamdari, "Analisis Yuridis Terhadap Kepemilikan Harta Pusaka Kaum Adat Painan Minangkabau (Studi Putusan Pengadilan Negeri Painan Nomor 14/Pdt.G/2013)", in *Reformasi Hukum Trisakti*. Vol 1 Nomor 1 (2019).

¹⁴ Eric, "Hubungan Antara Hukum Islam dan Hukum Adat dalam Pembagian Warisan di Dalam Masyarakat Minangkabau" in *Jurnal Muara* Vol 3 No 1. (April 2019).

¹⁵ Ira Damayanti Putri, Dhea Amelisca dan Sarfia Nengsih Radinda, "Pewarisan Menurut Hukum Waris Islam Terhadap Sistem Kekerabatan Matrilineal Minangkabau" in *Notaire* Vol. 2 No. 2, (Juni 2019).

¹⁶ Roni Yonnadi, "Pelaksanaan Pembagian Harta Warisan Untuk Anak Laki-Laki Terhadap Harta Pencaharian Pada Masyarakat Hukum Adat Minangkabau di Kecamatan Pariaman Timur Kota Pariaman", *Thesis--Universitas Gadjah Mada*, Yogyakarta (2016).

RESEARCH METHODS

This research is descriptive analysis with a qualitative research type that uses an empirical juridical approach. The data sources in this study were obtained from interviews, observations, and document studies, namely legal materials related to customary inheritance law, supported by other legal materials.¹⁷ The interview used was a structured interview, in which the researcher had held a list of questions that had been planned before meeting face to face with the research subject. The researcher does it to be more focused, and the topic is not widened so that the data obtained is indeed the data that the researcher wants to analyze without selecting and sorting out relevant and irrelevant data.

The number of subjects in this study was ten people in the Nagari Customary Density Office, Koto Tangah District and Nanggalo District, who had experienced inheritance distribution events in their families and knew about how the customary inheritance law of the Minangkabau community was implemented. The data from the interviews were then matched with the results of observations and document studies. The next step is to identify, interpret and conclude.

RESULTS AND DISCUSSION

The procedures for developing adat in Minangkabau in general and Nagari Koto Tangah and Nanggalo, in particular, were conveyed simply by word of mouth. All cultural heritage in the Minangkabau lands is conveyed orally; from *ninik* down to *mamak*, from *mamak* down to *kamanakan* (from grandmother down to mother, from mother down to a child). Then from children down to children and so on. It is not to be blamed, because there is no formal education like today, where there were no schools at that time, so people who passed on lessons were simply word of mouth.

Nagari Koto Tangah administratively by the Indonesian state government is a sub-district that oversees fourteen sub-districts, namely; Dadok Tunggul Hitam, Air Pacah, Lubuk Minturun, Lareh River, Bungo Pasang, Parupuk Tabing, Batang Kabung Ganting, Lubuk Buaya, Padang Sarai, Koto Panjang Ikua Koto, Sand Nan Tigo, Koto Pulai, Balai Gadang, Batipuh Panjang. Within the fourteen sub-districts there are twenty-four villages which traditionally existed or before independence, namely; Koto Tuo Village, Pulai, Baringin, Cold Aie, Lubuk Minturun, Lareh River, Koto Panjang, Ikua Koto, Bungo Pasang, Batang Kabung, Parupuk Tabing, Tanjung Aur, Bangek River, Parak Buruak, Jambak Village, Lubuk Buaya, Anak Aie, Padang Sari, Aie Pacah, Ganting, Pasie Sabalah, Pasie Kandang, Pasie Jambak, and Dadok Tunggul Hitam village. There are ten tribal groups in the villages of Nagari Koto Tangah which are led by a top leader. The top leadership of each tribe is appointed according to the custom that they have brought from their native village. Then *taratak* (residential areas) was formed, continued to be a village and they all

¹⁷ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif, Suatu Tujuan Singkat* (Jakarta: Rajawali, 2015), p. 13.

blended and developed. Each village is led by a village mayor. Meanwhile, *Nagari Koto Tengah* was brought by the leader of a *penghulu* who served as the head of the *Nagari (Wali Nagari)*.

Not much different from *Nagari Koto Tengah*. Only geographically *Nagari Nanggalo* is located in the middle of the city. There are villages and offices, shopping centres, and recreation centres with the Lubuk Minturun River as a tourist centre. *Nagari Koto Tengah* is not much different from *Nagari Nanggalo*. In custom and applying the applicable law in this *Nagari* still prioritizes the opinion of *ninik Mamak* in the *Nagari* when deciding to be implemented in the *Nagari*. Along with the religious knowledge gained by the Minangkabau community, the role of the *ulama* began to become important even though only at the level of accompanying *Ninik Mamak's* opinion in carrying out the law. For example, in the distribution of inheritance, customary law applied is still quite strong compared to Islamic inheritance law.

For the Minangkabau community, most inheritance (whatever the form of property) is given to daughters, not to sons. It raises the perception of the injustice of a *Ninik Mamak* in Minangkabau who does not consider the existence of sons. Whereas in Islam, inheritance of property is regulated by *Fiqh Farā'id*, which does not deny the rights of boys and girls, even the rights of boys are twice that of girls. Islamic inheritance law was born and developed in the Middle East with a patrilineal society. In its development, these products may clash if applied in a non-patrilineality society structure.¹⁸ In the Qur'an, men and women are equally entitled to the inheritance of their parents and relatives. This provision is an overhaul of the Arab custom, which only gives inheritance rights to men who can carry weapons to defend the honor of their tribe. So that small children, older people, and women, because they cannot carry weapons, do not have the right to inherit at all.¹⁹

However, after the teachings of Islam entered Indonesia, with the development of public awareness that demands equal rights in inheritance (one to one between men and women). There is a way that can be accepted fairly in our society to deal with Islamic inheritance. Seen in the daily reality of people's lives, the division of inheritance has been carried out while still alive in order to provide equal

¹⁸ Abdul Ghofur Anshori, *Filsafat Hukum Kewarisan Islam* (Yogyakarta: UUI Press, t.th), p. 196

One of the lessons of Islamic sharia is to elevate the dignity of women who were previously treated unfairly in the life of the structure of society in general, such as only being a tool to satisfy men's desires or being seen as second-class citizens. This situation occurs in almost all levels of society, even in the Jahili Arab society, a woman can be inherited, and they are very disgraceful if they give birth to a girl so that the baby's biological father usually kills a baby girl born by a mother. With the arrival of Islamic teachings, the Arab society reformed the system by elevating the status of women to equal men; it was not allowed to be killed, even in inheritance, their rights as heirs were not recognized by society. The condition that the inheritance share of sons is two to one share of daughters according to *Farā'i fiqh* is very fair considering that the inheritance verse is passed down in a society that adheres to a patrilineal system. If at that time it was stated one to one, of course, there would be turmoil in society, and it was considered unfair because it was contrary to the sense of justice that was felt and lived in a society at that time, where the obligations of a man exceeded women.

¹⁹ Ahmad Azhar Basyir, *Hukum Waris* (Yogyakarta: UUI Press, 2001), p. 5

shares between men and women. In the life of the Indonesian Muslim community in general, there are differences in interpreting justice in the inheritance because the backgrounds of those who are born and live in different societies have different kinship or kinship systems. To provide a legal solution regarding a fair distribution pattern, one can use one of the sources of Islamic law other than the Koran and *Hadith*, namely the *ijtihad* model of *Maṣlaḥah Mursalah*, *Istiḥsān* and others that allow Muslims to be able to formulate new laws, that are relevant to the needs of people undergoing social change so that Islamic inheritance law is universal.

This legal product will be able to be continued regardless of territorial boundaries and social environment. It means that with *ijtihad*, Islamic inheritance law will have flexibility and adaptability to changes in society.²⁰ Law as a means of achieving justice can only be effective if there is a combination of substantive justice values between legal messages (the *Qur'ān* and *Hadīth*) and society as people who are directly burdened with the law (*mukallaf*). According to Hazairin, the main area of legal justice is the attachment of Muslims to the basic guidelines for making legal decisions in Islam. A decision is said to be fair if it departs from the general guidelines of the Koran because the attachment of Muslims to basic guidelines in decision-making has a fundamental influence on the prospects of Muslim life individually and socially.²¹

The role of maintaining the community's ability to adapt due to changes in conditions is carried out by reconstructing relationships in the community that previously existed. With this role, the law is closely related and must anticipate social changes in society. Therefore, the law is required to formalize the relationship between community members because society is always dynamic, so continuous formulation is needed so that the law can adapt itself to the demands of the times.²²

In the case in Minangkabau land, especially in Nagari Nanggalo and Koto Tengah, the opinion of *Ninik Mamak* in the *Nagari* is very much considered in making a decision to be implemented in the *Nagari*, for example regarding the distribution of inheritance. However, along with the passage of time and awareness of the Muslim community about sharia, the opinions of *Ulama* also become significant to be considered in addition to *Ninik Mamak Nagari* opinions. At first, *Ninik Mamak* in Minangkabau did not differentiate between inheritance and livelihood. All merged into one and will be an inheritance for only daughters and sons are not taken into account. It has led to confusion for the Muslim Minangkabau community where in *Fiqh Farā'id* has stated that the rights of boys are twice the rights of girls.

From the above problems, Muslim scholars have studied the validity of the concept of inheritance distribution in Minang land. Some groups claim that the

²⁰ Abdul Ghofur Anshori, p. 64

²¹ Ibid., p. 82

²² Ibid. p. 64-80

Minangkabau customary law regarding inheritance cannot be accepted by Islamic law. The second group argues that the inheritance of property in Minangkabau does not conflict with Islamic law but is following the provisions contained in Sharia.²³ The third group argues by offering a compromise concept to separate inheritance and livelihood assets. For inheritance, customary law is applied, inherited from generation to generation collectively according to the maternal lineage. As for livelihood assets, the community applies Islamic inheritance law (*Farāid*). This opinion was later used in the congress of the *Alim Ulama*, *Niniak Mamak*, and *Cerdik Pandai* of Minangkabau Consultative Body on 4 to 5 May 1952 in Bukittinggi, as well as the Minangkabau Customary Law Seminar, which was held in Padang from 21 to 25 July 1968 and was adopted by the Muslim community in Minangkabau.

The above can illustrate that the Muslim community in Minang wants to implement all sharia guidelines and tries to prioritize them. The concept of classifying high inheritance and low inheritance certainly does not exist in the Arab region where Islamic sharia was derived. It results from the *ijtihad* of Minang scholars and scholars who need to be appreciated in bridging Islamic customary law. However, this concept is not necessarily accepted by the general public. In a developing reality, the application of this concept is very different between the two sub-districts in the city of Padang, which are the objects of this research. Where some villages still hold firmly to their customs, the distribution of inheritance tends to be women's right still.

In the Nanggalo sub-district, the issue of inheritance has been a hereditary discussion whose application remains following inheritance law in Islam. It is as stated by Mr. Amrizal as chairman of the Nagari adat density in the Nanggalo sub-district, who stated that his community still upholds Islamic law as a guide in the application of inheritance. It is just that they have their own terms but basically the same essence as Islamic law. Meanwhile, in the Koto Tangah sub-district, Buya Darmis Muar, the *Niniak Mamak* in Aia Pacah and the head of the MUI in Koto Tangah Sub-district, explained that the inheritance problem had not found a bright spot or solution, between applying customary law or Islamic law. People in Koto Tangah tend to stick to their customs in the distribution of inheritance. Before the parents died, there was already a record of the property left about whom the property was intended for, both high inheritance, low inheritance, and joint property to be divided.

In this area, there is no application of *Fiqh Farāid* because the division is clear. Whether it is interpreted as a grant, will, or gift that is not based on the inheritance count contained in *Fiqh Farāid*, it is customary law that plays a very important role. It is one of the factors that cause *Fiqh Farāid* cannot be applied in the Koto Tangah area. Abuya, as a Muslim Scholar in the Koto Tangah sub-district,

²³ Look at footnote number 10

did not even dare to apply *Fiqh Farāid* because there was no support from other *Ninik Mamak* in the area.²⁴

The Koto Tangah Court, which is the place for the settlement of regional inheritance cases, illustrates that there is indeed a classification in the community, namely high inheritance, which is the property of ancestral inheritance, and low inheritance, which in fact is personal property resulting from husband and wife's livelihood when they are married. However, both high and low inheritance assets tend to be controlled by women because there are strong indications that if men control them, they have a high potential to be sold.²⁵

The high inheritance cannot be contested because the high inheritance cannot be sold or pawned. If the high inheritance is pawned, it will be categorized as low inheritance, and women will like it. In high inheritance, a man is obliged to guard it so that it is not disturbed by others. When you want to know the arrangement of the division of the High Heritage property in a people, there must be a statement from the people that the distribution of the property has a clear designation and is known by the *Ninik Mamak* at the *Gadang* house. When it does not exist, then this will cause problems in the future.

For the people of Koto Tangah and Nanggalo who do not apply inheritance law according to *Fiqh Farāid*, they tend to distribute the property before the heir dies. However, if it is not done, then the court will apply *Fiqh Farāid* with the stipulation that high heirlooms cannot be distributed because the designation is clear, namely the High Pusaka is used for the public interest of the people, such as when the *Gadang* house is *katirisan* (broken), *gadih gadaang ndak balaki* (daughter who is an adult but not married), lying corpses that are not taken care of in the field. High Heritage Treasures cannot be certified because of difficulties in whose name the heirloom is while it is not owned personally, and this is a problem for which there is no solution. There must be an agreement between the people, and the head of the inheritance must be presented. If the High Pusaka property is to be sold or pawned, it must be known by all parties in the *Gadang* house and cannot be unilateral. Especially when the High Heritage Treasures is sold, the rights of men and women, according to *adat* (customs), are the same; if they are not sold, the ownership status belongs only to women.²⁶

²⁴ Regarding the latest data updates, in this case, there is no written, because the punishment used is the family principle, and there are advantages that do not harm one party because there have been provisions for generations in this area. If the law of *fiqh Farāid* is applied, it will cause big problems in this area so that there will be hostility, which is not even a solution. Darmis Muar, Head of MUI, Koto Tangah District, Padang City, *Interview*. (March 3, 2021)

²⁵ The distribution of inheritance for low inheritance in the form of livelihood assets differs from the distribution of inheritance for high inheritance. The distribution of inheritance on inheritance is low, especially the distribution of children's inheritance; if the heir's inheritance is indeed sourced from his livelihood during the marriage, then both sons and daughters of the heir have the same right to become heirs. Read Roni Yonnadi, p. 3.

²⁶ Darmis Muar, *Interview*

Inheritance division over low heirlooms has a different inheritance system than inheritance division over high heirlooms. The distribution of inheritance on low inheritance, especially the distribution of inheritance for children, in the Minangkabau indigenous law community, if the inheritance is sourced from livelihoods, then both boys and girls have the same right to be heirs. However, in general, our observations and interviews prove that the son does not want to take his share. It is because the son is more thinking about his future and that the inheritance is left to his sister. In this practice, women do seem to get many shares because men's rights are left to women.

CONCLUSION

The Koto Tangah and Nanggalo district heritage property is classified into two categories. "pusaka tinggi" is the people's property and cannot be traded, will always be inherited, controlled, and owned from generation to generation from the traditional female line. While the "pusaka rendah" is individual property, the inheritance distribution follows the Heir religion; if Moslem, then Fiqh Farāīd can be applied. However, when compared between Koto Tangah and Nanggalo, the Koto Tangah case about the division of inheritance both high and low heirlooms still tends to follow customary law than Islamic law. In both regions, problems arising from the distribution of low heirloom property that has no solution from the family because there are those who feel aggrieved by one of the parties; for example, it will be submitted the results to Mamak and Manti at the Nagari Customary Density Office. If the problem is not resolved at the Nagari Customary Density Office, the defendant and the defendant can proceed to the District Court. In this matter, the role of Ulema is needed to assert that there is no conflict between Islamic Law and Adat in the issue of the division of heirlooms. Only the term redaction of different words so that in general, the application of the heirloom, both high and low heirloom, is following the provisions of Islamic Law.[]

References

- Anshori, Abdul Ghofur. *Filsafat Hukum Kewarisan Islam*. Yogyakarta: UUI Press, n.d.
- Basyir, Ahmad Azhar. *Hukum Waris*. Yogyakarta: UUI Press, 2001.
- Benzani, Virza, interview by Rahmadanil, & Rifka Zuwanda. *Manti Kantor Kerapatan Adat Nagari Kecamatan Koto Tangah Kota Padang* (Maret 8, 2020).
- Eric. "Hubungan Antara Hukum Islam dan Hukum Adat dalam Pembagian Warisan di Dalam Masyarakat Minangkabau." *Jurnal Muara* 3, no. 1 (April 2019).
- Larasati, Acintya Heruka, and Endang Pandamdari. "Analisis Yuridis Terhadap Kepemilikan Harta Pusaka Kaum Adat Painan Minangkabau (Studi Putusan Pengadilan Negeri Painan Nomor 14/Pdt.G/2013)." *Reformasi Hukum Trisakti* 1, no. 1 (2019).
- MS, Amir. *Pewarisan Harato Pusako Tinggi dan Pencabarian*. Jakarta: Citra Harta Prima, 2011.
- Muar, Darmis, interview by Rahmadanil, & Rifka Zuwanda. *Ketua MUI Kecamatan Koto Tangah Kota Padang* (Maret 3, 2021).

- Munir, Misnal. "Sistem Kekerabatan dalam Kebudayaan Minangkabau: Perspektif Aliran Filsafat Strukturalisme Jean Claude Levi-Strauss". *Jurnal Filsafat* 25, no. 1 (Februari 2015): 1-31.
- Prasna, Adeb Davega. "Pewarisan Harta di Minangkabau dalam Perspektif Kompilasi Hukum Islam." *Kordinat: Jurnal Komunikasi Antar Perguruan Tinggi Agama Islam* 17, no. 1 (2018).
- Putri, Ira Damayanti, Dhea Amelisca, and Sarfia Nengsih Radinda. "Pewarisan Menurut Hukum Waris Islam terhadap Sistem Kekerabatan Matrilineal Minangkabau." *Notaire* 2, no. 2 (Juni 2019).
- Rizqa, Hasanul. *Awal Mula Islam Masuk ke Ranah Minang*. Maret 11, 2019 . <https://www.republika.co.id/berita/po7c98458/awal-mula-islam-masuk-ke-ranah-minang> (accessed 8 29, 2021).
- Soekamto, Soerjono, and Sri Mamudji. *Penelitian Hukum Normatif, Suatu Tujuan Singkat*. Jakarta: Rajawali, 2015.
- Yonnadi, Roni. *Pelaksanaan Pembagian Harta Warisan untuk Anak Laki-Laki Terhadap Harta Pencabarian pada Masyarakat Hukum Adat Minangkabau di Kecamatan Pariaman Timur Kota Pariaman*. Tesis, Yogyakarta: Universitas Gadjah Mada, 2016.