

## THE EXISTENCE OF HIGH HEIRLOOM ASSETS IN NAGARI MUARO PAITI AND THEIR RELEVANCE TO CONTEMPORARY ISLAMIC INHERITANCE

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### Abstract

High heirloom assets are assets that are jointly owned by a people who have blood ties and are inherited from generation to generation from previous ancestors, and these assets are under the management of the head of the inheritance (eldest male in the clan). High heirlooms do not belong to individuals, but belong to a group together. Inheritance from high inheritance applies a collective system, namely the property is not divided and delivered to the recipient group in the form of an undivided unit. To guarantee land ownership for its people, the government makes rules regarding land ownership, namely Law no. 5 of 1960. With this law, many people have certified their land, including high inheritance in the form of ulayat land in Muaro Paiti village, as private property rights recognized by law. As a result of the certificate of high inheritance into private property, of course, the system of inheritance of high inheritance has changed into inheritance according to the laws in force in Indonesia, namely Islamic inheritance.

**Keywords :** High in heritage, UUPA, In heritage in Islam.

### Abstrak

*Harta pusaka tinggi merupakan harta yang dimiliki bersama dari pada suatu kaum yang mempunyai pertalian darah dan diwarisi secara turun temurun dari nenek moyang terdahulu, dan harta ini berada di bawah pengelolaan mamak kepala waris (lelaki tertua dalam kaum). Harta pusaka tinggi bukanlah milik orang perorang, tetapi milik suatu kelompok secara bersama sama. Kewarisan dari harta pusaka tinggi itu berlaku sistem kolektif yaitu harta itu tidak dibagi-bagi dan disampaikan kepada kelompok penerimanya dalam bentuk kesatuan yang tidak terbagi. Untuk menjamin kepemilikan tanah bagi rakyatnya maka pemerintah membuat aturan tentang kepemilikan tanah yaitu Undang-undang No. 5 Tahun 1960. Maka dengan Undang-undang ini masyarakat banyak mensertifikatkan tanahnya dan termasuk harta pusaka tinggi berupa tanah ulayat di Nagari Muaro Paiti menjadi hak milik pribadi yang diakui oleh Undang-undang. Akibat dari disertifikatkannya harta pusaka tinggi menjadi hak milik pribadi tentu merubah sistem kewarisan harta pusaka tinggi menjadi kewarisan sesuai aturan Undang-undang yang berlaku di Indonesia yaitu kewarisan Islam.*

**Kata Kunci :** Harta pusaka tinggi, UUPA, Kewarisan dalam Islam.

### INTRODUCTION

High heirloom property (harato pusako tinggi) is a jointly owned property of a people who are related by blood and inherited from generations from earlier ancestors, and these

treasures are under the management of the chief heir (the oldest man in the tribe). The process of transferring power over this heirloom property from mamak to niece. Regarding high heirloom treasures, customary

provisions apply which read *tajua indak* eaten by Bali, *tasando indak* eaten by pawns. However, based on research conducted by Yusrizal Pura et al. high heirloom treasures in their implementation are often used as pawn objects.<sup>1</sup>

According to the traditional Minangkabau proverb, the high heirloom treasure is from grandma down to *mamak*, from *mamak* down to niece. The treasure of the high heirloom is in the form of customary land of the *gadang* house.<sup>2</sup> The customary land is controlled by the *tungganai* or *mamak* of the head of the heir, while the head of the heir is the one who determines the allocation of the right of use and the right of benefit from the customary land to his nieces.<sup>3</sup>

Talking about land certainly cannot be separated from Law No. 5 of 1960, which is about rules on land in Indonesia. In the UUPA, it guarantees the right of ownership of land by every Indonesian community contained in Law No. 5 of 1960 Article 21 paragraph 1 has stated "the existence of legal protection provided by the state to every Indonesian citizen to be able to have property rights to land." To ensure legal protection of property rights to land, article 19 paragraph 1 of UUPA says "to ensure legal certainty by the government, land registration is held throughout the territory of the Republic of Indonesia according to the provisions regulated in government regulations" and ownership in the UUPA is full ownership in accordance with article 20 paragraphs 1 and 2 which says that property rights are hereditary rights, the strongest and fullest that a person can own over land, property rights can be transferred and transferred to another party by the title holder.

<sup>1</sup>Yosrizal Putra, Yulia Nizwana, dan Adriyanti, "Pelaksanaan Akad Gadai Sawah Pusako Tinggi Di Jorong Tabek Pala Nagari Talang Ditinjau Dari Hukum Adat Minangkabau Dan Hukum Islam," *Jurnal SARMA DA*, t.t., 1.

In Nagari Muaro Paiti, Kapur IX District, Fifty Cities Regency, many people have certified customary land as a private right because of Law No. 5 of 1960 and government regulations on land registration, because the Law has made it easy to own or control legal land in the eyes of the law, as a result of the ease of certifying the land into private property, many Nagari Muaro Paiti people certify high heirloom property, especially customary land, into property rights, so that the certified land turns into low heirloom property so that it is easier for people to sell, mortgage or bequeath the high heirloom property in accordance with Islamic inheritance.<sup>4</sup>

As a result of the allowability of high heirloom property in Nagari Muaro Paiti caused various reactions from the community who opposed the certification of high heirloom property into private property, because they felt aggrieved by the person who had certified the customary land of the people. So they are hindered by their rights to use high heirloom property. Because basically the high heirloom property is the ownership of all members of the people and not private property.<sup>4</sup>

The following author conveys data on customary land that has been certified by the Muaro Paiti community with property rights.

No	Tribal Names	Area of Customary Land	Certified Land
1.	Suku Chaniago	30 Ha <sup>2</sup>	10 Ha <sup>2</sup>
2.	Suku Melayu	45 Ha <sup>2</sup>	20 Ha <sup>2</sup>
3.	Suku Pitopang	20 Ha <sup>2</sup>	8 Ha <sup>2</sup>
4.	Suku Piliang	19 Ha <sup>2</sup>	7 Ha <sup>2</sup>
5.	Suku Kutianyia	23 Ha <sup>2</sup>	12 Ha <sup>2</sup>

**Source** : PRONA Nagari Muaro Paiti Data 2020.

From the background of the problem, the question arises, How is the existence of high heritage treasures in Nagari

Muaro Paiti, and how is its relevance to contemporary Islamic inheritance law?

## DISCUSSION

### Harta Pusako Tinggi in Nagari Muaro Paiti.

High heirloom treasures in a general sense in Minangkabau terminology are called *harato jo pusako*. *Harato* is something that belongs to the people that appears and exists materially such as rice fields, fields, houses, livestock, and so on. *Pusako* is something that belongs to a people inherited from generation to generation both visible and invisible. Therefore, in Minangkabau, two twin words are also known, which mean very different from *sako* and *pusako*: *Sako* is an heirloom title that is being used and carried out its obligations by the people concerned.

*Nagari* is a combination of several *koto*, which have a tribe and occupy a certain area. In general, in a *Nagari* there are at least four tribes. A *Nagari* is headed by a *Nagari* chief. The use of *nagari* customary land, used for general purposes, such as the construction of mosques, the creation of traditional halls, and for markets or other interests that can be used for the common good.<sup>2</sup>

The ownership of *nagari* customary land cannot be changed, except on the agreement of all representatives of tribes or tribes in that *Nagari*. Due to the development of nieces and nephews, the custom of the *Nagari* customary land was downgraded to tribal customary land or tribal customary land. All tribes and peoples got an equal share. The agreement on the division of *nagari* customary land into tribal or tribal customs is stated in a letter of agreement

that existed in ancient times written in Malay and signed together.<sup>3</sup>

The second is the customary land of the tribe, held in the tribal rulers, and managed by the tribesmen. A tribe is a combination of several peoples, where the blood connection that binds the tribe is the blood connection according to the maternal line. The tribe is not tied to a specific area at all. Where the members of the tribe are they will still feel a blood connection with all the sense of tribal brotherhood.

Each tribe is led by a tribal ruler. To use the customary land of the tribe the tribesmen in their implementation were supervised by the chief of the tribal ruler and he was also in charge of several *gadang* houses belonging to the tribe or *jurai*. Given the importance of a *penghulu*'s duty as a leader in a tribe, not all men in his tribe can be appointed as tribal rulers but rather an adult man of broad knowledge, both in customary knowledge and general knowledge, just, wise and wise and patient.<sup>4</sup>

Third, The customary lands of the people, are lands that are managed by the people together. The people are a combination of *paruik* (*seibu*) that comes from one grandmother. The customary land of the people is a high heirloom treasure that is used for the welfare of nieces and nephews, especially to meet their economy. The customary land of the people owned by the communal group is property that is given the right to the members of the tribe to collect the proceeds, while the property rights in the name of the people This property if

<sup>2</sup> Wawancara dengan Dt. Bosa Rajab, (*Niniak Mamak Suku Melayu*), yang dilakukan pada Rabu 2 Juni 2021.

<sup>3</sup> Wawancara dengan Dt. Bandaro Mudo, (*Niniak Mamak Suku Melayu*), yang dilakukan pada Kamis 3 Juni 2021.

<sup>4</sup> Wawancara dengan Dt. Kumajo, (*Niniak Mamak Suku Chaniago*), yang dilakukan pada Kamis 3 Juni 2021.

mortgaged must have the approval of the head of the tribe and all other members of the clan.<sup>5</sup>

The supervision of the customary land of the people or the treasure of this high heritage, is the duty of the head of the people called *tungganai* (mamak of the aged house) in *jurai* and respected as expressed in the traditional proverb of precedence *salangkah*, exalted *sarantiang* (taken precedence and exalted *seranting*) by the members of his people.<sup>6</sup>

In this case the scope of *pusako* property is high depending on the development of the family in the<sup>7</sup>. The escape of the origin of the high heirloom treasure is caused by several things, including first, the distance between the existence of the treasure and the party who is working on it, that it can no longer be measured by the distance of years. Secondly, because the treasure is already mixed with other sources that come later.

In terms of shape, soil can be separated in two kinds, namely high forests and low forests. High forest is any land that has not been cultivated and has not been used as agricultural land, while low forest is any land that has been cultivated and cultivated into farmland or housing. Both kinds of land are determined by the ancestors for the common benefit of all family members collectively and are held by the ruler of that clan or family.

In terms of how the property or land is in the hands of a person who dies and who will turn to his heirs is by *dipusakai*. The heirloom treasures are also separated into two types, namely high heirloom treasures and low heirloom treasures.

In terms of the right to use land, it is divided into two forms, namely: joint rights and not joint rights. The manner of use of common property in this small environment depends also on whether the house still consists of one Mother with one pot or has been divided according to the number of Mothers contained in the house.

Similarly, low heirloom property is a common property for those who receive it, although it is originally the result of one's own efforts, but after it is passed on to its descendants, it becomes common property. From these two things emerged the characteristics of the Minangkabau social structure, which gave rise to its own form or principle in the law of inheritance.<sup>8</sup>

Some of the main principles of the Minangkabau inheritance law will contain below:

a. Unilateral Principle

What is meant by the unilateral principle is that the right of inheritance only applies in one line of kinship, and one line of kinship here is the line of kinship through the maternal lineage.

b. The Collective Principle

This principle means that those who are entitled to inheritance are not individuals, but a group together. This collective right is based on the fact that the property is not of exact origin. The principle of collective inheritance does not require the division of property. Collective possession of property causing the death of a member in the home has no effect on the property and joint ownership of the property.

c. The Principle of Primacy

The principle of primacy means that in the receipt of heirloom property or the acceptance of the role of managing heirloom property, there are levels of rights that cause

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<sup>5</sup> Wawancara dengan Dt. Bijo Dirajo (*Niniak Mamak Suku Pitopang*), yang dilakukan pada Jumat 5 Juni 2021.

<sup>6</sup> Wawancara dengan Dt. Bandaro Mudo, (*Niniak Mamak Suku Kutinyia*), yang dilakukan pada Kamis 3 Juni 2021.

<sup>7</sup> Amir Syarifuddin, *Pelaksanaan Hukum Kewarisan Islam Dalam Lingkungan Adat Minangkabau* (Jakarta: PT. Gunung Agung, 1984), 219.

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<sup>8</sup> Cindy Aoslavia, "Perbandingan Hukum Waris Adat Minangkabau Sumatera Barat dan Hukum Perdata Barat," *Mizan: Jurnal Ilmu Hukum* 10, no. 1 (2021): 55.

one party to be more entitled than the other and as long as the right one is still there, then the other will not accept.

### **Agrarian Law in Indonesia.**

Agrarian law in legal science actually has a broader meaning. In Latin, agrarian, which is often referred to as *ager*, means land or a piece of land. If we open in the Big Indonesian Dictionary (KBBI) it is stated that "Agrarian" means land affairs and or land and land ownership affairs over land.

According to Subekti, agrarian law is the entirety of legal provisions, both civil law, and constitutional law as well as state administrative law that regulates relations between people including legal entities, with earth, water, and space within the entire territory of the country and also regulates the authorities that originate in certain relationship relationships.<sup>9</sup>

Boedi Harsono stated that agrarian law is not just a tool of the legal field. Agrarian law is a group of various fields of law, each of which regulates the rights of control over certain natural resources which include the definition of agrarian.<sup>10</sup>

The group of various areas of law consists of:

- a. Land law that regulates the rights of control over land in the sense of the earth's surface.
- b. Water law, which regulates the rights of water tenure.

- c. Mining law, which regulates the right of control over excavated materials referred to by the basic mining law.
- d. Fisheries law, which regulates the rights of control over natural wealth contained in water.
- e. The law of control over energy and elements in space, regulates the rights of control over energy and elements in space intended by article 48 of the UUPA.

In Agrarian Law there are several principles, namely:

- a. The principle of nationality throughout Indonesia is the unity of the homeland of all Indonesian people who are united as an Indonesian nation.

The principle of nationality is found in article 1 paragraph (1), paragraph (2), and paragraph of the UUPA, namely:

- 1) The entire territory of Indonesia is the unity of the homeland of all Indonesian people who are united as an Indonesian nation.
- 2) The entire earth, water, and space, which are contained in it within the territory of the Republic of Indonesia, as a gift of God Almighty is the earth, water and space of the Indonesian nation and is a national wealth.
- 3) The relationship between the Indonesian nation and the earth, water, and space included in paragraph (2) of this article is an eternal relationship.

Land that exists within the territory of the Indonesian state is a right for the Indonesian nation, so it is not solely the right to be the owner. Similarly the land in the regions and islands.<sup>11</sup>

- b. The principle at the highest level, the earth, water, space, and the natural

<sup>9</sup>Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-undang Pokok Agraria, Isi dan Pelaksananya* (Jakarta: Djambatan, 2005), 5.

<sup>10</sup>Kadek Widya Antari, Ratna Artha Windari, Dan Dewa Gede Sudika Mangku, "Tinjauan Yuridis Mengenai Antynomy Normen (Konflik Norma) Antara Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar-Dasar Pokok Agraria Dengan Undang-Undang Nomor 25 Tahun 2007 Tentang Penanaman Modal Terkait Jangka Waktu Perolehan Hak Atas Tanah," *e-Journal Komunitas Yustisia Universitas Pendidikan Ganesha* 2, no. 2 (2019): 89.

<sup>11</sup>Supriadi, *Hukum Agraria* (Jakarta: Sinar Grafika, 2007), 1.

wealth contained therein are controlled by the State. This principle can be seen in article 2 paragraph (1) UUPA which states that: "on the basis of the provisions in article 33 paragraph 3 of the Basic Law and the matters referred to in article 1, the earth, water, and space, including the natural wealth contained therein are at the highest level controlled by the state as the organizational power of the whole people.

On the basis of the right of control of the state, the state can give land to a person or legal entity with a right to and for its purposes, for example property rights, business use rights, building use rights, use rights, or give it in management to a ruling body (department of self-service regional offices) to be used for the implementation of their respective duties.

- c. The principle of prioritizing national and state interests based on national unity from individual or class interests. This principle can be seen in article 3 of the UUPA, namely: "keeping in mind the provisions in article 1 and article 2, the exercise of customary rights and similar rights of indigenous peoples, as long as in reality they still exist, must be such that they are in accordance with national and state interests, which are based on national unity and must not conflict with higher laws and regulations".
- d. The principle that all land rights have a social function is found in article 6 of the UUPA, namely: "all land rights have a social function." Land rights have a social function not only in the form of property rights, but also business use rights, building use rights, use rights, and rental rights for buildings.  
The right to any land that exists in a person, or legal entity, cannot be

- justified that his land is used (or not used) solely for his personal benefit, especially if it is detrimental to society.
- e. The principle is that only Indonesian citizens have property rights to land. This principle confirms that only Indonesian citizens are domiciled as subjects of property rights. People who are Indonesian citizens in addition to foreign nationality cannot have land rights. Foreigners domiciled in Indonesia cannot own land with the status of property rights, but can only control land that has the status of right of use and lease rights for buildings with a limited period of time.
- f. The principle of equality for every Indonesian citizen. This principle stipulates that Indonesian citizens, both men and women, have the same opportunity to obtain land rights. This principle is found in article 9 paragraph (2) of the UUPA, namely: "every Indonesian citizen, both male and female, has the same opportunity to obtain land rights and to obtain benefits and results, both for themselves and their families."
- g. The principle of agricultural land must be actively worked out or cultivated by the owner himself and prevent means of extortion. This principle affirms that anyone who has a right to land for the benefit of being obliged to actively work or cultivate his own agricultural land and in working or working on the agricultural land must be prevented from means of being sensitizing.  
This principle can be seen in article 10 paragraph (1) of the UUPA, namely: "every person and legal entity who has the appropriate right to agricultural land is principally obliged to actively work or work on their own, by preventing extortion."

- h. The principle of horizontal separation is found in article 44 paragraph (1) of the UUPA, namely: "a person or a legal entity has a lease right to land, if he has the right to use someone else's land for building purposes, by paying the landlord, a sum of money as rent."

Land rights derived from the right of control from the state over land can be granted to individuals, both Indonesian citizens and foreign citizens, a group of people together, and legal entities, both private and public legal entities. The rights to the land in question are specified in article 16 Jo. Article 53 of the UUPA, including:

- a. Proprietary.
- b. Business use rights
- c. Building Use Rights
- d. Right of Use
- e. Leasehold
- f. The right to open land
- g. The right to collect forest products
- h. Other rights not included in the aforementioned rights exercised by law as well as rights of a temporary nature as mentioned in article 53.<sup>12</sup>

Boedi Harsono explained that, "the series of activities in the implementation of land registration is related to one another in a row and becomes a series that boils down to the availability of the necessary data in order to ensure legal certainty in the land sector for the people."<sup>13</sup>

K. Wantjik Saleh also argued that, the purpose of holding land registration by the government is to guarantee legal certainty which includes:

- a. The location, boundaries and area of the land.
- b. Status of land and persons entitled to land

<sup>12</sup>Sigit Supto Nugroho, *Hukum Agraria Indonesia* (Solo: Kafilah Publishing, 2017), 64.

<sup>13</sup> Boedi Harsono, *Beberapa Analisa Tentang Hukum Agraria* (Jakarta: Esa Study Club, 2000), 72.

- c. Provision in the form of a certificate letter.<sup>14</sup>

That legal certainty must include:

- a. Certainty regarding the person / legal entity who is the right holder.
- b. Legal certainty of the object of rights (location, boundaries and area of land plots).<sup>15</sup>

According to Boedi Harsono, land registration has the following functions:

- a. In the field of proof;
- b. Provide guarantees of legal certainty;
- c. In certain matters as a constitutive condition for the occurrence of a legal event, for example: the creation of land rights, the transfer of rights, the abolition of rights.<sup>16</sup>

Article 3 (three) of Government Regulation No. 24 of 1997 states that the purpose of land registration is:

- a. To provide certainty and legal protection to the holder of rights to a plot of land, units of flats and other registered rights in order to easily prove himself as the holder of the right concerned;
- b. To provide information to interested parties including the government so that it can easily obtain the data needed in carrying out legal actions regarding land plots and units of flats that have been registered;
- c. For the orderly implementation of land administration.

Good land registration is very profitable for the community. The advantages of carrying out land registration are:<sup>17</sup>

<sup>14</sup> K. Wantjik Saleh, *Hak Anda Atas Tanah* (Jakarta: Ghalia Indonesia, 1997), 59.

<sup>15</sup>Harun Al-Rasyid, *Sekilas Tentang Jual Beli Tanah (Berikut Peraturan-peraturannya)* (Jakarta: Ghalia Indonesia, 1986), 108.

<sup>16</sup> Harsono, *Beberapa Analisa Tentang Hukum Agraria*, 108.

<sup>17</sup>Eunike Syalom E. Pandey, "Kajian Yuridis Hak-Hak Atas Tanah Menurut Undang-Undang Nomor 5 Tahun

- a. Providing a sense of security to land rights holders due to legal certainty regarding their land rights, which in turn will provide a sense of stability in their business and can increase the productivity of using the land.
- b. Reduced land disputes so that there are savings in costs and time for individuals from the micro aspect as well as for the state in the macro aspect.
- c. Easy, Cheap, and certainty of a transaction regarding land. The transfer of individual rights to unregistered land often results in expensive costs and creates legal uncertainty.
- d. Increase investment by making land as collateral to obtain long-term credit. In general, banking institutions according to the existence of a legitimate right to a guarantee before credit is granted.
- e. The results of land registration in the form of juridical data and physical data in addition to providing legal certainty, can also be used as an instrument for determining the imposition of taxes.<sup>18</sup>

### The Existence of High Pusako Treasures in Nagari Muaro Paiti and the Concept of Contemporary Islamic Inheritance.

The word heir comes from Arabic which is taken from the word which means heir. Meanwhile, the meaning of inheritance according to language is the transfer of something from one person to another'. Or from one people to another.<sup>19</sup> Etymologically mawarith comes

from the plural form of the word mawarith, which is the masdar of the words waratha, yarithu, wirathatan, wa mirathan, which means relic, the transfer of something from an individual / group to another individual / group, something that can be a treasure, knowledge, glory and so on.<sup>20</sup>

So it can be concluded that inheritance or inheritance is the transfer of ownership from a deceased person either in the form of movable and immovable property, or everything he has during the hihup which has value and is mastered perfectly to a living person in accordance with what is established by Islamic law.

In inheritance law, the highest source is the Qur'an and as a complement that describes it is the Sunnah of the Apostle along with the results of the ijihad or efforts of leading Islamic jurists. The legal building of Islamic inheritance has a strong basis, namely the verses of the Qur'an, also based on the sunah of the Prophet Muhammad SAW, which is as follows the letter an-Nisa':7 which reads:<sup>21</sup>

In the interpretation of Al-Misbah it is explained that the verse describes the rights that must be fulfilled and which in reality are often ignored, namely the rights of inheritance. Or in other words, the verse emphasizes that for adult men or children who are left to die by their parents and relatives, there is a right in the form of a certain part determined by Allah Almighty.<sup>22</sup>

Regarding the verses of inheritance and the things set forth therein are as follows:

- a. The Qur'an surah An-Nissa verse 7 provides for the affirmation that men and women can bequeath and affirm with the same designation, in the

1960 Tentang Peraturan Dasar Pokok-Pokok Agraria," *Lex Et Societatis* VII, no. 10 (2019): 73.

<sup>18</sup> Irawan Soerojo, *Kepastian Hukum Hak Atas Tanah di Indonesia* (Surabaya: Arkola, 2003), 27.

<sup>19</sup> Nahmud Yunus, *Kamus Arab-Indonesia*, 8 (Jakarta: Hidakarya Agung, 1990), 496.

<sup>20</sup> Maimun Nawawi, *Pengantar Hukum Kewarisan Islam* (Surabaya: Pustaka Radja, 2016), 2.

<sup>21</sup> Departemen Agama, *Alquran dan Terjemahnya* (Jakarta: Sabaq, 2009), 202.

<sup>22</sup> M. Quraish Shihab, *Tafsir Al-Misbah Pesan, Kesan, dan Keserasian Al-Qur'an* (Jakarta: LenteraHati, 2012), 423.



form that for men and women there is a part of the inheritance of what their father's mother and aqrabun left behind.

- b. The Qur'an surah An-Nissa verse 11 regulates the acquisition of children with 3 (three) lines of law, the acquisition of mothers and fathers with 3 (three) lines of law and matters of will and debt.
- c. Qur'an surat An-Nissa verse 12 regulates the acquisition of widowers and widows with 2 (two) lines of law, the matter of wills and debts and the acquisition of brothers in the case of kalalah with 2 (two) lines of law regarding wills and debts.

Another source of inheritance law in Islam is the Hadith of the Prophet, where the source of law in Islam is the Quran and the Hadith of the Prophet, then the author will contain some Hadith of the Prophet that intersect with the inheritance. That is to say: Divide the inheritance among the heirs according to Kitabullah. (H.R.Muslim and Abu Dawud).<sup>23</sup>

In another Hadith, the Messenger of Allah SAW said: Give a share of the inheritance to his heirs, the rest belongs to the nearest male. (MuttafaqAlaihi).

Other hadiths also emphasize that different religions do not inherit from each other, as contained in the following hadith: It means that they cannot inherit from each other people of different religions." (H.R. Abu Dawud).<sup>24</sup>

In Islam there are several things that cause a person to inherit divided into three kinds, namely:

- a. Due to kinship or nasab relations, this kinship gives rise to the right of

inheritance if one dies. For example, between the child and his parents. If the parent dies, the child inherits the inheritance from his parents. And vice versa if the child dies. Such as both parents (mothers), children, grandchildren, and siblings, as well as uncles and aunts.

- b. Because of the marital relationship, the marriage that causes it to be able to inherit requires two conditions, namely:

- 1) The marriage contract is valid according to Islamic law, whether the two have gathered or not.
- 2) The marital bond between husband and wife is still intact or still considered intact. As for the legal basis that the marriage relationship is one of the causes is the word of Allah Almighty in Q.S.an-Nisa:12).

- c. Al-Wala' (Freeing a Sahaya Servant or Slave), Al-Wala' "is an inherited relationship resulting from a person freeing a servant of sahaya, or through a help-help covenant. For the latter, it seems to be rarely done, in fact there is none at all.

The pillars of inheritance in Islam are as follows:

- a. Heir (al-muwarrith)

What the heir means is the deceased person, whose property is inherited by his heirs. It could be from a parent, a relative, or one of the husbands and wives, it can also be said that the heir is someone who has passed away and left something that can turn to his surviving family. The muwaris, according to scholars is divided into 3 kinds: first Mati Haqiqy (true death), Mati haqiqy (matisejati), second Mati Hukmy (died according to the judgement or juridical), and third died Taqdiry

<sup>23</sup> Akhmad Haries, *Hukum Kewarisan Islam*, 1 (Yogyakarta: Ar-Ruzzmedia, 2019), 27.

<sup>24</sup> Imam Ash-Shan'ani, *Subulus Salam Syarh Bulughul Maram* (kampungunnah.org, 2013).

(died according to conjecture), Mati taqdiry (died according to conjecture) is a death (muwaris) based on a very strong conjecture, For example about the death of a person who came to a place that was being ravaged by war, which can threaten the safety of many people.

So if the person does not go home and there is no news, it could be that he has estimated and strongly suspected death.

b. Heirs (al-warith)

That is someone who has a kinship that causes inheritance as described at length above. In the presence of kinship, a person does not mean automatically becoming an heir who is entitled to a share. It must also meet the requirements established by Islamic law, these requirements are:

- 1) The heir is alive when the testator dies. Whether living in the real world or still in the womb, living hukmi but it is certain that the fetus is in living condition.
- 2) There is no legal obstacle to receiving inheritance, as it is known that there are several obstacles that cause a person to fall from the list of heirs, namely the murderer of the heir, different religions, related to slavery, and who are still in dispute different citizens.
- 3) Not included in the list of heirs who are hindered (mahjub) by the closer heirs.

c. Inheritance (al-mirath)

Inheritance according to Islam is everything left by the Heir who can legally pass to his heirs. In this sense it can be distinguished between inherited property and inherited property.

There are several conditions that must be met, before being declared as heirs that must be distributed to the heirs, namely:

1. Halalness and Legality.

The halal affairs of the heir's estate status are number one that needs to be studied

carefully. Property obtained in an illegitimate way, of course, in sharia law does not include rights that can be owned.

All property whose status is not halal, obtained by means that are not justified by Islamic law, the law is haram owned. And every illegitimate property is owned, the law is also haram to divide the inheritance.<sup>25</sup>

2. Mayyit's Estate.

It is all that mayyit leaves in the form of absolute fixed property and rights or rights which by his death become the right of his heirs in syar'i.

3. Not mixed with someone else's.

When a person dies, in the property in his hands there may still be the rights of others. The heir may indeed not have taken it illegitimately. Perhaps indeed the heir agreed with others to own the property jointly. But obviously, as long as there are other people's rights in the property, they must be sorted out and excluded. The rights of others should not be divided into inheritance.

In Nagari Muaro Paiti, high heirloom treasures or called customary lands of the people are owned by the people together and used together as well. In the traditional proverb says "*kaluak paku kacang balimbiang, tampuruang dilenggak lenggokkan, baok manurun ka saruaso, anak dipangku kemanakan di bimbiang, urang kampuang di pertenggangkan, sarato joadaikenyo*".

The meaning of the customary proverb *anak dipangku kemanakan di bimbiang* that the child be provided with a living with a living estate, whereaskemanakan di bimbiangThe point is that it is safe to be guided by heirloom treasures. Mamak is only as the holder of pusako property not one who owns high pusako property.<sup>26</sup>

<sup>25</sup> Muhammad Ajib, *Fiqih Hibah dan Waris* (Jakarta: Rumah Fiqih Publishing, 2019), 58.

<sup>26</sup> Wawancara dengan Dt. Dirajo (*Niniak Mamak Suku Melayu*), yang dilakukan pada Jumat 16 Juni 2021.

The basic concept of high heirloom property can be used at any time by the person who manages it but must not be owned either by being passed on to children or wives/husbands or by buying and selling the customary land of the people.

Regarding the certification of high heirloom property in nagari Muaro Paiti, many people do not support the existence of a certificate of high heirloom property, because every certified land is already the property of the certifying person, while in high heirloom property, especially customary land, the ownership is joint. Against the certification of high heirloom property, the niniak mamak in Nagari Muaro Paiti completely does not support this because it can eliminate in detail the characteristics of customs, namely the loss of heirloom property.<sup>27</sup>

Every high heirloom land that is certified by the community, then naturally the high heirloom land turns into a low heirloom treasure and can be inherited or sold by the person who certifies the high heirloom land. Of course, this is not in accordance with the purpose of the existence of heirloom property, which is to ensure the social life of the people.<sup>28</sup>

If you look at the opinions of religious leaders in Nagari Muaro Paiti, it seems that they disagree with the certification of high heirloom property because the property belongs to the members of the people. If it is certified, the property of this high pusako automatically becomes a low heirloom property meaning that with the certification, the property from which it is jointly owned turns into private property and will naturally be passed on to its children,<sup>29</sup> Meanwhile, this

high heirloom treasure cannot be passed on to the children of the manager, because the treasure returns to the people if the manager of the high heirloom treasure has left the world.<sup>30</sup>

The Nagari Muaro Paiti community in general also does not support the certification of high pusako property because this high heirloom property is a common property in the people and those who have property rights to the high heirloom property are all members of the people. So in high heirloom property there is no term personal property that exists is the right to manage high heirloom property individually then for that reason the Nagari Muaro Paiti community does not support the certification of high heirloom property, if it is certified then the property no longer has the status of common property but turns into personal property.<sup>31</sup>

From the results of the author's interviews with the speakers about the certification of high heirloom property, the author can conclude that the high heirloom property is a common property of all members of the people and the management of high heirloom property is private, to ensure legal certainty of this high heirloom land, it can be certified by means of joint ownership nor by private ownership, This means that this high heirloom property is registered to be made a certificate with the status of the common property of the people and who makes the high heirloom property certificate in the name of the tunganai and in the name of the head of the people, then there will be no change in the high heirloom property to the low heirloom treasure after the high heirloom treasure is certified.

In Nagari Muaro Paiti the treasure of the high pusako can be certified, of course in ways

<sup>27</sup> Wawancara dengan Dt. Magel Rajo Sati (*Pimpinan Adat Nagari Muaro Paiti*), yang dilakukan pada Jumat 6 Juli 2021.

<sup>28</sup> Wawancara dengan Tedi Krisna (*Masyarakat Umum*), yang dilakukan pada Jumat 16 Juli 2021.

<sup>29</sup> Wawancara dengan Hendri Katib (*Ulama*), yang dilakukan pada Jumat 15 Juli 2021.

<sup>30</sup> Wawancara dengan Imam Diris (*Ulama*), yang dilakukan pada Jumat 15 Juli 2021.

<sup>31</sup> Wawancara dengan Suryani (*Masyarakat Umum*), yang dilakukan pada Jumat 16 Juli 2021.

that have been determined by the customary rules in Nagari Muaro Paiti, namely by means of bali baminto bakarilaan. Basically, the male or female side can use the customary land of the people to meet the needs of their lives and their families. In Nagari Muaro Paiti there is a rule that gives members of the people the opportunity to own land by buying it to their people, meaning that only that people can buy their customary land either from men or women.<sup>32</sup>The condition for buying and selling the customary land of the people is with the willingness of all members of the clan without exception, after getting the willingness of all members of the tribe, it is only legal to buy and sell the customary land. So by itself the status of high heirloom treasures turns into rendah heirloom treasures because the land is obtained by means of bali baminto bakarilaan from his people.<sup>33</sup>

The procedure that must be taken by members of the community in changing the status of high heirloom property to low heirloom property, namely by transferring rights to customary land internally by the people, is carried out as follows, including:

1. Members of the people conduct deliberations for consensus. In the deliberation of consensus by all members of the people or those who represent it where the person who presides over the meeting is the head of the heir. In this meeting, it was decided whether the land could be sold or not. In making this decision, one must have a unanimous agreement, where if a person does not agree to sell it then the sale of the land cannot be made.
2. Divide or decide which part to

transfer (sell). In this case, after it has been decided by the head of the inheritance which has received approval from the members of the clan to transfer (sell) part of the customary land, it is determined which of the customary land to sell. In deciding the part of the land to be transferred (sold) is decided equally in the said meeting and also in deciding it must by unanimous decision or the whole meeting approve it;

3. The results of the meeting are notified to the tribal rulers. The results of the meeting of the members of the tribe were notified to the tribal rulers. Where the penghulu tribe here serves to know that one of his people will sell the customary land of the people. The chief heir will tell the tribal rulers what caused them to sell part of their people's property and which part to sell. After hearing everything said by the chief heir, then the tribal ruler can agree to it.
4. The results of the meeting were notified at the Nagari Customary Density (KAN). As a result of the meeting and approved by the tribal ruler, the head of the heir informed the Nagari Customary Density that the chairman of the Nagari Customary Density agreed and knew that there was a part of the customary land of the people's land in Nagarnya that was sold.<sup>34</sup>

The next procedure carried out by the people or the papers that must be made by the seller in this case the members of the tribe are:

1. Ranji, this is what is used is a small ranji that is a member of the ranji of the

<sup>32</sup> Wawancara dengan Dt. Dirajo (*Niniak Mamak Suku Melayu*), yang dilakukan pada Jumat 16 Juni 2021.

<sup>33</sup> Wawancara dengan Dt. Bijo Dirajo (*Niniak Mamak Suku Pitopang*), yang dilakukan pada Jumat 5 Juni 2021.

<sup>34</sup> Wawancara dengan Dt. Magel Rajo Sati (*Pimpinan Adat Nagari Muaro PAITI*), yang dilakukan pada Jumat 6 Juli 2021.

- people. This ranji diamana is at least 5 (four) levels of the group and above. Ranji created by the people and known and signed by the chief mamak, the chief mamak, and the nagari traditional density (KAN) chairman. In the marking of the ranji it is stamped on the signature of the chief's mother;
2. Letter of approval of the members of the people, the letter of approval is made by the head of the inheritance, the content of which is the division or property of the people to be sold must have the overall approval of the members of the tribe, wherein all members of the clan must be made the name of both the newborn, and sign.
  3. An affidavit that the land shall be handed over to the purchasing member of the people, herein it is written that the land before being sold is handed over to whom (one of the members of the tribe), is known and signed by the mamak of the chief heir in the seal, the mamak penghulu of the tribe, the Chairman of the Nagari Traditional Density (KAN), the Wali Nagari;
  4. Certificate, certificate explaining that the location of the land, controlled by whom, is known and signed by the Wali Nagari and the Sub-District Head;
  5. The affidavit of land acquisition, herein declares that a divided piece of land to be sold is in whose name, and signed by the concerned, is known and signed by the chief heir, ninik mamak the chieftain, the owner of the land bounded by the land, the village head, the sub-district;
  6. Affidavit, in which this affidavit states that true or original is the signature of the person in possession of the land, signed by the person concerned using a stamp and known to the head of the

heir.<sup>35</sup>

With the above steps, high heirloom treasures become low heirloom treasures and then certificates can be made by the Agrarian office. In minangkabau custom, randah heirloom treasures are treated differently than high heirloom treasures which is in accordance with the traditional proverb says "*tasabuike pulo pusako randah, dinamokan juo tambilang ameh, bandak dijua atau dihibabkan atau gadai indak jadi masalab*". The meaning of this customary pepatah is that low heirloom property can be sold, given or mortgaged by the person who controls the property, meaning that the property of pusako randah applies full property rights to its.

Judging from the times, the customary land of the people in Nagari Muaro Paiti has become a lot of pusako randah property and of course the community took advantage of the opportunity to make pusako randah property a full property right, namely by making a title certificate. In article 9 paragraph (2) of the UUPA, namely: "every Indonesian citizen, both men and women, has the same opportunity to obtain land rights and to get benefits and results, both for themselves and their families."

And on that basis, the Muaro Paiti community changed the status of high pusako property to pusako randah property so that it could be certified to become property rights. From the above explanation, it can be concluded, that the estate has several conditions before the property is actually declared an heir to be distributed to his heirs. Not everything that appears on the property left by the heir can be called inheritance, it can be someone else's property in it, therefore it is important to know the conditions that exist on the estate.

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<sup>35</sup> Wawancara dengan Dt. Magel Rajo Sati (*Pimpinan Adat Nagari Muaro Paiti*), yang dilakukan pada Jumat 6 Juli 2021.

## CONCLUSION

The ownership of high heirloom property, especially customary land in Nagari Muaro Paiti, which is basically jointly owned by members of the people and the control of the high heirloom land by the mother of the house of gadang in his village, has changed its legal understanding since the presence of Law on No. 5 of 1960 on Agrarian Principles and government regulations on land, which relates to the order and customs of the people in Nagari Muaro Paiti regarding land tenure. Originally the right for the person who controlled the high heirloom property was only the right to use the high heirloom land to be more productive, but now it is a private full ownership. Thus, based on the results of the author's research, it was found that the community even tried to convert high heirloom treasures into low heirloom treasures, namely by asking for a bakarilaan from all members of the people, with the consequence that if all members of the people agreed then the land was legally their own, so that some people the concept of bali mintak bakarilaan against the high heirloom property harmed the community in that people and provided benefits for the certify the land. This certainly intersects with the concept of Islamic inheritance which can only be applied as long as the pillars and conditions of inheritance are met. Regarding the problems and findings of the author previously mentioned, the author concludes that the certified high heirloom property still leaves a historical problem with the question of whether the way bali mintak bakarilaan is really understood as a contract of buying and selling, as for its relevance to Islamic inheritance that the inheritance that the property that can be inherited is really the result of personal efforts without the rights of others

## REFERENCE

- Ajib, Muhammad. *Fiqih Hibah dan Waris*. Jakarta: Rumah Fiqih Publishing, 2019.
- Al-Rasyid, Harun. *Sekilas Tentang Jual Beli Tanah (Berikut Peraturan-Peraturannya)*. Jakarta: Ghalia Indonesia, 1986.
- Al-Sabuni, Muhammad Ali. *Pembagian Waris Menurut Islam*. Diterjemahkan oleh A.M Basamalah. Jakarta: Gema Insani Press, 1996.
- Antari, Kadek Widya, Ratna Artha Windari, dan Dewa Gede Sudika Mangku. "Tinjauan Yuridis Mengenai Antynomy Normen (Konflik Norma) Antara Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar-Dasar Pokok Agraria Dengan Undang-Undang Nomor 25 Tahun 2007 Tentang Penanaman Modal Terkait Jangka Waktu Perolehan Hak Atas Tanah." *e-Journal Komunitas Yustisia Universitas Pendidikan Ganesha* 2, no. 2 (2019).
- Aoslavia, Cindy. "Perbandingan Hukum Waris Adat Minangkabau Sumatera Barat Dan Hukum Perdata Barat." *Mizan: Jurnal Ilmu Hukum* 10, no. 1 (2021).
- Ash-Shan'ani, Imam. *Subulus Salam Syarh Bulughul Maram*. kampungsunah.org, 2013.
- Azhari, Ikhsan, Irma Suryani, dan Dodon Alfiander. "Settlement of Pusako-Tinggi Property Disputes in Nagari Sungai Tarab." *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum* 20, no. 1 (2022). <http://dx.doi.org/10.32694/qst.v20i1.1140>.
- Faniyah, Iyah, dan Della Monita. "Pelaksanaan Dan Berakhirnya Gadai Tanah Harta Pusako Tinggi Masyarakat Adat Minangkabau." *Jurnal Sakato Ekasakti Law Review* 1, no. 1 (2022). <https://doi.org/10.31933/jselr.v1i1.542>.
- Haries, Akhmad. *Hukum Kewarisan Islam*. 1. Yogyakarta: Ar-Ruzzmedia, 2019.
- Haron, Mohamad Sabri bin, dan Iza Hanifuddin. "Harta Dalam Konsepsi Adat Minangkabau." *JURIS (Jurnal Ilmiah Syariah)* 11, no. 1 (2012): 1–13.
- Harsono, Boedi. *Beberapa Analisa Tentang Hukum Agraria*. Jakarta: Esa Study Club, 2000.
- . *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-undang Pokok Agraria, Isi dan Pelaksanaanya*. Jakarta: Djambatan, 2005.
- Nawawi, Maimun. *Pengantar Hukum Kewarisan Islam*. Surabaya: Pustaka Radja, 2016.
- Nugroho, Sigit Sapto. *Hukum Agraria Indonesia*. Solo: Kafilah Publishing, 2017.
- Nuriz, Ulfa Chaerani. "Penerapan Hukum Adat Minangkabau Dalam Pembagian Warisan Atas Tanah." *Diponegoro Law Journal* 6, no. 1 (2017).
- Pandey, Eunike Syalom E. "Kajian Yuridis Hak-Hak Atas Tanah Menurut Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok–Pokok Agraria." *Lex Et Societatis* VII, no. 10 (2019).
- Purwanto. "Hukum Agraria," 2013. <http://politikagraria.blogspot.com/2013/04/pengertian-hukumagraria.html> 15.
- Putra, Yosrizal, Yulia Nizwana, dan Adriyanti. "Pelaksanaan Akad Gadai Sawah Pusako Tinggi Di Jorong Tabek Pala Nagari Talang Ditinjau Dari Hukum Adat Minangkabau Dan Hukum Islam." *Jurnal Sarmada*, t.t.
- Putri, Eti Siska, Firman Firman, dan Rusdinal Rusdinal. "Pergeseran Hukum Waris Adat Di Minangkabau (Studi Kasus: Hukum Warisan Tanah Ulayat di Nagari Ladang Panjang Kecamatan Tigo Nagari, Kabupaten Pasaman, Sumatera Barat)." *Culture & Society: Journal of Anthropological Research* 1, no. 2 (2019). <https://doi.org/10.24036/culture/vol1-iss2/26>.

- Rahmat, Indra. "Pengelolaan Harta Pusaka Tinggi Dalam Masyarakat Adat Minangkabau (Studi di Kecamatan Batipuh Kabupaten Tanah Datar)." *Jurnal Bakaba* 8, no. 1 (2019). <http://ejournal.stkip-pgri-sumbar.ac.id/index.php/bakaba>.
- Saleh, K. Wantjik. *Hak Anda Atas Tanah*. Jakarta: Ghalia Indonesia, 1997.
- Shihab, M. Quraish. *Tafsir Al-Misbah Pesan, Kesan, dan Keserasian Al-Qur'an*. Jakarta: Lentera Hati, 2012.
- Soerojo, Irawan. *Kepastian Hukum Hak Atas Tanah di Indonesia*. Surabaya: Arkola, 2003.
- Sugiyono. *Metode Penelitian Pendidikan (Pendekatan Kuantitatif, Kualitatif, dan R&D)*. Bandung: Alfabeta, 2010.
- Supriadi. *Hukum Agraria*. Jakarta: Sinar Grafika, 2007.
- Syarifuddin, Amir. *Pelaksanaan Hukum Kewarisan Islam Dalam Lingkungan Adat Minangkabau*. Jakarta: PT. Gunung Agung, 1984.
- Thalib, Sajuti. *Hukum Kewarisan Islam di Indonesia*. Jakarta: Bima Aksara, 1987.
- Wati Rahmiria, dan Muhammad Zulfikar. *Hukum Waris Berdasarkan Hukum Perdata Barat dan Kompilasi Hukum Islam*. Bandar Lampung: Rajawali Press, 2018.
- Yuhelna, Sri Rahmadani, dan Waza Karia Akbar. "Penguatan Peran Perempuan Dalam Pengelolaan Harta Pusaka Tinggi Di Minangkabau." *Ekasakti Jurnal Penelitian & Pengabdian* 1, no. 1 (2021): 292–97.
- Yunus, Mahmud. *Kamus Arab-Indonesia*. 8. Jakarta: Hidakarya Agung, 1990.