

ISLAMIC INHERITANCE LAW IN SARUASO AND SAWAH TANGAH VILLAGES BASED ON ISLAMIC PRINCIPLES

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Abstract

This research aims to comprehend the practice of dividing the inheritance in Saruaso and Sawah Tangah Villages following the distribution principle of inheritance law distribution in Islam. The problem was that there were different views on the distribution of inheritance in the Saruaso and Sawah Tangah Villages with the provisions on the distribution of inheritance based on Islamic teachings. Meanwhile, the people of Saruaso and Sawah Tangah Villages embraced Islam. This research used a survey method. The research object was Niniak Mamak (indigenous stakeholders) and Bundo Kanduang (village's mothers) in two villages, Kanagarian Saruaso and Kanagarian Sawah Tangah. The sampling technique used was the purposive sampling technique. The results of this research are the practice of dividing inheritance in Saruaso and Sawah Tangah Village; in this case, low inheritance does not conflict with the provisions that apply to inheritance law in Islamic teachings (based on Faraid law). While the division of high inheritance follows customary provisions, this is because the high inheritance belongs to the people (tribes), cannot be traded, and cannot be divided individually.

Keywords: *Inheritance; Saruaso Village; Sawah Tangah Village; Islam Teachings*

Abstrak

Tujuan penelitian yaitu untuk melihat praktek pembagian harta warisan pada Kenagarian Saruaso dan Kenagarian Sawah Tangah sesuai dengan prinsip pembagain hukum waris dalam Islam. Permasalahan yang terjadi di lapangan yaitu terdapat pandangan bahwa pembagian harta warisan pada Kenagarian Saruaso dan Kenagarian Sawah Tangah terdapat perbedaan dengan ketentuan pembagian harta warisan berdasarkan ajaran Islam, sedangkan masyarakat Kenagarian Saruaso dan Kenagarian Sawah Tangah memeluk ajaran Islam. Penelitian ini menggunakan metode survei dan objek penelitiannya adalah Ninik Mamak dan Bundo Kanduang pada dua Kanagarian Saruaso dan Kanagarian Sawah Tangah. Teknik pengambilan sampel menggunakan teknik sampling purposive. Hasil penelitian yaitu praktek pembagian harta warisan pada Kenagarian Saruaso dan Kenagarian Sawah Tangah dalam hal ini harta pusaka rendah tidak bertentangan dengan ketentuan yang berlaku pada hukum kewarisan dalam ajaran Islam

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(berdasarkan hukum Faraid). Sedangkan pembagian harta pusaka tinggi mengikuti ketentuan adat, hal itu disebabkan harta pusaka tinggi merupakan milik kaum (suku), tidak dapat diperjualbelikan dan tidak dapat dibagi-bagi secara perorangan.

Kata kunci: *Harta Warisan; Kenagarian Saruaso; Kenagarian Sawah Tengah; Ajaran Agama Islam*

مستخلص

كان الهدف الأساسي من هذه الدراسة هو تبين كيفية توزيع الميراث بين الورثين في منطقة سارواسوا (Kanagarian Saruaso) ومنطقة ساوه تانغه (Kanagarian Sawah Tengah) ومناسبتها بما حدده الله في القرآن الكريم. والمشكلة التي نلجدها في هذا المجال هي وجود نظرية التعارض عند توزيع الميراث في منطقة سارواسوا (Kanagarian Saruaso) ومنطقة ساوه تانغه (Kanagarian Sawah Tengah) بأحكام توزيع الميراث على أساس التعاليم الإسلامية بينما معظم مجتمعها المسلمون. وتستخدم هذه الدراسة الطريقة الاستقصائية وكان الموضوع لهذه الدراسة هو زعماء القبائل (Ninik Mamak) وقائدات النساء (Bundo uang Kandung) في منطقة سارواسوا (Kanagarian Saruaso) ومنطقة ساوه تانغه (Kanagarian Sawah Tengah). أما تقنية أخذ العينات المستخدمة فيها هي تقنية أخذ العينات الهادفة. والنتائج لهذه الدراسة هي أن توزيع الميراث في منطقة سارواسوا (Kanagarian Saruaso) ومنطقة ساوه تانغه (Kanagarian Sawah Tengah) مما يسمون بـ "بوساكو رانده" (Pusako randah) لا يتعارض بالأحكام التي تنطبق على قانون الميراث الإسلامي. في حين أن تقسيم الميراث مما يسمون بـ "بوساكو تنغي" (pusako tinggi) يعتمد بالأحكام العرفية حيث أنه ملك للقبائل ولا يجوز تداولها ولا تقسيمها ولا بيعها إلا لأمر ضوري لمصلحة أبناء تلك القبائل.

الكلمات الرئيسية: جمع تكسير؛ القلة؛ الكثرة؛ جمع المطلق

A. INTRODUCTION

Inherited assets are assets that are transferred from someone who has died to someone who is still alive under applicable regulations. This explanation is a view from the side of Islamic teachings. In addition, Islam also explains that the amount of inheritance received by male heirs is commensurate with the family's duties, commitments, and responsibilities as protectors. However, inheritance based on Minangkabau customary provisions explains that the inheritance does not change hands but changes functions, responsibilities for management, management, and supervision from someone who has died to a living successor in the mother's lineage.

Based on the above notion, it can be stated that the inheritance related to Minangkabau customs carried out in Saruas and Sawah Tengah is very different when compared to the

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distribution of inheritance that applies to inheritance in Islamic teachings. The difference between the two, among others, in Islamic teachings, is that inheritance is the property that changes hands from someone who has died to someone who is still alive or his heirs. Meanwhile, according to Minangkabau custom, inheritance is the transfer of management rights, management, responsibilities, and functions of property left by someone who has died to generations who are still living in the same lineage of the mother.

The Minangkabau community highly upholds Islamic religious values and the values of Minangkabau traditional culture. Minangkabau customs have exceptional flexibility, so with their flexibility, they can survive for centuries. Following the Minangkabau proverb, namely *tak lakang dek paneh, tak lapuak dek hujan; Dianjak indak layuah, dibubuiek indak mati* (which means something that lasts eternally). The custom of Minangkabau consists of four levels, namely *adat sabana adat, adat nan diadatkan, adat nan teradat dan adat istiadat*. *Adat Sabana adat* means the customs based on the Qur'an dan Sunnah. *Adat nan diadatkan* means the customs established by the society's agreement. *Adat nan teradat* refers to the customs established based on the habits which can be adjusted. Finally, *adat istiadat* refers to the customs that are influenced by the socio-economic situation of the community.

The Minangkabau people are also very identical to Islamic teachings. Even customs and Shari'a in Minangkabau provisions should not deny or contradict each other but must be in line , so that it is revealed in the Minangkabau proverb, namely *adat basandi syara' – syara' basandi Kitabullah* (the custom is based on the religion of Islam – the religion is based on the Qur'an) and a similar opinion, namely *adat syarak basandi and syarak basandi Kitabullah, syarak mangato adat mamakai*. Another Minangkabau proverb also suggests that *Tasindorong jalan manurun – Tatukiek jalan mandaki – Adat jo syarak kok tasusun – Bumi sanang padi manjadi*. This proverb implies that if the custom and religion are applied equally, the people will live safely and peacefully. The viscosity between Islamic teachings and Minangkabau customs is expressed in the Minangkabau proverb, namely *syara' and adat bak aur jo tabiang, sanda manyanda ka duonyo* (the religion and the custom are like bamboo and the cliff; they both complete each other). So if there is a conflict between Minangkabau customs and the teachings of Islam, the conflicting custom must be discarded or abolished.

Based on the saying that the Minangkabau people prioritize the interests of the Islamic religion over the interests of custom, it is also illustrated in the expression that the *syarak mangato adat mamakai* means that all the provisions of Islamic religious law are used as guidelines by Minangkabau customs. The strength and belief of the Minangkabau people

towards Islam are emphasized by Amir MS (2003) that the Minangkabau people only adhere to one religion, namely Islam. However, if the religion is not Muslim, the person cannot be called a Minangkabau . Therefore, the function of adat and religion in the life of the Minangkabau people is like two sides of a coin that cannot be separated from one another, and it is also a disgrace for the Minangkabau to say that they are neither traditional nor religious.

The Islamic religious law and Minangkabau customs have been fused and crystallized in the life of the Minangkabau people. However, the division of inheritance between Minangkabau customary provisions and Islamic religious provisions is very contradictory. It can be seen in the distribution of inheritance. In Minangkabau custom, the distribution of inheritance is dominated by women, while in Islam, the distribution of inheritance is more dominated by men. This statement follows research by Yanti Mulia Roza (2020) that inheritance problems often cause conflicts in Minangkabau. The source of the conflict is based on differences in the sources of law used by both Minangkabau customs and Islamic teachings. So, the conflict or difference in the distribution of inheritance between Minangkabau customs and the provisions of Islamic inheritance law that occur in Minangkabau is the novelty of this research. So the results of this study can eliminate differences in views on the division of inheritance between Islamic inheritance law and Minangkabau customary law, which applies to the Saruaso and Tengah Sawah Village.

The study aimed to comprehend the practice of dividing inheritance in the Saruaso and Sawah Tengah under the inheritance law principles in Islam. By understanding this, the hostility or views resulting from disputes over the distribution of inheritance in Minangkabau, specifically in the Saruaso Kenaga and Sawah Tengah Villages, can be reduced.

B. DISCUSSION

1. The Distribution of Inheritance According to Minangkabau Customs

Minangkabau adheres to a kinship system from the maternal lineage (*matrilineal*) and has seven characteristics, namely; 1) The lineage comes from the mother, 2) The tribe according to the mother's line, 3) Marriage outside the mother's tribe (*exogamy*), 4) The power of the tribe is in the hands of the mother (in theory), 5) In practice, the brother in power in ethnicity, 6) In marriage the husband lives in the wife's house (matrilocal) and 7) inheritance is passed on from *mamak* (mother's brother) to nephews¹. Minangkabau has four footholds, this is in accordance with the Minangkabau proverb, namely *Ba-nasab pado ibu, Ba-sandi*

¹ Irlia Rozalin, "Pembagian Harta Warisan Dalam Masyarakat Minangkabau Di Kecamatan Medan Area Kelurahan Tegal Sari III Kota Medan," n.d., 1–17.

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*pado syarak, Ba-sako ka pusako, and Ba-ulatory ka Tanah Tinggi/Pusako Tinggi*². So, it means that the foothold or basis for the Minangkabau people to move is lineage based on mother, basically Islam, wealth is hereditary, and shared land (tribes).

The lives of the Minangkabau people are greatly influenced by *Niniak Mamak* (the indigenous stakeholders), *Cadiak Pandai* (the intellectuals), *Alim Ulama* (the scholars), and *Bundo Kanduang* (a true mother possessing maternal and leadership qualities)³. These four elements are known as *urang nan ampek jinih*. It means four kinds of people⁴. The four elements above are illustrated in the Minangkabau proverb, namely; 1) *Niniek Mamak: Nan gadang basa batuah – nan dianjuang tinggi – mambalah maampalau – mamapeh mandatakan – mamacik naraco adie – mamagang bungka nan piawai* (The indigenous stakeholders: the elders, leaders, and wise persons – respected – unite and strengthen – be fair - take good care of the inheritance), 2) *Cadiak Pandai: Nan cadiak biopari – Tau diereng jo gendeng – Tau di cakah jo kaik – Pandai manarah manalakang – Pandai marapek dalam aie – Mambuhue indak mambuku – Mauleh indak mangasan* (the intellectuals: understand the concept of figurative speech and are able to provide solutions to problems that exist in the clan, 3) *Alim Ulama: Suluah bendang dalam nagari – Palito nan tak namuah padam – Duduaknyo bacamin kitab – Tagak nan rintang jo pituah* (Scholars: people who understand religion so well that they have a place to ask about what is permissible and what is not permissible based on strong arguments from the holy books they read, and 4) *Bundo Kanduang: Limpapeh rumah nan gadang – Sumarak di dalam kampuang – Hiasan dalam nagari – Kok hiduik tampek banasa – Kok mati tampek baniat – Kaundang-undang ka Madinah – Ka payuang panji ka Sarugo – Cahayo rumah salendang dunie* (a mother: like a butterfly decorating a Gadang house – traditional house, to whom all hopes and prayers are directed, the guide to Medina (the holy land), directions to heaven, coloring the household of the world and the hereafter)⁵.

The heirs in Minangkabau custom is a person or nephew who must receive an inheritance from the clan, such as; rice fields, *banda buatan* (dams), *pandam pakuburan* (tribal burial place), *Rumah tanggo/Gadang* (tribal house), forest, land, and heirloom titles

² Azhari, "Harta Pusaka Tinggi," 2015.

³ Idrus Hakimy Dt. Rajo Penghulu, *Pegangan Penghulu, Bundo Kanduang, and Pidato Alua Pasambahan Adat in Minangkabau*. PT. Remaja RosdaKarya, Bandung (Bandung: PT. Remaja RosdaKarya, 1994).

⁴ Amir, "Adat Minangkabau Pola Dan Tujuan Hidup Orang Minang" (Jakarta: PT. Mutiara Sumber Widya, Penabur Benih Kecerdasan, 2003).

⁵ Amir.

(Sako)⁶. It is stated in the proverb: *sako turun tamurun, pusako jawek-bajawek* (inheritance title hereditary, inheritance inherited from generation to generation)⁷. People who can receive inheritance based on Minangkabau customs consist of two types: *warih batali darah* (*nasab* or the heirs based on blood relations) and *warih batali sabab* (artificial/caused)⁸. Inherited lineage or *warih batali darah* means the heir who receives inheritance because of the blood relations following the maternal lineage. Meanwhile, *warih batali sabab* (the heirs because of a cause) is the inheritance that has a relationship between the heir and the heir recipient and is not related to blood relations but is due to ancestral ties, ties made, and cultural ties⁹.

The Minangkabau people follow the mother's line with the following lineage structure; tribe (association of several clans), clan (association of several *jurai*, *paruik* (one grandmother, which is a collection of several families of the same mother), *jurai* means a collection of several nuclear families of the same maternal lineage, and the nuclear family (mother, children and excluding father)¹⁰. *Nasab* in Minangkabau custom can be seen in Figure 1.¹¹

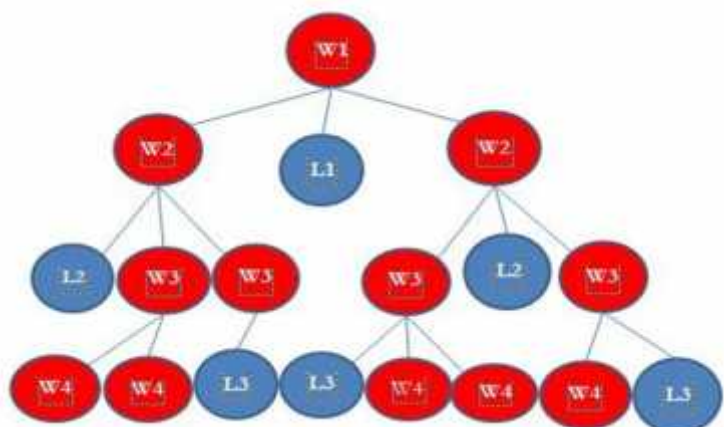


Figure 1: Nasab in Minangkabau Tradition

1. W4 to W3 is called *Samande* (One Mother)
2. W4 to W2 is called *Sanenek* (One Grandmother)
3. W4 to W1 *Saparuik/ Sajurai*
4. W1, W2, L1, W3, L2, W4, and L3 are called *Sakaum* (One Clan)

⁶ Penghulu, *Pegangan Penghulu, Bundo Kanduang, and Pidato Alua Pasambahan Adat in Minangkabau*. PT. Remaja RosdaKarya, Bandung.

⁷ Penghulu.

⁸ Nofiardi dan Syafwan Rozi, "Penerapan Nilai Toleransi Antar Budaya Dalam Pelaksanaan Hukum Kewarisan Islam Pada Masyarakat Perbatasan Di Rao Pasaman Sumatera Barat," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 17, no. 1 (2017): 85–112, <https://doi.org/10.18326/ijtihad.v17i1.85-112>.

⁹ Rozi.

¹⁰ Azhari, "Harta Pusaka Tinggi."

¹¹ Rajab et al., "The Level of Jealousy toward High Heritage Assets Distribution in Minangkabau," *International Journal of Innovation, Creativity and Change* Vol. 9, no. No. 10 (2019): 127–44.

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In line with the statement about Minangkabau traditional lineage above, Amir MS (2003) stated that the tribal structure in Minangkabau custom consists of *Ninieki*, *Gaek*, *UO* (*Grandma*), *Mande*, and his son /daughter¹². Inheritance in Minangkabau custom is read from the bottom; namely, the *padusi* receives an inheritance from *mande* (mother), *mande* receives an inheritance from *UO* (grandmother), and *UO* receives an inheritance from *gaek* (one *jurai*), and *gaek* receives an inheritance from *ninieki*¹³. It can be seen in Figure 2 regarding the Minangkabau tribal structure, namely;

Minangkabau Tribal Structure

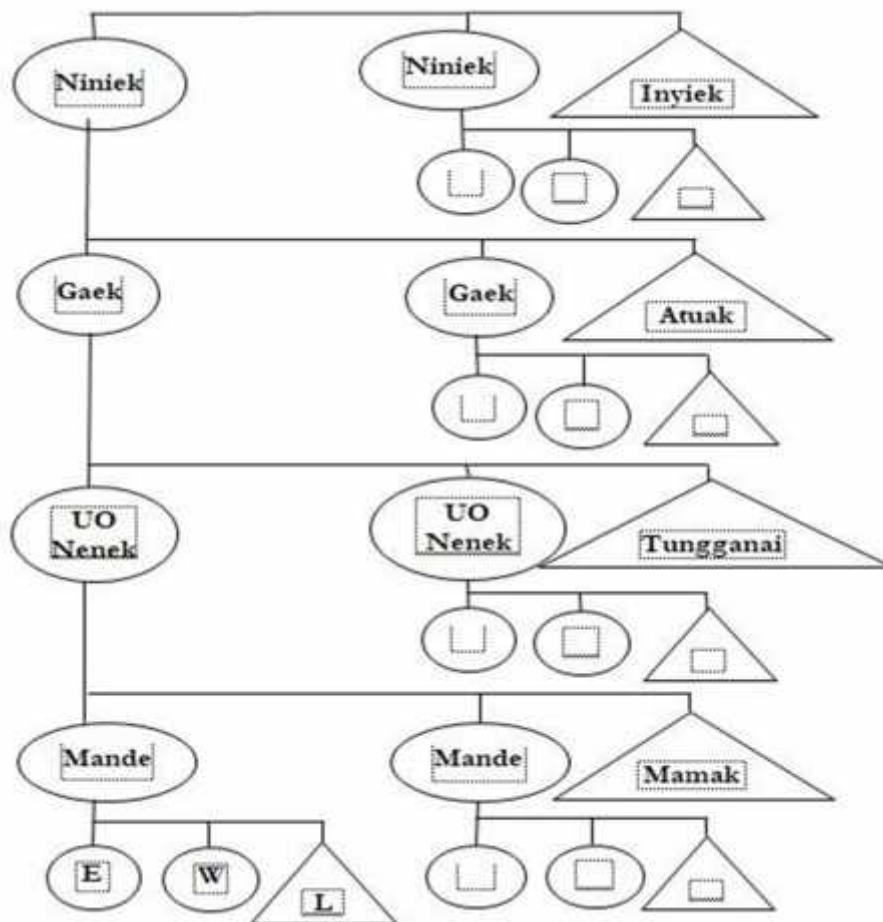


Figure 1. Minangkabau Tribal Structure

Caption Figure 2

E : Ego (Me), **W**: Female, **L**: Male

Mamak: the mother’s brothers,

Tungganai : the grandmother’s brothers

Atuak : *gaek*’s brothers,

Inyieki : *ninieki*’s brothers

○ : representing a female,

△ : representing a male

| : lineage

□ : siblings

¹² Amir, “Adat Minangkabau Pola Dan Tujuan Hidup Orang Minang.”

¹³ Amir.

The division of inheritance in Minangkabau customs is narrated in the Minangkabau proverb, which is *biriak-biriak tabang kasasak, dari sasak turun ka halaman, dari niniak turun ka mamak, dari mamak turun ka kamanakan*¹⁴. It means that birik-birik (the name of an animal) flies to *sasak* (woven bamboo slats for walls), from *sasak* goes down to the yard, the heirloom is from the *niniak* (the grandmother and the mother and the mother of a child)¹⁵ which descends to *mamak* (uncle), from *mamak* descends to nieces and nephews.

Inheritance in Minangkabau follows a collective system (joint property), so the inheritance cannot be divided individually. However, the property can be used and empowered, and its processing results can be enjoyed¹⁶. The characteristics of the collective inheritance system include; a) inheritance is the property inherited from generation to generation in the mother's line, b) inheritance cannot be divided in its ownership, and 3) the benefits of processing inheritance can be divided according to agreed terms¹⁷. Inheritance originating from high inheritance can be passed down from generation to generation, so the property is unsuitable for sale or mortgage, and scholars in Sharia law confirm this¹⁸.

So inheritance from *mamak* down to nephews is classified as high inheritance, and high inheritance cannot be traded, given, or donated, but in difficult conditions, it can be pawned. The pawning of high inheritance assets can be carried out after an agreement is made through deliberation and consensus by *Ninik Mamak* in the tribe. The high heirlooms in Minangkabau can be pawned for several reasons. They are *rumah gadang katirisan* (traditional houses have been damaged), *gadiah gadang alum balaki* (adults woman but not yet married due to economic conditions), *maiak tabujua ditangah rumah* (a corpse lying in the house that has not been taken care of since there is no cost), and *mambakik Batang tarandam* (reviving long-hidden respect)¹⁹.

Inherited assets in Minangkabau are divided into two: high inheritance assets inherited from generation to generation from *mamak* to nieces and nephews, and low inheritance assets

¹⁴ Munir Taher, "Sako, Pusako and Sangsoko," 2013.

¹⁵ Rajab et al., "The Level of Jealousy toward High Heritage Assets Distribution in Minangkabau."

¹⁶ Eric, "Hubungan Antara Hukum Islam Dan Hukum Adat Dalam Pembagian Warisan Di Dalam Masyarakat Minangkabau," *Jurnal Muara Ilmu Sosial, Humaniora, Dan Seni* 3, no. 1 (2019): 61–70.

¹⁷ Ismail, "Akulturasi Hukum Kewarisan Islam Dengan Hukum Kewarisan Adat Minangkabau," *ALHURRIYAH : Jurnal Hukum Islam* 02, no. 01 (2017).

¹⁸ Sidik Tono M. Roem Syibly Amir Mu'allim Ahmad Nurozi and Muhammad Roy Purwanto, "The Harmonious Relationship Between Minangkabau Custom and Islam in The Distribution of Inheritance," *Al-Shajarah*, 2019, 39–55.

¹⁹ Ocy Ananda Erica et al., "Analisis Kasus Mama Muda (Mamak Menyelesaikan Urusan Dalam Harta Pusaka) Minangkabau," *Jurnal Aufklarung* 1, no. 1 (2018): 89–95.

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obtained from business in one family between a husband and wife of Minangkabau people²⁰. However, with the development of the times, the heirlooms can be changed into four parts: high inheritance, low inheritance, livelihood property, and *suarang* property (own property)²¹.

Based on the type of inheritance in Minangkabau, the distribution of assets is grouped into two ways: for the high inheritance, the distribution follows the provisions of Minangkabau customs, and for the low inheritance, livelihood, and own property, the distribution follows the provisions of Islamic teachings. It was stated by Ria Agustar (2008) that the distribution of inheritance in Minangkabau is divided into two ways, namely, the high inheritance according to customary provisions and the low inheritance, livelihood, and own assets according to Islamic religious rules (*Faraid*)²².

2. *The Distribution of Inheritance Based on Islamic Teachings*

The law of inheritance explains the transfer of rights to the inheritance of people who have died, determines who will receive the inheritance, and determines the received amount by each heir²³. Based on the inheritance law above, several things must be understood about inheritance in Islamic law: inheritance, transfer of rights to inheritance, people who will become heirs, and the amount the heirs will receive for the assets left.

Inheritance in Islamic teachings regulates the transfer of rights and or obligations to assets left by people who have died to people who are entitled to receive them²⁴. Inheritance in Islamic law has the following principles; 1) *ijbari*, namely the transfer of property from a person who has died to his heirs directly, 2) *bilateral*, namely the right to inheritance from the relatives of the male and female descendants, 3) the individual principle, the inheritance can be distributed individually for owned according to the determined level, 4) the principle of balanced justice, male and female heirs have the same rights in inheriting the assets left by the testator, and 5) the principle solely due to death, the transfer of property to someone in inheritance status can take effect after the heir died²⁵.

²⁰ Siti Fatimah, "Gender Dalam Komunitas Masyarakat Minangkabau; Teori, Praktek Dan Ruang Lingkup Kajian," *Jurnal Ilmiah Kajian Gender* 2, no. 1 (2012): 11–24.

²¹ Is Sikumbang, "Adat Budaya Minangkabau," 2009.

²² R I A Agustar, "Pelaksanaan Pembagian Warisan Atas Harta Pencarian Dalam Lingkungan Adat Minangkabau Di Kecamatan Lubuk Kilangan Kota Padang," 2008.

²³ Supardin, *Fikih Mawaris & Hukum Kewarisan (Studi Analisis Perbandingan)* (Gowa: Pusaka Almaida, 2020).

²⁴ A. Khisni, *Hukum Waris Islam*, VI (Semarang: UNISSULA PRESS, 2017).

²⁵ Adeb Davega Prasna, "Pewarisan Harta Di Minangkabau Dalam Perspektif Kompilasi Hukum Islam," *KORDINAT XVII*, no. 1 (2018): 29–64.

Based on Islamic law, the causes of a person being able to inherit the property left by the heirs are due to kinship/kinship (children inherit from their father or vice versa), marital relations (husband gets an inheritance from his wife or vice versa), and because *wala'*, inheritance caused by someone has liberated enslaved people or a mutual assistance agreement or an oath of allegiance between one person and another²⁶. The evidence of the Qur'an supports the cause of a person inheriting an inheritance due to kinship is contained in Surah Al-Anfaal verse 75, which means; *"And those who believe and leave their homes and wage jihad in the way of Allah, and those who give shelter and give help (to the Muhajirin), they are the ones who truly believe. They get forgiveness and noble sustenance. Moreover, those who believe after that migrate and fight with you; they are among you. This is because those who have the kinship are some more entitled to their neighbour than those who are not relatives in the Book of Allah".*²⁷, and because marriage is stated in the Qur'an Surah An-Nisaa verse 12, which means: *"And for you (husbands) are two-second of the property left behind by your wife if they have no children. If your wife has children, you will get a quarter of the property she left behind after fulfilling the will they made or (and) after being paid the debt. The wives get a quarter of the wealth you leave behind if you have no children. If you have children, the wives get one-eighth of the wealth you left behind after being fulfilled by the will you made or (and) after being paid your debts. If a person dies, neither male nor female who does not leave the father and children but has a brother or a sister (from the same mother), then each of the two types of siblings gets one-sixth of the property.*

*Nevertheless, if the brothers are more than one, they are allied in that third, after fulfilling the will made by him or after being paid his debt by not giving mudarat (harm) (to the heirs). (Allah establishes this as) the true Shari'ah of Allah, and Allah is All-Knowing Again the Most Guided."*²⁸.

Islamic inheritance law states that before the inheritance is distributed to the heirs, several rights must be paid, including; 1) paying zakat if the corpse's assets have reached the nisab but zakat has not been paid, 2) paying the costs of managing the corpse such as the shroud and burial, 3) paying the debt if the corpse has debts, 4) paying the will if the corpse wills before he dies, and 5) if all rights in items 1 to 4 have been paid, the inheritance can be distributed to the heirs who are entitled to receive it²⁹. It is following the Compilation of Islamic Law Book II Article 175 concerning Inheritance Law that the obligations of the heirs

²⁶ Haries Akhmad, *Hukum Kewarisan Islam* (Yogyakarta: Ar-Ruzz Media, 2019).

²⁷ "Mengenal Digital Quran Versi. 3.0," n.d.

²⁸ "Mengenal Digital Quran Versi. 3.0."

²⁹ Sulaiman Rasjid, *Fiqhi Islam* (Bandung: Sinar Baru Algensindo, 2017).

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to the deceased are to take care of and organize the funeral until it is completed, to pay all debts that occur while the corpse is still alive in the form of medical expenses, care, including the heir's obligations and collection of receivables, to grant the will if the corpse has made a will and dividing the inheritance to the heirs who are entitled to receive it. The heirs' responsibility for the debts or obligations of the corpse is only limited to the value of the inheritance³⁰.

The sources of law used as a guide in the distribution of inheritance in Islamic teachings are 1) Al-Qur'an, which is contained in Surah An-Nisaa verse 7, which means: "*For men, there is a share of the inheritance of parents and relatives. , and for women, there is a right to share (also) from the inheritance of their parents and relatives, either a little or a lot according to the share that has been determined*", and reinforced by the Qur'an Surah An-Nisaa verse 33 with the meaning: "*For every inheritance from the property left by the parents and close relatives, We make his heirs. Moreover, (if there are) those you have sworn allegiance to, give them their share. Indeed, Allah witnesses everything*", 2) the Sunnah of the Messenger of Allah, this was explained by the Messenger of Allah in his words with the meaning of the hadith, namely: "*Give people who have a fixed share according to their respective parts, while the excess is given to those who are closer, i.e. the male is superior*" (Narrated by Bukhari Muslim), and the Ijma'dan Ijtihad of friends, imams of schools, and mujtahids can be used as the basis for solving inheritance problems that the sharih texts have not explained³¹.

The requirements that will be met for someone who will receive an inheritance in Islamic inheritance law are as follows; 1) the death *muwarrist* (the person who inherits) means the death of the person who owns the property, and the property will automatically transfer to the heirs, provided that the testator dies intrinsically, dies juridically (the person who dies but whose whereabouts is not known), and the alleged death is death only based on suspicion, 2) the life of the heir when the testator dies means that the heir who will receive the inheritance is still alive when the *muwaris* dies, and 3) there is no barrier in inheriting the inheritance, meaning that the heir is not hindered in receiving the inheritance, namely slavery, murder, and religious differences³². Islamic inheritance law stipulates that a person who can abort his right as an heir is 1) a murderer; this is following the words of the Prophet

³⁰ Khisni, *Hukum Waris Islam*.

³¹ Akhmad, *Hukum Kewarisan Islam*.

³² Amal Hayati, Rizki Muhammad Haris, and Zuhdi Hasibuan, "Hukum Waris" (Medan: CV. Manhaji dengan Fakultas Syariah UIN-SU Medan, 2015).

Muhammad, which means: "The Messenger of Allah SAW said: *"Whoever kills a victim, then indeed he cannot inherit it, even though the victim has no heirs other than himself. Even if the victim is a parent or child. So the killer is not entitled to receive an inheritance"*. It is reinforced by the Compilation of Islamic Law Book II article 173 that a person who is hindered or dies as an heir if it has been decided by a judge and has permanent legal force is blamed for killing or trying to kill or persecute the heir so that he dies³³, 2) different religions, it is based on the hadith of the Prophet Muhammad with the meaning; *"Muslims do not inherit the property of infidels, and unbelievers do not inherit the property of Muslims"*, and 3) slavery, means that enslaved people cannot inherit inheritance because they are not capable of carrying out legal actions. It is based on the Word of God in Surah An-Nahl verse 75, which means: *"Allah makes an example of an enslaved person who cannot act against anything and a person to whom We provide good sustenance from Us, then he spends part of his sustenance. Secretly and openly, are they the same? All praise is due to Allah, but most do not know"*³⁴.

The heirs who may (possibly) get an inheritance from a person who dies consist of 25 people, 15 from the male side and ten from the female side. The male parties are 1) 1) The son, 2) The son of the son (grandson from the son) and continues to the bottom as long as the origin of the relationship continues to be male, 3) Father, 4) Grandfather from the father's side and continues to the relationship that has not broken from the father's side, 5) Brother from the same parents, 6) Brothers from the same father only, 7) Brothers from the same mother only, 8) The son of a brother from the same mother, 9) The son of a brother from the same father, 10) A brother of the father (uncle) from the same parents, 11) A brother of a father from the same father, 12) A son of a father's brother (uncle) from the same parents, 13) A son of a father's brother (uncle) from the same father, 14) Husband and 15) The man who freed the corpse. If all of these people are still there, the one who gets the heirloom is the father, son, and husband. The female parties include 1) Daughters, 2) Daughters of the son and continue to the bottom as long as the origin of the relationship continues to be male, 3) Mother, 4) Mother of the father (grandmother), 5) the mother of the mother continues on the mother's side before the return of the brother, 6) Sisters from the same parents, 7) Sisters from the same father, 8) Sisters from the same mother, 9) The wife, and 10) The woman who freed the corpse. If everything is still there, those who get the inheritance are the wife, daughter, daughter of a son, mother, and sister who are the same

³³ Khisni, *Hukum Waris Islam*.

³⁴ Akhmad, *Hukum Kewarisan Islam*.

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mother. If all the heirs are still there, both from the male and female sides, then the one who gets the inheritance is the husband or wife, mother and father, sons and daughters³⁵. According to the Compilation of Islamic Law (KHI), heirs consist of groups based on blood relations, namely male groups including fathers, sons, brothers, uncles and grandfathers, and women/women, mothers, and daughters, sisters, and grandmothers. In contrast, according to the marriage group, it is husband or wife. If all the heirs are still alive or some are entitled to receive the inheritance are the children, father, mother and husband or wife³⁶. The Word of God strengthens the provisions of the distribution of rights for heirs in the Qur'an Surah An-Nisaa verse 11 with the following meaning: "*Allah has prescribed for you regarding (the division of inheritance for) your children. Namely: the share of a son is equal to the share of two daughters, and if the children are more than two girls, then two-thirds of the property is left behind; if the daughter is alone, then she gets half the property. Furthermore, for two parents, for each one-sixth of the property left behind, if the deceased has children; if the person who dies has no children and he is inherited by his parents (only), then the mother gets a third; If the deceased has several siblings, then the mother gets one-sixth. (The distributions mentioned above) after the will has been fulfilled or (and) after the debt has been paid. (About) your parents and your children do not know which of them is closer to (many) benefits to you. It is a decree from Allah. Surely Allah is all-knowing and wise*".³⁷ The provisions of inheritance with a division of two to one (2:1) following the verse of the Qur'an Surah An-Nisaa verse 4 can be compared from the perspective that boys have much more material obligations than girls. These obligations include; 1) a boy must pay a dowry if he gets married, while a girl is not obliged to pay it, and 2) a man must provide for his family, while a woman must obey and serve her husband.

There are three groups of heirs: *dzawil furudl*, *ashabah* and *dzawil arham*. *Dzawil furudl* is the right share of the heirs whose distribution has been determined, namely, 1/3, 2/3, 1/6 and 1/8. *Ashabah* is an heir whose rights are not set, but he will get all the property if he does not have a *dzawil furudl* heir. However, if there is a *dzawil furudl*, then the *ashabah* heir will only get the remainder after being distributed to the *dzawil furudl*. If the inheritance is not leftover, then *ashabah* heirs have no inheritance. In comparison, *dzawil arham* is an heir who

³⁵ Rasjid, *Fiqhi Islam*.

³⁶ Supardin, *Fikih Mawaris & Hukum Kewarisan (Studi Analisis Perbandingan)*.

³⁷ "Mengenal Digital Quran Versi. 3.0."

obtains inheritance due to a relationship with the heir. Therefore, *Dzawil arham* is not included in *dzawil furudl* and *ashabah*³⁸.

In the Compilation of Islamic Law, it is explained that the degrees of the group of heirs have levels, including 1) the first-degree group includes; widow/widower, children and/or their descendants, father and mother, 2) the second-degree group among them; widows/widowers, children and/or their descendants, grandparents from both father and mother, 3) third-degree groups including; widow/widower, sibling (sibling, father, mother) and/or their descendants, paternal and maternal grandfather and grandmother, and 4) widow/widower, uncle/aunt and/or their descendants³⁹.

Based on the provisions in the distribution of inheritance according to Islamic law, the principle of inheritance is the principle of the individual, the heirs are based on descent, marriage and guardianship, and the provisions on the rights of the heirs have been determined. So that the inheritance can be divided individually and the property has become the property of the person who received it.

3. The division of inheritance in *Saruaso* and *Sawah Tengah*

The public believes that the distribution of inheritance in Minangkabau customs, especially in the *Saruaso* and *Tengah*, is inversely proportional to the provisions stipulated in Islamic inheritance law. However, if viewed in-depth, the inheritance distribution is in line with the provisions of Islamic law. However, before discussing the distribution of inheritance, it is better to know in advance the types of inheritance found in Minangkabau, especially in the *Saruaso* and *Sawah Tengah* Villages.

Inherited assets in Minangkabau generally consist of high and low inheritance assets and include search assets and own property (*harato surang*). The inheritance grouping follows the questionnaires filled out by *Ninik Mamak* and *Bundo Kanduang* at *Saruaso* and *Sawah Tengah* Villages. Filling the questionnaire obtained the following results; 88% of respondents answered strongly agree, 12% answered agree, and 0% answered quite agree and disagree. It can be seen in Figure 3 regarding the grouping of inheritance in Minangkabau.

³⁸ Muhammad Ali Murtadlo, "Keadilan Gender Dalam Hukum Pembagian Waris Islam Perspektif The Theory of Limit Muhammad Syahrur," *Gender Equality: International Journal of Child and Gender Studies* 4, no. 1 (2018): 173–188.

³⁹ Khisni, *Hukum Waris Islam*.

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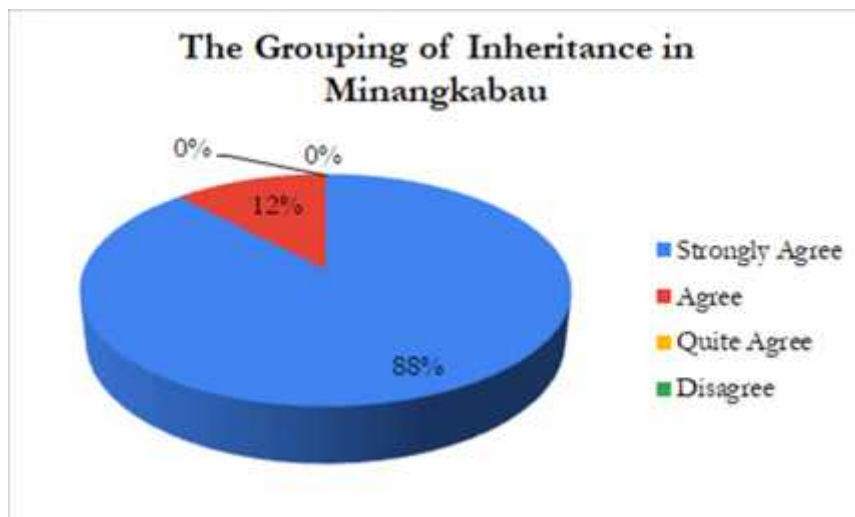


Figure 3. The Grouping of Inheritance in Minangkabau

Based on the data in Figure 3, inheritance in Minangkabau, especially in Kenagarian Saruaso and Kenagarian Sawah Tangah, consists of two types, namely high and low inheritance, because the results of the questionnaire show that 88% of respondents strongly agree. The data states that *Niniek Mamak* and *Bundo Kanduang* in *Saruaso* and *Sawah Tangah* Villages strongly agree (88%) on the inheritance classification in Minangkabau, namely high inheritance and low inheritance.

The people who are mandated to carry out the task of distributing inheritance in *Minangkabau*, both high and low inheritance, are *Ninik Mamak* and *Alim Ulama*. *Ninik Mamak* and *Alim Ulama's* understanding of distributing the inheritance given to them was very well understood and proven to have been carried out well, following the provisions that apply both in Islam and in *Minangkabau* customs. It can be seen from the questionnaires conducted to *Niniek Mamak*, *Bundo Kanduang* in *Saruaso*, and *Sawah Tangah* Villages. The questionnaire results are that 54% of respondents answered strongly agree, 43% of respondents answered agree and 3% of respondents answered quite agree, and 0% of respondents answered disagree. It can be seen in Figure 4, which relates to *Ninik Mamak* and *Alim Ulama's* understanding of the assigned tasks.

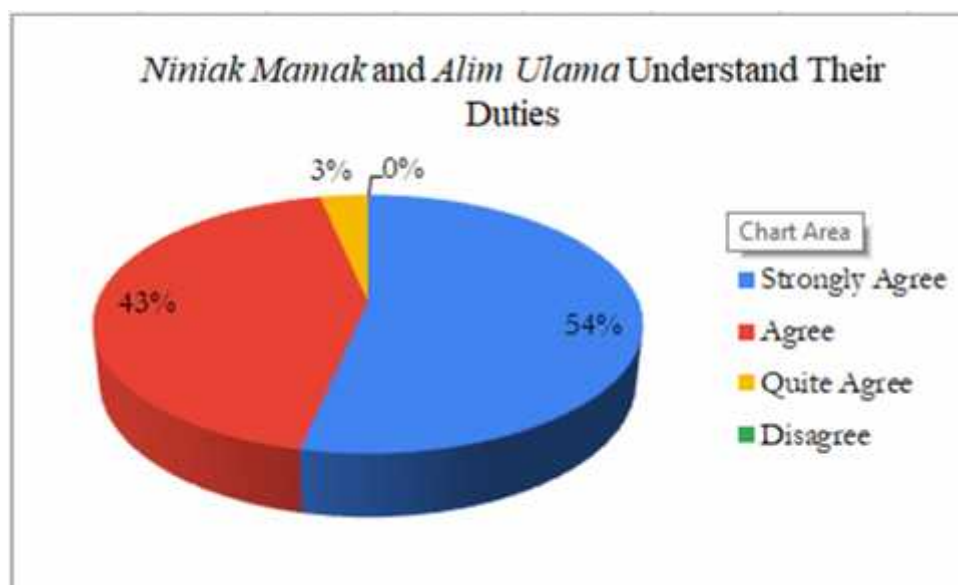


Figure 4. Ninik Mamak and Alim Ulama Understand Their Duties

Based on the data in Figure 4, Ninik Mamak and Alim Ulama understand the assigned tasks. It is indicated by the acquisition of a percentage of 54% of respondents stated strongly agree. It means that *Ninik Mamak* and *Alim Ulama* in *Saruaso* and *Sawah Tengah* Villages understand the task assigned to them. For example, one of the tasks assigned includes the technique of distributing inheritance in Minangkabau. *Ninik Mamak* and *Alim Ulama* are stated because in Minangkabau, a leader generally has a dual role, as *Ninik Mamak* and a cleric. An example of one of the tasks of *Ninik Mamak* and *Alim Ulama* in distributing inheritance in Minangkabau is; that if death occurs and he leaves a high inheritance, then *Ninik Mamak* and *Alim Ulama* will divide the property according to Minangkabau customary provisions. If he leaves a low inheritance property (search property or personal property (*harato surang*)), then *Ninik Mamak* and *Alim Ulama* will divide it according to the provisions that apply in Islamic teachings or Faraid law.

However, in terms of understanding the tasks given to *Ninik Mamak* and *Alim Ulama*, still, 3% of respondents stated that they quite agree. It means that *Ninik Mamak* and *Alim Ulama* still do not understand the task of distributing inheritance. Concerning these data, *Ninik Mamak* and *Alim Ulama*, who already have much experience (senior) to cadre and educate *Ninik Mamak* and *Alim Ulama* who are still young or have just been appointed by their tribe members. Therefore, *Ninik Mamak* and *Alim Ulama* will be the next generation to carry on their duties as *Ninik Mamak* and *Alim Ulama* can carry out their duties according to the stipulated provisions, both those applicable in Islamic teachings and Minangkabau customs.

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High heirloom assets in Minangkabau are jointly owned heirlooms, given from generation to generation based on maternal lineage, and these assets cannot be traded. The provisions that apply to the distribution of high heirloom assets follow Minangkabau customary provisions. It can be proven by questionnaires given to *Ninie Mamak* in *Kanagerian Saruaso* and *Kanagerian Sawah Tangah*. The questionnaire results showed that 67% of respondents answered strongly agree, and 33% respondents answered agree and 0% answered quite agree and disagree. This statement can be seen in Figure 5 regarding the technique of distributing high heirlooms, applying Minangkabau customary provisions.

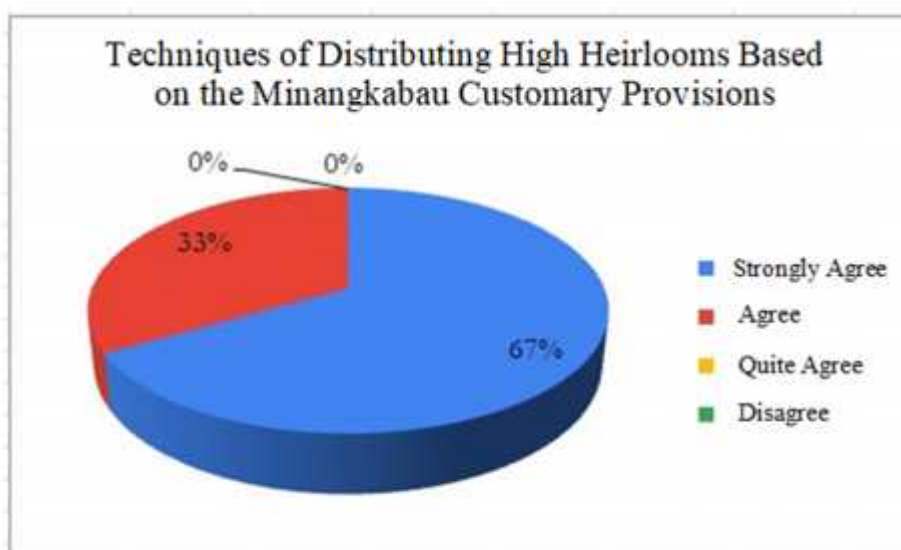


Figure 2. The Technique of Distributing High Heirlooms Based on Minangkabau

Customary Provision

The data in Figure 5 can be used as a basis that the technique of distributing high inheritance uses the provisions contained in Minangkabau customs. It is evidenced by the results of a questionnaire with a score of 67% of respondents answered strongly agree. It means that the technique used in distributing high heirloom assets by *Ninik Mamak* or *Alim Ulama* in Minangkabau has been carried out following Minangkabau customary provisions. Because the high inheritance is a joint property, the property cannot be divided and cannot be traded and passed down from mamak to nephew based on the mother's lineage.

The technique of distributing low inheritance in Minangkabau follows the applicable guidelines in Islamic inheritance law. This statement was strengthened by the questionnaires given to *Ninie Mamak* in *Saruaso* and *Sawah Tangah* Villages. The questionnaire results are 63% of respondents answered strongly agree, 37% answered agree and 0% answered quite

agree and disagree. These results can be seen in Figure 6 regarding distributing low inheritance assets that apply the provisions of Islamic teachings.

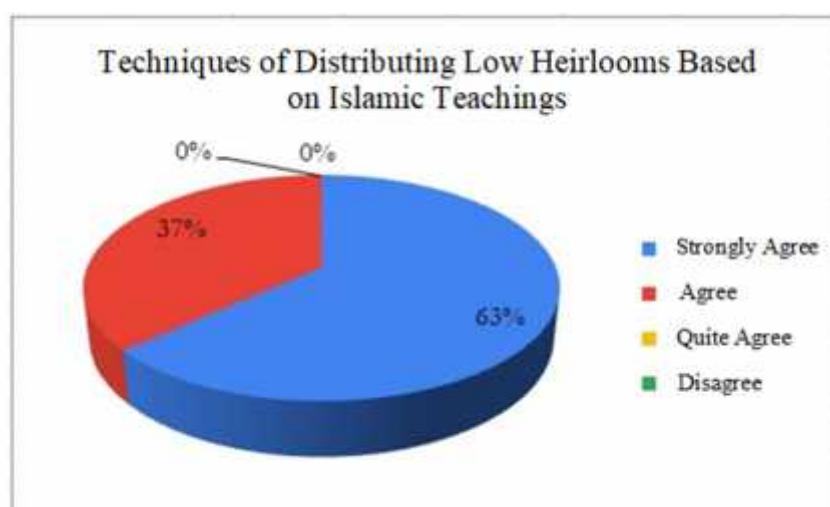


Figure 3. The Techniques of Low Heirlooms Distribution based on Islamic Teachings

This study revealed that *Niniak Mamak* and/or *Alim Ulama* in Minangkabau state that the distribution of low inheritances imposed the inheritance law in Islamic teachings. It is because the property was personal, and it could be distributed to people entitled to receive it.

C. CONCLUSION

The distribution of Minangkabau inheritance was carried out at the Saruaso and Sawah Tengah Villages in terms of low inheritance assets, which was very appropriate and in line with the principles and provisions stipulated in Islamic teachings on Faraid. This is shown by the Minangkabau proverb that *adat basandi, syarak-syarak basandi Kitabullah, syarak mangato, adat mamakai*. However, the division of high inheritance in Saruaso and Sawah Tengah does not conflict with the provisions of Islamic law. It is because the high inheritance does not belong to individuals but is jointly owned and is not allowed to be divided, it is not allowed to be traded, but his tribe can utilize the benefits of high inheritance.

Minangkabau people are very obedient to customary provisions. However, unfortunately, it was still found that some *Niniak Mamak* violated the customary provisions. Thus, other researchers interested in exploring this finding in-depth can consider it as further research.

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