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THE HARMONIOUS RELATIONSHIP BETWEEN MINANGKABAU CUSTOM AND ISLAM IN THE DISTRIBUTION OF INHERITANCE

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Abstract

*This paper explores the relationship between Minangkabau custom and Islam in the distribution of inheritance. Minangkabau, one of the major tribes in Indonesia that embraces Islam, has unique and distinctive customs, one of which is the distribution of inheritance in its matrilineal family system. Islam adheres to a bilateral-parental system. The researchers conducted an in-depth study on the harmonious relationship between Minangkabau custom and Islam, with a focus on the distribution of inheritance. The study uses the normative approach with a qualitative analysis. The findings indicate that in the beginning, Minangkabau customs and Islamic teachings had a striking paradoxical relationship. However, a harmonious path was found in which the distribution of inheritance in the matrilineal family system could be preserved without violating Islamic inheritance law. The path adopted divides family property into higher inheritance and lower inheritance, where customary law applies to the former, and Islamic law (*farā'id*) applies to the latter which is known as subsistence inheritance. Higher inheritance is called *waqf* or *mussābalah* assets, based on the principle of *al-ādat al-muhākkamah wa al-'urfu qaḍin*" in Islamic law which means customs are both law and judge. This research contributes to a comprehensive study of the inheritance system adopted by the Minangkabau ethnic group and provides an understanding of the Minangkabau people. More importantly it shows how Islamic*

inheritance law can be adapted to accommodate the influence of customary law in resolving inheritance.

Keywords: Islamic inheritance law, *Farā'id*, Minangkabau custom, Local custom.

Introduction

Minangkabau mainly describes the customary environment of a region approximately located in West Sumatra Province. The word “approximately” is used because the definition of Minangkabau is not exactly the same as the definition of West Sumatra.¹ This is because the word Minangkabau has a more socio-cultural meaning.² The cultural boundaries of Minangkabau expand from *riak nan badabuah*, *siluluak punai mati*, *sirangkak* and *badanguang buayo putiah daguak*, *taratak aie hitam*, *sikilang aie bangieh* to *durian ditakuak rajo*.³ The boundaries identified are difficult to interpret correctly, as they are symbolically expressed. *Riak nan badabuah* is thought to be the Indian Ocean; *si kilang aie bangieh* is allegedly the name of a place located in West Pasaman; while *taratak aie hitam* is thought to be the current Indragiri area.⁴

According to Nasroen who quotes van der Tuuk’s opinion, the word Minangkabau is derived from *pinang khabu*, meaning “homeland”.⁵ Some say it originated from “*menang kerbau*” freely

¹ Dwi Winanto Hadi Bakti Utama, *Laporan Analisis Kekayaan Dan Keragaman Budaya Provinsi Sumatera Barat* (Jakarta: Pusat Data dan Statistik Pendidikan dan Kebudayaan Sekretariat Jenderal Kementerian Pendidikan dan Kebudayaan, 2017).32

² Amir Syarifuddin, *Pelaksanaan Hukum Kewarisan Islam Di Lingkungan Adat Minangkabau* (Jakarta: Gunung Agung, 1984).

³ Datoek Batoeah Sango, *Tambo Alam Minangkabau* (Pajokoemboeh: Limbago, 1979).58-70, see also Mochtar Naim, *Merantau Pola Migrasi Suku Minangkabau*, (Yogyakarta: Gadjah Mada University Pers, 1976), 61

⁴ Adrianus Khatib, *Kaum Paderi Dan Pemikiran Keagamaan Di Minangkabau* (Jakarta: Fakultas Pascasarjana IAIN Syarif Hidayatullah, 1991), 38. See also Irhash A. Shamad, dan Danil Chaniago, *Islam dan Praksis Kultural Masyarakat Minangkabau*, (Jakarta: PT Tintamas Indonesia, 2007).

⁵ Nasroen, *Dasar Falsafah Adat Minangkabau* (Jakarta: Bulan Bintang, 1957), 19.

translated as “triumphant buffalo” or “*mainan kerbau*” means “toy buffalo”. Nonetheless, these last two meanings cannot be verified as they are nothing more than fairy tale or “*kaba*”. Metaphorically, it can be understood as a narrative of how a small kingdom which is likened to a little buffalo, wants to break free from the great kingdom of Majapahit, the big buffalo. In the struggle, the big buffalo loses and the little buffalo wins or gains victory (triumphant buffalo).⁶

Minangkabau has therefore two meanings: first, as the place where the Pagaruyung kingdom was first founded and second, as one of the ethnic groups inhabiting the area.⁷ Today, the Pagaruyung kingdom has been long forgotten by the Minangkabau people. The term Minangkabau no longer has the connotation of a kingdom territory; rather it defines an ethnic group or culture comprising Minangkabau ethnic.⁸

The teachings of Minangkabau custom are expressed in the form of *petitah petitih* that is, the norms are expressed in a profound figurative sense with the basic teaching of *alam takambang menjadi guru* (learning from nature). *Petitah petitih* is the basis of Minangkabau customary law in all actions taken, reaching all aspects of Minangkabau community life such as politics, economics, socio-culture, defense and security.⁹ When Islam entered Minangkabau,¹⁰ Minangkabau custom was in its integrated form with minor influences from Hindu and Buddhist culture. Islam brought with it teachings on spiritual beliefs or faith and principles in the order of public life called “*Shari’ah*”. Custom has norms

⁶ Yaswirman, *Hukum Keluarga: Karakteristik Dan Prospek Doktrin Islam Dan Adat Dalam Masyarakat Matrilineal Minangkabau* (Jakarta: PT RajaGrafindo Persada, 2011).

⁷ M.D. Mansoer, *Sejarah Minangkabau* (Jakarta: Bhratara, 1970), 58.

⁸ Hajizar, *Studi Tekstual Dan Musikologis Kesenian Tradisional Minangkabau Sijobang: Kaba Anggun Nan Tungga Magek Jabang* (Sumatra Utara: PhD dissertation, Universitas Sumatera Utara, 1988), 31.

⁹ Idrus Hakimy Dt. Rajo Penghulu, *Rangkaian Mustika Adat Basandi Syarak Di Minangkabau* (Bandung: CV.Remaja Karya, 1988), xv. See also Yelia Nathassa Winstar, “Pelaksanaan Dua Sistem Kewarisan Pada Masyarakat Adat Minangkabau”, *Jurnal Hukum dan Pembangunan* 2 (2007), 154.

¹⁰ Slamet Mulyana, *Runtuhnya Kerajaan Hindu Jawa Dan Timbulnya Negara-Negara Islam Di Nusantara* (Jakarta: Bathara, 1963), 261.

determined by birth which are different from Islamic teachings.¹¹ Custom regulates the relationship between individuals within the society in this life, not the hereafter. A customary proverb therefore reads: “*hidup dikandung adat, mati dikandung tanah*”. The teachings of Minangkabau customary law, namely *Undang-undang Nan Dua Puluh* (customary law on offenses in Minangkabau), existed long before Indonesian independence.¹²

Islam, on the other hand, regulates the relationship between individuals and God commonly referred to as *habl min Allah* (relationship with God) and also regulates the relationships between individuals within the society, usually known as *habl min al-nās* (relationship with human beings).

Clashes between custom and Islamic law appear in the social arena, particularly in the kinship system. Minangkabau custom adheres to a matrilineal system, whilst Islam adheres to the bilateral-parental. In Minangkabau, the husband lives in the wife’s family home whereas in Islam, the wife lives in the house provided by her husband. The impact of the Minangkabau matrilineal system thus extends to marriage, guardianship, property and inheritance. Despite the consensus of “*adat basandi syarak, syarak basandi kitabullah, syarak mangato, adat memakai,*” the contact between custom and Islam in this regard has undergone a long process.

In this research, the researchers have conducted an in-depth study on the harmonious relationship between Minangkabau custom and Islam, especially in the distribution of inheritance. Some Minangkabau customary teachings are contrary to Islamic teachings; nonetheless, Islam has become the religion embraced by its indigenous people, making it an inseparable part of Minangkabau custom itself.

The methodology used in this research is the normative approach with qualitative analysis. The reason for choosing this method is that the researchers are looking for concepts in inheritance

¹¹ Amir Syarifuddin, *Pelaksanaan Hukum Kewarisan Islam di Lingkungan Adat Minangkabau*. PhD Diss., (Institut Agama Islam Negeri Syarif Hidayatullah, 1982).

¹² H. Munir Salim, “Adat Recht Sebagai Bukti Sejarah Dalam Perkembangan Hukum Positif Di Indonesia,” *Al-Daulah Jurnal*, Vol. 4, No.1, (2015).

law, in custom and religion, as well as searching for differences between the two areas.

Minangkabau Matrilineal Kinship

A unique and interesting Minangkabau custom lies in its strong matrilineal kinship system. Matrilineal kinship is a kinship system which is mainly based on the female (upward from mother's lineage and downward from daughter's lineage). It is so far unknown who exactly brought this system to Minangkabau. Yet, the lineage of the Minangkabau people adheres to the matrilineal line. Etymologically, *matri* means mother and *lineal* means line. The line covers (i) the grandmothers' family consisting of the grandmothers of the men and women; (ii) the children of women's grandmothers; and (iii) men, women and children of the mother and her sisters. The list goes on to their grandchildren and great grandchildren. As a family grows, the connection with the grandmother and great grandmother diminishes. The group of people is then led by a *penghulu* (leader) and a *panungkek* (deputy leader), *imam khatib*, and so on.¹³

The matrilineal system in Minangkabau is a complex and impeccable system because it regulates nearly all aspects of the indigenous people's lives, for instance property and marital rules, management of the community and tribe despite the influence of foreign culture and other modern changes in society.¹⁴

Minangkabau are a people with the most tangible matriarchal system in the world today where an offspring can be traced through the female line or the mother's descendants. Children of sisters or cousins are closely related to one another, therefore marriage among them is disallowed. Tracing descendants from the husband's side is arguably non-existent. Children live and grow up in their mother's house, while the husband in the marital relationship is considered as an outsider when seen from the mother's line. This system will obviously have a bearing on decisions made with regard to inheritance or heirlooms

¹³ Sjafnir A.N. DT. Kando Marajo. *Sirih Pinang of Minangkabau Custom: Thematic Minangkabau Customary Knowledge*, (Padang: Sentra Budaya, 2006).

¹⁴ Suardi Mahyuddin, *Minangkabau Customary Law System Dynamics in the Supreme Court Jurisprudence*, (Jakarta: PT. Candi Cipta Paramuda, 2009).

which are distributed in accordance with the female line.¹⁵

The characteristics of the Minangkabau people with a matrilineal system can be summarised as follows:

1. An offspring is traced based on the maternal lineage.
2. The tribe is established according to the mother's line.
3. No one is allowed to marry anyone who shares the same tribe, that is they must marry an outsider (exogamy).
4. Power within the tribe is theoretically in the hands of the mother, yet it is rarely used. In practice, the leader is an uncle or mother's brother.
5. Marriage is matrilineal, where the husband resides in the wife's house.
6. Rights and inheritance are passed on by *mamak* (uncle) to his niece, namely from the brother to his sister's daughter.
7. All members of the tribe are required to develop the sense of "being in the same boat" under all situations.¹⁶

Special characteristics of Minangkabau people may be closely related to the structural nature of their society and its culture. Minangkabau people are bound to their mother, home and maternal heirlooms. It also shows up in the personality of the Minangkabau man. Although he might not have been living in his mother's home for years, his feelings revolve around it. His emotional connection with his father is regarded as shallow. The Minangkabau woman has confidence in herself because she does not have to depend on her husband whom she has culturally taken into the maternal home. In her life, she works and takes responsibility for the children, house and land which she has the right over, worked for and indulged in.¹⁷

However, women's role in the Minangkabau tribe is not more than a successor to her maternal lineage. Women are not placed on the scale of governance in a broad sense, namely *rumah gadang* (spired roof house). In principle, once *rumah gadang* is fully built by the chief

¹⁵ A. A. Navis, (ed), *Minangkabau Dialectics: In Social and Political Conflict*, (Jakarta: Genta Singgalang Press, 1983).

¹⁶ Suardi Mahyuddin, *Minangkabau Customary Law System Dynamics in the Supreme Court Jurisprudence*, (Jakarta: PT. Candi Cipta Paramuda, 2009).

¹⁷ A. A. Navis, (ed), *Minangkabau Dialectics: in Social and Political Conflict*. (Jakarta: Genta Singgalang Press, 1983).

of *mamak's* heir, the ones who live in the house are his sister and her family instead of him and his family. However, the one who remains in power is the leader of the tribe, *tungganai* or *penghulu andika*. Thus, *rumah gadang* will never be pawned or sold. In recent times many *rumah gadang* are left damaged and uninhabited. Despite their decaying conditions, these houses are never pawned or put on sale.

What is meant by a matrilineal institutionalisation? Firstly, a household is the lowest unit; secondly, a unit is higher than the whole house if it continues to develop; thirdly, the lineage who occupies *rumah gadang* must be able to trace back their genealogy; and fourthly, the tribe is the highest unit. It may be difficult to trace back the genealogy of the tribe as it has developed in such a way.¹⁸

The matrilineal kinship of the Minangkabau does not mean that men do not play any role in the household. According to their respective roles, a man who shares the same genealogy line as a woman has strict responsibilities as the successor of *rumah gadang*. A husband engages himself in new forms of conflict as he is expected to be the ideal husband as an outsider or *urang sumando*. He is obliged to protect the dignity of his children and wife in his house, as well as to be responsible as *ninik mamak* to his sisters and their sons and daughters who are in the same matrilineal lineage.

In principle, Minangkabau boys still own full rights to their mother's house as they can use it as higher inheritance. Minangkabau customary law does not distinguish the benefits obtained by children in the tribe. In practice girls only have rooms in *rumah gadang*, while boys, since early childhood, are taught and are accustomed to sleep in the tribe's cabin together with their peers under the supervision of their teachers. After studying and reciting the Qur'ān, they sleep in groups inside the mosque. Girls, on the contrary, are not accustomed to sleep in the mosque.¹⁹

¹⁸ See Amir Syarifuddin, 187-188. Each unit is led by the oldest man; the oldest son of the oldest mother is prioritized (if there are several mothers from one grandmother) called "*mamak rumah*". In *jurai*/ unit, he is called "*mamak jurai*"; while in *tungganai*, he is called "*mamak of chief heir*" as the holder of inheritance. All these units are also led by a *penghulu (datuk)*.

¹⁹ Suardi Mahyuddin, *Minangkabau Customary Law System Dynamics in the Supreme Court Jurisprudence*, (Jakarta: PT. Candi Cipta Paramuda, 2009).

Minangkabau Custom and Islamic Teaching

Along with the advent of Islam into the Minangkabau region, the implementation of custom and teachings of Islam also assimilated into the Minangkabau Muslim's realms with some people seeking to gather knowledge in Makkah. Upon returning from the holy land, they found that some customs and habits in their homeland were contradictory to the teachings of Islam. This resulted in conflicts between strict adherents of the religion and the indigenous people which culminated in a war, prompting a showdown between the indigenous people who received help from the colonial troops and the religious group (dubbed the *paderi* people) that eventually put up a fight against the Netherlands.

The rising conflict between the indigenous and religious groups centered around the contrast between Minangkabau matrilineal customary system and the provisions in the Islamic teachings which tended to support a patrilineal system. In the matrilineal system, the dominant role is played by mothers and the household is dedicated to women, whilst in the patrilineal system house ownership goes to fathers (men) and upon marriage, a woman comes to her husband's house. This is in contrast with the matrilineal system where a Minangkabau man comes to his wife's house following the marriage. The matrilineal system has communal or shared property (*pusako*) while in the patrilineal system the father's property is to be fully shared, where a son will get twice more than a daughter. In addition, there are customary provisions which are incompatible with Islamic teachings such as gambling and taking intoxicating drinks.

In the beginning there were indeed clashes between local custom and Islam. In the view of Snouck Hurgronje and van Vollenhoven, which was further supported by the French sociologist Bousquet the conclusion was that the Minangkabau case was a striking paradox in Islamic sociology.²⁰ At a glance this opinion may hold some truth, as many people assume that Minangkabau custom is a local practice that regulates the interaction among fellow

²⁰ G.H. Bousquet, *Adat Dan Islam: Suatu Tinjauan Tentang Konflik Di Minangkabau*. Abdullah (Ed.) (Jakarta: Pustaka Firdaus, 1987), 104.

community members, thus sparking a conflict with the *Shari'ah*. More than just a habit custom includes a value system, ethics and law aimed to embody ideal behavior,²¹ so the conflict should not be exaggerated as it is not principle in nature. In comparing Minangkabau with Aceh, Snouck for instance argued that humans as individuals and members of society would go through inseparable religious and non-religious lives. Muslims shall be observed as individuals, as members of society and social beings, and judged on how they practice the teachings of Islam in their daily lives.²²

Snouck in his conclusions about Minangkabau, sharply distinguished customary substance from Islam and the behaviour of the Minangkabau people when they applied custom on the one hand, and Islam on the other. For instance, the attitude of the society in its daily interactions was mainly regulated by custom, but their relationship with God was transcendently regulated by religion. Snouck's conclusion is reinforced by Schrieke.²³ The inability of members of the society to harmonise these two value systems chiefly led to social divisions.

Although not all Islamic teachings were in harmony with the customs especially during the early arrival of Islam, the problem did not necessarily ignite unresolved conflicts. Local custom and Islam in Minangkabau would finally strengthen the lives of the Minangkabau people as shown in the formulation of a balanced relationship between local custom and Islam, namely "*adat basandi syarak, syarak basandi Kitabullah, syarak mangato, adat mamakai*." The adoption of this saying in the lives of the Minangkabau proves that there is certainly no conflict between custom and Islam; in fact, they complement each other. If the researchers had seen the conditions in Minangkabau society before the formula was adopted, the assumption of conflict might be true. Seeing the consensus in the

²¹ P E de Josselin de Jong, *Minangkabau and Negri Sembilan: Socio-Political Structure in Indonesia* (New York: AMS Press, 1980), 85.

²² See C.W.J. Drewes, "Snouck Hurgronje and the Study of Islam", In *Land-En Volkenkunde*, 113, no. 1 (1957): 15.

²³ B. Schrieke, *Indonesian Sociological Studies* (Bandung: The Hague, 1955), 150.

people's lives during the time span of the research shows the assumption is no longer relevant.²⁴

The gradual inclusion of Islam in the lives of the Minangkabau people greatly influenced Minangkabau custom. The peak of Islam's influence was in the changes of customary philosophy that occurred four times, namely the philosophy of *alam takambang menjadi guru* into the latest philosophy of *adat besandi syara', syara' besandi kitabullah*. The changes occurred in the context of adjusting existing customs to incoming Islam to the point where the religion is entrenched in Minangkabau society up to this day.²⁵ The adjustment between custom and *Shari'ah* is applied within certain boundaries, and the adjusted norms are practised as the custom. With the formulation of the philosophies everything had to adapt to *Shari'ah*. *Shari'ah* in this context is not the interpretation of custom, rather it is the *Shari'ah* explicated in the Qur'an - the holy book.

The second philosophical formula reads "*syara' mengata, adat memakai*" which may have led to the incorrect understanding of *Shari'ah* itself, as happened among the leaders and legal experts in Minangkabau. Some understood it to mean that anything in the *Shari'ah* can be used and hold legal power only after passing through a customary institution.²⁶ The thinking was that Islamic law can only come into force when it is channeled through customary institutions. Such interpretation is in line with the "reception theory" developed by Ter Haar who was among the legal experts and court officials in Indonesia. In accordance with this theory Islamic Law as it is, is not law. It is only treated as a legal sanction if it is already accepted by and is applicable in customary law.

Since the definition of the second formula contradicts the first formula, particular research investigating the issue is needed for a valid interpretation. In the opinion of Angku Kali Malin Batuah, a

²⁴ Yaswirman, *Hukum Keluarga: Karakteristik Dan Prospek Doktrin Islam dan Adat Dalam Masyarakat Matrilineal Minangkabau*, (Jakarta: Raja Grafindo Persada, 2011).

²⁵ Yelia Nathassa Winstar, "The Implementation of Two Inheritance Systems in Minangkabau Indigenous People," *Journal of Law and Development*, No. 2 (2007): 155.

²⁶ Sofyan Asmawi, "Perpaduan Dan Perbenturan Adat dan Ajaran Agama" (Seminar Islam di Minangkabau, Minang Permai, Padang, 1969), 2.

customary expert in the former center of Minangkabau kingdom, Pagarruyung, the second formula had differed from its original formula which then led to a misunderstanding. The original formula reads “*syara’ belum mengata, adat sudah memakai*”. In this context three main points can be considered. First, *Sharī’ah* or Islamic law came after custom had taken its particular form, which is in accordance with the previous explanation. Second, what was stated later by sharia had previously been conducted by custom, thus sharia confirms the practices dictated by custom. This understanding is in contrast to the view that customs were formulated to provide confirmation of activities based on sharia. Third, local custom and sharia can go hand-in-hand.²⁷

The relationship between Islamic law and local custom is always shaded by many issues, for instance, the suitability of custom to *Sharī’ah* law as there is no rejection of parts of custom which are compatible with *Sharī’ah* law. One custom that is frequently being fought over is the compatibility of Islamic law with the custom in the family, marriage, and inheritance systems.²⁸

Alongside the philosophy of *adat besandi syara’, syara’ besandi kitabullah*, religious custom that brings about conflicts in the society can be avoided, in this instance, after the distribution of inheritance into higher and lower inheritance. Higher inheritance belongs to the tribe or people, while lower inheritance refers to the income of husband and wife which can be distributed according to Islamic law. These views were reaffirmed at the Minangkabau customary seminars in 1956 at Bukittinggi and in 1970 at Batusangkar.²⁹

²⁷ Amir Syarifuddin, *Pelaksanaan Hukum Kewarisan Islam di Lingkungan Adat Minangkabau*. PhD Diss., (Institut Agama Islam Negeri Syarif Hidayatullah, 1982). 234.

²⁸ Fatmah Taufik Hidayat, “Pelaksanaan Eksogami Dalam Adat Minangkabau Menurut Pandangan Islam,” *Justicia, Jurnal Kajian Hukum Dan Sosial* 13, no. 2 (2016).

²⁹ Musyair Zainuddin, *Serba Serbi Adat Minangkabau* (Yogyakarta: Penerbit Ombak, 2016).

The Harmonious Relationship as Catalyst for Peace Between Custom and Islam

Wealth in Minangkabau custom belongs to *sako* and *pusako*. *Sako* or immaterial wealth includes title, lineage, *pepatah petitih* and customary law, manners or courtesy. Whereas *pusako* commonly referred to as *harato pusako* (material inheritance) consists of higher inheritance and lower inheritance. Higher inheritance, is all inheritance for many generations is not included as subsistence inheritance of a living person; it is regarded as the legacy or inheritance of the ancestors. Whereas lower inheritance also known as subsistence inheritance of a living person and is inherited under Islamic law or *farā'id*.³⁰

Minangkabau custom uses a collective-matrilineal inheritance system, meaning that inheritance from the heirs of the lineage cannot be distributed. The only thing that can be shared is usage of the inheritance by the entitled heirs. The heirs determined by the matrilineal system are mainly women. The death of a family member in the house will not affect the collectivity of the inheritance. Additionally, births in the house also do not affect the right to joint property as a Minangkabau proverb says, “*masuk tidak menggenapkan keluar tidak mengganjilkan*” which means that the individuals in the house are not taken into consideration.³¹

Minangkabau customary provision with regard to inheritance of higher inheritance reads “*biriek biriek tabang kasasak, dari sasak turun ka halaman, dari niniek turun ka mamak, dari mamak turun ka kamanan.*” Furthermore, Minang customary provision with regard to ownership of higher heritage property is “*tajua indak dimakan bali, tasando indak dimakan gadai,*” which means that higher heritage property is not eligible for sale. The provisions on inheritance also mention that in the case of the heirs being nephews

³⁰ Nurullah, DT Perpatih Nan Tuo, *Tanah Ulayat Menurut Ajaran Adat Minangkabau* (Sumatra Barat: Yayasan Sako Batuah, 1999), 13. See also Amir Syarifuddin. *Pewarisan Harato Pusako Tinggi dan Pencapaian Minangkabau*, (Jakarta: Citra Harta Prima, 2011), 275-276

³¹ Amir Syarifuddin, *Pelaksanaan Hukum Kewarisan Islam di Lingkungan Adat Minangkabau*. PhD Diss., (Institut Agama Islam Negeri Syarif Hidayatullah, 1982). 234.

or nieces, they are not initially accepted by some Minangkabau clerics as they are deemed incompatible with the provisions of inheritance according to Islamic teachings. The transformation process in interpretation by Minangkabau clerics on this issue can be gleaned from two grant clerics of Minangkabau, Shaykh Ahmad Khatib and Haji Abdul Karim Amrullah.³²

The influence of Islam on property inheritance in Minangkabau is inseparable from the role played by Shaykh Ahmad Khatib who was born in Bukit Tinggi 1860 and died in Makkah in 1916.³³ Shaykh Ahmad Khatib adhered to the school of Shafī'i and studied religion, astronomy and algebra for nine years in Makkah. Due to his diligence and strength of character coupled with strong religious principles while in Makkah, he mainly refused to accept things that he thought were contrary to Islam. This was why he refused to return to a Minangkabau society that practiced the inheritance system from *mamak* to nephews and nieces - something that he believed was contrary to Islam. His distaste for custom, especially the inheritance issue, was stronger than his dislike of the Naqshabandi Order in which he had grown up before going to Makkah. With the religious knowledge he obtained while living in Mecca, he finally denounced the order.³⁴ He asserted that the distribution of inheritance according to custom was an act of sin and unlawful because of the element of deprivation, such as using other people's property illegally, snatching the property of orphans, betraying God's mandate, allowing immoral acts while still treating inheritance as a matter of custom, justifying unlawful or *harām* things or doubting that something is clearly unclean.³⁵ According to

³² H. Nurullah dan DT Perpatih Nan Tuo. *Tanah Ulayat Menurut Ajaran Adat Minangkabau*, (Padang: Yayasan Sako Batuah, 1999), 11.

³³ Hamka, *Ayahku* (Jakarta: Jayamurti, 1967), 203. See also Deliar Noer, Reviews on Ruth T. Mcvey, *The Modernist Muslim Movement in Indonesia 1900–1942*. By (Singapore: Oxford University Press, 1973). *Modern Asian Studies* 10, No. 4 (October 1976): 639–639, <https://doi.org/10.1017/S0026749X00015031>. See also Tamar Djaja, *Pustaka Indonesia II* (Jakarta: Bulan Bintang, 1966), 566.

³⁴ Hamka, *Tasawuf, Perkembangan Dan Pemurniannya* (Jakarta: Nurul Islam, 1952), 230–31.

³⁵ H. Nurullah dan DT Perpatih Nan Tuo. *Tanah Ulayat Menurut Ajaran Adat Minangkabau*, (Padang: Yayasan Sako Batuah, 1999), 11.. See also Amir

Shaykh Ahmad Khatib, all Minangkabau people ate unclean property. He was consistent in his opinion after he left Minangkabau and stayed in Makkah until his death in 1916 (1334H), never returning to Minangkabau.³⁶

Not all followers of Shaykh Ahmad Khatib agreed with their teacher. The conclusions of Shaykh Ahmad Khatib can be considered valid if the given inheritance becomes a personal right of the beneficiary. Personal rights indeed have to be legally inherited through *farā'id*, while higher inheritance is neither a personal rights nor a personal income for the beneficiary. Inheritance assets which are inherent in the status of an heir belong to the community (communal *bezit*). Shaykh Ahmad Khatib did not separate higher inheritance from subsistence inheritance.³⁷

It should be noted that in the time of Shaykh Ahmad Khatib, there was only one inheritance which had not been separated into higher and lower inheritance as an effort to resolve the conflict of inheritance between custom and religion. Had he returned home after the distinction was made, he might have changed his opinion. He only said that inheritance was the treasures of love. Although Islam had developed in Minangkabau, he questioned why the customs disapproved by the religion were still applicable.³⁸

Another important thinker was Haji Abdul Karim Amarullah, Buya Hamka's father, who was the student of Shaykh Ahmad Khatib and studied under him for a long time in Makkah. At first he thoroughly believed in the doctrine of his teacher, but when he returned to Minangkabau he realized that inheritance could not be distributed to children, as they were passed from one generation to the next generation. This view was also adopted by his son Hamka in his book entitled *Ayahku* (My Father) in which he says "therefore, it is difficult to set aside either custom or *Shari'ah* in Minangkabau;

Syarifuddin, *Pelaksanaan Hukum Kewarisan Islam di Lingkungan Adat Minangkabau*, 275–76.

³⁶ Hamka, *Islam dan Adat Minangkabau* (Jakarta: Pustaka Panjimas, 1984).

³⁷ Amir Syarifuddin, *Pelaksanaan Hukum Kewarisan Islam Di Lingkungan Adat Minangkabau*, 276–77.

³⁸ Yaswirman, *Hukum Keluarga: Karakteristik Dan Prospek Doktrin Islam Dan Adat Dalam Masyarakat Matrilineal Minangkabau* (Jakarta: PT. Rajagrafindo Persada, 2013).

they should be combined into one, just like oil and water in milk.” He believed that Islam was not attached to Minangkabau custom, but an Islamic arrangement can be made for the Minangkabau people. In fact, the position of inheritance had been adjusted by not allowing it to be sold nor pawned, as reinforced by the clerics of *Sharī’ah* law. The inheritance assets were “*dijual tidak dimakan beli, digadaikan tidak dimakan sanda*”.³⁹

On Hamka’s perspective, Haji Abdul Karim Amrullah asserts that higher inheritance property was a *waqf* or *mussābalah* inheritance. This was also adopted by Umar bin Khatab in relation to his private property in Khaybar where the land was not allowed to be treated as *tashārrūf*. He proposed the famous *qā’idah usūl muhakkamatun, wa al-’urfu qaḍin*, which roughly means “custom is strengthened and ‘uruf (tradition) is applicable”.⁴⁰

The ultimate turning point in the dispute between customs and clerics was a meeting held in Bukit Marapalam. They agreed that Minangkabau people, besides being Muslims, should also adhere to their custom. The congress of *Alim Ulama* (Consultative Body of Clerics), *Ninik Mamak* and Minangkabau scholars held on 4–5th May 1952 in Bukittinggi was attended by, among others, Haji Agus Salim and Buya Hamka.⁴¹ The meeting resulted in the discussion of some key concepts such as higher inheritance which refer to the assets acquired from generation to generation and which are passed on by custom (customary law). Meanwhile subsistence assets, which according to custom are called lower inheritance, are passed on according to *Sharī’ah* (Islamic law).⁴²

As seen from the mindset of the clerics in Minangkabau themselves, the inheritance is divided into two, namely higher inheritance and subsistence inheritance. Higher inheritance should not be contested, that is they remain in their original state as “*dijual tidak dimakan beli, digadai tidak dimakan sanda*.” However,

³⁹ Yaswirman. See also Hamka, *Ayahku*, 9. See also Nurullah, DT Perpatih Nan Tuo, *Tanah Ulayat Menurut Ajaran Adat Minangkabau*, 13.

⁴⁰ Hamka, *Islam dan Adat Minangkabau*, 103.

⁴¹ Amir Syarifuddin, *Pelaksanaan Hukum Kewarisan Islam di Lingkungan Adat Minangkabau*, 234.

⁴² Hamka, *Adat Minangkabau Menghadapi Revolusi* (Jakarta: Firma Tekad, 1963), 7.

subsistence inheritance should be included under *farā'id* in line with Islam. The clerics however defended higher inheritance by reassessing the four conditions which allowed it for sale or to be pawned.⁴³ The above-mentioned facts bring forth a theory that Minangkabau people, since the arrival of Islam to this day, do not apply a single inheritance system. They have two inheritance systems applied at once, the collective-matrilineal inheritance system imposed on higher inheritance assets and the individual-bilateral inheritance system applied to lower heritage assets.⁴⁴ This pattern of relations between adat or custom and religion was established after the ongoing process of Islamization in the Minangkabau community.⁴⁵

Conclusion

Throughout its earliest presence, Minangkabau society had been regulated by its own customs. In the 7th century, Islam came and asserted its influence in regulating the lives of the Minangkabau people for more than thirteen centuries. During this time, there had been an adjustment process between the two living rules of custom and religion in the Minangkabau people and their society.

Initially there was a conflict between Minangkabau customs and Islamic teachings. The relationship was regarded as a striking paradox in Islamic sociology, but eventually a close and cordial path was found. This harmonious relationship was started by Haji Abdul Karim Amarullah (known as Haji Rasul) when he argued that higher inheritance was not allowed to be passed on to children in the family as the assets were received from generation to generation. This perspective was passed on to his son, Buya Hamka who held the view that custom and *Sharī'ah* in Minangkabau should not eliminate each other. They should be able to combine into one, just like the combination of oil and water in milk. Islam is not determined by Minangkabau custom but should influence its development. Higher

⁴³ Hamka, *Islam dan Adat Minangkabau*. 103.

⁴⁴ Yelia Nathassa Winstar, "The Implementation of Two Inheritance Systems in Minangkabau Indigenous People," 156.

⁴⁵ Ismail, "Akulturasi Hukum Kewarisan Islam Dengan Hukum Kewarisan Adat Minangkabau," *ALHURRIYAH: Jurnal Hukum Islam* Vo. 02, no. No.01 (June 2017): p.58.

inheritance can be passed on from generation to generation; it is neither eligible for sale nor pawn, as reinforced by clerics in *Shari'ah* law.

In Islamic law, higher inheritance can be referred to as *waqf* or as *mussābalah* as was adopted by Umar bin Khatab in the distribution of his private property in Khaybar where the content of his premise could be taken out yet the land was not allowed to be treated as *tashārrūf*. He proposed a famous proverb *qā'idah uṣūl muhakkamatun, wa al-'urfu qaḍin* which means "custom is strengthened, while 'uruf (tradition) is applicable." This harmonious relationship is applicable as a permanent law following the congress of 'Alim 'Ulāma' (Consultative Body of Clerics), Ninik Mamak and Minangkabau scholars, held from 4 – 5 May 1952 in Bukittinggi. The result was an agreement that customary law shall apply to the lands and property of higher inheritance, while *farā'id* law shall apply to assets of subsistence inheritance.

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TRANSLITERATION TABLE

CONSONANTS

Ar=Arabic, Pr=Persian, OT=Ottoman Turkish, Ur=Urdu

Ar	Pr	OT	UR	Ar	Pr	OT	UR	Ar	Pr	OT	UR	
ء	ب	پ	پ	ز	ز	ز	ز	گ	—	g	g	g
ب	ب	ب	ب	ژ	—	—	ř	ل	l	l	l	l
پ	پ	پ	پ	ژ	—	zh	j	م	m	m	m	m
ت	ت	ت	ت	س	s	s	s	ن	n	n	n	n
ث	—	—	ﺖ	ش	sh	sh	ş	ه	h	h	h ¹	h ¹
ث	th	th	th	ص	ş	ş	ş	و	w	v/u	v	v/u
ج	j	j	c	ض	đ	ž	ž	ی	y	y	y	y
چ	—	ch	çh	ط	ﺖ	ﺖ	ﺖ	ة	-ah	—	—	-a ²
ح	h	h	h	ظ	ž	ž	ž	ال	al ³	—	—	—
خ	kh	kh	kh	ع	‘	‘	‘	—	—	—	—	—
د	d	d	d	غ	gh	gh	ğh	—	—	—	—	—
ڈ	—	—	d	ف	f	f	f	—	—	—	—	—
ذ	dh	dh	dh	ق	q	q	q	—	—	—	—	—
ر	r	r	r	ك	k	k/g	k/ñ	—	—	—	—	—

¹ – when not final
² – at in construct state
³ – (article) al - or l-

VOWELS

	Arabic and Persian	Urdu	Ottoman Turkish
Long	ا	ā	ā
	آ	Ā	—
	و	ū	ū
	ي	ī	ī
Doubled	ي	īyy (final form ī)	īyy (final form ī)
	و	uww (final form ū)	uvv
	و	uvv (for Persian)	uvv
Diphthongs	و	au or aw	ev
	ی	ai or ay	ey
Short	ا	a	a or e
	ا	u	u or ū
	ا	i	o or ö
	ا	i	i

URDU ASPIRATED SOUNDS

For aspirated sounds not used in Arabic, Persian, and Turkish add h after the letter and underline both the letters e.g. جھ jh گھ gh

For Ottoman Turkish, modern Turkish orthography may be used.

AL-SHAJARAH

Special Issue

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