



Inheritance of Property in Minangkabau: Review of Customary Law and Islamic Law

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Abstract. The Minangkabau people adhere to Islamic beliefs or religion. In social life in Minangkabau, custom and religion are two values that are in line with and adhered to according to the Basandi Syarak Adat life philosophy, Syarak Basandi Kitabullah. This philosophy explains that existing customary law must follow Shari'a, namely Islamic law which is guided by the Al-Quran and Sunnah which is called the Book of Allah. In the inheritance of property in Minangkabau, there are differences and similarities with customary law and Islamic law. This problem research was carried out by reviewing the relevant literature according to the title. There are two types of inheritance in Minangkabau, namely high inheritance and low inheritance. Inheritance of high inheritances follows the customary inheritance rules in Minangkabau, which are inherited collectively according to the mother's lineage (matriline). This inheritance is usually in the form of goods or land. What is shared is the time spent working on it and enjoying the results. The beneficiaries are usually women, and only men manage the high inheritance. For lower inheritance, it is property that arises because the husband and wife leave their living to their children, as stipulated in Islamic law or Faraidh law.

Keywords: Inheritance, Minangkabau, Customs, Islamic Law

Introduction

Minangkabau, Minang for short, are an ethnic group native to the archipelago, who live in Sumatra in the central part of Indonesia. The distribution of the Minangkabau tribe covers the whole of West Sumatra, half of Riau, northern Bengkulu, western Jambi, west coast of North Sumatra, southwest coast of Aceh, and Negeri Sembilan in Malaysia. Minangkabau refers to a culture and geography characterized by language, customs related to the matrilineal kinship system, and Islamic religious identity. Minang people are often equated with Padang people because they refer to the name of the capital city of West Sumatra province, namely the city of Padang. (Wikipedia, n.d.)

The Minangkabau people adhere to Islamic beliefs or religion. In Minangkabau, custom and religion are two rules that are in line with the philosophy adopted, namely Adat Basandi Syarak, Syarak Basandi Kitabullah. This philosophy states that existing customary law must follow Sharia, Islamic law which originates from the Book of Allah, namely the Qur'an and as-Sunnah. For this reason, all rules of the Minangkabau community must be in accordance with Islamic law which is enforced by customary law. There should be no customary rules that deviate from Islamic rules. This includes the law of inheritance, and inheritance must not only follow the usual rules, but must also comply with Islamic inheritance law, namely faraidh.

Inheritance law is one of the rules stipulated by Allah SWT relating to human relations with humans, especially inheritance, property and property due to death. The inheritance left

behind must be regulated who is entitled to receive it, the amount, and how to obtain it. These rules are mentioned in the Quran and Hadith. (Amir Syarifuddin, 2015) On the other hand, inheritance in Minangkabau that is common is not the transfer of property ownership and distribution of assets from the deceased to the living, but the transfer of functions and responsibilities for management, administration and supervision of wealth from those who died to the next generation. (Idus Hakimy Dt. Rajo Penghulu, 1994)

Inheritance of property in Minangkabau has differences and similarities in inheritance of property in Islam. Based on the background above, the author is interested in researching and writing about the inheritance of property in Minangkabau in terms of customary law and Islamic law.

Research Methods

Legal research is a process of seeking scientific truth about law by using scientific methods in a systematic and logical way to solve legal problems or find the truth about legal events that occur both theoretically and practically. (Muhaimin, 2020) In this writing, the research method used The research used is normative legal research or library research, namely using legal material sources in the form of statutory regulations, legal principles and principles, legal theory and opinions of legal experts.

Results and Discussion

Review of Customary Law on Inheritance in Minangkabau

In ordinary inheritance law, inheritance is discussed more than just the relationship with the heirs. General inheritance law is customary law which includes schemes and principles of inheritance law, as well as rules for managing inheritance and transferring property rights from the owner of the inheritance to the heir. The general concept of inheritance law is a set of rules governing the procedure for passing on assets from one generation to the next. (Hadikusuma, 2007)

As a general rule, the legal order of customary inheritance is closely related to the system of social structures and forms of kinship. As long as the family system lasts, society, especially Indonesia, has formed a system that draws a line from their ancestors. This is a well-known genealogy system in Indonesia, but there are three main types of genealogy systems, namely the patrilineal system or paternal lineage, the matrilineal system (maternal lineage) and the parental system. (Habib Ismail, Hasyim Asyari, 2019)

Minangkabau society adheres to matrilineal principles in its social order. This resulted in every child born later following his mother's lineage and obtaining the same tribe as his mother. The principle of matrilineal genealogy makes the factor of the uncle (mother's brother) called *mamak* in Minangkabau custom a very important figure. The responsibility of a *mamak* in this case is heavy because all kinds of conditions for her nephew (sister's child) are in the hands of the *mamak*. The role of the father in his wife's house is only as a guest and does not have authority as *urang sumando*. (Anwar Fauzi, 2012)

A woman in Minangkabau has a special place, so she is called *Bundo Kanduang*, where *Bundo Kanduang* plays a decisive role in the successful implementation of men's decisions as

mamak and penghulu (tribal leader). This great influence causes Minang women to be symbolized as Limpapeh Rumah nan Gadang (the main pillar of the house). Even though power is heavily influenced by the control of economic assets, men in women's families still hold power or legitimacy of power in their communities. (Ira Damayanti Putri, 2019)

There are three main principles in Minangkabau Customary Inheritance Law, namely: (Amir Syarifuddin, 1984)

1. The principle of unilateral, namely inheritance rights only apply within one family line, namely kinship according to the kinship line (matrilineal). Inheritance from ancestors is passed down through the mother's lineage and passed on to the next generation through daughters.
2. Collective principle, namely the heirs are not individuals but a group. On this basis, the inherited inheritance cannot be divided.
3. The principle of primacy, that is, when receiving an inheritance or receiving management of an inheritance, there are levels of rights that make one party more entitled than the other, as long as there are always rights holders who cannot receive it.

There are two types of inheritance in Minangkabau, namely Sako and Pusako. Sako is a customary honorary title or similar given to matrilineal descendants. The term adat refers to "sako customs passed down from generation to generation". Sako is not an object, but an honorary title that can be inherited by those who have the title at the time of death. The title of sako is passed down from mamak to nephew. Sako also means ancient wealth that has no form called rights. Sako is an honorary title passed down to kamanakan (son) for generations according to the mother's lineage. (M.S, 2003)

Mamak in Minangkabau has the task of educating and guiding his nephews, maintaining and developing heirlooms, representing the family in external affairs, and acting as a mediator when disputes occur between his people. The nephew will inherit the sako from his mother. Mamak is obliged to guide her nephew as described in the following proverb: Kaluak paku kacang balimbiang, Daun bakuang lenggang-lenggangkan, Anak dipangku kamanakan dibimbiang, Urang kampuang dipatenggangkan.

Pusako is a material customary inheritance consisting of property and property of the customary rulers. In general, the classification of property ownership in Minangkabau has two categories, namely high inheritance and low inheritance. As explained LKAAM (Minangkabau Natural Customary Density Institute) is the property of the people which is passed down from generation to generation from ninik to mamak, from mamak to grandson according to the mother's lineage. (LKKAM, 2002) Meanwhile, according to Hamka, pusako tinggi are assets that can be obtained from tambilang basi, and pusako randah can be obtained from tambilang emas. (Hamka, 1984) Tambilang basi is a wealth that has been passed down from generation to generation by ancestors. While tambilang emas, it is a treasure obtained by one's own efforts. In addition there are also those who call it joint ownership, namely property acquired in household life.

The inheritance of assets in this pusako is in accordance with the customary Minangkabau inheritance provisions, which are divided according to the mother's line (matrilineal). Collective inheritance is one of the inheritance systems in Indonesia, which is an institutional inheritance system. The institution in question is the family as a unit of genealogical kinship.

This inheritance is usually in the form of objects, namely land such as agricultural land. What is divided is the turn to work and enjoy the results. The owner of the inheritance is usually a woman and the man only processes and collects the results. (Hazarin, 1982) Therefore it is called inheritance as in Minangkabau it is called a pusako treasure, where those who are entitled to receive inheritance are families from the matrilineal clan and not individuals.

High heritage assets in Minangkabau may be mortgaged or released if they meet the following conditions:

1. *Mayik tabujua ditangah rumah*, that is, if a clan member dies and the family left behind does not have the funds to organize the funeral process for the corpse.
2. *Gadiah gadang alun balaki*, that is, in a family member there is a girl who is old and unmarried, then the property is used as capital for the man to marry the girl.
3. *Rumah gadang katirisan*, that is, if a rumah gadang needs renovation but family members do not have the funds to repair it, then the high heirlooms may be pawned or sold to repair the house.
4. *Pambangkik Batang Tarandam*, namely the appointment of the prince because the previous prince had died.

The inheritance of high inheritance in Minangkabau customary law has several important functions. First, it provides protection for young children and those who do not have a steady source of income. Second, inheritance can help maintain relationships between families and ensure that their interests are protected. Third, inheritance is also a source of family income, especially for younger family members. Fourth, inheritance is also used to protect family assets and preserve natural resources around Minangkabau. (Asyrofil, 2023)

While the inheritance of lowland assets are all assets obtained from the results of one's own efforts, including the husband and wife's living. If the heirs maintain the integrity of this inheritance by not selling or dividing it, then the inheritance will be passed on to the next generation continuously so that it is difficult to trace, then it will be a high inheritance or high inheritance property. A weak inheritance is known as a shovel of gold in everyday language. Rice fields resulting from forest clearing when they were still taruko were classified as low heritage for a short time. After being passed down for two generations, the treasure will again become a noble heirloom, including mortgaged land. (Putiah, 2007)

Based on the above, high inheritances can come from lower inheritances which are continuously inherited as a whole and are never divided, so that over time these assets are not clearly known to their owners because they continue to be passed on to the next generation. According to Minangkabau custom, high inheritances cannot become low inheritances. Whereas lower inheritance whose origin is clear, such as coming from parents' income, can be inherited using the Islamic inheritance system (*Faraidh*).

Review of Islamic Law on Inheritance in Minangkabau

For Muslims in Indonesia, Allah SWT decree regarding inheritance has become the applicable law used in religious courts to resolve cases of distribution or disputes regarding inheritance. Inheritance in Islam regulates the transfer of assets from the deceased to the living. These rules regarding the transfer of property are referred to by different names, in the

Islamic legal literature several terms are found that refer to Islamic inheritance law, such as Faraaidh, Fiqh al-Waris and Hukm al-Waris. (Amir Syarifuddin, 2015)

In Indonesia, Islamic law guidelines are contained in a collection of regulations called the Compilation of Islamic Law (KHI). In article 171 letter a of the Compilation of Islamic Law (KHI) it is explained that, "Inheritance law is the law governing the transfer of inheritance rights (tirkah) to heirs, determining who has the right to become heirs and what part each has."

Principles in Islamic inheritance: (Sakirman, 2017)

1. The principle applies by itself (Ijbar)

In Islamic inheritance law, the transfer of the property of the deceased to the heirs occurs automatically. No person or institution can delay it. Individuals, both heirs and heirs, especially those who are not family members, may not delay and not receive inheritance. Because there are clear provisions in the text. They were "forced" (ijbar) to give and receive according to their share of the inheritance. 11 Meanwhile, the crown prince was only given the freedom to transfer his inheritance to the person he wanted with a will. The transfer of property is only caused by the death of the owner of the property. This means that the principle applies by itself, only applies after the death of the crown prince and does not apply as long as the owner of the property is still alive.

2. Individual bilateral principle

The individual bilateral principle means that any heir can do this, regardless of whether he is male or female. Inheritance rights are received from paternal and maternal relatives, and each heir holds the rights according to the specified rights. This principle can be identified from the sound of the core verse regarding inheritance in Q.S an-Nisa verses: 7, 11, 12, and 176, the essence of this verse is that every man and woman has inheritance from both parents.

3. The principle of dissemination with priority in the family sphere

The principles underlying the possibility that multiple heirs will be involved in the distribution of inheritance. Not only children, but also husbands, wives, parents, siblings, grandchildren, parents and offspring of siblings are also included.

4. The principle of equal rights

Islamic inheritance law does not distinguish between men and women, infants and adults. everyone has the same right to inherit.

5. The principle of balanced justice

This principle implies that in the provisions of Islamic inheritance law there is always a balance between rights and obligations, the rights that a person gets and the obligations that a person has to do. Men and women have the right to their respective duties in family and community life. Because basically in the Islamic inheritance system, the inheritance received by the heirs from the heirs is essentially a continuation of the responsibilities of the heirs to his family.

The Islamic inheritance system has several elements or pillars such as:

1. The heir is called al-Muwarit

In the event of death a person leaves property or rights. The same may be true for those who died and left something for their living relatives.

2. Heir (heir),

Heirs are people who are entitled to inheritance for certain reasons. The conditions for receiving an inheritance are that the heir is still alive at the time of the heir's death, there are no circumstances that legally prevent him from receiving the inheritance, that the inheritance is not entirely disguised, or that he is a close relative.

3. Inheritance or al-Mauruts

Al-Mauruts also known as miraats or irts, are assets left by heirs or those entitled to inherit.

The Compilation of Islamic Law (KHI) classifies heirs in terms of how they are distributed as follows: The group of heirs of dzawil furud, namely (Murniwati, 2023)

1. The father gets 1/3 of the share if the heir leaves no children/offspring. This is stated in Article 177 KHI "The father gets one-third share if the heir leaves no children, if there are children, the father gets one-sixth share".
2. The mother gets 1/6 share if the heir has children/offspring, or the heir has two or more siblings (siblings, paternal, maternal) gets 1/3 if the heir has no children/offspring or the heir leaves one sibling (sibling, seayah, seibu). This is stated in Article 178 KHI in paragraph (1) "The mother gets one-sixth share if there are children or two or more siblings. If there are no children or two or more siblings, then he gets a third part ". Paragraph (2) states "The mother gets one-third of the remaining portion after being taken by the widow or widower if she is together with the father".
3. The widower gets 1/4 share if the heir leaves children/offspring, gets 1/2
4. if the heir does not leave children / offspring. This is stated in Article 179 KH "The widower gets half a share, if the heir does not leave children, and if the heir leaves children, then the widower gets a quarter of the share".
5. The widow gets 1/8 share if the heir leaves children/offspring, gets 1/4 share if the heir leaves no children/offspring. This is stated in Article 180 KHI "The widow gets a quarter of the share if the heir does not leave children, and if the heir leaves children, then the widow gets an eighth share".
6. A daughter gets 1/2 part, two or more daughters get 2/3 part, if there are no sons or descendants of sons. And if the girl is with the boy, the share for the boy is two to one for the girl. This is stated in Article 176 KHI "if there is only one daughter she gets half a share, if two or more people together they get two-thirds of the share, and if the girl is together with the boy, then the son's share is two compared to one with girls"
7. A sister or brother (both sibling, father, mother) gets 1/6 part, if there are two or more siblings (sibling, father, mother) gets 1/3 part, if siblings (sibling, father, seibu) jointly inherit the heir's mother. This is stated in Article 181 KHI "If a person dies without leaving children and a father, then the mother's brothers and sisters will each receive one-sixth share. If they are two or more people, they will share a third share together.
8. A sister (sibling, father, mother) gets 1/2 part, two or more siblings or father gets 2/3 part, if the sister inherits not with the father and there are no brothers or male descendants - the brother of the brother. Thus stated in Article 182 KHI "If a person dies without leaving a father and children, while he has one biological sister or father, then he gets half the share. If the sister is together with a biological sister or father of two or more people, then

they will get two-thirds share together. If the sister is with siblings or father, then the share of the brother is two to one with the sister.

There are several similarities and differences regarding the concept of inheritance itself contained in the Minangkabau custom and the Islamic Law Compilation, and these similarities and differences show that the Minangkabau adat is consistent with the custom in the Islamic Law Compilation. The provisions contained in Minangkabau customs and KHI provide a clear place for inheritance in Minangkabau.

1. Source of inheritance

There are fundamental differences regarding the sources of wealth contained in Minangkabau custom and Islamic inheritance. In Minangkabau custom, there are two sources of inheritance. One is inherited from the ancestors and the other comes from the livelihood. In contrast, in the compilation of Islamic law, inheritance and common property acquired by the heirs while living together as one household after marriage are considered as a source of inheritance.

2. Type of inheritance

In Minangkabau inheritance can be divided into two types. The first is high heritage, the source of which is passed down from generation to generation and is owned by all members of the tribe, not wholly owned by anyone. Second, low inheritance that arises from the income of one's livelihood/business and is wholly owned by the person who controls it. Whereas in KHI, inherited assets are assets that are wholly owned by the heirs, both originating from innate assets and joint assets. This is explained in Article 171 letter e.

As is known, in the concept of faraid, the condition for assets to be inherited to heirs is the property of Milk al-Raqabah or Milk al-Taam, namely assets and benefits whose ownership is wholly owned and controlled by the owner of the property. Therefore, in article 171 letter e of the Compilation of Islamic Law, it is explained that the condition for inherited assets is that the assets have been cleared of debt payments, costs for organizing a funeral and granting a will. This means that the property cannot be inherited if someone else still has the right to it or until the heir has it in full (Milk al-Raqabah).

If article 171 letter e KHI is used to discuss inheritance in Minangkabau custom, Pusako Tinggi is not owned by an individual, but is an asset that is jointly owned by people whose interests are also owned by a group that is bound by a kinship or tribal system. Pusako Tinggi is not Milk al-Raqabah or Milk al-Taam because it is controlled by a tribe or collective. This high pusako is kept and managed by a mamak, so that the nephew from the sister's side only has the right to enjoy this large inheritance without being able to own it. This is illustrated by the fact that these expensive lands could not be sold, pledged, or bequeathed individually without the consent of all members of the tribe.

Therefore, Pusako Tinggi is not in accordance with the concept of inheritance in Islam because it is not an inheritance as defined by faraidh and the Compilation of Islamic Law, so it cannot be used for large inheritance according to Minangkabau custom. Hence, the existence of the great inheritance could persist indefinitely. Management and interests are inherited collectively along matrilineal lines.

Lower inheritance is wealth resulting from someone's work or business that he owns completely and perfectly, and has full power over the property, so the concept of inheritance must follow *faraaidh* and the Compilation of Islamic Law. This has also become an agreement with traditional and religious leaders in Minangkabau after the declaration of Bukik Marapalam in the early 19th century.

CONCLUSION

There are two inherited treasures in Minangkabau custom. Inheritance of the heirloom high inheritance is in accordance with the provisions of Minangkabau customary inheritance, which is inherited collectively according to the mother's lineage (matrilineal). Collective inheritance is one of the inheritance systems in Indonesia, namely a system where the inheritance system is institutional. This inheritance is usually in the form of objects or land as agricultural land. What is divided is the turn to work on and enjoy the results. Beneficiaries are usually women, men can only collect the proceeds. Because of that it is called an inheritance as it is in Minangkabau, where those who are entitled to receive inheritance are families within one clan according to matrilineal lines, not individuals.

Lower inheritance is property that is the result of a person's livelihood that he owns completely and perfectly, and he has full power over the property, so the concept of inheritance must follow *faraaidh* and the Compilation of Islamic Law.

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