



Resolving Customary Inheritance Disputes within Indonesia's National Legal System:

The Case of Harta Pusaka Tinggi in Minangkabau Society, West Sumatra

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Abstract

This study discusses the position and resolution of *harta pusaka tinggi* (ancestral inherited property) in Minangkabau customary inheritance system in West Sumatra and the urgency of its regulation within the national inheritance system through the *Kompilasi Hukum Islam* (KHI/Compilation of Islamic Law). The focus of this study is on the practices of management and transfer of *harta pusaka tinggi* which, based on customary provisions, is collective, cannot be owned individually, and is not traded except on certain conditions based on *kaum* deliberation. This study aims to describe the position of *harta pusaka tinggi* in Minangkabau customary law, analyze the resolution of disputes, and formulate the urgency of substantive legal provisions regarding customary inheritance within the KHI. The study employed a qualitative method with a legal anthropology approach and a normative approach toward the KHI. Data collection was conducted by means of interviews with the customary leaders of the *Lembaga Kerapatan Adat Alam Minangkabau* (LKAAM/Minangkabau Customary Council Institution), *Kerapatan Adat Nagari* (KAN), community leaders and court judges in West Sumatra, and supported by analysis of statutory regulations. The findings indicate that the management of *harta pusaka tinggi* has undergone changes under the influence of modernization, economic needs and the weakness of national legal regulations regarding customary inheritance, resulting in various legal disputes and difficulties for judges in determining the substantive legal grounds in deciding customary inheritance cases. The study implies the importance of reconstructing and accommodating customary inheritance law, especially *harta pusaka tinggi*, into the KHI as a national regulation in order to create legal certainty, protect customary values, and provide dispute resolution that is more responsive to the legal pluralism in Indonesia.

Keywords: Customary Inheritance, *Harta Pusaka Tinggi*, *Kompilasi Hukum Islam*

Abstrak

Penelitian ini mengkaji kedudukan dan penyelesaian sengketa harta pusaka tinggi dalam sistem kewarisan adat Minangkabau di Sumatera Barat serta urgensi pengaturannya dalam sistem kewarisan nasional melalui Kompilasi Hukum Islam. Fokus kajian diarahkan pada praktik pengelolaan dan pengalihan harta pusaka tinggi yang dalam ketentuan adat bersifat kolektif, tidak boleh dimiliki secara individual, serta tidak dapat diperjualbelikan kecuali dalam kondisi tertentu berdasarkan musyawarah kaum. Penelitian ini bertujuan menjelaskan kedudukan harta pusaka tinggi dalam hukum adat Minangkabau, menganalisis mekanisme penyelesaian sengketa serta merumuskan kebutuhan hukum materiil terkait kewarisan adat dalam Kompilasi Hukum Islam. Metode penelitian yang digunakan adalah penelitian kualitatif dengan pendekatan antropologi hukum dan pendekatan normatif terhadap Kompilasi Hukum Islam. Pengumpulan data dilakukan melalui wawancara dengan tokoh adat yang tergabung dalam Lembaga Kerapatan Adat Alam Minangkabau (LKAAM), Kerapatan Adat Nagari (KAN), tokoh masyarakat, dan hakim pengadilan di Sumatera Barat, serta didukung oleh analisis peraturan perundang-undangan. Hasil penelitian menunjukkan bahwa praktik pengelolaan harta pusaka tinggi mengalami pergeseran akibat pengaruh modernisasi, kebutuhan ekonomi, dan lemahnya pengaturan hukum nasional terkait kewarisan adat. Kondisi ini menimbulkan berbagai sengketa hukum dan kesulitan bagi hakim dalam menemukan dasar hukum materiil ketika memutus perkara waris adat. Studi ini berimplikasi pada pentingnya rekonstruksi dan pengakomodasian hukum waris adat, khususnya terkait harta pusaka tinggi, ke dalam Kompilasi Hukum Islam sebagai regulasi nasional guna menciptakan kepastian hukum, perlindungan terhadap nilai adat, serta penyelesaian sengketa yang lebih responsif terhadap pluralisme hukum di Indonesia.

Kata Kunci: *Kewarisan Adat, Harta Pusaka Tinggi, Kompilasi Hukum Islam*

Introduction

In the practice of inheritance distribution, customary law communities in Indonesia are strongly bound to their customary inheritance systems, such as practiced by the Minangkabau customary community in West Sumatra. The traditional inheritance system in Minangkabau recognizes two types of property, namely *pusaka tinggi* and *pusaka rendah*. The status of *harta pusaka tinggi* is the highest form of inherited property passed down from generation to generation. This *harta pusaka tinggi* refers to the legacy of former descendants and then it is passed on to later descendants. Meanwhile, the *harta pusaka rendah* is the inherited property derived from the work or earnings of parents (father and mother), which is then inherited by later descendants in accordance with the provisions of Islamic

inheritance law.¹

Harta pusaka tinggi is managed by the *Mamak Kepala Waris* (MKW)² and may only be utilized for its benefits; it may not be transferred to other parties or sold. However, it may be pawned in accordance with the pawn requirements regulated under Minangkabau customary inheritance law. *Harta pusaka tinggi* may be pawned under four conditions based on deliberation and agreement among all members of the *kaum* (clan). These reasons are: (1) *Maik tabujua di ateh rumah* (a deceased person lies in the house awaiting funeral arrangements); (2) *Mananggakan gala pusako* (the conferral of a customary hereditary title); (3) *Gadiah gadang indak balaki* (an adult woman/unmarried daughter who has not yet married); and (4) *Rumah gadang katirisan* (the traditional clan house is leaking/damaged), namely for the cost of renovating the *rumah gadang*.³

In principle, the rules governing *harta pusaka tinggi* within the Minangkabau customary inheritance system prohibit its transfer or sale to other parties. However, many transfers of *harta pusaka tinggi* are, in fact, made in ways that do not follow customary provisions, giving rise to legal problems in society. This condition is affected by the increasing economic needs and social changes due to modernization that erodes community adherence to customary law as it is considered less relevant to current conditions. On the other hand, existing regulations have not fully accommodated the legal needs of customary law communities. Consequently, in customary law disputes, judges often face difficulties in finding substantive legal references. Judges' limited understanding of customary law, combined with the absence of clear substantive legal regulations concerning such customary matters, has created new problems within the judicial process.

The substantive inheritance law governing Muslims within the Indonesian national inheritance system is regulated under the *Kompilasi Hukum Islam* (KHI/Compilation of Islamic Law), Book Two on Inheritance Law (Articles 171–193). The KHI defines inheritance law as the transfer of ownership rights over the decedent's estate to the heirs along with their respective shares (Article 171 letter a). An inheritance estate refers to all property left by the decedent, whether in the form

¹Franz Benda-Beckmann and Keebet von Benda-Beckmann, "Changing One Is Changing All: Dynamics in the Adat-Islam-State Triangle," *Journal of Legal Pluralism and Unofficial Law* 38, no. 53–54 (2006); Andre Indrasukma, "Pengelolaan Harta Pusaka Tinggi Di Minangkabau; Studi Kasus Di Kubang Putih Kecamatan Banuhampu Kabupaten Agam Sumatra Barat," *Al-Aḥwāl* 14, no. 1 (2021), p. 13; Masfi Sya'fiatul Ummah, "Inheritance Law in Minangkabau: A Comparative Study of the Application of Islamic and Customary Inheritance Law in Koto Tangah Subdistrict," *Sustainability (Switzerland)* 11, no. 1 (2019).

²Interview with Jasri Datok Basa, Chair of KAN Nagari Kasang, on August 21, 2025.

³Franz von Benda-Beckmann and Keebet von Benda-Beckmann, "The Dynamics of Change and Continuity in Plural Legal Orders," *Journal of Legal Pluralism and Unofficial Law* 38, no. 53–54 (2006), p. 1–44; Afnaini and M. Syamsudin, "Changes In The Inheritance System Of Pusako Tinggi Assets And Their Impact On The Minangkabau Traditional Inheritance System," *Prophetic Law Review* 4, no. 2 (2022); Indrasukma, "Pengelolaan Harta Pusaka Tinggi Di Minangkabau; Studi Kasus Di Kubang Putih Kecamatan Banuhampu Kabupaten Agam Sumatra Barat."

of assets or rights belonging to the decedent (Article 171 letter d). Meanwhile, inherited property includes personal property and shares of joint marital property after deducting expenses related to the decedent's care during illness until death, such as medical treatment costs, funeral arrangements (*tajhiz mayat*), debts, and wills to relatives (Article 171 letter e).

The KHI also regulates marital property, namely personal property and joint property (Articles 85–97). However, the KHI does not recognize a category of property that remains undistributed upon the death of the decedent and continues to be collectively managed. This is different from the Minangkabau inheritance system in West Sumatra which knows the concept of *harta pusaka tinggi*, namely property that is still used by the *kaum* together and is not distributed individually when the decedent dies.

The KHI has not yet accommodated problems regarding customary inheritance disputes, especially those that relate to *harta pusaka tinggi* in customary Minangkabau inheritance law in West Sumatra. This condition causes difficulties for judges in resolving cases due to the absence of clear substantive customary legal arrangements in the KHI. Therefore, it is important to study the need for customary inheritance law arrangements for resolving disputes in courts, especially regarding the status of *harta pusaka tinggi* in the inheritance system in the Minangkabau community and the formulation of its substantive legal arrangements from the perspective of legal anthropology that can be accommodated in the KHI.

This study aims to evaluate the implementation of legal policy at the national level in order to produce problem-solving recommendations in the field of inheritance law through the approaches of legal anthropology theory and the KHI. Specifically, this study explains the position of *harta pusaka tinggi* within the Minangkabau customary inheritance system and formulates substantive legal provisions that may be incorporated into the KHI. The significance of this study is expected to provide normative recommendations concerning substantive legal regulations in customary inheritance disputes involving *harta pusaka tinggi* as practiced by the Minangkabau customary community in West Sumatra.

Studies on *harta pusaka tinggi* within the Minangkabau customary community demonstrate the development of issues from normative customary aspects toward disputes, management, transformation of inheritance practices, and the relationship between customary law, Islamic law, and national law. Based on their focus, previous studies may be categorized into several groups.

The first category consists of studies focusing on disputes and legal settlement of *harta pusaka tinggi*. In this context, Ratu Lesyane Putri and I Komang Suka'arsana examined a dispute concerning *harta pusaka tinggi* in the Decision of the Batusangkar District Court Number 27/Pdt.G/2017/PN Bts. The study revealed a contradiction between the judge's considerations and the principles of Minangkabau customary law. The judge granted the claim of the *Mamak Kepala Waris* on the grounds that he was considered the party with authority over the *harta pusaka tinggi*, whereas according to Minangkabau customary law the property

belongs collectively to the *kaum*. These findings indicate the problems of the implementation of customary law in the practice of national courts. Similar research was carried out by Carrissa Aggasta Lui, Helen Setia Budi, and Reynaldi Hartman with a legal positivism approach in the settlement of Minangkabau customary inheritance disputes based on the Supreme Court Decision Number 2488 K/Pdt/2024. The study emphasized that the dominance of a positivistic approach in dispute resolution has the potential to neglect the matrilineal principles and communal values of Minangkabau customary law, thereby necessitating judicial reconstruction that is more accommodative toward legal pluralism.

The second category consists of studies focusing on the management and transfer of *harta pusaka tinggi*. Andre Indrasukma examined the management of *harta pusaka tinggi* in Nagari Kubang Putiah and found that its management practices had undergone changes and no longer fully conformed to customary provisions. From the perspective of Islamic law, such practices were considered closer to the concept of *hibah* (grant/gift). Meanwhile, Apri Hendri, Syamsuwir, and Hospi Burda examined the transfer of *harta pusaka tinggi* in Nagari Durian Gadang through practices of pawning and sale due to the community's limited understanding of customary regulations. The study concluded such transfers are not legitimate either under customary law or Islamic law because *harta pusaka tinggi* is not individually owned property that can be freely transferred. Further, these practices were also seen as opposed to the principle of property protection in *maqāṣid al-syarī'ah* (objectives of Islamic law).

Previous studies regarding the relationship between customary law and Islamic law in the Minangkabau inheritance system have proven that both systems are dynamically integrated in society. Elfia, Meirison, and Qasim Muhammadi found that in Padang Pariaman there is a practice of distributing *pusaka rendah* located on *pusaka tinggi* land to daughters, which is influenced by the lack of understanding of Islamic law and elements of coercion among heirs. To solve this problem, they proposed a solution to separate the value of *pusaka tinggi* land from *pusaka rendah* assets so that the distribution of inheritance is in accordance with Islamic law provisions. In line with this finding, Rahmi Murniwati found the existence of a dual inheritance system in Minangkabau society, namely *pusako tinggi*, which is inherited matrilineally according to customary law, and *pusako rendah*, which is distributed based on Islamic inheritance law. These findings indicate that Minangkabau society is fundamentally capable of accommodating customary law and Islamic law side by side.

In addition, there are studies focusing on comparisons between inheritance law systems. Fikri Rafi Musyaffa Abidin et al. compared Minangkabau customary inheritance law with the Indonesian Civil Code (*KUHPerdata*). The study found that Minangkabau customary law was based on collective ownership through maternal lineage whereas the Civil Code was based on an individualistic system that recognized blood relations and marriage. This study demonstrates fundamental

differences in philosophy, distribution systems, and the determination of heirs between the two legal systems.

Most of previous research on *harta pusaka tinggi* has generally focused on disputes, management, transfer, the relationship between customary law and Islamic law, as well as comparisons of inheritance systems. However, there remains limited research specifically examining the position of *harta pusaka tinggi* within the Minangkabau customary inheritance system in relation to the need for reformulating the substantive law of the KHI. This study differs from previous research because it emphasizes the analysis of the position of *harta pusaka tinggi* within the Minangkabau customary inheritance system as a consideration for reformulating the substantive provisions of the KHI. This issue is important because the KHI has not explicitly regulated *harta pusaka tinggi*, while disputes concerning it continue to increase in judicial practice.

This study employs legal anthropology theory to examine the legal cultural practices of society, as well as the KHI as a regulation and substantive legal reference in resolving inheritance disputes within the Indonesian Religious Courts. This study adopts an anthropological approach, namely the study of human beings, particularly social anthropology, which examines society as a form of “comparative sociology” in order to understand various forms of society and develop general theories regarding how they function. Social anthropology is also known as the study of “small-scale” societies that are relatively easier to understand comprehensively, as well as a form of “cultural translation” for understanding customs that may appear exotic within foreign societies.⁴

In anthropological research, there are five main variables in formulating a research topic. The first variable is the internal human situation, which includes behavior, beliefs, values, and perceptions. The second is the external situation in the form of societal characteristics. The third is social behavior, which examines patterns of eating, communication, playing, and working within society, i.e., aspects that usually attract the attention of social scientists when they first enter a new environment. The fourth is artifacts as products of human creation and the fifth is the environment, both physical and social.⁵

Legal anthropology is not ethnocentric because it is not limited to a particular culture; rather, it examines the relationship between law, culture, and social

⁴Robert Layton, *An Introduction to Theory in Anthropology*. Cambridge (Cambridge: Cambridge University Press, 2006); Eli Rustinar Juanda, Ipit Saefidier Dimyati, Komarudin, Asep Ganjar Wiresna, “Indigenous Knowledge and Ecological Sustainability: A Narrative Review,” *Jurnal Antropologi Nusantara* 1, no. 1 (2025), p. 1–14; Koentjaraningrat, *Pengantar Ilmu Antropologi* (Jakarta: Rineka Cipta, 2009); Yance Arizona, “Adat as Strategy for Legal Struggle and Legal Mobilization (Adat Sebagai Strategi Perjuangan Dan Mobilisasi Hukum),” *Indonesian Journal of Socio-Legal Studies* 2, no. 2 (2023).

⁵H. Russell Bernard, *Research Methods in Anthropology: Qualitative and Quantitative Approaches* (Thousand Oaks: Sage Publications, 1994); Soerjono Soekanto, “Antropologi Hukum Sebagai Penunjang Studi Hukum Adat,” *Jurnal Hukum & Pembangunan* 15, no. 2 (2017).

organization.⁶ Law is viewed as a social process within community life. Therefore, law is not limited to statutory regulations, but also includes customary law and religious rules as local regulatory systems that function to maintain social order.⁷

Accordingly, research on the systems of a community as local elements influencing the implementation of law becomes important. The application of legal anthropology requires various methods, such as normative, historical, exploratory, descriptive, and case study approaches. Legal anthropology plays a role in explaining legal changes within society, identifying the ideology underlying legal rules, studying legal behavior and legal culture within communities, and examining legal issues inductively.⁸

According to E. Adamson Hoebel and Karl Llewellyn in *The Cheyenne Way*, law possesses four elements incorporated within the concept of authority as the defining characteristics of law within society and culture. These elements include: imperative, meaning that law is established by those in authority to regulate society; supremacy, meaning that law occupies the highest position and functions as a social fact; system, meaning that law constitutes an interconnected order of rules; and officiality, meaning that law possesses a public quality formally recognized by society.⁹

This present study employs the theory of Hoebel and Karl Llewellyn concerning the element of authority in the imperative nature of law through an anthropological approach to analyze the position of *harta pusaka tinggi* within Minangkabau customary law in West Sumatra, as well as to formulate substantive legal provisions to be incorporated into the KHI for the resolution of customary inheritance disputes concerning *harta pusaka tinggi* in courts.

This study is related to the inheritance practices of *harta pusaka tinggi* within the Minangkabau customary community in West Sumatra. The research subjects consisted of customary leaders in West Sumatra, namely individuals holding positions within the LKAAM and KAN of West Sumatra, as well as other

⁶ John R. Bowen, *Islam, Law and Equality in Indonesia: An Anthropology of Public Reasoning* (New York: Melbourne Cambridge University Press, 2003); Ali Sodikin, "Antropologi Hukum Sebagai Pendekatan Dalam Penelitian Hukum Islam," *Al-Manahij: Jurnal Kajian Hukum Islam* VII, no. 1 (2013).

⁷ Sulistyowati Irianto, "Praktik Penelitian Hukum: Perspektif Sosiolegal," in *Metode Penelitian Hukum: Konstelasi Dan Refleksi*, ed. Sulistyowati Irianto and Shidarta (Jakarta: Yayasan Obor Indonesia, 2009), p. 297–315; Sally Falk Moore, "Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study," in *Law as Process: An Anthropological Approach* (London: Routledge & Kegan Paul, 1983), p. 54–73.

⁸ Franz Von Benda-Beckmann, "Anthropological Approaches to Property Law and Economics," *European Journal of Law and Economics* 2, no. 4 (1995); Bowen, *Islam, Law and Equality in Indonesia: An Anthropology of Public Reasoning*.

⁹ Chris Hann, "Reproduction and Inheritance: Goody Revisited," *Annual Review of Anthropology* 37 (2008); David S. Trigger, "Land Claim Legacies, Native Title, and the Rigours of Indigenous Politics," *Australian Journal of Anthropology* 36, no. 1 (2025); Yusnita Eva, "Perspektif Dan Kajian Hukum Dari Beberapa Tokoh Dalam Bidang Antropologi Hukum," *Mimbar Hukum* 22, no. 1 (2010), p. 18.

community leaders. In addition, several judges from District Courts in West Sumatra were also included in the study. Field data collection techniques were conducted through open interviews using previously prepared but non-binding questions. The collected data were analyzed in depth in order to derive legal conclusions.

The data collected here were analyzed comprehensively and in depth using a descriptive-analytical method to explain the position of *harta pusaka tinggi* within the inheritance system of the Minangkabau customary community, as well as the formulation of substantive legal provisions that may be proposed for inclusion within the legal provisions of the KHI. The results of this analysis are expected to provide a comprehensive study regarding the dynamics of the development of Islamic inheritance law that is responsive to contemporary conditions in accordance with the living law within society.

The Position of Joint Property and Heirs in the Compilation of Islamic Law

The KHI governs marital property that is classified into personal property and joint property. Personal property refers to any property acquired before marriage by personal effort, gift, grant, inheritance, and other means, whereas joint property refers to property acquired during the marriage.¹⁰ These provisions are closely related to inheritance distribution, in which personal property remains the ownership of each husband or wife, except for the property belonging to the deceased party, while joint property is first divided equally between the spouses before becoming inheritance property. Articles 85 and 87 of the KHI emphasize that the existence of joint property does not eliminate the individual ownership rights of the husband or wife over their respective personal and acquired property. Article 97 stipulates that a widow or widower after divorce is entitled to one-half of the joint property, while Article 190 regulates the distribution of joint property in polygamous marriages, whereby each wife is entitled to the marital property derived from her own household with the decedent.

The KHI also stipulates impediments (*hijab*) to inheritance in Article 173, i.e. the loss of the right to inherit once it is proven through a court decision that the person has committed murder, attempted murder, severe abuse, or serious defamation against the decedent. The parties entitled to become heirs are regulated in Article 174, consisting of heirs by blood relation, namely children, father, mother,

¹⁰Maizuddin Maizuddin et al., "The Typology of Hadith as the Bayan of the Qur'an and Its Implications for the Reform of Islamic Inheritance Law," *Samarah* 7, no. 2 (2023); Zainuddin Ali, *Pelaksanaan Hukum Waris Di Indonesia* (Jakarta: Sinar Grafika, 2008).; Ilyas Ilyas et al., "The Accommodation of Customary Law to Islamic Law: Distribution of Inheritance in Aceh from a Pluralism Perspectives," *Samarah* 7, no. 2 (2023); Mursyid Djawas et al., "Harmonization of State, Custom, and Islamic Law in Aceh: Perspective of Legal Pluralism," *Hasanuddin Law Review* 10, no. 1 (2024); Sayuthi M. Amin et al., "Resolving Inheritance Conflicts and Their Legal Repercussions in Aceh: A Sociological and Anthropological Look at Peace Initiatives Using Customary Courts," *El-Usrah* 8, no. 1 (2025), p. 166–89.

siblings, uncles, grandfather, and grandmother, as well as heirs by marital relation, namely husband or wife. If all principal heirs are present, then only the children, father, mother, and husband or wife is entitled to inherit.

The KHI also recognizes the concept of substitute heirs as regulated in Article 185, namely that descendants of an heir who dies before the decedent may replace their position, unless they are included among those prohibited from inheriting under Article 173. The share of a substitute heir may not exceed the share of the equivalent heir being replaced. In addition, the KHI regulates the concept of *wasiat wajibah* (obligatory bequest) for adopted children and adoptive parents in Article 209. Adopted children or adoptive parents who do not receive a will from the decedent may be granted an obligatory bequest of up to one-third of the inheritance estate, provided that it does not exceed the share of other equivalent heirs.

KHI serves as the basis for regulating the national inheritance system for Muslims in Indonesia. However, the KHI has not regulated inheritance property that is not distributed but instead collectively utilized by heirs, as practiced in the concept of *harta pusaka tinggi* within Minangkabau customary inheritance law in West Sumatra. Therefore, this study proposes a formulation of substantive inheritance law within the KHI to address the need for resolving customary disputes related to the practice of *harta pusaka tinggi*.

Overview of Minangkabau Customary Institutions

1. *Kerapatan Adat Nagari* (KAN)

Within the Minangkabau customary governmental system in West Sumatra, there exists the *nagari*, namely a customary law community unit equivalent to a village that possesses the authority to regulate community interests based on Minangkabau customs and customary law,¹¹ as regulated in Article 1(c) of the West Sumatra Provincial Regulation Number 13 of 1983. The customary functions of the *nagari* are carried out by the *Kerapatan Adat Nagari* (KAN), which plays a role in organizing the social life of the *nagari* community concerning customary law and Minangkabau culture. M. Natsir and Jasri describe that the KAN has the authority to represent the customary community, manage customary rights and kinship property, resolve customary disputes such as *tanah ulayat* (communal customary land) and *harta pusaka tinggi*, as well as preserve and maintain Minangkabau customs and culture.

In this regard, it is known that the authority of the KAN customary institution includes representing the customary community in customary matters, managing customary rights and kinship property, and resolving customary disputes that do not conflict with prevailing customary provisions, including disputes concerning *tanah ulayat*, *harta pusaka tinggi*, and other customary matters. The KAN also functions as the guardian and preserver of Minangkabau customs and

¹¹Interview with Jasri Datok Basa, Chair of KAN Nagari Kasang, on August 21, 2025.

culture.¹² West Sumatra Provincial Regulation Number 7 of 2018 concerning *Nagari* states that: “The *Kerapatan Adat Nagari*, hereinafter abbreviated as KAN or referred to by another name, is an institution that constitutes the highest representative consultative body in the administration of *nagari* governance, whose membership consists of representatives of *niniak mamak* (customary elders), elements of *alim ulama* (religious scholars), *cadiak pandai* (intellectuals), *bundo kanduang* (female customary leaders), and *parik paga* elements within the respective *nagari*, in accordance with the customs of the particular *nagari*.”

Article 6 of West Sumatra Provincial Regulation Number 7 of 2018 concerning *Nagari* provides that:

- 1) In every *Nagari*, a *Kerapatan Adat Nagari* (KAN) shall be established as the highest consultative institution in the administration of *Nagari* governance.
- 2) The membership of the *Kerapatan Adat Nagari* as referred to in paragraph (1) consists of representatives of *Niniak Mamak* (customary elders), elements of *Alim Ulama Nagari* (religious scholars), elements of *Cadiak Pandai* (intellectuals), elements of *Bundo Kanduang* (female customary leaders), and elements of *Parik Paga* within the respective *Nagari* in accordance with *Adat Salingka Nagari*.
- 3) The *Kerapatan Adat Nagari* is led by a chair assisted by two vice chairs appointed or elected from and by the members in accordance with the provisions of *Adat Salingka Nagari*.

The KAN customary institution operates under the supervision of the LKAAM from the sub-district level up to the provincial level. KAN is a *nagari* institution responsible for maintaining, preserving, and safeguarding Minangkabau customs and culture. Based on the West Sumatra Provincial Regulation Number 7 of 2018 concerning *Nagari*, the term of office of the KAN is based on *Adat Salingka Nagari* which is the customary tradition of the *nagari* community that is passed down from generation to generation. This tradition is a guide for the life of the *nagari* community which regulates various aspects of life including kinship relations, marriage, and inheritance.¹³

The provisions of West Sumatra Provincial Regulation Number 7 of 2018 concerning the KAN term of office based on *Adat Salingka Nagari* mean that the term of office of the KAN is determined through deliberation and consensus among all *kaum* and customary leaders in each *nagari*. Therefore, the term of office of the KAN varies from one *nagari* to another. For example, the Chair of KAN *Nagari* Kasang, Jasri, has served for more than twenty years because he has continuously

¹²Interview with M. Natsir Datok Sampono Batuah, Secretary VII for Sako Pusako Affairs of LKAAM West Sumatera, on August 20, 2025 and Jasri Datok Basa, Chair of KAN *Nagari* Kasang, on August 21, 2025.

¹³Interview with M. Natsir Datok Sampono Batuah, Secretary VII for Sako Pusako Affairs of LKAAM West Sumatera, on August 20, 2025.

been requested to continue his position through KAN deliberations, even though it has periodically been stated that his term had ended. According to Jasri and Ispendi, the absence of term limits for the Chair of the KAN is due to the lack of specific provisions within Minangkabau customary law regulating such limitations.¹⁴

In every *nagari*, a KAN is established, namely an institution whose membership consists of *tungku tigo sajarangan*, a leadership concept within Minangkabau customary society that comprises three principal elements: *niniak mamak* (customary leaders), *alim ulama* (religious leaders), and *cadiak pandai* (intellectual leaders/scholars). This concept shows the synergy and complementarity of these three elements in maintaining social harmony and balance.¹⁵ The term *niniak mamak* is used to refer to the customary authorities, that is, the respected elders of the Minangkabau *kaum*. They are the leaders, advisors and regulators in various aspects of *kaum* life, including customary affairs, inheritance property and the life of the social community. From the explanations of M. Natsir, Jasri, and Ispendi, the *niniak mamak* themselves consist of four elements, namely:¹⁶

- a. *Penghulu* (the title for the highest leader of a *kaum* within a *nagari*).
- b. *Malin* or other varying titles in each *nagari* (a title for religious scholars or *alim ulama*).
- c. *Manti* or other varying titles in each *nagari* (a title for individuals responsible for determining the affairs and future of the *kaum*).
- d. *Dubalang* or other varying titles in each *nagari* (a title for individuals responsible for safeguarding and enforcing *kaum* regulations and guiding the *kamanakan* [nephews/nieces within the matrilineal lineage]).

The KAN consists of *penghulu suku* (tribal chiefs), *penghulu kaum* (clan chiefs), and *penghulu tungganai*, who play roles in customary decision-making. The *penghulu tungganai* serves as the *mamak kepala waris* (head of inheritance authority) as well as the highest leader of the *kaum*, responsible for customary matters, *kemenakan* (matrilineal descendants/nephews and nieces), and the *kaum* itself. As the highest customary institution within the Minangkabau *nagari*, the membership of the KAN is proposed by the local *kaum* community. According to M. Natsir and Jasri, KAN exists in every *nagari*, although in newly expanded *nagari*, it remains located in the parent *nagari*. The KAN functions to preserve and maintain Minangkabau customs and culture under the supervision of the LKAAM. The institution is the gathering of *niniak mamak* of their respective *kaum* based on local

¹⁴Interview with Jasri Datok Basa, Chair of KAN Nagari Kasang, and Ispendi, Traditional Leader (KAN Treasurer) of KAN Nagari Kasang, on August 21, 2025.

¹⁵Interview with M. Natsir Datok Sampono Batuah, Secretary VII for Sako Pusako Affairs of LKAAM West Sumatera, on August 20, 2025 and Jasri Datok Basa, Chair of KAN Nagari Kasang, on August 21, 2025.

¹⁶Interview with M. Natsir Datok Sampono Batuah, Secretary VII for Sako Pusako Affairs of LKAAM West Sumatera, on August 20, 2025; Jasri Datok Basa, Chair of KAN Nagari Kasang, and Ispendi, Traditional Leader (KAN Treasurer) of KAN Nagari Kasang, on August 21, 2025.

customary law with the same position, authority, and rights in determining the development of customary law and conveying the results of deliberations to their respective *kaum*.¹⁷

The KAN decision making is done collectively by deliberation and consensus without adopting a voting system. If consensus has not yet been achieved, the decision is postponed or deferred (*diperambunkan*) until an agreement is reached. The resolution of important matters within the *nagari* is deliberated jointly between the *wali nagari* and the *tungku tigo sajarangan* (KAN) at the customary hall or the KAN office. The *wali nagari* is the head of the *nagari* government, i.e., the lowest customary law community unit in West Sumatra Province, who administers governance based on the origins and customs of the Minangkabau community.¹⁸

2. Lembaga Kerapatan Adat Alam Minangkabau (LKAAM)

The LKAAM is a customary institution that partners with the Government of West Sumatra in accommodating the aspirations of customary communities in preserving Minangkabau customary values. The LKAAM aims to preserve Minangkabau customs and culture in their entirety, transmit them institutionally to future generations, and increase community participation in regional development. In addition, the LKAAM functions as a coordinating body for the KAN customary institutions in accordance with the customary structure within the *nagari* of West Sumatra, with organizational positions extending from the sub-district, regency/city, to provincial levels.¹⁹

According to the explanation provided by M. Natsir, the LKAAM was initially established with the purpose of opposing and eradicating the rebellion of the Indonesian Communist Party (*Partai Komunis Indonesia*/PKI).²⁰ This is consistent with the writing of H. Kamardi Datok P. Simulie entitled “*Cuplikan Sejarah Singkat Lahirnya LKAAM (Lembaga Kerapatan Adat Alam Minangkabau) Provinsi Sumatera Barat* (A Brief Historical Overview of the Establishment of the LKAAM [Lembaga Kerapatan Adat Alam Minangkabau] of West Sumatra Province),” delivered during the LKAAM West Sumatra Working Meeting in Padang in 2016. The writing explains that at that time the *niniak mamak/penghulu adat* (customary elders/chiefs) became targets of attacks by the PKI. The *niniak mamak* were insulted and labeled as “village devils,” feudal groups, and landlords who had to be eliminated from Indonesia. If a *niniak mamak* stated that a “pawn-

¹⁷Interview with Ispendi, Traditional Leader (KAN Treasurer) of KAN Nagari Kasang, on August 21, 2025.

¹⁸Interview with M. Natsir Datok Sampono Batuah, Secretary VII for Sako Pusako Affairs of LKAAM West Sumatera, on August 20, 2025; Interview with Ispendi, Traditional Leader (KAN Treasurer) of KAN Nagari Kasang and Jasri Datok Basa, Chair of KAN Nagari Kasang, on August 21, 2025.

¹⁹Interview with M. Natsir Datok Sampono Batuah, Secretary VII for Sako Pusako Affairs of LKAAM West Sumatera, on August 20, 2025.

²⁰Interview with M. Natsir Datok Sampono Batuah, Secretary VII for Sako Pusako Affairs of LKAAM West Sumatera, on August 20, 2025.

holding” (*pegang gadai*) case had not yet been resolved, the *niniak mamak* would be accused of being a counter-revolutionary element that had to be crushed, considered a rebel, labeled as a member of the banned Masyumi and PSI parties, an agent of Neo-Colonialism and Imperialism (*Nekolim*), and so forth.²¹

The authority of the LKAAM includes preserving and safeguarding Minangkabau customary values and culture, serving as a strategic partner of the regional government, and accommodating the aspirations of customary communities. The LKAAM functions as a fortress for the preservation of Minangkabau customs so that they are not eroded by the development of the times, while also strengthening the cultural identity of the community. Through various customary and cultural development programs, the LKAAM instills Minangkabau values in society and younger generations in order to ensure the continuity of customs and strengthen community resilience against negative external influences.²²

The Position of *Harta Pusaka Tinggi* in the Minangkabau Customary Inheritance System

In the Minangkabau customary inheritance system, there are two types of inheritance that are recognized, namely *sako* and *pusako*. *Sako* refers to inherited intangible wealth in the form of rights and symbols of customary prestige, which play an important role in shaping morality and preserving Minangkabau customs, including.²³

- 1) The title of *penghulu* (customary chief).
- 2) The maternal lineage (*sako indu*).
- 3) The father’s title (in the Rantau Pariaman region, paternal titles are passed down to children, such as *sidi*, *bagindo*, *marah*, and *sultan*).
- 4) Minangkabau customary law itself along with its proverbs and customary expressions.
- 5) Customs of politeness and etiquette

As immaterial wealth, *sako* is inherited from generation to generation according to the following lines:²⁴

- 1) The title of *penghulu* is inherited by male *kemenakan* (nephews within the matrilineal lineage).
- 2) The maternal lineage (*sako indu*) is inherited by daughters.
- 3) The father’s title (such as *sidi*, *bagindo*, *marah*, and *sultan*), specifically

²¹H. Kamardi Datok P. Simulie, “Cuplikan Sejarah Singkat Lahirnya LKAAM (Lembaga Kerapatan Adat Alam Minangkabau) Provinsi Sumatera Barat” (Padang, 2016).

²²Interview with M. Natsir Datok Sampono Batuah, Secretary VII for Sako Pusako Affairs of LKAAM West Sumatera, on August 20, 2025.

²³Edison Pliang and Nasrun Dt. Marajo Sungut, *Tambo Minangkabau; Budaya Dan Hukum Adat Di Minangkabau*, ed. S.IP Harry Arfianda (Bukit Tinggi, Sumatera Barat: Kristal Multimedia, 2024).

²⁴Edison Pliang and Nasrun Dt. Marajo Sungut, *Tambo Minangkabau; Budaya Dan Hukum Adat Di Minangkabau*, ed. S.IP Harry Arfianda.

in the Rantau Pariaman region, is inherited by sons.

- 4) Customary law together with its proverbs, expressions, etiquette, and norms of politeness are inherited by all children and *kemenakan* within the *nagari* and throughout the Minangkabau customary sphere.

Pusako or inherited property refers to material wealth inherited by children and *kemenakan*, such as rice fields, plantations, fish ponds, *rumah gadang* (traditional clan houses), family burial grounds (*pandam pekuburan*), communal customary land (*tanah ulayat*), meeting halls, mosques or *langar* (*surau*), and the equipment of the *penghulu*. *Harta pusako* is divided into *pusaka tinggi* and *pusaka rendah*. *Pusaka tinggi* refers to ancestral inherited property passed down from generation to generation without knowledge of its original owner, so that it cannot or is not appropriate to be divided among heirs. In Minangkabau custom, the transfer of authority over *pusaka tinggi* from the *mamak kepala waris* to the *kemenakan* is called *pusako bajawek*.²⁵

In earlier times, *harta pusaka tinggi* originated as inheritance passed down from the *niniak* (ancestors/grandmothers) to the *uwo* (elder grandmother), and subsequently from the *uwo* to the *mande* (mother), and from the *mande* to female relatives. At present, however, *harta pusaka tinggi* is inherited only from the *mamak* (maternal uncle/customary guardian) to the *kamanakan* or *kemenakan* (matrilineal nephews and nieces).²⁶

Within Minangkabau custom, *kemenakan* (*kamanakan*) are not subject to the concept of disinheritance. This is because there are four categories of *kemenakan*, namely:²⁷

- 1) *Kamanakan nan batali darah*; which refers to the children of one's sisters (blood-related matrilineal descendants).
- 2) *Kamanakan nan batali adat*; which refers to *kemenakan* connected through customary ties, expressed in the phrase *se-pondam sapekuburan, sahino samalu, salatak satariak, sabarek saringan*. However, they no longer belong to the same *suku* (tribe) or *rumah gadang*, and even their *sako* (customary titles) may already differ between the *kaum* considered connected through customary relations. This means that if one *kaum* line becomes extinct, the *kaum* connected through customary ties will inherit its property.
- 3) *Kamanakan nan batali ayie*; which refers to a child formally adopted as a *kemenakan* by the father through customary procedures, namely:
 - a. Approval by all *datok* (customary leaders) in the *nagari*, evidenced in written form.
 - b. Formal inauguration (*dilewakan*) through a customary ceremony at the customary hall witnessed by neighboring *nagari* communities.

²⁵Edison Pliang and Nasrun Dt. Marajo Sungut, *Tambo Minangkabau; Budaya Dan Hukum Adat Di Minangkabau*, ed. S.IP Harry Arfianda.

²⁶Edison Pliang and Nasrun Dt. Marajo Sungut, *Tambo Minangkabau; Budaya Dan Hukum Adat Di Minangkabau*, ed. S.IP Harry Arfianda.

²⁷STS. Dt. Rajo Indo, *Seluk-Beluk Hukum Adat Minangkabau* (n.d.).

- c. Hosting a communal feast for the *anak nagari* (members of the *nagari* community).
 - d. Public announcement twice during Friday assemblies.
Once these procedures are completed, the child is officially recognized as a *kamanakan*, as reflected in the expression *anak kamanakan*, derived from *anak kakamanakan*.
- 4) *Kamanakan nan batali budi*; which refers to outsiders who come and attach themselves strongly to a particular *kaum*. The receiving *kaum* regards such individuals as possessing good character and accepts them as members of the *kaum* with the status of *kamanakan*. The typical procedures needed for such recognition are:
- a. Fulfilling *maisi adat* obligations to the *nagari* according to *adat salingka nagari*.
 - b. Meeting all customary requirements for becoming a *kamanakan* without exception according to *adat nan sabatang panjang*.
 - b. Hosting a feast for the *anak nagari*.
 - c. Being formally inaugurated at the customary hall and/or at the *medan nan bapaneh* (traditional customary gathering place).
 - d. Being announced twice during Friday assemblies by the *datok pucuok*, *datok kapalo suku*, and/or *datok kapalo kampuang*.

The sources of *harta pusaka tinggi* are of two kinds, namely:²⁸

1) *Cancang letih galung taruko sendiri*

This refers to property acquired through one's own hard labor, such as personally creating rice fields, clearing and cultivating plantations, or establishing boundaries and fences on land that did not previously belong to any *kaum* or *suku*; for example, opening agricultural land in unclaimed forest areas. Such property later becomes communal *kaum* property and is inherited by the *kemenakan*.

2) Inheritance passed down from *niniak* to *mamak*, and from *mamak* to *kemenakan*

This refers to property originally obtained through *cancang letih galung taruko sendiri* by earlier ancestors and subsequently inherited from the *niniak* to the *mamak*, and from the *mamak* to the *kemenakan*.

Harta pusaka tinggi is ancestral inherited property passed down from generation to generation and jointly owned by family members, rather than originating from the earnings of the father and mother. Such property can be houses, rice fields, gardens or plantations. In Minangkabau custom, the transfer of authority over *harta pusaka tinggi* from *mamak* to *kemenakan* is called *pusako basalin*, meaning that such property is inherited only by *kemenakan*. According to Jasri and Ispendi, the *mamak kepala waris* distributes *harta pusaka tinggi* to be managed by *kaum* members, particularly the *kemenakan*, with one-third of the proceeds

²⁸Pliang and Sungut, *Tambo Minangkabau; Budaya Dan Hukum Adat Di Minangkabau*.

allocated for *kaum* interests and two-thirds for the manager, although these arrangements vary among different *kaum* and *nagari*.²⁹

The position of *harta pusaka tinggi* is governed by the customary principle “*tajua indok dimakan bali, tasando indak dimankan gadai*” (once sold it cannot be repurchased, and pledged property should not be pawned). This means that *harta pusaka tinggi* may neither be sold nor pawned. However, under compelling circumstances, it may be pawned provided that the following conditions are fulfilled:³⁰

- 1) *Maik* (the deceased) *terbujur di atas rumah*
This refers to when a person dies and the body lies in the house, while the family lacks the financial means for funeral arrangements and religious ceremonies to pray for the deceased.
- 2) *Gadi gadang* (adult unmarried woman) *tak balaki* (without a husband)
This refers to an adult daughter who is considered ready for marriage but remains unmarried because there are insufficient funds to hold a *baralek* (wedding ceremony). In Minangkabau customary views, an adult unmarried woman may bring shame to her *kaum* and relatives. Furthermore, in some cases, the woman may engage in conduct contrary to customary and religious norms, thereby causing embarrassment to the *kaum*, relatives, and family, even to the extent that family members may become involved in violent conflict because of her behavior. If the woman remains unmarried solely due to financial constraints, then the *kaum*’s *harta pusaka tinggi* may be used to finance the marriage ceremony to the extent necessary or in a modest manner.
- 3) *Rumah gadang* (traditional house) *ketirisan* (damaged/leaking)
This refers to when the *rumah gadang* has a leaking roof that causes damage to other parts of the house, and no other funds are available for repairs. Within Minangkabau custom, the *rumah gadang* has a highly important function as the center of matrilineal kinship administration within the Minangkabau *kaum*. The *rumah gadang* also functions as a residence and provides protection for all family members within the *paruik* (matrilineal family unit), while symbolizing the unity and integrity of the *kaum* organization.
- 4) *Mangambang nan talipek atau mambangkik batang tarandam (batagak panghulu)*
This refers to the ceremony of reviving a *gala* (customary title) of a *penghulu* that has long fallen into disuse. The title is conferred upon a *kaum* member considered capable of carrying the responsibility, but there are

²⁹Interview with Jasri Datok Basa, Chair of KAN Nagari Kasang, and Ispendi, Traditional Leader (KAN Treasurer) of KAN Nagari Kasang, on August 21, 2025.

³⁰Interview with M. Natsir Datok Sampono Batuah, Secretary VII for Sako Pusako Affairs of LKAAM West Sumatera, on August 20, 2025; Jasri Datok Basa, Chair of KAN Nagari Kasang, and Ispendi, Traditional Leader (KAN Treasurer) of KAN Nagari Kasang, on August 21, 2025.

insufficient funds to hold the *baralek* (customary installation ceremony). In fact, the position of a *penghulu* within a *kaum* is extremely important. Without a *penghulu*, there would be no one responsible for resolving *kaum* disputes, paying debts, collecting receivables on behalf of the *kaum*, or serving as the *kaum*'s representative in *nagari* meetings and other matters concerning *kaum* interests.

From the explanations of M. Natsir, Jasri, Ispendi, and Imharto Karim (Head of Services at the Wali Nagari Kasang Office), nowadays there are also *kaum* that pawn *harta pusaka tinggi* not only for the four customary reasons mentioned above, but also for other needs such as children's educational expenses and various necessities. In some cases, the property is even sold based on the agreement of the *kaum* members. There are also instances where the sale occurs due to development interests related to government projects, as happened in Nagari Kasang, where certain *harta pusaka tinggi* properties were sold for a toll road construction project.³¹

Within Minangkabau custom, the *mamak kepala waris* is responsible for safeguarding and managing *harta pusaka tinggi*. Such property may be pawned or sold upon the agreement of the *kaum* for the benefit of the *kaum* or the public interest, but this cannot be done directly. The *penghulu* must first seek alternative solutions, and only if such efforts fail or prove insufficient may the *harta pusaka tinggi* be pawned or sold in accordance with the customary provisions of the local *nagari*.³²

Harta pusaka rendah refers to inherited property passed from the decedent to the first generation of heirs, where the number of heirs is still limited, and therefore its status is regarded as "low" inheritance. This property may originate from the management of inherited assets, trade, employment, or gifts from other parties, and may take the form of movable property (such as jewelry, cars, and houses) or immovable property (such as rice fields and plantations). Inheritance received from parents becomes the full personal property of the heirs, including the proceeds derived from its management, which may increase one's acquired wealth. Consequently, the owner has the right to possess, sell, or grant the property to others.³³

In its development, this type of property generally consists of a person's acquired wealth distributed according to Islamic inheritance law, including property

³¹Interview with M. Natsir Datok Sampono Batuah, Secretary VII for Sako Pusako Affairs of LKAAM West Sumatera, on August 20, 2025; Jasri Datok Basa, Chair of KAN Nagari Kasang, and Ispendi, Traditional Leader (KAN Treasurer) of KAN Nagari Kasang, and Imharto Karim, Head of Service Affairs at the Nagari Kasang Village Office, conducted on August 21, 2025.

³²Hospi Burda Apri Hendri, Syamsuwir, "Pengalihan Harta Pusaka Tinggi Perspektif Hukum Adat Dan Hukum Islam (Studi Kasus Di Nagari Durian Gadang Kecamatan Sijunjung)," *Jurnal Integrasi Ilmu Syari'ah* II, no. 1 (2021), p. 15.

³³Qasim Muhammadi Elfia, Meirison, "Distribution of Heritage Association of Harta Pusaka Tinggi And Harta Pusaka Rendah in Padang Pariaman," *Al-Ahkam* 30, no. 1 (2020), p. 22.

jointly earned by husband and wife, as well as property granted by a *mamak* to his *kemenakan* from the *mamak*'s own earnings. If *harta pusaka rendah* is inherited continuously for three generations (children, grandchildren, and great-grandchildren) without being divided, its status automatically changes into *harta pusaka tinggi*.³⁴

Harta pusaka rendah that continues to be preserved intact without being sold or divided, and is inherited continuously until its original ownership is no longer questioned, may eventually change status into *harta pusaka tinggi*. In Minangkabau customary practice, some *harta pusaka tinggi* indeed originates from *pusaka rendah* that later becomes customary *kaum* property and is continuously inherited within the *kaum*. *Harta pusaka tinggi* is not subject to the *faraidh* (Islamic inheritance) system because it is not divided as individual inheritance, but rather inherited collectively by the *kaum* descendants (*anak kaum/suku*), while *kaum* members are only entitled to benefit from its use and proceeds.³⁵

Harta pusaka rendah may be inherited by descendants and is referred to as an "implant asset," functioning to increase the amount of *harta pusaka tinggi* in Minangkabau society, thereby supporting the welfare of communities both in the Minangkabau homeland and among migrants abroad. This property originates from parents and is inherited by their children, both male and female, or may take the form of gifts from a *mamak* (maternal uncle). Its distribution follows Islamic inheritance provisions (*faraidh*), whereby male children receive a share twice that of female children. In practice, distribution is generally carried out while the parents are still alive in order to avoid disputes in the future.³⁶

From the explanation above, it can be concluded that within the Minangkabau customary inheritance system there are two fundamental principles governing inheritance property. First, *harta pusaka tinggi* is inherited from generation to generation through the maternal lineage and transferred in accordance with customary provisions. This property is managed by the *mamak kepala waris*. Second, *harta pusaka rendah* is inherited in accordance with Islamic law or based on the agreement of family members. The legal position of *harta pusaka tinggi* is that it belongs collectively to the *kaum/suku* (clan/tribe) as a customary legal entity and is managed by the *mamak kepala waris*, who is not the owner of the *kaum*'s assets but merely their manager. Meanwhile, *harta pusaka rendah* constitutes acquired property inherited according to *faraidh* or family agreement.

³⁴Indo, *Seluk-Beluk Hukum Adat Minangkabau*.

³⁵Adeb Davega Prasna, "Pewarisan Harta Di Minangkabau Dalam Perspektif Kompilasi Hukum Islam," *Kordinat* XVII, no. 1 (2018), p. 36.

³⁶Interview with Jasman, Imam of the Mesjid Raya Nagari Nanggalo Surao Gadang, conducted on August 20, 2025; Jasri Datok Basa, Chair of KAN Nagari Kasang, and Ispendi, Traditional Leader (KAN Treasurer) of KAN Nagari Kasang, and Imharto Karim, Head of Service Affairs at the Nagari Kasang Village Office, conducted on August 21, 2025; Elfia, Meirison, "Distribution of Heritage Association of Harta Pusaka Tinggi And Harta Pusaka Rendah in Padang Pariaman."

The System for Resolving *Harta Pusaka Tinggi* Disputes in Minangkabau Customary Society

In the provisions of Regional Regulation (Peraturan Daerah/Perda) Number 2 of 2007 concerning the Principles of Nagari Governance, Article 1 point 13 states that the *Kerapatan Adat Nagari* (KAN) is an institution of customary deliberation which consists of *niniak mamak* that has existed and been inherited from generation to generation according to custom, and functions to maintain customary traditions and resolve disputes related to *sako* and *pusako* within the *nagari*. This regulation describes the function and authority of the KAN customary institution, which is entrusted with resolving matters relating to *sako* and *pusako* arising within Minangkabau customary society.

The KAN does not generally have a direct role, from the outset, in the settlement of customary disputes, including disputes on inheritance. Instead, the disputing parties are first encouraged to resolve the matter through family deliberation. If no settlement is reached within the family, the matter proceeds to the level of the *kaum* (clan) and *suku* (tribe/clan group), as reflected in the customary proverb “*karuah di pajaniah, kusuik disalasaikan*” or more completely “*indak ado kusuik nan tak salasai, indak ado karuah nan tak janiah*,” meaning that there is no problem without a solution and nothing cloudy that cannot be clarified. This proverb emphasizes optimism and the belief that every difficulty can be overcome with wisdom and patience, teaching people not to give up when facing life’s challenges. However, if one of the disputing parties remains dissatisfied with the decision reached, the process may then proceed to the higher level, namely the KAN, for settlement.³⁷

This is in line with the explanation of M. Natsir that according to the custom, every dispute that occurs in society must be resolved starting from the lowest level, as reflected in the Minangkabau proverb “*bajanjang naiak, batanggo turun*.”³⁸ *Bajanjang naiak* means that every dispute should be resolved through the lowest stages first, starting from the family or household level, which is handled by the *mamak rumah* (maternal uncle/head of the household). If no agreement is reached at the household level, the dispute resolution process will continue to the level of *kaum* or *suku* and the *nagari* level. At the *nagari* level, the matter is resolved or deliberated upon within the KAN institution. *Batanggo turun* means that the results of the deliberation or dispute resolution conducted by the *niniak mamak* or customary elders are expected to be obeyed by the disputing parties.³⁹

The resolution of customary disputes, e.g., disputes related to *harta pusaka*

³⁷Romi Afadarma, “Peranan Ketua Adat Dan Kerapatan Adat Nagari Dalam Penyelesaian Sengketa Harta Pusaka Tinggi Di Nagari Sungai Tarab Kabupaten Tanah Datar Provinsi Sumatera Barat,” *PhD Thesis, UIN FAS BENGKULU* (Semarang, 2010).

³⁸Interview with M. Natsir Datok Sampono Batuah, Secretary VII for Sako Pusako Affairs of LKAAM West Sumatera, on August 20, 2025.

³⁹Afadarma, “Peranan Ketua Adat Dan Kerapatan Adat Nagari Dalam Penyelesaian Sengketa Harta Pusaka Tinggi Di Nagari Sungai Tarab Kabupaten Tanah Datar Provinsi Sumatera Barat.”

tinggi, is carried out gradually, starting from the lowest level, i.e., the household or family. At this stage the settlement is handled by the *mamak rumah* from both parties. If no agreement is reached, the matter proceeds to the level of *kaum* or *suku* under the leadership of the *penghulu paruik*. The *penghulu paruik* (*penghulu suku*) is the clan chief or leader within the *niniak mamak* structure who is responsible for managing and safeguarding the customs and inherited property of the clan. He also functions as a guide for the *anak kemenakan* (matrilineal descendants/nephews and nieces) and as a community leader in accordance with inherited customary provisions. If the matter still cannot be resolved, the dispute is then brought to the *nagari* level.⁴⁰

If the dispute remains unresolved at the clan level, the settlement process is then continued through the KAN by first submitting a formal request. Before submitting the application or registering the dispute with the KAN customary institution, the KAN requests both parties to gather together. The KAN then asks the claimant to submit an object commonly referred to as a *tando* (a sign or symbolic token). In this context, *tando* is divided into two forms:^{41,42}

- 1) For disputes concerning *sako* (customary titles or symbols of prestige), the *tando* takes the form of a *keris* (traditional dagger), which symbolizes the authority and prestige of a *datuk* (customary leader).
- 2) For disputes concerning *pusako* in the form of material property such as land, houses, and other assets, the *tando* takes the form of a bracelet (*gelang*).

The submission of the *tando* signifies the seriousness of the disputing parties in seeking the resolution of the dispute. The *tando* serves as a guarantee from the parties that the dispute will be resolved genuinely and properly. After the *tando* is submitted, the Chair of the KAN convenes a meeting with KAN members to determine the date for the deliberation session. Once the process of resolving the *harta pusaka tinggi* dispute has been completed, the *tando* is returned by the Chair of the KAN to the claimant. The losing party is required to reimburse the litigation costs in the form of an amount of money determined by the Chair of the KAN.

Disputes among *anak-kemenakan* (matrilineal descendants/nephews and nieces), or among members of the same *kaum/suku* (clan/tribe) concerning various customary matters, including disputes over *harta pusaka tinggi*, are resolved through the following procedures:

- 1) The dispute is first resolved by the respective *niniak mamak* of both parties. If no settlement is reached, then;

⁴⁰Afadarma, "Peranan Ketua Adat Dan Kerapatan Adat Nagari Dalam Penyelesaian Sengketa Harta Pusaka Tinggi Di Nagari Sungai Tarab Kabupaten Tanah Datar Provinsi Sumatera Barat.

⁴¹Afadarma, "Peranan Ketua Adat Dan Kerapatan Adat Nagari Dalam Penyelesaian Sengketa Harta Pusaka Tinggi Di Nagari Sungai Tarab Kabupaten Tanah Datar Provinsi Sumatera Barat."

⁴²Interview with M. Natsir Datok Sampono Batuah, Secretary VII for Sako Pusako Affairs of LKAAM West Sumatera, on August 20, 2025; Jasri Datok Basa, Chair of KAN Nagari Kasang, and Ispendi, Traditional Leader (KAN Treasurer) of KAN Nagari Kasang, on August 21, 2025.

- 2) The matter is brought before the *dunsanak sabarek sapikua* in accordance with the customary principle *ketek babingkah tanah, gadang nan balingkuang aua*. If no settlement is achieved, then;
- 3) The matter is brought before the *dunsanak bandua badiguah atok bagisia*. If a settlement still cannot be reached, then;
- 4) The dispute is brought before the KAN for further resolution, which is first examined by the customary peace section/division/element within the KAN, subject to the following requirements:
 - a. Registering the case through a written application signed by the relevant *niniak mamak*.
 - b. Submitting a final written conclusion signed by the parties concerned.
 - c. Paying a case registration fee amounting to one *emas* (traditional gold-value unit).
 - d. Paying hearing fees for each session by the party registering the case.
 - e. The KAN decision is determined in a special session based on recommendations and considerations from all sections/divisions/elements of customary reconciliation within the KAN.

The stages of dispute resolution within the KAN customary institution at the *nagari* level are as follows:⁴³

- 1) First stage: The KAN summons the *mamak* or *penghulu kaum* from both parties to obtain information regarding the results achieved from the settlement efforts within the clan.
- 2) Second stage: The KAN summons the plaintiff to provide an explanation regarding the dispute. Based on this explanation, the KAN formulates conclusions in the form of important points considered necessary.
- 3) Third stage: The KAN summons the defendant to provide an explanation. From the information given, the KAN likewise formulates conclusions in the form of important points deemed necessary.
- 4) Fourth stage: Based on the points and explanations provided by both parties, the KAN may formulate a conclusion regarding the dispute.
- 5) Fifth stage: The KAN also summons witnesses presented by both disputing parties to provide testimony.
- 6) Sixth stage: The KAN summons both disputing parties on the same day but at different times in order to prevent disturbances or conflicts that might arise if the parties meet face to face.
- 7) Final stage: The KAN issues a customary policy or decision regarding the disputed matter.⁴⁴

In the subsequent stage, to ensure the implementation of the KAN decision,

⁴³Afadarma, "Peranan Ketua Adat Dan Kerapatan Adat Nagari Dalam Penyelesaian Sengketa Harta Pusaka Tinggi Di Nagari Sungai Tarab Kabupaten Tanah Datar Provinsi Sumatera Barat."

⁴⁴Similar statements were expressed by Jasri Datok Basa, Chair of KAN Nagari Kasang, and Ispendi, Traditional Leader (KAN Treasurer) of KAN Nagari Kasang, on August 21, 2025.

several provisions are established as follows:⁴⁵

- 1) Decisions agreed upon during the reconciliation process within the KAN must be implemented by all related parties.
- 2) The implementation of KAN decisions concerning customary disputes, whether involving *sako* or *pusako* (customary civil disputes, including disputes over *harta pusaka tinggi*), is communicated to both disputing parties in a special meeting. If one or both parties do not yet accept the decision, they are granted the right to respond or appeal within fifteen (15) days from the date the decision is delivered or issued.
- 3) If an agreement is reached through deliberation and consensus during the reconciliation process in the KAN, both disputing parties are required to sign the KAN decision and implement it.
- 4) The KAN communicates the agreed decision to all KAN members as guidance for future cases.
- 5) If any disputing party violates the agreed decision, the violating party will be subject to sanctions or fines in accordance with the provisions specifically discussed before the decision was issued.
- 6) The highest decision concerning *sako* and *pusako* is determined in a special meeting of the KAN leadership and the customary reconciliation body, guided by previous decisions and precedents.

In several cases, reconciliation through deliberation and consensus within the KAN customary institution at the *nagari* level still allows the dispute to proceed through legal channels or the District Court due to dissatisfaction of one of the parties with the reconciliation outcome or the KAN decision. This occurs because KAN decisions merely constitute reconciliation agreements and do not possess legally binding force, thereby allowing the dispute to be brought again before the court, as explained by Syafrizal, Said Amrizal Zulfi, Saiyed Kadhim Syah, M. Natsir, and Jasri.⁴⁶

Chief Judge of the Padang District Court, Syafrizal said that disputes related to *harta pusaka tinggi* are under the absolute jurisdiction of the District Court because according to Minangkabau custom, *harta pusaka tinggi* is considered as customary heritage property, not inheritance property distributed among heirs. The management of *harta pusaka tinggi* is customarily passed down from the *mamak* through the maternal lineage. Therefore, disputes related to *harta pusaka tinggi* are

⁴⁵Afadarma, "Peranan Ketua Adat Dan Kerapatan Adat Nagari Dalam Penyelesaian Sengketa Harta Pusaka Tinggi Di Nagari Sungai Tarab Kabupaten Tanah Datar Provinsi Sumatera Barat."

⁴⁶Interview with Syafrizal, S.H., Chief Judge of the Padang District Court; Said Amrizal Zulfi, S.H., Judge at the Padang District Court; and Saiyed Kadhim Syah, S.H., Judge at the Padang District Court, conducted on August 20, 2025; M. Natsir Datok Sampono Batuah, Secretary VII for Sako Pusako Affairs of LKAAM West Sumatra, on August 20, 2025; and Jasri Datok Basa, Chair of KAN Nagari Kasang, and Ispendi, Traditional Leader (KAN Treasurer) of KAN Nagari Kasang, on August 21, 2025.

categorized as customary civil disputes and are not within the jurisdiction of the Religious Court. Similar explanations were also given by Padang District Court judges Said Amrizal Zulfi and Saiyed Kadhim Syah.⁴⁷

Proposed Formulation of Substantive Law in the KHI Concerning the Position of *Harta Pusaka Tinggi* in the Inheritance System of Minangkabau Customary Society

The position of *harta pusaka tinggi* in Minangkabau custom is not that of inheritance property distributed after a person's death, but rather hereditary property originating from the ancestors of a *kaum*, passed down to subsequent generations through the maternal line. *Harta pusaka tinggi* is managed by the *mamak*, i.e., the eldest or most respected male within the *kaum*. If the *mamak* is unable to carry out this responsibility, the *kaum* may deliberate to appoint another person considered capable of managing the property. As communal *kaum* property, *harta pusaka tinggi* may not be divided among heirs or sold, but it may be pawned under urgent economic circumstances in accordance with customary provisions, namely in the following four situations:

- 1) When there is a *maik* lying in the house and there are no funds available for the funeral rites (*tajhiz*) and prayer ceremonies for the deceased.
- 2) When there is a *gadi gadang* who remains without a husband due to the absence of funds for the *baralek*. In such circumstances, the *kaum's harta pusaka tinggi* may be used to finance the wedding ceremony.
- 3) When the *rumah gadang* is damaged or leaking. If the roof of the *rumah gadang* leaks and may cause further structural damage, while no repair funds are available, the property may be pawned for renovation expenses.
- 4) When it is necessary to conduct *mangambang nan talipek* or *mambangkik batang tarandam* (*batagak panghulu*), namely the ceremony for reviving or reinstating a customary title (*gala penghulu*) that has long been unused. This situation occurs when a *kaum* member considered capable is to receive the customary title, but there are insufficient funds to organize the *baralek*.

According to Ispendi, in contemporary conditions *harta pusaka tinggi* is also sometimes pawned for other needs, such as children's university tuition fees, daily living expenses, and other necessities. This implies that the values attached to *harta pusaka tinggi* have changed because economic demands today are quite different from the past.⁴⁸

The change in the value of *harta pusaka tinggi* at times causes disputes among the *kaum*. In some instances, fights have even occurred between *kaum* members or between *kaum*, involving sharp weapons. According to Jasman (Imam

⁴⁷Interview with Syafrizal, S.H., Chief Judge of the Padang District Court; Said Amrizal Zulfi, S.H., Judge at the Padang District Court; and Saiyed Kadhim Syah, S.H., Judge at the Padang District Court, conducted on August 20, 2025.

⁴⁸Interview with Ispendi, Traditional Leader (KAN Treasurer) of KAN Nagari Kasang, on August 21, 2025.

of Raja Mosque, Nagari Nanggalo Surau Gadang), such incidents had previously occurred in Nagari Nanggalo Surau Gadang, although they no longer occur today. If disputes do arise, they are usually resolved through deliberation among *kaum* members themselves and do not proceed to the customary adjudication process before the KAN.⁴⁹

In several cases, disputes over *harta pusaka tinggi* cannot be resolved at the initial stage through family or *kaum* deliberation, and therefore must be settled at the *nagari* level through the KAN. Many cases also proceed through legal processes before the District Court. According to Syafrizal, the Chief Judge of the Padang District Court, many disputes over *harta pusaka tinggi* have been submitted to the Padang District Court. Because *harta pusaka tinggi* is classified as customary property, the dispute over *harta pusaka tinggi* is under the absolute authority of the District Court and not the Religious Court. Therefore, the legal reference used in the resolution of disputes over *harta pusaka tinggi* is customary civil law.⁵⁰

From the perspective of Islamic law, the phenomenon of *harta pusaka tinggi* in Minangkabau custom which is inherited matrilineally has caused legal ambiguity. Although *harta pusaka tinggi* is communal in nature and does not constitute private property, this system potentially disadvantages the paternal lineage because Minangkabau custom recognizes only the maternal line of descent. Nevertheless, Minangkabau society has generally accepted this provision, so it rarely gives rise to disputes. In recent developments, however, changes in social values have caused conflicts among *kaum* members in the utilization of *harta pusaka tinggi*. Therefore, the written regulation in the customary legal framework is considered necessary to help judges in resolving disputes regarding *harta pusaka tinggi* more effectively.

The explanation of Syafrizal, which was reinforced by Said Amrizal Zulfy and Saiyed Kadhim Syah, stated that judges, especially those who are not from Minangkabau, have difficulty in handling customary cases, including disputes concerning *harta pusaka tinggi*. The experience of the two judges of the Padang District Court who originated from Aceh showed that they had to first study the unwritten rules of Minangkabau custom by consulting customary leaders. However, the information obtained was often inconsistent and varied from one source to another. This condition affects the judicial decision-making process because judges do not possess adequate knowledge of Minangkabau customary law.⁵¹

The difficulties faced by judges in West Sumatra in handling customary disputes, particularly those concerning *harta pusaka tinggi*, are also influenced by the Supreme Court's judicial rotation policy, which requires judges to serve in

⁴⁹Interview with Jasman, Imam of the Mesjid Raya Nagari Nanggalo Surao Gadang, conducted on August 20, 2025.

⁵⁰Interview with Syafrizal, S.H., Chief Judge of the Padang District Court, on August 20, 2025.

⁵¹Interview with Syafrizal, S.H., Chief Judge of the Padang District Court, and Saiyed Kadhim Syah, S.H., Judge at the Padang District Court, conducted on August 20, 2025.

different regions. Thus, non-Minangkabau judges must learn local customs that are highly practiced in the community but not formally codified in legal guidelines. This problem is deemed necessary to be specifically regulated in the national legal system. Although inheritance law has been regulated in the KHI through Presidential Instruction Number 1 of 1991, these provisions have not yet accommodated customary civil inheritance systems, including *harta pusaka tinggi* in Minangkabau society in West Sumatra. The absence of customary inheritance regulation in national law causes difficulties for judges in regions that still have a distinctive customary system. Therefore, customary inheritance rules, including provisions concerning *harta pusaka tinggi*, should be formulated within the KHI as part of the national legal system, including for other customary regions in Indonesia. Hence, this study proposes the inclusion of a specific clause in the KHI concerning *harta pusaka tinggi*. The proposed clauses are as follows:

- 1) *Harta Pusaka Tinggi* constitutes customary hereditary property within Minangkabau customary society and is inherited in accordance with customary law provisions.
- 2) *Harta Pusaka Tinggi* is inherited through the maternal line of descent.
- 3) The responsibility and management of *Harta Pusaka Tinggi* are entrusted to a male member of the maternal lineage.
- 4) The proceeds derived from the management of *Harta Pusaka Tinggi* may be utilized by *kaum* members belonging to the maternal line of descent.
- 5) Under certain circumstances, the benefits derived from the management of *Harta Pusaka Tinggi* may also be provided to *kaum* members from the paternal line if they are economically disadvantaged, based on the deliberation and agreement of *kaum* members.
- 6) If the *kaum* members agree that *Harta Pusaka Tinggi* should be sold for particular considerations, the proceeds from the sale of *Harta Pusaka Tinggi* shall become inheritance property for both the maternal and paternal lines of descent.

The six clauses above may be proposed for inclusion in the KHI in order to avoid legal problems that create difficulties for judges in resolving disputes concerning *harta pusaka tinggi* before the courts. This proposal would also shift the legal position of *harta pusaka tinggi* as part of customary heritage property, which has previously fallen under the jurisdiction of the District Court, so that such disputes could instead be handled by the Religious Court.

Fundamentally, *harta pusaka tinggi* constitutes inherited property transmitted within the Minangkabau kinship system, but it possesses distinct characteristics compared to *harta pusaka rendah*. *Pusaka rendah* follows the *faraidh* principles of Islamic inheritance law, is inherited patrilineally to male heirs, and becomes individual private property. In contrast, *harta pusaka tinggi* is inherited matrilineally through the female lineage, does not become private property, but is collectively managed and utilized for the benefit of the *kaum*.

Another consideration supporting its integration into the KHI is the fact that Minangkabau society is predominantly Muslim, so that *harta pusaka tinggi* may be understood as part of Islamic inheritance with special customary-based regulation. This system may be accepted through the concept of '*urf*' (customary practice recognized in Islamic law), allowing the distinction between *pusaka tinggi* and *pusaka rendah* to remain accommodated within Islamic inheritance law as a form of preserving Minangkabau custom, provided that it does not contradict Islamic principles.

Conclusion

Harta pusaka tinggi in Minangkabau custom constitutes hereditary property inherited from the ancestors (*niniak moyang*) and collectively owned by members of the *kaum*, rather than property derived from the parents' acquired wealth. Such property may consist of houses, rice fields, plantations, or farmland, and its inheritance process from *mamak* to *kemenakan* is known as *pusako basalin*. The management of *harta pusaka tinggi* falls under the authority of the *Mamak Kepala Waris*, who allocates the property to the *kemenakan* for management purposes, while the proceeds are generally divided into one-third for the interests of the *kaum* and two-thirds for the manager. These arrangements vary among *kaum*, both within the same *nagari* and across different *nagari*, in accordance with each *kaum*'s customary provisions. The legal position of *harta pusaka tinggi* is that it may neither be sold nor pawned; however, under an emergency situation it can be pawned if it meets the requirements determined by Minangkabau customary law. Settlement of customary disputes including disputes over *harta pusaka tinggi* begins at the household level through the *mamak rumah* of both parties. If reconciliation cannot be reached, the case is continued to the *penghulu paruik* at the *kaum/suku* level, and then to the KAN at the *nagari* level through deliberation and consensus. KAN decisions function as reconciliation agreements and are not legally binding, so that disputes can still be brought to the District Court. Disputes over *harta pusaka tinggi* are the absolute jurisdiction of the District Court because they are customary civil matters, not Islamic inheritance matters under the jurisdiction of the Religious Court. The absence of specific regulation in national law regarding customary inheritance creates difficulties for judges, especially those who do not understand local customary law. As such, the *harta pusaka tinggi* should be accommodated in the KHI, including provisions on: its status as customary heritage property; matrilineal inheritance through maternal line; management by male members of the maternal lineage; utilization of its proceeds for members of maternal clan line; the possibility of limited utilization by economically disadvantaged members of the paternal line based on clan deliberation; and, if the property is sold upon clan agreement, the distribution of the proceeds to both the maternal and paternal lines of descent. Such regulation is necessary to provide legal certainty, facilitate judges in resolving disputes and enable the transfer of jurisdiction to the Religious Court. Unlike *harta pusaka rendah* that is inherited patrilineally according to Islamic law, *harta pusaka*

tinggi is matrilineal and collectively utilized by clan members. This practice may be accepted as '*urf*' so long as it does not conflict with Islamic law.

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