
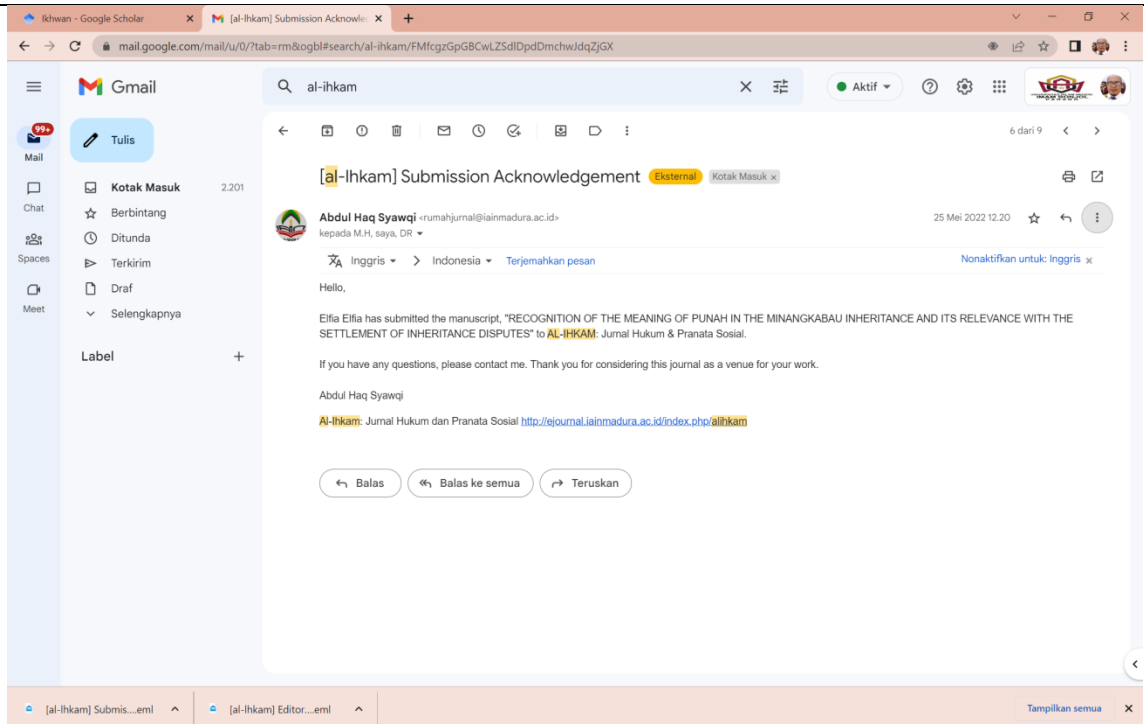


KORESPONDEN PENERBITAN ARTIKEL

Judul	Patterns for Settlement of PunaH Inheritance Disputes In the Community of Nagari Salareh Aia from the Perspective of Islamic Law
Penulis	Elfia , Universitas Islam Negeri Imam Bonjol Padang, Indonesia Sandria Milka Ratna Sari , Universitas Islam Negeri Imam Bonjol Padang, Indonesia Ikhwan , Universitas Islam Negeri Imam Bonjol Padang, Indonesia Muchlis Bahar , Universitas Islam Negeri Imam Bonjol Padang, Indonesia Nurus Shalihin , Universitas Islam Negeri Imam Bonjol Padang, Indonesia
Jurnal	Al-Ihkam: Jurnal Hukum dan Pranata Sosial 
Penerbit	Faculty of Sharia IAIN Madura collaboration with The Islamic Law Researcher Association (APHI)
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A SUBMISSION



The screenshot shows a Gmail interface with a search bar containing 'al-ihkam'. The email list shows an email from Abdul Haq Syawqi (rumahjurnal@iainmadura.ac.id) to Elfia Elfia, dated 25 Mei 2022 12:20. The subject is '[al-Ihkam] Submission Acknowledgement'. The email body contains the following text:

Hello,

Elfia Elfia has submitted the manuscript, "RECOGNITION OF THE MEANING OF PUNAH IN THE MINANGKABAU INHERITANCE AND ITS RELEVANCE WITH THE SETTLEMENT OF INHERITANCE DISPUTES" to **AL-IHKAM: Jurnal Hukum & Pranata Sosial**.

If you have any questions, please contact me. Thank you for considering this journal as a venue for your work.

Abdul Haq Syawqi

Al-Ihkam: Jurnal Hukum dan Pranata Sosial <http://ejournal.iainmadura.ac.id/index.php/alihkam>

At the bottom of the email, there are three buttons: 'Balas', 'Balas ke semua', and 'Teruskan'.

B REVIEW

The screenshot shows a Gmail interface with a search bar containing "al-ihkam". The email is from "Dimas Danar Septiadi" (rumahjurnal@iainmadura.ac.id) to "Elfia Elifa, M.H, DR, DR". The subject is "[al-ihkam] Editor Decision". The email content includes:

Elfia Elifa, M.H, DR, DR:

We have reached a decision regarding your submission to **AL-IHKAM: Jurnal Hukum & Pranata Sosial**, "RECOGNITION OF THE MEANING OF PUNAH IN THE MINANGKABAU INHERITANCE AND ITS RELEVANCE WITH THE SETTLEMENT OF INHERITANCE DISPUTES".

Our decision is to: Revisions Required

Dimas Danar Septiadi
IAIN Madura
Phone 081330489035
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A-Recognition of ...

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Dari: Elfia M.Ag <elfiamag@uinib.ac.id>
Date: Sel, 1 Nov 2022 pukul 08:29
Subject: Re: [al-ihkam] Editor Decision
To: Dimas Danar Septiadi <rumahjurnal@iainmadura.ac.id>

Assalamualaikum Warahmatullahi Wabarakatuh
I hereby send a revised revised manuscript that has been corrected according to the reviewer's input. Repair results are marked in red. Thanks Wassalam. Elfia et al

Pada tanggal Jum, 21 Okt 2022 pukul 14:36 Elfia M.Ag <elfiamag@uinib.ac.id> menulis:
Thank you very much I convey to the **Al-Ihkam** Journal Team, I will immediately correct it according to the input and revisions from the reviewer.

Pada tanggal Jum, 21 Okt 2022 pukul 11:08 Dimas Danar Septiadi <rumahjurnal@iainmadura.ac.id> menulis:

Elfia Elifa, M.H, DR, DR:

We have reached a decision regarding your submission to **AL-IHKAM: Jurnal Hukum & Pranata Sosial**, "RECOGNITION OF THE MEANING OF PUNAH IN THE MINANGKABAU INHERITANCE AND ITS RELEVANCE WITH THE SETTLEMENT OF INHERITANCE DISPUTES".

Our decision is to: Revisions Required

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PUBLISHING

The screenshot shows a Gmail interface with a search bar containing 'al-ihkam'. The main content is a forwarded email from 'Elfia M. Ag' (elfiamag@uinib.ac.id) to 'kepada saya' (me), dated 'Kam, 15 Des 2022 05.09'. The email is in Indonesian and contains the following text:

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Date: Kam, 1 Des 2022 12.02
Subject:
To: <elfiamag@uinib.ac.id>

Dear Elfia et al
Assalamualaikum Wr Wb
Through this letter, we inform you that your paper is ready to publish after passing some stages (revision, proofreading, editing, etc). According to this, we want to attach the Unconditional Letter of Acceptance (Unconditional LoA) that shows that your paper will be published soon.
Wassalamualaikum Wr Wb.
Best regards
Al Ihkam editorial team

Satu lampiran • Dipindai dengan Gmail

The email includes an attachment titled 'LoA Unconditiona...' with a thumbnail showing a document header from 'Jurnal al-Ihkam IAIN Madura'.

[al-Ihkam] Submis...eml

[al-Ihkam] Editor...eml

Tampilkan semua

NASKAH PERMINTAAN REVISI

RECOGNITION OF THE MEANING OF *PUNAH* IN THE MINANGKABAU INHERITANCE AND ITS RELEVANCE WITH THE SETTLEMENT OF INHERITANCE DISPUTES

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Article history:

Abstract:

The meaning of *Punah* in Islamic inheritance law is comprehended in the concept of the inheritance of the *Kalalah* (a person who has neither parents nor children). This term is also used in the Minangkabau customary inheritance of Nagari Salareh Aia,

which is one of the areas Salingka Nagari Minangkabau but has particular meanings and customary procedures in settling the *Punah* inheritance disputes. This study aimed to analyze and provide solutions for the settlement of the disputes of *Punah* inheritance in Nagari Salareh Aia from the perspective of Islamic and customary law. This research was field research with the approach of customary law and Islamic law. Primary and secondary data were collected through interviews and documentation studies. The results showed that the concept of *Punah* was comprehended differently by the Minangkabau people and the Faraid science. In Minangkabau society, *Punah* depends on not having daughters, while *Punah* in Islam depends on not having children or fathers. Thus, the two concepts are used mutually in settling inheritance disputes. This understanding is because the matrilineal system binds Minangkabau society. The mechanism for settling *Punah* inheritance customs by controlling and selling the inheritance for individual rights violates the concept of high ancestral inheritance settlement. Furthermore, the essence of collective ownership of high ancestral inheritance is failed. Settlement of customary disputes between high and low ancestral inheritance can be accomplished by purifying and separating low and high ancestral inheritance by dividing into two parts, namely partly for *Punah* heirs and partly for adat status of high ancestral inheritance.

Keywords:

Faraid, Islamic law, inheritance, Minangkabau, *Punah*

Introduction

The meaning of *Punah* in Islamic inheritance law is found in the concept of *Kalalah* inheritance. A person is called *Kalalah* if he has no offspring (children) and parents (father). People who have the kinship line of the family, not from the first line nor the second line, are called *Kalalah*¹. However, some describe *Kalalah* as *Punah* and the downward of the family tree who does not have heirs². The term *Kalalah* can be used for heiress and heirs. However, several opinions of linguists suggest the meaning of *Kalalah*: first, someone who does not have children and parents; second, someone who does not have children, parents, and siblings; fourth, someone who does not have family and relatives. Meanwhile, *Kalalah* heirs include siblings or brothers and sisters. The term *Kalalah* can be used for heiress and heirs. However, several opinions of linguists suggest the meaning of *Kalalah*: first, someone who does not have children and parents; second, someone who does not have children, parents, and siblings; fourth, someone who

¹ Ahmad Suganda and Nabi Muhammad, 'Konsep *Kalalah* Dalam Fiqh Waris, 04, 1–17 (p. 5).

² Al Yasa' Abu Bakar, *Rekonstruksi Fikih Kewarisan* (Banda Aceh: LKAS, 2012), p. 6.

does not have family and relatives. Meanwhile, *Kalalah* heirs include siblings or brothers and sisters^{3, 4}

Principally, Inheritance transfers ownership rights from the deceased to the living heirs⁵. *Kalalah* inheritance is mentioned in the Qur'an Surah an-Nisa 'verse 12 and 176. Verse 12 describes the share of each heir who gets the inheritance, including the *Kalalah* inheritance⁶. The mentioned verse explains the settlement of the share of the *Kalalah* (*Punah*) inheritance by emphasizing that both brothers and sisters are also designated as heirs if a person who dies does not have a father as heir and children but only has a brother or sister. In verse 176, the *Kalalah* inheritance is the heirs of siblings (siblings and agnate siblings, both male and female).

The term *Punah* is also shown in the Minangkabau customary inheritance. High ancestral inheritance assets, inherited in Minangkabau customary terms, are assets inherited based on the matrilineal system. High ancestral inheritance refers to the high ancestral inheritance from *Mamak* and *Ninik* *mamak* ahead to the top of the family tree. As the Minangkabau saying goes: *dari ninik turun ke mamak, dari mamak turun ke kemenakan* (from *Ninik* passed down to *Mamak*, from *Mamak* passed down to nephew)⁷. In Minangkabau custom, there are two forms of inheritance: high ancestral inheritance and low ancestral inheritance. High ancestral inheritance assets are owned by the family and maintained from generation to generation, from previous generations to the heirs of the following assets; the source is no longer known⁸. High ancestral inheritance is recognized as assets from their ancestors and afterward inherited from generation to generation from *Mamak* to nephews of the kinship group. Thus, they become the high ancestral inheritance of the kinship group⁹. The provision of these high ancestral inheritance assets, in principle, cannot be sold or pawned to the public, as the Minang proverb says: *dijua tak dimakan bali, digadai tak dimakan sando* which means that sold but cannot be bought, pawned but cannot be held. If there is an urgent condition for inheritance, it may be sold or pawned for the common good, but all lineage members must approve it. Under Minangkabau customary law, which is based on matrilineal, namely maternal law, then inheritance law in Minangkabau custom is applied and calculated based on maternal lineage. According to the mother's lineage, the inheritance is shared to family members if someone dies. Correspondingly, if the mother dies, the

³ Suganda and Muhammad.

⁴ M Guntur Ageng Prayogi, '(IAIN) Metro Lampung', 2018, p. 21.

⁵ (Atmaji, 2019: 3)

⁶ Amir Syarifuddin, *Hukum Kewarisan Islam*, 2nd edn (Jakarta: Kencana, 2005).

⁷ (Kamaluddin, 2005: 85–86)

⁸ Amir Syarifuddin, *Pelaksanaan Hukum Kewarisan Islam Dalam Lingkungan Adat Minangkabau* (Jakarta: PT Gunung Agung, 1984), p. 216.

⁹ Ellyne Dwi Poespasari, *Pemahaman Seputar Hukum Waris Adat Di Indonesia* (Jakarta Timur: Kencana, 2018), p. 35.

heirs fall to daughters and granddaughters to the next female generation; these heirs are called warih nan dakek (close heirs) ¹⁰.

The meaning of *Punah* in Minangkabau in this inheritance concept is that a woman dies leaving her inheritance, but there is no longer a close heir who is a direct lineage of women. Consequently, the heirs are from distant heirs. Distant family heirs mean blood-lined family members from the mother's lineage, indirectly descended from the woman who died. If this lineage is still none, the inheritance goes to family members, including blood relatives, according to the maternal lineage from the ancestors. In addition, *jurai-jurai* come from the same *paruik*. If someone dies, *jurai* will be in the same Nagari. In this case, it applies *adat aia putuih tanjuang baraliah* ¹¹. Furthermore, if all the heirs specified above no longer exist, the Nagari will inherit the inheritance. That is what meant by *Punah* people in Minangkabau in the concept of high ancestral inheritance in Minangkabau custom. It can be comprehended that the high ancestral inheritance may not change the ownership to a person or people who are not part of kinship group ¹².

Regarding the reality in the community, the settlement of the distribution of inheritance follows the rules of Islamic inheritance law. However, some divide inheritance in a familial manner and customary rules for certain areas. As happened in the Banjarmasin, the distribution of inheritance is accomplished in a family manner instead of following the practice of Islamic inheritance law and the Compilation of Islamic Law. The distribution does not reflect the principle of justice.¹³. Correspondingly, the distribution of inheritance is similar in Kemukiman Lambang Aceh Besar. The distribution of inheritance to the youngest daughter is carried out based on the principle of justice (in terms of independence and financial stability) on the condition that it is conducted after the heiress dies and the heirs give their inheritance rights to the youngest daughter.¹⁴ In Banjar, the inheritance distribution uses the bequeathed grant before death, *munasakhah*, lottery, *al-takharuj*, division of inheritance to carry out *ritual arwah* (spirit rituals), and collective inheritance ¹⁵. Meanwhile, the principle of matrilineal kinship is applied in Minangkabau. It means the ownership of inherited assets occurs from generation to generation, from parents to their children ¹⁶. Thus, as the head of the heir, *Mamak* ignores his nephew. The position of *Mamak* role in

¹⁰ (Anwar, 1997: 89)

¹¹ (Anwar, 1997: 89–90)

¹² (Anwar, 1997: 91)

¹³ (Aprilia, 2020: 74)

¹⁴ (Hirdayadi: 2018)

¹⁵ Wahidah and Faridah, 'Praktik Penyelesaian Harta Warisan Pada Masyarakat Banjar' (Universitas Islam Negeri Antasari Banjarmasin, 2018), p. 135.

¹⁶ Ria Agustar, 'Pelaksanaan Pembagian Warisan Atas Harta Pencarian Dalam Lingkungan Adat Minangkabau Di Kecamatan Lubuk Kilangan Kota Padang' (Program Pascasarjana Universiats Diponegoro, 2008), p. 17.

high ancestral inheritance should be a supervisor. In fact, *Mamak* is no longer responsible for supervising the inheritance.¹⁷ The Bugis community in Tellu Siattinge Subdistrict, Bone District generally assigns assets before the heiress dies through the bequeathed grant, divided by deliberation. In contrast, the assets that have not been divided will be distributed after the heiress dies as an inheritance. The systematics of inheritance is not under Islamic law, especially in *mawāri fiqh*. Nevertheless, because the distribution is founded on mutual agreement (*islah*), it is permissible on the condition that the rights of each heir are taken into account. There is no conflict in the distribution of inheritance.¹⁸ The community's custom of donating assets before the heir's death tends to initiate inheritance-based land disputes in the future. Disputes usually arise from the division of land, which is only given to some heirs and is not beneficial to some heirs, especially to daughters and their descendants.¹⁹ Research in Central Aceh showed that the practice of inheritance distribution is conducted in three kinds of models: first, not getting any inheritance for heirs as a consequence of the lawbreaking *titi*; second, heirs getting inheritance because they are considered as *badl* (alternates) due to deceased heirs; and fourth, obtaining a grant.²⁰ The Sumpur Kudus community is a Muslim community that adheres to Islamic law in The organization of death bodies. The symbols they use do not only represent love and affection, but it also shows belief that contains transcendental values.²¹

Kaban explained that the settlement of customary land inheritance disputes in the Karo indigenous people shows three ways: first, through *runggun*; second, through the *begu house*; and fourth, through the District Court²². Meanwhile, Nangka added that the settlement of customary inheritance disputes is on the basis of the kinship system; before the heir dies, the inheritance is forwarded or passed and appoints the heirs, then commit the bequeathed grant.²³ Settlement of the distribution of customary inheritance disputes through mediation in Kajowair village to subside the conflicts can be appropriately resolved. Mediation is conducted by mutual negotiation to determine a collective decision with customary law in force for both parties under the disputes because the agreement was obtained from the customary institution of Kajowair Village²⁴. Asbudi also stated that the distribution of inheritance in Rongkong is conducted by implementing deliberation and consensus to maintain adat by maintaining harmony in the family. Inheritance ownership is possessed by the person who lives with the heir. In

¹⁷ (Edwar, 2010: 103–105)

¹⁸ (Tarmizi, 2020: 179)

¹⁹ (Karjoko, Lego,dkk: 2021)

²⁰ (Fauzi: 2019)

²¹ Salma, 'The Study of Islamic Law About The Deceased Muslim and Its Cultural Symbols in Sumpur Kudus, West Sumatera, Indonesia', *Samarah*, 5.1 (2021), 402–25 <<https://doi.org/10.22373/sjhk.v5i1.9037>>.

²² Maria Kaban, 'Penyelesaian Sengketa Waris Tanah Adat Pada Masyarakat Adat Karo', *Mimbar Hukum*, 28.3 (2016), 464 (p. 464).

²³ (Nangka, 2019: 154–155)

²⁴ (Saputri, 2019: 4–5)

addition, the daughter has the same position in the inheritance distribution.²⁵ At the same time, according to Nuris ²⁶ the inheritance distribution of the land asset to the Chaniago clan also employed a matrilineal system. It is different from the settlement of inheritance disputes in Aceh conducted by the Aceh Assembly, especially in Lhokseumawe. Furthermore, it employs the Aceh Assembly's efforts, as a mediator and facilitator, in resolving inheritance disputes. It is motivated by the Aceh inheritance system, which gives equal status to sons and daughters as heirs, according to the enactment of Law Number 40 of 1999 concerning the Specialty of Aceh Studies. ²⁷. The practice of dividing inheritance in the Suku Anak Dalam (rural tribal child) shows the existence of legal dualism, namely Islamic inheritance law and customary inheritance law. However, customary inheritance law seems to be more dominant than Islamic inheritance law. ²⁸

The son's role in the high inheritance in Minangkabau is only as of the customary inheritance of *Mamak*, who is responsible for supervising the inheritance assets ²⁹. In addition, the solution provided by religious leaders in resolving high ancestral inheritance disputes mixed with communal assets is by calculating all high ancestral inheritance assets, and the benefit of selling these assets is delivered to high ancestral inheritance assets holders. The house can be shared with heirs based on *Faraid* law.³⁰ Efforts to settle disputes over the sale and purchase of inherited land without the approval of the heirs can be conducted by a mediation process that lasts for 30 days from the moment the mediator is selected by the parties or appointed directly by the panel of judges. ³¹. Settlement of inheritance disputes (according to Minangkabau customary law and Islamic law), is resolved by the elders through deliberation involving *Ninik mamak* who are the elders in a clan. ³² The management of high ancestral inheritance assets in Minangkabau indigenous peoples, such as in Batipuh Subdistrict,

²⁵ Asbudi, 'Pembagian Harta Waris Menurut Sistem Kewarisan Hukum Adat Rongkong Studi Masyarakat Adat Desa Marampa Kecamatan Rongkong Kabupaten Luwu Utara', *Ila Galigo Public Administration*, 3.1 (2020), 30 (p. 30).

²⁶ Ulfa Chaerani Nuris, 'Penerapan Hukum Adat Minangkabau Dalam Pembagian Warisan Atas Tanah (Studi Pada Suku Chaniago Di Jorong Ketinggian Kenagarian Guguak VIII Koto, Kecamatan Guguak, Kabupaten Lima Puluh Kota, Ibu Kota Sarilamak)', *Diponegoro Law Jurnal*, 6.17 (2017), 11 (p. 30).

²⁷ (Hadi Putri 2019, 145)

²⁸ Dian. Wenny Dastina Mustika, 'Religious, Economic, and Political Values Shifting in Inheritance System of Suku AnAk DalAm.', 2020.

²⁹ Danial Abdillah Lazuardi and Endang Pandamdaro, 'Harta Pusaka Tinggi Menurut Hukum Waris Adat Minangkabau', 2015, 1–13.

³⁰ Qasim Muhammadiyah, 'Distribution of Heritage Association of Harta Pusaka Tinggi And Harta Pusaka Rendah in Padang Pariaman The Theme in This Study Is the Distribution of Inheritance from a Mixture of Pusaka Tinggi and Pusaka Rendah Which Is Located in Nagari Lurah Ampalu Dis', 30.1 (2020), 39–60.

³¹ Puspita Farahdillah and others, 'Mediasi Tentang Penyelesaian Sengketa Waris: Studi Putusan No. 181/PDT.G/2013/PA.YK', 9.1 (2022), 381–95.

³² Rama Deyan and others, 'Penyelesaian Sengketa Waris (Menurut Hukum Adat Minangkabau Dan Hukum Islam)', IV.Oktober (2021), 436–46.

Tanah Datar District, is carried out in a profit-sharing agreement for pawning, which is allowed by *adat* (customs) and grants ³³.

Furthermore, the management of high ancestral inheritance assets can also be established in gold to save ancestral heritage. Thus, it results in breaking the chain of the utilization of high ancestral inheritance. Handling disputes over customary land tenure through the customary court of West Sumatra, such as customary land disputes, namely the *pacuan kudo*, occurred due to the status of customary land and unclear *ranji* structure, resulting in an unclear distribution of assets. Disputes over customary land tenure are resolved through customary court, which are subsequently forwarded to the District Court. ³⁴. Revitalization of Islamic inheritance law in settlement of inheritance land disputes in the Sasak community who is Islam in the majority. However, most Sasak communities employ customary inheritance law to resolve inheritance disputes. To avoid conflicts and disputes, it is necessary to apply an Islamic inheritance system in inheritance distribution to create harmony and justice ³⁵.

The community applies a matrilineal collective inheritance system to the inheritance acculturation in settlement of high ancestral inheritance disputes in Minangkabau. Therefore, the use of high ancestral inheritance rights is possessed by women. Although the Minangkabau community adheres to the customary inheritance system, they still consider the Islamic inheritance system. If there is a dispute, the Tribal Council settles it amicably ³⁶. Eric expressed the same thing that high ancestral inheritance cannot be divided equally among heirs because Minangkabau tradition applies a collective inheritance system. In contrast, low ancestral inheritance applies Islamic inheritance law ³⁷. Settlement of inheritance disputes can also be accomplished through mediation through *takharruj* and *tasaluh*, which means the willingness and agreement between the heirs ^{38 39}. It is completed in order that the distribution of inheritance follows each provision. It is also known as distributive justice, in which someone obtains a share according to their rights ⁴⁰. The gender justice system also

³³ Indra Rahmat, '(Studi Di Kecamatan Batipuh Kabupaten Tanah Datar) Sumber Diterbitkan Oleh : Indra Rahmat : Laboratorium Program Studi Pendidikan Sejarah Sekolah Pengelolaan Harta Pusaka Tinggi Dalam Masyarakat Adat Minangkabau (Studi Di Kecamatan Batipuh Kabupaten Ta', 8 (2019), 15–24.

³⁴ Hesty Wahyuni and others, 'Penanganan Sengketa Penguasaan Tanah Hak Adat Melalui Peradilan Adat Sumatera Barat', 4.3 (2021).

³⁵ (Supriadi & Mujib: 2019)

³⁶ Ernawati and Baharudd, 'Akulturasi Kewarisan: Penyelesaian Sengketa Pusaka Tinggi di Minangkabau', 2017.

³⁷ Eric Eric, 'Hubungan Antara Hukum Islam Dan Hukum Adat Dalam Pembagian Warisan Di Dalam Masyarakat Minangkabau', *Jurnal Muara Ilmu Sosial, Humaniora, Dan Seni*, 3.1 (2019), 61 <<https://doi.org/10.24912/jmishumsen.v3i1.3532>>.

³⁸ (Ilham & Suhasti: 2016)

³⁹ (Sesha et al.: 2021)

⁴⁰ Islamiyati, 'Analisis Keadilan Pada Pembagian Harta Warisan Menurut Hukum Islam'.

characterizes the distribution of Islamic inheritance, in which men and women are equally qualified for a share of the inheritance, in line with each heir's share.⁴¹

According to certain studies previously, it is obvious that the settlement of inheritance disputes is various. Regarding the agreement of the heirs, whether the distribution of inheritance is carried out in an amicable manner or under Islamic inheritance law. However, some resolve inheritance disputes through various forms of tradition, such as in Kenagarian Salareh Aia, Palembang District. Based on the facts, the people of Nagari Salareh Aia adhere to the principle of deliberation related to social behavior in case of social inequality in the family. One of the social inequality forms is the existence of inheritance disputes. To conduct deliberation by determining the outcome of the agreement is indeed inseparable from the rules and does not contradict Islamic law. Adat has rules that apply in society. The community should also be subject to customary law, in line with Islamic law. However, the problem in this area is a gap in customary law carried out by the community related to inheritance. As already mentioned, in Nagari Salareh Aia, the distribution of inheritance is based on the *Punah* of the heirs who are entitled to receive the inheritance. The inheritance is in the form of a house but is built on customary land, and the customary land is a gift from the previous Ninik mamak. The daughter as the recipient of the right to the inheritance is *Punah*, and no one is allowed to receive it unless it is delivered to the Baitul Mal, relating to Islamic law. In fact, this inheritance is seized by the only son. By all means, this son is not the heir. He cannot receive it because he is not part of the kinship group. Moreover, the inheritance professed to the son is sold. On the other hand, adat only qualifies inheritance to someone from the same kinship group, and it is not allowed to be traded because the legal action is not in line with customary rules and Islamic inheritance law. The assets is permissible to sell on four conditions: first, the *gadiah gadang indak balaki*. Second, *mayat tabujua diateh rumah*. Fourth, *rumah gadang katirisan*, fourth, *mambangkik batang tarandam*. However, selling the inheritance does not need the four conditions in this issue.

The main problem in the Salareh Aia community related to this inheritance is that boys trade inheritance that does not belong to them for personal interests and without any legal bases regulated in the legality of selling the inheritance. It has happened a lot to the people in Nagari Salareh Aia that the daughter, the heir entitled to receive the inheritance, is already *Punah*. It is not definitely under the customary rules that apply to Minangkabau customs.

Methods

⁴¹ Maryati Bachtiar, 'Hukum Waris Islam Dipandang Dari Perspektif Hukum Keadilan Gender', 3.1.

The type of research was field research with a qualitative approach. The primary data sources of the research are in the form of explanations or information obtained from disputing parties, Ninik mamak, Datuak and Nagari officials, namely the head of Assembly of Adat Nagari and the head of the custom and syara' Assembly of Adat Nagari to provide information for more complete data collection. The secondary data sources in this study were taken from books related to the topics concerned, such as books of inheritance including Islamic inheritance law and customary inheritance law books, followed by other literature books to support this research. Techniques for collecting data in this study included interviews with disputing parties, Ninik mamak, Datuak, Religious leaders and the head of Assembly of Adat Nagari, the head of the adat and syara' Assembly of Adat Nagari Salareh Aia regarding the settlement pattern of customary *Punah* heir dispute in the Kenagarian. The data analysis was conducted in the following ways: first, data reduction. Data reduction was conducted by summarizing and selecting the main points of the settlement of customary *Punah* heir dispute and then focusing on the essential things, starting from the procedure for implementing the settlement of *Punah* heir dispute from a mixture of high and low ancestral inheritance assets, and customary mechanisms in resolving disputes over the mix of high ancestral inheritance and low ancestral inheritance to determine the pattern used in settlement of Nagari Salareh Aia custom. Second, data presentation. The presentation of data is completed in a short description, which is processed from the local language that has been translated, which then made it into a narrative text that is easy to understand. Fourth, drawing conclusions and verification.

Discussion and Result

Overview of Salareh Aia

Salareh Aia is an administrative Nagari in Palembayan Subdistrict, Agam District, West Sumatra which is located between the border of Agam District and Pasaman District. Nagari Salareh Aia was formed on May 31, 1946. As a Nagari Government, Salareh Aia consists of 11 Kejorong and has different areas, covering several Jorong: Jorong Koto Alam, Jorong Subarang Aia, Jorong Kampung Tengah Timur, Jorong Kampung Tengah Barat, Jorong Kayu Pasak Timur, Jorong Kayu Pasak, Jorong Kayu Pasak Selatan, Jorong Ngungun, Jorong Koto Gadang, Jorong Tompek, Jorong Tapian Kandih, with a population of 4168 families in Salareh Aia. The outer boundary of the village is in the north on the border of Pasaman District, in the south on the border of Ampek Nagari Subdistrict, in the west on the border of Kinali Subdistrict

(West Pasaman) and Ampek Nagari Subdistrict (Agam), while in the east on the border of Tigo Koto Silungkang Nagari ⁴².

In Salareh Aia, several leaders have a duty to manifest the law in the field of adat Nagari Salareh Aia which consists of two local political units known as Langgam. Langgam in Nagari Salareh Aia have different structural compositions and local cultural values but have similarities in the basic pattern that forms the structure and values of adat istiadat, namely the habit of living in clans and groups through a matrilineal system and solid philosophical values of Minangkabau custom. The Adat structures are the Saripado Langgam and the Rajo nan Balimo Langgam, each formed from a different history. It produces a unique structure and has its complete role and authority in managing the community. The presence of the Nagari Government is supported by the two Langgam, in which all aspects relating to the management dynamics of the Nagari Government are always based on Langgam adapted to the existing roles and authorities. The power of the Langgam, which is a community unit with political unity, legal territory, economic unity, cultural unity, and living habits, is interesting to understand and explore for reconstruction in rural planning in Nagari Salareh Aia or rural West Sumatra in general⁴³.

Customary Procedures for Settlement of the Disputes of *Punah* Inheritance Di Nagari Salareh Aia DIAGRAM

Settlement of the disputes of *Punah* inheritance in Nagari Salareh Aia, Palembayan Subdistrict, is carried out through customary courts. The Customary Court in Nagari Salareh Aia does not have a written law that becomes a guide in resolving the disputes of *Punah* inheritance, only based on applicable customary rules and subsequently implementing them following the Langgam adopted by Nagari Salareh Aia community. There are several customary procedures for dispute settlement that the disputing parties must pass regarding inheritance. The settlement of this dispute is through Assembly of Adat Nagari with deliberation. Dispute settlement in Assembly of Adat Nagari aims to reduce and resolve conflicts between disputing parties. Assembly of Adat Nagari functions as a mediator and a justice of the peace in disputes. It is well known as the Penghulu (the elder), the leader of the institution's meeting in the village and clan.

The Penghulu Assembly of Adat Nagari, in handling its duties, is guided by the customary rules that apply in Nagari Salareh Aia, both people who adhere to the Saripado Langgam and people who adhere to the Rajo nan Balimo Langgam. In these

⁴² Iron Maria Edi, *Langgam: Struktur Politik Lokal Minangkabau Yang Tergerus, (Kasus Langgam Nagari Salareh Aia, Kecamatan Palembayan, Kabupaten Agam, 2019.*

⁴³ Iron Maria Edi.

two Langgam, they have the same customary rules, but the implementation of customary settlements is different. Regarding the difference in the Saripado Langgam, the position of the Datuak is the elder. Thus, the customary inheritance is used in turns within a clan. Whereas in the Rajo nan Balimo Langgam, the structure of the king is used, namely the customary inheritance system is used based on direct descendants in the same scope as one descendant of the king, one descendant of the prince, one descendant of the preacher. Although the settlement of the disputes of *Punah* inheritance in Nagari Salareh Aia is not guided by written law, it still follows applicable customary rules based on the structure of the Penghulu and *Mamak*. Thus, decisions are made based on consensus through deliberation.⁴⁴ As a tool to resolve the disputes of *Punah* inheritance in Nagari Salareh Aia, mediation is conducted for the disputing parties. This mediation aims to reconcile the two disputing parties so that conflicts are resolved well through deliberation and consensus.⁴⁵

The customary trial was conducted in the Customary Court through several stages to settle the dispute of *Punah* inheritance in Nagari Salareh Aia, Palembang District. Furthermore, the stages are as follows: first, reports from the disputing parties that there were disputes related to *Punah* inheritance with other parties. The report form submitted is a complaint from one of the parties reported to the Ninik mamak or to the board of Ninik mamak (leader of luhak). When the report has reached the head of the Ninik mamak, the Ninik mamak will call the parties to discuss the problems that occurred in the form of a claim by one of the disputing parties to be delivered to the trial. Afterward, the Ninik mamak manages a meeting to implement the customary trial. If it is agreed on, then a sign and address are placed. The leader of the Ninik mamak conveyed to *Mamak* regarding the party's report that a customary trial on the dispute of *Punah* inheritance would be held.⁴⁶

Second, the calling of the disputing parties (*rapekkan*) is accomplished a week after the head of the Ninik mamak receives the report, and there is an agreement between both parties to carry out the trial. At this stage, the disputing parties are requested to explain the inheritance dispute between the parties. Furthermore, both parties can present their complaints. In the customary trial process, the disputing parties are called to resolve the problems encountered through custom meetings.⁴⁷

Fourth, mediation. This mediation is carried out after the disputing parties are summoned before the panghulu and then resolved by finding common

⁴⁴ Edi, *Interview*, 22 December 2021. Prosedur Adat Menyelesaikan SengketaWaris Punah Di Nagari Salareh Aia.

⁴⁵ Asril Dt. Rangkayo Mulia, *Interview*, 22 December 2021. Prosedur Adat Menyelesaikan SengketaWaris Punah Di Nagari Salareh Aia..

⁴⁶ Asril Dt. Rangkayo Mulia. *Interview*, 22 December 2021. Prosedur Adat Menyelesaikan SengketaWaris Punah Di Nagari Salareh Aia.

⁴⁷ Pucuk Adat Nan 15 Arman Dt. Tan Mangindo, *Wawancara*, 2021.

ground to establish an agreement. Afterward, a meeting is held for both disputing parties to carry out mediation actions. One of the mediation actions carried out is to relay the case to the Ninik mamak to be resolved amicably within the time provided: three days, seven days, or maximally 14 days. There is extra time provided if the case has not been resolved. However, there must be a report, and then it must be brought together in advance to agree on the time limit given. If there is no amicable settlement between the two parties, the Ninik mamak summons the two disputing parties, and then the decision rests on the Ninik mamak.⁴⁸ This mediation is carried out after the disputing parties are summoned before the panghulu and then resolved by finding identical perspective to establish an agreement.⁴⁹

Fourth, deliberation and consensus. The deliberation system is completed amicably so that there is no interference from other parties outside of the disputing family members. Every customary dispute in the family will be discussed by family members guided by Ninik mamak. This amicability is a community habit that reflects the vast family unit in society.⁵⁰ Before a decision is made by the Ninik mamak and during the process of deliberation and consensus, the Ninik mamak preferably examines and investigates everything related to the inheritance, including the origin of the inheritance to the ranji (structure) of ownership of the previous *Punah* inheritance. The customary trial is carried out at least seven to eleven times until it is found clarity of the *Punah* inheritance to determine a fair decision.⁵¹

Fifth, the decision of Ninik mamak. After deliberation and consensus have been carried out, the Ninik mamak, as the customary leader, determines a decision based on the results of the deliberation that has been mutually agreed on. According to the results of the decision, no one was harmed materially because it was considered under applicable customary rules and applied the concept of justice. Thus, the process of resolving inheritance disputes is carried out peacefully until there is identical perspective and clarity on the status of the *Punah* inheritance.

Mechanism of Dispute Resolution in *Punah* inheritance

The meaning of *punah* in the Minangkabau traditional inheritance system of Nagari Salareh Aia is the end of the closest heir, including the daughter from the matrilineal. In principle, the Minangkabau custom has determined that the inheritance of property is passed down to the niece's children close to matrilineal kinship. Although there are sons from the mother's descendants, they cannot be regarded as heirs who are

⁴⁸ Asril Dt. Rangkayo Mulia.

⁴⁹ Arman Dt. Tan Mangindo.

⁵⁰ Arman Dt. Tan Mangindo.

⁵¹ Asril Dt. Rangkayo Mulia. Asril Dt. Rangkayo Mulia.

entitled in Minangkabau custom because inheritance for sons is a mere usufructuary right, they cannot fully control the inheritance. However, the main point of this study is that son can control the collection of inheritance passed by his parents.

There are cases of *punah* inheritance disputes that have occurred in Nagari Salareh Aia, however, only a few cases were taken as samples in this study, including: first is the case in Kampuang Gadang Jorong Kayu Pasak Timur, on behalf of Oyoih (nickname), Chaniago clan, 51 years old, who is the sole *punah* heir. In this case, the inheritance left by both parents is land and a house established upon customary land. The inheritance is a mixture of high ancestral inheritance and low ancestral property. As the sole heir, Oyoih controlled the entire inheritance, then all property in form of houses and land was sold to other people. The form of settlement for this combination of high and low ancestral inheritance is to sell the property, however, *Mamak* requires that he should receive a 10% share of the transaction of this ancestral inheritance combination. If the *punah* heir did not agree to share with *Mamak*, then he is reluctant to assist in the process of selling the inheritance, such as signing an approval letter for the deal purpose.⁵² **OMIT ARTINYA HILANGKAN**

Second, the case in Padanggantiang Jorong Kayu Pasak Timur, on behalf of Ijen (nickname), Jambak clan, 47 years old. He is a *punah* heir along with three other brothers. The form of inheritance left by both parents is land, but it is a composition of high ancestral inheritance and low ancestral inheritance. This mixture was completed by Ijen and his three other brothers, who are *punah* heirs as well through the distribution of the inheritance with his three brothers. Each person deserved an equal share. After each *punah* heir acquired a share, the share for Ijen's heirs from the distribution, which is the property, was sold to the other party. Albeit, in the process of selling the inheritance, it must obtain approval from the *Mamak* with proof of signature on the letter, and it requests the *Mamak* to obtain 10% of the inheritance sale.⁵³

Third, the case that occurred in Jorong Kayu Pasak, in the name of Sirubidin (nickname), Piliang clan, is the sole *punah* heir. His parents left an inheritance in form of land and houses. The inheritance is a mixture of high ancestral inheritance and low ancestral inheritance. The customary settlement carried out on this combination of high and low ancestral inheritance was by selling and distributing a share of 10% to the *Mamak* because in the correspondence process the *Mamak's* signature was required as evidence of the approval and he was the head of the heir, therefore requested for a share. The process carried out is by deliberation within the family involving the *Mamak* since the inheritance is a mixture of high ancestral inheritance and low ancestral

⁵² Ratmiyati, *Wawancara*, 2021.

⁵³ Yerman, *Wawancara*, 2021.

inheritance. After deliberation, it was agreed that the inheritance might be marketed by the *punah* heir.⁵⁴

Fourth, the case that occurred in Padanggintang Jorong Kayu Pasak Timur, representing Icam (nickname), Jambak clan, 45 years old, is a *punah* heir. The forms of inheritance sold are land and houses, which are composed of high ancestral inheritance and low ancestral inheritance. Customary settlement of a combination of high ancestral inheritance and low ancestral inheritance cannot be separated from deliberation, so in this case when a *punah* heir wills to sell the inheritance of a mixture of high ancestral inheritance and low ancestral inheritance, then a discussion is carried out with the *Mamak* as the head of the customary inheritance. However, the settlement carried out, in this case, is by deliberation; when the combined inheritance of high and low ancestral inheritance was sold under the consent of the *Mamak* and it was also required that the *Mamak* was provided with 10% of the proceeds from the inheritance sale.⁵⁵

Fifth, the case that occurred in Jorong Kayu Pasak Selatan, on behalf of Nulih and Majik, Piliang clan, are *punah* heirs. The forms of inheritance obtained by these *punah* heirs are land, houses, and rice fields from the combination of high ancestral inheritance and low ancestral inheritance. Some of the inherited assets were sold and the others were not. However, some of the sold assets are called gifts using a grant contract, but principally the heirs would earn a sum from the grant. This composition of high ancestral inheritance and low ancestral inheritance was settled amicably by the *punah* heirs with *Mamak* because they wished to sell the said assets. Then, a family discussion was held between the *punah* heirs and the *Mamak* to provide approval in order to assist the buy and sell transaction using proof of signature in the letter, and the *Mamak* would ask for a 10% share of the inheritance deal.⁵⁶

Some of the cases above show that the *punah* inheritance dispute that occurred in Nagari Salareh Aia is heirs controlling the entire inheritance and then selling it, nevertheless the settlement of this inheritance is not according to the inheritance legal system in Minangkabau custom and also with customary law regarding the inheritance law prevailing in Nagari Salareh Aia. Basically. The combination of high and low ancestral inheritance cannot be controlled and traded in its entirety by *punah* heirs before the inheritance is divided and settled according to customary inheritance law. This customary settlement of disputes between high and low ancestral inheritances should be resolved based on a system of negotiation for consensus which results in *ninik mamak's* decision should be based on mutual agreement, which is following the applicable customary law in Saripado style. For that reason, several examples of cases of mixed

⁵⁴ Kasiman Dt. Marajo Nan Tinggi, *Wawancara*, 2021.

⁵⁵ Amralis Angku Rajo Endah, Interview, 24 December 2021. Kasus-Kasus Sengketa Waris Punah Di Nagari Salareh Aia.

⁵⁶ Ratmiyati.

inheritance of high and low ancestral inheritance assets took place in the Luhak Kayu Pasak, which is part of the Saripado style traditional area in order to find solutions. As per the applicable customary law in the Saripado style, following finding the results of the negotiation for consensus, a decision is issued by ninik mamak. The decision should be following *sakato samupakak* (negotiation for consensus) from the results of the deliberation that has been closed. In the settlement of the Saripado Ninik mamak-style case, the *Mamak* is not authorized to make and resolve separate decisions. Meanwhile, the settlement carried out in the case above was based on the agreement of the *Mamak* and the requirement that allows *Mamak* to obtain a 10% share had no legal basis before the custom.

Several cases that occurred and the form of customary settlement of *punah* inheritance disputes carried out in Nagari Salareh Aia showed that the customary settlement process was perceived from the principles of Islamic inheritance and the Minangkabau customary legal system of inheritance. Some differences and similarities were found, including in heir aspects. In Minangkabau customary inheritance law system, the heirs of high ancestral inheritance are passed down to women, while in the Islamic inheritance law system, sons and daughters have a share of the inheritance. However, when the female heirs are absent, the inheritance directly goes to the sons. The basic provisions of Islamic inheritance law that have been stipulated in the Qur'an state that sons will get a share of the rest of the inheritance of their parents. The position of the son in the *punah* inheritance shows that the son is *ashabah binafsihi*, that is, the son will inherit the rest of the property alone. The legal basis that determines that a son has the right to inherit property from his parents is written in Q.S an-Nisa' [4]: 7 which reads: For men there is a share in what their parents and close relatives leave, and for women there is a share in what their parents and close relatives leave—whether it is little or much. These are obligatory shares. The verse explains that the son will have a share of the inheritance left by either his father and mother, or both. Likewise, daughters get a share of the inheritance left by their parents as well ⁵⁷. When associated with the Islamic inheritance system, the position of son as *punah* heirs is entitled to a share of the inheritance, namely the heirs of *ashabah binafsihi*. The implementation of the customary settlement of inheritance disputes in Nagari Salareh Aia referred to several sides, the customary settlement in Nagari Salareh Aia should be carried out in the following forms: **first** is in terms of the status of inheritance. Assets that are inherited or sold do not belong to the heirs so the *punah* heirs do not have the right to have full control. Second is from the perspective of the heirs. In this case, the son is a *punah* heir and the inheritance left is a mixture of high ancestral inheritance and low ancestral inheritance. In respective property, the position of son as *punah* heirs is not included in the inheritance of high ancestral inheritance before the custom because Minangkabau applies an inheritance system based on matrilineal kinship. Despite that, low ancestral

⁵⁷ (Syarifuddin, 2005: 7)

inheritance in the Qur'an verse explains that the son will inherit a share of the inheritance, the position of the son as *punah* heirs are *ashabah* heirs, which is the person who controls the rest of the property. Third is the distribution of inheritance. Islamic inheritance law dictates that the share for sons is twice that of daughters. If there is no daughter heir, then the son who is *ashabah* will inherit the rest of the assets. The prevailing customary rules addressing *punah* inheritance law in the Nagari Salareh Aia custom on a mixture of high ancestral inheritance and low ancestral inheritance is by dividing the two assets. Some are for *punah* heirs and some are endowed to *adat*. However, it is required based on customary legal systems that when a son sells the property, *Mamak* should be eligible for a 10% share of the sale of the property. This is not in accordance with the principles and provisions of Islamic inheritance law.

If the heirs have received some of the mixed assets of high and low ancestral inheritance, then the property is sold. This is granted according to customary law because it has become the heir's property. However, if it is traded, *ninik mamak* should have the proceeds from the sold property, which is 10 % and it is not from the distribution of the property to the heirs. This has become a provision of customary inheritance law in Nagari Salareh Aia. After the combination of high ancestral inheritance and low ancestral inheritance is divided according to customary rules, the heirs have received some of the property, and part of it has been included in the custom which becomes high ancestral inheritance. Subsequently, what is part of this heir may be sold but based on the *ninik mamak* agreement, if it has been agreed by *ninik mamak*, then according to customary rules from the sale proceeds, these customary holders are eligible for a 10% share of the asset sale, such as *tigo tungku sajarangan*, elders in the customary system will have their share according to their level of position before the custom.⁵⁸

This form of customary settlement is carried out by inviting all *sapayung*⁵⁹ parties in inheritance disputes, especially *ninik mamak* should divide the mixed assets of high and low ancestral inheritance, which partly is for the heirs and the other is for the custom context. The combination of high ancestral inheritance and low ancestral inheritance cannot be controlled entirely by the heirs, yet cannot be traded and controlled by *mamak*.⁶⁰ Settlement of this composition undergoes sharing, which process is carried out under an agreement on this distribution approved by *Mamak* as the head of the inheritance and acknowledged by the *datuak* in the customary of *Mamak* until the report to the head of Assembly of *Adat Nagari* within the scope of the customary area.

⁵⁸ Arman Dt. Tan Mangindo.

⁵⁹ *Sapayung* maksudnya hubungan dalam satu *datuak*.

⁶⁰ Asril Dt. Rangkayo Mulia.

The distribution of property is acknowledged by the *mamak* and witnessed directly by the *datuak*.⁶¹

The customary provision in Nagari Salareh Aia that the inheritance of a *punah* person is known as *warih bakaturunan sako babandaran*.⁶² The remaining heirs are only entitled to authority but to spend by controlling individually is not allowed before in the custom. The disposition of the combination of high ancestral inheritance and low ancestral inheritance is in *payuak timbago*,⁶³ if the inheritance is controlled in its entirety, the customary law of *warih bakaturunan sako babandaran* is void.⁶⁴ The customary settlement of mixed assets of high ancestral inheritance and low ancestral inheritance is different. In the case of high ancestral inheritance, the settlement is carried out by involving all elements of custom, while low ancestral inheritance only requires the nuclear family and nephew-cousin kins cannot interfere, including disputes over low ancestral inheritance because it is not property rights.⁶⁵

Mechanisms and efforts for the customary settlement of inheritance disputes of mixed high ancestral inheritance and low ancestral inheritance are performed by applying two forms of settlement, namely: First is negotiation which is conducted to anticipate social turmoil and ongoing disputes over the inheritance dispute. Deliberation is a suitable effort to be carried out for those who are facing inheritance disputes in Nagari Salareh Aia because they hold closely the kinship ties and are familial. Thus, the wrongs can be amended; the bad is discarded and the good is pondered by deliberation. The ongoing dispute can be discussed properly and it is led by *Ninik mamak*. Second is consensus, the word consensus is taken after deliberation. The agreement does not harm other parties and certainly does not violate the applicable customary laws. One of the reasons for the implementation of these two forms is to apply the concept of justice, therefore the agreement that will be decided does not harm any of the disputing parties and maintains kinship in family relations. Thus, efforts to settle customary disputes between high ancestral inheritance and low ancestral inheritance are still carried out through negotiation and consensus to become a standard in making decisions in the inheritance settlement. For the next generation, in the case of *punah* heir when the daughter as the heirs of high ancestral inheritance is deceased, the decisions that have been made will serve as guidelines in the dispute and these decisions anticipate that the same case will occur to the other children and nephew-niece kins. Negotiation and consensus are carried out in meetings in the event of customary problems in the community so that *datuak* cannot make decisions unilaterally since the key to customary

⁶¹ Yerman.

⁶² *Warih bakaturunan sako babandaran* maksudnya harta warisan ahli waris *punah* dibagi kepada ahli waris dan dimasukkan sebagian dalam adat yaitu menjadi harta pusaka tinggi.

⁶³ *Payuak Timbago* maksudnya adalah rumah sako pusat kekayaan adat dan atau rumah orang tua pemuka adat tigo suku sajarangan.

⁶⁴ Rabuman Dt. Jelo, *Wawancara*, 2021.

⁶⁵ Asril Dt. Rangkayo Mulia.

settlement is the agreement in negotiation.⁶⁶ In the settlement of customary inheritance, it is mandatory to carry out negotiation first. An individual is not allowed to decide on his own to control the property. The negotiation is carried out to reach a mutual agreement.⁶⁷ Subsequently, Kasiman Khatib Marajo Nan Tinggi also provided information on the implementation of the customary settlement of disputes between high ancestral inheritance and low ancestral inheritance inheritances through negotiation.⁶⁸

In traditional inheritance disputes, Ninik mamak plays an important role in the process of settling *punah* inheritance disputes as stated by Kasiman Khatib Marajo Nan Tinggi. that Ninik mamak has a great influence on the mechanism of customary settlement of disputes between high ancestral inheritance and low ancestral inheritance in Nagari Salareh Aia because ninik mamak holds the decisions on negotiation and consensus which is completed collectively before the traditional stakeholders, as well as imam khatib. Meanwhile, the elders in adat pai tampek batanyo pulang tampek barito (parents understand more about inside and outside of custom, If there is a settlement in the implementation of a customary settlement that violates the customary laws, it is the elder in the custom who will give the customary explanation).⁶⁹

Impact and Solutions for *Punah* Inheritance Settlement Patterns in Nagari Salareh Aia

The impact of the customary settlement pattern on *punah* inheritance disputes in Nagari Salareh Aia is: First, the customary settlement of *punah* inheritance disputes has shown the clarity of the heir's position with respect to inheritance and property status in the category of high ancestral inheritance or low ancestral inheritance and or mixed assets from high ancestral inheritance and low ancestral inheritance. Second, it can avoid disputes between parties and heirs because the settlement pattern is applied following the concept of justice. The customary settlement of inheritance in Nagari Salareh Aia is based on the Salingka Nagari custom, which is inseparable from the adat basandi syara', syara' basandi kitabullah. It can be understood that the customary settlement process of the *punah* inheritance dispute is based on the customary laws that apply and are used in Nagari Salareh Aia. These laws are inseparable from syara' law.⁷⁰

Some of the solutions put forward by traditional leaders in the traditional settlement of a *punah* inheritance dispute of combined high and low ancestral

⁶⁶ Asril Dt. Rangkayo Mulia.

⁶⁷ Yerman.

⁶⁸ Kasiman Dt. Marajo Nan Tinggi.

⁶⁹ Kasiman Dt. Marajo Nan Tinggi. Interview, 26 December 2021. Penyelesaian Adat Sengketa Campuran Harta Pusaka Tinggi dan Harta Pusaka Rendah Waris Punah Di Nagari Salareh Aia.

⁷⁰ Asril Dt. Rangkayo Mulia. interview, 22 December 2021. Analisis dan Solusi Penyelesaian Adat Sengketa Campuran Harta Pusaka Tinggi dan Harta Pusaka Rendah Waris Punah Di Nagari Salareh Aia.

inheritance in Nagari Salareh Aia, Palembang Subdistrict are: First, to understand the inheritance which is the subject of the customary inheritance dispute. Second is discussion. The discussion held with traditional leaders is negotiation and consensus, which is to find common ground for the settlement of customary rights on inheritance. Negotiations are held to maintain relationships within the family, therefore it is performed heavily regarding the family context, to avoid problems and disputes between heirs, *Mamak*, and other family parties. Third is consensus. The agreement made is based on the results of negotiation by all parties involved in the settlement of customary inheritance disputes. Fourth is the decision of *ninik mamak*. This is the highest decision issued by the *ninik mamak* in custom. Hence, decision-making by *ninik mamak* is inseparable from seeking justice in the settlement of the distribution of inheritance.

The form of the solution presented by these traditional leaders is indivisible from the Salingka Nagari Customary system which is also based on the *adat syara'*, *syara' basandi Kitabullah*. This law is still firmly held by the traditional leaders of Nagari Salareh Aia, Palembang Subdistrict. This is to avoid disputes, bad impacts, and demands that will occur in the future as the effect of the implementation of the settlement of *punah* inheritance dispute, as well as the settlement carried out by *ninik mamak* based on considerations and *adat basandi syari'*, *syara' basandi kitabullah*. Therefore, the disputing parties can accept the *ninik mamak* decision without any other disagreement and the outcomes of the negotiation and consensus do not harm each other because of the settlement of the *punah* inheritance as per the concept of justice. Therefore, there is a foul impact caused by the customary settlement since it is based on mutual consideration and agreement, including the heirs.

The nature of customary law that applies in society is not a proposition that is determined by *syar'i*. However, this customary law includes *'urf* in the maintenance of *mashlahah mursalah* (disputes) in society. *Mashlahat* is determined by the texts called *mashlahat mu'tabarah* which include five features; the protection of religious beliefs, the protection of soul, the protection of mind, the protection of family and descendants (human dignity), and the protection of property⁷¹. As stated by al-Ghadzali is *hifzu al-Kulliyat al-Khams*⁷². In regard to the research on the traditional settlement of *punah* inheritance disputes in Nagari Salareh Aia, Palembang Subdistrict, this form of implementation of customary settlement is relevant to *mashlahah mursalah* which aims to maintain heirs and assets. The implementation of the distribution of inheritance has been explained in the Qur'an and the hadith. However, the community also applies customary laws that have become a habit and are implemented by the

⁷¹ Abdul Ghofur Anshori and Yulkarnain Harahab, *Hukum Islam Dinamika Dan Perkembangannya Di Indonesia* (Yogyakarta: Kreasi Total Media, 2008), p. 182.

⁷² Firdaus, *Ushul Fiqih: Metode Mengkaji Dan Memahami Hukum Islam* (Depok: Rajawali Pers, 2017), p. 92.

people in Nagari Salareh Aia. In principle, high ancestral heritage assets are to be maintained and developed continuously so that the next generation can benefit from these assets and these assets can be passed down from generation to generation. However, in contrast to mixed assets of high ancestral inheritance and low ancestral inheritance, the status of ownership may shift if the heirs agree to divide and settle so that ownership rights also change. Therefore, it is also not allowed in customary inheritance law to control and sell all assets before the distribution of the mixed inheritance is completed.

Conclusion

The concept of *punah* is understood differently by the Minangkabau community and faraidh study because on the one hand Islamic society refers to Islamic law and on the other hand uses a matrilineal system. In Minangkabau society, *punah* depends on the absence of daughters while *punah* in Islam is indicated by the absence of children or fathers so the two concepts are used interchangeably in resolving inheritance disputes in the Nagari Salareh Aia. The Minangkabau customary procedure for resolving *punah* inheritance disputes in Nagari Salareh Aia, Palembayan Subdistrict is based on applicable customary rules, which undergoes customary settlement. The stages of the procedure in the implementation of the customary settlement of *punah* inheritance disputes among others include: first is report, second is subpoenaing the disputing parties, third is mediation, fourth is negotiation and consensus, and fifth is ninik mamak decisions. The mechanism for resolving *punah* inheritance customs in Nagari Salareh Aia upholds the kinship system with the settlement of assets that can be carried out between *punah* heirs and *Mamak* in a family manner. However, controlling the inheritance and selling it for individual ownership violate the concept of settlement of high ancestral inheritance so that the essence of collective ownership of high inheritance is void. The customary settlement of disputes between high ancestral inheritance and low ancestral inheritance can be done by refining and separating between low ancestral inheritance and high ancestral inheritance, partly for *punah* heirs and partly for customs, which are used for subsequent high ancestral inheritance property.

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NASKAH HASIL REVISI

**PATTERNS FOR SETTLEMENT OF PUNAH (EXTINCT)
INHERITANCE DISPUTES IN THE COMMUNITY OF SALAREH AIA
VIEWED FROM THE PERSPECTIVE OF ISLAMIC LAW**

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Article history:

Abstract:

This research investigates the settlement pattern of extinct inheritance disputes in Nagari Salareh Aia. Theoretically, the procedure is consistent with Islamic law, but in practice, it is not, although this region is located in the *Salingka Nagari* area of

Minangkabau. This is a field study using customary law and Islamic law approaches. Data were analyzed using the Creswell approach. This research found, first, the Minangkabau community and Islamic inheritance law interpret the concept of extinction differently. Extinction in Minangkabau society is defined as not having daughters, while Islam defines it as not having children or fathers, so the two concepts are used mutually in resolving inheritance disputes. Second, the mechanism for resolving extinct inheritance disputes against heirs who control the inheritance and sell it for private ownership is incompatible with high inheritance ownership concept. Meanwhile, disputes over mixed assets of high and low inheritance are settled by purifying and separating the assets. Some are for extinct heirs, while others are for customs, with high inheritance status. Third, the settlement of extinct inheritance disputes in Salareh Aia fosters close family ties. It also clarifies the heirs' position regarding inheritance and property status, whether it is a high inheritance or low inheritance.

Keywords:

Faraidh; Islamic Inheritance; Minangkabau; Dispute Settlement;

Punah (Extinct)

Abstrak

Penelitian ini bertujuan mengeksplorasi pola penyelesaian sengketa waris punah di Nagari Salareh Aia. Secara prinsip sesuai dengan hukum Islam, namun dalam pelaksanaannya, tidak sesuai dengan hukum kewarisan Islam meskipun termasuk daerah Salingka Nagari di Minangkabau. Penelitian ini merupakan penelitian lapangan dengan pendekatan hukum adat dan hukum Islam. Data diperoleh melalui metode wawancara dan dokumen sebagai alat pengumpul data. Pendekatan Creswell digunakan untuk menganalisis data. Temuan penelitian ini menemukan tiga hal penting. Pertama, konsep punah dipahami secara berbeda oleh masyarakat Minangkabau dan hukum kewarisan Islam. Dalam masyarakat Minangkabau, kepunahan itu bergantung kepada tidak memiliki anak perempuan, sementara punah dalam Islam adalah tidak memiliki anak atau bapak sehingga kedua konsep itu digunakan secara mutual dalam menyelesaikan sengketa warisan. Kedua, mekanisme penyelesaian adat waris punah terhadap ahli waris yang menguasai harta warisan dan menjualnya untuk dimiliki perorangan, menyalahi konsep kepemilikan harta pusaka tinggi. Sedangkan penyelesaian terhadap sengketa harta campuran pusaka tinggi dan pusaka rendah, dilakukan dengan cara memurnikan dan memisahkan harta tersebut. Sebagian untuk ahli waris punah dan sebagian lagi untuk adat dalam status menjadi harta pusaka tinggi. Ketiga, dampak yang ditimbulkan dari pola penyelesaian adat waris punah di Nagari Salareh Aia adalah menjadikan hubungan kekeluargaan terjalin erat. Juga, memperjelas

kedudukan ahli waris terhadap harta warisan dan status harta, mana yang termasuk harta pusaka tinggi dan pusaka rendah.

Kata Kunci:

Faraidh; Kewarisan Islam; Minangkabau; Penyelesaian Sengketa,

Punah

Introduction

The concept of extinction is interpreted differently by the Minangkabau community and Islamic inheritance law (*faraidh*), thus, the two concepts are used mutually in resolving inheritance disputes. The meaning of *Punah* in Islamic inheritance law is found in the concept of *Kalalah* inheritance. A person is called *Kalalah* if he has no offspring (children) and parents (father). People who have the kinship in the family, be it from the top line (parents) or the bottom line (descendants), are called *Kalalah*⁷³. However, some also interpret *kalalah* as people with no offspring at all.⁷⁴ The term *Kalalah* can be used for heiress and heirs. However, several opinions of linguists suggest the meaning of *Kalalah*: *first*, someone who does not have children and parents; *second*, someone who does not have children, parents, and siblings; *third*, someone who does not have family and relatives. The first meaning is a representative meaning of the opinion of the majority of scholars. Meanwhile, *Kalalah* heirs include siblings or brothers and sisters. The term *Kalalah* can be used for heiress and heirs. Meanwhile, *Kalalah* heirs include siblings or brothers and sisters⁷⁵.⁷⁶

Principally, Inheritance transfers ownership rights from the deceased to the living heirs⁷⁷. *Kalalah* inheritance is mentioned in the Qur'an Surah an-Nisa 'verse 12 and 176. Verse 12 describes the share of each heir who gets the inheritance, including the *Kalalah* inheritance⁷⁸. The mentioned verse explains the settlement of the share of the *Kalalah* (*Punah*) inheritance by emphasizing that both brothers and sisters are also counted as an heirs if a person who dies does not have a father as heir and children but only has a brother or sister. In verse 176, the *Kalalah* inheritance is the heirs of siblings (siblings and agnate siblings, both male and female).

⁷³ Ahmad Suganda and Muhammad, 'Konsep Kalalah Dalam Fiqh Waris, Suganda and Muhammad, "Konsep Kalalah Dalam Fiqh Waris The Concept of Kalalah in Inheritance Jurisprudence." 04, 1-17 (p. 5).

⁷⁴ Al Yasa' Abu Bakar, *Rekonstruksi Fikih Kewarisan* (Banda Aceh: LKAS, 2012).

⁷⁵ Suganda and Muhammad

⁷⁶ M Guntur Ageng Prayogi, "(IAIN) Metro Lampung," 2018.

⁷⁷ Endah Dwi Atmaji, *Hukum Waris Dalam Islam* (Klaten: Cempaka Putih, 2019, h.3)

⁷⁸ Amir Syarifuddin, *Hukum Kewarisan Islam*, 2nd ed. (Jakarta: Kencana, 2005).

The term *Punah* is also shown in the Minangkabau customary inheritance. In this case, *punah* (extinction) refers to the situation in which there is no heir to inherit the inheritance. High ancestral inheritance assets, inherited in Minangkabau customary terms, are assets inherited based on the matrilineal system. High ancestral inheritance refers to the high ancestral inheritance from *Mamak* (*Mamak* means all mother's brothers) and *Ninik Mamak* (a traditional leadership title carried by a Minangkabau man, which is elected and agreed upon by members of his clan for an indefinite period of time) ahead to the top of the family tree. As the *Minangkabau's Proverb*: *dari ninik turun ke mamak, dari mamak turun ke kemenakan* (from *Ninik* passed down to *Mamak*, from *Mamak* passed down to *nephew*)⁷⁹. In Minangkabau custom, there are two forms of inheritance: high inheritance and low ancestral inheritance.⁸⁰ High ancestral inheritance is recognized as assets from their ancestors and afterward inherited from generation to generation from *Mamak* to nephews of the kinship group. Thus, they become the high ancestral inheritance of the kinship group⁸¹. The provision of this high ancestral inheritance assets, in principle, cannot be sold or pawned to the public, as the Minang proverb says: *dijua tak dimakan bali, digadai tak dimakan sando* (which means that sold but cannot be bought, pawned but cannot be held). If there is an urgent condition for inheritance, it may be sold or pawned for the common good, but all lineage members must approve it. For example, a woman in the clan is not married, or someone dies and the body has not yet been buried. Under Minangkabau customary law, which is based on matrilineal, namely maternal law, then inheritance law in Minangkabau custom is applied and calculated based on maternal lineage. According to the mother's lineage, the inheritance is shared to *family members of mother's line* if someone dies.⁸²

The meaning of *Punah* in Minangkabau in this inheritance concept is that when a woman dies without an heir from her direct lineage, the heirs are the distant kindred. Consequently, the heirs are from distant heirs. Distant family heirs mean blood-lined family members from the mother's lineage, indirectly descended from the woman who died such the daughter of a deceased sister. If this lineage is still none, the inheritance goes to family members, including blood relatives, according to the maternal lineage from the ancestors. In addition, *jurai-jurai* (family structure consisting of small groups according to maternal lineage kinship (matrilineal) come from the same *paruik* (blood-lined) If someone dies, *jurai* will be in the same Nagari (Nagari's meaning in terms of

⁷⁹ Safrudin Halimy Kamaluddin, *Adat Minangkabau Dalam Perspektif Hukum Islam* (Padang: Hayfa Press, 2005, h.85-85).

⁸⁰ Amir Syarifuddin, *Pelaksanaan Hukum Kewarisan Islam Dalam Lingkungan Adat Minangkabau* (Jakarta: PT Gunung Agung, 1984).

⁸¹ Ellyne Dwi Poespasari, *Pemahaman Seputar Hukum Waris Adat Di Indonesia* (Jakarta Timur: Kencana, 2018).

⁸² Chairul Anwar, *Hukum Adat Indonesia Meninjau Hukum Adat Minangkabau* (Jakarta: PT. Rineka Cipta, 1997), h. 89.

punah heirs is adat)⁸³. Furthermore, if all the heirs specified above no longer exist, the Nagari will inherit the inheritance. That is what meant by *Punah* people in Minangkabau in the concept of high ancestral inheritance in Minangkabau custom.⁸⁴

Regarding the reality in the community, the settlement of the distribution of inheritance follows the rules of Islamic inheritance law. However, *majority* divide inheritance in a familial manner and customary rules for certain areas. *As happened in the Banjarmasin, the distribution of inheritance is accomplished in a family manner instead of following the practice of Islamic inheritance law and the Compilation of Islamic Law.*⁸⁵ Correspondingly, the distribution of inheritance is similar in Kemukiman Lambang Aceh Besar. The distribution of inheritance to the youngest daughter is carried out based on the principle of justice (in terms of independence and financial stability), the heirs give their inheritance rights to the youngest daughter.⁸⁶ *In Banjar, the inheritance distribution uses the bequeathed grant before death.*⁸⁷ Meanwhile, the principle of matrilineal kinship is applied in Minangkabau. It means the ownership of inherited assets occurs from generation to generation, from parents to their children. Thus, as the head of the heir, *Mamak* ignores his nephew. The position of *Mamak* role in high ancestral inheritance should be a supervisor. In fact, *Mamak* is no longer responsible for supervising the inheritance.⁸⁸

The son's role in the high inheritance in Minangkabau is only as of *mamak waris adat* or *mamak kepala adat* (a person with complete control over the high inheritance and is in charge of supervising, maintaining, and developing the high inheritance property so that it does not run out), who is responsible for supervising the inheritance assets^{89,90}. Settlement of inheritance disputes (according to Minangkabau customary law and Islamic law), is resolved by the elders through deliberation involving *ninik mamak*

⁸³ (Chairul Anwar, 1997: 89–90)

⁸⁴ (Chairul Anwar, 1997: 91)

⁸⁵ Rizeka Aprilia, *Penyelesaian Sengketa Waris Di Luar Pengadilan Agama Di Kota Banjarmasin* (Universitas Islam Negeri Antasari Banjarmasin, 2020, h. 74).

⁸⁶ Hirdayadi M. Ansar Israr, "Tehnik Pembagian Warisan Terhadap Anak Bungsu Perempuan Dalam Masyarakat Kemukiman Lamblang Kec. Kuta Baro Kab. Aceh Besar Menurut Hukum Islam," *Samarah* 1, no. 2 (2018).

⁸⁷ Wahidah and Faridah, "Praktik Penyelesaian Harta Warisan Pada Masyarakat Banjar" (Universitas Islam Negeri Antasari Banjarmasin, 2018).

⁸⁸ Ria Agustar, "Pelaksanaan Pembagian Warisan Atas Harta Pencarian Dalam Lingkungan Adat Minangkabau Di Kecamatan Lubuk Kilangan Kota Padang" (Program Pascasarjana Universitas Diponegoro, 2008).

⁸⁹ Danial Abdillah Lazuardi and Endang Pandamdaro, "*Harta Pusaka Tinggi Menurut Hukum Waris Adat Minangkabau*," 2015, 1–13.

⁹⁰ Qasim Muhammadi, "Distribution of Heritage Association of Harta Pusaka Tinggi And Harta Pusaka Rendah in Padang Pariaman The Theme in This Study Is the Distribution of Inheritance from a Mixture of Pusaka Tinggi and Pusaka Rendah Which Is Located in Nagari Lurah Ampalu Dis" 30, no. 1 (2020): 39–60.

who are the elders in a clan.^{91 92} The management of high ancestral inheritance assets in Minangkabau indigenous peoples, such as in Batipuh Subdistrict, Tanah Datar District, is carried out in a profit-sharing agreement for pawning, **which is allowed by adat (customs).**⁹³

Handling disputes over customary land tenure through the customary court of West Sumatra, such as customary land disputes, namely the *pacuan kudo*, occurred due to the status of customary land and unclear **ranji (structure)**, resulting in an unclear distribution of assets. Disputes over customary land tenure are resolved through customary court, which are subsequently forwarded to the District Court.⁹⁴ **To avoid conflicts and disputes, it is necessary to apply an Islamic inheritance system in inheritance distribution to create harmony and justice**⁹⁵.

Although the Minangkabau community adheres to the customary inheritance system, they still consider the Islamic inheritance system. If there is a dispute, the Tribal Council settles it amicably⁹⁶. Eric expressed the same thing that high ancestral inheritance cannot be divided equally among heirs because Minangkabau tradition applies a collective inheritance system. In contrast, low ancestral inheritance applies Islamic inheritance law⁹⁷. Settlement of inheritance disputes can also be accomplished through mediation through **takharruj (the heir's exit or resignation from receiving his share rights of the inheritance) or tasaluh (peace)**, which means the willingness and agreement between the heirs^{98 99}. It is completed in order that the distribution of inheritance follows each provision. It is also known as distributive justice, in which

⁹¹ Puspita Farahdillah et al., "Mediasi Tentang Penyelesaian Sengketa Waris: Studi Putusan No. 181/PDT.G/2013/PA.YK" 9, no. 1 (2022): 381-95.

⁹² Rama Deyan and others, 'Penyelesaian Sengketa Waris (Menurut Hukum Adat Minangkabau Dan Hukum Islam)', IV.Oktober (2021), 436-46.

⁹³ Indra Rahmat, "(Studi Di Kecamatan Batipuh Kabupaten Tanah Datar) Sumber Diterbitkan Oleh: Indra Rahmat: Laboratorium Program Studi Pendidikan Sejarah Sekolah Pengelolaan Harta Pusaka Tinggi Dalam Masyarakat Adat Minangkabau (Studi Di Kecamatan Batipuh Kabupaten Ta" 8 (2019): 15-24.

⁹⁴ Hesty Wahyuni et al., "Penanganan Sengketa Penguasaan Tanah Hak Adat Melalui Peradilan Adat Sumatera Barat" 4, no. 3 (2021).

⁹⁵ **Lalu Supriadi and Bin Mujib, "Revitalisasi Hukum Waris Islam Dalam Penyelesaian Kasus Sengketa Tanah Waris Pada Masyarakat Sasak" 19, no. 1 (2019): 67-87, <https://doi.org/10.18326/ijtihad.v19i1.67-87>.**

⁹⁶ Ernawati and Baharudd, 'Akulturasi Kewarisan: Penyelesaian Sengketa Pusaka Tinggi di Minangkabau', 2017.

⁹⁷ Eric Eric, 'Hubungan Antara Hukum Islam Dan Hukum Adat Dalam Pembagian Warisan Di Dalam Masyarakat Minangkabau', *Jurnal Muara Ilmu Sosial, Humaniora, Dan Seni*, 3.1 (2019), 61.

⁹⁸ **Rini Fahriyani Ilham and Ermi Suhasti, "Mediasi Dalam Penyelesaian Sengketa Waris : Studi Putusan No . 181 / PDT . G / 2013 / PA . YK" 9, no. 181 (2016): 67-86.**

⁹⁹ **Laras Sessa, Oloan Muda Hasim Harahap, and Elimartati, "Eksistensi Hukum Islam Dan Sistem Waris Adat Yang Dipengaruhi Oleh Sistem Keekerabatan Melalui Penyelesaian Al-Takharruj" 6, no. 1 (2021): 145-64.**

someone obtains a share according to their rights ¹⁰⁰. The gender justice system also characterizes the distribution of Islamic inheritance, in which men and women are equally qualified for a share of the inheritance, in line with each heir's share. ¹⁰¹.

Referring to the findings of the preceding studies, it is clear that the settlement of inheritance disputes varies according to the heirs' agreement. Inheritance can be divided amicably or based on Islamic inheritance law. However, some resolve inheritance disputes through various forms of tradition, such as in Kenagarian Salareh Aia. The problem in this area is a gap in customary law carried out by the community related to inheritance. As previously stated, there is a case of inheritance distribution in Nagari Salareh Aia based on the extinction of the heirs who are entitled to inherit the property, such as the inheritance is in the form of a house but is built on customary land, and the customary land is a gift from the previous Ninik mamak. The daughter as the recipient of the right to the inheritance is *Punah*, and no one is allowed to receive it. In fact, this inheritance is seized by the only son. By all means, this son is not the heir. He cannot receive it because he is not part of the kinship group. Moreover, the inheritance given to the son is sold. On the other hand, customary only qualifies inheritance to someone from the same kinship group, and it is not allowed to be traded because the legal action is not in line with customary rules and Islamic inheritance law. The assets is permissible to sell on four conditions: first, *gadih gadang indak balaki* (to carry out the marriages of the tribe's unmarried women). Second, *mayat tabujua diateh rumah* (to hold the funeral). Third, *rumah gadang katirisan* (to renovate the tribe's traditional house), fourth, *mambangkik batang tarandam* (restoring lost or no longer living traditional heirlooms). However, selling the inheritance does not need the four conditions in this issue.

There are several problems investigated in this research. First, what is the customary procedure for resolving extinct inheritance disputes in Nagari Salareh Aia? Second, how are disputes over mixed assets of high and low inheritance settled in Nagari Salareh Aia? Third, what effect does the pattern of settling extinct inheritance disputes have in Nagari Salareh Aia?

Methods

The type of research was field research with a qualitative approach. The primary data sources of the research are in the form of explanations or information obtained from disputing parties, *Ninik mamak, Datuak and Nagari officials (KAN) Salareh Aia Solok West Sumatera*, namely the head of Assembly of Adat Nagari and the head of the custom

¹⁰⁰ Islamiyati, "Analisis Keadilan Pada Pembagian Harta Warisan Menurut Hukum Islam," n.d.

¹⁰¹ Maryati Bachtiar, "Hukum Waris Islam Dipandang Dari Perspektif Hukum Keadilan Gender" 3, no. 1 (n.d.).

and syara' Assembly of Adat Nagari to provide information for more complete data collection. The secondary data sources in this study were taken from books related to the topics concerned, such as books of inheritance including Islamic inheritance law and customary inheritance law books, followed by other literature books to support this research. Techniques for collecting data in this study included interviews with disputing parties, Ninik mamak, Datuak, Religious leaders and the head of Assembly of Adat Nagari, the head of the adat and syara' Assembly of Adat Nagari Salareh Aia regarding the settlement pattern of customary *Punah* heir dispute in the Kenagarian. **Data were analyzed using the Creswell approach.** in the following ways: first, data reduction. **The data were reduced by summarizing and selecting the main information on extinct inheritance (*punah*) dispute resolution, then focusing on important points, such as customs procedures and mechanisms in resolving inheritance disputes, with the goal of determining the pattern used in traditional dispute resolution in Nagari Salareh Aia.** Second, data presentation. The presentation of data is completed in a short description, which is processed from the local language that has been translated, which then made it into a narrative text that is easy to understand. **Third**, drawing conclusions and verification.

Discussion and Result

Overview of Salareh Aia

Salareh Aia is an administrative *nagari* (falls under the jurisdiction of the regency), in Palembang Subdistrict, Agam District, West Sumatra which is located between the border of Agam District and Pasaman District. Nagari Salareh Aia was formed on May 31, 1946. As a Nagari Government, Salareh Aia consists of 11 *Jorong* (The term *Jorong* is equivalent to urban village, *Jorong* falls under the jurisdiction of *Nagari*) and has different areas, covering several *Jorong* with a population of 4168 families in Salareh Aia. The socio-cultural conditions of *Nagari* Salareh Aia are not far from the role of *Ninik Mamak*, traditional leaders and religious leaders tasked with managing the customs in Nagari Salareh Aia. *Nagari* Salareh Aia characteristics are uniform because these areas are still occupied by indigenous people and have no immigrant communities. People who live or work in *Nagari* Salareh Aia are mostly traders and farmers, civil servants, artisans, and fishermen. The majority of people in this region are Muslim.¹⁰²

In Salareh Aia, several leaders have a duty to manifest the law in the field of adat Nagari Salareh Aia which consists of two local political units known as *Langgam*. **The two *Langgam*** in Nagari Salareh Aia have different structural compositions and local

¹⁰² Iron Maria Edi, *Langgam: Struktur Politik Lokal Minangkabau Yang Tergerus*, (Kasus *Langgam* Nagari Salareh Aia, Kecamatan Palembang, Kabupaten Agam, 2019).

cultural values but have similarities in the basic pattern that forms the structure and values of adat istiadat, namely the habit of living in clans and groups through a matrilineal system and solid philosophical values of Minangkabau custom. The Adat structures are the *Saripado Langgam* (is formed through maternal lineage kinship and relationships based on close residence. In *Langgam Saripado*, unity includes the *paruik*, *kampuang* (village), tribe, and *luhak*, as well as the *lareh*. Meanwhile), and the *Rajo nan Balimo Langgam* (has community unity based on maternal lineage kinship and residence relations. Its form of unity includes the unity of the *paruik*, *kampuang* (village), tribe, and *langgam*), was formed from a different history. The difference is in the composition of the customary unit.¹⁰³.

Customary Procedures for Settlement of the Disputes of *Punah* Inheritance Di Nagari Salareh Aia

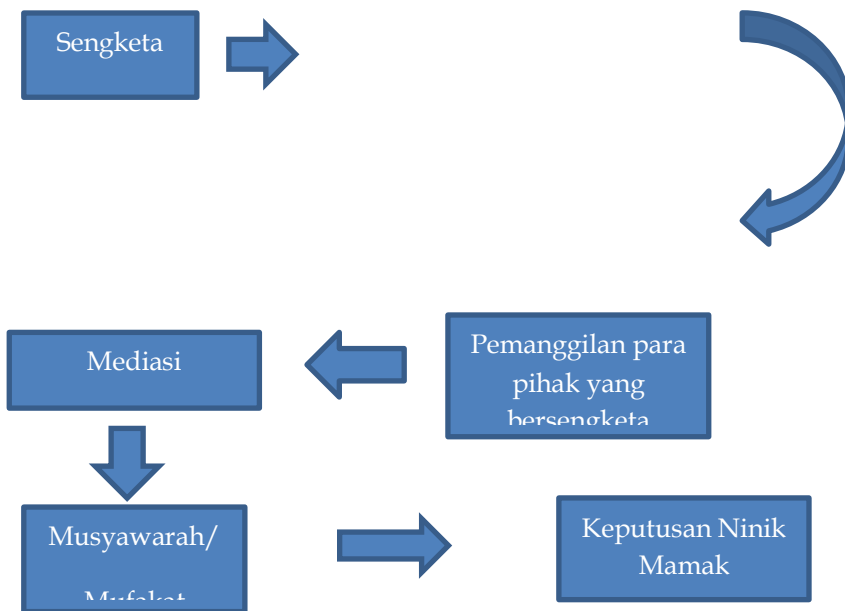
Settlement of the disputes of *Punah* inheritance in Nagari Salareh Aia, Palembayan Subdistrict, is carried out through customary courts. There are several customary procedures for dispute settlement that the disputing parties must pass regarding inheritance. The settlement of this dispute is through Assembly of Adat Nagari with deliberation.¹⁰⁴ In carrying out his duties, the *Penghulu* (is the highest title held by a Minangkabau man in a clan, chosen by clan agreement) of the Kerapatan Adat Nagari (KAN) is guided by the customary rules that apply in Nagari Salareh Aia, both for people who adhere to *Langgam Saripado* and for people who adhere to *Langgam Rajo Nan Balimo*. These two *Langgam*, have the same customary rules, but the implementation of customary settlements is different.

Tahap-Tahap Penyelesaian Sengketa Waris *Punah* Di Nagari Salareh Aia

¹⁰³ Edi, *Wawancara*, 22 Desember 2021. Proses Adat Menyelesaikan Sengketa Waris *Punah* Di Nagari Salareh Aia.

¹⁰⁴ Edi, *Wawancara*, 22 Desember 2021. Proses Adat Menyelesaikan Sengketa Waris *Punah* Di Nagari Salareh Aia.

Para pihak melaporkan kepada ninik mamak adanya sengketa terhadap waris *punah*



The Customary Court resolves the *Punah* inheritance dispute in Nagari Salareh Aia by holding a customary court through several stages.: first, reports from the disputing parties that there were disputes related to *Punah* inheritance with other parties. The report form submitted is a complaint from one of the parties reported to the Ninik mamak or to the board of Ninik mamak, leader of luhak (a confederation of several *Nagari* in Minangkabau). Report in the form of a verbal submission in which the heirs inform the *Mamak* that they intend to sell the inheritance. When the report has reached the head of the *Ninik mamak*, the Ninik mamak will call the parties to discuss the problems that occurred in the form of a claim by one of the disputing parties to be delivered to the trial. Afterward, the *Ninik mamak* manages a meeting to implement the customary trial. If it is agreed on, then a sign and address are placed..¹⁰⁵

Second, the calling of the disputing parties *dirapekkan* (discussed/deliberated at the meeting) is accomplished a week after the head of the *ninik mamak* receives the report, and there is an agreement between both parties to carry out the trial. At this stage, the disputing parties are requested to explain the inheritance dispute between the parties. Furthermore, both parties can present their complaints. In the customary trial process, the disputing parties are called to resolve the problems encountered through custom meetings..¹⁰⁶

Third, mediation. This mediation is carried out after the disputing parties are summoned before the *ninik mamak* and then resolved by finding a **common ground** to establish an agreement. Afterward, a meeting is held for both disputing parties to carry out mediation actions. One of the mediation actions carried out is to relay the case to the

¹⁰⁵ Asril Dt. Rangkayo Mulia. Wawancara, 22 December 2021. Prosedur Adat Menyelesaikan Sengketa Waris Punah Di Nagari Salareh Aia.

¹⁰⁶ Arman Dt. Tan Mangindo, Wawancara, 22 December 2021. Pucuk Adat Nan 15

Ninik mamak to be resolved amicably within the time provided: three days, seven days, or maximally 14 days. If there is no amicable settlement between the two parties, the Ninik mamak summons the two disputing parties, and then the decision rests on the Ninik mamak.¹⁰⁷ This mediation is carried out after the disputing parties are summoned before the panghulu and then resolved by finding identical perspective to establish an agreement.¹⁰⁸

Fourth, deliberation and consensus. The deliberation system is completed amicably so that there is no interference from other parties outside of the disputing family members. Every customary dispute in the family will be discussed by family members guided by Ninik mamak.¹⁰⁹ Before a decision is made by the Ninik mamak and during the process of deliberation and consensus, the Ninik mamak preferably examines and investigates everything related to the inheritance, including the origin of the inheritance to the *ranji (structure)* of ownership of the previous *Punah* inheritance. The customary trial is carried out at least seven to eleven times until it is found clarity of the *Punah* inheritance to determine a fair decision.¹¹⁰

Fifth, the decision of Ninik mamak. After deliberation and consensus have been carried out, the Ninik mamak, as the customary leader, determines a decision based on the results of the deliberation that has been mutually agreed on. **As a result, because the customary settlement is based on mutual consideration and agreement, including the heirs, there will be no disputes.** Thus, the process of resolving inheritance disputes is carried out peacefully until there is identical perspective and clarity on the status of the *Punah* inheritance.

Some Case Studies About Mechanism of Dispute Resolution in *Punah* Inheritance

The meaning of *punah* in the Minangkabau traditional inheritance system of Nagari Salareh Aia is the end of the closest heir, including the daughter from the matrilineal. In principle, the Minangkabau custom has determined that the inheritance of property is passed down to the niece's children close to matrilineal kinship. Although there are sons from the mother's descendants, they cannot be regarded as heirs who are entitled in Minangkabau custom because inheritance for sons is a mere usufructuary right, **so that they** cannot fully control the inheritance. However, the main point of this study is that **sons** can control the collection of inheritance passed by his parents.

¹⁰⁷ Asril Dt. Rangkayo Mulia, Wawancara, 23 December 2021

¹⁰⁸ Arman Dt. Tan Mangindo, Wawancara, 22 December 2021

¹⁰⁹ Arman Dt. Tan Mangindo, Wawancara, 22 December 2021

¹¹⁰ Asril Dt. Rangkayo Mulia, Wawancara, 23 December 2021

There are cases of *punah* inheritance disputes that have occurred in Nagari Salareh Aia, however, only a few cases were taken as samples in this study, including: first is the case in Kampuang Gadang Jorong Kayu Pasak Timur, on behalf of Oyoih (nickname), Chaniago clan, 51 years old who is the sole *punah* heir. In this case, the inheritance left by both parents is land and a house established upon customary land. The inheritance is a mixture of high ancestral inheritance and low ancestral property. As the sole heir, Oyoih controlled the entire inheritance, then all **property was sold to other people**. The form of settlement for this combination of high and low ancestral inheritance is to sell the property, however, *Mamak* requires that he should receive a 10% share of the transaction of this ancestral inheritance combination. If the *punah* heir did not agree to share with *Mamak*, then he is reluctant to assist in the process of selling the inheritance, such as signing an approval letter for the deal purpose.¹¹¹

Second, the case in Padang Gantiang Jorong Kayu Pasak Timur, on behalf of Ijen (nickname), Jambak clan, 47 years old. He is a *punah* heir along with three other brothers. The form of inheritance left by both parents is land, but it is a composition of high ancestral inheritance and low ancestral inheritance. This mixture was completed by Ijen and his three other brothers, who are *punah* heirs as well through the distribution of the inheritance with his three brothers. Each person deserved an equal share. After each *punah* heir acquired a share, the share for Ijen's heirs from the distribution, which is the property, was sold to the other party. Albeit, in the process of selling the inheritance, it must obtain approval from the *Mamak* with proof of signature on the letter, and it requests the *Mamak* to obtain 10% of the inheritance sale.¹¹² **That part is given to all Mamak and used for their personal interests**

Third, the case that occurred in Jorong Kayu Pasak, in the name of Sirubidin (nickname), Piliang clan, **as** the sole *punah* heir. His parents left an inheritance in form of land and houses. The inheritance is a mixture of high ancestral inheritance and low ancestral inheritance. The customary settlement carried out on this combination of high and low ancestral inheritance was by selling and distributing a share of 10% to the *Mamak* because in the correspondence process the *Mamak's* signature was required as evidence of the approval and he was the head of the heir, therefore requested for a share. **This type of inheritance always has an impact on how disputes are resolved** After deliberation, it was agreed that the inheritance might be marketed by the *punah* heir.¹¹³

Fourth, the case that occurred in Padang Gantiang Jorong Kayu Pasak Timur, representing Icam (nickname), Jambak clan, 45 years old, **as** a *punah* heir. The forms of inheritance sold are land and houses, which are composed of high ancestral inheritance and low ancestral inheritance. Customary settlement of a combination of high ancestral

¹¹¹ Ratmiyati, Wawancara, 23 December 2021.

¹¹² Yerman, Wawancara, 21 December 2021

¹¹³ Kasiman Dt. Marajo Nan Tinggi. Wawancara, 26 December 2021

inheritance and low ancestral inheritance cannot be separated from deliberation, so in this case when a *punah* heir wills to sell the inheritance of a mixture of high ancestral inheritance and low ancestral inheritance, then a discussion is carried out with the *Mamak* as the head of the customary inheritance. **The settlement carried out**, in this case, is by deliberation and it was also required that the *Mamak* was provided with 10% of the proceeds from the inheritance sale.¹¹⁴

Fifth, the case that occurred in Jorong Kayu Pasak Selatan, on behalf of Nulih and Majik (nickname), **as** *punah* heirs. The forms of inheritance obtained by these *punah* heirs are land, houses, and rice fields from the combination of high ancestral inheritance and low ancestral inheritance. Some of the inherited assets were sold and the others were not. However, some of the sold assets are called gifts using a grant contract, but principally the heirs would earn a sum from the grant. This composition of high ancestral inheritance and low ancestral inheritance was settled amicably by the *punah* heirs with *Mamak* because they wished to sell the said assets **such as land, houses and rice fields**. Then, a family discussion was held between the *punah* heirs and the *Mamak* to provide approval in order to assist the buy and sell transaction using proof of signature in the letter, and the *Mamak* would ask for a 10% share of the inheritance deal.¹¹⁵

Some of the cases above show that the *punah* inheritance dispute that occurred in Nagari Salareh Aia is heirs controlling the entire inheritance and then selling it. But the settlement of this inheritance is not according to the inheritance legal system in Minangkabau custom and also with customary law regarding the inheritance law prevailing in Nagari Salareh Aia. Basically, The combination of high and low ancestral inheritance cannot be controlled and traded in its entirety by *punah* heirs before the inheritance is divided and settled according to customary inheritance law.

This customary settlement of disputes between high and low ancestral inheritances should be resolved based on a system of negotiation for consensus which results in *ninik mamak's* decision. Mamak's decision should be based on mutual agreement and discussion, which is following the applicable customary law in Saripado style. For that reason, several examples of cases of mixed inheritance of high and low ancestral inheritance assets took place in the Luhak Kayu Pasak, which is part of the *Saripado* style traditional area in order to find solutions. As per the applicable customary law in the *Saripado* style, following finding the results of the negotiation for consensus, a decision is issued by *ninik mamak*. The decision should be following ***sakato samupakat* (negotiation for consensus)** from the results of the deliberation that has been closed. In the settlement of the *Saripado Ninik mamak*-style case, the *Mamak* (all mother's brothers) is not authorized to make and resolve separate decisions. Meanwhile, the settlement

¹¹⁴ Amralis Angku Rajo Endah, Wawancara, 24 December 2021. Kasus-Kasus Sengketa Waris Punah Di Nagari Salareh Aia.

¹¹⁵ Ratmiyati, Wawancara, 23 December 2021.

carried out in the case above was based on the agreement of the *Mamak* and the requirement that allows *Mamak* to obtain a 10% share had no legal basis before the custom.

Several cases that occurred and the form of customary settlement of *punah* inheritance disputes carried out in Nagari Salareh Aia showed that The customary settlement of extinct inheritance (*Punah*) disputes in Nagari Salareh Aia demonstrates that there are differences and similarities in customary rules and principles of Islamic inheritance, such as in the case of heirs. The heirs of high inheritance are given to women under Minangkabau customary law, whereas sons and daughters both receive a share of the inheritance under Islamic inheritance law. However, when the female heirs are extinct, the inheritance is passed directly to the sons who are still alive.

The basic provisions of Islamic inheritance law that have been stipulated in the Qur'an state that sons will get a share of the rest of the inheritance of their parents. The position of the son in the *punah* inheritance shows that the son is *ashabah binafsihi*, that is, the son will inherit the rest of the property alone. The legal basis that determines that a son has the right to inherit property from his parents is written in Q.S an-Nisa' [4]: 7. These are obligatory shares. The verse explains that the son will have a share of the inheritance left by either his father and mother, or both. Likewise, daughters get a share of the inheritance left by their parents as well ¹¹⁶.

The implementation of the customary settlement of inheritance disputes in Nagari Salareh Aia referred to **several sides of inheritance in customary Mnangkabau**, the customary settlement in Nagari Salareh Aia should be carried out in the following forms: **First, is in terms of the status of inheritance**. Assets that are inherited or sold do not belong to the heirs **so the *punah* heirs do not have the right to have**. Second is from the perspective of the heirs. In this case, the son is a *punah* heir and the inheritance left is a mixture of high ancestral inheritance and low ancestral inheritance. **In term of property ownership, the position of son as *punah* heirs is not included in the inheritance of high ancestral inheritance the custom because Minangkabau applies an inheritance system based on matrilineal kinship**. Despite that, low ancestral inheritance in the Qur'an verse explains that the son will inherit a share of the inheritance, **the position of the son are *ashabah* heirs, or** is the person who controls the rest of the property. Third is the distribution of inheritance. Islamic inheritance law dictates that the share for sons is twice that of daughters. If there is no daughter heir, then the son who is *ashabah* will inherit the rest of the assets. The prevailing customary rules addressing *punah* inheritance law in the Nagari Salareh Aia custom on a mixture of high ancestral inheritance and low ancestral inheritance **are** by dividing the two assets. Some are for *punah* heirs and some are endowed to adat.

¹¹⁶ Amir Syarifuddin, *Hukum Kewarisan Islam*, (Jakarta: Kencana), 2005), h. 7.

If the heirs have received a share of the mixed assets of high inheritance and low inheritance, then selling the property is permitted under customary law. All Ninik Mamak receive 10% of the sale proceeds, not from the property distribution to the heirs. This has become a provision of customary inheritance law in *Nagari* Salareh Aia. After the combination of high ancestral inheritance and low ancestral inheritance is divided according to customary rules, the heirs have received some of the property, and part of it has been included in the custom which becomes high ancestral inheritance. Subsequently, what is part of this heir may be sold but based on the *ninik mamak* agreement such as *tigo tungku sajarangan* (Traditional leaders in Minangkabau include *Niniak Mamak/Penghulu*, *Alim Ulama* (People who are religious experts), and *Cadiak Pandai* (who are intelligent), elders in the customary system will have their share according to their level of position before the custom.¹¹⁷

This form of customary settlement is carried out by inviting all *sapayung* (kinship of people of the same *datuak* (traditional title bestowed on a person by the agreement of people or tribe) parties in inheritance disputes, especially *ninik mamak* should divide the mixed assets of high and low ancestral inheritance, which partly if for the heirs and the other are for the customary. The combination of high ancestral inheritance and low ancestral inheritance cannot be controlled entirely by the heirs, yet cannot be traded and cannot be controlled by *mamak* (because the property is not entirely customary)¹¹⁸

The distribution of property is acknowledged by the *mamak* and witnessed directly by the *datuak*.¹¹⁹

The customary provision in *Nagari* Salareh Aia that the inheritance of a *punah* person is known as *warih bakaturunan sako babandaran* (some of the properties of extinct heirs (*punah*) are divided among heirs and some are included in the customary property. A part of the custom's inheritance becomes a high inheritance). The remaining heirs are only entitled to authority but to spend by controlling individually is not allowed before in the custom. The disposition of the combination of high ancestral inheritance and low ancestral inheritance is in *payuak timbago* (Sako house, a traditional wealth center, also known as the traditional leader's house of *Tigo Tungku Sajarangan*). If the inheritance is controlled in its entirety, the customary law of *warih bakaturunan sako babandaran* (some of the properties of extinct heirs (*punah*) are divided among heirs and some are included in the customary property. A part of the custom's inheritance becomes a high inheritance) is void.¹²⁰ The customary settlement of mixed assets of high ancestral inheritance and low ancestral inheritance is different. In the case of high ancestral inheritance, the settlement is carried out by involving all elements of custom, while low ancestral inheritance only requires the nuclear family and nephew-cousin kins cannot

¹¹⁷ Arman Dt. Tan Mangindo, Wawancara, 22 December 2021. Pucuk Adat Nan 15

¹¹⁸ Asril Dt. Rangkayo Mulia, Wawancara, 23 December 2021

¹¹⁹ Yerman, Wawancara, 21 December 2021

¹²⁰ Rabuman Dt. Jelo, Wawancara, 23 December 2021.

interfere, including disputes over low ancestral inheritance because it is not property rights.¹²¹

Mechanisms and efforts for the customary settlement of inheritance disputes of mixed high ancestral inheritance and low ancestral inheritance are performed by applying two forms of settlement, namely: First is negotiation which is conducted to anticipate social turmoil and ongoing disputes over the inheritance dispute. Second is consensus, the word consensus is taken after deliberation. The agreement does not harm other parties and certainly does not violate the applicable customary laws. One of the reasons for the implementation of these two forms is to apply the concept of justice, therefore the agreement that will be decided does not harm any of the disputing parties and maintains kinship in family relations.^{122,123,124}

In traditional inheritance disputes, *ninik mamak* plays an important role in the process of settling *punah* inheritance disputes as stated by Kasiman Khatib Marajo Nan Tinggi. He mentioned that *ninik mamak* has a great influence on the mechanism of customary settlement of disputes between high ancestral inheritance and low ancestral inheritance in Nagari Salareh Aia because *ninik mamak* holds the decisions on negotiation and consensus which is completed collectively before the religious stakeholders, as well as *imam khatib*. Meanwhile, the elders in custom “*pai tampek batanyo pulang tampek barito*” (means *Niniak Mamak* is the highest position in the tribes in Minangkabau, they are a support and a place to ask questions from various problems faced by their children, nephew, people and *Nagari*)¹²⁵

Impact and Solutions for *Punah* Inheritance Settlement Patterns in Nagari Salareh Aia

The impact of the customary settlement pattern on *punah* inheritance disputes in Nagari Salareh Aia is: First, the customary settlement of *punah* inheritance disputes has shown the clarity of the heir's position with respect to inheritance and property status in the category of high ancestral inheritance or low ancestral inheritance and or mixed assets both high ancestral inheritance and low ancestral inheritance. Second, it can avoid disputes between parties and heirs because the settlement pattern is applied following the concept of justice. The customary settlement of inheritance in Nagari Salareh Aia is based on the *Salingka of Nagari* custom (A rule that has been practiced in society from generation to generation (since the ancestors' time) to the point where it is a law and regulation that must be followed, but only applies in a particular *Nagari* in Minangkabau

¹²¹ Asril Dt. Rangkayo Mulia, Wawancara, 23 December 2021

¹²² Asril Dt. Rangkayo Mulia, Wawancara, 23 December 2021

¹²³ Yerman, Wawancara. 21 December 2021

¹²⁴ Kasiman Dt. Marajo Nan Tinggi. Wawancara, 26 December 2021

¹²⁵ Kasiman Dt. Marajo Nan Tinggi. Wawancara, 26 December 2021.

and does not necessarily apply in other *Nagari*.), which is inseparable from the *adat basandi syara', syara' basandi kitabullah* (the customary provisions are based on the Shari'a, and the Shari'a refers to the Qur'an). It can be understood that the customary settlement process of the *punah* inheritance dispute is based on the customary laws that apply and are used in Nagari Salareh Aia. These laws are inseparable from syara' law.¹²⁶

Some of the solutions put forward by traditional leaders in the traditional settlement of a *punah* inheritance dispute of combined high and low ancestral inheritance in Nagari Salareh Aia, Palembang Subdistrict are: First, to understand the inheritance which is the subject of the customary inheritance dispute. Second is **to organize discussion**. The discussion held with traditional leaders is negotiation and consensus, which is to find common ground for the settlement of customary rights on inheritance. Negotiations are held to maintain relationships within the family, therefore it is performed **in a family way**, to avoid problems and disputes between heirs, *Mamak*, and other family parties. Third is **to make consensus**. The **consensus** made is based on the results of negotiation by all parties involved in the settlement of customary inheritance disputes. Fourth, is the decision of *ninik mamak*. This is the highest decision issued by the *ninik mamak* in custom. Hence, decision-making by *ninik mamak* is inseparable from seeking justice in the settlement of the distribution of inheritance.

The form of the solution presented by these traditional leaders is indivisible from the Salingka Nagari Customary system which is also based on the *adat syara', syara' basandi Kitabullah*. This is to avoid disputes, bad impacts, and **disputes** that will occur in the future as the effect of the implementation of the settlement of *punah* inheritance dispute. Therefore, the disputing parties can accept the *ninik mamak* decision without any other disagreement and the outcomes of the negotiation and consensus do not harm each other because of the settlement of the *punah* inheritance as per the concept of justice. **Therefore, no dispute will arise from the customary settlement because it is based on mutual consideration and agreement, including the heirs.**

The nature of customary law that applies in society is not a proposition that is determined by syar'i. However, this customary law includes *'urf* in the maintenance of *mashlahah* (*Mashlahah* is a concept that is used as the primary consideration in solving Islamic law problems because its principle is the protection of the law's objective purpose (*maqasid al-syari'ah*), which is the preservation of religion, soul, mind, lineage, and property) in society. The intended *maslahat* is one that clearly maintains the five parts; the protection of religious beliefs, the protection of soul, the protection of mind, the protection of family and descendants (human dignity), and the protection of

¹²⁶ Asril Dt. Rangkayo Mulia. Wawancara, 22 December 2021. Analisis dan Solusi Penyelesaian Adat Sengketa Campuran Harta Pusaka Tinggi dan Harta Pusaka Rendah Waris Punah Di Nagari Salareh Aia.

property¹²⁷. As stated by al-Ghadzali is *hifzu al-Kulliyat al-Khams*¹²⁸. The implementation of customary settlement is relevant to *mashlahah* which aims to maintain heirs and assets.

The implementation of inheritance distribution has been explained in the Qur'an Surah an-Nisa verses 11, 12, and 176, as well as several hadiths of the prophet. However, the community also applies customary laws that have become a habit and are implemented by the people in Nagari Salareh Aia. In principle, high ancestral heritage assets are to be maintained and developed continuously so that the next generation can benefit from these assets and these assets can be passed down from generation to generation. However, in contrast to mixed assets of high ancestral inheritance and low ancestral inheritance, the form of ownership may shift if the heirs agree to divide and settle so that ownership rights also change. Therefore, it is also not allowed in customary inheritance law to control and sell all assets before the distribution of the mixed inheritance is completed.

Conclusion

The concept of *punah* is understood differently by the Minangkabau community and *islamic inheritance* because on the one hand Islamic society refers to Islamic law and on the other hand uses a matrilineal system. The two concepts are used interchangeably in resolving inheritance disputes in the Nagari Salareh Aia. The Minangkabau customary procedure for resolving *punah* inheritance disputes in Nagari Salareh Aia, is based on applicable customary rules, which undergoes customary settlement.

The mechanism for resolving *punah* inheritance customs in Nagari Salareh Aia upholds the kinship system with the settlement of assets that can be carried out between *punah* heirs and *Mamak* in a family manner. However, controlling the inheritance and selling it for individual ownership violate the concept of settlement of high ancestral inheritance so that the essence of collective ownership of high inheritance is void. The customary settlement of disputes between high ancestral inheritance and low ancestral inheritance can be done by refining and separating between low ancestral inheritance and high ancestral inheritance, partly for *punah* heirs and partly for customs, which are used for subsequent high ancestral inheritance property.

The impact of customary settlement pattern of extinct inheritance disputes in Nagari Salareh Aia is to foster close family ties. The resolution of this extinct inheritance

¹²⁷ Abdul Ghofur Anshori and Yulkarnain Harahab, *Hukum Islam Dinamika Dan Perkembangannya Di Indonesia* (Yogyakarta: Kreasi Total Media, 2008).

¹²⁸ Firdaus, *Ushul Fiqih: Metode Mengkaji Dan Memahami Hukum Islam* (Depok: Rajawali Pers, 2017).

dispute clarifies the heirs' position toward the inheritance and the status of the assets, whether the property is classified as high inheritance or low inheritance.

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Patterns for Settlement of *Punah* Inheritance Disputes In the Community of Nagari Salareh Aia from the Perspective of Islamic Law

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Abstract:

This research aims to investigate the settlement pattern of inheritance disputes in Nagari Salareh Aia as well as the impact of this settlement pattern. This is a field study using customary law and Islamic law approaches. Data were obtained through interviews and document studies. To analyze data, the Creswell approach was used, which includes data reduction, data verification, and drawing conclusion. This research reveals

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three significant findings. First, the customary settlement pattern, for heirs who control *punah* inheritance, is done by selling it to other. If there are one or more heirs, the remaining sale of the assets is divided among the heirs after the *Mamak's* rights are excluded. Second, the settlement of *punah* inheritance disputes in Salareh Aia fosters close family ties. It also clarifies the heirs' position regarding inheritance and property status, whether it is a high inheritance or low inheritance. Third, based on the pattern of settlement and the resulting impact, it can be concluded that the mechanism for resolving disputes over the *Punah* inheritance in the *Nagari* Salareh Aia has fulfilled sharia principles, namely to maintain the property and the honor of the people.

Keywords:

Islamic Inheritance, Minangkabau, Dispute Settlement, *Punah*

Abstrak

Penelitian ini bertujuan mengeksplorasi pola penyelesaian sengketa waris *punah* di Nagari Salareh Aia serta dampak yang ditimbulkan dari penyelesaian tersebut. Penelitian ini merupakan penelitian lapangan dengan pendekatan hukum adat dan hukum Islam. Data diperoleh melalui metode wawancara dan dokumen sebagai alat pengumpul data. Pendekatan Creswell digunakan untuk menganalisis data dengan tahap: reduksi data, penyajian data, verifikasi data dan pengambilan kesimpulan. Temuan penelitian ini menemukan tiga hal penting. Pertama, pola penyelesaian adat terhadap ahli waris yang menguasai harta warisan *punah*, dengan cara menjualnya untuk dimiliki perorangan. Jika ahli waris *punah* satu atau beberapa orang, maka setelah diberikan hak *mamak*, sisa penjualan harta dibagi di antara ahli waris *punah*. Sedangkan penyelesaian terhadap sengketa harta campuran pusaka tinggi dan pusaka rendah, dilakukan dengan cara memurnikan dan memisahkan harta tersebut. Sebagian untuk ahli waris *punah* dan sebagian lagi untuk adat dalam status menjadi harta pusaka tinggi. Kedua, dampak yang ditimbulkan dari pola penyelesaian adat waris *punah* di Nagari Salareh Aia adalah menjadikan hubungan kekeluargaan terjalin erat. Juga, memperjelas kedudukan ahli waris terhadap harta warisan dan

status harta, mana yang termasuk harta pusaka tinggi dan pusaka rendah. Melihat dari pola penyelesaian dan dampak yang ditimbulkan maka mekanisme penyelesaian sengketa warisan punah secara adat telah memelihara prinsip-prinsip syariah yaitu selain memelihara harta juga memelihara kehormatan kaum.

Kata Kunci:

Kewarisan Islam; Minangkabau; Penyelesaian Sengketa; Punah

Introduction

The concept of *punah* is interpreted differently by the Minangkabau community and Islamic inheritance law (*faraidh*), thus, the two interpretations are used in solving inheritance disputes. The meaning of *Punah* in Islamic inheritance law is found in the concept of *kalalah* inheritance. A person is called *kalalah* if he has no offspring (children) and parents (father) passed away. People who have a kinship in the family, be it from the top line (parents) or the bottom line (descendants), are called *kalalah*¹. However, some also interpret *kalalah* as people with no offspring at all.² The term *kalalah* can be used for heiress and heirs. However, several opinions of linguists suggest the meaning of *kalalah*: *first*, someone who does not have children and parents; *second*, someone who does not have children, parents, and siblings; *third*, someone who does not have family and relatives. The first meaning is a representative meaning of the opinion of the majority of scholars. Meanwhile, *kalalah* heirs include siblings or brothers and sisters. The term *kalalah* can be used for heiress and heirs. Meanwhile, *kalalah* heirs include siblings or brothers and sisters³.

¹ Ahmad Suganda and Muhammad, 'Konsep Kalalah Dalam Fiqh Waris, Suganda and Muhammad. 04, 1-17 (p. 5).

² Al Yasa' Abu Bakar, *Rekonstruksi Fikih Kewarisan* (Banda Aceh: LKAS, 2012).

³ Suganda and Muhammad, "Konsep Kalalah Dalam Fiqh Waris The Concept of Kalalah in Inheritance Jurisprudence.", M Guntur Ageng Prayogi, "(IAIN) Metro Lampung," 2018.

Principally, inheritance transfers ownership rights from the deceased to the living heirs⁴. *Kalalah* inheritance, which transfers ownership rights from the deceased to the living heirs is mentioned in the Qur'an Surah an-Nisa' verse 12 and 176. Verse 12 describes the share of each heir who gets the inheritance, including the *Kalalah* inheritance⁵. The mentioned verse explains the settlement of the share for the *Kalalah (Punah)* inheritance by emphasizing that both brothers and sisters are also counted as an heir if the late person does not have a father and children as heirs but only has a brother or sister instead. In verse 176, meanwhile, the *Kalalah* inheritance is identified for the heirs of siblings (siblings and agnate siblings, both male and female).

The term *Punah* showed in the Minangkabau customary inheritance. In this case, *punah* (extinction) refers to the situation in which there is no heir to inherit the inheritance. High ancestral inheritance assets, inherited in Minangkabau customary terms, are assets inherited based on the matrilineal system. High ancestral inheritance refers to the high ancestral inheritance from *Mamak* (*Mamak* means all mother's brothers) and *Ninik Mamak* (a traditional leadership title carried by a Minangkabau man, which is elected and agreed upon by members of his clan for an indefinite period) ahead to the top of the family tree. This is in line with a Minangkabau's proverb: *dari ninik turun ke mamak, dari mamak turun ke kemenakan* (from *Ninik* passed down to *Mamak*, from *Mamak* passed down to nephew)⁶. In Minangkabau custom, there are two forms of inheritance: high ancestral inheritance and low ancestral inheritance.⁷ High ancestral inheritance is recognized as assets from their ancestors and afterward inherited from generation to generation from *Mamak* to nephews of the kinship group. Thus, they become the high ancestral inheritance of

⁴ Endah Dwi Atmaji, *Hukum Waris Dalam Islam* (Klaten: Cempaka Putih, 2019, h.3) See also Miftahul Huda, Niswatul Hidayati, Khairil Umami "Fiqh and Custom Negotiation in Avoiding Inheritance Dispute Tradition among Mataraman Society East Java," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 15, no. 2 (2020): 236, <https://doi.org/https://doi.org/10.19105/al-lhkam.v15i2.3787>.

⁵ Amir Syarifuddin, *Hukum Kewarisan Islam*, 2nd ed. (Jakarta: Kencana, 2005).

⁶ Safrudin Halimy Kamaluddin, *Adat Minangkabau Dalam Perspektif Hukum Islam* (Padang: Hayfa Press, 2005, h.85-85).

⁷ Amir Syarifuddin, *Pelaksanaan Hukum Kewarisan Islam Dalam Lingkungan Adat Minangkabau* (Jakarta: PT Gunung Agung, 1984).

the kinship group⁸. The provision of this high ancestral inheritance assets, in principle, cannot be sold or pawned to the public, as the Minang proverb says: *dijua tak dimakan bali, digadai tak dimakan sando* (which means that it can be sold but cannot be bought, pawned but cannot be held). If there is an urgent condition for an inheritance, it may be sold or pawned for the common good, but all lineage members must approve it. For example, a woman in the clan is not married (does not have the cost to get married and is eligible for marriage in terms of age), or someone dies and the body has not yet been buried. Under Minangkabau customary law, which is based on matrilineal, namely maternal law, then the inheritance system in Minangkabau custom is applied and calculated based on maternal lineage. According to the mother's lineage, the inheritance is shared with family members of the mother's line.⁹

The meaning of *Punah* in Minangkabau in this inheritance concept is that when a woman dies without an heir from her direct lineage, the heirs are the distant kindred. Consequently, the heirs are from distant heirs. Distant family heirs mean blood-lined family members from the mother's lineage or indirectly descended from the woman who died, such as the daughter of a deceased sister. If this lineage is still none, the inheritance goes to family members, including blood relatives, according to the maternal lineage from the ancestors. In addition, there is *jurai-jurai*, a family structure consisting of small groups according to maternal lineage kinship (matrilineal). it comes from the same *paruik* (blood-lined). If someone dies, *jurai* will be in the same Nagari (Nagari's meaning in terms of *punah* heirs is *adat* or customary)¹⁰. Furthermore, if all the heirs specified above no longer exist, the Nagari (institution) will inherit the inheritance. That is the meaning of *Punah* people in the concept of high ancestral inheritance in Minangkabau custom.¹¹

In terms of community reality, the settlement of inheritance

⁸ Ellyne Dwi Poespasari, *Pemahaman Seputar Hukum Waris Adat Di Indonesia* (Jakarta Timur: Kencana, 2018).

⁹ Chairul Anwar, *Hukum Adat Indonesia Meninjau Hukum Adat Minangkabau* (Jakarta: PT.Rineka Cipta, 1997), h. 89.

¹⁰ (Chairul Anwar, 1997: 89-90)

¹¹ (Chairul Anwar, 1997: 91)

distribution follows the rules of Islamic inheritance law. However, the majority divide inheritance in a familial manner and customary rules for certain areas. As happened in the Banjarmasin, the distribution of inheritance is accomplished in a family manner instead of following the practice of Islamic inheritance law and the Compilation of Islamic Law.¹² Correspondingly, the distribution of inheritance is similar in the community of Kemukiman Lamblang, Kota Baro sub-district, Aceh Besar District. The distribution of inheritance to the youngest daughter is carried out based on the principle of justice (in terms of independence and financial stability) in which other heirs give their inheritance rights to the youngest daughter.¹³ In Banjar, the inheritance distribution uses the bequeathed grant before death.¹⁴ Meanwhile, the principle of matrilineal kinship is applied in Minangkabau. It means the ownership of inherited assets occurs from generation to generation, from parents to their children. The position of *Mamak* role in high ancestral inheritance should be a supervisor because *mamak* possessed considerable power in customs. In fact, *Mamak* is no longer responsible for supervising the inheritance.¹⁵

The son's role in the high inheritance in Minangkabau is only as of *mamak waris adat* or *mamak kepala adat* (a person with complete control over the high inheritance and is in charge of supervising, maintaining, and developing the high inheritance property so that it does not run out), who is responsible for supervising the inheritance assets¹⁶. Settlement of inheritance disputes (according to

¹² Rizeka Aprilia, *Penyelesaian Sengketa Waris Di Luar Pengadilan Agama Di Kota Banjarmasin* (Universitas Islam Negeri Antasari Banjarmasin, 2020, h. 74).

¹³ Hirdayadi M. Ansar Israr, "Tehnik Pembagian Warisan Terhadap Anak Bungsu Perempuan Dalam Masyarakat Kemukiman Lamblang Kec. Kuta Baro Kab. Aceh Besar Menurut Hukum Islam," *Samarah* 1, no. 2 (2018); See Also Lego Karjoko et al., "Islamic Court's Approach to Land Dispute in Inheritance Cases," *Ahkam: Jurnal Ilmu Syariah* 21, no. 2 (2021): 213-38, <https://doi.org/10.15408/AJIS.V21I2.21864>.

¹⁴ Wahidah and Faridah, "Praktik Penyelesaian Harta Warisan Pada Masyarakat Banjar" (*Universitas Islam Negeri Antasari Banjarmasin*, 2018).

¹⁵ Ria Agustar, "Pelaksanaan Pembagian Warisan Atas Harta Pencarian Dalam Lingkungan Adat Minangkabau Di Kecamatan Lubuk Kilangan Kota Padang" (Program Pascasarjana Universitas Diponegoro, 2008).

¹⁶ Danial Abdillah Lazuardi and Endang Pandamdar, "*Harta Pusaka Tinggi Menurut Hukum Waris Adat Minangkabau*," 2015, 1-13. Qasim Muhammadi, "Distribution of Heritage Association of Harta Pusaka Tinggi And Harta Pusaka

Minangkabau customary law and Islamic inheritance), is resolved by the elders through deliberation involving *ninik mamak* who are the elders in a clan.^{17 18} The management of high ancestral inheritance assets in Minangkabau indigenous peoples, such as in Batipuh Subdistrict, Tanah Datar District, is carried out in a profit-sharing agreement for pawning, which is allowed by *adat* (customs).¹⁹

Handling disputes over customary land tenure through the customary court of West Sumatra, such as customary land disputes, namely the *pacuan kudo*, occurred due to the status of customary land and unclear *ranji* (structure), resulting in an unclear distribution of assets. Disputes over customary land tenure are resolved through customary court, which is subsequently forwarded to the District Court.²⁰ To avoid conflicts and disputes, it is necessary to apply an Islamic inheritance system in inheritance distribution to create harmony and justice²¹.

Although the Minangkabau community adheres to the customary inheritance system, they still consider the Islamic inheritance system. If there is a dispute, the Tribal Council settles it amicably²². Eric expressed the same thing that high ancestral

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¹⁷ Puspita Farahdillah et al., "Mediasi Tentang Penyelesaian Sengketa Waris: Studi Putusan No. 181/PDT.G/2013/PA.YK" 9, no. 1 (2022): 381-95.

¹⁸ Rama Deyan and others, 'Penyelesaian Sengketa Waris (Menurut Hukum Adat Minangkabau Dan Hukum Islam)', IV.Oktober (2021), 436-46.

¹⁹ Indra Rahmat, "(Studi Di Kecamatan Batipuh Kabupaten Tanah Datar) Sumber Diterbitkan Oleh : Indra Rahmat : Laboratorium Program Studi Pendidikan Sejarah Sekolah Pengelolaan Harta Pusaka Tinggi Dalam Masyarakat Adat Minangkabau (Studi Di Kecamatan Batipuh Kabupaten Ta" 8 (2019): 15-24.

²⁰ Hesty Wahyuni et al., "Penanganan Sengketa Penguasaan Tanah Hak Adat Melalui Peradilan Adat Sumatera Barat" 4, no. 3 (2021); See Also Syukri Iska et al., "Implications of the Pagang Gadai Contract on Disharmony Social Actors in Minangkabau Community," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (June 9, 2022): 27-37, <https://doi.org/10.31958/JURIS.V21I1.5647>.

²¹ Lalu Supriadi and Bin Mujib, "Revitalisasi Hukum Waris Islam Dalam Penyelesaian Kasus Sengketa Tanah Waris Pada Masyarakat Sasak" 19, no. 1 (2019): 67-87.

²² Ernawati and Baharudd, 'Akulturasi Kewarisan: Penyelesaian Sengketa Pusaka Tinggi di Minangkabau', 2017.

inheritance cannot be divided equally among heirs because Minangkabau tradition applies a collective inheritance system. In contrast, low ancestral inheritance applies to Islamic inheritance law²³. Settlement of inheritance disputes can also be accomplished through mediation through *takharruj* (the heir's exit or resignation from receiving his share rights of the inheritance) or *tasaluh* (peace), which means the willingness and agreement between the heirs²⁴ ²⁵. It is completed in order that the distribution of inheritance follows each provision. It is also known as distributive justice, in which someone obtains a share according to their rights²⁶. The gender justice system also characterizes the distribution of Islamic inheritance, in which men and women are equally qualified for a share of the inheritance, in line with each heir's share.²⁷

Referring to the findings of the preceding studies, it is clear that the settlement of inheritance disputes varies according to the heirs' agreement.²⁸ Inheritance can be divided amicably or based on Islamic inheritance law. However, some resolve inheritance disputes through various forms of tradition, such as in Kenagarian Salareh Aia. In this area, there is a gap in customary law carried out by the community related to inheritance. As previously stated, there is a case of inheritance distribution in Nagari Salareh Aia based on the extinction of the heirs who are entitled to inherit the property, such as the inheritance is in the form of a house but is built on customary land

²³ Eric Eric, 'Hubungan Antara Hukum Islam Dan Hukum Adat Dalam Pembagian Warisan Di Dalam Masyarakat Minangkabau', *Jurnal Muara Ilmu Sosial, Humaniora, Dan Seni*, 3.1 (2019), 61.

²⁴ Rini Fahriyani Ilham and Ermi Suhasti, "Mediasi Dalam Penyelesaian Sengketa Waris : Studi Putusan No . 181 / PDT . G / 2013 / PA . YK" 9, no. 181 (2016): 67-86.

²⁵ Laras Sessa, Oloan Muda Hasim Harahap, and Elimartati, "Eksistensi Hukum Islam Dan Sistem Waris Adat Yang Dipengaruhi Oleh Sistem Kekerabatan Melalui Penyelesaian Al-Takharruj" 6, no. 1 (2021): 145-64.

²⁶ Islamiyati, "Analisis Keadilan Pada Pembagian Harta Warisan Menurut Hukum Islam," n.d.

²⁷ Maryati Bachtiar, "Hukum Waris Islam Dipandang Dari Perspektif Hukum Keadilan Gender" 3, no. 1 (n.d.).

²⁸ Maimun, "The Women's Rights in Divorce and Gender Equality Discourse in The Dynamics of Divorce in Madura," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (June 27, 2022): 468-92, <https://doi.org/10.22373/SJHK.V6I1.12804>.

which is a gift from the previous *ninik mamak*. The daughter as the recipient of the right to the inheritance is *Punah*, and no one is allowed to receive it. In fact, this inheritance is seized by the only son. By all means, this son is not the heir. He cannot receive it because he is not part of the kinship group. Moreover, the inheritance given to the son is sold. On the other hand, customary only qualifies inheritance to someone from the same kinship group, and it is not allowed to be traded because the legal action is not in line with customary rules and Islamic inheritance law. The assets is permittable to sell on four conditions: 1). *gadiah gadang indak balaki* (to carry out the marriages of the tribe's unmarried women), 2). *mayat tabujua diateh rumah* (the hold the funeral), 3). *rumah gadang katirisan* (to renovate the tribe's traditional house), and 4). *mambangkik batang tarandam* (restoring lost or no longer living traditional heirlooms). However, selling the inheritance does not need the four conditions in this issue.

There are several problems investigated in this research. First, what is the pattern of *punah* inheritance dispute settlement in the Nagari Salareh Aia community? Second, what effect does the pattern of settling *punah* inheritance disputes have in Nagari Salareh Aia?

Method

This is a field research with a qualitative approach. The primary data sources of the research are in the form of explanations or information obtained from disputing parties, *Ninik mamak*, *Datuak* and KAN (a mediation institution at *Nagari* level in Minangkabau) *Salareh Aia Solok West Sumatera*, namely the head of *Nagari's* Customary Court and the head of the custom and *syara'* *Nagari's* Customary Court to provide information for more complete data collection. The secondary data sources in this study were taken from books related to the topics concerned, such as books of inheritance including Islamic inheritance law and customary inheritance law books, followed by other literature to support this research. Techniques for collecting data in this study included interviews with disputing parties, *Ninik mamak*, *Datuak*, Religious leaders, and the head of Assembly of *Adat Nagari*, the head of the *adat* and *syara'* Customary Court of *Nagari Salareh Aia* regarding the settlement pattern of customary *Punah* heir dispute in the Kenagarian. Data were analyzed using the Creswell approach in the following ways: the first phase is data reduction. The data were

reduced by summarizing and selecting the main information on extinct inheritance (*punah*) dispute resolution, then focusing on important points, such as customs procedures and mechanisms in resolving inheritance disputes to determine the pattern used in traditional dispute resolution in Nagari Salareh Aia. The second phase is data presentation. The presentation of data is completed in a short description which is processed from the local language that has been translated and then made into a narrative text that is easy to understand. The third phase is conclusions, and verification. The third stage is to verify the data and formulate conclusions after discussing and analyzing the findings.

Discussion and Result

Overview of Nagari Salareh Aia

Salareh Aia is an administrative *nagari* (under the jurisdiction of the regency) in Palembang Subdistrict, Agam District, West Sumatra which is located between the border of Agam District and Pasaman District. Nagari Salareh Aia was formed on May 31, 1946. As a *Nagari* Government, Salareh Aia consists of 11 *Jorong* (The term *Jorong* is equivalent to urban village. It is under the jurisdiction of *nagari*) and has different areas with a population of 4168 families. The socio-cultural conditions of *Nagari* Salareh Aia are not far from the role of *Ninik Mamak*, traditional and religious leaders tasked with managing the customs in *Nagari* Salareh Aia. *Nagari* Salareh Aia characteristics are uniform because these areas are still occupied by indigenous people and have no immigrant communities. People who live or work in *Nagari* Salareh Aia are mostly traders and farmers, civil servants, artisans, and fishermen. The majority of people in this region are Muslim.²⁹

In Salareh Aia, several leaders have to manifest the law in the field of local *adat* which consists of two local political units known as *Langgam*. The two *Langgam* in Nagari Salareh Aia has different structural compositions and local cultural values. However, they have similarities in the basic pattern that forms the structure and customary values, namely the habit of living in clans and groups through a

²⁹ Iron Maria Edi, *Langgam: Struktur Politik Lokal Minangkabau Yang Tergerus, (Kasus Langgam Nagari Salareh Aia, Kecamatan Palembang, Kabupaten Agam, 2019.*

matrilineal system and solid philosophical values of Minangkabau custom. The Adat structures are the *Saripado Langgam*, for instance is formed through maternal lineage kinship and relationships based on close residence. In *Langgam Saripado*, unity includes the *paruik* (a nuclear family descended from matrilineal relations), *kampung* (village), tribe, and *luhak* (a kind of confederation area of *Nagari* in Minangkabau). Meanwhile, the *Rajo nan Balimo Langgam* formed its unity based on the same thing while forming the unity based on the *paruik*, *kampung* (village), tribe, and *langgam* with a different history in the composition of the customary unit.³⁰

Customary Procedures for Settlement of the Disputes of *Punah* Inheritance in Nagari Salareh Aia

Settlement of the disputes of *Punah* inheritance in Nagari Salareh Aia, Palembang Subdistrict, is carried out through the customary courts. There are several customary procedures for dispute settlement that the disputing parties must pass. The settlement of this dispute is through customary court with deliberation.³¹ In carrying out his duties, the *Penghulu* (the highest title held by a Minangkabau man in a clan, chosen by clan agreement) of the *Kerapatan Adat Nagari* (KAN) is guided by the customary rules that apply in Nagari Salareh Aia both for people who adhere to *Langgam Saripado* and those who adhere to *Langgam Rajo Nan Balimo*. This two *langgam* (the customary system) have the same customary rules although the implementation of customary settlements is different. Differences in customary systems in terms of customary rules used to result in differences in power and authority. In *Langgam Saripado* there is a kinship relationship formed based on maternal lineage and close residence. *Langgam Rajo Nan Balimo*, on the other hand, has a kinship-based community based on maternal lineage and place of residence. The flow of settlement toward *punah* inheritance can be shown in Figure 1 below.

³⁰ Edi, *Wawancara*, 22 December 2021. *Prosedur Adat Menyelesaikan Sengketa Waris Punah Di Nagari Salareh Aia*.

³¹ Edi, *Wawancara*, 22 December 2021. *Prosedur Adat Menyelesaikan Sengketa Waris Punah Di Nagari Salareh Aia*.

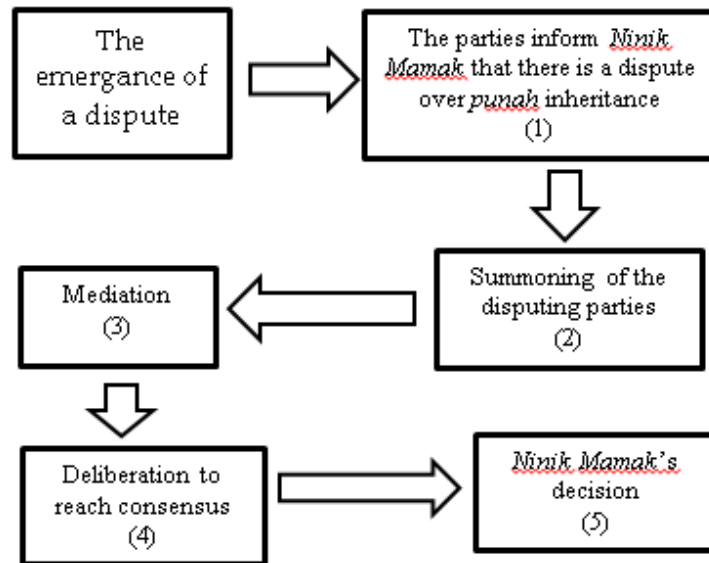


Figure 1. The settlement stages of *punah* inheritance disputes in *Nagari Salareh Aia*

From the Flow in Figure 1 above, it can be seen that the Customary Court resolves the *Punah* inheritance dispute in *Nagari Salareh Aia* by holding a customary court through several stages: the first is reporting. The reports from the disputing parties that there is disputes related to *Punah* inheritance with other parties is the main starting point. The report's form is a complaint from one of the parties that are submitted to the *ninik mamak* or the *ninik mamak's* leader. When *ninik mamak* receives the report, they will summon the disputing parties with the intention of conveying the problems that arise in the form of a claim by one of the disputing parties to be tried. Afterward, the *ninik mamak* manages a meeting in the official's *Nagari* to implement the customary trial. If it is agreed on, then a sign and address are placed.³²

³² Asril Dt. Rangkayo Mulia. Wawancara, 22 December 2021. Prosedur Adat Menyelesaikan Sengketa Waris Punah Di Nagari Salareh Aia.

Second, the summoning of the disputing parties (discussed/deliberated at the meeting) is accomplished a week after the head of the *ninik mamak* receives the report, and there is an agreement between both parties to carry out the trial. At this stage, the disputing parties are requested to explain the inheritance dispute between the parties. Furthermore, both parties can present their complaints. In the customary trial process, the disputing parties are called to resolve the problems encountered through custom meetings.³³

Third, do mediation. This mediation is carried out after the disputing parties are summoned before the *ninik mamak* and then resolved by finding a common ground to establish an agreement. Afterward, a meeting is held for both disputing parties to carry out mediation actions. One of the mediation actions carried out is to relay the case to the *Ninik mamak* to be resolved amicably within the time provided: three days, seven days, or maximally 14 days. If there is no amicable settlement between the two parties, the *Ninik mamak* summons the two disputing parties, and then the decision rests on the *Ninik mamak*.³⁴ This mediation is carried out after the disputing parties are summoned before the *panghulu* and then resolved by finding an identical perspective to establish an agreement.³⁵

Fourth, is deliberation to reach a consensus among *ninik mamak*. The deliberation system is completed amicably so that there is no interference from other parties outside of the disputing family members. Every customary dispute in the family will be discussed by family members guided by *Ninik mamak*.³⁶ Before a decision is made by the *ninik mamak* and during the process of deliberation and consensus, the *Ninik mamak* preferably examines and investigates everything related to the inheritance, including the origin of the inheritance to the *ranji* (structure) of ownership of the previous *Punah* inheritance. The customary trial is carried out at least seven to eleven

³³ Arman Dt. Tan Mangindo, Wawancara, 22 December 2021. Pucuk Adat Nan 15

³⁴ Asril Dt. Rangkayo Mulia, Wawancara, 23 December 2021

³⁵ Arman Dt. Tan Mangindo, Wawancara, 22 December 2021

³⁶ Arman Dt. Tan Mangindo, Wawancara, 22 December 2021

times until it is found clarity of the *Punah* inheritance to determine a fair decision.³⁷

The fifth is making decisions among *ninik mamak*. This is the *ninik mamak*'s highest decision in customs. After deliberation and consensus have been carried out, the *Ninik mamak*, as the customary leader, determines a decision based on the results of the deliberation that has been mutually agreed on. As a result, because the customary settlement is based on mutual consideration and agreement, among the heirs, there will be no disputes. Thus, the process of resolving inheritance disputes is carried out peacefully until there is an identical perspective and clarity on the status of the *Punah* inheritance.

Some Case Studies about Mechanism of Dispute Resolution in Punah Inheritance

The meaning of *punah* in the Minangkabau traditional inheritance system of Nagari Salareh Aia is the end of the closest heir, including the daughter from the matrilineal. In principle, the Minangkabau custom has determined that the inheritance of property is passed down to the niece's children close to matrilineal kinship. Although there are sons from the mother's descendants, they cannot be regarded as heirs who are entitled in Minangkabau custom because inheritance for sons is a mere usufructuary right, so they cannot fully control the inheritance. However, the main point of this study is that sons can control the collection of inheritance passed by their parents.

There are cases of *punah* inheritance disputes that have occurred in Nagari Salareh Aia, however, only a few cases were taken as samples in this study, including first is the case in Kampuang Gadang Jorong Kayu Pasak Timur, on behalf of *Oyoih* (nickname), Chaniago clan, 51 years old who is the sole *punah* heir. In this case, the inheritance left by both parents is a house and land established upon customary land. The inheritance is a mixture of high ancestral inheritance and low ancestral property. As the sole heir, *Oyoih* controlled the entire inheritance, then all property was sold to other people. The form of settlement for this combination of high and low ancestral inheritance is to sell the property to a buyer. However, *Mamak* required that he should receive a 10% share of the transaction

³⁷ Asril Dt. Rangkayo Mulia, Wawancara, 23 December 2021

of this ancestral inheritance combination. If the *punah* heir did not agree to share with *mamak*, then *mamak* is reluctant to assist in the process of selling the inheritance, such as signing an approval letter for the deal purpose.³⁸

Second, the case in Padang Gantiang Jorong Kayu Pasak Timur, on behalf of Ijen (nickname), Jambak clan, 47 years old. He is a *punah* heir along with three other brothers. The form of inheritance left by both parents is an area of land, but it is a composition of high ancestral inheritance and low ancestral inheritance. Ijen and his three other brothers, who were heirs of extinction, resolved the case of high inheritance mixed with low inheritance by dividing the inheritance equally among them. Each person deserved an equal share. After each *punah* heir acquired a share, the share for Ijen's heirs from the distribution, which is the property, was sold to the other party. Albeit, in the process of selling the inheritance, it must obtain approval from the *Mamak* with proof of signature on the letter, and it requests the *Mamak* to obtain 10% of the inheritance sale.³⁹ That part is given to all *Mamak* and used for their personal spending.

Third, the case that occurred in Jorong Kayu Pasak, in the name of Sirubidin (nickname), Piliang clan, as the sole *punah* heir. His parents left an inheritance in form of land and houses. The inheritance is a mixture of high and low ancestral inheritance. The customary settlement carried out on this combination of high and low ancestral inheritance was by selling and distributing a share of 10% to the *Mamak* because in the correspondence process, the *Mamak*'s signature was required as evidence of the approval and *mamak* therefore requested for a share. The type of inheritance always has an impact on how disputes are resolved. After deliberation, it was agreed that the inheritance might be marketed by the *punah* heir.⁴⁰

Fourth, the case that occurred in Padang Gantiang Jorong Kayu Pasak Timur, representing Icam (nickname), Jambak clan, 45 years old, as a *punah* heir. The forms of inheritance sold are land and houses, which are composed of high and low ancestral inheritance. Customary settlement of a combination of both cannot be separated

³⁸ Ratmiyati, Wawancara, 23 Desember 2021.

³⁹ Yerman, Wawancara, 21 Desember 2021

⁴⁰ Kasiman Dt. Marajo Nan Tinggi, "Wawancara," 2021.

from deliberation, so in this case, when a *punah* heir wills to sell the inheritance, a discussion is carried out with the *mamak* as the head of the customary inheritance. The settlement carried out, in this case, is by deliberation and it was also required that the *mamak* was provided with 10% of the proceeds from the inheritance sale.⁴¹

Fifth, the case that occurred in Jorong Kayu Pasak Selatan, on behalf of Nulih and Majik (nickname), as *punah* heirs. The forms of inheritance obtained by these *punah* heirs are land, houses, and rice fields from the combination of high and low ancestral inheritance. Some of the inherited assets were sold and others were not. However, some of the sold assets are called gifts using a grant contract, but principally the heirs would earn a sum from the grant. This composition of high and low ancestral inheritance was settled amicably by the *punah* heirs with *Mamak* because they wished to sell the whole assets ranging from land, and houses to rice fields. Then, a family discussion was held between the *punah* heirs and the *Mamak* to provide approval in order to assist the transaction using proof of signature in the letter. In other cases, the *Mamak* would ask for a 10% share of the inheritance deal.⁴²

If analyzed, some of the cases above show that the *punah* inheritance dispute that occurred in Nagari Salareh Aia is heirs controlling the entire inheritance and then selling it. However, the settlement of this inheritance is not according to the inheritance legal system in Minangkabau custom and also with customary law regarding the inheritance law prevailing in Nagari Salareh Aia. Basically, the combination of high and low ancestral inheritance cannot be controlled and traded in its entirety by *punah* heirs before the inheritance is divided and settled according to customary inheritance law.

This customary settlement of disputes between high and low ancestral inheritances has been resolved based on a system of negotiation for consensus which results in *ninik mamak's* decision. *Mamak's* decision should be based on mutual agreement and discussion, which following the applicable customary law in *Saripado* style. For that

⁴¹ Amralis Angku Rajo Endah, Wawancara, 24 December 2021. Kasus-Kasus Sengketa Waris Punah Di Nagari Salareh Aia.

⁴² Ratmiyati, Wawancara, 23 December 2021.

reason, several examples of cases of mixed inheritance of high and low ancestral inheritance assets took place in the Luhak Kayu Pasak, which is part of the *saripado* style traditional area in order to find solutions (In *langgam saripado* there is a kinship relationship formed based on maternal lineage and close residence).

As per the applicable customary law in the *Saripado* style, following finding the results of the negotiation for consensus, a decision is issued by *ninik mamak*. The decision should be following *sakato samupakat* (negotiation for consensus) from the results of the deliberation. In the settlement of the *Saripado Ninik mamak*-style case, the *Mamak* (all mother's brothers) is not authorized to make and resolve separate decisions. Meanwhile, the settlement carried out in the cases above was based on the agreement of the *Mamak* and the requirement that allows *Mamak* to obtain a 10% share had no legal basis before the custom.

Several cases that occurred and the form of customary settlement of *punah* inheritance disputes carried out in Nagari Salareh Aia showed that the customary settlement of *punah* inheritance (Punah) disputes in Nagari Salareh Aia demonstrates that there are differences and similarities in customary rules and principles of Islamic inheritance, such as in the case of heirs.

The heirs of high inheritance are given to women under Minangkabau customary law, whereas sons and daughters both receive a share of the inheritance under Islamic inheritance law. However, when the female heirs are extinct, the inheritance is passed directly to the sons who are still alive.

The basic provisions of Islamic inheritance law that have been stipulated in the Qur'an state that sons will get the inheritance of their parents. The position of the son in the *punah* inheritance shows that the son is *ashabah binafsihi*, that is, the son will inherit the rest of the property alone. The legal basis that determines that a son has the right to inherit property from his parents is written in Q.S an-Nisa' [4]: 7. These are obligatory shares. The verse explains that the son will have a share of the inheritance left by either his father and mother or both. Likewise, daughters get a share of the inheritance left by their parents as well ⁴³.

⁴³ Amir Syarifuddin, *Hukum Kewarisan Islam*, (Jakarta: Kencana), 2005), h. 7.

The implementation of the customary settlement of inheritance disputes in Nagari Salareh Aia referred to several sides of inheritance in customary Minangkabau. The customary settlement in Nagari Salareh Aia should be carried out in the following forms: First, is in terms of the status of inheritance. Assets that are inherited or sold do not belong to the heirs so the *punah* heirs do not have the right to have any. The second is from the perspective of the heirs. In this case, the son is a *punah* heir and the inheritance left is a mixture of high ancestral inheritance and low ancestral inheritance. In terms of property ownership, and the position of the son as *punah* heir is not included in the inheritance of high ancestral inheritance of the custom because Minangkabau applies an inheritance system based on matrilineal kinship. Despite that, low ancestral inheritance in the Qur'an verse explains that the son will inherit a share of the inheritance, the position of the son is *ashabah* heirs, or the person who controls the rest of the property. The third is the distribution of inheritance. Islamic inheritance law dictates that the share for sons is twice that of daughters. If there is no daughter heir, then the son who is *ashabah* will inherit the rest of the assets. The prevailing customary rules addressing *punah* inheritance law in the Nagari Salareh Aia custom on a mixture of high ancestral inheritance and low ancestral inheritance are by dividing the two assets. Some are for *punah* heirs and some are endowed to be used as a high ancestral inheritance.

If the heirs have received a share of the mixed assets of high inheritance and low inheritance, then selling the property is permitted under customary law. All Ninik Mamak receive 10% of the sale of inheritances, not from the property distribution to the heirs. This has become a provision of customary inheritance law in Nagari Salareh Aia. After the combination of high ancestral inheritance and low ancestral inheritance is divided according to customary rules, the heirs have received some of the property, and part of it becomes high ancestral inheritance. Subsequently, a part of this heir may be sold based on the *ninik mamak* agreement such as *tigo tungku sajarangan* (Traditional leaders in Minangkabau include *Niniak Mamak/Penghulu*, *Alim Ulama* (religious experts), and *Cadiak Pandai* (intelligent people)).

Elders in the customary system will have their share according to their level of position before the custom.⁴⁴

This form of customary settlement is carried out by inviting all *sapayung* (kinship of people of the same) *datuak* (traditional title bestowed on a person by the agreement of people or tribe) parties in inheritance disputes, especially *ninik mamak* who should divide the mixed assets of high and low ancestral inheritance, which partly is for the heirs and the other are for the customary. The combination of high and low ancestral inheritance cannot be controlled entirely by the heirs, yet cannot be traded and cannot be controlled by *mamak* (because the property is not entirely customary)⁴⁵ The distribution of property is instead acknowledged by the *mamak* and witnessed directly by the *mamak*.⁴⁶

The customary settlement is carried out by inviting all parties involved in inheritance disputes, particularly *Ninik Mamak*. This is done in order to convey the distribution of mixed high and low inheritance. Some are given to heirs, while others are included in high inheritances. The position of the mixed inheritance of high and low ancestral inheritance is under the control of *payuak timbago* (sako house, a traditional wealth center, also known as the traditional leader's house of *Tigo Tungku Sajaringan*). If the inheritance is completely controlled, the customary law of *warih bakaturunan sako babandaran* (some of the properties of *punah* heirs (*punah*) is lost).⁴⁷

The customary settlement of mixed assets of high ancestral inheritance and low ancestral inheritance is different. In the case of high ancestral inheritance, the settlement is carried out by involving all elements of custom, while low ancestral inheritance only requires the nuclear family and nephew-cousin kins cannot interfere, including disputes over low ancestral inheritance because it is not property rights.⁴⁸ In the low ancestral inheritance, only the nuclear family has

⁴⁴ Arman Dt. Tan Mangindo, Wawancara, 22 December 2021. Pucuk Adat Nan 15

⁴⁵ Asril Dt. Rangkayo Mulia, Wawancara, 23 December 2021

⁴⁶ Yerman, Wawancara, 21 December 2021

⁴⁷ Rabuman Dt. Jelo, Wawancara, 23 December 2021.

⁴⁸ Asril Dt. Rangkayo Mulia, Wawancara, 23 December 2021

the rights, and nephews cannot dispute it because it does not belong to them.

Mechanisms and efforts for the customary settlement of inheritance disputes of mixed high ancestral inheritance and low ancestral inheritance are performed by applying two forms of settlement, namely: First is negotiation which is conducted to anticipate social turmoil and ongoing disputes over the inheritance dispute. The second is consensus, the word consensus is taken after deliberation. The agreement does not harm other parties and certainly does not violate the applicable customary laws. One of the reasons for the implementation of these two forms is to apply the concept of justice, therefore the agreement that will be decided does not harm any of the disputing parties and maintains kinship in family relations.⁴⁹

In traditional inheritance disputes, *ninik mamak* plays an important role in the process of settling *punah* inheritance disputes as stated by Kasiman Khatib Marajo Nan Tinggi. He mentioned that *ninik mamak* has a great influence on the mechanism of customary settlement of disputes between high ancestral inheritance and low ancestral inheritance in Nagari Salareh Aia. This is caused by *ninik mamak* holding the decisions on negotiation and consensus which is completed collectively before the religious stakeholders as well as *imam khatib*. Whereas the customary elder serves as a person who will explain custom or what is known as "*pai tampek batanyo balik tampek barito*" (the elder understands more about the ins and outs of custom if there is a customary settlement that is not in accordance with customary rules).⁵⁰

Impact and Solutions for *Punah* Inheritance Settlement Patterns in Nagari Salareh Aia

The impact of the customary settlement pattern on *punah* inheritance disputes in Nagari Salareh Aia is: First, the customary settlement of *punah* inheritance disputes has shown the clarity of the heir's position with respect to inheritance and property status in the

⁴⁹ Asril Dt. Rangkayo Mulia, Wawancara, 23 December 2021, Yerman, Wawancara. 21 December 2021,

⁵⁰ Kasiman Dt. Marajo Nan Tinggi. Wawancara, 26 December 2021.

category of high ancestral inheritance or low ancestral inheritance and or mixed assets of both. Second, it can avoid disputes between parties and heirs because the settlement pattern is applied following the concept of justice.

The customary settlement of inheritance in Nagari Salareh Aia is based on the *Salingka of Nagari* custom (A rule that has been practiced in society from generation to generation in a particular *Nagari* in Minangkabau and does not necessarily apply in other *Nagari*.), which is inseparable from the *adat basandi syara', syara' basandi kitabullah* (the customary provisions are based on the Shari'a, and the Shari'a refers to the Qur'an). It can be understood that the customary settlement process of the *punah* inheritance dispute is based on the customary laws that apply and are used in Nagari Salareh Aia. These laws are inseparable from *syara'* law.⁵¹

Some of the solutions put forward by traditional leaders in the traditional settlement of a *punah* inheritance dispute of combined high and low ancestral inheritance in Nagari Salareh Aia, Palembayan Subdistrict are: First, to understand that inheritance is the subject of the customary inheritance dispute. The second is to organize the discussion. The discussion held with traditional leaders is negotiation and consensus making, which is to find common ground for the settlement of customary rights on inheritance. Negotiations are held to maintain relationships within the family, therefore it is performed in a familial way, to avoid problems and disputes between heirs, *Mamak*, and other family parties. The third is to make a consensus. The consensus made is based on the results of negotiation by all parties involved in the settlement of customary inheritance disputes. Fourth, is the decision of *ninik mamak*. This is the highest decision issued by the *ninik mamak* in customs.

The form of the solution presented by these traditional leaders is indivisible from the *Salingka Nagari* Customary system which is also based on the *adat syara', syara' basandi Kitabullah*. This is to avoid disputes, bad impacts, and that will occur in the future as the effect of the implementation of the settlement of *punah* inheritance dispute.

⁵¹ Asril Dt. Rangkayo Mulia. Wawancara, 22 December 2021. Analisis dan Solusi Penyelesaian Adat Sengketa Campuran Harta Pusaka Tinggi dan Harta Pusaka Rendah Waris Punah Di Nagari Salareh Aia.

Therefore, the disputing parties can accept the *ninik mamak* decision without any other disagreement and the outcomes of the negotiation and consensus do not harm each other because of the settlement of the *punah* inheritance as per the concept of justice.

The nature of customary law that applies in society is not a proposition that is determined by *syar'i*. However, this customary law includes *'urf* in the maintenance of *mashlahah* (*Mashlahah* is a concept that is used as the primary consideration in solving Islamic law problems because its principle is the protection of the law's objective purpose (*maqasid al-syari'ah*), which is the preservation of religion, soul, mind, lineage, and property) in society. The intended *maslahat* is one that clearly maintains the five parts; the protection of religious beliefs, the protection of the soul, the protection of the mind, the protection of family and descendants (human dignity), and the protection of property⁵². As stated by al-Ghadzali is *hifzu al-Kulliyat al-Khams*⁵³. Related to this present research on the customary settlement of *Punah* inheritance disputes in Nagari Salareh Aia, Palembang sub-district, the implementation of this customary settlement is relevant to *mashlahah mursalah*, which aims to preserve offspring and property

The implementation of inheritance distribution has been explained in the Qur'an Surah an-Nisa verses 11, 12, and 176, as well as several hadiths of the prophet. However, the community also applies customary laws that have become a habit and are implemented by the people in Nagari Salareh Aia. In principle, high ancestral heritage assets are to be maintained and developed continuously so that the next generation can benefit from these assets and these assets can be passed down from generation to generation. However, in contrast to mixed assets of high ancestral inheritance and low ancestral inheritance, the form of ownership may shift if the heirs agree to divide and settle so that ownership rights also change. Therefore, it is also not allowed in customary inheritance law to

⁵² Abdul Ghofur Anshori and Yulkarnain Harahab, *Hukum Islam Dinamika Dan Perkembangannya Di Indonesia* (Yogyakarta: Kreasi Total Media, 2008).

⁵³ Firdaus, *Ushul Fiqih: Metode Mengkaji Dan Memahami Hukum Islam* (Depok: Rajawali Pers, 2017).

control and sell all assets before the distribution of the mixed inheritance is completed.

Conclusion

This research shows that the pattern of tribal-based inheritance dispute settlement by prioritizing the kinship approach is effective in resolving *Punah* inheritance disputes in *Nagari* Salareh Aia. This pattern of the settlement also has a significant impact on class solidarity, clarifies the position and status of the heirs, and clarifies the inheritance's status. Based on the pattern of settlement and the resulting impact, it can be concluded that the mechanism for resolving disputes over the *Punah* inheritance in the *Nagari* Salareh Aia has fulfilled sharia principles, namely to maintain the property and the honor of the people.

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Patterns for Settlement of Punah Inheritance Disputes In the Community of Nagari Salareh Aia from the Perspective of Islamic Law

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Patterns for Settlement of *Punah* Inheritance Disputes In the Community of Nagari Salareh Aia from the Perspective of Islamic Law

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Abstract:

This research aims to investigate the settlement pattern of inheritance disputes in Nagari Salareh Aia as well as the impact of this settlement pattern. This is a field study using customary law and Islamic law approaches. Data were obtained through interviews and document studies. To analyze data, the Creswell approach was used, which includes data reduction, data verification, and drawing conclusion. This research reveals

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three significant findings. First, the customary settlement pattern, for heirs who control *punah* inheritance, is done by selling it to other. If there are one or more heirs, the remaining sale of the assets is divided among the heirs after the *Mamak's* rights are excluded. Second, the settlement of *punah* inheritance disputes in Salareh Aia fosters close family ties. It also clarifies the heirs' position regarding inheritance and property status, whether it is a high inheritance or low inheritance. Third, based on the pattern of settlement and the resulting impact, it can be concluded that the mechanism for resolving disputes over the *Punah* inheritance in the *Nagari* Salareh Aia has fulfilled sharia principles, namely to maintain the property and the honor of the people.

Keywords:

Islamic Inheritance, Minangkabau, Dispute Settlement, *Punah*

Abstrak

Penelitian ini bertujuan mengeksplorasi pola penyelesaian sengketa waris *punah* di Nagari Salareh Aia serta dampak yang ditimbulkan dari penyelesaian tersebut. Penelitian ini merupakan penelitian lapangan dengan pendekatan hukum adat dan hukum Islam. Data diperoleh melalui metode wawancara dan dokumen sebagai alat pengumpul data. Pendekatan Creswell digunakan untuk menganalisis data dengan tahap: reduksi data, penyajian data, verifikasi data dan pengambilan kesimpulan. Temuan penelitian ini menemukan tiga hal penting. Pertama, pola penyelesaian adat terhadap ahli waris yang menguasai harta warisan *punah*, dengan cara menjualnya untuk dimiliki perorangan. Jika ahli waris *punah* satu atau beberapa orang, maka setelah diberikan hak *mamak*, sisa penjualan harta dibagi di antara ahli waris *punah*. Sedangkan penyelesaian terhadap sengketa harta campuran pusaka tinggi dan pusaka rendah, dilakukan dengan cara memurnikan dan memisahkan harta tersebut. Sebagian untuk ahli waris *punah* dan sebagian lagi untuk adat dalam status menjadi harta pusaka tinggi. Kedua, dampak yang ditimbulkan dari pola penyelesaian adat waris *punah* di Nagari Salareh Aia adalah menjaga hubungan kekeluargaan terjalin erat. Juga, memperjelas kedudukan ahli waris terhadap harta warisan dan

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status harta, mana yang termasuk harta pusaka tinggi dan pusaka rendah. Melihat dari pola penyelesaian dan dampak yang ditimbulkan maka mekanisme penyelesaian sengketa warisan punah secara adat telah memelihara prinsip-prinsip syariah yaitu selain memelihara harta juga memelihara kehormatan kaum.

Kata Kunci:

Kewarisan Islam; Minangkabau; Penyelesaian Sengketa; Punah

Introduction

The concept of *punah* is interpreted differently by the Minangkabau community and Islamic inheritance law (*faraidh*), thus, the two interpretations are used in solving inheritance disputes. The meaning of *Punah in Islamic inheritance law is found in the concept of kalalah* inheritance. A person is called *kalalah* if he has no offspring (children) and parents (father) passed away. People who have a kinship in the family, be it from the top line (parents) or the bottom line (descendants), are called *kalalah*¹. However, some also interpret *kalalah* as people with no offspring at all.² The term *kalalah* can be used for heiress and heirs. However, several opinions of linguists suggest the meaning of *kalalah*: *first*, someone who does not have children and parents; *second*, someone who does not have children, parents, and siblings; *third*, someone who does not have family and relatives. The first meaning is a representative meaning of the opinion of the majority of scholars. Meanwhile, *kalalah* heirs include siblings or brothers and sisters. The term *kalalah* can be used for heiress and heirs. Meanwhile, *kalalah* heirs include siblings or brothers and sisters³.

¹ Ahmad Suganda and Muhammad, 'Konsep Kalalah Dalam Fiqh Waris, Suganda and Muhammad. 04, 1-17 (p. 5).

² Al Yasa' Abu Bakar, *Rekonstruksi Fikih Kewarisan* (Banda Aceh: LKAS, 2012).

³ Suganda and Muhammad, "Konsep Kalalah Dalam Fiqh Waris The Concept of Kalalah in Inheritance Jurisprudence.", M Guntur Ageng Prayogi, "(IAIN) Metro Lampung," 2018.

Principally, inheritance transfers ownership rights from the deceased to the living heirs⁴. *Kalalah* inheritance, which transfers ownership rights from the deceased to the living heirs is mentioned in the Qur'an Surah an-Nisa' verse 12 and 176. Verse 12 describes the share of each heir who gets the inheritance, including the *Kalalah* inheritance⁵. The mentioned verse explains the settlement of the share for the *Kalalah* (*Punah*) inheritance by emphasizing that both brothers and sisters are also counted as an heir if the late person does not have a father and children as heirs but only has a brother or sister instead. In verse 176, meanwhile, the *Kalalah* inheritance is identified for the heirs of siblings (siblings and agnate siblings, both male and female).

The term *Punah* showed in the Minangkabau customary inheritance. In this case, *punah* (extinction) refers to the situation in which there is no heir to inherit the inheritance. High ancestral inheritance assets, inherited in Minangkabau customary terms, are assets inherited based on the matrilineal system. High ancestral inheritance refers to the high ancestral inheritance from *Mamak* (*Mamak* means all mother's brothers) and *Ninik Mamak* (a traditional leadership title carried by a Minangkabau man, which is elected and agreed upon by members of his clan for an indefinite period) ahead to the top of the family tree. This is in line with a Minangkabau's proverb: *dari ninik turun ke mamak, dari mamak turun ke kemenakan* (from *Ninik* passed down to *Mamak*, from *Mamak* passed down to nephew)⁶. In Minangkabau custom, there are two forms of inheritance: high ancestral inheritance and low ancestral inheritance.⁷ High ancestral inheritance is recognized as assets from their ancestors and afterward inherited from generation to generation from *Mamak* to nephews of the kinship group. Thus, they become the high ancestral inheritance of

⁴ Endang Atmaji, *Hukum Waris Dalam Islam* (Klaten: Cempaka Putih, 2019, h.3) See also Miftahul Huda, Niswatul Hidayati, Khairil Umami "Fiqh and Custom Negotiation Avoiding Inheritance Dispute Tradition among Mataraman Society East Java," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 15, no. 2 (2020): 236, <https://doi.org/10.19105/al-lhkam.v15i2.3787>.

⁵ Amir Syarifuddin, *Hukum Kewarisan Islam*, 2nd ed. (Jakarta: Kencana, 2005).

⁶ Safrudin Halimy Kamaluddin, *Adat Minangkabau Dalam Perspektif Hukum Islam* (Palembang: Hayfa Press, 2005, h.85-85).

⁷ Amir Syarifuddin, *Pelaksanaan Hukum Kewarisan Islam Dalam Lingkungan Adat Minangkabau* (Jakarta: PT Gunung Agung, 1984).

the kinship group⁸. The provision of this high ancestral inheritance assets, in principle, cannot be sold or pawned to the public, as the Minang proverb says: *dijua tak dimakan bali, digadai tak dimakan sando* (which means that it can be sold but cannot be bought, pawned but cannot be held). If there is an urgent condition for an inheritance, it may be sold or pawned for the common good, but all lineage members must approve it. For example, a woman in the clan is not married (does not have the cost to get married and is eligible for marriage in terms of age), or someone dies and the body has not yet been buried. Under Minangkabau customary law, which is based on matrilineal, namely maternal law, then the inheritance system in Minangkabau custom is applied and calculated based on maternal lineage. According to the mother's lineage, the inheritance is shared with family members of the mother's line.⁹

The meaning of *Punah* in Minangkabau in this inheritance concept is that when a woman dies without an heir from her direct lineage, the heirs are the distant kindred. Consequently, the heirs are from distant heirs. Distant family heirs mean blood-lined family members from the mother's lineage or indirectly descended from the woman who died, such as the daughter of a deceased sister. If this lineage is still none, the inheritance goes to family members, including blood relatives, according to the maternal lineage from the ancestors. In addition, there is *jurai-jurai*, a family structure consisting of small groups according to maternal lineage kinship (matrilineal). It comes from the same *paruik* (blood-lined). If someone dies, *jurai* will be in the same Nagari (Nagari's meaning in terms of *punah* heirs is *adat* or customary)¹⁰. Furthermore, if all the heirs specified above no longer exist, the Nagari (institution) will inherit the inheritance. That is the meaning of *Punah* people in the concept of high ancestral inheritance in Minangkabau custom.¹¹

In terms of community reality, the settlement of inheritance

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⁸ Ellyne Dwi Poespasari, *Pemahaman Seputar Hukum Waris Adat Di Indonesia* (Jakarta: Cimur: Kencana, 2018).

⁹ Chairul Anwar, *Hukum Adat Indonesia Meninjau Hukum Adat Minangkabau* (Jakarta: PT.Rineka Cipta, 1997), h. 89.

¹⁰ (Chairul Anwar, 1997: 89-90)

¹¹ (Chairul Anwar, 1997: 91)

distribution follows the rules of Islamic inheritance law. However, the majority divide inheritance in a familial manner and customary rules for certain areas. As happened in the Banjarmasin, the distribution of inheritance is accomplished in a family manner instead of following the practice of Islamic inheritance law and the Compilation of Islamic Law.¹² Correspondingly, the distribution of inheritance is similar in the community of Kemukiman Lamblang, Kota Baro sub-district, Aceh Besar District. The distribution of inheritance to the youngest daughter is carried out based on the principle of justice (in terms of independence and financial stability) in which other heirs give their inheritance rights to the youngest daughter.¹³ In Banjar, the inheritance distribution uses the bequeathed grant before death.¹⁴ Meanwhile, the principle of matrilineal kinship is applied in Minangkabau. It means the ownership of inherited assets occurs from generation to generation, from parents to their children. The position of Mamak role in high ancestral inheritance should be a supervisor because mamak possessed considerable power in customs. In fact, Mamak is no longer responsible for supervising the inheritance.¹⁵

The son's role in the high inheritance in Minangkabau is only as of *mamak waris adat* or *mamak kepala adat* (a person with complete control over the high inheritance and is in charge of supervising, maintaining, and developing the high inheritance property so that it does not run out), who is responsible for supervising the inheritance assets¹⁶. Settlement of inheritance disputes (according to

¹² Rizeka Aprilia, *Penyelesaian Sengketa Waris Di Luar Pengadilan Agama Di Kota Banjarmasin* (Universitas Islam Negeri Antasari Banjarmasin, 2020, h. 74).

¹³ Hirdayadi M. Ansar Israr, "Tehnik Pembagian Warisan Terhadap Anak Bungsu Perempuan Dalam Masyarakat Kemukiman Lamblang Kec. Kuta Baro Kab. Aceh Besar Menurut Hukum Islam," *Samarah* 1, no. 2 (2018); See Also Leqon Karjoko et al., "Islamic Court's Approach to Land Dispute in Inheritance Cases," *Ahkam: Jurnal Ilmu Syariah* 21, no. 2 (2021): 213–38, <https://doi.org/10.15408/AJIS.V21I2.21864>.

¹⁴ Wahidah Faridah, "Praktik Penyelesaian Harta Warisan Pada Masyarakat Banjar" (*Universitas Islam Negeri Antasari Banjarmasin*, 2018).

¹⁵ Ria Agustar, "Pelaksanaan Pembagian Warisan Atas Harta Pencarian Dalam Lingkungan Adat Minangkabau Di Kecamatan Lubuk Kilangan Kota Padang" (*Program Pascasarjana Universitas Diponegoro*, 2008).

¹⁶ Danial Abdillah Lazuardi and Endang Pandamdaro, "Harta Pusaka Tinggi Menurut Hukum Waris Adat Minangkabau," 2015, 1–13. Qasim Muhammadi, "Distribution of Heritage Association of Harta Pusaka Tinggi And Harta Pusaka

Minangkabau customary law and Islamic inheritance), is resolved by the elders through deliberation involving *ninik mamak* who are the elders in a clan.¹⁷ ¹⁸ The management of high ancestral inheritance assets in Minangkabau indigenous peoples, such as in Batipuh Subdistrict, Tanah Datar District, is carried out in a profit-sharing agreement for pawning, which is allowed by *adat* (customs).¹⁹

Handling disputes over customary land tenure through the customary court of West Sumatra, such as customary land disputes, namely the *pacuan kudo*, occurred due to the status of customary land and unclear *ranji* (structure), resulting in an unclear distribution of assets. Disputes over customary land tenure are resolved through customary court, which is subsequently forwarded to the District Court.²⁰ To avoid conflicts and disputes, it is necessary to apply an Islamic inheritance system in inheritance distribution to create harmony and justice²¹.

Although the Minangkabau community adheres to the customary inheritance system, they still consider the Islamic inheritance system. If there is a dispute, the Tribal Council settles it amicably²². Eric expressed the same thing that high ancestral

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¹⁷ Puspita Farahdillah et al., "Mediasi Tentang Penyelesaian Sengketa Waris: Studi Putusan No. 181/PDT.G/2013/20.A.YK" 9, no. 1 (2022): 381-95.

¹⁸ Rama Deyan and others, 'Penyelesaian Sengketa Waris (Menurut Hukum Adat Minangkabau Dan Hukum Islam)', IV.Oktober (2021), 436-46.

¹⁹ Indra Rahmat, "(Studi Di Kecamatan Batipuh Kabupaten Tanah Datar) Sumber Diterbitkan Oleh : Indra Rahmat : Laboratorium Program Studi Pendidikan Sejarah Sekolah Pengelolaan Harta Pusaka Tinggi Dalam Masyarakat Adat Minangkabau (Studi Di Kecamatan Batipuh Kabupaten Ta" 8 (2019): 15-24.

²⁰ Hesty Wahyuni et al., "Penanganan Sengketa Penguasaan Tanah Hak Adat Melalui Peradilan Adat Sumatera Barat" 4, no. 3 (2021); See Also Syukri Iska et al., "Implications of the Pagang Gadai Contract on Disharmony Social Actors in Minangkabau Community," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (June 9, 2022): 27-37, <https://doi.org/10.31958/JURIS.V21I1.5647>.

²¹ Lalu Supriadi and Bin Mujib, "Revitalisasi Hukum Waris Islam Dalam Penyelesaian Kasus Sengketa Tanah Waris Pada Masyarakat Sasak" 19, no. 1 (2019): 67-87.

²² Ernawati and Baharudd, 'Akulturasi Kewarisan: Penyelesaian Sengketa Pusaka Tinggi di Minangkabau', 2017.

inheritance cannot be divided equally among heirs because Minangkabau tradition applies a collective inheritance system. In contrast, low ancestral inheritance applies to Islamic inheritance law²³. Settlement of inheritance disputes can also be accomplished through mediation through *takharruj* (the heir's exit or resignation from receiving his share rights of the inheritance) or *tasaluh* (peace), which means the willingness and agreement between the heirs²⁴ ²⁵. It is completed in order that the distribution of inheritance follows each provision. It is also known as distributive justice, in which someone obtains a share according to their rights²⁶. The gender justice system also characterizes the distribution of Islamic inheritance, in which men and women are equally qualified for a share of the inheritance, in line with each heir's share.²⁷

Referring to the findings of the preceding studies, it is clear that the settlement of inheritance disputes varies according to the heirs' agreement.²⁸ Inheritance can be divided amicably or based on Islamic inheritance law. However, some resolve inheritance disputes through various forms of tradition, such as in Kenagarian Salareh Aia. In this area, there is a gap in customary law carried out by the community related to inheritance. As previously stated, there is a case of inheritance²³ distribution in Nagari Salareh Aia based on the²⁴ distinction of the heirs who are entitled to inherit the property, such as the inheritance is in the form of a house but is built on customary land

²³ Eric Eric, 'Hubungan Antara Hukum Islam Dan Hukum Adat Dalam Pembagian Warisan Di Dalam Masyarakat Minangkabau', *Jurnal Muara Ilmu Sosial, Humaniora, Dan Seni*, 3.1 (2019), 61.

²⁴ Rini Fahriyani Ilham and Ermi Suhasti, "Mediasi Dalam Penyelesaian Sengketa Waris : Studi Putusan No . 181 / PDT . G / 2013 / PA . YK" 9, no. 181 (2016): 67–86.

²⁵ Laras Sessa, Oloan Muda Hasim Harahap, and Elimartati, "Eksistensi Hukum Islam Dan Sistem Waris Adat Yang Dipengaruhi Oleh Sistem Kekebabatan Melalui Penyelesaian Al-Takharruj" 6, no. 1 (2021): 145–64.

²⁶ Islamiyati, "Analisis Keadilan Pada Pembagian Harta Warisan Menurut Hukum Islam," n.d.

²⁷ Maryati Bachtiar, "Hukum Waris Islam Dipandang Dari Perspektif Hukum Keadilan Gender" 3, no. 1 (n.d.).

²⁸ Maimun, "The Women's Rights¹² Divorce and Gender Equality Discourse in The Dynamics of Divorce in Madura," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (June 27, 2022): 468–92, <https://doi.org/10.22373/SJHK.V6I1.12804>.

which is a gift from the previous *ninik mamak*. The daughter as the recipient of the right to the inheritance is *Punah*, and no one is allowed to receive it. In fact, this inheritance is seized by the only son. By all means, this son is not the heir. He cannot receive it because he is not part of the kinship group. Moreover, the inheritance given to the son is sold. On the other hand, customary only qualifies inheritance to someone from the same kinship group, and it is not allowed to be traded because the legal action is not in line with customary rules and Islamic inheritance law. The assets is permittable to sell on four conditions: 1). *gadiah gadang indak balaki* (to carry out the marriages of the tribe's unmarried women), 2). *mayat tabujua diateh rumah* (the hold the funeral), 3). *rumah gadang katirisan* (to renovate the tribe's traditional house), and 4). *mambangkik batang tarandam* (restoring lost or no longer living traditional heirlooms). However, selling the inheritance does not need the four conditions in this issue.

There are several problems investigated in this research. First, what is the pattern of *punah* inheritance dispute settlement in the Nagari Salareh Aia community? Second, what effect does the pattern of settling *punah* inheritance disputes have in Nagari Salareh Aia?

Method ⁶

This is a field research with a qualitative approach. The primary data sources of the research are in the form of explanations or information obtained from disputing parties, *Ninik mamak*, *Datuak* and KAN (a mediation institution at *Nagari* level in Minangkabau) *Salareh Aia Solok West Sumatera*, namely the head of *Nagari's* Customary Court and the head of the custom and *syara'* *Nagari's* Customary Court to provide information for more complete data collection. The secondary data sources in this study were taken from books related to the topics concerned, such as books of inheritance including Islamic inheritance law and customary inheritance law books, followed by other literature to support this research. Techniques for collecting data in this study included interviews with disputing parties, *Ninik mamak*, *Datuak*, Religious leaders, and the head of Assembly of *Adat Nagari*, the head of the *adat* and *syara'* Customary Court of *Nagari Salareh Aia* regarding the settlement pattern of customary *Punah* heir dispute in the *Kenagarian*. Data were analyzed using the Creswell approach in the following ways: the first phase is data reduction. The data were

reduced by summarizing and selecting the main information on extinct inheritance (*punah*) dispute resolution, then focusing on important points, such as customs procedures and mechanisms in resolving inheritance disputes to determine the pattern used in traditional dispute resolution in Nagari Salareh Aia. The second phase is data presentation. The presentation of data is completed in a short description which is processed from the local language that has been translated and then made into a narrative text that is easy to understand. The third phase is conclusions, and verification. The third stage is to verify the data and formulate conclusions after discussing and analyzing the findings.

Discussion and Result

Overview of Nagari Salareh Aia

Salareh Aia is an administrative *nagari* (under the jurisdiction of the regency) in Palembang Subdistrict, Agam District, West Sumatra which is located between the border of Agam District and Pasaman District. Nagari Salareh Aia was formed on May 31, 1946. As a *Nagari* Government, Salareh Aia consists of 11 *Jorong* (The term *Jorong* is equivalent to urban village. It is under the jurisdiction of *nagari*) and has different areas with a population of 4168 families. The socio-cultural conditions of *Nagari* Salareh Aia are not far from the role of *Ninik Mamak*, traditional and religious leaders tasked with managing the customs in *Nagari* Salareh Aia. *Nagari* Salareh Aia characteristics are uniform because these areas are still occupied by indigenous people and have no immigrant communities. People who live or work in *Nagari* Salareh Aia are mostly traders and farmers, civil servants, artisans, and fishermen. The majority of people in this region are Muslim.²⁹

In Salareh Aia, several leaders have to manifest the law in the field of local *adat* which consists of two local political units known as *Langgam*. The two *Langgam* in Nagari Salareh Aia has different structural compositions and local cultural values. However, they have similarities in the basic pattern that forms the structure and customary values, namely the habit of living in clans and groups through a

²⁹ Iron Maria Edi, *Langgam: Struktur Politik Lokal Minangkabau Yang Tergerus*, (Kasus *Langgam* Nagari Salareh Aia, Kecamatan Palembang, Kabupaten Agam, 2019).

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matrilineal system and solid philosophical values of Minangkabau custom. The Adat structures are the *Saripado Langgam*, for instance is formed through maternal lineage kinship and relationships based on close residence. In *Langgam Saripado*, unity includes the *paruik* (a nuclear family descended from matrilineal relations), *kampung* (village), tribe, and *luhak* (a kind of confederation area of *Nagari* in Minangkabau). Meanwhile, the *Rajo nan Balimo Langgam* formed its unity based on the same thing while forming the unity based on the *paruik*, *kampung* (village), tribe, and *langgam* with a different history in the composition of the customary unit.³⁰

Customary Procedures for Settlement of the Disputes of *Punah* Inheritance in Nagari Salareh Aia

Settlement of the disputes of *Punah* inheritance in Nagari Salareh Aia, Palembang Subdistrict, is carried out through the customary courts. There are several customary procedures for dispute settlement that the disputing parties must pass. The settlement of this dispute is through customary court with deliberation.³¹ In carrying out his duties, the *Penghulu* (the highest title held by a Minangkabau man in a clan, chosen by clan agreement) of the *Kerapatan Adat Nagari* (KAN) is guided by the customary rules that apply in Nagari Salareh Aia both for people who adhere to *Langgam Saripado* and those who adhere to *Langgam Rajo Nan Balimo*. This two *langgam* (the customary system) have the same customary rules although the implementation of customary settlements is different. Differences in customary systems in terms of customary rules used to result in differences in power and authority. In *Langgam Saripado* there is a kinship relationship formed based on maternal lineage and close residence. *Langgam Rajo Nan Balimo*, on the other hand, has a kinship-based community based on maternal lineage and place of residence. The flow of settlement toward *punah* inheritance can be shown in Figure 1 below.

³⁰ Edi, *Wawancara*, 22 December 2021. Prosedur Adat Menyelesaikan Sengketa Waris Punah Di Nagari Salareh Aia.

³¹ Edi, *Wawancara*, 22 December 2021. Prosedur Adat Menyelesaikan Sengketa Waris Punah Di Nagari Salareh Aia.

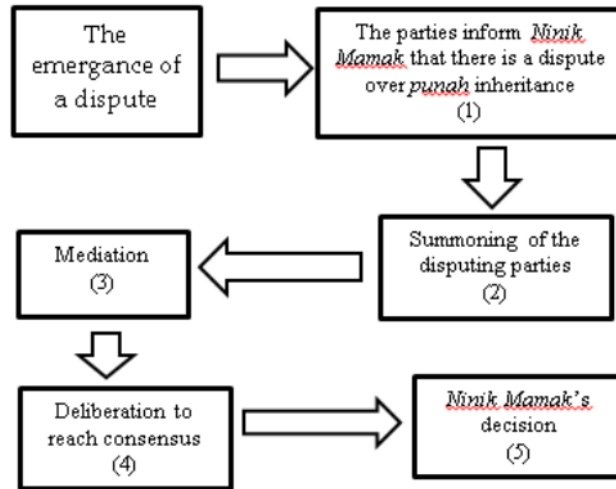


Figure 1. The settlement stages of *punah* inheritance disputes in Nagari Salareh Aia

From the Flow in Figure 1 above, it can be seen that the Customary Court resolves the *Punah* inheritance dispute in Nagari Salareh Aia by holding a customary court through several stages: the first is reporting. The reports from the disputing parties that there is disputes related to *Punah* inheritance with other parties is the main starting point. The report's form is a complaint from one of the parties that are submitted to the *ninik mamak* or the *ninik mamak's* leader. When *ninik mamak* receives the report, they will summon the disputing parties with the intention of conveying the problems that arise in the form of a claim by one of the disputing parties to be tried. Afterward, the *ninik mamak* manages a meeting in the official's *Nagari* to implement the customary trial. If it is agreed on, then a sign and address are placed.³²

³² Asril Dt. Rangkayo Mulia. Wawancara, 22 December 2021. Prosedur Adat Menyelesaikan SengketaWaris Punah Di Nagari Salareh Aia.

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Second, the summoning of the disputing parties (discussed/deliberated at the meeting) is accomplished a week after the head of the *ninik mamak* receives the report, and there is an agreement between both parties to carry out the trial. At this stage, the disputing parties are requested to explain the inheritance dispute between the parties. Furthermore, both parties can present their complaints. In the customary trial process, the disputing parties are called to resolve the problems encountered through custom meetings.³³

Third, do mediation. This mediation is carried out after the disputing parties are summoned before the *ninik mamak* and then resolved by finding a common ground to establish an agreement. Afterward, a meeting is held for both disputing parties to carry out mediation actions. One of the mediation actions carried out is to relay the case to the *Ninik mamak* to be resolved amicably within the time provided: three days, seven days, or maximally 14 days. If there is no amicable settlement between the two parties, the *Ninik mamak* summons the two disputing parties, and then the decision rests on the *Ninik mamak*.³⁴ This mediation is carried out after the disputing parties are summoned before the *panghulu* and then resolved by finding an identical perspective to establish an agreement.³⁵

Fourth, is deliberation to reach a consensus among *ninik mamak*. The deliberation system is completed amicably so that there is no interference from other parties outside of the disputing family members. Every customary dispute in the family will be discussed by family members guided by *Ninik mamak*.³⁶ Before a decision is made by the *ninik mamak* and during the process of deliberation and consensus, the *Ninik mamak* preferably examines and investigates everything related to the inheritance, including the origin of the inheritance to the *ranji* (structure) of ownership of the previous *Punah* inheritance. The customary trial is carried out at least seven to eleven

³³ Arman Dt. Tan Mangindo, Wawancara, 22 December 2021. Pucuk Adat Nan 15

³⁴ Asril Dt. Rangkayo Mulia, Wawancara, 23 December 2021

³⁵ Arman Dt. Tan Mangindo, Wawancara, 22 December 2021

³⁶ Arman Dt. Tan Mangindo, Wawancara, 22 December 2021

times until it is found clarity of the *Punah* inheritance to determine a fair decision.³⁷

The fifth is making decisions among *ninik mamak*. This is the *ninik mamak*'s highest decision in customs. After deliberation and consensus have been carried out, the *Ninik mamak*, as the customary leader, determines a decision based on the results of the deliberation that has been mutually agreed on. As a result, because the customary settlement is based on mutual consideration and agreement, among the heirs, there will be no disputes. Thus, the process of resolving inheritance disputes is carried out peacefully until there is an identical perspective and clarity on the status of the *Punah* inheritance.

Some Case Studies about Mechanism of Dispute Resolution in *Punah* Inheritance

The meaning of *punah* in the Minangkabau traditional inheritance system of Nagari Salareh Aia is the end of the closest heir, including the daughter from the matrilineal. In principle, the Minangkabau custom has determined that the inheritance of property is passed down to the niece's children close to matrilineal kinship. Although there are sons from the mother's descendants, they cannot be regarded as heirs who are entitled in Minangkabau custom because inheritance for sons is a mere usufructuary right, so they cannot fully control the inheritance. However, the main point of this study is that sons can control the collection of inheritance passed by their parents.

There are cases of *punah* inheritance disputes that have occurred in Nagari Salareh Aia, however, only a few cases were taken as samples in this study, including first is the case in Kampuang Gadang Jorong Kayu Pasak Timur, on behalf of *Oyoih* (nickname), Chaniago clan, 51 years old who is the sole *punah* heir. In this case, the inheritance left by both parents is a house and land established upon customary land. The inheritance is a mixture of high ancestral inheritance and low ancestral property. As the sole heir, *Oyoih* controlled the entire inheritance, then all property was sold to other people. The form of settlement for this combination of high and low ancestral inheritance is to sell the property to a buyer. However, *Mamak* required that he should receive a 10% share of the transaction

³⁷ Asril Dt. Rangkayo Mulia, Wawancara, 23 December 2021

of this ancestral inheritance combination. If the *punah* heir did not agree to share with *mamak*, then *mamak* is reluctant to assist in the process of selling the inheritance, such as signing an approval letter for the deal purpose.³⁸

Second, the case in Padang Gantiang Jorong Kayu Pasak Timur, on behalf of Ijen (nickname), Jambak clan, 47 years old. He is a *punah* heir along with three other brothers. The form of inheritance left by both parents is an area of land, but it is a composition of high ancestral inheritance and low ancestral inheritance. Ijen and his three other brothers, who were heirs of extinction, resolved the case of high inheritance mixed with low inheritance by dividing the inheritance equally among them. Each person deserved an equal share. After each *punah* heir acquired a share, the share for Ijen's heirs from the distribution, which is the property, was sold to the other party. Albeit, in the process of selling the inheritance, it must obtain approval from the *Mamak* with proof of signature on the letter, and it requests the *Mamak* to obtain 10% of the inheritance sale.³⁹ That part is given to all *Mamak* and used for their personal spending.

Third, the case that occurred in Jorong Kayu Pasak, in the name of Sirubidin (nickname), Piliang clan, as the sole *punah* heir. His parents left an inheritance in form of land and houses. The inheritance is a mixture of high and low ancestral inheritance. The customary settlement carried out on this combination of high and low ancestral inheritance was by selling and distributing a share of 10% to the *Mamak* because in the correspondence process, the *Mamak*'s signature was required as evidence of the approval and *mamak* therefore requested for a share. The type of inheritance always has an impact on how disputes are resolved. After deliberation, it was agreed that the inheritance might be marketed by the *punah* heir.⁴⁰

Fourth, the case that occurred in Padang Gantiang Jorong Kayu Pasak Timur, representing Icam (nickname), Jambak clan, 45 years old, as a *punah* heir. The forms of inheritance sold are land and houses, which are composed of high and low ancestral inheritance. Customary settlement of a combination of both cannot be separated

³⁸ Ratmiyati, Wawancara, 23 Desember 2021.

³⁹ Yerman, Wawancara, 21 Desember 2021

⁴⁰ Kasiman Dt. Marajo Nan Tinggi, "Wawancara," 2021.

from deliberation, so in this case, when a *punah* heir wills to sell the inheritance, a discussion is carried out with the *mamak* as the head of the customary inheritance. The settlement carried out, in this case, is by deliberation and it was also required that the *mamak* was provided with 10% of the proceeds from the inheritance sale.⁴¹

Fifth, the case that occurred in Jorong Kayu Pasak Selatan, on behalf of Nulih and Majik (nickname), as *punah* heirs. The forms of inheritance obtained by these *punah* heirs are land, houses, and rice fields from the combination of high and low ancestral inheritance. Some of the inherited assets were sold and others were not. However, some of the sold assets are called gifts using a grant contract, but principally the heirs would earn a sum from the grant. This composition of high and low ancestral inheritance was settled amicably by the *punah* heirs with *Mamak* because they wished to sell the whole assets ranging from land, and houses to rice fields. Then, a family discussion was held between the *punah* heirs and the *Mamak* to provide approval in order to assist the transaction using proof of signature in the letter. In other cases, the *Mamak* would ask for a 10% share of the inheritance deal.⁴²

If analyzed, some of the cases above show that the *punah* inheritance dispute that occurred in Nagari Salareh Aia is heirs controlling the entire inheritance and then selling it. However, the settlement of this inheritance is not according to the inheritance legal system in Minangkabau custom and also with customary law regarding the inheritance law prevailing in Nagari Salareh Aia. Basically, the combination of high and low ancestral inheritance cannot be controlled and traded in its entirety by *punah* heirs before the inheritance is divided and settled according to customary inheritance law.

This customary settlement of disputes between high and low ancestral inheritances has been resolved based on a system of negotiation for consensus which results in *ninik mamak's* decision. *Mamak's* decision should be based on mutual agreement and discussion, which following the applicable customary law in *Saripado* style. For that

⁴¹ Amralis Angku Rajo Endah, Wawancara, 24 December 2021. Kasus-Kasus Sengketa Waris Punah Di Nagari Salareh Aia. [1](#)

⁴² Ratmiyati, Wawancara, 23 December 2021.

reason, several examples of cases of mixed inheritance of high and low ancestral inheritance assets took place in the Luhak Kayu Pasak, which is part of the *saripado* style traditional area in order to find solutions (In *langgam saripado* there is a kinship relationship formed based on maternal lineage and close residence).

As per the applicable customary law in the *Saripado* style, following finding the results of the negotiation for consensus, a decision is issued by *ninik mamak*. The decision should be following *sakato samupakat* (negotiation for consensus) from the results of the deliberation. In the settlement of the *Saripado Ninik mamak*-style case, the *Mamak* (all mother's brothers) is not authorized to make and resolve separate decisions. Meanwhile, the settlement carried out in the cases above was based on the agreement of the *Mamak* and the requirement that allows *Mamak* to obtain a 10% share had no legal basis before the custom.

Several cases that occurred and the form of customary settlement of *punah* inheritance disputes carried out in Nagari Salareh Aia showed that the customary settlement of *punah* inheritance (Punah) disputes in Nagari Salareh Aia demonstrates that there are differences and similarities in customary rules and principles of Islamic inheritance, such as in the case of heirs.

The heirs of high inheritance are given to women under Minangkabau customary law, whereas sons and daughters both receive a share of the inheritance under Islamic inheritance law. However, when the female heirs are extinct, the inheritance is passed directly to the sons who are still alive.

The basic provisions of Islamic inheritance law that have been stipulated in the Qur'an state that sons will get the inheritance of their parents. The position of the son in the *punah* inheritance shows that the son is *ashabah binafsihi*, that is, the son will inherit the rest of the property alone. The legal basis that determines that a son has the right to inherit property from his parents is written in Q.S an-Nisa' [4]: 7. These are obligatory shares. The verse explains that the son will have a share of the inheritance left by either his father and mother or both. Likewise, daughters get a share of the inheritance left by their parents as well⁴³.

The implementation of the customary settlement of inheritance disputes in Nagari Salareh Aia referred to several sides of inheritance in customary Minangkabau. The customary settlement in Nagari Salareh Aia should be carried out in the following forms: First, is in terms of the status of inheritance. Assets that are inherited or sold do not belong to the heirs so the *punah* heirs do not have the right to have any. The second is from the perspective of the heirs. In this case, the son is a *punah* heir and the inheritance left is a mixture of high ancestral inheritance and low ancestral inheritance. In terms of property ownership, and the position of the son as *punah* heir is not included in the inheritance of high ancestral inheritance of the custom because Minangkabau applies an inheritance system based on matrilineal kinship. Despite that, low ancestral inheritance in the Qur'an verse explains that the son will inherit a share of the inheritance, the position of the son is *ashabah* heir, or the person who controls the rest of the property. The third is the distribution of inheritance. Islamic inheritance law dictates that the share for sons is twice that of daughters. If there is no daughter heir, then the son who is *ashabah* will inherit the rest of the assets. The prevailing customary rules addressing *punah* inheritance law in the Nagari Salareh Aia custom on a mixture of high ancestral inheritance and low ancestral inheritance are by dividing the two assets. Some are for *punah* heirs and some are endowed to be used as a high ancestral inheritance.

If the heirs have received a share of the mixed assets of high inheritance and low inheritance, then selling the property is permitted under customary law. All *Ninik Mamak* receive 10% of the sale of inheritances, not from the property distribution to the heirs. This has become a provision of customary inheritance law in *Nagari Salareh Aia*. After the combination of high ancestral inheritance and low ancestral inheritance is divided according to customary rules, the heirs have received some of the property, and part of it becomes high ancestral inheritance. Subsequently, a part of this heir may be sold based on the *ninik mamak* agreement such as *tigo tungku sajarangan* (Traditional leaders in Minangkabau include *Niniak Mamak/Penghulu*, *Alim Ulama* (religious experts), and *Cadiak Pandai* (intelligent people)).

Elders in the customary system will have their share according to their level of position before the custom.⁴⁴

This form of customary settlement is carried out by inviting all *sapayung* (kinship of people of the same) *datuak* (traditional title bestowed on a person by the agreement of people or tribe) parties in inheritance disputes, especially *ninik mamak* who should divide the mixed assets of high and low ancestral inheritance, which partly if for the heirs and the other are for the customary. The combination of high and low ancestral inheritance cannot be controlled entirely by the heirs, yet cannot be traded and cannot be controlled by *mamak* (because the property is not entirely customary)⁴⁵ The distribution of property is instead acknowledged by the *mamak* and witnessed directly by the *mamak*.⁴⁶

The customary settlement is carried out by inviting all parties involved in inheritance disputes, particularly *Ninik Mamak*. This is done in order to convey the distribution of mixed high and low inheritance. Some are given to heirs, while others are included in high inheritances. The position of the mixed inheritance of high and low ancestral inheritance is under the control of *payuak timbago* (sako house, a traditional wealth center, also known as the traditional leader's house of *Tigo Tungku Sajaringan*). If the inheritance is completely controlled, the customary law of *warih bakaturunan sako babandaran* (some of the properties of *punah* heirs (*pu^h*) is lost.⁴⁷

The customary settlement of mixed assets of high ancestral inheritance and low ancestral inheritance is different. In the case of high ancestral inheritance, the settlement is carried out by involving all elements of custom, while low ancestral inheritance only requires the nuclear family and nephew-cousin kins cannot interfere, including disputes over low ancestral inheritance because it is not property rights.⁴⁸ In the low ancestral inheritance, only the nuclear family has

⁴⁴ Arman Dt. Tan Mangindo, Wawancara, 22 December 2021. Pucuk Adat Nan
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⁴⁵ Asril Dt. Rangkayo Mulia, Wawancara, 23 December 2021

⁴⁶ Yerman, Wawancara, 21 December 2021

⁴⁷ Rabuman Dt. Jelo, Wawancara, 23 December 2021.

⁴⁸ Asril Dt. Rangkayo Mulia, Wawancara, 23 December 2021

the rights, and nephews cannot dispute it because it does not belong to them.

Mechanisms and efforts for the customary settlement of inheritance disputes of mixed high ancestral inheritance and low ancestral inheritance are performed by applying two forms of settlement, namely: First is negotiation which is conducted to anticipate social turmoil and ongoing disputes over the inheritance dispute. The second is consensus, the word consensus is taken after deliberation. The agreement does not harm other parties and certainly does not violate the applicable customary laws. One of the reasons for the implementation of these two forms is to apply the concept of justice, therefore the agreement that will be decided does not harm any of the disputing parties and maintains kinship in family relations.⁴⁹

In traditional inheritance disputes, *ninik mamak* plays an important role in the process of settling *punah* inheritance disputes as stated by Kasiman Khatib Marajo Nan Tinggi. He mentioned that *ninik mamak* has a great influence on the mechanism of customary settlement of disputes between high ancestral inheritance and low ancestral inheritance in Nagari Salareh Aia. This is caused by *ninik mamak* holding the decisions on negotiation and consensus which is completed collectively before the religious stakeholders as well as *imam khatib*. Whereas the customary elder serves as a person who will explain custom or what is known as "*pai tampek batanyo balik tampek barito*" (the elder understands more about the ins and outs of custom if there is a customary settlement that is not in accordance with customary rules).⁵⁰

Impact and Solutions for *Punah* Inheritance Settlement Patterns in Nagari Salareh Aia

The impact of the customary settlement pattern on *punah* inheritance disputes in Nagari Salareh Aia is: First, the customary settlement of *punah* inheritance disputes has shown the clarity of the heir's position with respect to inheritance and property status in the

⁴⁹ Asril Dt. Rangkayo Mulia, Wawancara, 23 December 2021, Yerman, Wawancara. 21 December 2021,

⁵⁰ Kasiman Dt. Marajo Nan Tinggi. Wawancara, 26 December 2021.

category of high ancestral inheritance or low ancestral inheritance and or mixed assets of both. Second, it can avoid disputes between parties and heirs because the settlement pattern is applied following the concept of justice.

The customary settlement of inheritance in Nagari Salareh Aia is based on the *Salingka of Nagari* custom (A rule that has been practiced in society from generation to generation in a particular Nagari in Minangkabau and does not necessarily apply in other Nagari.), which is inseparable from the *adat basandi syara', syara' basandi kitabullah* (the customary provisions are based on the Shari'a, and the Shari'a refers to the Qur'an). It can be understood that the customary settlement process of the *punah* inheritance dispute is based on the customary laws that apply and are used in Nagari Salareh Aia. These laws are inseparable from *syara'* law.⁵¹

Some of the solutions put forward by traditional leaders in the traditional settlement of a *punah* inheritance dispute of combined high and low ancestral inheritance in Nagari Salareh Aia, Palembang Subdistrict are: First, to understand that inheritance is the subject of the customary inheritance dispute. The second is to organize the discussion. The discussion held with traditional leaders is negotiation and consensus making, which is to find common ground for the settlement of customary rights on inheritance. Negotiations are held to maintain relationships within the family, therefore it is performed in a familial way, to avoid problems and disputes between heirs, *Mamak*, and other family parties. The third is to make a consensus. The consensus made is based on the results of negotiation by all parties involved in the settlement of customary inheritance disputes. Fourth, is the decision of *ninik mamak*. This is the highest decision issued by the *ninik mamak* in customs.

The form of the solution presented by these traditional leaders is indivisible from the *Salingka Nagari* Customary system which is also based on the *adat syara', syara' basandi Kitabullah*. This is to avoid disputes, bad impacts, and that will occur in the future as the effect of the implementation of the settlement of *punah* inheritance dispute.

⁵¹ Asril Dt. Rangkayo Mulia. Wawancara, 6² December 2021. Analisis dan Solusi Penyelesaian Adat Sengketa Campuran Harta Pusaka Tinggi dan Harta Pusaka Rendah Waris Punah Di Nagari Salareh Aia.

Therefore, the disputing parties can accept the *ninik mamak* decision without any other disagreement and the outcomes of the negotiation and consensus do not harm each other because of the settlement of the *punah* inheritance as per the concept of justice.

The nature of customary law that applies in society is not a proposition that is determined by *syar'i*. However, this customary law includes *'urf* in the maintenance of *mashlahah* (*Mashlahah* is a concept that is used as the primary consideration in solving Islamic law problems because its principle is the protection of the law's objective purpose (*maqasid al-syari'ah*), which is the preservation of religion, soul, mind, lineage, and property) in society. The intended *maslahat* is one that clearly maintains the five parts; the protection of religious beliefs, the protection of the soul, the protection of the mind, the protection of family and descendants (human dignity), and the protection of property⁵². As stated by al-Ghadzali is *hifzu al-Kulliyat al-Khams*⁵³. Related to this present research on the customary settlement of *Punah* inheritance disputes in Nagari Salareh Aia, Palembang sub-district, the implementation of this customary settlement is relevant to *mashlahah mursalah*, which aims to preserve offspring and property

The implementation of inheritance distribution has been explained in the Qur'an Surah an-Nisa verses 11, 12, and 176, as well as several hadiths of the prophet. However, the community also applies customary laws that have become a habit and are implemented by the people in Nagari Salareh Aia. In principle, high ancestral heritage assets are to be maintained and developed continuously so that the next generation can benefit from these assets and these assets can be passed down from generation to generation. However, in contrast to mixed assets of high ancestral inheritance and low ancestral inheritance, the form of ownership may shift if the heirs agree to divide and settle so that ownership rights also change. Therefore, it is also not allowed in customary inheritance law to

⁵² Abdul Ghofur Anshori and Yulkarnain Harahab, *Hukum Islam Dinamika Dan Perkembangannya Di Indonesia* (Yogyakarta: Kreasi Total Media, 2008).

⁵³ Firdaus, *Ushul Fiqih: Metode Mengkaji Dan Menahami Hukum Islam* (Depok: Rajawali Pers, 2017).

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control and sell all assets before the distribution of the mixed inheritance is completed.

Conclusion

This research shows that the pattern of tribal-based inheritance dispute settlement by prioritizing the kinship approach is effective in resolving *Punah* inheritance disputes in *Nagari* Salareh Aia. This pattern of the settlement also has a significant impact on class solidarity, clarifies the position and status of the heirs, and clarifies the inheritance's status. Based on the pattern of settlement and the resulting impact, it can be concluded that the mechanism for resolving disputes over the *Punah* inheritance in the *Nagari* Salareh Aia has fulfilled sharia principles, namely to maintain the property and the honor of the people.

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