

## Perspective of Islamic and Custom Law toward the Position of *Mamak Kepala Waris* in Managing High Ancestral Inheritance in Minangkabau

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### *Abstract*

*Mamak kepala waris* is the title name within a community whose role is to lead the whole community members, to handle, to manage, to observe and to be responsible to the community's high ancestral inheritance. High ancestral inheritance is a property which owned by family member hereditary from woman side. This study aims to know the perspective of Islamic and custom law toward the position of *mamak kepala waris* in managing high ancestral inheritance in Minangkabau inhabitants. This study is an empirical juridical research with descriptive analysis methodology using comparative approach. The data were collected through observation, interview, and books, journals and laws theory. The result shows that the way *mamak kepala waris* manages the high ancestral inheritance is different with Islamic law. In Islamic law, the inheritance will be given to a son and daughter based on the Al-Qur'an and Hadiths. Meanwhile, the custom law in Minangkabau gives the inheritance to the woman lineage only.

*Keywords:* *mamak kepala waris*, high ancestral inheritance, custom law, Islamic law.

### 1. Introduction

Customary law is a traditional law system that handed down from ancient times to present time. The situation is still enforced and maintained by the indigenous people. One of the communities that still has a traditional nature is Minangkabau indigenous community in West Sumatra Province. Minangkabau indigenous community prioritizes communal interests rather than individual interests. This makes the relationship between members of the communities is based on a sense of togetherness, kinship, help and mutual cooperation. Most of Minangkabau indigenous community are Muslim (Noviardi, 2017). The customary law itself is reflected through the Islamic law and the holy Qur'an (Anwar, 2012). However, Minangkabau indigenous community is still respecting and practicing their customary law which proved on their customary law in marriage and inheritance system.

Minangkabau indigenous community is formed from matrilineal kinship system which prioritize the maternal (female) lineage and implemented *semando* in its marriage system. *Semando* is a marriage system in which after marriage the husband positioned under the influence of the wife's relatives. If he has a daughter, the daughter will be the descendant successor of his

wife's lineage. But if he has a son, the son cannot be the descendant successor of his wife. In Minangkabau community the inheritance is divided into four parts, namely:

(a) High ancestral inheritance

High ancestral inheritance is inherited from several generations following the matrilineal system. The existence of high ancestral inheritance is appeared due to the history of *kampung* and *koto* followed by opening rice fields as a life source. The opening of rice fields is the result of *galuah taruko* by the founder of *kampung* and *koto*. Hence, it inherited from generation to generation until today. In relation to the high ancestral inheritance in Minangkabau, Hadikusuma states that *gadang* house or rice field belongs to the clan in which the mother is the center of control (Hadikusuma, 1993). The high ancestral inheritance cannot be divided and sold, except in necessary circumstances it can only be pawned.

(b) Low ancestral inheritance

Low ancestral inheritance is the properties acquired from the work of someone. In contrast with high ancestral inheritance, low ancestral inheritance is allowed to be sold and pawned as needed by the agreement of the heirs. According to Hilman Hadikusuma, low ancestral inheritance is the inheritance from one or two relatives, for example from derived from one grandfather or grandmother that includes in a family (Hadikusuma, 1993). Low ancestral inheritance is a joint property of relatives which will continue to grow and the ownership is undivided.

(c) Acquired inheritance

Acquired properties are the properties acquired by husband and wife during marriage. The acquired properties which obtained from buying or called as *tembilang emas* were in the form of rice fields, fields, gardens, and other. However, if the couple gets divorced, these properties will be divided. Since Minangkabau adheres to matrilineal system. Thus, if the husband dies, his children are not the heirs of his properties but the heirs to their mother's family.

(d) *Suarang* inheritance

*Suarang* inheritance is the properties owned by an individual before and after marriage.

In Minangkabau, high ancestral inheritance is a hereditary property which controlled and maintenance by a person called "*mamak kepala waris*". High ancestral inheritance cannot be traded as stated in the traditional proverb "*dijual tidak dimakan beli, digadai tidak dimakan sando*", which mean the high inheritance must not be sold and pawned due to its acquisition by previous ancestors. Every clan in Minangkabau owns communal inheritance that used and utilized by the members of the clan for the welfare of the family. It is mainly used for the leader's nephews or nieces. *Mamak kepala waris* has important role with responsibilities to lead all clan members, to manage, to regulate, to supervise, and to be responsible for the ancestral inheritance of the clan. He is the one who will manage and expand the high ancestral inheritance for the benefit of his nephews or nieces (Ilusia & Muliadi, 2015). Meanwhile, *mamak kepala waris* in Islamic perspective is called as inheritor. Inheritor defines as someone who manage the inheritance of dead people to be given to people who deserve it, including family or people who need it. The partition of the inheritance is regulated in Qur'an and Hadiths. Hence, this study aims to know the perspective of Islamic and custom law toward the position of *mamak kepala waris* in managing high ancestral inheritance in Minangkabau inhabitants.

## 2. Methodology

This study used empirical juridical research or socio-legal research using comparative approach as the methodology. Based on its characteristic, empirical juridical research can be categorized in descriptive analysis. It observes on community groups' behavior in Minangkabau that uses matrilineal system. Comparative approach is used in this study due to compare the cultures on Minangkabau community groups and Islamic perspective on inheritance system. The data were collected in two sources, namely primary and secondary. The primary data were obtained through observation and interviews with respondents and important persons who understand the condition of the Minangkabau community in the matrilineal system. While, the secondary data were taken from desk study on legal documents including jurisprudence and legal theories.

## 3. Result and discussion

### 3.1 *The position of mamak kepala waris in managing high ancestral inheritance*

Minangkabau community group adheres to the collective inheritance system, including (a) the inheritance is continued or transferred by the owner to the descendant and cannot be divided on its ownership, and (b) the inheritance is inherited by a group of inheritor in which they are allowed to use it but not to divided its ownership. Minangkabau inheritance law is a continuation that is in accordance with the orderly structure according to the law of the mother, but on the other hand, it has relevance and is influenced by the law of *sharak* (religion) (Anwar, 2012). Therefore, according to the orderly structure according to the law of the mother, the heirs according to Minangkabau customary law are calculated from the line of women (women).

In the Minangkabau indigenous community who deserve to be heirs are daughters, but not solely female heirs who control and regulate inheritance, heirs are accompanied by male relatives of the mother (*mamak*). The inheritance process does not always run smoothly but often causes disputes among heirs. The problem that often occurs in the Minangkabau indigenous community is that high inheritance is used for the benefit of large families (clans). In its implementation, there are often irregularities with the use of inheritance for personal interests and the pawning of the inheritance of people outside the specified conditions.

The position of *mamak* in the Minangkabau indigenous community, there are three, namely:

(1) *Mamak* is the Head of the People (*Kepala Kaum*);

As the head of people, *mamak* is responsible for the people. He is obliged to maintain, protect, guide, and resolve the problems faced by his nephew. Furthermore, he also judges on the cases that arise within his people. Thus, *mamak* should be a wise person who has deep knowledge of custom and religion. *Mamak* should have noble character and high authority for his nephew.

(2) *Mamak* the Head of Inheritance (*mamak kepala waris*);

*Mamak kepala waris* or also known as *tungganai* is the leader of people of *Separuik*. His obligation is to save property that has been hereditary inheritance. He also became the leader of his *saparuiik* nephew and responsible for developing the inheritance. Thus, *mamak* can maintain the unity, togetherness and welfare of his nephew; and

(3) *Mamak* as a guide;

*Mamak* is obliged to guide his nephew with traditional custom. His nephew has right to know and demanded to know on things related to the custom. Other than that the nephew also has right to know about all problems related to family property from *mamak*.

The Minangkabau society adheres to a distinctive kinship system, namely the matrilineal kinship system. Matrilineal kinship system is drawn from the mother or female lineage. It is used as the basis on which people and descendants gather in a shared residence called *gadang* house. In *gadang* house the brother from the mother is the one who responsible for its inhabitants who is called as *mamak kepala waris*. Therefore, the organization of the Minangkabau community is ruled by men from the maternal line and usually called brothers of the oldest mothers. However, if there is no brother from the mother then it will replace by the oldest male child. Based on the matrilineal kinship system, the position of *mamak kepala waris* plays an important role in the community. *Mamak kepala waris* is considered as a protector of family members who has responsibility for his nephews or nieces. Therefore, *mamak kepala waris* permanently acts as the spokesperson for every meeting concerning Minangkabau customary law.

Meanwhile, *mamak kepala waris* in Islamic perspective is called as inheritor. Inheritor defines as someone who manage the inheritance of dead people to be given to people who deserve it, including family or people who need it. The partition of the inheritance is regulated in Qur'an and Hadiths.

### 3.2 *The comparison between Minangkabau and Islamic inheritance system*

In Minangkabau community group, the inheritance is divided into two categories, namely; high ancestral inheritance and low ancestral inheritance. High ancestral inheritance is an inheritance owned by group and obtained hereditary through female's lineage, including properties such as land, field, *Gadang* house (Minangkabau traditional house), graveyard, pool and others. Moreover, the high ancestral inheritance is cannot be traded but only be pawned. But, pawning the high ancestral inheritance must followed specific requirement and get permission from *mamak kepala waris*, such as;

- (a) *Membangkit batang terendam*, meaning that in the Minangkabau, a clan with a lower dignity must improve their dignity to be equal with other clans. The dignity of the clan refers to the title inheritance belonged to the clan.
- (b) *Gadis tua tak bersuami* refers to a mother with no daughter. In Minangkabau community it is known as an extinct group. It means that there is no heir to receive the high ancestral inheritance.
- (c) *Mayat terbujur di tengah rumah*, means that if someone dies, then the members of the family will need a lot of money to bury and pay the inheritor's debts.
- (d) *Rumah gadang ketirisan*, or refers to the house of *gadang* that must be nurtured and requiring a lot of money to preserve and maintain it (Haries, 2014).

While, low ancestral inheritance is a joint property of relatives, of which the ownership is undivided and will continue to grow with the income acquired by the heirs. The example of low ancestral inheritance is there is only one traditional house where members of the family gather, there are several hectares of land for rice fields, and there are several traditional clothing equipment and traditional jewelry.

Different with Minangkabau inheritance system, Islamic inheritance system did not differentiate between high or low ancestral inheritance. It only follows what was written within Al-Qur'an and Hadiths. *Mamak kepala waris* in Islamic perspective is called as inheritor. Inheritor refers to someone who manage the inheritance of dead people to be given to people who deserve it, including family or people who need it. The partition of the inheritance is regulated in Qur'an and Hadiths. Inheritor is categorized in two; *sababiyah* and *nasabiyah* inheritor. *Sababiyah* inheritor is someone who has right to get some part of the inheritance due to marriage relationship with the dead people. Whereas *nasabiyah* inheritor is someone who has right to get the inheritance due to its *nasab* or family relationship (Firdaweri, 2015). Islam adheres to bilateral

system which divided the inheritance in 2:1 ratio where men are getting two times larger rather than women. As written in Qs. An-Nisa 11 that,

“Allah instructs you concerning your children: for the male, what is equal to the share of two females. But if there are [only] daughters, two or more, for them is two thirds of one's estate. And if there is only one, for her is half. And for one's parents, to each one of them is a sixth of his estate if he left children. But if he had no children and the parents [alone] inherit from him, then for his mother is one third. And if he had brothers [or sisters], for his mother is a sixth, after any bequest he [may have] made or debt. Your parents or your children - you know not which of them are nearest to you in benefit. [These shares are] an obligation [imposed] by Allah. Indeed, Allah is ever Knowing and Wise.”(Qur'an, n.d.).

It can be seen that Islam guides on the distribution system of inheritance of the dead people. This guide will not be changed and will remain the same until forever. It did not differentiate between man and woman or between high ancestral or low ancestral inheritance. It distributed the inheritance in a fair system following the rules from Allah. These rules are an obligation that should and must be followed in life. Therefore, the comparison can be described as below;

Islamic inheritance system:

- (a) It adheres bilateral inheritance system,
- (b) It refers to Al-Quran and Hadiths,
- (c) Man is getting two times bigger than woman due to his job as the head of the family.

Whereas, Minangkabau inheritance system:

- (a) It adheres matrilineal inheritance system,
- (b) It refers to the custom (*tamboalam*),
- (c) Woman is getting the whole rights on inheritance rather than man due to woman's stereotype as a weak creature and her job to take care and raise to children in her family.

#### 4. Conclusion

The inheritance system between Minangkabau custom and Islamic law has discrepancy in the distribution of the inheritance. Minang society still adheres to the customary system which uses women lineage in their inheritance distribution and managed by *mamak kepala waris*. While, Islamic law adheres to the Qur'an and hadiths which put no differentiation between men and women in its distribution and use inheritor as the one who manage the inheritance.

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