

The Distribution of *Pusako Randah* Property in Minangkabau Society: Between Cultural Tradition and Islamic Law Provision

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Abstract

This article discusses the distribution of *pusako randah* property by the Minangkabau people. *Pusako randah* property is distributed when parents, as the property owner, are still alive and distributed only to daughters (daughter-based distribution). Whereas, according to the consensus of Tungku Tigo Sajarangan attended by *ulama*, *ninik mamak*, and intellectuals-scholar in 1952, the distribution of *pusako randah* property should be executed using *farāid* mechanism. Some data are obtained from in-depth interviews with six custom figures. The finding of this research reveals that the distribution of *pusako randah* property is not only executed after the death of parents but also divided before the parents' death. Besides, *pusako randah* property is intended only for daughters, while sons do not have a right to inheritance property. Distribution agreement of assets while parents are still alive in Islam is categorized as a gift (*hibah*) to anticipate (*sadd al-dzari'ah*) potential property disputes after parents die. In the inheritance traditions of other Minangkabau people, the distribution agreement of assets when the parents are still alive while the transfer after the parents die could be categorized as a will distribution (*wasiah*). However, the distribution still exceeds one-third of the total assets. The allocation of inheritance only to daughters is a tradition that deviates from the Tungku Tigo Sajarangan consensus, even though the aim is to realize a universal benefit.

Keywords: Inheritance Distribution, *Pusako Randah* Property, Minangkabau.

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Introduction

The study of property in Minangkabau society has always become interesting because of its local characteristics and uniqueness. One of the local characteristics is the slogan “*Adat Basandi Syara’, Syara’ Basandi Kitabullah*,” which literary means the tradition is based on sharia principle, and sharia is based on the Quran. The slogan of *Adat Basandi Syara’, Syara’ Basandi Kitabullah* (hereafter referred to ABS-SBK) implies all customary laws of Minangkabau society should based on Islamic teachings. This implication calls scholars, especially Muslim scholars, to research property and its management in Minangkabau society. Among the research is about property division in Minangkabau, which adheres to a matrilineal system. According to the maternal lineage, the matrilineal system is understood as a kinship system. With this system, inheritance in Minangkabau society is distributed more to daughters and female relatives.¹

There are three arguments regarding the status or position of property and its distribution in Minangkabau society. The first opinion argued that the Minangkabau society's property distribution is contrary to Islamic norms. This discrepancy can be found in the inheritance system of inheritance property in Minangkabau society, which is only intended for daughters. A famous Islamic scholar from Minangkabau, Sheikh Ahmad Khatib al-Minangkabawi, pioneered this argument. The second argument highlights that the customary provisions regarding the distribution of *pusako tinggi* (high heritage) in Minangkabau society do not contradict Islamic norms. This second opinion is

¹ Ira Damayanti Putri, Dhea Amelisca, and Sarfia Nengsih, “Pewarisan Menurut Hukum Waris Islam Terhadap Sistem Kekerabatan Matrilineal Minangkabau,” *Notaire 2*, no. 2 (2019): 197, <https://doi.org/10.20473/ntr.v2i2.13916>.

delivered by Abdul Malik Karim Amarullah, a student of Sheikh Ahmad Khatib al-Minangkabawi. According to him, *pusako tinggi* property is analogous to *musabalah* assets (joint property) in the period of Umar ibn Khattab. The third argument differentiates between the legal status of *pusako tinggi* and *pusako randah* properties. *Pusako tinggi* properties are distributed according to customary provisions, while *pusako randah* properties are distributed according to the provisions of Islamic law (*farā'id*). This opinion results from the agreement (consensus) of the Tungku Tigo Sajarangan attended by ulama, *ninik mamak*, and scholars-intellectuals in 1952. This consensus was further solidified through the academic customs seminar in Padang in 1968.²

M. Iqbal, in his research, found that the distribution of *pusako* properties in Minangkabau does not contradict Islamic law. *Pusako tinggi* cannot be inherited because a group jointly owns a property. Meanwhile, *pusako randah* properties are wealth from livelihood and private assets. Therefore *pusako randah* properties can be divided and inherited according to the provisions of *fara'id* in Islamic law. This change occurred after the Tungku Tigo Sajarangan consensus attended by *ninik mamak*, ulama, and intellectuals-scholars in 1952 and the 1968 Seminar of Customs. By this condition, Minangkabau people had carried out the distribution of *pusako tinggi* property in accordance with customary provisions, while the division

² Yasrul Huda, "Islamic Law Versus Adat: Debate about Inheritance Law and the Rise of Capitalism in Minangkabau," *Studia Islamika* 15, no. 2 (2008): 201–99, <https://doi.org/doi.org/10.15408/sdi.v15i2.531>; Adeb Davega Prasna, "Pewarisan Harta Di Minangkabau Dalam Perspektif Kompilasi Hukum Islam," *Kordinat* XVII, no. 1 (2018): 30–64.

of *pusako randah* complies *farāid* provision in Islamic law.³ The application of this customary law is also in line with the *Kompilasi Hukum Islam* in Indonesia (the compilation of Islamic law).⁴ This change indicates a change in society's laws. The integration of Minangkabau customary law with Islamic law has changed the distribution of *pusako randah* property from customary rules to Islamic law in accordance with *farāid* provisions.⁵ In other words, This condition is a real manifestation of the assimilation⁶ and harmonization⁷ between Minangkabau customary law and Islamic law. This conclusion is applied by the Koto Tangah and Naggalo Padang communities, which differentiate between *pusako tinggi* and *pusako randah* properties. *Pusako tinggi* property as a community and joint assets cannot be divided and traded. Meanwhile, *pusako randah* property as individual assets can be divided according to *farāid* provision as long as the property owner is Muslim.⁸

³ Novi Muharam and Suparno Suparno, "The Analysis of Inheritance Property Distribution in The Perspective of Minangkabau Customary Law and Islamic Law," in *Proceedings of the First Multidiscipline International Conference, MIC* (Jakarta, 2021), <https://doi.org/10.4108/eai.30-10-2021.2315733>.

⁴ Prasna, "Pewarisan Harta Di Minangkabau Dalam Perspektif Kompilasi Hukum Islam."

⁵ Huda, "Islamic Law Versus Adat: Debate about Inheritance Law and the Rise of Capitalism in Minangkabau."

⁶ Rianda Dirkareshza, Nada Prima Dirkareshza, and Rosalia Dika Agustanti, "Assimilation Of Customs With Islamic Law In Minangkabau Customary Inheritance Law," *Syiah Kuala Law Journal* 6, no. 1 (2022): 80–92, <https://doi.org/doi.org/10.24815/sklj.v6i1.28305>.

⁷ Sidik Tono et al., "The Harmonious Relationship between Minangkabau Custom and Islam in the Distribution of Inheritance," *Al-Shajarah* 2019, no. Special Issue Shariah and Law (2019): 39–55.

⁸ Rahmadanil and Rifka Zuwanda, "Application of Inheritance Law in Minangkabau According to Islamic Law," *Jurnal Hukum Islam* 19, no. 2 (2021): 349–65, <https://doi.org/doi.org/10.28918/jhi.v19i2.5087>.

The implementation of Islamic inheritance law in Minangkabau society was initially implemented *farāid* system in Islamic law. However, after each heir knows his allocated share, men (brothers) hand over their share to women (sisters) so that only women (daughters) get the final share. This distribution is carried out according to the agreement through the deliberation of all the heirs after agreeing to the share of each heir, and then the brother hands over his share or rights to his sister. According to Fika Yassa Putri, et al.,⁹ and Ira Damayanti Putri, et al.,¹⁰ Anwar Fauzi's research¹¹ concluded that the Minangkabau people did not based on Minangkabau customs but based on conventional provisions. However, this research only shows another side of the Minangkabau people who live outside the West Sumatra province. Anwar Fauzi researched the Minangkabau people who live in Malang.

Other research on *pusako tinggi* property shows that the distribution of *pusako tinggi* property provides benefits both from an economic perspective and for the welfare of some particular groups as well as the common public. Research by Azhari Akmal Tarigan, et al., concluded a new trend in managing *pusako tinggi* property as business capital and development.¹² Eficandra, in his study, found

⁹ Fakhrol Fahmi, Yaswirman, and Mardenis, "Implementation of Low Heritage Health Association According to the Law of Minangkabau In Nagari Balingka, Agam Regency," *International Journal of Multicultural and Multireligious Understanding* 7, no. 1 (2020): 368–78, <https://ijmmu.com/index.php/ijmmu/article/view/1357>.

¹⁰ Putri, Amelisa, and Nengsih, "Pewarisan Menurut Hukum Waris Islam Terhadap Sistem Keperabatan Matrilineal Minangkabau."

¹¹ Anwar Fauzi, "Dualitas Hukum Waris Minangkabau Dan Islam (Studi Konstruksi Sosial Masyarakat Muslim Minangkabau Di Malang)," *Jurisdictie* 3, no. 1 (2012): 45–54, <https://doi.org/10.18860/j.v0i0.2180>.

¹² Azhari Akmal Tarigan and Jufri Naldo, "The New Construction of Inheritance in Minangkabau People : Competition and Strategy to Produce Successful Entrepreneurs in Indonesia," *Millati, Journal of*

that the reconstruction of inheritance in the form of cash waqf could not only be a solution for the welfare of the people but also make the existence of *pusako tinggi* property more functional and maintainable.¹³

Nagari Malampah society, in other cases, indicates different conditions and facts. In this condition, the distribution of *pusako randah* property does not follow the Tungku Tigo Sajarangan consensus in 1952 and the Seminar of Custom in 1968. Previous studies concluded that the Miangkabau society had carried out the distribution of *pusako randah* property in accordance with *farāid* provisions. Meanwhile, this research indicates that, in particular cases, Minangkabau society does not distribute *pusako randah* property according to *farāid* provisions, such as the Nagari Malampah community. There are at least three forms of distribution of *pusako randah* property in Nagari Malampah, distinguishing it from other Nagari in Minangkabau. First, the Nagari Malampah community – as a Minangkabau Muslim community – not only divides the *pusako randah* property after the parent who owns the property dies but also distributes it before the parent dies. Second, even though *pusako randah* property is distributed before the parent – as the property owner – dies, some people still name it "inherited assets". Third, the allocation of *pusako randah* property is only for daughters, while sons do not have the right to *pusako randah* property. Sons only have the right to use *pusako randah* property during their parents' lives. Otherwise, sons can only have their parents' property

Islamic Studies and Humanities 7, no. 2 (2022): 19–31, <https://doi.org/dx.doi.org/10.18326/mlt.v7i2.7151>.

¹³ Eficandra Eficandra, "The Reconstruction of High-Inherited Wealth in Minangkabau through Cash Waqf Movement," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (2022): 121, <https://doi.org/10.31958/juris.v21i1.5850>.

through the *hibah* mechanism (a gift) after obtaining approval from their sister as heir.

The distribution of *pusako randah* property by living parents in Nagari Malampah seemed contrary to Islamic provisions. According to Islamic provisions, *mauruth* (inheritance property) is *tirkah* (property left by the dead), which is only distributed after the *muwarrith* (owner of the property) dies. Consequently, the property owner's death becomes an “absolute condition” in Islamic inheritance law.¹⁴ The property owner who dies is called *muwarrith*, and the person who has the right to inheritance is called *waris* (heir). Different conditions are found in customary traditions and provisions in Nagari Malampah where properties are not only distributed after the owner of the property dies but also could be distributed while the parent, as the owner of the property, is still alive.

The distribution of inheritance, which is only distributed to daughters, is also unique to research. The description of the phenomenon of implementing inheritance law aims to show that not all Minangkabau people distribute *pusako randah* property according to Tungku Tigo Sajaringan consensus in 1952 and the 1968 Seminar of Custom. This research also indicates that the distribution of Pusako Randah assets is considered inappropriate with *farāid* provisions. In Islamic inheritance law, all male and female heirs have their own rights to get an inheritance as long as there are no obstacles (*hijab*). Technically, sons have more inheritance rights than daughters, as mentioned in Quranic verses (An-Nisa:11). However, the tradition applied in Nagari Malampah society is that only daughters are entitled to inheritance.

¹⁴ Wahbah Al-Zuhaily, *Al-Fiqh Al-Islami Wa Adillatuhu VIII* (Damaskus: Dar al-Fikr, 1985), 255–57.

This research emphasizes the discussion on *pusako randah* distribution without a *farāid* system in Islamic law. A further implication is that the distribution of *pusako randah* property that does not follow the *farāid* system is seen as inconsistent with the *Adat Basandi, Syarak, Syarak Basandi Kitabullah* (ABS-SBK) philosophy.

The primary data in this research was obtained through in-depth interviews with three traditional leaders from Nagari Malampah, consisting of one chairman of the *Kerapan Adat Nagari* (KAN), one KAN member, and one *ninik mamak* as a religious figure. Comparative data was obtained from three traditional figures from outside Nagari Malampah, each representing three *luhak*, namely St. Syahril Amga (*Luhak Tanah Datar*), Syaiful Dt. Tunaro (*Luhak Agam*) and Emrizal Dt. Yang Basa (*Luhak 50 cities*). The selection of those informants is based on their character and level of understanding of Minangkabau customary issues, which are the object of this research.

The article focuses on why the people of Nagari Malampah allocate *pusako randah* property only for girls. Apart from that, this article will explore arguments about why people distribute assets when parents are still alive and call this distribution "inheriting" assets. The data collection will be analyzed and presented descriptively, comparatively, and interpretively. Descriptive-comparative analysis presents the data as is and compares the practices of the Nagari Malampah community with the Minangkabau community in general. Then, interpretive analysis presents the data for interpretation based on relevant literature.

The Principle of *Urf*, *Salingka Nagari* Tradition, and the Distribution of *Pusako Randah*

The Minangkabau society, through the *Tungku Tigo Sajarangan* consensus attended by *ninik mamak*, *ulama*,

and intellectuals-scholars in 1952 and the Seminar of customs in 1968, agreed that *pusako randah* assets would be inherited using the *farāid* system. This consensus becomes a basis for the distribution of Pusako Randah property, which should be conducted through Islamic law. The Islamic law based-distribution of Pusako Randah indicates the implementation of *Adat Basandi Syarak, Syarak Basandi Kitabullah, Syarak Mangato Adat Mamakai* (tradition is based on the sharia principle, and sharia is based on the Quran. Sharia states, the tradition applies).

According to the interview with Yurdi Dt Basa¹⁵ as chief of Kerapan Adat Nagari (KAN) Malampah it was informed that Pusako Tinggi assets and Pusako Low assets are only for female children, even if there are no daughters, the assets are given to the mother's sister or the mother's sister's children. Sons do not obtain rights to their parents' property through the inheritance system. According to the traditional philosophy, this provision has become a customary tradition from Malampah ancestors: "*warih bajawek, pusako batarimo* (inheritance is taken, *pusako* is accepted)". This tradition is still carried out by the Malampah people, especially for tangible assets such as fields and other assets except money and gold. Money and gold are handed over to the children as heirs and divided according to their agreement. Anwar Dt. Pado, as one of the *ninik mamak* of Nagari Malampah, recognizes this pattern of distributing inheritance to daughters as a manifestation of the matrilineal system of the Malampah people and other Minangkabau society. As a consequence, the *pusako randah* property in Nagari Malampah is owned and controlled by women.¹⁶ Yuni, as *ninik mamak* and Malampah religious figure, also argued that the

¹⁵ Interview with Yurdi Dt Basa, 19 December 2022.

¹⁶ Interview with Yurdi Anwat Dt Pado, 27 January 2023.

distribution of *pusako randah* property was only for girls because in the tradition of the Nagari Malampah community, girls lived in the *gadang* house (traditional big house from Minangkabau) and they were considered better able to manage and save properties. On the contrary, men are stereotyped as “wanderers,” so they are less able to look after their wealth. After marriage, a man will live in his wife's house and manage his wife's assets to finance and provide for his children and wife.¹⁷

As the consensus agreed, the distribution of *pusako tinggi* property in Minangkabau society is distributed technically by the customary law, while *pusako randah* is distributed with the concept of *farāid*. The provisions for distributing *pusako tinggi* property using customary provisions apply in all Nagari in Minangkabau without any differences.¹⁸ Syaiful Dt. Tunaro also admitted that since the Tigo Tungku Sajarangan consensus in 1952, the Minangkabau people have divided the Pusako Randah property in a *farāid* way.¹⁹ However, St. Syahril Amga did not deny that the discovery of the fact that the Pusako Randah property allowed for differences between Nagari and was in accordance with the agreement of the Nagari community because it included the provisions of the Adat Salingka Nagari Custom.²⁰ Adat Salingka Nagari is a customary provision that only applies to certain places of Nagari.²¹

¹⁷ Interview with Yurdi Yuni Efendi, 14 December 2022.

¹⁸ Interview with Emrizal Dt Hyang Basa on December, 20 2022.

¹⁹ Interview with Syaiful Dt. Tunaro on February, 5 2023.

²⁰ Interview with St. Syahril Amga on December 19 2021.

²¹ Idrus Hakimy Dt. Rajo Panghulu, *Rangkaian Mustika Adat Basandi Syarak Di Minangkabau*, ed. Tjun Surjaman, Cetakan ke (Bandung: PT Remaja Rosdakarya, 2004), 103–14; Alexander Stark, “The Matrilineal System of the Minangkabau and Its Persistence Throughout History: A Structural Perspective,” *Southeast Asia: A*

The distribution of *pusako randah* property when the parents (as owners of the property) are still alive, which is considered inheritance, can be said to be a provision of the Salingka Nagari custom because this provision is found in Nagari Malampah. Meanwhile, in Minangkabau society, property is generally distributed as "inheritance assets" after the parents, as the owners of the assets, die. If parents' assets are distributed before they die, the Minangkabau people call it "*mambagi* (dividing up) assets or property."²² Some people use the term "*mauntuakan* or *maumpuakan* (allocate) assets", not inheriting assets.²³ Emrizal Dt. Hyang Basa believes that, in line with Islamic provisions, inheritance is property distributed to the family after the owner dies.²⁴

The distribution of inheritance only to daughters can be seen as a provision of the Salingka Nagari custom. This provision only applies to the Nagari Malampah society. In other communities in Minangkabau, the distribution is according to *farāid* where sons and daughters inherit from their parents' inheritance, as Tungku Tigo Sajarangan consensus in 1952 and the Seminar of Custom in 1968. Leaders The community and the chairman of KAN Nagari Malampah admitted that the inheritance distribution,

Multidisciplinary Journal 13, no. April (2013): 1–13; Afifi Fauzi Abbas, "Konsepsi Dasar Adat Minangkabau," *Researchgate.Net*, no. January 2007 (2007): 1–8, https://www.researchgate.net/profile/Afifi-Fauzi-Abbas-2/publication/342819519_Konsepsi_Dasar_Adat_Minangkabau/links/5f07570b4585155050986242/Konsepsi-Dasar-Adat-Minangkabau.pdf.

²² Interview with St. Syahril Amga on December, 19 2021.

²³ Interview with Syaiful Dt. Tunaro on February, 5 2023.

²⁴ Interview with Emrizal Dt Hyang Basa on December 20, 2022.

which is divided only among daughters, is a customary provision of Salingka Nagari.²⁵

From the perspective of Islamic law, the distribution of *pusako randah* assets while parents are still alive, which is only given to daughters, is included in the *'urf khas* category. *'Urf Khas* is a tradition that only applies to particular communities.²⁶ This can be seen in distributing *pusako randah* property, which is only found in Nagari Malampah. Meanwhile, Minangkabau society generally has implemented a *farāid* system by following the Tungku Tigo Sajarangan consensus. Meanwhile, Nagari Malampah is specifically only intended for girls. The existence of the Salingka Nagari Custom as a special rule has gained legitimacy as a customary rule that applies specifically to certain Nagari in Minangkabau. This provision is in line with the rule: "*al-wilayah al-khasah aqwa min al-wilayah al-'ammah*" *the particular mandate of power is stronger than general mandate of power*".²⁷

***Fath al-Zariah* in the Distribution of Pusako Randah Property when the Property Owner is Still Alive**

Most Nagari Malampah People distribute the inheritance to their heirs while the heir is still alive. Inherited property could be distributed to daughters who are either married or single daughters. The inherited property can be distributed in two ways: First, the property is given to daughters, and they will become full ownership.

²⁵ Interview with Yurdi Dt Basa on December 19th, 2022.

²⁶ Ansari Yamamah, "The Existence of Al-Urf (Social Tradition) in Islamic Law Theory," *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)* 21, no. 7 (2016): 43–48, <https://doi.org/10.9790/0837-2112074348>.

²⁷ Muhammad Mustofa Al-Zuhaily, "Kitab Al-Qawaid Al-Fiqhiyyah Wa Tathbiiqiha Fi Al-Mazaahib Al-Arba'ah" (Damaskus: Dar al-Fikr, 2007), 486.

This pattern is mostly carried out by giving married daughters property, usually given some time after the marriage. Second, assets are intended for children when their parents are still alive, but the actual distribution of inherited property is carried out after the parents die. Usually, the method is carried out with a family discussion and participated by all heirs and the *mamak kepala waris*.²⁸ Sometimes, the distribution of inheritance is made in the form of a letter that is known and approved by the *mamak kepala waris*, involving several witnesses.²⁹ Anwar Dt Pado explained that the distribution of *pusako randah* property was carried out with the knowledge of the *mamak kepala waris* and the other heirs, even though it is not necessarily with the consent of the other heirs. The position of *mamak kepala waris* is occupied by the oldest male in the family or group.³⁰

The distribution of parents' assets to children before death is often practiced in Nagari Malampah. Moreover, some groups prioritize this practice.³¹ Apart from being a long-standing custom, this practice is also recognized as an anticipatory effort against conflict if it is divided after the parent dies through an inheritance system.³² Anwar Dt Pado argued, based on experience in the Malampah community, that there were quite a few cases of conflict over inheritance after their parents died. To anticipate unexpected conflict, people prefer to distribute assets when they are still in complete consciousness.³³

²⁸ *Mamak kepala waris* is an influential person who has full power over people's inheritance in Minangkabau.

²⁹ Interview with Yurdi Dt Basa on December, 18th, 2022.

³⁰ Interview with Anwar Dt Pado on January, 27th, 2023.

³¹ Interview with Yuni Efendi on December, 18th, 2022.

³² Interview with Yurdi Dt Basa, on December, 19th, 2022.

³³ Interview with Anwar Dt Pado on January, 21st, 2023.

The pattern of distribution of pusako randah assets in the Nagari Malampah community (where the property is distributed after the parents die) can be categorized as inheritance distribution in the Islamic inheritance system. This distribution practice also applies generally in Minangkabau society, which agreed to the results of the Tunku Tigo Sajarangan consensus in 1952 and the Seminar of Custom in 1968. This pattern is a logical consequence of the distribution of property through the Islamic inheritance system because the Islamic inheritance system can only be implemented after the property owner dies.

However, the distribution of property through Islamic inheritance law, when the property owner is still alive, is still found in the Nagari Malampah community. The Malampah people also call it "inheriting the property."³⁴ In Minangkabau customary provisions, a distinction is generally made between the distribution of assets according to the inheritance system and "*maumpuakan*" or "*mauntuakan*."³⁵ St. Syaril Amga argued that, like the Islamic inheritance law, the inherited property in Minangkabau society should be distributed after the death of the parent or the property owner. In contrast to the inheritance system, the terms "*maumpuakan*" or "*mauntuakan*" are terms for dividing assets before the property owner's death. This distribution model can be executed while the property owner is still alive and with the approval of all heirs.³⁶ This statement has a strong argument if it is related to the inheritance system. This distribution is imperative. Therefore, it must be given to all heirs according to their respective shares.

³⁴ Interview with Yuni Efendi on December 19th, 2022.

³⁵ Interview with Syaiful Dt. Tunaro on February, 5th 2023.

³⁶ Interview with St. Syahril Amga on December 19th, 2021.

Meanwhile, carrying out the act of "*maumpuakan*" or "*mauntuakan*" is not a necessity; even after the property is distributed, the heirs are required to receive a share according to the share determined by their parents.³⁷ For instance, in Nagari Batu Hampa Limapuluh Kota society, the distribution of assets by "*maumpuakan*" or "*mauntuakan*" can be conducted in two ways. First, properties are distributed directly to the children, and the children are directly managed and utilized. Second, the assets are intended for the children, but this will be implemented after the parents die.³⁸

In Islamic tradition, the practice of dividing property by parents, in which the property becomes full ownership of their children, can be categorized as *Hibah*. *Hibah* is a voluntary transfer of ownership from someone to another person carried out without compensation.³⁹ *Hibah* is an act to do voluntarily and without coercion. Consequently, something that has been given cannot be taken back. Apart from *hibah*, *waṣīah* is also the practice of dividing assets while the parents are still alive, but the property may not be owned in full until the donor dies. *Waṣīah* is understood

³⁷ Interview with Emrizal Dt Hyang Basa on December, 20th, 2022.

³⁸ Interview with Emrizal Dt Hyang Basa on December 20th, 2022.

³⁹ Wahbah al-Zuhaili, "Al-Fiqh Al-Islami Wa Adillatuhu V" (Damaskus: Dar al-Fikr, 1985), 5; Mohd Yusof Yusnita and Ahmad Asmida, "Hibah as an Alternative Mechanism in Muslim Assets Management: A Study in Melaka Tengah," *South East Asia Journal of Contemporary Business, Economics and Law* 3, no. 3 (2013): 1–5, <http://seajbel.com/wp-content/uploads/2014/01/KLL3301-ASMIDA-HIBAH-AS-AN-ALTERNATIVE-MECHANISM-IN-MUSLIMS-ASSESTS-MANAGEMENT-A-STUDY-IN-MELAKA-TENGAH.pdf>; Rusni Hassan and Nor Azdilah Mohamad Zaizi, "The Concept and Application of Hibah As a Financial Instrument From the Malaysian Legal Perspective: An Analysis," *IJUM Law Journal* 28, no. 1 (2020): 227–52, <https://doi.org/10.31436/ijumlj.v28i1.498>.

as a voluntary gift of ownership made after the owner dies.⁴⁰

Based on the explanation of Islamic inheritance law above, "*mauntuakan*" (allocating) property which is practiced in the Malampah society, cannot be categorized as an inheritance practice because it does not fulfill the elements of transferring property through an inheritance mechanism. Inheritance is the property distribution when the owner of the property dies. Meanwhile, in Nagari Malampah, parents -as property owners- distribute their assets while they are still alive. For this reason, although some people in Nagari Malampah call this practice "inheriting assets," it is meant to distribute assets through the mechanism of *hibah* and *wasiah*. This condition is in line with fiqh's rules: "The considered contract is based on an objective and meaning, not on wording and text."⁴¹ Therefore, inheriting a property in the Nagari Malampah community can be categorized as *hibah* if the parents are still alive. Meanwhile, if the distribution of assets is executed after the parent dies, it is included in *wasiah*.

The *hibah* system practiced by the Malampah community, which is given when parents are still alive, does not conflict with Islamic law because parents, as property owners, have the full right to give their property to anyone. Likewise, allocating assets while parents are still alive, which is implemented when parents have died, is also in line with Islamic law. This practice can be categorized into *wasiah*. Distributing *wasiah* to heirs can be justified

⁴⁰ Sukiati, "THE PRACTICE OF HIBAH AS A SUBSTITUTE HEIR AMONG THE JAVANESE FAMILY," *Miqot* XLII, no. 1 (2018): 64, <https://doi.org/http://dx.doi.org/10.30821/miqot.v42i1.552>.

⁴¹ Ahmad Al-Zarqa', "Sharh Al-Qawaid Al-Fiqhiyah" (Damaskus: Dar al-Qalam, 1989).

since there is no conflict with the distribution.⁴² *Waṣīah* can also be justified as long as the parents, as property owners, are competent in legal actions (*ahliyah al-'ada*). If these conditions are met, then the act of allocating assets by donating (*hibah*) or bequeathing (*waṣīah*) the property is legally recognized under Islamic law. Moreover, the community practice of "*mauntuakan*" (allocating) property in the form of *hibah* and *waṣīah* is given by their own parents as property owners.

The tradition of distributing *pusako randah* property in Nagari Malampah, which the people of Nagari Malampah call "*mauntuakan*" (allocating), can be categorized as *waṣīah* practice in Islam. *Waṣīah* (will) is understood as a will from one living person to another, executed after the will-maker dies. However, According to the Shariah, someone is entitled to make *waṣīah* (a will) no more than one-third of the assets. The amount of this part of the assets is found in a hadith of the Prophet Muhammad said to Sa'ad ibn Waqash; "*waṣīah* (a will) is enough for one-third, and it is already a lot."⁴³

However, Malampah society sometimes determines *waṣīah* (will) to exceed one-third of their property because they should adjust to the number of daughters. The property will be divided equally among all daughters. If there are three or more daughters, the share of each daughter will not exceed one-third of the assets. However,

⁴² Zakiy al-Sya'ban and Ahmad Al-Ghundur, "Ahkam Al-Washayyah Wa Al-Miras Wa Al-Waqf Fi Al-Syari'ah Al-Islamiyyah" (Kuwait: Maktabah al-Falah, 1984).

⁴³ Abu al-Husain Muslim ibn al-Hajjaj ibn Muslim al-Qusyairi Al-Naisyaburi, *Al-Jami' Al-Shahih IV* (Beirut: Dar al-Ta'shil, 2014), 341–42. Muhammad Bin Isa Bin Saurah At-Tirmizi, *Al-Jami' Al-Kabir III* (Beirut: Dar al-Gharb al-Islami, 1996), 17. Ahmad ibn Syu'aib ibn Ali ibn Sinan ibn Bahr ibn Dinar Al-Nasa'i, *Sunan Al-Nasa'i III* (Beirut: Dar al-Ma'rifah, n.d.), 551–52.

if there are two daughters or only one, the distribution will exceed one-third of the property. Two daughters will get half of their parent's property for each daughter. If the parent only has one daughter, the daughter will get all the property.⁴⁴ All *waṣīyah* (a will) processes have gone through a mechanism of approval from *mamak* and heirs.⁴⁵

Giving a will of more than one-third of one's assets is a matter of debate among the ulama. Some scholars limit a maximum of one-third of the property, but most scholars allow it as long as the other heirs approve it.⁴⁶ In accordance with the opinion of this discussion, the distribution of *pusako randah* property in Nagari Malampah is a will that is justified according to the majority of *ulama* because its implementation has gone through deliberation with *mamak* (the head of the heirs), and the approval of the other heirs. The property allocation that applies in the Nagari Malampah community can be accepted according to the principle of Islamic jurisprudence (*qaidah ushuliyah*) “*Al-adah Muhakkamah.*” (Customs can be used as a basis for laws).⁴⁷

The vital force of the Nagari Malampah society's motives in distributing will property before they die, is to avoid conflict in the future.⁴⁸ Some family conflicts often occur in society regarding the distribution of property after the death of parents. This condition might be a trigger behind people preferring to distribute assets to their children before they die to avoid conflicts between their children in the future.

⁴⁴ Interview with Anwat Dt Pado on January 27th, 2023.

⁴⁵ Interview with Yurdi Dt Basa on January 21th 2023.

⁴⁶ Muhammad Abu Zahrah, *Ahkam Al-Tirkat Wal Al-Mawaris* (Kairo: Dar al-Fikr al-Arabiy, n.d.), 77–78.

⁴⁷ Al-Zuhaily, “Kitab Al-Qawaid Al-Fiqhiyyah Wa Tathbiiqiha Fi Al-Mazaahib Al-Arba’ah,” 308.

⁴⁸ Interview with Yurdi Dt Basa on January 21st, 2023.

In Islamic law, the practice of the Nagari Malampah community in distributing *pusako randah* property can be included in the category of anticipatory action to prevent *mudharat* (a disadvantage or harmful condition). In Ushul Fiqh, this action includes solving problems using the *fath al-dzari'ah*, one of Islamic legal methods. *Fath al-dzari'ah* is a method of resolving legal cases by determining the law regarding an action that can bring beneficial or useful conditions and avoiding harmful conditions.⁴⁹ As a development of the concept of *sadd al-dzari'ah*, *fath al-dzari'ah* is a medium that leads to the realization of benefits, which is the aim of the institutionalization of Islamic law. Implementatively, if an action is believed to produce goodness or create useful conditions, then any action supporting Islamic law's realization is mandatory.⁵⁰

In the same condition with *sadd al-dzari'ah* implementation, the implementation of *fath al-dzari'ah* must be seen from two aspects: the motive and the consequences resulting from the action. If an action is driven by the desire to do a prohibited action in Islam, then the action should be prohibited (*sadd al-dzari'ah*). If the action is motivated by the desire to do valuable and permissible things in Islam, the action could be executed (*fath al-dzari'ah*). Likewise, with the consequences, if an action leads to harmful conditions, then that action should be prohibited (*sadd al-dzari'ah*). On the other hand, if the action creates benefits according to Islamic principles, then the action should be carried out (*fath al-dzari'ah*).⁵¹

⁴⁹ Wahbah Al-Zuhaili, "Usul Al-Fiqh Al-Islami" (Damaskus: Dar al-Fikr, 1986), 873–74.

⁵⁰ Nurdhin Baroroh, "Metamorfosis Illat Hukum Dalam Sad Adz-Dzari'ah Dan Fath Adz-Dzari'ah," *Al-Mazahib* 5, no. 2 (2017): 289–304, <https://doi.org/https://doi.org/10.14421/al-mazaahib.v5i2.1426>.

⁵¹ Al-Zuhaili, "Usul Al-Fiqh Al-Islami."

The law for distributing *pusako randah* property in the Nagari Malampah community can be decided based on the concept of *fath al-dzari'ah*. Dividing *pusako randah* property aims to avoid conflicts caused by a distributed property after the parents die. Likewise with the consequences, if dividing assets before the parents die can eliminate conflicts and disputes in the distribution of assets, then the argument for dividing *pusako randah* property is in line with Islamic law. The tradition of distributing *pusako randah* property in the Nagari Malampah community is a preventive measure for conflicts that might occur in the distribution of assets in the future.

The Daughter-based *Pusako Randah* Property Distribution through *Maslahah* Perspective

The daughter-based distribution of the parent's *pusako randah* property must be analyzed by looking at the timing of the distribution. If the *wasiah* (will) is made before the parent dies, the distribution is included in the allocation of assets (*mauntuakan*). As explained previously, this pattern of property distribution can be called a *hibah* or *wasiah* in Islam. This distribution pattern does not contradict Islamic law even though the son does not get a share of his parent's property. This pattern does not prevent parents from giving their assets to whomever they wish. This pattern also should not require all children (son or daughter) to receive a share because parents, as property owners, have absolute authority in managing their assets as long as parents are still alive. As a consequence, parents during their lifetime are not prevented from donating their assets to whoever they wish. The allocation of assets in the form of *hibah* also has a similar provision. Even though the will exceeds one-third of the assets, the will does not conflict with Islamic

provisions as long as its allocation is by the consent of other heirs.

However, some Minangkabau people still distribute *pusako randah* assets to daughters only before the parents die. They still consider this distribution tradition to be the same as the practice of inheritance in Islam. This distribution practice is a customary tradition that deviates from the consensus. In Islamic terms, sons are not prevented from inheriting except if the son apostates from Islam or kills his parents.⁵² This customary provision of Nagari Malampah is not in accordance with the Islamic inheritance law. Distributing inheritance specifically to daughters only before their parents die is a form of deviation from ABS-SBK, as the philosophy of Minangkabau people's life. Even though these customary rules are old traditions that have been carried out for generations, they do not meet the criteria for *'urf* in Islamic legal principle "Customs can be used as a basis for determining the law."⁵³ In Islam, *'urf* or tradition can be an authoritative source in making laws, especially when no provisions are explicitly regulated in the Qur'an and Sunnah.⁵⁴ The traditions of a society can be accepted and

⁵² Mursyid Djawas et al., "The Construction of Islamic Inheritance Law: A Comparative Study of the Islamic Jurisprudence and the Compilation of Islamic Law" 21, no. 2 (2022): 207–19; Andi Asdar Yusup, "Controversy of Islamic Law on The Distribution of Inheritance to the Heirs of Different Religion," *HUNAFa: Jurnal Studia Islamika* 14, no. 2 (2017): 377–403, <https://doi.org/10.24239/jsi.v14i2.490.377-403>; Al-Zuhaily, *Al-Fiqh Al-Islami Wa Adillatuhu VIII*.

⁵³ Al-Zuhaily, "Kitab Al-Qawaid Al-Fiqhiyyah Wa Tathbiqihah Fi Al-Mazaahib Al-Arba'ah," 210. Al-Zarqa', "Sharh Al-Qawaid Al-Fiqhiyyah," 205–6.

⁵⁴ Mohd Daud Bakar, "The Effect of Language and Custom in Islamic Legal Theory," *Jurnal Syariah* 7, no. 2 (1999): 1–10; Shafi'i Abdul Aziz Bello and Rusni Hassan, "Application of Urf in Islamic Banking

recognized as long as these traditions meet with *'urf ṣahih* condition. Tradition should not conflict with rigid principles in Islamic teaching.⁵⁵ The tradition of the Nagari Malampah community, which considers the distribution of *pusako randah* property to be the same as inheritance, is certainly contrary to Islamic teaching. In the Quran, sura An-Nisa verse 2 requires sons to receive a share of the inheritance. Meanwhile, in Nagari Malampah, only daughters are entitled to inherit property.

However, the statement by the Chairman of KAN Nagari Malampah said that the *pusako randah* property, inherited only for daughters, was property in the form of fields or other property besides money and gold. The distribution of parents' inheritance in money and gold is left entirely to the children and their respective families.⁵⁶ This statement is interesting to analyze from the perspective of Nagari Malampah society in protecting and defending their land and territory. In Minangkabau society, the believed value in land ownership is customary value. From a customary perspective, land must be maintained as the property of the people. Therefore, houses, fields, gardens, and forests must be protected and maintained to ensure future generations' survival and avoid poverty.⁵⁷ Minangkabau people assume women can better look after property than men; women think more about family interests than men. This assumption shows that women

and Conventional Bank,” *Journal of Arts and Humanities* 2, no. 4 (2013): 62–72, <http://irep.iium.edu.my/31457/>.

⁵⁵ Abd Al-Wahab Khallaf, “Ilm Ushul Al-Fiqh,” *Ilmu Ushul Al-Fiqh* (Kairo: Maktabah al-Da’wah al-Islami, 1996), 89; Yamamah, “The Existence of Al-Urf (Social Tradition) in Islamic Law Theory.”

⁵⁶ Interview with Yurdi Dt Basa on January 21st, 2023.

⁵⁷ Selfi Mahat Putri, “Kepemilikan Tanah (Adat) Di Minangkabau,” *Jurnal Ilmu Humaniora* 5, no. 2 (2021): 271–79, <https://online-journal.unja.ac.id/index.php/titian>.

have a vital role in the wealth matters in Minangkabau.⁵⁸ With this argument, the people of Nagari Malampah bequeathed or distributed their *pusako randah* property – besides their *pusako tinggi* property – to their children, especially their daughters.

The distribution of *pusako randah* property only to women can be seen through the *maqasid* theory as a system approach popularized by Jasser Auda. Islamic law must accommodate the traditions of a society in order to achieve legal purposes (*maqasid*), even though sometimes the customary rules differ from those indicated by the text.⁵⁹ The distribution of *pusako randah* property in the form of land (by only giving the land to women) aims to maintain the property (*hifz al-māl*). Besides, this effort aims to defend traditional communities and create social solidarity. Furthermore, there are efforts to universalize Islamic law in distributing *pusako randah* property to maintain the economic survival of offspring. According to the people of Nagari Malampah, this goal might be realized if women, rather than sons, managed and controlled the inheritance. For this reason, it is not surprising that people, including the Malampah community, believe wealth management is given more priority to women than men.

Conclusion

From the research findings and discussion results, it can be concluded that the distribution of *pusako randah*

⁵⁸ Fatahuddin Aziz Siregar et al., “Staying at Home: The Perspectives of Minangkabau Ulemas Concerning Husbands’ Provision of Sustenance in Covid-19 Impacted Households,” *JURIS (Jurnal Ilmiah Syariah)* 21, no. 2 (2022): 133, <https://doi.org/10.31958/juris.v21i2.6551>.

⁵⁹ Jasser Auda, “Systems as Philosophy and Methodology for Analysis,” *Maqasid Al-Shariah as Philosophy of Islamic Law*, 2019, <https://doi.org/10.2307/j.ctvkc67tg.8>.

property, which is only intended for girls, is part of the manifestation of the matrilineal system adopted by the Malampah society. Consequently, the *pusako randah* property in Nagari Malampah is owned and controlled by women. For Malampah society, fields, gardens, and other immovable property must be protected and used for the welfare of the descendants of their people. For this reason, they must be guarded and must not be traded. This goal may be realized if the property is given to daughters who live in the *gadang* house (the big traditional house for Minangkabau people). Girls are deemed to be more capable of managing property than men. Men or sons, from the traditional perspective, migrate a lot; they are considered less capable of looking after their assets. After marriage, a man will live in his wife's house and manage his wife's assets to finance and provide for his children and wife. This provision in Minangkabau is included in the traditional rules of the *Salingka Nagari* because it is only practiced in Nagari Malampah and is not generally applied in other Minangkabau communities.

Second, the distribution of *pusako randah* property when parents are still alive was practiced by Malampah society for generations. This practice of distributing property aims to avoid future conflicts and struggles over inheritance. Although this pattern cannot be included in Islamic inheritance Law distribution, it can be categorized as a *hibah* (gift) and *waşiah* (will) from parents to their children. Both *hibah* and *waşiah* conducted by Malampah society did not conflict with Islamic law. According to several arguments, *waşiah* property might be distributed exceeding one-third as long as the heirs agree to the property distribution. Moreover, the objective of the distribution before the parents died is an anticipatory effort (*sad-al-zariah*) and innovative effort (*fath al-zariah*) from

the possibility of inheritance conflict occurring in the future.

Third, the distribution of inheritance, which is only intended for the daughter, is actually not in line with the Tigo Sajaringan consensus in 1952 and the Seminar of Customs in 1968. This authoritative consensus requires the distribution of *pusako randah* property using the *farāid* system. However, this inheritance practice can be seen as an effort to maintain *pusako randah* property, in the form of land and other assets besides money and gold, as an act of defending property (*hifz al-māl*). Another aim of this distribution of property is a form of social solidarity for the benefit of indigenous communities on a wider scale. Research findings show that not all inheritance distributions in Minangkabau are in line with the Tigo Sajaringan consensus. This finding is indicated by the division of inheritance in Nagari Malampah, which does not distribute the *pusako randah* property using the *farāid* system.

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