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The Developing of Minangkabau Customary Inheritance

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Abstract

The matrilineal kinship system draws a female line. The problem of inheritance law becomes more complex if it occurs within the Minangkabau Indigenous Community. This is motivated by the fact that the Minangkabau Indigenous People are devout followers of Islam; they also have strong customary laws with matrilineal lineage and collective inheritance systems. The author uses a juridical-normative research method, while the research specification is descriptive and analytical. The data obtained was analyzed using qualitative juridical methods. In several inheritance disputes, judges of the Religious Courts in West Sumatra have applied the principle of "Adat Basandi Syarak, Syarak Basandi Kitabullah." In implementing the inheritance system, Minangkabau customary law aligns with Islamic law without eliminating the values of the adat. The existing customary law must be subordinate to Sharia, that is, Islamic law derived from the Qur'an and Sunnah as the Kitabullah. Every customary rule must not deviate from Islamic Sharia, including inheritance law. In addition to following customary provisions, inheritance must also be in accordance with Islamic inheritance law, in this case, Faraidh.

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Introduction

Inheritance law constitutes a component of civil law, specifically within the realm of family law.¹ Indonesia's inheritance law remains diverse because there is no single national inheritance law that applies uniformly to all Indonesians.² Currently, there are 3 (three) distinct types of inheritance law in effect and acknowledged by the Indonesian populace: inheritance laws derived from Islamic law, customary law, and European Civil law (*Burgerlijk Wetboek*).

¹ Hazar Kusmayanti And Lisa Krisnayanti, 'Hak Dan Kedudukan Cucu Sebagai Ahli Waris Pengganti Dalam Sistem Pembagian Waris Ditinjau Dari Hukum Waris Islam Dan Kompilasi Hukum Islam' (2019) 19 Jurnal Ilmiah Islam Futura 68 <<https://jurnal.ar-raniry.ac.id/index.php/Islamfutura/Article/View/3506>>.

² Bambang Daru Nugroho, Hazar Kusmayanti And Dede Mulyanto, 'The Division Of Inheritance Of Adopted Children In The Indigenous People Of Kampung Naga Associated With Islamic Law' (2022) 7 Jurnal Bina Mulia Hukum 102 <<https://jurnal.fh.unpad.ac.id/index.php/Jbmh/Article/View/985>>.

If we look at inheritance systems that remain pluralistic, they can be found not only in Indonesia but also in other countries, such as Ghana. Reforming customary law by the state within the context of legal pluralism in Ghana remains a challenging endeavor. This is related to the fact that customary law reforms have not had the expected impact on many rural dwellers who, arguably, are reluctant to abandon their customary laws in favor of state laws that may be at odds with the ideals and objectives of customary law. Specifically, regarding the inheritance law reform, it has been observed that “traditional inheritance norms prevail regardless of the paper law. Thus, by employing legal pluralism as a guiding framework in analyzing the relationship between the state and customary legal systems, it is possible to focus on the law of intestate succession”.³

The inheritance law applicable nationally in Indonesia has not yet been developed into a unified regulation. This is a result of the legal legacy created by the Dutch colonial government of the East Indies.⁴ In accordance with the Indonesian nation’s Pancasila philosophy and the aspirations of the community, Indonesia as a long-established independent and sovereign state yearns for its own inheritance law that applies nationally (as well as marriage law with Law Number 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning marriage).

The smallest component of family law and civil law is inheritance law. The span of a person’s life is directly tied to inheritance law because everyone will inevitably encounter the legal event known as death. The issue of how to manage and carry on a person’s rights and obligations is a legal repercussion that follows a person’s death. Inheritance law governs how the rights and liabilities following a person’s death are resolved. Indonesian inheritance law is still diverse and eclectic.⁵

The community needs an inheritance law because it is crucial to protect human

³ Ama Hammond, ‘Reforming the Law of Intestate Succession in a Legally Plural Ghana’ (2019) 51 *The Journal of Legal Pluralism and Unofficial Law* 114 <<https://doi.org/10.1080/07329113.2019.1594564>>.

⁴ Sonny Dewi Judiasih and others, ‘Pergeseran Norma Hukum Waris Pada Masyarakat Adat Patrilineal’ (2021) 16 *Rechtidee* 65 <<https://journal.trunojoyo.ac.id/rechtidee/article/view/8676>>.

⁵ Supriyadi Supriyadi, ‘Pilihan Hukum Kewarisan Dalam Masyarakat Pluralistik (Studi Komparasi Hukum Islam Dan Hukum Perdata)’ (2015) 12 *Al-Adalah* 553 <<https://ejournal.radenintan.ac.id/index.php/adalah/article/view/235>>.

life, particularly when a person dies legally. If a person passes away, there are legal repercussions, including how to handle and carry on the rights and obligations of the deceased. If the deceased individual leaves properties behind, new issues typically develop because of the transfer of management or the distribution of the properties that were left behind or inherited. The structure of Indonesian society, which comprises numerous tribes, ethnicities, and faiths, each of which has its own distinctive style, is significantly influenced by inheritance law. The structure and framework of inheritance laws are intricately linked to the societal structure and characteristics of familial relationships.⁶ It is well known that there have been numerous impacts on customary law. Customary law has been greatly impacted by the major faiths and cultures of Asia, particularly Islam, Buddhism, and Hinduism, as well as what we might loosely refer to as Confucianism in its theological and ethical connotations.⁷ Inheritance according to customary law is based on the kinship system of customary law. Heir and customary inheritance laws are based on kinship or heredity systems, which are patrilineal, matrilineal, and parental.⁸

The system of matrilineal kinship is based on the female line (mother). The husband is viewed as a migrant and not as a member of the family. The *semenda* marriage system is applicable in this situation. *Semenda* marriage is a marriage where the husband, after marriage, resides and takes up his position in the wife's family and relinquishes his rights and position among his own relatives. The Minangkabau ethnic group has the most prevalent matrilineal system in Indonesia. It can be seen that "the factor of blood descent according to the mother's line" is a factor that regulates the organization of society in Minangkabau, an area of Indonesia where society is organized in accordance with the mother's law, starting from the smallest environment, the family, to the uppermost environment, the "*Nagari*." However, in the last mentioned environment, the *Nagari*, we

⁶ Author Hazairin, 'Hukum Kekeluargaan Nasional' (*Universitas Indonesia Library*, 1968) <<https://lib.ui.ac.id>>.

⁷ David C Buxbaum (ed), *Family Law and Customary Law in Asia* (Springer Netherlands 1968) <<http://link.springer.com/10.1007/978-94-017-6216-8>>.

⁸ Elfrida R Gultom, 'Development Of Women Position In The Patrilineal Inheritance Of Indonesian Society' (2017) 17 *Jurnal Dinamika Hukum* 194 <<https://dinamikahukum.fh.unsoed.ac.id/index.php/JDH/article/view/886>>.

still find other binding factors. Life organized according to the mother's legal order is referred to in everyday terms as life according to tradition.⁹

The act of passing money to the generation left behind is a significant challenge that arises in human life. High heirloom properties cannot be transferred, such as those sold to other parties, as is the custom of the Minangkabau people (*ganggam bantuik*). The daughters of Minangkabau have the right to inherit. Although the brothers of the mother (*mamak*) accompany the heirs, the female heirs control and administer the inheritance. The process of inheriting money is not always easy, and heirs frequently fight it.¹⁰

Many studies have been conducted on Minangkabau customary inheritance law, including studies written by Sukirno and Nuzir titled "*Penerapan Hukum Adat Minangkabau dalam Pembagian Warisan Atas Tanah (Studi Di: Suku Chaniago Di Jorong Ketinggian Kenagarian Guguak VIII Koto, Kecamatan Guguak, Kabupaten Lima Puluh Kota, Ibu Kota Sarilamak)*" (Application of Minangkabau Customary Law in the Distribution of Land Inheritance (Study in: Chaniago Tribe in Jorong Tinggi Kenagarian Guguak VIII Koto, Guguak District, Limapuluh Kota Regency, Capital City of Sarilamak))",¹¹ Firdawaty and Moelyono titled "*Hukum Kewarisan Adat Minangkabau Menurut Pemikiran Hazairin dan Amir Syarifuddin* (Minangkabau Customary Inheritance Law According to the Thoughts of Hazairin and Amir Syarifuddin)",¹² Noviardi titled "*Pembagian Hak Waris Harta Pusaka Tinggi Adat Minangkabau Perspektif Masalah Mursalah Imam Asy-Syathibi* (Minangkabau Traditional Heirloom High Heirloom Property from Masalah Mursale Asy-Syathibi's Perspective)",¹³ Nova titled "Customary Inheritance Law in

⁹ Author Chairul Anwar, 'Hukum Adat Indonesia : Meninjau Hukum Adat Minangkabau' (*Universitas Indonesia Library*, 1997) <<https://lib.ui.ac.id>>.

¹⁰ Bravo Nangka, 'Penyelesaian Sengketa Berdasarkan Hukum Waris Adat Berdasarkan Sistem Kekerabatan' (2019) 7 *Lex Privatum* <<https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/25923>>.

¹¹ Sukirno Ulfa Chaerani Nuriz*, 'Penerapan Hukum Adat Minang Kabau Dalam Pembagian Warisan Atas Tanah (Studi di : Suku Chaniago di Jorong Ketinggian Kenagarian Guguak VIII Koto, Kecamatan Guguak, Kabupaten Lima Puluh Kota, Ibu Kota Sarilamak)' (2017) 6 *Diponegoro Law Journal* 1 <<https://ejournal3.undip.ac.id/index.php/dlr/article/view/15680>>.

¹² Sucipto Sucipto, 'Hukum Pokok dan Hukum Pendukung dalam Bidang Pidana dan Perdata Islam' (2011) 3 *Asas: Jurnal Hukum dan Ekonomi Islam* 177559 <<https://www.neliti.com/publications/177559/>>.

¹³ A Noviardi, 'Harta Waris Pusaka Tinggi Adat Minangkabau Perspektif Masalah Mursalah Asy-Syathibi' (2020) 4 *Sakina: Journal of Family Studies*.

Minangkabau Viewed from a Compilation of Islamic Law and Civil Law",¹⁴ Iska et al., who researched the construction of Islamic capitalism through *Pagang Gadai* amongst the Minangkabau people,¹⁵ and Nurdin, who discusses the legal protection of customary rights in legal pluralism and its impact on the Minangkabau community.¹⁶

However, there have been no discussions on the dynamics of the implementation of Islamic law regarding the distribution of inheritance in the context of matrilineal society in Minangkabau. There are differences of opinion in Minangkabau society when Islamic law is applied and when customary law is applied. In this study, the author will analyze three court decisions that reflect the implementation of the Minangkabau community's life philosophy, *Adat Basandi Syarak, Syarak Basandi Kitabullah* (Customs Based on Islamic Law, Islamic Law Based on the Qur'an). The court decisions to be analyzed are Decision Number 523/Pdt.G/2012/PA.BKT, Determination Number 173/Pdt.P/2020/PA.Bkt, and Decision Number 0236/Pdt.G/2014/PA.PP.

Research Method

This research will analyze how customary inheritance practices interact with state law, the role of customary courts in resolving inheritance disputes, and the conflicts that arise when Islamic law and customary law are applied simultaneously. Additionally, it will examine how the Minangkabau community navigates conflicting rulings from state and customary courts, especially regarding the ownership and status of heirloom property, which remains unclear to many. By addressing these issues, this study seeks to fill a gap in the existing literature and shed light on the impact of state interventions on the preservation or transformation of Minangkabau customary inheritance practices.

¹⁴ L Nova, 'Hukum Waris Adat Di Minangkabau Ditinjau Dari Kompilasi Hukum Islam Dan Hukum Perdata' (2020) 1 AKADEMIK: Jurnal Mahasiswa Humanis.

¹⁵ Syukri Iska and others, 'The Construction of an Islamic Capitalism through Pagang Gadai amongst the Minangkabau People' (2023) 9 Cogent Social Sciences 2154547 <<https://doi.org/10.1080/23311886.2022.2154547>>.

¹⁶ Zefrizal Nurdin, 'Legal Protection of Customary Rights under Legal Pluralism and Its Impact on the Minangkabau Society: An Empirical Study in the District of Lima Puluh Kota, West Sumatra' (2022) 8 Cogent Social Sciences 2045722 <<https://www.tandfonline.com/doi/full/10.1080/23311886.2022.2045722>>.

The Dynamics of Islamic Law Implementation on Inheritance Distribution in the Context of Matrilineal Society in Minangkabau

For a long time, Minangkabau society has been an Islamic society. The Minangkabau civilization is influenced by custom and religion. The principles of life of the Minangkabau indigenous people are *Adat Basandi Syarak and Syarak Basandi Kitabullah*.¹⁷ Doctrinally, “*adat basandi syarak, syarak basandi Kitabullah*” still holds as a philosophical and moral framework, guiding the interplay between custom and Islamic law. Yet under modern legal pluralism, its practical application is often mediated or constrained by the coexistence of national law, secular principles, and international norms. It remains relevant but primarily as a cultural and ethical compass rather than an absolute legal mandate.

The existing customary law must be subject to Sharia, Islamic law, which comes from the Al-Quran and Sunnah as Kitabullah. Therefore, every norm in Minangkabau society is regulated by customary law, which is enforced in accordance with Islamic Sharia law. Every customary law, especially those governing inheritance, must be in accordance with the rules of Islamic law on inheritance, which is called Islamic Inheritance Law (*faraidh*).

The first Islamic inheritance law, which centered wives and children, both male and female, is relevant to the distribution of low heirloom property (*penghidupan property* and *suarang property*). Secondly, while the *Kepala Waris Mamak* continues to play an important role in carrying out the distribution of high heirloom property (livelihood property and *suarang property*), it has no relevance to the distribution of low heirloom property. Third, Minangkabau indigenous people still largely follow Minangkabau norms in resolving inheritance issues.

There is an argument that the inheritance of property in Minangkabau is contrary to Islamic inheritance law. One who holds this argument is Sheikh Ahmad Khatib Al-Minangkabawy (Imam of the Great Mosque of Minangkabau descent), as mentioned in

¹⁷ Adeb Davega Prasna, ‘Pewarisan Harta Di Minangkabau Dalam Perspektif Kompilasi Hukum Islam’.

his book written in Makkah in the late 19th century entitled *Al-Dai al Masmu Fii Al Raddi ala Al Tawarisi al-Ikhwati wa Awadi Al-Akhwati ma'a Wujud al Ushuli wa al Furui*.¹⁸ This is also the argument of Safrudin Halimy Kamaluddin, who states that Minangkabau customary law regarding inheritance is acceptable according to Islamic law.¹⁹ Here, Minangkabau inheritance practices are in accordance with Sharia law and do not contradict Islamic law. Abdul Malik Karim Amrullah, a student of Ahmad Khatib Al-Minangkabawy, expressed this view. He argues that it is not against Islamic law that property is inherited in Minangkabau. According to him, *waqf* property or *musabalah* property, since the time of Umar ibn al-Khattab, is the same as inherited property. Sulaiman Ar-Rasuli, the founder of Pesantren Tarbiyah Islamiah Canduang, is one who shares this perspective. Idrus Hakimy also expressed the same perspective but for different reasons. Minangkabau does not recognize the unity between father and mother, as in Islam.²⁰

As is known, the majority of Muslims in Indonesia have made Imam Syafi'i their primary reference in establishing Islamic law. The legal foundation of Islamic law in Indonesia is predominantly derived from the interpretations and fatwas of the Shafi'i school of thought. This school is significant as it serves as the primary reference for the majority of Indonesian Muslims, who regard Imam Syafi'i as their principal authority in the formulation of Islamic legal principles. The Shafi'i school plays a crucial role in shaping Islamic legal thought in Indonesia. Its methodology emphasizes a structured approach to Islamic jurisprudence, integrating sources such as the Qur'an, Hadith, *ijma'* (consensus), and *qiyas* (analogy) as the foundational elements of law. This systematic framework has made it particularly relevant within the Indonesian context, where it influences both personal and public aspects of Islamic law.²¹

¹⁸ Amir Syarifuddin, *Pelaksanaan hukum kewarisan Islam dalam lingkungan adat Minangkabau* (Gunung Agung 1984).

¹⁹ Safrudin Halimy Kamaluddin, *Adat Minangkabau Dalam Perspektif Hukum Islam : Analisis Fiqh Terhadap Sistem Matrilineal, larangan Kawin Sesuku dan Hukum Waris Adat Minangkabau* (Hayfa Press 2005) <http://ps.uinib.ac.id/2Fperpustakaan%2Findex.php%3Fp%3Dshow_detail%26id%3D214> accessed 16 October 2025.

²⁰ Syarifuddin (n 18).

²¹ Siti Purmini, 'Schools and Classifications of Fiqh: A Guide to Understanding the Diversity of Islamic Law' (2024) 3 Jurnal Price : Ekonomi dan Akuntansi 59 <<https://ejournal.seaninstitute.or.id/index.php/jecoa/article/view/5229>> accessed 16 October 2025.

There are differences in the inheritance system according to Minangkabau customs and the Shafii'i school where, in Minangkabau customs, inheritance is divided into two: high heirlooms, which are distributed to children from the maternal line and will become jointly managed property, and low heirlooms, which will be inherited by all heirs according to Sharia provisions. In the Shafii'i school, there is no division of inheritance as mentioned. There are also similarities between the two, namely in the concept of distributing low heirlooms according to the provisions mentioned in the Qur'an, where a daughter receives one share and a son receives two shares. Of course, the distribution of inheritance in Minangkabau is the same as the concept of inheritance distribution according to the Shafi'i school of thought.

For resolving inheritance issues in Minangkabau society, there was an agreement between *ninik mamak* and *alim ulama* at Bukit Marapalam during the Paderi War in the 19th century. This resulted in the stable forming of the relationship between customary law and Islamic law. The formulation states that customary law is based on Sharia, and that Sharia is based on the Book of Allah (the Quran). The relationship between Islamic law and customary law in Minangkabau is encapsulated in the Minangkabau proverb "*adat and syara' sanda menyanda and syara' mengato adat memakai*." This proverb signifies that the connection between customary law and Islamic law (Sharia) is very close and mutually supportive, as what is referred to as customary law is essentially Sharia itself. In this context, it should be clarified that "*adat*" in this expression represents the manner in which Sharia is applied or utilized in society.

The formulation was reinforced by the *Pertemuan Empat Jenis* (*ninik mamak, imam-khotib, cerdik-pandai, mantidubalang*). The decision made at the inheritance meeting in Minangkabau held in Bukittinggi in 1952 was reinforced by the conclusions drawn at the Minangkabau Customary Law Seminar in Padang in July 1968. During both events, it was affirmed that in Minangkabau society, the division of high-value heirloom properties inherited from matrilineal ancestors follows customary law (*adat*), whereas lower-value heirlooms are divided according to Sharia (Islamic Law). In other words, since 1952, if there is a dispute regarding high heirloom property, the settlement uses customary law.

For low heirloom property, the settlement uses Islamic inheritance law (*faraidh* law).²²

Initially, the Minangkabau community only recognized the existence of high heirloom property (*harta pusaka tinggi*). To this high heirloom property, matrilineal inheritance applies. This is illustrated in the following customary saying:

Birik-birik turun ke semak
Tiba di semak berilah makan
Harta ninik turun ke mamak
*Harta mamak turun ke kemenakan*²³

From this proverb, it is clear that the heirs in Minangkabau are *mamak* to *ninik* (Ninik is the grandmother's brother, as the person who heads a clan or family) property and then *kemenakan* to *mamak's* property.²⁴ According to Minangkabau custom, the holder of property is a woman because, in her hands, the matrilineal relatives are centered. *Mamak* has the role of organizing and supervising the use of the property. Over time, the term lower heirloom property or livelihood property was introduced. There are some customary leaders who separate between livelihood property and low heirloom property.

The types of heirloom property known in Minangkabau Customary Law today include the following:²⁵

1. High Heirloom Property (*Harta Pusako Tinggi*)

High heirloom property is often used for the benefit of the extended family (*kaum*), which is a problem in Minangkabau society. The position of high heirloom property is very strong and cannot be changed to low heirloom except very rarely, due to the erosion of *adat* little by little. So strong is this position that high heirloom

²² Eric Eric, 'Hubungan Antara Hukum Islam Dan Hukum Adat Dalam Pembagian Warisan Di Dalam Masyarakat Minangkabau' (2019) 3 Jurnal Muara Ilmu Sosial, Humaniora, dan Seni 61 <<https://journal.untar.ac.id/index.php/jmishumsen/article/view/3532>>.

²³ Hazar Kusmayanti and others, 'Contradiction Implications of the Receptie a Contrario Theory in Minangkabau Inheritance' (2024) 21 Justicia Islamica 247 <<https://jurnal.iainponorogo.ac.id/index.php/justicia/article/view/8859>>.

²⁴ Fatahullah, Adi Sulistiyono and Burhanudin Harahap, 'Reform of Islamic Inheritance Law: The Influence of Customary Law on the Institution of Wasiat Wajibah in Islamic Law' (2025) 13 Jurnal IUS Kajian Hukum dan Keadilan 259 <<https://jurnal.ius.ac.id/ojs/index.php/jurnalIUS/article/view/1695>>.

²⁵ Yetti Yetti, Yelia Nathassa Winstar and Faizal Indra, 'Inheritance Law: Conceptions of Inheritance According to Minangkabau Customary Law' (2024) 2 Indonesian Journal of Interdisciplinary Research in Science and Technology 481 <<https://journal.formosapublisher.org/index.php/marcopolo/article/view/8832>>.

property cannot be affected by marriage, either within or outside the Minangkabau tribe. All such property is under the control of the tribal woman, the wife.

High heirloom property is divided into the following categories.

- a. Material property, such as land cleared for paddy fields, farms, springs, ponds, gardens and *gadang* houses from ancestral endeavors, is passed down from generation to generation according to the mother's lineage (matrilineal). These properties are inherited by members of the community on the female side.
- b. Moral property is the title of a person that is passed from generation to generation (*Adat Sako*). The traditional heirloom title of "*Mamak*" (mother's brother) is inherited by his male nephew.

High heirloom property in Minangkabau may be pawned or released if it meets the following 4 conditions:²⁶

- a. *Mayik tabujua di tengah rumah*, that is, if a member of the community dies and the family left behind does not have the money to organize the process of burying the corpse.
- b. *Gadiah gadang alun balaki*, that is, if there is a daughter who is old and unmarried in the family, then the property is used as capital for the man to marry the daughter.
- c. *Rumah gadang katirisan*, that is, if a *gadang* house needs renovation but the family members do not have the funds to repair it, then the high heirloom property can be mortgaged or sold to repair the house.
- d. *Pambangkik batang tarandam*, that is, there will be the appointment of a head man (*penghulu*) because the previous head man has died.

2. Low Heirloom Property (*Harta Pusako Rendah*)

The distribution of low heirloom property (*pusako rendah*) in the Minangkabau traditional community is carried out according to *Faraidh* law to keep the heirloom property (*pusako*) from running out or remaining intact. This is also the reason why the *pusako rendah* is not distributed to the male party, in order to create family and community harmony. This reason relates to the form of the physical characteristics of the male party, avoiding social sanctions, and applicable customs. The physical characteristics of men are different from those of women, and these characteristics

²⁶ Rahmi Murniwati, 'Sistem Pewarisan Harta Pusako Di Minangkabau Ditinjau Dari Hukum Waris Islam' (2023) 7 Unes Journal of Swara Justisia 103 <<https://swarajustisia.unespadang.ac.id/index.php/UJSJ/article/view/315>>.

are related to how they work. Men with a strong physique, if they do not get a decent job, can do manual labor such as plowing rice fields or being a construction worker. Avoiding insults and other social sanctions towards their *mamak* or brother or family may happen if a girl seeks out the *pusako*. Low *pusako* property can be divided into two, which are:

- a. *Penghidupan Property*, that is, the property of the husband and wife acquired during the marriage, acquired with *tembilang emas* (by purchase). These *penghidupan* properties can be distributed to both parties in the event of divorce.
- b. *Suarang Property*, that is, the properties owned by a person, husband, or wife before marriage. These properties remain the properties of the husband and wife, even after the marriage has taken place.

In practice, in the Minangkabau customary society, inheritance disputes often occur due to disagreements over the results of inheritance distribution. These disagreements are mainly triggered by disputes between the testator and other parties regarding the distribution of inheritance. Or there are discrepancies related to the utilization of heirlooms for personal gain and the mortgaging of family heirlooms outside of predetermined conditions. When someone dies and leaves property, everyone will be affected by customary inheritance law, especially in terms of how the properties are distributed.

In Minangkabau, most issues related to inheritance are resolved amicably through discussion and compromise among neighbors. When it comes to resolving disputes over high heirloom properties in Minangkabau, there are often disputes or disagreements within the group where high heirloom properties are sold without the group's knowledge. In Minangkabau custom, high heirloom properties are the pride and dignity of the community; therefore, if there is a sale of high heirloom properties, this is equivalent to eliminating one of the community's or tribe's areas, and reducing the *ulayat* or *nagari*.

Bajanjang naiak batanggo turun or "dispute resolution must be done in stages" used in Minangkabau customary dispute resolution. This principle aims to promote peace

among indigenous people by resolving their differences.²⁷ According to the Tungka Customary Chief of West Sumatra, *Bajanjang naiak batanggo turun* is a principle that has become the legal basis for customary law enforcers to resolve customary disputes. If it does not conform to this principle, the process will not be accepted and will amount to violating the customary law of procedure.²⁸ Due to the strong relationship among family members within the tribe and community, customary issues in Minangkabau seem to have been resolved more successfully through these institutions. The low resolution of customary issues by state courts in West Sumatra supports this assertion,²⁹ even for customary land disputes that have been resolved by the *Majelis Adat Nagari*, permanently enforced by the district court. The techniques used by Minangkabau customary institutions to resolve disputes follow the principle of *bajanjang naiak batanggo turun*, starting from the low institution of *Bakaum* (group discussion), and going up to the high institution of the *Nagari Adat Density (Densitas Adat Nagari)*.³⁰

Case of Islamic Law Implementation in the Division of Inheritance in Minangkabau Society (Decision Number 523/PDT.G/2012/PA.BKT, Determination Number 173/Pdt. P/2020/PA.Bkt. and Decision Number 0236/Pdt.G/2014/PA.PP)

Changes in kinship structures and the role of *mamak* in Minangkabau society illustrate notable transformations. Previously, the *paruik*, a kinship group consisting of three or four generations above and one generation below, was considered highly significant.³¹ Customary law extensively practiced within the community focuses on the

²⁷ Alfin Rahman, 'Penyelesaian Sengketa Tanah Ulayat Suku Adat Minangkabau Di Kabupaten Tanah Datar Sumatera Barat' (2022) 1 Recht Studiosum Law Review 51 <<https://talenta.usu.ac.id/rsrl/article/view/volume-1nomor-2>>.

²⁸ Hazar Kusmayanti, Dede Kania and Galuh Puspaningrum, 'Praktik Beracara Penyelesaian Sengketa Adat Sumatera Barat Berdasarkan Asas Bajanjang Naiak Batanggo Turun' (2022) 6 Refleksi Hukum: Jurnal Ilmu Hukum 185 <<https://ejournal.uksw.edu/refleksihukum/article/view/5167>>.

²⁹ Tarmizi Tarmizi, 'Upaya Penyelesaian Konflik Pembagian Harta Warisan Masyarakat di Indonesia' (2024) 16 Al-Adl : Jurnal Hukum 41 <<https://ojs.uniska-bjm.ac.id/index.php/aldli/article/view/9701>>.

³⁰ B Febriandi, 'Inheritance Law in Minangkabau (Jaringan Kerja Pengembang Partisipasi Indonesia Sakato Sumatera Barat)' (*Jemari Sakato*, 2023).

³¹ Abdul Qodir Zaelani, 'Kedudukan Ahli Waris Pengganti (Plaatsvervulling) Dalam Kompilasi Hukum Islam Dan Pemecahannya' (2020) 2 ADHKI: Journal of Islamic Family Law 91 <<https://jurnal.adhkiindonesia.or.id/index.php/ADHKI/article/view/32>>.

distribution of inheritance.³²

Decision No. 523/PDT. G/2012/PA.BKT is between the Plaintiff (55 years old) and Defendant I (45 years old) as well as Defendant II (60 years old), all of Minangkabau ethnicity. In the trial of this case, the Plaintiff, through a letter dated October 2, 2012, filed a request for the Cancellation of the Registered Will at the Bukittinggi Religious Court Registration Office under Number 523/Pdt. G/2012/PA.BKT dated October 4, 2012. The Plaintiff is the second child of their deceased parents, and the eldest sibling of the Plaintiff is Defendant II. The Plaintiff's mother is from the *Pisang* Minangkabau clan. She was the Head of the Clan who once owned a piece of land in Bukittinggi measuring approximately 20 meters in length and 15 meters in width, originally given by the Plaintiff's maternal grandmother, who was the mother of the Plaintiff's late mother (biological grandmother of both the Plaintiff and Defendant II).

During her lifetime, the Plaintiff's grandmother also transferred this land to the Plaintiff's mother (the mother of the Plaintiff and Defendant II). Subsequently, the Plaintiff's parents built a semi-permanent house measuring 7 × 10 meters with a kitchen measuring 5 × 8 meters on this land, which was then inhabited by the Plaintiff's parents and Defendant II.

The land, house, and its contents are the only properties left by the deceased parents of the Plaintiff and Defendant II. On September 15, 1991, the Plaintiff signed a will under duress and without knowledge of its contents, which unexpectedly stated that the deceased parents of the Plaintiff had made a conditional will to Defendant I.

It is known that Defendant I, as the conditional will recipient, did not fulfill 2 conditions from the contents of the will, specifically points 2 and 4, which clearly state:

1. Point 2: This house is where we spend our old age peacefully, managed by our son Defendant I under the guidance and supervision of our brother Syawaluddin Saidi Burhan and his siblings, as well as our children Achyar, Munawar, and Novirman, and Insya Allah until the end of our respective lives.

³² Fahmi Fatwa Rosyadi Satria Hamdani and others, 'Traditional Law vs. Islamic Law; An Analysis of Muslim Community Awareness in Inheritance Issues' (2022) 32 *Al-Ahkam* 109 <<https://journal.walisongo.ac.id/index.php/ahkam/article/view/11000>>.

2. Point 4: In this house after our passing, our son Defendant I kindly accepts our children, grandchildren, and relatives as we did during our lifetime.

The will given by the deceased parents of the Plaintiff to Defendant I is considered contrary to Islamic Law provisions, where a will under Islamic Law cannot exceed one-third of the inheritance. Meanwhile, the will made by the Plaintiff's parents to Defendant I transfers the entire inheritance, thus disregarding the inheritance rights of the Plaintiff as one of their legitimate children. Based on the above, the Plaintiff requests the Bukittinggi Religious Court through the Panel of Judges handling this case to render the following legal decisions:

1. Accept and grant the Plaintiff's Petition.
2. Declare that the Plaintiff is one of two legitimate heirs of the deceased Father of the Plaintiff and deceased Mother of the Plaintiff.
3. Legally declare that the conditional will made by the deceased Father of the Plaintiff and deceased Mother of the Plaintiff dated September 15, 1991 is null and void.
4. Order Defendant I to vacate the house inherited by the Plaintiff's parents located in Bukittinggi and leave all its contents, which are the inheritance rights of the Plaintiff and Defendant II, with the house keys to be handed over and held by the Bukittinggi Religious Court pending a legal decision from the Bukittinggi Religious Court.
5. Declare that part of the house and its contents, which are the inheritance rights of the Plaintiff's parents and Defendant II, located in Bukittinggi, with the other part of the house and its contents being the inheritance right of the Plaintiff.
6. Declare that this decision can be enforced immediately despite any appeal, cessation, or opposition (*Uit Voorbaar Bij voorraad*).
7. Sentence Defendant I and II to pay all costs incurred in this lawsuit.

Based on the basis of the lawsuit, the Panel of Judges considered that there are two types of inheritance known in Minangkabau: low and high heirloom property. Low heirloom properties consist of all properties acquired from work and life efforts, which can be sold and pawned as needed by the heirs. High heirloom properties include inherited forests, fields, traditional Minangkabau houses (*rumah gadang*), ancestral burial grounds, and others passed down through generations. High heirloom properties can be agreed upon under customary law to be inherited by nephews (family within the clan). This is because these properties cannot be destroyed or inherited by wives and children, as they are not their own, only properties that can be maintained and maintained during their lifetime.

The deceased parents of the Plaintiff did indeed renovate the house but this does

not mean that the improvements to the house subsequently became the property of the deceased parents of the Plaintiff. The house remains the property of the Plaintiff's late grandmother or family for several generations because houses and land, according to tradition, are high heirloom properties, which in Minangkabau custom cannot be sold or bought except under certain conditions.

After examining the evidence and hearing testimonies from the defendants, the judges of the Bukittinggi Religious Court issued Decision No. 523/Pdt. G/2012/PA.Bkt on October 1, 2013, with the following content:

1. Partially approving the Plaintiff's petition;
2. Declaring that the Plaintiff is one of the two legitimate heirs of the deceased Father of the Plaintiff and deceased Mother of the Plaintiff;
3. Partially rejecting the Plaintiff's petition;
4. Ordering the Plaintiff to pay court costs amounting to Rp. 1,461,000 (one million four hundred sixty-one thousand Indonesian Rupiah).

According to the author, the judge's decision was appropriate because the Panel of Judges considered that the case involved land and a house for which the Plaintiff requested the cancellation of the will, as they are high heirloom properties. Therefore, they cannot be transferred to others because these properties have belonged to the family/clan for several generations, rather than low heirloom properties that can be transferred to others. The judges also considered the inheritance system in Minangkabau society, which is matrilineal and collective in nature. Property is inherited by a group of heirs collectively without division of ownership and possession, where each heir has the right to utilize, use, or benefit from the inherited property.

Regarding the cancellation of the will made by the deceased parents with Defendant I based on Islamic law, it is indeed not permissible to make a will exceeding 1/3 of the inheritance. According to the provisions of customary law in Minangkabau, properties exceeding 1/3 mentioned in the lawsuit are classified as high heirloom property, thus the will is invalid because these properties are collectively owned. If the properties exceed 1/3 and are low heirloom properties, Islamic law applies with the provision that the will is valid so long as all heirs agree. However, if there are dissenting heirs, the

portion exceeding 1/3 becomes invalid because it includes the rights of the heirs.³³ The provisions of this will can also be found in Article 201 of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (hereinafter referred to as KHI), emphasizing that the will may not exceed 1/3 of the properties owned by the testator.

The Bukittinggi Class IB Religious Court, acting as the first-level judicial authority, issued Determination Number 173/Pdt. P/2020/PA.Bkt based on the submitted petition, which involved two petitioners: the father and mother of the deceased. The deceased left behind a house, the certificate of which was encumbered by a bank loan. This situation led the petitioners to request a determination of heirs to retrieve the certificate, after which they would manage the transfer of ownership of the certificate to the deceased's name. The deceased had a full brother and had never married, legally or informally. The panel of judges at the Bukittinggi Religious Court ruled that the petitioners, the father and mother, were the heirs of the deceased, while the deceased's brother was blocked (*terhijab*) by the parents. This decision is in accordance with Article 174 paragraph (2) of the Compilation of Islamic Law (KHI), affirmed in Book II of the Guidelines for the Implementation of Duties and Court Administration, revised edition 2013.

Legal Basis: Article 174 paragraph (2) of the Compilation of Islamic Law (KHI) regulates inheritance distribution.

Inheritance Principles:

1. The deceased's parents (father and mother) are considered *dzawil furudh* (fixed-share heirs) if the child has never married and has no descendants.
2. Siblings of the deceased, particularly brothers, only inherit if the deceased's parents are absent (*ashabah*).

Since the deceased had no children or spouse, the father and mother became the primary heirs, while the brother was blocked (*terhijab*) by the existence of the parents.³⁴ This aligns

³³ Djanuardi Siti Intan Sekarieva, 'Keabsahan Wasiat Melebihi 1/3 Bagian Harta Pusaka Ditinjau Dari Hukum Islam Dan Hukum Adat Minangkabau' (2020) 8 Normative Jurnal Ilmiah Hukum 44 <<https://ojs.unitas-pdg.ac.id/index.php/normatif/article/view/652>>.

³⁴ Agnes Listya Adeline and Mentor Mella Ismelina Farma Rahayu, 'Juridical Review Of The Distribution Of Inheritance For Replacement Heirs In Terms Of Islamic Inheritance Law And Civil Inheritance Law' (2023) 4 International Journal Of Social, Policy And Law 67 <<https://ijospl.org/index.php/ijospl/article/view/146>> accessed 16 October 2025.

with KHI principles, which prioritize the parents when the deceased has no descendants or spouse. In the Minangkabau context, which is matrilineal, the inheritance of houses or family property typically follows the maternal line (*pusako tinggi*). However, in this case, the deceased was male and the petitioners were his parents, so customary law remains relevant as a moral guide and helps align the procedure with local family values. The process of retrieving the certificate and distributing the property still considers family harmony, consistent with the principle "*adat basandi syarak, syarak basandi Kitabullah*". In other words, customary law does not directly determine the distribution of inheritance here but plays an important role in maintaining family consensus and guiding local social procedures.

Another case referred to the Decree on the Distribution of Inheritance to Heirs at the Padang Panjang Religious Court was based on Decision Number 0236/Pdt.G/2014/PA.PP.³⁵ In the case of the Padang Panjang Religious Court, Decision Number 0236/Pdt.G/2014/PA.PP, the plaintiffs claimed that the estate of the late Delam Dt. Tumbijo and Hj. Djalinus had been controlled by the defendant. The plaintiffs argued that the inheritance had not yet been distributed according to Islamic law (*faraid*) to the rightful heirs. The estate included:

1. A plot of land measuring 3,800 m² in Padang Panjang City, with Certificate of Ownership (SHM) No. 16 registered in the name of Hj. Djalinus (deceased).
2. Redemption of two rice fields (*gada*) – one in Padang Dianau and one in Limau Purut, valued at 20 Rupiah Gold USA, which were redeemed by Syamsuar and Syahrul Amin from the defendant on August 11, 1992.
3. One rice field in Bungo, Kelurahan Ekor Lubuk, Padang Panjang City, worth 12 Rupiah Gold USA, redeemed by Lamsiah from the defendant in 2003.
4. One rice field in Sago, Kelurahan Ngalau, Padang Panjang City, worth 22 Rupiah Gold USA, along with one gold ring weighing 2 gold units, redeemed by Iwan Mawardi-Pakiah from the defendant in 2004.

The plaintiffs requested that the estate be distributed in accordance with Article 176 of the Compilation of Islamic Law (KHI) and Surah An-Nisa, verse 11. They proposed the following shares: Plaintiff I: $\frac{1}{8}$, Plaintiff II:

³⁵ Amlis Amlis, Syuryani Syuryani and Mahlil Adriaman, 'Penetapan Pembagian Harta Waris Terhadap Ahli Waris Di Pengadilan Agama Padang Panjang Berdasarkan Putusan Nomor 0236/Pdt.G/2014/Pa.Pp' (2023) 1 Sakato Law Journal 1 <<https://www.jurnal.umsb.ac.id/index.php/SLJ/article/view/3990>> accessed 16 October 2025.

2/8, Plaintiff III: $\frac{1}{8}$, Plaintiff IV: $\frac{1}{8}$, Plaintiff V: 2/8, and Defendant: 1/8

The plaintiffs asked the court to decide on the distribution of the estate of the late couple

Delam Dt. Tumbijo and Hj. Djalinus as follows:

1. Approve the plaintiffs' claims.
2. Recognize Plaintiffs I-V and the defendant as legitimate heirs under Islamic law.
3. Confirm that SHM No. 16, covering 3,800 m² in Kelurahan Ngalau, Padang Panjang City, is part of the estate.
4. Include gold jewelry totaling 54 Rupiah Gold USA.
5. Include one gold ring weighing 2 gold units.
6. If the estate cannot be physically divided among the heirs, it should be auctioned, and the proceeds distributed according to each heir's share.
7. If the defendant cannot return the gold inheritance, they must compensate with their portion of the land (SHM No. 16, 3,800 m²), specifically $\frac{1}{8}$ or 475 m², which can be sold or auctioned.
8. Order the defendant to pay all court costs.

The determination of inheritance in Decision No. 0236/Pdt.G/2014/PA.PP by the Padang Panjang Religious Court resolved the distribution of the deceased's estate and the respective shares of each heir in both the plaintiff and defendant's claims. In this case, male heirs were allocated shares of $\frac{2}{8}$ and $\frac{1}{8}$ in accordance with the claims submitted. The decision provided clarity on each heir's portion, ensuring the estate was distributed fairly among all entitled parties.

This allocation follows the principles of Islamic inheritance law, or *faraid*, which is based on guidance from the Qur'an and Hadith, particularly Surah An-Nisa verses 7, 11, and 12. *Faraid* prescribes fixed shares for heirs according to gender, kinship, and relational proximity, aiming to provide a just and structured method for estate division. By adhering to these prescriptions, the court ensured that the distribution was legally valid under Islamic law and reflective of established jurisprudential principles.

From a theoretical perspective, the court's ruling demonstrates the practical application of Islamic legal theory in modern adjudication. The *faraid* system embodies both divine command and social justice. Inheritance is a form of property acquisition through the transfer of ownership according to *ijbāri* (divine mandate). In this process, property rights pass from a deceased person to their surviving relatives. This transfer is guided by the *ijbāri* principle, meaning it is determined by God's decree rather than human choice (*ikhtiyārī*), making inheritance a divinely mandated mechanism of

ownership. Furthermore, Islamic inheritance law is founded on principles of fairness and equity, emphasizing balanced and bilateral justice, which distinguishes it from inheritance systems in other legal frameworks.³⁶

The Minangkabau customary inheritance system operates in harmony with Islamic law while preserving traditional values, especially in the case of minor or livelihood property, which is distributed according to the Islamic *faraid* system. In contrast, major ancestral property is not subject to *faraid* rules because it does not fall under Milk al-Raqabah,³⁷ which qualifies as inheritable property under Islamic law. However, if a community member donates such property to their child with the consent of all clan members, intending it to serve as inheritance due to the extinction of their lineage, this transfer can be recognized as inheritance under Article 211 of the Compilation of Islamic Law.

The decisions of Decision Number 523/PDT.G/2012/PA.BKT, Determination Number 173/Pdt. P/2020/PA.BKT, and Decision Number 0236/Pdt.G/2014/PA.PP exemplify the application of *Receptio Incompleta* in the context of inheritance law in Indonesia. In these cases, the Religious Courts primarily based the distribution of inheritance on Islamic law, referencing the Qur'an and Hadith, particularly Surah An-Nisa, verses 7, 11, and 12, to determine the rightful shares to give to the heirs. At the same time, the courts acknowledged local customary practices, such as Minangkabau traditions, but only to the extent that they did not conflict with Islamic legal principles. This reflects the essence of *Receptio Incompleta*, whereby customary law is accepted partially or conditionally, serving as a complement to the binding higher Islamic law. These rulings demonstrate how Indonesian Religious Courts integrate religious doctrine with local customs in a way that preserves both legal certainty and social practices, ensuring that customary norms are respected without overriding the fundamental principles of Islamic inheritance law.

³⁶ Hafidz Taqiyuddin, Mus'idul Millah and Hikmatul Luthfi, 'Instruments of Property Ownership in Islam: The Study of Inheritance Law' (2023) 13 Journal of Islamic Thought and Civilization 157 <<https://journals.umt.edu.pk/index.php/JITC/article/view/2891>>.

³⁷ Benny Suryanto, 'Hukum Kewarisan Adat Matrilineal : Eksistensi Dan Pergeseran | Oleh : Benny Suryanto (1/11) - Direktorat Jenderal Badan Peradilan Agama' <<https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/benny-suryanto>>.

Conclusion

Maintaining legal pluralism means providing space for customary law, Islamic law, and national law to coexist according to their respective contexts. The role of the state is to ensure mechanisms for coordination and dispute resolution, rather than enforcing uniformity. One example is the implementation of the Minangkabau customary inheritance law system, which has strengths regarding the resilience of tradition and harmony with local values. It is also vulnerable to incompatibility with Islamic law and limitations when it comes to keeping up with globalization. There are opportunities to increase the recognition and protection of customary inheritance law within the national legal system, although there are also threats due to modernization, globalization, and changes in government policy that could disrupt existing customary law practices.

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