

## The System of Inheritance Law in Minangkabau: A Social History Study

M. Iqbal

<sup>1</sup>Department of Law, Universitas Muhammadiyah Sumatera Utara, Indonesia.

### ABSTRACT

The Minangkabau tradition is unique in that it adheres to a matrilineal family system. The family system, which outlines descent from the mother's side, certainly affects the inheritance system. In the Minangkabau customary law system, assets are basically classified into 2 (two) namely high inheritance and low inheritance assets, and one more is livelihood property. When Islam entered the Minangkabau realm, there was a fear that the foundations of Minangkabau customary law would be eroded by the arrival of Islam. However, it turns out that the arrival of Islamic law does not necessarily change drastically and radically the provisions of the customary law. For high heirlooms, the Minangkabau traditional inheritance law system is used; while low inheritance and basic livelihood assets are faraidh.

**Keyword:** system, law, inheritance, minangkabau

### Corresponding Author:

M. Iqbal,

Universitas Muhammadiyah Sumatera Utara,

Jalan Kapten Mukhtar Basri No 3 Medan 20238, Indonesia.

Email: m.iqbal@umsu.ac.id



## 1. INTRODUCTION

The State of Indonesia is a country which consists of various islands which have different languages, customs, religions and cultures from one another. With the diversity of customs, religions and cultures, Indonesian society is a pluralistic society which has the same meaning as the term plural or pluralistic society. (Sembiring, 2018: 102)

One of the tribes in Indonesia is the Minangkabau tribe, which is very famous for its customs which are different from other tribes in Indonesia. This tribe in its kinship system adheres to matriarchaat (maternal line), meaning that when a marriage occurs, the husband resides in the wife's or family's house, but the husband does not belong to the wife's family and the children of the offspring are considered to belong to the mother only, not to the father, so that the husband has no power over his children. (Prodjodikoro, 1983: 11). The motherly family system is very influential in the way the distribution of inheritance is carried out, namely that the husband will not receive the inheritance from his wife's property if his wife dies. (Prodjodikoro, 1983: 38)

On the other hand, since the entry of Islam to Indonesia, Minangkabau people are a tribe that has adhered to the teachings of the Islamic religion so that in the Minangkabau customary adage "adat with syara", syara "jointed with the Kitabullah", meaning that the prevailing customs should not contradict the Book of Allah. However, in reality for outsiders of Minang, it turns out that in the concept of inheritance, Minangkabau customary law is different from Islamic inheritance law.

It is interesting to study in more depth the inheritance system in Minangkabau customary law which is philosophically influenced by Islamic law, but on the other hand, the existing inheritance system is in contrast to the inheritance system in Islamic law. This is of course a big question as to what the inheritance law system is really like in Minangkabau.

## 2. CUSTOMARY INHERITANCE LAW IN INDONESIA

Inheritance law is part of family law which plays a very important role and even determines and reflects the system and form of law that applies in a society. This is because the waeis law is closely related to the scope of human life. Every human being will definitely experience an event, which is a legal event, when a family member dies. If a person dies, this is a legal event which at the same time gives rise to

legal consequences, namely how to manage and continue the rights and obligations of the person who died. (Prodjodikoro, 1983: 11)

The settlement of a person's rights and obligations is regulated by law. Therefore, inheritance can be said to be a provision that governs the procedures for the transfer and transfer of property (tangible or intangible) from the heir to his heirs. (Hadikusuma, 2003: 8). In this case, the form and legal system, especially inheritance law, are closely related to the form of society. If it is agreed that law is one aspect of culture, both spiritual or spiritual as well as physical culture, this is perhaps one of the reasons why there are various legal systems, especially inheritance law.

Indigenous peoples form laws from the habits that apply in the community itself. There are traditional inheritance laws that apply in Indonesia which are pluralistic according to existing ethnic groups or ethnic groups. Basically it is caused by the different lineage system, which forms the basis of the system of ethnic groups or ethnic groups. (Soekanto, 1996: 7)

When considering parts of customary law, we must not forget that these parts have a large influence on customary inheritance law. The term traditional inheritance law is to distinguish it from Western inheritance law. The law of customary inheritance is a legacy from the ancestors which is passed on from generation to generation by their descendants. (Sulastri, 2015: 143)

Between one community has habits that are not the same as the others regarding customary inheritance law. The law of traditional inheritance is actually the transfer of assets from one generation to the offspring. According to Ter Haar, customary inheritance law is legal rules that are related to the process from century to century which attracts attention is the process of transferring and transferring material and immaterial wealth from generation to generation. (Haar, 2017: 202)

Hilman Hadikusuma said that the inheritance customary law is the rules of customary law that govern how inheritance or inheritance is passed on or distributed from heirs to heirs from generation to generation. (Hadikusuma, 1992: 211). Based on the definition it contains three elements, namely the existence of an inheritance or inheritance property, the presence of an heir who leaves his property, and an heir or heir who will continue its management or who will receive their share. (Hadikusuma, 1992: 211)

In fact, the three elements mentioned by Hilman Hadikusuma above, in the process of transferring and transferring to people who are entitled to receive assets always cause problems, such as:

1. The first element raises the problem of how and to what extent the relationship of an inheritor (heir) to his wealth is influenced by the nature of the family environment in which the heir is located.
2. The second element raises the problem of how and to what extent there should be kinship between the legacy and the heir.
3. The third element raises the question of how and to what extent the form of the transferred wealth is influenced by the nature of the family environment in which the heirs and the heirs are together. (Wulansari, 2018: 72)

Bushar Muhammad defines inheritance law as a series of regulations governing the transfer and over-possession of inheritance or inheritance from one generation to another, both knowing material and immaterial objects. Whereas the inheritance law includes issues, actions regarding the transfer of property while a person is still alive. The institution used in this case is a grant. (Muhammad, 2013: 39)

R. Soepomo said that customary inheritance law is the law of inheritance which contains regulations governing the process of forwarding and transferring property and intangible items (immaterial geoderne) from a human force (generatie) to their descendants. (Soepomo, 1986: 67)

The process of transfer of property itself, in fact, can already be started when the owner of the wealth is still alive and the process continues until the descendants of each of them become new independent families (mentas and seek - Java) which in time get their turn. also to pass on the process to the next generation (descendants) as well. (Wignjodipoero, 1995: 161)

Customary inheritance law has its own characteristics and characteristics that are different from other laws. Broadly speaking, the law of inheritance shows distinctive features of the traditional school of thought of the Indonesian nation. The law of traditional inheritance is based on principles that arise from the communal and concrete schools of thought of the Indonesian nation.

In addition, if the customary inheritance law is compared to the civil inheritance law, the difference between the inheritance and the distribution method will appear. Customary inheritance law shows a very principle difference from the Civil Inheritance Law, namely:

1. Customary inheritance law does not recognize the principle of *legitieme portie* (absolute part), however, the customary inheritance law stipulates that the basis for this equal rights contains

the right to be treated equally by parents in the process of passing on and passing on family property. In addition, the basis of equality of inheritance customary law rights also lays the foundation of harmony in the process of implementing the distribution in a harmonious manner by showing the special condition of each inheritance. The Civil Inheritance Law recognizes each heir for a certain part of the inheritance, the inheritance according to the provisions of law (legitime portie articles 913 to 929).

2. Customary inheritance law should not be forced to be shared between heirs. Civil Inheritance Law stipulates the absolute right of the respective heirs to determine the distribution of the inheritance at any time. (Article 1066 of the Civil Code). (Wignjodipoero, 1995: 163)

When compared with Islamic Inheritance Law, principal differences are found, namely:

1. Customary Inheritance Law is an inheritance that can not be divided or the implementation of the distribution is postponed for quite a long time or only partially distributed. Islamic inheritance law, each heir determines the distribution of the inheritance at any time.
2. Customary Inheritance Law, gives adopted children the right to support from the inheritance of their adoptive parents. Islamic inheritance law, is not familiar with provisions like this.
3. Customary Inheritance Law, there is a system of inheritance replacement, while Islamic inheritance law is not known.
4. Customary Inheritance Law, the distribution is a collective act, walking in harmony in a friendly atmosphere by paying attention to the special circumstances of each inheritance. Islamic Inheritance Law, the parts of the heirs have been determined the distribution of the inheritance according to these provisions.
5. Customary inheritance law, girls, especially in Java, if there are no sons, can close the right to inherit from their grandparents and relatives of their parents. Islamic inheritance law, only guarantees girls a certain share of the inheritance of their parents.
6. Customary Inheritance Law, inheritance does not constitute a unitary inheritance, but must pay attention to the nature, origin and legal position of the respective items contained in the inheritance. Islamic inheritance law is a unity of inheritance. (Wignjodipoero, 1995: 164)

Customary inheritance law recognizes that there are 3 (three) systems of customary inheritance, namely:

1. The individual inheritance system is an inheritance that is divided into the right of ownership to the heirs.
2. Collective inheritance system is an inheritance property inherited or more precisely controlled by a group of heirs in an undivided state who is in power as if it were a family body or a customary law relative.
3. Major inheritance system is the inheritance of parents or ancestral assets of relatives which remain intact and are not distributed among the respective heirs. The major inheritance system is divided into:
  - a. Male major, that is, if the oldest son when the heir dies or the eldest son (male descendant) is the sole heir as in Lampung.
  - b. Female major, that is, if the oldest daughter at the time the heir dies is a single heir, for example in Seemendo South Sumatra. (Sulastri, 2015: 145-147)

### 3. MINANGKABAU CUSTOMARY LAW SYSTEM IN INHERITANCE

Customary law is a part of law that comes from customs, namely social rules that are made and maintained by legal functionaries and apply and regulate legal relations in society. (Soemadiningrat, 2002: 140). Adat is defined as a habit which according to the community's assumptions has been formed both before and after the existence of society. The term adat comes from Arabic, namely 'adah, which refers to a variety of actions that are performed repeatedly. (Djazuli, 2010). As with custom, law also comes from the Arabic hukm which means command. This legal term ultimately affects members of society, especially those who are Muslim.

The term customary law among the general public (lay) is very rare. People tend to use the term "adat" only. This mention leads to a habit, namely a series of actions that generally must apply to the structure of the community concerned. Adat is a reflection of the personality of a nation, it is one of the incarnations of the soul of the nation concerned from century to century. Every nation in the world has its own customs which are not the same as one another. The term customary law refers to the term customary rules known for a very long time in Indonesia.

According to Minangkabau custom, a husband does not belong to the wife's family. Therefore, if a husband dies, the inheritance does not enter the wife's family but remains in the husband's family and is inherited by his siblings and their offspring from a sister and if the person does not have children then the property falls into the hands of the closest family and if no immediate family, then the property belongs to the legal union (tribe) concerned. (Salim, 1991: 12; (Wignjodipoero, 1995: 163)

In the inheritance system, the Minangkabau custom does not recognize the wife's inheritance from her late husband's assets. This is based on the stipulation that property cannot be transferred outside the clan, while the husband or wife is outside the community based on exogamous marriage. In its development, after Islam entered the realm of Minang, then it became known that the inheritance rights of a widow or widower were also identified in the livelihood assets of husband and wife. According to Minangkabau custom, the holder of property is practically a woman because in her hands it is centered on material relatives. (Soemadiningrat, 2002: 239).

According to Minangkabau inheritance law, because children belong to their mother's family, children are not the heirs of their father's livelihood assets. Therefore, in practice, many parents donate their assets to their children before dying so that they do not fall into the hands of their families. (Prodjodikoro, 1983: 25).

Likewise, if the wife dies, her husband will not receive any inheritance from his wife, because he is not included in the wife's family. (Prodjodikoro, 1983: 38). Thus basically Minangkabau inheritance law does not have inheritance law individually but between several families (jurai lungsik).

In the Minangkabau community, assets are classified into 2 (two) types, namely:

1. High inheritance is known as ancestral property which is inherited from generation to generation from mamak down to the nephews of a clan so that it is a high inheritance from that particular people. (Amir MS, 2011: 26). High heirlooms are assets controlled by a larger family or relatives led by the head of the Andiko or the head heir. (Wignjodipoero, 1995: 38). According to the Minangkabau Natural Adat Density Institute (LKAAM), what is meant by high inheritance is the wealth of the people who have been received from generation to generation from ninik to mamak, from mamak to kemanakan according to the lineage of the mother. (LKAAM, 2002: 68)

According to Minangkabau custom, high inheritance is inherited collectively according to the maternal lineage (matrilineal). Such high heirlooms may not be sold, pawned for personal gain or for only a few people. In practice, in certain situations and conditions, high inheritance assets can be pawned if there is an agreement among members of the clan and provided that at that time there are no other costs that can be used other than high inheritance. the required conditions may be to pawn high heirlooms, namely when the rumah gadang requires funds to renovate it (rumah gadang katirisan); niece of marriage (gadih gadang indak balaki), organizing the corpse (maik tabujua in the house), and the ceremony of the new pengulu (mambangkik Batang tarandam). (Prasna, 2018: 40)

Even though the inheritance is controlled by a family led by a mamak heir, they only have the right to use it, meaning that the nature of the property belongs to the family so that the person entrusted with managing it must have the consent of the mamak heir, or it could be the mamak himself who gets the right to disturb the benefits, as long as all the jurai agreed to it, because in addition to the mamak as exercising power of the inheritance, he is also obliged to supervise and maintain the property so that it remains intact if it continues to increase. (Anwar, 1997: 93). These high heirlooms are in the form of permanent and hereditary assets such as land, forests, fields, rice fields, houses gadang that are collectively owned.

2. Low inheritance, namely all assets obtained from the results of their own business, including the livelihood assets of husband and wife. (Prasna, 2018: 41). According to Yaswirman, if the heir keeps the integrity of this low inheritance by not selling it or sharing it, then in time it is passed on to the next generation continuously so that it is rather difficult to trace it, then the low inheritance will turn into high inheritance. (Yaswirman, 2013: 155). Hamka also said the same thing by saying that low inheritance can be transferred to high inheritance, but high inheritance will not be possible to transfer to low inheritance, unless adat is no longer established. (Hamka, 1984: 96)

In some references there is also the term joint livelihood property or suarang property, which is all assets that are acquired by husband and wife, either unionized or individually, obtained either in the form of fixed assets or movable property acquired by the husband and wife during the marriage bond. (Hadikusuma, 1986: 119). Regarding suarang assets, if the marriage breaks because the husband dies, then the property is controlled by the wife (widow) and children and if the wife remarries, the livelihood property is an inheritance right for her children and there is no right for her new husband. If the wife does not have children and then dies, her livelihood assets are divided between the husband and wife's

relatives. If the marriage breaks because the wife dies, then the property is controlled by the mamak for the needs of the nephew and the husband has the right to enjoy it and if the husband remarries, the suarang property becomes inherited property for the needs of the children of the deceased; and if the husband dies without children, then the assets are settled together by the relatives of both parties. (Hadikusuma, 1986: 120)

Regarding livelihood assets in Minangkabau it does not have legal status in adat and is not included in low inheritance assets. Because of that, there is a saying, "children are on the bench jo searching, kamanakan are covered by jo pusako (children are held on the lap with their livelihood assets, while the nephews are guided by heirlooms). Based on the Supreme Court's decision in the development of Minangkabau adat, nephews no longer inherit livelihood assets. (Anwar, 1997: 100-101). Livelihood assets (suarang) are basically controlled by the husband and wife, the husband may grant it to his wife or children, likewise the wife can grant it to her husband or to her children, both male and female.

Inborn assets, these assets will return to their respective origins. This means that if there is a divorce or death, the wife's property before the marriage will still belong to her and her children, while the assets are returned to the people who gave it when the marriage occurs, and vice versa. If the husband's inheritance was brought to his wife's house at the time of the marriage, whether in the form of assets from his own work or a gift received at the time of the marriage, then the property becomes the full property of the husband and there is no right of the wife to these assets because the assets arose outside the joint venture of the husband and wife. (Anwar, 1997: 100).

Minangkabau customary law has certain principles of inheritance, many of these principles are based on the kinship and material system, because the inheritance law of a society is determined by the community. Minangkabau custom has its own definition of family and marriage procedures. These two things emerge from the characteristics of the Minangkabau social structure which gives rise to a separate form or principle in inheritance law.

Some of the main principles of the Minangkabau inheritance law will be outlined below:

1. Unilateral principle, namely inheritance rights that only apply in one kinship line, namely the mother's kinship line. Heirlooms from above are received from the ancestors only through the maternal line and are passed down to the children and grandchildren through the daughters. Absolutely nothing crosses the male line either up or down.
2. The collective principle that the right to inheritance is not an individual person, but a group together. Based on this principle, assets are not divided and delivered to groups of recipients in an undivided form. In the form of high inheritance assets, it is natural to continue collectively, because at the time of receipt it is also collectively, which the ancestors also received collectively. Lower inheritance assets can still be recognized by the owner, which the owner obtains based on his livelihood. Assets in this form are received collectively by the next generation.
3. The principle of primacy means that in receiving inheritance or accepting the role of managing the inheritance, there are levels of rights that cause one party to have more rights than the other and as long as those entitled to exist, the other will not receive it. Indeed, this principle of virtue can apply in any inheritance system, given that the family or community is very close to the heir. But the principle of virtue in Minangkabau inheritance law has its own form. This separate form is caused by the forms of the layers in the Minangkabau matrilineal kinship system. (Syarifuddin, 2006: 230-235)

#### **4. DUALISM OF INHERITANCE LAW IN MINANGKABAU**

A traditional Minangkabau figure, Idrus Hakimy, stated that the Minangkabau custom is a teaching set out in the form of *petitih* or norms expressed in a very deep figurative sense, with a basic teaching of the nature of *takambang* being a teacher (learning from nature). (Hakimy, 1997). The *petitih* quota is the basis of Minangkabau customary law in taking all actions to be taken, covering all aspects of social life in Minangkabau in the economic, socio-cultural, defense and security fields. (Hakimy, 1988: xv).

The entry of Islam and its teachings into the Minang realm step by step turned out to have a very big influence on the life order of the Minang community. One of the changes was by changing the traditional philosophy 4 times, which was originally the natural philosophy of *takambang* to become a teacher until it changed to the custom of *basandi syarak, syarak basandi Kitabullah*. The purpose of changing the customary philosophy is in the context of adjusting between adat and Islam until today it is the only religion recognized by the Minangkabau people. There was a clash between adat and Islamic teachings

when Islam first entered Minangkabau in the social sphere, especially concerning the kinship system which later determined the form of marriage and association. (Hakimy, 1988: 22).

The change in the Minangkabau traditional philosophy resulted in changes in the patterns of association in his marriage in the form of *sumando*, which was adapted to Islamic teachings. Changes in social patterns in marriage resulted in a revolution in the Minangkabau traditional inheritance law. This fact then raises the theory that in fact the Minangkabau indigenous people after the entry of Islam to this day have implemented two inheritance law systems in their implementation, namely:

1. Collective-matrilineal inheritance system applied to high inheritance; and
2. The individual-bilateral inheritance system is applied to low inheritance. (Winstar, 2007: 156)

Whereas the inheritance system used by the Minangkabau custom is a collective-matrilineal inheritance system. This means that the inheritance of the heirs cannot be distributed, only the right of use can be distributed to the rightful heirs, namely the heirs who are determined based on the matrilineal system are women. This collective ownership will cause the death of a family member in the house and does not affect the collective nature of the inheritance. Likewise, on the contrary, the occurrence of a birth in a house also does not affect the joint rights of the property, as it is said in the adage "entry does not fulfill, leaving is not odd" means that individuals in the house are not considered. (Syarifuddin, 2006: 234)

The Minangkabau customary proverb says "sakali aia gadang, sakali but baranjak, sakali rajo baganti, sakali adaik barubah", meaning that when the water overflows, the bath shifts, if there is a replacement of the king, then the customs will also change. (Wignjodipoero, 1995: 100). This proverb implies that adat is not static but changes according to the prevailing changes by replacing it with adat. Likewise, what happened about inheritance in the Minang realm.

Before Islam entered this area, customary rules had regulated the relationship between humans to achieve unity and unity of the people with a sense of help and respect for one matrilineal system. After Islam entered Minangkabau, in the 16th century, the Minangkabau community had embraced Islam, so there was a mixture of law between adat and Islamic law which often led to conflicts between the two.

According to the Minangkabau government system, the headman has a decisive position. The *pengulu* is the real ruler in the *nagari*. The decisions made by the rulers who were members of the "Nagari Council" could not be denied even by the Minangkabau King. The power of religious groups is limited to mosques or *surau*, while daily government is carried out according to customary law, a war broke out between religious groups commonly known as the *padri* group and traditional groups which ended with the victory of the *padri* group led by *Harimau nan Salapan* ( Tiger Eight). (Wignjodipoero, 1995: 100)

After the entry of Islam to Minangkabau, the inheritance problem in Minangkabau has gradually changed the method of distributing inheritance although it does not eliminate values as an ideal form of a culture adhered to by a society that has been passed down from generation to generation. Especially with the formation of new family structures consisting of father, mother, and children. In Islam, the father is the head of the family, while according to custom, the father does not belong to the wife's family, but the father is the "urang *sumando*" and the family leader according to custom is the *mamak* or *pengulu*.

The relationship between the *mamak* and the nephew is getting weaker, the child is closer to the father and mother, especially the people who live overseas, their relationship with their lungs begins to break. Husband and wife with their strength are both responsible for their children. This happens not only among overseas people but also has penetrated into big cities such as Bukit Tinggi, Padang, Payakumbuh. Economic factors also have a significant influence on these changes, where parents generally try for the needs of their children not for their nephews. (Anwar, 1997: 123-126)

After the entry of Islam to Minangkabau, the inheritance system in Minangkabau was divided into two systems according to the type of assets. For high inheritance the collective inheritance system applies, while for low inheritance and livelihoods, the Islamic inheritance system applies the principles of *ijbari*, bilateral, individual, balanced justice, and solely due to death. (Prasna, 2018: 43)

Therefore, for high inheritance in Minangkabau custom, the concept of Islamic inheritance cannot be used, because it is not an inheritance as contained in the *faraidh* and Islamic Law Compilation. Based on such conditions, the existence of high inheritance assets is allowed to be eternal as stipulated, namely the management and benefits are inherited collectively according to the matrilineal route. (Prasna, 2018: 46)

On the other hand, low inheritance is property that is the result of a person's livelihood which is fully and completely owned, and has full power over these assets, so the concept of inheritance must

follow faraidh and the Compilation of Islamic Law. This has also become an agreement with traditional and religious leaders in Minangkabau after the Bukik Marapalam declaration in the early 19th century (Prasna, 2018: 47)

The most important principle of the inheritance distribution system in Minangkabau is the consensus word of all heirs. The inheritance of property through this agreement does not violate Islamic law, because in Islam as far as the rights of Allah are concerned, the willingness of a servant does not have any effect on the law prescribed by Allah. (Syarifuddin, 2006: 317)

Based on the above arguments, it provides evidence that the entry of Islam into the Minang realm did not destroy the values that have been alive and well established in the matrilineal Minangkabau society. The inclusion of Islamic values turns out to enrich the values of the Minangkabau community. Therefore, conflicts between religion and customs do not need to occur because especially in terms of inheritance, these 2 (two) inheritance systems have their respective divisions and domains related to the distribution of assets and who is the heir.

## 5. CONCLUSION

That the allegation that the entry of Islam into the Minangkabau realm has damaged Minangkabau traditional principles, especially in terms of inheritance, is absolutely not true. Between Islamic inheritance law and Minangkabau traditional inheritance law, it has its own place, so there is no need for debates that contradict Islamic law and customary law. The Minangkabau customary philosophy which changed to the basansi syarak custom, the syarak basandi Kitabullah, indicates clearly and unequivocally that the Minangkabau custom is based on the Kitabullah namely the Al-Qur'an. Thus, there is no excuse that can be justified if there are customs that are contrary to the law on the land of Minangkabau.

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