

CHANGES IN THE INHERITANCE SYSTEM OF PUSAKO TINGGI ASSETS AND THEIR IMPACT ON THE MINANGKABAU TRADITIONAL INHERITANCE SYSTEM

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Citation Guide:

Afnaini and M. Syamsudin, 'CHANGES IN THE INHERITANCE SYSTEM OF PUSAKO TINGGI ASSETS AND THEIR IMPACT ON THE MINANGKABAU TRADITIONAL INHERITANCE SYSTEM' [2022] 4 (2) Prophetic Law Review 222.

Received:

18 January 2022

Accepted:

12 January 2023

Published:

20 January 2023

DOI:

10.20885/PLR.vol4.iss2.art5



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Abstract

This study analyzes changes in the inheritance system of Pusako Tinggi assets and their impact on the Minangkabau customary inheritance system. As empirical legal research, it addresses the changes in the behavior of the Minangkabau indigenous people related to inheritance in Pusako Tinggi assets. To gain a better understanding of the main problem, philosophical, sociological, and case approaches were used. Data were collected by observation, interview, and document study, and they were analyzed in a descriptive-qualitative manner with an inductive conclusion. The results of the study revealed that the following factors caused some changes in the inheritance system of Pusako Tinggi assets in the Minangkabau indigenous people: (1) The influence of the Islamic inheritance system; (2) Registration and Granting of Higher Inheritance Rights; (3) Pusako Tinggi land trade; (4) The weakening power of mamak. Changes in the inheritance system for Pusako Tinggi assets in the Minangkabau people have an impact on: (1) elimination of nephews' inheritance rights; (2) changes in Mamak's responsibilities; (3) no addition of pusako tinggi; (4) the development of migratory culture; (5) the use of Pusako Tinggi land for investment.

Keywords: *inheritance system, Pusako Tinggi, Minangkabau.*

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A. Introduction

Pusako Tinggi assets play an essential role for the Minangkabau people because these assets are passed down from generation to generation of a clan based on the maternal lineage system. The process of transferring ownership over the *Pusako Tinggi* property from *Mamak* (Eldest Uncle of the Family) of the nephew in Minangkabau custom is also known as *Pusako Basalin*³. The *Pusako Tinggi* assets unify the *jurai* (a group of several family units), clans, tribes and for the Minangkabau people at large. In addition, this tradition carries on the principle of heredity according to the traditional lineage. This treasure is also an asset for the family members. Thus, when a nephew experiences hardship of life, this can be used for help.⁴ Usually, the *Pusako Tinggi* asset takes the form of a Grand Residence (*rumah gadang*) with the largest form being the *Pusako Tinggi* land. This land serves as a bond for the establishment of an organization and the use of the land is communal to ensure the sustainability of the clan organization.⁵

As a matter of fact, in the current practice, there have been considerable changes in the inheritance system in the Minangkabau customary community along with the societal dynamic.⁶ *Pusako Tinggi* land which used to unify a group of people and serve as an economic resource can no longer suffice the soaring needs of the members of their clan, and thus private property (*harta suarang*) increasingly occupies an important position in meeting the economic needs of the family members.⁷

The separation of livelihood assets is considered by some Minangkabau people as the starting point of individual ownership of assets in Minangkabau, which was attributed to several factors. One of the main factors is the modern economic system, which urges a person to work outside of the *Pusako Tinggi* property. However, in terms of the separation of assets, the awareness of responsibility for children, and the influence of the Islamic religion are deemed as more decisive.⁸ The notable aspect of this research lies in some considerable changes in traditional values among indigenous peoples in Tanah Datar

³ Amir M.S, *Adat Minangkabau: Pola dan Tujuan Hidup Orang Minang* (PT.Mutiara Sumber Widya, 2003) 44.

⁴ Anwar Chaidir, *Hukum Adat Indonesia: Meninjau Hukum Adat Minangkabau*, (Rhineka Cipta 1997) 11.

⁵ Iskandar Kamal, *Beberapa Aspek dari Hukum Kewarisan Matrilineal ke Bilateral di Minangkabau*, (Center for Minangkabau Studies 1968) 12.

⁶ Hazairin. *Hukum Kewarisan Bilateral* (Tinta Emas 1974) 9.

⁷ Amir M.S. *Tanya Jawab Adat Minangkabau, Hubungan Mamak Rumah dengan Sumando*, (2nd Edition) (PT. Mutiara Sumber Widya, 2003) 30.

⁸ Amir Syarifuddin, *Pelaksanaan Hukum Kewarisan Islam dalam Lingkungan Adat Minangkabau*, (Gunung Agung 2004) 15.

Regency, West Sumatra, where the distribution of inheritance of *Pusako Tinggi* or communal assets in the area is very much inconsistent with the predetermined inheritance law of *Fara'id* (Islamic inheritance jurisprudence).

Nowadays, because *pulangkabako* marriage (marrying the father's niece) or the *pulangkamamak* marriage (marrying the uncle's son/daughter) is no longer legal, the people of Tanah Datar Regency, West Sumatra, prefer marriage with other tribes outside the Tanah Datar Regency by no longer using the *semendo bertandang* system. Such changes are also caused by the fact that at this time, the parents of Tanah Datar Regency, West Sumatra are entirely responsible with their children, and thus the nephews are no longer the heirs of their *mamak*. In the current shift, the child is the first and primary heir if the parent dies, and therefore other family members, including nephews are no longer included as heirs if the heir dies leaving children.

B. Problem Formulations

The present study addresses two problems, namely: why has there been a change in the inheritance system of *Pusako Tinggi*, which has led to ownership and control by another party?; and what is the impact of changes in the inheritance system of *Pusako Tinggi* assets for the customary inheritance system in Tanah Datar Minangkabau Regency?

C. Methodology

As empirical legal research, this study addressed the shift in Minangkabau people's behavior related to inheritance in *Pusako Tinggi* assets. To gain a better understanding of the main problem, philosophical, sociological and case approaches were used. Data were collected by observation, interview and document study for further analysis using a descriptive-qualitative approach with an inductive conclusion.

The research was conducted in Tanah Datar Regency, West Sumatra Province. This site was selected based on the observable changes in the customary inheritance system, especially in the *Pusako Tinggi* assets.

D. Discussion and Result

1. Factors Affecting Changes in the Inheritance System of *Pusako Tinggi* Assets in Minangkabau

Social changes are an ever-present phenomenon in every society, wherever and whenever. All their life, humans as part of society are inseparable from many changes

in various walks of life, which constantly occurs along interaction between individuals as a member of society and may be attributed to the influential interaction between society and its environment.⁹

Theoretically, such changes are affected by two factors:

- a. Internal factors referring to the changes occurring within the individual dimension as a form of personal motivation to make changes to himself and his environment. Internal factors generally are driven by personal encouragement or motivation to make some changes, which can be in the form of behavioral changes or environmental changes. Meanwhile, several internal factors in society include: an increase and decrease in population, new discoveries, conflicts and the occurrence of rebellion or revolution.¹⁰
- b. External factors referring to factors that occur from outside the individuals. These factors can be caused by family, community, and environment. Meanwhile, the external factors of the society include the environment, war, and cultural influences from other communities.¹¹

In general, the factors affecting social changes are divided into two major categories, namely: changes originating from the community and changes originating from outside the community. Changes originating from the community include an increase or decrease in population and new discoveries, while changes originating from outside society consist of the environmental aspect of their surroundings, war, and cultural influences from other societies.

The data analysis revealed several factors affecting changes in the inheritance system of *Pusako Tinggi* assets in Tanah Datar Minangkabau, as stated below.

a. The Influence of the Islamic Inheritance System

In the Minangkabau community, the *pancaharian* initially used customary law in the system of control and inheritance, which will go to the clan as *Pusako Randah* when the owner dies. However, since the introduction of Islam, there have been attempts to strengthen the existence of the nuclear family and the recognition of individual ownership rights to their livelihood assets by the state. Thenceforth, the *pancaharian* assets began to change their control and inheritance using Islamic law

⁹ M. Tahir Kasnawi and Sulaiman Asang, *Konsep dan Pendekatan Perubahan Sosial*, (IPEM4439/Modul1) (Universitas Terbuka, 2014) 13

¹⁰ Nur Djazifah ER, *Proses Perubahan Sosial di Masyarakat*, (Lembaga Penelitian dan Pengabdian Kepada Masyarakat Universitas Negeri Yogyakarta 2012) 50.

¹¹ Djazifah ER N (n 10).

or other legal options for the owner, and thus the income of parents can be inherited directly to their children.

Irman Idrus¹² stated that the changes in the application of inheritance law in Tanah Datar are seen from the fact that some chose to apply customary inheritance law, Islamic inheritance law, or civil inheritance law. In principle, the *Pusako Tinggi* inheritance system is not an inheritance because of its undivided and untransferable nature to one party only. This information is in line with an interview with DT Sinaro¹³ who articulated that changes in the inheritance system for *Pusako Tinggi* assets in the Minangkabau people in Tanah Datar Regency can be seen from the fact that several regions have abandoned customary inheritance by adopting a western inheritance system which is purely individual. Many regions have also begun to implement an Islamic inheritance system which refers to an individual-bilateral inheritance system by stipulating the division of both the tangible and intangible inherited property on individual ownership. Therefore, after the inherited property is divided, each heir can control and have a share of the inherited property. This is very contrary to the customary system which emphasizes the principle of harmony and the principle of togetherness as a way to maintain kinship. Irman Idrus,¹⁴ however, proposed a different view that economic factors apart from religious factors are due to urgent economic conditions which have led to the sale and purchase of the ownership of *Pusako Tinggi* land.

From this opinion, it can be concluded that changes in the application of inheritance law in Tanah Datar Minangkabau, especially for *Pusako Tinggi* assets are influenced by Islamic inheritance law, namely the existence of individual distribution of livelihood assets in which each heir can control and own a share of the inherited property.

b. Registration and Granting of Right of *Pusako Tinggi*

In the concept of customary law, the relationship between community members and land is not determined by legal certificate. This relationship is more

¹² Interview with H. Irman Idrus, *Wali Nagari Baringin* (Chief of Adat in Baringin Regency) on Monday, August 6 2018 at the Wali Nagari Baringin Office, Lima Kaum Subdistrict, Tanah Datar Regency, West Sumatra, 14:00 – 15:00 Indonesian Western Time

¹³ Interview with DT Sinaro, *Wali Nagari Sungai Tarab* (Chief of Adat in Sungai Tarab Regency) on Monday, 3 September 2018 at the KAN Office, Sungai Tarab, Tanah Datar Regency, 14:00 – 15:00 Indonesian Western Time

¹⁴ Interview with H. Irman Idrus, *Wali Nagari Baringin* (Chief of Adat in Baringin Regency), Monday, August 6 2018 at the Wali Nagari Baringin (Chief of Adat in Baringin Regency) Office, Lima Kaum Subdistrict, Tanah Datar Regency, West Sumatra, 14:00 – 15:00 Indonesian Western Time

based on the hereditary history of cultivated land, the recognition of traditional leaders, and the testimony of other people as the primary factor. Land is seen as the property controlled by a person or group of people *ipso facto*. That is, the land is considered under their control if the land is occupied, utilized, cultivated, and cared for by the settlers and cultivators for human welfare. The more the land is occupied, processed, and utilized, the stronger the right to control over the land. Conversely, the more it is neglected, the weaker the tenure rights. In contrast, the Western concept postulates *ipso jure*, where ownership or control over land must be proven in a way that is in accordance with the law, namely with a legal certificate.¹⁵

The Indonesian Agrarian Law (*Undang-Undang Pokok Agraria*, 'UUPA') adheres to these two principles by applying customary law that recognizes the rights of indigenous peoples over their customary lands based on real evidence of control on the ground. On the right, it also adheres to the rights based on *ipso jure* as evidenced by a certificate of ownership.

In principle, agrarian law never forces the registration of customary land, as can be seen from Government Regulation No. 24 of 1997 concerning Land Registration. Article 9 regarding the object of land registration does not include customary land. Hence, there is no need to formally register the ownership of customary land, but the National Land Agency (*Badan Pertanahan Nasional*, 'BPN') can register the inventory of customary land on certain thematic maps as an administrative requirement only.

However, in its development, there has been an attempt to urge the formal registration of customary land tenure in West Sumatra by adopting the western concept of property rights contained in the UUPA. This is particularly seen from the West Sumatra Provincial Regulation in Article 8 Number 16 of 2008 concerning Customary Land and its Utilization, which has begun to regulate the registration of customary land using the basis of rights listed in the UUPA. Similarly, Article 8 of the regional regulation stated that the concept of communal ownership of *Pusako Tinggi* has begun to be attached to a framework of rights such as ownership rights, right to cultivate, usufructuary right, or management rights. There is no expiration date on the valid registration of *Pusako Tinggi* land on the basis of property rights,

¹⁵Ade Saptomo, 'Dibalik Sertifikat Hak Atas Tanah dalam Perspektif Pluralisme Hukum', (2004) 1 *Jurisprudence* 2.

but problems will arise on *ulayat nagari* lands and *ulayat rajo* lands, which can only be subject to right to cultivate, management rights and usufructuary rights, which have an expiration date. When the basis of the right expires and the relatives neglects to extend it, does the customary land then fall into state land? This condition will lead to problems considering that the right to cultivate, management rights, and usufructuary rights in the UUPA concept are imposed on state land, apart from the fact that principally customary land does not originate from state land, for which customary law communities have applied for rights.

c. Use of *Pusako Tinggi* Assets for Investment

The use of *Pusako Tinggi* assets for investment or registration and the unilateral granting of rights to these assets which have caused the inheritance system to become more complicated than before due to the involvement of other parties besides the owner of the *Pusako Tinggi* assets. While the perspective of national development urges the more effective and efficient land management, the traditional management carried out by the community cannot always produce expected outcome. This matter is stipulated in the national regulation in PMNA/Ka.BPN No. 5 of 1999 article 4, which states that:¹⁶

- a. Mastery of land parcels which include customary land rights by individuals and legal entities can be exercised:
 - 1) Under customary law community members concerned with tenure rights according to applicable customary law provisions, which if desired by the right holders can be registered as land rights according to the UUPA provisions.
 - 2) Through government agencies or individuals who are not members of the customary law community concerned with land rights according to the UUPA provisions based on granting rights from the State after the land is released by the customary law community or by its citizens in accordance with the provisions and procedures of the applicable customary law.
- b. Relinquishment of communal land as referred to in paragraph (1) letter b for agricultural purposes and other purposes require right to cultivate or usufructuary rights, can be carried out by customary law communities by handing over the use of the land for a certain period of time. Thus, after that period expires, or after the land is no longer used or abandoned, the right to cultivate or usufructuary rights concerned are deleted. Further use must be made based on a new agreement from the customary law community concerned as long as the customary rights of the customary law community remains valid in accordance with the provisions of Article 2.

¹⁶ PMNA/KBPN No. 5 of 1999 on Guidelines for the Settlement of Indigenous Peoples' Rights Issues, art. 4.

- c. In the case as referred to in paragraph (2), the right to cultivate or usufructuary rights granted by the state and their extension and renewal may not exceed the period of use of the land obtained from the customary law community concerned.¹⁷

The Minangkabau customary law has made it permissible for someone outside the customary law community to use *Pusako Tinggi* land as long as it has “*mengisi adat menuang limbago*” or has received *ninik mamak*’s (Customary Leader of several families) approval, has gone through the procedures determined by customary law and has paid compensation for the customary law community. When the land is no longer used, it will return to being the customary land of the customary law community as the Minang proverb “*Kabau tagak kubangan tingga, nan tabaok sado luluak nan lakek di Badan,*” which means that the land remains as the property of the community, while entrepreneurs are only allowed to bring all the fruits (profit) proceeds from his business on the land. From this concept, it is clear that for the purpose of investment, the customary law communities never intend to relinquish their customary rights forever, but only for temporary use as has long been known in customary law. However, the mass media and some people constantly use the term “customary land acquisition” as if indicating the relinquishing of customary right by the indigenous community for the utilization of customary land for investment. This term also pinpoints that the land will become state land that is subject to usufructuary right or other land rights. Such an interpretation is based on the UUPA stipulation which views the usufructuary rights or management rights attached to state land.

This contradictory opinion often triggers disputes when the business investors no longer extend their usufructuary rights. It becomes unclear whether the land shall return to the status of customary land or become state land. This dispute is exacerbated by the multiple interpretations caused by article 11 of the West Sumatra Regional Regulation number 16 of 2008 concerning Utilization of communal land, which states that upon the termination of agreement over the transfer of control over the land, the status of control over the land returns to its original status. The phrase “return to its original status” has sparked a polemic whether to return the status to customary land or to return to state land. In response to this, it is necessary to

¹⁷ PMNA/KBPN No. 5 of 1999 on Guidelines for the Settlement of Indigenous Peoples' Rights Issues, par. (2).

examine PMNA/Ka.BPN No. 5 of 1999 Article 4 paragraph (2) above, which stipulates that further land use after the expiration of right to cultivate or usufructuary rights must be based on new approval from the customary law community concerned. Here, it can be seen that the customary law community's rights to their land after the termination of right to cultivate or usufructuary rights remains valid, because they are asked for approval regarding the further use of the land. The status of the land, whether it will be reused by the community or become state land must be with the approval of the customary law community. The same principle is actually also stated in article 3 of the West Sumatra Regional Regulation Number 1 of 2008, but it was drowned out due to multiple interpretations caused by Article 11 of the Regional Regulation.¹⁸

Regardless of the dichotomy between state land and communal land, in principle, the state does not exercise absolute state control over private land but performs a public function as controller. On this basis, the *nagari* has the opportunity to exercise control over these public functions over state lands, which certainly must be adapted to today's context based on the spirit of decentralization. In other words, the *nagari* can express the public function of the land based on living values or based on the customary rights system through customary governance.¹⁹

d. The waiver of the right to sue or “*rechtsverwerking*”

The customary law contains an institution called “the release of the right to sue” or “*rechtsverwerking*” which basically refers to the fact that someone who owns land but for a certain period of time lets the land go unmanaged, and the land is used by someone in good faith, he can no longer demand a return of the land from other people. This institution is in accordance with customary law, which states that land is the common property of the customary law community, which must be used for the benefit of community members and may not just be owned but not used. The same is true of the prohibition of abandoning land in the national land law.

e. The Sale of *Pusako Tinggi* Assets

In principle, the customary law of the Tanah Datar community does not recognize the sales of *Pusako Tinggi* land which results in the permanent loss of

¹⁸ Regional Regulation of West Sumatra No. 16 of 2008 on Utilization of Customary Land, art. 11.

¹⁹ Nurul Firmansyah, ‘Pemulihan Hak Ulayat Pasca-HGU’ <<http://www.qbarpadang.or.id/en/oponi/111-pemulihanhakulayatpasca-hgu>>, accessed 26 August 2018.

customary rights to the land. The land is a form of social security for the sustainability of future generations, as well as a guarantee for the elderly in the clan that they will have a place to return to and a *pandan pakuburan* (graveyard) if they die. However, the observation revealed the sales practice of *Pusako Tinggi* land among people. This is in line with Emrizal's opinion that²⁰ changes in the inheritance system for *Pusako Tinggi* assets generally occur due to buying and selling, namely the transfer of customary ownership rights to private ones. However, despite the strong opposition of the indigenous people against this practice, which only permits mortgages, in several instances, the urgent need can sometimes lead them to unavoidable sale of the land.

Notable changes were mainly generated by the widely increasing sale of *Pusako Tinggi* assets because of an urgent need, despite the strong opposition of the indigenous people. In many instances, the sale of the *Pusako Tinggi* asset is inevitable. Today, inherited property is sold for the following reasons: (1) The inherited land is no longer productive, and thus it cannot serve as the land for cultivation. No wonder, the people had no other choice but to sell them to build factories, offices, and housing. The most important requirement before the sale of the land is the agreement of the clan members and the fact that no one takes care, which makes it neglected; (2) The heirs migrate and are unlikely to return home to take care of the inherited property. *Pusako Tinggi* lands are sold with the aim of obtaining money to purchase other more productive objects, which can be labeled as *pusako tinggi*. Such arrangement can be based on agreement from all members of the clan, including those who are overseas and those living in the village.

The permissibility of sale and purchase of *Pusako Tinggi* assets on the customary land in Tanah Datar Regency from a mere mortgage permission, was attributed to several factors, namely: (1) Lineage extinction (Severed Generations), namely when the lineage for both the male and female sides no longer live. In this case, it is permissible to sale the inherited property. The lineage extinction in the male and female side is mainly due to the following: (a) The last and only female lineage in the *sasuku saparuik* and *sapayuang* clans; (b) The end of the generation on the part of the last male in the *sasuku saparuik sapayuang* clan; (2) Changes in

²⁰ Interview with Emrizal, Wali Nagari Sungai Tarab, Monday, 27 August 2018 at the Wali Nagari Sungai Tarab Office, 14:00 - 15:00 Indonesian Western Time.

the status of assets, namely when the assets have changed their status from *Pusako Tinggi* assets to grant assets, and thus a third party who receives the assets may and has the right to trade it; (3) People who are very deprived and suffer from economic hardship. *Pusako Tinggi* assets may be traded with the community suffers from a prolonged crisis, which makes people extremely very deprived and impoverished. One of the benefits of selling the property is to ensure the sustainability of the lineage. *Pusako Tinggi* assets may also be traded when there is a crisis in the clan that forces the sale of these assets; (4) Agreement made by deliberation for consensus, namely when an agreement of deliberation for consensus is achieved by the people who are *sasuku saparuik* (share the same clan) to trade these assets. In this case, it is permissible and appropriate to sale the inherited asset, because the highest vote is achieved when an agreement from all members clan is made. It is also possible to grant the inherited property to the Nagari or other parties that will benefit the heir and the elders of their former ancestors, when an agreement of deliberation to reach a consensus is achieved between the entire clan members of those who are *sasuku* and *saparuik*. Upon the change of ownership of the inherited property, from the heirs to the recipient of the grant, the recipient of the grant may trade the property. In other words, when the status of this *Pusako Tinggi* property has changed and has been transferred to a third party, the third party may trade it because the property has become the property of the third party.

The agreement made by consensus based on deliberation of the clan members (*sasuku saparuik*) can lead to the sale of *Pusako Tinggi* assets, because, in principle, custom is based on an agreement. Thus, whenever an agreement from all the people in the tribe is made, the property may be traded.

f. The Weakening of Mamak's Power

In the current real practice, there here has been several changes and diminishing role of *Mamak* as the chief of heirs (*Kepala Waris*), which has conceptually been outlined by Minangkabau custom. Such actual changes are mainly cause by the changing role of the chief heir in his clan, namely:

First, the existing changes are mainly generated by changes in the responsibility of a man (*Mamak*) to his wife and children at home. This is based on the starting point of the marriage system practiced by today's society, which has led to the form of *sumando menetap marriage*, from the previously known as the

sumando bartandang form of marriage. In this case, men as husbands are gradually becoming more and more responsible for their wives and children. As a result, all fathers and husbands have to pay more attention to their own families. The closer ties between husband, wife and children has put aside the external influence and power of the *mamak*, which in the past was considered doctrinally dominant and decisive in the lives of his nephews, who were commonly called his people. The changing responsibility of a *mamak* to his wife and children has diminished their responsibility to take care of his nephews because the nephews can ask for protection from their parents. Apart from that, *mamak* has little free time to work with his nephew due to his busy schedule in making a living for his children and wife.

Second, the relocation of the clan members and the family from the *Rumah Gadang* to a build a new home (primary residence) has led to stronger control of the land which was the personal inheritance of the people. In this case, it becomes apparent that the role and influence of the chief heir in the clan is constantly decreasing.

Third, education brings a person to be more critical in dealing with something. The educational factor leads to a change that benefit individuals, the environment and society in their social interaction. This has an influential impact especially on customary inheritance in Tanah Datar, where previously sons were not entitled to inheritance (matrilineal system), although logically, a person will be more inclined to choose justice in terms of distributing inheritance. Thus, the share of inheritance to sons and daughters has led to equal position between men and women.

Fourth, the migratory culture of the Minangkabau people from their origin to the destination to gain life betterment and settlement, especially in overseas countries has greatly affected the practice of inheritance law. This has led to a tendency to adjust the matrilineal inheritance law in their origin to the pattern of parental inheritance law that is made applicable in overseas countries. Migration is not only done by members of the clan but also by the chief heirs. With the departure of the chief heir overseas, the role of the chief inheritor diminishes because he no longer kept abreast of developments taking place in the village, and likewise with the function of supervision and management of *Pusako Tinggi* assets, which cannot be carried out properly. That role is ultimately carried out partially and/or individually by nephews or members of the clan. The culture of migrating has an

impact on the role of the *mamak* towards the nephews as well as in maintaining and overseeing the results of the *Pusako Tinggi* of the people in his hometown.

Fifth, the process and changes in the times have led to the emergence of new societal patterns. *Mamak* as the chief heir who in ancient times always devoted his time to managing the people, has now been required to devote his entire life to work or do other activities for his children and wife. At this time, most of chief heirs or *mamak* work in various fields of services, including the military, civil officials, members of the legislature, teachers, traders and so forth.

Sixth, in a family that controls land or *Pusako Tinggi* in a “*ganggam bauntuak hiduik ba pan gadok*”²¹ by the chief heirs, meaning that the land may be owned after being legalized or approved by his people, as his and its management and utilization is left entirely to the person concerned. *Pusako tinggi* land that has been designated is hereditary and continues through the mother’s lineage (matrilineal value), so land cultivation over the years resulted in a stronger sense of private ownership. With the enactment of UUPA No. 5 of 1960 in conjunction with Government Regulation no. 10 of 1961 has been amended by Government Regulation (*Peraturan Pemerintah*, ‘PP’) No. 24 of 1997, which aims to provide legal certainty of land rights through the issuance of legal certificate in the area of West Sumatra in accordance with the Circular Letter of the Governor of the Level I Region of West Sumatra No. DA. 6980/III-27/1983,²² *Pusako Tinggi* land that has been designated can be certified in the name of an individual because it has been legalized by the chief heir, the head of the tribe and is known by KAN.

According to DT Sinaro, the changes in the inheritance system for *Pusako Tinggi* assets have resulted from the changing role of the chief heir or *mamak* in indigenous peoples. In an interview, DT Sinaro articulated that:²³

Changes in the inheritance system for *pusako tinggi* assets can come from the chief heir or *mamak*, as it is known that the position of the *penghulu* (headman) or *mamak* or chief heir will be prone to temptation from any party who wish to control customary land. The position of the *penghulu* and *mamak* could be distorted for their own interests or because of pressure from investors who could invest their capital in Tanah Datar, which allows the buying and selling and transactions of the inherited land for parties who wanted to control customary

²¹ Devoting a lifetime to work.

²² Circular Letter of the Governor of the Level I Region of West Sumatra No. DA. 6980/III-27/1983.

²³ Interview with DT Sinaro, Nagari Sungai Tarab Traditional Density on Monday, September 3 2018 at the KAN Office, Sungai Tarab, Tanah Datar Regency, 14:00 – 15:00 Indonesian Western Time.

land. As a result, the inherited land of *pusako tinggi* will ultimately end up with private ownership. This is added by the fact that most *Penghulu* and *mamak* or chief heirs do not gain a good understanding of the rules of *pusako tinggi* land, which will lead them to be easily lured by the persuasion of those who want to sell the inherited land belonging to their people.

Penghulu or *mamak* occupies a high position among the indigenous peoples. This position is indeed prone to temptation from the parties who wish to control *Pusako Tinggi* assets. Thus, there is a great possibility that the *mamak* will be diverted from their role and sell the inherited land for the sake of their own interests, since they can be easily persuaded by the parties who want to sell the inherited land belonging to their people.

DT Sinaro's opinion is in line with the opinion of Epi Mardian DT Paduka Majo Kayo²⁴ who said:

The misuse of inheritance by the *ninik mamak*, and the fact that it is even traded for personal interest has sometimes led to the situation where people no longer possess *Pusako Tinggi* assets. It is presumable that *Pusako Tinggi* property can provide real benefits to members of a clan. If only it is managed properly, it can become an economic potential that will prosper all members of that clan.

The shifting role of the *ninik mamak* and the *penghulu* or headmen of the elite has also led to the changing practice in the inheritance system of *Pusako Tinggi*. Regarding the existing changes in society, Roucek and Warren²⁵ pronounced that change can be distinguished into two senses, namely social change and cultural change. Social change only covers social processes or community structures. Meanwhile, cultural change has a broader connotation in the form of changes in culture. For example, there has been a declining trust of a nephew towards his *ninik mamak* because of the development of knowledge, technology, or other aspects as a result of culture.

The diminished role of the *mamak* in guarding the *Pusako Tinggi* is also a determinant of the shift in the inheritance system of the *Pusako Tinggi*, considering that the *mamak* has the role of taking care of his nephews and also taking care of his own wife and children. In this case, DT Sinaro²⁶ revealed the following:

²⁴ Interview with Epi Mardian DT Paduka Majo Kayo, Wali Nagari Situmbuk on Monday, 20 August 2018 at the Wali Nagari Situmbuk Office, 14:00 - 15:00 Indonesian Western Time.

²⁵ Roucek and Warren, *Pengantar Sosiologi* (PT. Bina Aksara 1984) 215.

²⁶ Interview with DT Sinaro, Indigenous Density of Nagari Sungai Tarab on Monday, 3 September 2018 at the KAN Office, Sungai Tarab, Tanah Datar District, 14:00 – 15:00 Indonesian Western Time.

Changes in the inheritance system of the adat community's *Pusako Tinggi* in Tanah Datar Regency include the role of the *ninik mamak* to take care of their nephews and oversee everything related to inherited property. Such role is similar to the role of a husband in his own family, namely watching over his sisters and nephews. However, at present, the role of the *ninik mamak* is getting less significant because they tend to take care of their own wife and children, since as the husbands they also play more of a role in the household.

The shifting role of a *ninik mamak* as the chief heir today certainly necessitates the appropriate solution by considering various elements in society, both the *ninik mamak*, intellectuals and religious scholars as a way to ensure that the existing changes in society as part of global change do not lead to an adverse impact and erode the strongly rooted local custom that has widely been adopted for such a long time.

It is necessary to ensure that the existing changes go hand in hand with the applicable customs in Tanah Datar Regency. However, there has been a growing concern among the Indigenous people of Tanah Datar on the increasingly changing inheritance system as a result of the changes of times, particularly regarding two aspects. The first concern deals with the existence of an inheritance system among indigenous peoples and the second is the social and cultural changes taking place amidst the Minangkabau people.

The existence of Minangkabau cultural values within the community is clearly seen in the relationship between the *ninik mamak* and the nephews. Currently, the applicable values in the relationship between the *ninik mamak* and their nephews have begun to be eroded by the wind of change. There are no longer close ties between the *ninik mamak* and nephews and vice versa, and we can no longer see how a *ninik mamak* leads his nephew appropriately. However, the occurrence in the Minangkabau community is nothing more than a change, which was mainly carried out by community leaders. This is in line with Lauer's conception that social change is an inclusive concept that refers to changes in social phenomena at various levels of human life, starting from the individual level, interaction, institution, community, society, culture, and civilization to the global level. For this reason, KAN's active role is needed in observing and taking preventive steps against various customary problems and/or phenomena that occur in society in the actualization of the role of *mamak Kepala Waris* today in order to preserve Minangkabau customs, which include *Pusako Tinggi* assets as the hallmark of the matrilineal system.

On this basis, there has been a change in the inheritance system for *Pusako Tinggi* assets among the Indigenous People in Tanah Datar Regency. Previously, the high inheritance was passed on to the nephew and continued down according to the matrilineal lineage, but now there has been a change in this practice because the *Pusako Tinggi* is traded, used for investment, or registered for the granting of rights. Thus, the inheritance system that should fall to the nephew is no longer in practice in accordance with the inheritance law system that existed before. This is in line with Lauer's theory of social change, which defines social change as a social phenomenon at various levels of human life, starting from the individual, interaction, institutional, community, society, cultural and civilization levels to the global level.

2. The Impact of Changes in the Inheritance System of *Pusako Tinggi* Assets on Indigenous Peoples in Tanah Datar Minangkabau

a. Nephews no longer receive inheritance rights

Since there was a change in the inheritance system of *Pusako Tinggi* assets among the indigenous people in Tanah Datar Regency, from the practice of inheriting *Pusako Tinggi* assets to nephews and to lower lineages according to the matrilineal lineage, currently nephews no longer receive inheritance rights if the inherited property is traded, used for investment, or registered for unilateral grant of rights.

b. Changing Responsibilities of the *Mamak*

The marriage system practiced by indigenous peoples in Tanah Datar Regency today has led to the form of *sumando menetap* marriages, which were previously known as *sumando bertandang* marriages. Husbands and men are gradually becoming more and more responsible for their wives and children. The father or husband pays more attention to his family, so that closeness with his wife and children eliminates the influence and power of the *mamak*, which was doctrinally considered dominant and decisive in the lives of his nephews, who are commonly called his people. Apart from that, *mamak* has little free time to work with his nephews and their children since he devotes his entire time making a living for his own children and wife. This indicates a change in *mamak's* responsibility who pays more attention to his wife's children, making them less responsible to the nephews and nephew's children because their own parents are the ones who hold the responsibility to feed and protect them.

c. The Stagnant Value of *Pusako Tinggi*

The headman or mamak have a high position for indigenous peoples, which is indeed prone to temptation to control *Pusako Tinggi* assets. It does not rule out the possibility that they will misuse the position to satisfy their own interests including the lure to sell the land belonging to their people. Misuse of inheritance by *ninik mamak* people includes the sale of *Pusako Tinggi* land. This explains why sometimes certain people no longer have *Pusako Tinggi* assets for being distributed to their nephews. In some other cases, the width of the asset *Pusako Tinggi* assets constantly decreases because they are distributed to their nephews.

d. The Development of *Merantau* (Migratory) Culture

Migration of residents or people from one area to another generally aims to gain life betterment and settlement, especially in foreign countries. This has turned the matrilineal customs of inheritance law in their hometown into the parental pattern of inheritance law based on the western legal perspective. Migrating is not only done by members of the clan but also by the head of the heirs. With the departure of the chief heir overseas, the role of the chief inheritor diminished because he no longer kept abreast of developments taking place in the village, and likewise with the function of supervision and management of *Pusako Tinggi* assets, which cannot be carried out properly. That role is ultimately carried out partially and/or individually by nephews or members of the clan, and thus this culture of migrating results in the gap and the weakening role between the *mamak* (uncle) from his nephews as well as in maintaining and supervising the results of the *Pusako Tinggi* of the people in his hometown.

e. The Use of *Pusako Tinggi* Land for Investment

Pusako Tinggi land has been used for investment and registered for unilateral grant of rights. This makes the inheritance system more complicated than before, mainly due to the interaction between customary law, Islamic inheritance law and national law (in this case agrarian law) in terms of land ownership rights. This sale is mainly attributed to economic factors (buying and selling) and the pragmatic mindset of indigenous peoples.

E. Conclusion

This study concludes the following points: First, the factors affecting changes in the inheritance system for *Pusako Tinggi* assets in indigenous peoples in Tanah Datar Regency are as follows: (1). The influence of the Islamic inheritance system; (2) Registration and Granting of *Pusako Tinggi* Rights; (3) The sale of *Pusako Tinggi* land; (4) The weakening of *mamak*'s power.

Second, the changes in the inheritance system for the *pusako tinggi* of inheritance to the indigenous people in Tanah Datar Regency have an impact on: (1) nephews not receiving inheritance rights; (2) changes in *Mamak*'s responsibilities; (3) stagnant values of *Pusako Tinggi* land; (4) the development of migratory culture; (5) the use of *Pusako Tinggi* land for investment.

Based on the research conclusions, this research suggests the following points: First, it is necessary to rearrange the supervisory function of the Kerapatan Adat Nagari (KAN) for the use of *Pusako Tinggi*. Second, it is essential to revitalize the deliberative institution of KAN in resolving various problems at stake. Third, efforts are needed to improve the welfare of indigenous peoples through the existence of *Pusako Tinggi* assets.

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