



Takharruj As Problem Solving In The Division Of Inheritance In Minangkabau Society: A Study of the Sociology of Law

Herix¹ , Agam Pratama² , Heru³ 

¹²³ State Islamic University Sjech M. Djamil Djambek, Bukittinggi, Indonesia

Abstract. Takharruj is a mechanism that is widely recognized and accepted by the Minangkabau community as an attempt to find an amicable solution in the division of inheritance. This process involves negotiation and deliberation between heirs facilitated by traditional leaders or community leaders. Through takharruj, the division of inheritance can be resolved in a family manner by considering aspects of justice, the needs of each heir, and efforts to maintain family harmony. This research provides a deeper understanding of the practice of inheritance division in Minangkabau society and the underlying cultural values. The research findings can serve as input for the development of inheritance dispute resolution policies and practices that are more responsive to the local cultural context.

Keywords: Takharruj, Problem, Solving, Inheritance, Minangkabau, Sociology Of Law

1. Introduction

The Minangkabau community in West Sumatra adheres to a matrilineal kinship system that is unique and different from other communities in Indonesia. In this system, the lineage is drawn from the mother's side, and heirlooms (inheritance property) are passed down through the female line.(Syarifuddin, 1984) These heirlooms are collectively owned and managed by female relatives in a tribe or kaum, not individually.(Zubaidah, 1998)

This Minangkabau customary inheritance system clashes with the general Islamic inheritance system, in which the inheritance is divided fairly between male and female heirs according to the shares determined by Islamic law. To overcome this problem, a practice called "takharruj" emerged, which is the relinquishment of inheritance rights by brothers to sisters."(Yaswirman, no date)

In the practice of takharruj, the brother voluntarily relinquishes his inheritance rights over the estate and gives it to the sister. The main reason behind this practice is that brothers are considered to have greater opportunities to earn a living on their own, while sisters have the primary responsibility of safeguarding and taking care of the estate as an inheritance for the next generation.(Anwar, 1997) Thus, the practice of takharruj ensures that the estate remains within the female lineage and is managed collectively by female relatives within a tribe or clan(Marni, Hanani and Nofiardi, 2023).

The practice of takharruj has a strong historical and philosophical background in Minangkabau society. Since long ago, the Minangkabau community has upheld customs and traditions that prioritize the female lineage in terms of ownership and management of inherited property.(Hakimy, 1994) The practice of takharruj is a form of respect for these customs and reflects noble values such as gender equality, kinship solidarity, and togetherness in managing inherited property collectively(Liza, Hanani and Nofiardi, 2023).

In addition, the practice of takharruj also has wider social implications in Minangkabau

society. With brothers relinquishing their inheritance rights, solidarity and kinship ties within the community are strengthened.(Karnandi, 2017) This practice helps preserve centuries of tradition and culture, and strengthens the identity of Minangkabau society as a society that values the role of women in preserving heirlooms(Hizbullah, Hanani and Nofiardi, 2023).

Although the practice of takharrij is an exception to the general Islamic inheritance system, it is accepted and respected by the Minangkabau people as part of their deeply rooted customs. This practice is a solution that is in accordance with the cultural and social context of the Minangkabau community in overcoming the problem of distributing inheritance.

In its implementation, the practice of takharrij is carried out through a process of deliberation and mutual agreement among relatives in one tribe or clan.(Yaswirman, no date) This reflects the principles of democracy and togetherness in decision making adopted by the Minangkabau people. The relinquishment of inheritance rights by brothers is also done voluntarily and without coercion, as a form of respect for customs and collective decisions.

The practice of takharrij in the division of inheritance in Minangkabau is a clear example of how local communities are able to adapt and adjust the inheritance system in accordance with the values and traditions that have been deeply embedded in the community. This practice is a solution to the problems that arise in the division of inheritance, while maintaining the culture and identity of the Minangkabau people(Wahyudi, Hanani and Nofiardi, 2023).

2. Methods

This research was conducted by applying a qualitative approach that focuses on literature study. In this research there are two types of data sources used, namely primary data and secondary data. Primary data sources are obtained through analysis of the Qur'an, hadith, and related books and journals. While secondary data sources are obtained through books and research that have relevance to the topic discussed.

This research uses a qualitative approach with an ethnographic study design. The qualitative approach was chosen to gain an in-depth understanding of the practice of takharrij and its meaning for the Minangkabau community. Meanwhile, the ethnographic design allows researchers to observe and describe the practice in the context of the culture and daily life of the community.(Creswell, 2007)

The collected data will be analyzed using a thematic analysis approach. The analysis process includes coding the data, identifying the main themes, and interpreting the meaning of the practice of takharrij in the context of Minangkabau culture.(Braun and Clarke, 2006)

3. Results and Discussion

3.1. *Takharrij in the settlement of inheritance issues in minangkabau*

The Minangkabau community in West Sumatra adheres to a matrilineal kinship system that is unique and different from other communities in Indonesia. In this system, the lineage is drawn from the mother's side, and inheritance is passed down through the female line.(Syarifuddin, 1984) These heirlooms are collectively owned and managed by female relatives within a tribe or clan, rather than individually.(Zubaidah, 1998)

This Minangkabau customary inheritance system clashes with the general Islamic inheritance system, in which the inheritance is divided fairly between male and female heirs according to the shares determined by Islamic law. To overcome this problem, a practice called "takharrij" emerged, which is the relinquishment of inheritance rights by brothers to sisters.(Yaswirman, no date)

In the practice of takharuj, the brother voluntarily relinquishes his inheritance rights over the estate and gives it to the sister. The main reason behind this practice is that the brother is considered to have greater opportunities to earn his own living, while the sister has the primary responsibility of looking after and taking care of the estate as an inheritance for the next generation.(Anwar, 1997) Thus, the practice of takharuj ensures that inheritance remains in the female lineage and is managed collectively by female relatives within a tribe or clan.

The practice of takharuj has a strong historical and philosophical background in Minangkabau society. Since long ago, the Minangkabau community has upheld customs and traditions that prioritize the female lineage in terms of ownership and management of inherited property.(Hakimy, 1994) The practice of takharuj is a form of respect for these customs and reflects noble values such as gender equality, kinship solidarity and togetherness in managing heirlooms collectively.

In addition, the practice of takharuj also has wider social implications in Minangkabau society. With brothers relinquishing their inheritance rights, solidarity and kinship ties within the community become stronger.(Karnandi, 2017) This practice helps preserve centuries of tradition and culture, and reinforces the identity of Minangkabau society as a society that values the role of women in preserving heirlooms.

Although the practice of takharuj is an exception to the general Islamic inheritance system, it is accepted and respected by the Minangkabau people as part of their deeply rooted customs. This practice is a solution that is in accordance with the cultural and social context of the Minangkabau community in overcoming the problem of distributing inheritance.

In practice, the practice of takharuj is carried out through a process of deliberation and mutual agreement among relatives within a tribe or clan.(Yaswirman, no date) This reflects the principles of democracy and togetherness in decision-making adopted by the Minangkabau community. The relinquishment of inheritance rights by brothers is also done voluntarily and without coercion, as a form of respect for customs and collective decisions.

The practice of takharuj in the division of inheritance in Minangkabau is a clear example of how local communities are able to adapt and adjust the inheritance system in accordance with the values and traditions that have been deeply embedded in the community. This practice is a solution to the problems that arise in the division of inheritance, while maintaining the culture and identity of the Minangkabau people.

3.2. *The implementation process of takharuj in minangkabau*

The practice of takharuj, or the relinquishment of inheritance rights by a brother to a sister, is a long-standing tradition in Minangkabau society. The process of implementing takharuj has specific procedures and procedures that are regulated in Minangkabau customs. The following are details of the takharuj implementation process in Minangkabau:

3.2.1 *People's deliberation*

The takharuj process begins with deliberations at the kaum (tribe) level involving all members of the kin, both men and women.(Anwar, 1997) In this meeting, the plan to relinquish the inheritance rights by the brother and the reasons behind it are discussed. The meeting is led by the penghulu or mamak kepala waris, who acts as the customary leader of the community.

3.2.2 *Mutual agreement*

After a process of deliberation, the decision to implement takharuj must have the consent and agreement of all members of the kin within the kaum.(Yaswirman, no date) This agreement reflects the principles of democracy and togetherness in decision-making adopted by the Minangkabau people.

3.2.3 Declaration of Waiver of Inheritance Rights

After reaching an agreement, the brother who is relinquishing his inheritance rights makes a verbal declaration in the presence of all members of the clan.(Hakimy, 1994) This statement is submitted voluntarily and without coercion, as a form of respect for customs and collective decisions.

3.2.4 Recording and Documentation

To maintain the validity and legality of the takharuj process, the declaration of disinheritance by the brother is officially recorded and documented.(Syarifuddin, 1984) This recording is usually carried out by the penghulu or mamak kepala waris as the party responsible for managing the heirloom property.

3.2.5 Implementation of the Distribution of Heirlooms

After the takharuj process is complete, the inheritance that originally belonged to the brother will be transferred to the sister.(Karnandi, 2017) These heirlooms are then managed and owned collectively by female relatives within the kaum, in accordance with Minangkabau tradition.

3.2.6 Traditional Ceremony (If Any)

In some cases, the takharuj process is also followed by certain traditional ceremonies, such as the recitation of mantras or prayers by penghulu or other traditional leaders.(Zubaidah, 1998) This ceremony aims to ask for blessings and smoothness in the management of the heirloom property that has been transferred.

3.3. A study based on the sociology of law

In the Minangkabau community, the division of inheritance often faces obstacles due to the mixture between customary law which adheres to the matrilineal kinship system and Islamic inheritance law.(M.S, 2011) To overcome this, the concept of takharuj in Islamic law can be used as a solution.(Thalib, 1985) Takharuj allows deviation from the standard rules in certain situations in order to realize justice and avoid undue hardship.(Hallaq, 2009)

In the context of inheritance distribution in Minangkabau, the application of takharuj is interesting to study from the perspective of legal sociology. Some aspects that can be studied include community acceptance of this practice, the role of customary institutions and ulama in regulating its application, the social and justice impacts caused, and challenges due to social changes that occur.(Naim, 2013)

Research could explore whether there is resistance or widespread acceptance from the community regarding takharuj. The process of negotiation and compromise between customary and Islamic law is also important to understand.(Hadler, 2010) Customary institutions and ulama play an important role in deciding the application of takharuj and bridging the two laws.(Azra, 2003)

The social impacts of takharuj such as justice and kinship dynamics need to be assessed. Meanwhile, social change and modernization may bring new challenges to the practice in the future. How Minangkabau society adapts and adjusts takharuj to these changes is an important point to research.(Hadler, 2010)

Through the study of legal sociology, we can gain a deeper understanding of the interaction of law and social reality in Minangkabau. By understanding takharuj as a problem-solving mechanism, we can learn how people find fair and contextual solutions in dealing with complex legal issues.

4. Conclusions

The practice of takharuj in inheritance distribution among the Minangkabau society represents a unique and distinctive solution to address the challenges arising from the

differences between the Minangkabau customary inheritance system and the generally accepted Islamic inheritance system. Through takharruj, male siblings voluntarily relinquish their inheritance rights over ancestral property and transfer them to their female siblings. This practice ensures that the ancestral property remains within the female lineage and is collectively managed by the female relatives within a clan or tribe, in accordance with the Minangkabau tradition.

Takharruj is not merely a practical solution for inheritance distribution but also reflects the noble values upheld by the Minangkabau society, such as respect for customary laws, gender equality, kinship solidarity, and collective decision-making. This practice has become a symbol of Minangkabau cultural identity, which prioritizes the female lineage in preserving ancestral property.

The implementation process of takharruj in Minangkabau involves all members of the clan and is based on the principles of deliberation, mutual agreement, and respect for customary laws. This reflects the principles of democracy and togetherness embraced by the Minangkabau society in decision-making regarding the management of ancestral property.

Although takharruj is an exception to the generally accepted Islamic inheritance system, it is accepted and respected by the Minangkabau society as part of the deeply rooted customary laws within the community. This practice serves as a suitable solution in the context of the Minangkabau cultural and social environment in addressing inheritance distribution issues.

Overall, the takharruj practice in inheritance distribution among the Minangkabau society is a tangible example of how local communities can adapt and adjust their inheritance systems to align with the deeply ingrained values and traditions within their society. This practice has become a cultural heritage that deserves to be preserved and respected as a part of Indonesia's rich local wisdom.

Reference

- Anwar, C. (1997) *Hukum Adat Indonesia: Meninjau Hukum Adat Minangkabau*. Jakarta: Rineka Cipta.
- Azra, A. (2003) *Surau: Pendidikan Islam Tradisional dalam Transisi dan Modernisasi*. Jakarta: Logos Wacana Ilmu.
- Braun, V. and Clarke, V. (2006) 'Using thematic analysis in psychology, Qualitative Research in Psychology', 3(2).
- Creswell, J.W. (2007) 'Qualitative Inquiry and Research Design: Choosing Among Five Approaches', *Sage Publications* [Preprint].
- Hadler, J. (2010) *Sengketa Tiada Putus: Matriarkat, Reformisme Agama, dan Kolonialisme di Minangkabau*. Jakarta: Freedom Institute.
- Hakimy, I. (1994) *Pegangan Penghulu, Bundo Kanduang, dan Pidato Alua Pasambahan Adat di Minangkabau*. Bandung: Remaja Rosdakarya.
- Hallaq, W.B. (2009) *Theory, Practice, Transformations*. Cambridge University Press.
- Hizbullah, S., Hanani, S. and Nofiardi, N. (2023) 'Delik Zina Controversy in the Kuhp', *GIC Proceeding*, 1, pp. 356–362. Available at: <https://doi.org/10.30983/gic.v1i1.126>.
- Karnandi, O.S. (2017) 'Pelaksanaan Hukum Waris Adat Minangkabau di Kota Padang', *Jurnal Hukum Samudra Keadilan*, 12(2).
- Liza, A., Hanani, S. and Nofiardi, N. (2023) 'Reflection of Islamic Law on Living Al-Hijr When Baganyi in The Community Nagari Canduang Koto Laweh', *GIC Proceeding*, 1, pp. 338–347. Available at: <https://doi.org/10.30983/gic.v1i1.134>.
- M.S, A. (2011) *Adat Minangkabau: Pola dan Tujuan Hidup Orang Minang*. Jakarta: Mutiara

Sumber Widya.

- Marni, T.S., Hanani, S. and Nofiardi, N. (2023) 'Modernisation of Islamic Family Law in Indonesia (Analysis of Counter Legal Draft- Compilation of Islamic Law in Inheritance Law)', *GIC Proceeding*, 1, pp. 317–325. Available at: <https://doi.org/10.30983/gic.v1i1.131>.
- Naim, M. (2013) *Merantau: Pola Migrasi Suku Minangkabau*. Jakarta. Jakarta: Rajawali Press.
- Syarifuddin, A. (1984) *Pelaksanaan Hukum Kewarisan Islam dalam Lingkungan Adat Minangkabau*. Jakarta: Gunung Agung.
- Thalib, S. (1985) *Receptio a Contrario: Hubungan Antara Adat dan Syara' di Minangkabau*. Jakarta: Bina Aksara.
- Wahyudi, D., Hanani, S. and Nofiardi, N. (2023) 'Sociological Analysis of Islamic Law Regarding Law Number 22 of 2009 Related to the Sale and Purchase of Vehicles Without Complete Documents', *GIC Proceeding*, 1(22), pp. 308–316. Available at: <https://doi.org/10.30983/gic.v1i1.113>.
- Yaswirman (no date) 'Hukum Keluarga : Karakteristik Dan Prospek Doktrin Islam Dan Adat Dalam Masyarakat Matrilineal, 107.', *Karakteristik Dan Prospek Doktrin Islam Dan Adat Dalam Masyarakat Matrilineal* [Preprint].
- Zubaidah, S. (1998) *Sistem Kekerabatan Matrilineal di Minangkabau*. Jakarta: Balai Pustaka.