

Harmonization of Minangkabau Customary Inheritance Law With *Faraidh*

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Abstract

Purposes— This study aims to examine the relationship between the concept of inheritance in Minangkabau Customary Law and Islamic Inheritance Law (*faraidh*), identifying areas of convergence and divergence.

Design/methods— This research employs a comparative legal analysis to evaluate the compatibility of Minangkabau customary inheritance practices with the Compilation of Islamic Law (KHI), specifically focusing on the categorization of property and inheritance systems.

Findings— The study shows that between the concept of inheritance of Minangkabau Customary Law and Islamic Inheritance Law (*faraidh*), there are similarities and differences. The similarity lies in the concept of inheritance of *pusako randah* property (livelihood property/joint property/*gono gini* property), namely that *pusako randah* is included in inheritance according to the Compilation of Islamic Law because it is owned by the heir as *Milk al Raqabah*. Another similarity lies in inheritance with a collective system; this collective system is also found in the Compilation of Islamic Law, specifically Article 183 and Article 189. The difference lies in the high *pusako* property, which cannot be classified as inheritance because the high *pusako* property is not owned by the heir as *Milk al-Raqabah*. Thus, it can be concluded that the inheritance system in Minangkabau custom does not conflict with Islamic law.

Keywords: Minangkabau Customary Law, Islamic Inheritance Law, Comparative Analysis, *Pusako* Property

Ethical Statement: It is declared that scientific and ethical principles were adhered to during the preparation of this work, and all sources used have been properly cited in the bibliography. The article has been reviewed by at least two peer reviewers, a similarity report was obtained using Turnitin, and compliance with research/publication ethics has been confirmed.

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Article Type: Research Article

1. Introduction

As a customary law community, the Minangkabau people are fundamentally adherents of Islam, resulting in a life governed simultaneously by two normative systems: customary norms and religious norms (F. von Benda-Beckmann & K. von Benda-Beckmann, 2013). These two systems coexist and are applied in the daily life of Minangkabau society, each possessing a value structure that demands obedience and submission from its people—allegiance to the customary order as Minangkabau members and compliance with religious rules as Muslims (Abdullah, 1966). This dual allegiance is embodied in the society's foundational philosophy: *Adat Basandi Syarak, Syarak Basandi Kitabullah* (Custom is based on Sharia, Sharia is based on the Book of Allah).

This philosophical principle dictates that Minangkabau customary law (*adat*) must submit to Islamic law (*syariah*), which is derived from the Quran and the Sunnah (Hadler, 2008). Consequently, every rule within the Minangkabau social order, including those pertaining to inheritance, must align with Islamic Sharia. The rules that are in accordance are then institutionalized and applied as binding customary law (Azra, 2019).

Regarding inheritance specifically, the Minangkabau community must follow its customary provisions while ensuring they are consistent with Islamic Inheritance Law (*Faraidh*) (Hamka, 2023). At first glance, a seeming contradiction appears, especially concerning the inheritance of *pusako tinggi* (high heritage or ancestral property). Minangkabau customary law generally recognizes two types of property: *pusako tinggi*, which is property passed down hereditarily from ancestors, and *pusako randah* (low heritage), which is property acquired through an individual's or a couple's own efforts (Blackwood, 2000).

Many scholars and observers argue that Minangkabau customary inheritance law contradicts Islamic law for several key reasons (Amir, 2017). First, while Islamic inheritance primarily involves the transfer of ownership of a deceased individual's property to living heirs, the Minangkabau system for *pusako tinggi* is not a transfer of ownership but rather a transfer of responsibility for management, care, and supervision from one generation to the next within the maternal lineage (Prindiville, 1985). Under

these customary provisions, *pusako tinggi* is inherited by daughters according to the matrilineal line, while sons are excluded. However, it is crucial to note that *pusako randah* (acquired property) is still distributed according to *faraidh* (Hooker, 1975).

Second, the underlying principle of property ownership differs fundamentally. Inheritance in Minangkabau custom regarding *pusako tinggi* adheres to a collective or communal principle, meaning the property belongs jointly to the clan (*suku*) and not to individuals (Benda-Beckmann, 1979). In contrast, Islamic inheritance law is predicated on an individual principle, affirming each person's right to own property individually without communal bonds (Coulson, 1964). Third, the kinship systems guiding inheritance are divergent. The Islamic system is bilateral, recognizing heirs from both paternal and maternal lines without a gender-based barrier to inheritance rights, governed by specific causes like kinship, marriage, and *wala'* (H. A. R. Gibb, 1992). Conversely, the Minangkabau system, due to its matrilineal kinship structure, recognizes heirs primarily from the mother's lineage only, which appears to exclude male relatives from the maternal property pool (Tanner, 1974).

With the differences between the inheritance system according to Minangkabau custom and the inheritance system according to Islamic law, it certainly results in many perceptions and theories about inheritance law in Minangkabau, particularly in the inheritance of heritage property. Some argue that property inheritance in Minangkabau contradicts Islamic inheritance law. Among those who argued this was Syekh Ahmad Khatib Al-Minangkabawy (Imam of the Grand Mosque, of Minangkabau descent), as contained in his book written in Mecca at the end of the 19th century titled *Al Da'i Al Masmu' Fii Al Raddi 'ala Al Tawarisi Al Ikhwati wa Awadi Al Akhwati ma'a Wujud Al Ushuli wa Al Furu'i*. A similar opinion was conveyed by Safrudin Halimy Kamaluddin (2005), who stated that inheritance law according to Minangkabau custom cannot be accepted by Islamic law.

The second opinion states that property inheritance in Minangkabau is in accordance with the provisions in Islamic Sharia and does not conflict with Islamic inheritance law. This opinion was conveyed by Karim Amrullah, who was the son and student of Ahmad Khatib Al-Minangkabawy. He stated that property inheritance in Minangkabau does not conflict with Islamic law because heritage property is in the same

state as *waqf* property or *musabalah* property in the time of Umar ibn Khattab. This opinion was also followed by, among others, Sulaiman Ar-Rasuli (Founder of the Tarbiyah Islamiah Canduang Islamic Boarding School, Agam Regency, West Sumatra). A similar opinion was also conveyed by Idrus Hakimy (1994), but with a different reason: that Minangkabau custom does not recognize property unity or joint property/*gono gini* property as in Islamic law, so it cannot be said that Minangkabau violates the Islamic inheritance system.

The third opinion separates heritage property (*pusako*) and livelihood property (*pencaharian*). For heritage property, customary law applies, which is inherited hereditarily and collectively according to the maternal line (*matrilineal*). Meanwhile, for livelihood property, Islamic inheritance law (*Faraidh*) applies. This opinion was used in the congress of the Deliberative Body of Religious Scholars, *Niniak Mamak*, and Minangkabau Intellectuals on May 4-5, 1952, in Bukittinggi, and also the Minangkabau Customary Law Seminar held in Padang on July 21-25, 1968. This opinion was also strengthened by Buya Hamka (1982), as he explained in his book titled "Ayahku".

With the strong differences of opinion occurring among customary figures and Ulema, many conclude that property inheritance in Minangkabau is indeed not in accordance with Islamic inheritance law. There have even been opinions that the issue of heritage property inheritance in Minangkabau contradicts or is diametrically opposed to Islamic law because, in several *Fiqh* literature books, a matrilineal inheritance system where property is inherited collectively according to the maternal line, as applied by the Minangkabau customary community, is not found. However, if we look deeper into the provisions regarding inheritance regulated in the Compilation of Islamic Law (KHI) in Book II on Inheritance, there are several articles in the KHI that are quite interesting to study further.

2. Methods

This research employs a comparative legal analysis method to systematically examine the compatibility between inheritance practices in Minangkabau Customary Law and the provisions of the Compilation of Islamic Law (KHI). The analysis specifically focuses on key KHI provisions concerning inheritance, namely Articles 171, 183, and 189, and the

categorization of property—particularly the distinction between *pusako tinggi* (ancestral/communal property) and *pusako randah* (acquired/marital property). The primary legal materials consist of the KHI and authoritative sources on Minangkabau customary law, supplemented by secondary sources such as scholarly journals and legal commentaries. Data is analysed qualitatively using descriptive-analytical techniques to map points of convergence and divergence between the two legal systems in regulating inheritance (Marzuki, 2017; Soekanto, 2007).

3. Result and Disssussion

In the Compilation of Islamic Law (KHI), there are several provisions that are almost not found in classical *Fiqh* literature books. As stated by M. Amin Suma (2013), not all contents of the Compilation of Islamic Law contain Islamic law as it is, and therefore it is less accurate if the Compilation of Islamic Law is declared to contain solely Islamic law. Among the provisions meant are Article 171, Article 183, and Article 189 regarding Inheritance. These articles briefly contain elements of similarity with the property inheritance system in Minangkabau, and according to the Author, these articles can become the foundation and basis for heritage property inheritance in the Minangkabau customary community because there are elements of similarity in those articles with inheritance provisions in Minangkabau custom.

Article 171 of the Compilation of Islamic Law (KHI) is a general provision chapter in Islamic inheritance law that regulates the definitions of inheritance, testator, heir, and estate (*tirkah*). This article explains that inheritance is the transfer of ownership of the estate from the testator to their heirs, which is then further regulated in subsequent articles regarding heirs and the size of each share. Article 183 of the Compilation of Islamic Law (KHI) regulates that heirs can agree to make peace in the division of inheritance after each realizes their share. This article allows heirs to resolve inheritance division peacefully and familiarly outside the standard Islamic inheritance law provisions if all parties agree. This agreement is valid if all heirs have realized and agreed to the shares they should receive according to Islamic law.

Article 189 of the Compilation of Islamic Law (KHI) regulates the division of inheritance in the form of agricultural land less than two hectares in size, with priority to

maintain the unity of the land for the collective interest of the heirs, for example, to be cultivated together or shared in turns. If not possible, then the division can be done based on the agreement of the heirs. The purpose of this article is to maintain the benefit, justice, and welfare of the family by avoiding the accumulation of land with one heir, as well as maintaining the economic value of the land, unless a mutual agreement of the heirs is not possible.

Property and its Inheritance in Minangkabau

In Minangkabau customary provisions, property is distinguished into two types: *Pusako Tinggi* Property and *Pusako Randah* Property. In the explanation of LKAAM (Minangkabau Nature Adat Consultative Institute) (2002) found in the book it published titled "Adat Basandi Syarak, Syarak Basandi Kitabullah; Pedoman Hidup Banagari," *Pusako Tinggi* Property is clan property inherited hereditarily within a clan (*suku*) and is communal, not individual property. Examples include communal land (*ulayat*), the big house (*rumah gadang*), or cultivated land managed together by all clan members, with supervision by the *mamak* (uncle) and practical management by the oldest woman in the family. Meanwhile, *Pusako Randah* property is property obtained from the results of one's own business or work, including the livelihood property of a husband and wife. Unlike high heritage, this property can be bought and sold, pawned, or granted, and can be divided among sons and daughters upon family agreement.

Meanwhile, according to M. Rasjid Manggis (1971), what is classified as *Pusako Tinggi* Property is what is now also called "ulayat." Included in this ulayat category are forests and fields, mountains and hills, lakes, swamps, and valleys and rivers. Citing Hamka's opinion (1982), *pusako tinggi* is heritage property obtained from "tembilang besi," and *pusako randah* is obtained from "tembilang emas." "Tembilang besi" means heritage property inherited hereditarily, obtained from previous generations, and is communal (clan property). "Tembilang emas" refers to personal wealth obtained from one's own efforts, often also called livelihood property or *pusako randah* whose ownership is more personal; besides that, some also call it joint property, meaning property obtained during married life.

Based on Minangkabau customary inheritance law provisions, this *pusako tinggi* property is inherited collectively according to the maternal line (matrilineal), and it is already a principle in Minangkabau custom that *pusako tinggi* property cannot be sold or pawned for personal interest or for a few people. However, in certain conditions, *pusako tinggi* property can (only) be pawned based on the agreement of clan members and when there is indeed no other source of funds that can be used except from that *pusako tinggi* property, which can be called an emergency state (*Urgent*). The circumstances or conditions categorized as emergency/urgent are when the *rumah gadang* requires renovation, marrying off a niece, funeral arrangements, and the appointment of a new *penghulu* (leader). Deliberation regarding the rights to use heritage property is carried out in the *rumah gadang* by the women. In every deliberation of the clan, tribe, and village (*nagari*), the women are very influential in determining the use of *pusako tinggi* property. This means the women can know and maintain the rights obtained over heritage property.

Meanwhile, *Pusako Randah* Property is all property obtained from the results of one's own work, including within it the livelihood property of a husband and wife. Regarding *pusako randah* property that is inherited, if the heirs still want to maintain the integrity of that *pusako randah* property by not dividing or selling it, and then in time it is inherited again to the next generation continuously so that it is difficult to trace, then that *pusako randah* property shifts status to become *pusako tinggi* property. So there are times when *pusako tinggi* property also originates from *pusako randah* property utilized hereditarily without questioning its origins anymore. Once it is inherited according to custom, then *pusako randah* property changes its status to *pusako tinggi* property. This is what happens a lot in the midst of Minangkabau customary society at present.

Similarly, Hamka (1982) explained that *pusako randah* property can change status to *pusako tinggi* property, whereas *pusako tinggi* property cannot change status to *pusako randah* property, unless custom no longer stands. Hamka stated, "Faraidh cannot enter here." In the principle of Minangkabau custom, *pusako tinggi* property cannot be divided, but is inherited in intact form hereditarily to the daughters of that clan (*suku*). The clan can only take benefits and yields from that *pusako tinggi* property. Meanwhile, *pusako randah* property, which is the result of the livelihood of a husband

and wife, and when the husband and wife or one of them dies, then the property is inherited to the heirs in accordance with *syarak* provisions (Islamic inheritance law/Faraidh). In the *Tungku Tigo Sajaringan* congress held in 1952, it was agreed that *pusako tinggi* property is inherited according to custom to nieces (matrilineal), while *pusako randah* property is inherited according to *faraidh* law. However, regarding *pusako randah* property that is not divided and whose status has become *pusako tinggi* property, it is inherited according to customary inheritance provisions like the inheritance of *pusako tinggi* property, namely to nieces according to the matrilineal system.

Systems and Principles of Property Inheritance in Minangkabau

According to Hazairin (1982), broadly speaking, there are three inheritance systems used in Indonesia, namely: First, the individual inheritance system, which is a system where every heir individually receives their respective share of the inheritance property according to applicable provisions, and has the freedom to use it. This system is adhered to by societies with a bilateral kinship system (like the Javanese society) or patrilineal (like Batak and Lampung) that have shifted towards an individual pattern, for example, due to modernization. Second, the majorat inheritance system, which is a single inheritance system where the oldest child in one family has the right to be the sole heir to inherit all the estate or a number of principal assets of that family. This system generally applies in societies adhering to the patrilineal system, where lineage and inheritance are passed down through the male side. This inheritance is like what happens in the societies of South Sumatra and Bali.

Third, the collective inheritance system, which is an institutional inheritance system; the institution meant is the family as a unit of genealogical kinship or as if becoming one family legal entity where inheritance property is held and managed together by a group of heirs. The object of this inheritance is usually in the form of goods or land as agricultural land and it is not divided personally, but what is divided is the turn to cultivate and enjoy the results. This system is adhered to by societies adhering to a bilateral kinship system, where all heirs, both from the mother's and father's lines, have the same rights over the inheritance. The recipient of the inheritance is usually female; males may only collect the results. Therefore, that inheritance object is called heritage property

(*harta pusaka*) as found in Minangkabau. From the three inheritance systems according to legal expert Hazairin, the Minangkabau customary community uses the collective or institutional inheritance system, where those entitled to receive inheritance are the family within one clan according to the maternal line (matrilineal), not individuals.

After Islam entered and developed in Minangkabau, Islamic teachings slowly influenced the rules in the life system of the Minangkabau society without exception to the property ownership system and inheritance system in this Minangkabau society. The influence of these Islamic teachings impacted the inheritance system in Minangkabau so that its inheritance system was divided into two systems according to the type of property; for *pusako tinggi* property, the collective inheritance system applies, while for *pusako randah* property and livelihood property, the Islamic inheritance system applies with the principles of *ijbari*, bilateral, individual, balanced justice, and that inheritance will only occur when the owner of the property has died.

Regarding the property inheritance system in Minangkabau, there are several specific principles in its inheritance. Among those principles, they are generally based on the kinship and property system, because inheritance law in Minangkabau is determined by the social structure, and Minangkabau custom has its own understanding of family and the method of marriage. From that kinship and property system, a kinship structure emerged in Minangkabau custom which ultimately gave rise to a form of inheritance law that is collective. Amir Syarifuddin (1984) explains there are three main principles in Minangkabau Customary inheritance law, namely: (a) Unilateral Principle, is the inheritance right that only applies in one kinship line, namely kinship in the maternal line (matrilineal). Heritage property received from ancestors through the mother's line and downwards is passed on to daughters or nieces (children of sisters); from daughters, it is inherited to granddaughters (children of nieces).

(b) Collective Principle, that those entitled to heritage property are not individual persons, but a group together. Based on that, heritage property is not divided based on how many heirs there are, but is inherited collectively to all groups or called the clan (*kaum*). The ownership of this property is legally held by the group, although the right of use can be enjoyed by group members collectively according to the maternal line (matrilineal). (c) Balanced Justice Principle (or individual based on function). Although

collective, in its implementation there is an aspect of justice where the right to use or the results of heritage property can be enjoyed by all entitled heirs, both male and female, according to their function and position in the clan. Amir Syarifuddin argues that this collective inheritance system does not conflict with Islamic Sharia because the Quran only regulates the transfer of inheritance property into individual ownership rights, while heritage property in Minangkabau is legal entity property managed by the *mamak* head of inheritance.

Concept of Inheritance Property in Minangkabau Custom and the Compilation of Islamic Law

Regarding the concept of inheritance property found in Minangkabau customary rules and in the Compilation of Islamic Law, there are several similarities and differences, where these similarities and differences can provide clarity on the position of Minangkabau customary inheritance property according to the provisions found in the Compilation of Islamic Law. First, regarding the source of inheritance property, between Minangkabau custom and the Compilation of Islamic Law, there is a principal difference regarding the source of said inheritance property. In the Minangkabau customary concept, inheritance property originates from two directions, namely that obtained from ancestors hereditarily, and that obtained from the results of one's own business or livelihood. Meanwhile, in the Compilation of Islamic Law, the source of inheritance property comes from the testator's innate property and joint property (*harta gono gini*) obtained during married life after marrying their partner.

Second, if we pay attention to the type of inheritance property, then in the Minangkabau customary inheritance system, there are two types of inheritance property. The first type is *pusako tinggi* inheritance property; its source comes from previous generations inherited hereditarily and is not owned wholly by a person, but everyone as family members in one clan participates in owning it collectively. The second type is *pusako randah* inheritance property; its source is from livelihood results or from one's own business and is owned wholly by the individual or the person who worked for it. Meanwhile, in the Compilation of Islamic Law, there is only one type of inheritance property, namely property owned wholly by the testator, whether it is innate

property or property that is the result of livelihood during the household which becomes joint property (*harta gono gini*), as explained in the Compilation of Islamic Law Article 171 letter e.

We have known that in the concept of Islamic inheritance law (*faraidh*), the condition for property that can be inherited by the testator to their heirs is that the property is owned in their own name by the individual or the testator wholly, both materially and beneficially, and the owner or testator has freedom in its control (*Milk al-Raqabah* or *Milk al-Taam*). Thus, in Article 171 letter e of the Compilation of Islamic Law, there is an explanation that the condition for inheritance property is that the property has been cleared of debt payments, funeral costs, and bequest distribution. This means that property cannot be inherited as long as there are still other people's rights in that property, or that property cannot be inherited as long as the testator does not yet own that property wholly (*Milk al-Raqabah*).

Based on the concept in Article 171 letter e of the Compilation of Islamic Law, which the Author makes as a reference to discuss inheritance property in Minangkabau custom, then *pusako tinggi* property is not inheritance property, because *pusako tinggi* property is not owned personally by an individual, but is owned together by a clan, and its benefits are also owned together by that clan; in other words, *pusako tinggi* property is not property owned as *Milk al-Raqabah* or *Milk al-Taam*. Similarly, a *mamak* (clan head) only has the right to maintain and guard *pusako tinggi* property, likewise nieces from the mother's line only have the right to get and enjoy the benefits of that *pusako tinggi* property, without being able to own it wholly. From a concept like that, it is clear that said *pusako tinggi* property may not be sold, pawned, or inherited to individuals without the approval of all clan members. Thus, regarding *pusako tinggi* property in Minangkabau custom, Islamic inheritance law provisions cannot be applied, because *pusako tinggi* property is not estate property as regulated in the provisions of Islamic inheritance law (*faraidh*) and the Compilation of Islamic Law.

Therefore, *pusako tinggi* property is left always intact as per the provision in Minangkabau custom that only its management and benefits are inherited collectively according to the matrilineal line. Meanwhile, *pusako randah* property is property originating from the results of someone's livelihood which they own wholly and perfectly,

and as the owner, they have full power over that property, so its inheritance must follow the provisions of Islamic inheritance law (*faraidh*) and the Compilation of Islamic Law. Regarding the inheritance system for these two types of property (*pusako tinggi* and *pusako randah*), it has become a mutual agreement between customary leaders and religious leaders in Minangkabau after the declaration of the *Bukik Marapalam* Agreement in the early 19th century. This agreement was made at Bukit Marapalam in 1837 with the aim of harmonizing views between custom and religion in community life. In this agreement, the declaration "Adat basandi syarak, syarak basandi kitabullah" is famous, affirming that custom must be in accordance with Sharia and Sharia must be based on the teachings of the Quran. This shows that Islamic values are integrated into customary practice, creating harmonization between the two in the social, political, and cultural context of Minangkabau society.

It can be concluded that there are similarities and differences regarding the concept of inheritance property according to Minangkabau custom and the Compilation of Islamic Law. The similarity is that *pusako randah* property in Minangkabau is inheritance because it is owned wholly by the testator, so its inheritance both uses the *faraidh* concept as explained in Article 171 letter e of the Compilation of Islamic Law, while the difference lies in *pusako tinggi* property, which is not inheritance property (as per Article 171 letter e of the Compilation of Islamic Law), because that *pusako tinggi* is not owned wholly by the testator, but is owned collectively by members of a clan. Therefore, the inheritance of *pusako tinggi* property does not use the *faraidh* concept; it is inherited based on the concept existing and applicable in the Minangkabau customary community, which is inherited collectively to female descendants according to the maternal line (*matrilineal*).

Collective Principle in Minangkabau Customary Inheritance Law and Peace Principle in Article 183 and Article 189 of the Compilation of Islamic Law

In the previous section, it was explained that *pusako tinggi* property in Minangkabau custom is not inheritance property as per the provisions found in the Compilation of Islamic Law; therefore, that *pusako tinggi* property is not inherited according to the concept of Islamic inheritance law (*faraidh*), but rather inherited based on Minangkabau

customary inheritance law provisions, that *pusako tinggi* property is inherited to women according to the maternal line and men do not have inheritance rights in it. Meanwhile, *pusako randah* property is inherited according to Islamic inheritance law provisions (*faraidh*), namely the son's share is twice the daughter's share. However, the fact that happens a lot in Minangkabau society is that regarding property originating from livelihood or joint property (*harta gono gini*) which notably is *pusako randah* property, they do not inherit it by *faraidh*, but rather inherit it with the Minangkabau customary inheritance law system, namely inherited collectively to female heirs to be owned together by all daughters, and such inheritance has been running for a long time in the Minangkabau social order, but such inheritance is carried out with the approval of other heirs. So far, there has been no rejection from male heirs regarding their parents' action of inheriting their *pusako randah* property to female heirs to be owned together collectively by their female family members (sisters) (*matrilineal*).

This is also explained in the "Workshop on Equalizing Perceptions of Adat Basandi Syarak, Syarak Basandi Kitabullah" on February 6, 2002, in Padang, that for *pusako randah*, although *faraidh* inheritance law has been applied, it does not rule out the possibility of its division according to the agreement of the heirs or people entitled to receive it; based on this agreement, that low heritage property is made joint property and made *milik paruik*, or *milik jurai* (property of the closest matrilineal heir family). Based on the opinion of Sukris Sarmadi (2013), the Author analyzes that collective inheritance based on agreement, which happens a lot in Minangkabau society, has elements of similarity with the peace principle regulated in Article 183 and the collective principle found in Article 189 of Book II of the Compilation of Islamic Law. The Author cites Sukris Sarmadi's opinion explaining that there are two bases and reasons enabling the Compilation of Islamic Law to allow inheritance division through peace, namely: First, the heirs have known their respective inheritance shares according to Islamic material law. If inheritance division occurs based on peace, then surely the heirs consider matters related to the condition of family relationships, for example; one party of the heirs gets a smaller inheritance share than other heirs, whereas the heir in question is in a condition classified as needing more; and also the inheritance property to be divided

is a source of family economy, not only concerning the lives of the heirs but also other relatives who do not need the inheritance property too much.

Second, based on Islamic inheritance law (*Faraidh*), the majority of *faradhiyun* scholars allow the occurrence of *takharuj* in the form of an agreement held by heirs to withdraw themselves from receiving an inheritance share as a substitution. Based on the two reasons above, the division of inheritance property can be done through deliberation or peace, and this method is practiced a lot by the Minangkabau community. The same thing was also conveyed by Abdurrahman (1992) in explaining Article 183 of the Compilation of Islamic Law, that the principle of deliberation is possible in the division of inheritance property. The same thing was also explained by Suhairi (2012) regarding peace in the division of inheritance property; here the Author cites a summary of his writing published in the *Journal Al-Manahij*. In a special sense, the agreement of all heirs for the exit of one or more heirs from the inheritance division—this method in Islamic law literature is called *takharuj* or *tasaluh*.

Takharuj or *tasaluh* is an agreement held by heirs to withdraw (remove) an heir from receiving an inheritance share by giving a performance/payment, whether that performance comes from the property of the person withdrawing them, or comes from the inheritance property that will be distributed. The basis used by scholars who justify this *takharuj* is the willingness and agreement of the party entitled to receive it. The heirs are people entitled to receive that property, so they can act upon their property according to their will and willingness. Besides that, scholars who allow *takharuj* also base it on *atsar shahabi* (actions of the Prophet's companions) from Abu Yusuf from Amru ibn Dinar originating from Ibnu 'Abbas that a widow of Abdurahman bin 'Auf named Tumadir made an agreement with three other widows of her husband to exit from the group of recipients of her husband's inheritance with a compensation she received of eighty-three dirhams.

Muhammad Abu Zahrah in his work *Ushul Fiqh* asserts that a person's right to inherit the estate of their heir who died falls into the category of servants' rights or pure individual rights. Based on Abu Zahrah's explanation, regarding the division of inheritance property, if every heir party voluntarily wants to divide it familiarly, then division can be done familiarly or peacefully according to the agreement of the related

heir parties. Even based on that, it is valid if there are among the heirs who give up or forfeit their rights in that inheritance property division to be surrendered to other heirs. In this context, the Author argues that the inheritance division provisions regulated by *nash* (Quran and Sunnah) are legal provisions that regulate, not legal provisions that bind. The heirs can make peace based on the agreement and willingness of each heir in the division of inheritance property; of course, the agreement and willingness of all those heirs must be without pressure from other heirs.

If there is a part or one of the heirs who does not agree to it, then the division must be returned according to the provisions of Islamic inheritance law (*faraidh*). Muhammad Ali Al Shabuni (2013) mentions the settlement method with *al-Takharaj min al-Tarikah*, namely the resignation of an heir from the right they possess to get a share through deliberation; in this case, they only ask for compensation in the form of a sum of money or certain goods from another heir or from the existing estate. Based on several theories and explanations above, the Author draws the conclusion that heirs are enabled to negotiate or deliberate to reach an agreement and peace in the division of inheritance property which can differ from the standard division according to Islamic inheritance law, as long as it is done based on the voluntariness of all parties involved. That principle is what is found in the Compilation of Islamic Law Article 183.

The Minangkabau society is essentially a religious society, understanding, submitting, and obedient to Islamic Sharia. The Minangkabau customary philosophy which reads "Adat Basandi Syarak, Syarak Basandi Kitabullah" proves that Minangkabau customary law is based on Islamic law, although Islamic religious teachings entered the Minangkabau region later after that customary order existed in community life (according to several records, Islamic religious teachings had spread evenly in Minangkabau around the early 15th century). However, slowly but surely, Islamic religious teachings succeeded in bringing drastic changes to all sectors of Minangkabau community life, and later Islam was adopted by the Minangkabau community and made the highest guide in personal, family, and social life, including in legal matters. This adoption is proven by the declaration of "Sumpah Sati Bukik Marapalam" involving all elements in Minangkabau society, further strengthening that Minangkabau customary law submits to Islamic law.

Thus, there is no reason to say Minangkabau customary law contradicts Islamic law, including in the issue of inheritance. The collective inheritance system in Minangkabau custom, which so far many opinions assume contradicts the principles of Islamic inheritance law (*Faraidh*) where the son's share is twice the daughter's share or commonly called the standard theory 2:1. The Author refutes that assumption as incorrect, because based on what is established in Article 183 of the Compilation of Islamic Law, it allows for peace in the division of inheritance property. The collective system applied in Minangkabau customary inheritance is actually the same as the Peace system in the division of inheritance property as intended by Article 183 of the Compilation of Islamic Law.

There are three elements of similarity between the collective system according to Minangkabau custom and the peace principle regulated by the Compilation of Islamic Law, according to the Author: First, Article 183 of the Compilation of Islamic Law regulates that heirs can deliberate and agree to make peace to divide inheritance property after the heirs realize their respective shares. The Minangkabau community has realized that the amount of inheritance share between male heirs and female heirs is 2:1, but it has become an unwritten agreement and a hereditary habit in their lives that sons are not given inheritance, but it is surrendered only to female heirs (sisters) to be cultivated to become a source of income and family economy in the *rumah gadang* to support life in the context of continuing the testator's lineage.

According to *tambo* and Minangkabau customary history, it can indeed be indicated that those who work to open rice fields are the men, but the results of opening those rice fields are surrendered to the family (siblings) who are female to be subsequently inherited collectively according to the maternal line, not to their children. A system like this is accepted and continued hereditarily by male family members and there is no opposition from them. Even until now, we often encounter that some Minangkabau people inherit the *pusako randah* property they own (livelihood property/joint property/gono gini property) to daughters collectively, which is subsequently owned together by family members, and sometimes its status is even upgraded to become *pusako tinggi* property.

The purpose of this collective inheritance is so that the family of a clan possesses a center of livelihood that will be used to support children and nieces/nephews, because when a clan does not possess property and *pusako*, then that clan will disappear and become extinct, and if that happens to all clans, then Minangkabau custom will also disappear and become extinct. It does not mean the Minangkabau community does not know that the male heir's share is 2:1 with females; it's just that they, the men, have peacefully surrendered their inheritance share to female heirs on the basis of maintaining clan integrity, and this is in accordance with the peace principle in Article 183 of the Compilation of Islamic Law.

Second, furthermore, Article 189 of the Compilation of Islamic Law explains that the division of inheritance property in the form of agricultural land less than 2 hectares in size should be maintained in its unity as originally, and utilized for the collective interest of the concerned heirs. That is already crystal clear and very corresponding with the collective system inheritance adhered to by Minangkabau custom as explained in the section above. Third, the basis of the peace principle in the Compilation of Islamic Law is, among others, to maintain the center of the family economy, because there are times in some families, that inheritance property is the source of economy in the family, so if divided, it will bring effects that are not good for the family economy of the heirs because they will lose the source of economy.

That is also the reason for the Minangkabau community why they use the collective inheritance system over a portion of *pusako randah* property (livelihood property/joint property/gono gini property) they own, because *pusako tinggi* and part of *pusako randah* belonging to the clan function as a livelihood to support that clan along with children and nieces/nephews, so inheritance with this collective system will support the family economy and guarantee survival together in a clan and certainly will maintain the integrity of that clan. From the description above, it is clear that the most fundamental reason in the application of collective inheritance division in Minangkabau custom and the peace principle applicable in the Compilation of Islamic Law is to avoid poverty and misery for one of the heir parties as per the word of Allah in the Quran Surah An Nisa verse 9: "And let those fear (in their behavior toward orphans) who if they left behind them

weak offspring would be afraid for them. So let them fear Allah and speak words of appropriate justice" (QS An Nisa verse 9).

It is becoming clearer that inheritance with the collective system practiced so far by the Minangkabau customary community is basically the implementation of the peace principle found in this Compilation of Islamic Law, so the system and implementation of property inheritance in Minangkabau which has become a tradition and general habit for its society in reality is already appropriate and harmonious and does not conflict with Islamic inheritance law (*faraidh*), specifically with the Compilation of Islamic Law which becomes a reference for the Muslim community in Indonesia.

4. Conclusion

Regarding the object of inheritance, between the inheritance system according to Minangkabau custom and the inheritance system in the provisions of the Compilation of Islamic Law, there are similarities and differences between the two. The similarity is that the inheritance object in the form of *pusako randah* property (livelihood property/joint property/gono gini property) in the Minangkabau customary inheritance system is equally an element of inheritance property, both in the Minangkabau customary inheritance system and the inheritance system according to the Compilation of Islamic Law, so in its inheritance, it uses Islamic inheritance law (*faraidh*). Besides that, there is also another similarity, which lies in inheritance with a collective system, where inheritance with the collective system, besides being adhered to by Minangkabau custom, is also found in the Compilation of Islamic Law, namely Article 183 and Article 189.

Meanwhile, the difference is found in *pusako tinggi* property (property obtained hereditarily from previous generations), that *pusako tinggi* property is not inheritance property according to the Compilation of Islamic Law because *pusako tinggi* property is not owned as *Milk al-Raqabah* by the testator, so in its inheritance, it cannot be done based on Islamic inheritance law (*faraidh*). Related to the peace principle, there is a similarity between Minangkabau Custom and peace in the Compilation of Islamic Law Article 183 and Article 189. That the collective inheritance system which has long been practiced by the Minangkabau community is essentially inheritance with the peace

concept in Article 183 and collective inheritance in Article 189 of the Compilation of Islamic Law.

References

- Abdullah, T. (1966). Adat and Islam: An examination of conflict in Minangkabau. *Indonesia*, 2, 1–24.
- Abdurrahman. (1992). *Kompilasi Hukum Islam di Indonesia*. Akademika Pressindo.
- Al-Shabuni, M. A. (2013). *Hukum Waris Dalam Islam*. Fathan Prima Media.
- Al-Zuhaili, W. (2007). *Fiqh al-Islami wa Adillatuhu, Juz 10*. Daar al-Fikr.
- Amir, M. S. (2017). *Adat Minangkabau: Pola dan tujuan hidup orang Minang*. PT. Mutiara Sumber Widya.
- Azra, A. (2019). The origins of Islamic reformism in Southeast Asia: Networks of Malay-Indonesian and Middle Eastern ‘Ulama’ in the seventeenth and eighteenth centuries. Allen & Unwin.
- Benda-Beckmann, F. von. (1979). *Property in social continuity: Continuity and change in the maintenance of property relationships through time in Minangkabau, West Sumatra*. Martinus Nijhoff.
- Blackwood, E. (2000). *Webs of power: Women, kin, and community in a Sumatran village*. Rowman & Littlefield Publishers.
- Bzn, B. T. H. (1980). *Asas-Asas dan Susunan Hukum Adat* (S. Poesponoto, Trans.). Pradnya Paramita.
- Coulson, N. J. (1964). *A history of Islamic law*. Edinburgh University Press.
- Dijk, V. (1979). *Pengantar Hukum Adat Indonesia* (A. Soehardi, Trans.). Sumur.
- Dirajo, D. S. (1987). *Curaian Adat Alam Minangkabau*. Pustaka Indonesia.
- Gibb, H. A. R. (1992). *Mohammedanism: An historical survey*. Oxford University Press.
- Gusti Asnan. (2003). *Kamus Sejarah Minangkabau*. Pusat Pengkajian Islam dan Minangabau.
- Hadler, J. (2008). *Muslims and matriarchs: Cultural resilience in Indonesia through Jihad and colonialism*. Cornell University Press.

- Hakimy, I. D. R. P. (1994). *1000 Pepatah-petitih, Mamang, Bidal, Pantun Gurindam Bidang Sosial Budaya, Ekonomi, Politik, Hukum, Hankam, dan Agama di Minangkabau*. Remaja Rosdakarya.
- Hakimy, I. D. R. P. (1994). *Pokok-Pokok Pengetahuan Adat Alam Minangkabau*. Remaja Rosdakarya.
- Hakimy, I. D. R. P. (1994). *Rangkaian Mustika Adat Basandi Syarak di Minangkabau*. Remaja Rosdakarya.
- Hamka. (1982). *Ayahku*. Umminda.
- Hamka. (1984). *Islam dan Adat Minangkabau*. Pustaka Panjimas.
- Hazairin. (1982). *Hukum Kewarisan Bilateral Menurut Qur'an dan Hadits*. Tintamas.
- Hooker, M. B. (1975). *Legal pluralism: An introduction to colonial and neo-colonial laws*. Clarendon Press.
- Kemal, I. (1971). *Beberapa Studi tentang Minangkabau*. Fakultas Hukum dan Pengetahuan Masyarakat Universitas Andalas.
- LKAAM Sumatera Barat. (2002). *Adat Basandi Syarak, Syarak Basandi Kitabullah*. Sako Batuah.
- M.S Dt. Rajo Penghulu. (1991). *Orang Cerdik Pandai Minangkabau*. Universitas Bung Hatta dan LKAAM Sumatera Barat.
- M.S, A. (2011). *Adat Minangkabau; Pola dan Tujuan Hidup Orang Minang*. Citra Harta Prima.
- M.S, A. (2011). *Pewarisan Harato Pusako Tinggi dan Pencaharian*. Citra Harta Prima.
- Manggis, M. R. (1971). *Minangkabau; Sejarah Ringkas dan Adatnya*. Sridharma.
- Marzuki, P. M. (2014). *Penelitian Hukum*. Kencana Prenada Media.
- Marzuki, P. M. (2017). *Penelitian hukum* (13th ed.). Prenadamedia Group.
- Soekanto, S. (2007). *Penelitian hukum normatif: Suatu tinjauan singkat*. RajaGrafindo Persada.
- Nasution, A. H. (2012). *Hukum Kewarisan; Suatu Analisis Komparatif Pemikiran Mujtahid dan Kompilasi Hukum Islam*. Raja Grafindo Persada.
- Navis, A. A. (1984). *Alam takambang jadi guru: Adat dan kebudayaan Minangkabau*. PT. Grafiti Pers.

- Prindiville, J. C. (1985). The image of women in Minangkabau fiction. *Indonesia*, 39, 72–88.
- Safrudin Halimy Kamaluddin. (2005). *Adat Minangkabau dalam Perspektif Hukum Islam*. Hayfa Press.
- Sarmadi, S. (2013). *Hukum Waris Islam di Indonesia (Perbandingan Kompilasi Hukum Islam dan Fiqh Sunni)*. Aswaja Pressindo.
- Saydam, G. (2004). *Kajian Adat dan Syarak Minangkabau*. PPIM.
- Soekanto, S., & Mamudji, S. (2001). *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*. Rajawali Press.
- Suhairi. (2012). Perdamaian dalam Pembagian Harta Warisan; Kritik atas konsep Qad'i dalam hukum Kewarisan Islami. *Al-Manahij*, VI(1).
- Suma, M. A. (2013). *Keadilan Hukum Waris Islam: Dalam Pendekatan Teks dan Konteks*. Rajawali Press.
- Syarifuddin, A. (1984). *Hukum Pewarisan Islam dalam Adat Minangkabau*. Gunung Agung.
- Syarifuddin, A. (2015). *Hukum Kewarisan Islam* (2nd ed.). Prenada Media.
- Tanner, N. (1974). Disputing and dispute settlement among the Minangkabau of Indonesia. *Indonesia*, 18, 113–152.
- von Benda-Beckmann, F., & von Benda-Beckmann, K. (2013). *Political and legal transformations of an Indonesian polity: The Nagari from colonisation to decentralisation*. Cambridge University Press.
- Yaswirman. (2013). *Hukum Keluarga: Karakteristik dan Prospek Doktrin Islam dan Adat dalam Masyarakat Matrilineal Minangkabau*. Rajawali Press.
- Yus Dt Perpatiah. (1985). *Pitaruah Ayah* [Audio cassette]. Balerong Group.
- Yusuf, A. M. (2014). *Metode Penelitian; Kuantitatif, Kualitatif dan Penelitian Gabungan*. Kencana Prenada Media.