



CONTRADICTION IMPLICATIONS OF THE *RECEPTIE A CONTRARIO* THEORY IN MINANGKABAU INHERITANCE

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Abstract: This research explores the application of the *receptie a contrario* theory in its implementation in the inheritance law of the Minangkabau customary society. This research is a normative juridical research with conceptual and philosophical approaches. Data source analysis is conducted on primary legal materials in the form of expert interviews and laws and regulations, and secondary legal materials in the form of research results on Islamic law and customary law. Based on the research results, it can be concluded that the theory of *receptie a contrario* still applies to inheritance issues in Minangkabau. Although the Minangkabau people are famous for their adherence to customs, they consider breaking customs shameful. However, the Minangkabau community has explicitly stated that their customary inheritance law refers to Islamic inheritance law by recognizing that children and wives are heirs of their parents/husbands. In contrast, previously, the customary heirs recognized were nieces (*kemenakan*). This research confirms that the application of the *receptie a contrario* theory still applies to inheritance issues in Minangkabau. In addition, it also contributes to explaining to the broader community that inheritance in Minangkabau, although it adheres to matrilineal kinship lines, has implemented Islamic law.

Keywords: inheritance; Minangkabau; *receptie a contrario*.

Abstrak: Penelitian ini mengeksplorasi bagaimana penerapan teori *receptie a contrario* dalam implementasinya di hukum waris masyarakat adat Minangkabau. Penelitian ini merupakan penelitian yuridis normatif dengan pendekatan konseptual dan filosofis. Analisis sumber data dilakukan terhadap bahan hukum primer berupa hasil wawancara ahli dan peraturan perundang-undangan, dan bahan hukum sekunder berupa hasil penelitian seputar hukum Islam dan hukum adat. Berdasarkan hasil penelitian, dapat disimpulkan bahwa teori *receptie a contrario* masih berlaku untuk masalah kewarisan di Minangkabau. Walaupun masyarakat Minangkabau terkenal

karena ketaatan terhadap adat istiadat dan mereka menganggap melanggar adat sebagai sesuatu yang memalukan. Namun dalam hal pewarisan masyarakat adat Minangkabau secara tegas telah menyatakan hukum waris adat mereka mengacu pada hukum waris Islam dengan mengakui bahwa anak dan istri adalah ahli waris dari orang tua/ suami mereka, dimana sebelumnya ahli waris adat yang diakui adalah kemenakan. Penelitian ini memberi penegasan bahwa penerapan teori *receptie a contrario* masih berlaku dalam masalah pewarisan di Minangkabau. Selain itu juga berkontribusi dalam menjelaskan kepada masyarakat luas bahwa pewarisan di Minangkabau walaupun menganut garis kekerabatan matrilineal tetapi pewarisannya telah memakai hukum Islam secara implementatif.

Kata kunci: waris; Minangkabau; *receptie a contrario*.



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INTRODUCTION

Legal pluralism has historical roots in the Dutch colonial government.¹ Pluralism in the legal realm is no longer inevitable. This is the consequence of Indonesia's pluralism regarding ethnicity, culture, languages, religions, and beliefs.² State and customary law relationships may lead to tension and conflicts without reconciliation. Legal pluralism opposes what John Griffiths refers to as the legal centralism philosophy.³ Legal plurality in the legal system is undeniable, and inheritance law is no exception.⁴ Many elements, including historical, cultural, economic, and political constellations, contribute to legal heterogeneity in inheritance law.⁵

The spread of Islam into the territory of Nusantara impacts the culture in Nusantara, giving a new atmosphere for Nusantara culture. Furthermore, Islam enters a culture without destroying it but rather unifies it. One of the cultures that

¹ Rahmat bin Mohamad and I Wayan Rideng, "The Legal Pluralism in Law Education in Indonesia," *Sociological Jurisprudence Journal* 4, no. 1 (2021): 1-5, <https://doi.org/10.22225/scj.4.1.2635.1-5>.

² Hazar Kusmayanti, Dede Kania, and Nanik Prasetyoningsih, "Judges' Acceptance of Sharia-Inspired Laws in Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 12, no. 2 (2023): 199-214, <https://doi.org/10.24090/mnh.v17i2.7716>.

³ John Griffiths, "What Is Legal Pluralism?," *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (1986): 1-55.

⁴ Suci Flambonita and Artha Febriansyah Vera Novianti, "The Concept of Legal Pluralism in Indonesia in The New Social Movement," *Jurnal Analisa Sosiologi* 10, no. 2 (2021): 361-73, <https://doi.org/10.20961/jas.v10i0.45939>.

⁵ Sulistyowati Irianto, *Pluralisme Hukum Waris Dan Keadilan Perempuan* (Jakarta: Yayasan Pustaka Obor Indonesia, 2016).

has altered is Minangkabau culture,⁶ which includes a family legacy culture still prevalent in Minangkabau society. *Receptie a contrario* theory in the context of Minangkabau customary law can be an intriguing subject for analysis. For example, how might this theory be applied to the context of inheritance in Minangkabau society, and what social facts might the author discover directly in the field? As a result, inheritance law in Indonesia presently has multiple applications. The population mentioned above segregation has been abolished by Law No. 62 of 1958 Concerning Citizenship of the Republic of Indonesia and Presidential Decree No. 240 of 1967 Concerning Basic Policies Concerning Indonesian Citizens of Foreign Descendants; however, the practice of legal pluralism regarding inheritance laws still exists today.⁷

In Indonesia, three distinct systems of inheritance law are in effect.⁸ While these systems did not emerge concurrently, they were firmly embedded in people's daily lives long before the Indonesian state was conceived and declared independent. *Adat*, or customary law, sharia, or Islamic law, and national law, a European continental legal system descended from Dutch colonists, serve as the foundation for the three systems of inheritance law in Indonesia. Sharia is deeply ingrained in many Indonesian norms to the extent that it is the foundation for local customary law. Naturally, everyone wishes to live a pleasant, quiet, and serene existence free from disturbances from others, but disagreements can occasionally arise in daily social interactions.⁹

According to Sharia, disagreements can be settled through non-litigation outside the court system or litigation institutions such as courts. Litigation-based dispute resolution is conducted through a courtroom process overseen and decided by a judge. As per the regulations outlined in Article 25 of Law No. 48 of 2009 concerning Judicial Powers, some inheritance disputes require non-litigation settlement before litigation. In these cases, the parties involved settle their differences amicably outside the legal system, relying on their goodwill.

⁶ Yulianti, Amung Ahmad SM, and Fathia Lestari, "Undang-Undang Sumatera Barat (Minangkabau) Tahun 1837-1862," *Historia Madania* 4, no. 1 (2020): 31-48.

⁷ Sonny Dewi Djudiasih, Hazar Kusmayanti, and Deviana Yuanitasari, *Pergeseran Norma Hukum Waris Adat* (Jatinangor: Unpad Press, 2021).

⁸ Mark Cammack, "Islamic Inheritance Law in Indonesia: The Influence of Hazairin's Theory of Bilateral Inheritance," *Studia Islamika* 10, no. 1 (2003), <https://doi.org/10.15408/sdi.v10i1.639>.

⁹ Nurhayati, "Penyelesaian Sengketa Dalam Hukum Ekonomi Islam," *Jurnal Hukum Ekonomi Syariah* 3, no. 1 (2019): 2-11, <https://doi.org/10.26618/j-hes.v3i1.2118>.

The Qur'an, the holy book of Islam that is a literal record of God's words, and hadith, which are compilations of the customs and traditions of the Prophet Muhammad, provide a manner of settling conflicts through peaceful methods, either outside of court (non-litigation) or in court (litigation).¹⁰ Sharia-related issues, such as the division of inherited land or other inheritances, are common in Muslim-majority nations. These issues might lead to disagreements between next-of-kin and other family members. Understanding inheritance law, property law, inheritance distribution, and the associated legal rights and obligations could bring this about.¹¹

The reality of inherited law that develops in Indonesian society is multiple, with various legal systems within one social life.¹² The pluralism of the inherited legal system in Indonesia originates not only from the influence of the legal system that existed and evolved from the pre-colonial era of the Netherlands to the current day but also from the diverse family systems and customs of societies known to be very varied. In Indonesia, three types of inheritance law are developing and applied: Islamic inheritors' law, customary inheriting law, and Western inherited law.¹³ Each of these legal systems is built on different legal frameworks and realities than the other.¹⁴ The law of Islam is based on the doctrine of Islam and is normatively derived from the Quran verses and the hadiths of the Prophet Muhammad SAW. Nonetheless, the social and cultural conditions of the Arab community at the time of the revelation impacted the development of Islamic heirship law.¹⁵

The legal framework of Western inheritance differs significantly from Islamic inheritance law. Western inheritance law is a legacy of the Dutch East Indies era,

¹⁰ Syahrizal Abbas, *Mediasi Dalam Hukum Syariah, Hukum Adat, Dan Hukum Nasional* (Jakarta: Prenada Media, 2017).

¹¹ Achmadi, Ratna Atnawatie, and Maimunah, "The Socialization and the Delivery of Information of The Divisions of Legacy Based on the Law of Civil and The Other Laws In The Village Tumbang Rungan," *PengabdianMu: Jurnal Ilmiah Pengabdian Kepada Masyarakat* 2, no. 2 (2017): 63–70, <https://doi.org/10.33084/pengabdianmu.v2i2.53>.

¹² Adelina Nasution, "Pluralisme Hukum Waris Di Indonesia," *Al-Qadha Jurnal Islam Dan Perundang-Undangan* 5, no. 1 (2019): 20–30, <https://doi.org/10.32505/qadha.v5i1.957>.

¹³ Syahrizal Abbas, *Bunga Rampai Problematika Hukum Kewarisan Islam Kontemporer Di Indonesia* (Jakarta: Puslitbang Kehidupan Keagamaan Balitbangdiklat Kemenag, 2012).

¹⁴ Syahrizal Abbas, *Bunga Rampai Problematika Hukum Kewarisan Islam Kontemporer Di Indonesia* (Jakarta: Puslitbang Kehidupan Keagamaan Balitbangdiklat Kemenag, 2012), 63.

¹⁵ Mursyid Djawas et al., "The Construction of Islamic Inheritance Law: A Comparative Study of the Islamic Jurisprudence and the Compilation of Islamic Law," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 2 (December 30, 2022): 207–19, <https://doi.org/10.31958/juris.v21i2.7495>.

based on the *Burgerlijk Wetboek* found in the Civil Code.¹⁶ It stands on the foundation of Western ideology that adheres to individualism, which states that an individual has absolute freedom and independence to own and spend their acquired wealth, whether by inheritance or otherwise, without regard for social obligations. In customary society, the philosophy underlying the legal framework of customary inheritance is the values of communal responsibility and communalism, which then become essential values in life. The role of customary leaders and the noble values and local wisdom embraced are essential considerations in customary inheritance law.

Based on the inheritance distribution following Islamic law in conjunction with customary law, the author will examine the theory of applying customary law and Islamic law from these three kinship systems. Because customary and Islamic laws are closely related, they frequently overlap, yet harmonization also happens. If not thoroughly understood, it may result in conflicts between the interests of Islamic law and customary law, ultimately confusing the community over whether to follow customary law or Islamic law. According to Islamic teachings in the Fiqh literature, there is *'urf*, which can be interpreted as what is regarded as good and proper by people in general, done repeatedly until it becomes a habit.¹⁷ *'Urf* is one of the tools or methods for establishing Islamic law. *Urf* or customary practices are also studied in the principles of *fiqh*, namely the principle of *al-adatu mukakamah*.¹⁸ According to Hasbi, this aligns with one of the benchmarks for forming Islamic legal principles: *al-adatu mukakamah*, which means customs can be considered Islamic law.¹⁹ Several theories exist regarding applying Islamic and customary law, particularly during the Dutch colonial period. In the study of the implementation of customary law and Islamic law in Indonesia, three theories concerning the relationship between customary law and Islamic law in Indonesia are considered: the *Theory of Receptio in Complexu*, the *receptie* theory, and the theory of *receptio a contrario*.²⁰

¹⁶ Lukman Santoso, "Perbandingan Sistem Civil Law dan Hukum Islam serta Interaksinya Dalam Sistem Hukum Indonesia," *Istinbath: Jurnal Hukum* 13, no. 2 (2016): 189–222.

¹⁷ Basiq Djalil, *Ilmu Ushul Fiqh (Satu Dan Dua)* (Jakarta: Kencana Prenada Media Group 2014, 2014).

¹⁸ Nafi' Mubarak, "Living Law dan 'Urf Sebagai Sumber Hukum Positif Di Indonesia," *Islamica: Jurnal Studi Keislaman* 11, no. 1 (September 1, 2016): 135–58, <https://doi.org/10.15642/islamica.2016.11.1.135-158>; Ayman Shabana, *Custom in Islamic Law and Legal Theory: The Development of the Concepts of 'Urf and 'Adah in the Islamic Legal Tradition*. (Basingstoke: Palgrave Macmillan, 2010), <http://www.myilibrary.com?id=306681>.

¹⁹ Hasbi Ash-Shiddieqy, *Falsafah Hukum Islam* (Jakarta: Bulan Bintang, 1975).

²⁰ Zainuddin Ali, *Hukum Islam : Pengantar Ilmu Hukum Islam Di Indonesia* (Jakarta: Sinar Grafika, 2006).

One of the customary inheritance law systems that is very interesting to discuss is the Minangkabau customary inheritance law system. This system is based on matrilineal, which means that ownership and inheritance rights are passed down from mother to daughter. After Islam arrived and developed in Minangkabau, it gradually influenced the property ownership system and inheritance system in Minangkabau. If it is related to the application of the *receptie* theory above with the inheritance law in the Minangkabau customary tribe, whether the *receptie* theory is still valid, and if so, which *receptie* theory is suitable for linking Islamic law with customary law in the inheritance of the Minangkabau tribe.²¹

According to the researcher's search, this research has not been previously examined, and some focus on assessing the implementation of inheritance law in several regions, including those conducted by Dian Novida Rahmi, Suciati Suciati, and Anindya Bidasari. Their research aims to understand and analyze the effectiveness of the compilation of Islamic law in the division of inheritance in the Banjar Customary Law community. This research is carried out to understand and analyze the application of Islamic Inheritance Law in the Banjar Customary Law community,²² Rahmat Haniru²³. Other researchers conducted studies on the factors that impede the implementation of the Islamic inheritance law system in Indonesia, such as Sakirman, concluding that Islamic inheritance law has not yet been fully implemented in Indonesia because society is still influenced by customary inheritance law and Muslims have not fully understood the concepts of justice and equality in Islamic inheritance law.²⁴ In contrast, Rosidi Jamil presents the thoughts of Hazairin and Munawwir Sjadzali, who emphasize the need to actualize Islamic teachings, including the division of inheritance.²⁵ Another researcher, Muhammad

²¹ Irmawati, "Teori Belah Bambu Syahrizal Abbas: Antara Teori Receptie in Complexu, Teori Receptie Dan Teori Receptio a Contrario," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 2, no. 2 (2017): 170-86; Sugiri Permana, "Implications of Hazairin and Munawir Sjadzali Thoughts In Establishment of Islamic Inheritance In Indonesia," *AHKAM: Jurnal Ilmu Syariah* 18, no. 2 (July 12, 2018), <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/9866>.

²² Dian Novida Rahmi, Suciati Suciati, and Anindya Bidasari, "Implementasi Mengenai Pembagian Harta Warisan Menurut Kompilasi Hukum Islam Di Masyarakat Hukum Adat Banjar," *Nomos: Jurnal Penelitian Ilmu Hukum* 1, no. 1 (2021): 1-6, <https://doi.org/10.56393/nomos.v1i1.56>.

²³ Rahmat Haniru, "Hukum Waris Di Indonesia Perspektif Hukum Waris Islam Dan Hukum Waris Adat," *The Indonesian Journal of Islamic Family Law* 4, no. 2 (2014): 457-74.

²⁴ Sakirman, "Konvergensi Pembagian Harta Waris Dalam Hukum Islam," *Jurnal Al-Adalah* 13, no. 3 (2016): 156-64, <http://dx.doi.org/10.24042/adalah.v13i2.1853>.

²⁵ Rosidi Jamil, "Hukum Waris Dan Wasiat: Sebuah Perbandingan Antara Pemikiran Hazairin Dan Munawwir Sjadzali," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 10, no. 1 (2017): 99-114, <https://doi.org/10.14421/ahwal.2017.10108>.

Muhibbuddin, concludes that judges have revived Islamic inheritance law in the Supreme Court by granting a portion of the estate of a Muslim deceased to non-heirs through obligatory bequests.²⁶

Using the notion of reception in contrario presents a fresh contradiction in applying the law of inheritance in Minangkabau. In Minangkabau treasury inheritance, the reception theory in contrario determines whether new customary laws are acceptable. Minangkabau customary law regulates whether inheritance must be by Islamic law; for example, when it comes to the inheritance of a low legacy or the customary law, Minangkabau acknowledges that this property belongs to the legacy under Islamic law. Indeed, the researchers will connect the system of collective inheritance found in Islamic law with Minangkabau customary law.

This research employs normative juridical approaches, specifically research on legal principles, norms, and regulations.²⁷ A legal research method that examines library materials in the form of positive law through scientific research procedures to find truth based on legal science from its normative side, such as describing and analyzing based on applicable positive law. This method also prioritizes literature research and how it is implemented in practice. This descriptive-analytical study describes, examines, and analyzes the relevant legal provisions. Thus, this research is expected to thoroughly, systematically, factually, and accurately explain the problems to be studied regarding the concept of implementation of reception theory in Minangkabau customary society.

The Literature study collects data from laws and regulations, literature studies, and library documents to obtain secondary legal materials.²⁸ Interviews with traditional figures were conducted to conduct questions and answers and obtain information directly from relevant sources about implementing the reception theory in Minangkabau customary society. The method for concluding the research results collected using a qualitative juridical analysis method is to systematically arrange the data obtained through field research and library research, beginning with current laws and regulations as favorable laws. In contrast, this qualitative research is intended to analyze data from discovering principles and information

²⁶ Muhammad Muhibbuddin, "Pembaruan Hukum Waris Islam Di Indonesia," *Ahkam: Jurnal Hukum Islam* 3, no. 2 (2015): 188-98, <https://doi.org/10.21274/ahkam.2015.3.2.187-198>.

²⁷ Soerjono Soekanto and Sri Mamuji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Press, 2013).

²⁸ Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum Dan Jurimetri* (Jakarta: Ghalia Indonesia, 2010).

to determine their relevance to the main problems and reach an objective conclusion.

TEORI RECEPTIE AND MINANGKABAU INHERITANCE

The Minangkabau community is part of an indigenous Muslim majority. Habits and religion are two "powers" that coexist and influence one another. These two forces have a set of values that require the extreme loyalty of the Minangkabau community.²⁹ These values include obedience to the customs of Minangkabau and submission to Islam as a Muslim community. Minangkabau, abbreviated as Minang, consists of the ethnic groups native to these islands who live in the central part of Sumatra, Indonesia. The spread of the minority ethnic group covers the whole of Western Sumatra, half of Riau, north of Bengkulu, west of Jambi, the west coast of North Sumatra, and the south-west coasts of Aceh, as well as the state of Nine in Malaysia. The term "Minangkabau" describes linguistic and geographic groups that share Islamic religious identity, practices about matrilineal ancestry, and language.

According to Ibrahim Dt. Sanggoeno Dirajo, Minangkabau (Minang) is an ethnic group in Indonesia that speaks Malay and is part of the customs of Minangkabau. Minangkabau's principles of custom are briefly expressed in the statement "*Adat basandi syarak, syarak basandi Kitabullah*" (the custom based on law, the law based on the Qur'an), which means that the custom is based on Islamic teachings. If someone is not a Muslim, it means they are not part of the Minangkabau community; that is the interpretation of the statement.³⁰ Minangkabau is a region in Indonesia that is known for its solid customs and traditions, with the philosophy of "*Adat Basandi Syarak, Syarak Basandi Kitabullah, Shariyyat Mangato Adat Mamakai*," supplemented with "*Alam Takambang Jadi Guru*" as the fundamental values in regulating Minangkabau society, which was later formalized in the oath of Satie Bukit Marapalam in 1837 in Bukit Pato, Lintau, near Batu Sangkar. The integration of Islamic teachings with Minangkabau culture culminates with this ceremony.³¹

Minangkabau customary law is a traditional legal system developed in Minangkabau society in Western Sumatra, Indonesia. Based on local wisdom, customs, and cultural values that have existed since ancient times, Minangkabau

²⁹ Galuh Puspaningrum Hazar Kusmayanti, Dede Kania, "Praktik Beracara Penyelesaian Sengketa Adat Sumatera Barat Berdasarkan Asas Bajanjang Naiak Batanggo Turun," *Refleksi Hukum: Jurnal Ilmu Hukum* 6, no. 2 (2022): 185-202, <https://doi.org/10.24246/jrh.2022.v6.i2.p185-202>.

³⁰ Yulianti, SM, and Lestari, "Undang-Undang Sumatera Barat (Minangkabau) Tahun 1837-1862."

³¹ Ikrar Abadi, "Keluarga Sakinah (Perkawinan Menurut Adat Dan Perubahan Sosial Masyarakat Minangkabau)," *Journal Al-Ahkam* 12, no. 1 (2021): 37-48.

customary law has a long history. It grew alongside Minangkabau society. Minangkabau customary law is constantly evolving and adapting to social and cultural developments. The Minangkabau community has a matrilineal inheritance system. The inheritance and descent of ancestors are passed down through the mother line. Therefore both sons and daughters belong to their mother's families, clans, and their offspring and inherit properties accordingly. The mother line refers to solving problems in marriage, family, inheritance, economics, and social affairs in the Minangkabau community.

The inheritance system is not separate from the marriage system adopted by the Minangkabau community. It is an exogamous marriage scheme in which a woman finds her husband outside her clan by first taking and then returning to the woman's house. As a result of this exogamous marriage, the children born will inherit their mother's offspring. Of course, the marriage and kinship system adopted by the Minangkabau community affects the application of the inheritance law that will be used to address the issue of heritage distribution in Minangkabau society.³²

This unique inheritance system has implications for hereditary practice, often resulting in the integration of Minangkabau customary law and Islamic law on inheriting rights. Local customary traditions have greatly influenced Islamic law in Indonesia. In Minangkabau, Islamic law has been adapted to the matrilineal customs system, enhancing women's role in the inheritance system. However, Islamic influence altered the practice of inheritance and understanding, resulting in contradictions between customary and Islamic law. In other cases, Islamic law, such as the rules on heritage, was applied exclusively, replacing local customary practice. While Minangkabau customs remained essential daily, Islamic influence greatly impacted the legal system and inheritance practices.³³

Receptie theory allows Minangkabau customary law based on the matrilineal system to be integrated with Islamic law. Minangkabau traditions have been codified, meaning customary law must be formalized and established. This can be a challenge for scholars since they must ensure that the new customary law codified is consistent with Islamic law. In Minangkabau treasury inheritance, the reception theory in *contrario* determines whether new customary laws are acceptable. For

³² Eric, "Hubungan Antara Hukum Islam Dan Hukum Adat Dalam Pembagian Warisan Di Dalam Masyarakat Minangkabau," *Jurnal Muara Ilmu Sosial, Humaniora* 3, no. 1 (2019): 61-70, <https://doi.org/10.24912/jmishumsen.v3i1.3532>.

³³ Mega Rahmi Putri, "Inheritance of Property in Minangkabau: Review of Customary Law and Islamic Law," *GIC Proceeding*, 1, no. 1 (2023): 1-9, <https://doi.org/10.30983/gic.v1i1.151>.

example, in the inheritance of a low estate (a property owned by Milk al-Raqabah), Minangkabau's customary law acknowledges that this property is inherited according to Islamic law.

The Minangkabau heritage system has two types of inheritance: high and low. High heritage refers to what is inherited collectively according to the mother's line of descent. The following is the heritage property regulated by the customary law of the Minang ethnic group.³⁴

- a. High inheritance, which means wealth inherited from generations. Its management is controlled by the head of the largest relative unit called "*penghulu*" (*in this case*, acting as the clan leader).
- b. Wealth inherited from one generation is a low inheritance. This wealth is sometimes called "*sako kekayaan*" (first-generation inherited wealth).
- c. Personal property is owned by individuals, including husbands or wives, before marriage. After marriage, everyone retains ownership of this property. Therefore, this personal property is owned by both husband and wife and is considered personal property.
- d. Property purchase refers to the property acquired from one's enterprise. This is a whole inheritance that should be maintained separately among the inheritors.

According to the explanation from the *Lembaga Kerapatan Adat Alam Minangkabau*, *Warisan Tinggi*, also known as *Harta Pusako Tinggi*, is the wealth inherited from ancestors passed down from *nine to mamak*, and from mamak to nieces and nephews according to maternal lineage. According to M. Rasjid Manggis, *Warisan Tinggi* refers to high forests today known as *ulayat*. This *Warisan Tinggi* includes forests and fields, mountains and hills, lakes and ponds, pools and rivers, valleys and ravines. Meanwhile, according to Hamka, *Warisan Tinggi* is obtained from iron *tembilang*, while *Warisan Rendah* is obtained from gold *tembilang*. Iron *tembilang* refers to wealth inherited from previous generations, while gold *tembilang* represents wealth acquired through one's efforts.

This is known as communal property, which is acquired during a marriage. According to the customary rules of Minangkabau descent, high inheritance is collectively inherited according to maternal lineage (matrilineal). High inheritance cannot be sold or loaned for personal gain or to individuals. The maternal family

³⁴ Amir Syarifuddin, *Pelaksanaan Hukum Kewarisan Islam Dalam Lingkungan Adat Minangkabau* (Jakarta: Gunung Agung, 1984).

can use high inheritance in the *rumah gadang* (traditional house). Maternal relatives significantly influence decision-making in every community, clan, and village meeting. This means maternal relatives can recognize and defend the rights acquired over inherited wealth. On the other hand, Low Inheritance, or *Harta Pusako Randah*, refers to all wealth acquired through one's efforts, including the earnings of both husband and wife. Yaswirman added that if an heir preserves the integrity of this low inheritance by not selling or dispersing it and then passes it down to the next generation in a way that makes it difficult to trace, it transitions to high inheritance.³⁵

Minangkabau customs have different inheritance requirements than Islam, particularly regarding large inheritances. First, consider the nature of inheritance itself. Generally, inheritance transfers assets from a deceased person to the living heirs. This is the form of inheritance applicable in Islam. However, in Minangkabau customs, inheriting high ancestral property is not about transferring ownership and distributing assets from the deceased to the living. Instead, it involves the transfer of functions and responsibilities for managing, administering, and supervising the assets from the deceased generation to the living generation. This aligns with the Minangkabau proverb, "*Biriek biriek turun ka samak, dari samak ka halaman. Dari Niniek turun ka mamak, dari mamak ka kamanakan*," which means that descendants inherit ancestral property under Minangkabau customary law according to maternal lineage (matrilineal). However, for inheritance, it still follows the laws of *faraidh* (Islamic inheritance law).³⁶

Second, regarding property ownership, Minangkabau customs adhere to the collective or communal wealth principle, which implies that ownership is shared. Ancestral property is collectively owned by the community rather than by individuals. In contrast, Islamic inheritance adheres to individual ownership, which states that each person has the right to own property without being bound by others. Third, Islam adheres to the principle of bilateral inheritance, which means that every family member (both father and mother) or from both male and female descendants has the right to inherit for specific reasons, namely kinship, marital relations, and *wala* (a formerly enslaved person).³⁷

³⁵ Adeb Davega Prasna, "Pewarisan Harta Di Minangkabau Dalam Perspektif Kompilasi Hukum Islam," *Kordinat* 12, no. 1 (2018): 30-64, <https://doi.org/10.15408/kordinat.v17i1.8094>.

³⁶ Idrus Hakimy Dt. Rajo Penghulu, *Pokok-Pokok Pengetahuan Adat Alam Minangkabau* (Bandung: Remaja Rosdakarya, 1994).

³⁷ Amir MS, *Pewarisan Harato Pusako Tinggi Dan Pencaharian* (Jakarta: Citra Harta Prima, 2011).

Since Minangkabau customary law follows a matrilineal descent system, inheritance law is derived primarily from women's maternal lineage. This difference causes issues and debates, notably with high ancestral property, which contradicts Islamic law. The discussion was eventually formalized in a meeting of the four types (*ninik mamak, imam-khatib, cerdik pandai, mantidubalang*) held in Bukittinggi in 1952 and reinforced by the Conclusion of the Minangkabau Customary Law Seminar held in Padang in July 1968. In these meetings and seminars, it was affirmed that the distribution of inheritance among Minangkabau people for high ancestral property obtained from ancestors according to maternal lineage is performed according to customary law. On the other hand, the low property is applied following *syara* or Islamic law.³⁸

With substantial differences amongst customary leaders and scholars, many conclude that Minangkabau inheritance differs from Islamic law. Some have claimed that ancestral property inheritance in Minangkabau contradicts Islamic law since, according to some Fiqh literature, there is no system of collective inheritance and matrilineal inheritance as practiced by the Minangkabau community. However, some articles can be considered quite intriguing when analyzing the provisions on inheritance in the Compilation of Islamic Law adopted in 1991 in Book II on Inheritance. Specific provisions in the Compilation of Islamic Law are scarcely found in classical Fiqh literature. As M. Amin Suma indicates, not all content of the Compilation of Islamic Law contains pure Islamic law. Thus, it must be more accurate to state that the Compilation of Islamic Law solely encompasses Islamic law.³⁹

The challenge in applying the *receptie a contrario* theory is the adjustment of Islamic jurisprudence scholars. The author cites the research conducted by Ahmad Adri Riva'i,⁴⁰ which discusses the differing views of Ahmad Khatib and Abdul Karim Amrullah on Islamic law and Minangkabau customary law, particularly in terms of kinship law, and the reasons for these differences. The Minangkabau community is well-known for its adherence to Islamic teachings and customs. The Minangkabau people experience a conflict between their customary kinship and Islamic rules. This conflict is notably evident in the thoughts of Sheikh Ahmad

³⁸ Selfia Marlina and Endriyenti, "Intervensi Hukum Islam Terhadap Hukum Kewarisan Adat Minangkabau," *El-Ahli : Jurnal Hukum Keluarga Islam* 4, no. 2 (2023): 1-17.

³⁹ Muhammad Amin Suma, *Keadilan Hukum Waris Islam: Dalam Pendekatan Teks Dan Konteks* (Jakarta: Rajawali Press, 2013).

⁴⁰ Ahmad Adri Riva'I, "Pemikiran Ahmad Khatib Dan Abdulkarim Amrullah Tentang Hukum Islam Dan Adat Minangkabau," *Hukum Islam* 22, no. 2 (2022): 23-53.

Khatib al-Minangkabau, who launched a fundamental critique of the Minangkabau matrilineal inheritance system at the end of the 19th century.⁴¹ Ahmad Khatib places more emphasis on Minangkabau customary inheritance. He views Minangkabau inheritance as unlawful because it contradicts Islamic inheritance law, particularly regarding heirs and the inheritance process.

However, research by Ahmad Adri Riva'i indicates that, in principle, Ahmad Khatib and Abdul Karim Amrullah are not fundamentally different. Both scholars consider Islamic law to be the determining factor for whether customary law should be applied. Their diverse perspectives stem from the other social contexts they experience. The thoughts of these two scholars have influenced the Minangkabau customary community, making Islamic kinship law increasingly prominent alongside the continued practice of Minangkabau customary law. Customary law only applies if it does not contradict Islamic law. This teacher and student perspective may influence Minangkabau kinship law towards a bilateral approach.

Another challenge is the shift in inheritance practices in some regions of West Sumatra. According to research by Afnaini and M. Syamsudin, there has been a significant change in traditional values among the customary community in Tanah Datar Regency, West Sumatra, where the distribution of *Pusako Tinggi* or communal assets in the area, is becoming increasingly inconsistent with the inheritance laws established in *Fara'id* (Islamic inheritance jurisprudence). Currently, with the invalidation of *pulangkabako* marriages (marriages with paternal nieces) or *pulangkamamak* marriages (marriages with the children of an uncle), the people of Tanah Datar Regency prefer to marry outside their ethnic group and no longer use the *semendo bertandang* system. Nephews are no longer regarded as heirs from their maternal uncles, as parents in Tanah Datar Regency are now solely accountable for their offspring.⁴²

Children are now regarded as the significant and principal heirs if their parents die, rendering other family members, including nieces and nephews, ineligible heirs if the deceased leaves children. This shift is mainly due to the influence of Islamic inheritance systems. In Minangkabau society, traditional laws initially governed the management and inheritance of assets, which became *Pusako Randah* (low ancestral

⁴¹ Taufik Abdullah, *Studi Adat Sebagai Pantulan Perubahan Sosial Di Minangkabau*, " in *Alam Terkembang Jadi Guru Adat Dan Kebudayaan Minangkabau*, Ed. A. A. Navis, II (Jakarta: Grafiti Pers, 1986).

⁴² Afnaini and M. Syamsudin, "Changes In The Inheritance System Of Pusako Tinggi Assets And Their Impact On The Minangkabau Traditional Inheritance System," *Prophetic Law Review* 4, no. 2 (2022): 223–40, <https://doi.org/10.20885/PLR.vol4.iss2.art5>.

property) and were passed down through the clan upon the owner's death. However, with the introduction of Islam, there has been an effort to strengthen the role of the nuclear family and recognize individual ownership rights over livelihood assets by the state.⁴³

INTEGRATION OF MINANGKABAU ISLAMIC AND CUSTOMARY LAW WITHIN THE FRAMEWORK OF THE *RECEPTIE* THEORY

The integration of Minangkabau Islamic law and customary law within the framework of the *receptie* theory illustrates the complex relationship between these two legal systems, which coexist and affect one another.⁴⁴ This integration is evident in various aspects of daily life, including inheritance, conflict resolution, and social norms. *receptie* theory, proposed by Snouck Hurgronje,⁴⁵ suggests that customary law can be accepted and absorbed into Islamic law as long as it does not contradict Islamic principles. This framework enables a harmonious coexistence of Minangkabau customary law, mainly matrilineal, with Islamic law, which is patrilineal in the inheritance system.

One of the most significant areas of integration is in inheritance practices. In Minangkabau culture, inheritance traditionally follows a matrilineal system, where property is passed down through the female line. However, Islamic law prescribes a different approach to inheritance, emphasizing male heirs. Reception Theory allows the integration of these systems, enabling adaptations that honor both traditions. For instance, inheritance distribution may involve customary meetings to decide heirs, acknowledging both matrilineal customs and Islamic guidelines, resulting in a more inclusive approach to asset distribution.

Similarly, integrating these legal systems in conflict resolution allows community leaders and religious figures to mediate disputes. When conflicts arise between customary practices and Islamic law, local leaders often negotiate resolutions that respect both legal frameworks. This practice reflects Reception Theory's emphasis on adapting local customs within the broader context of Islamic law, promoting social harmony.

⁴³ Syarifuddin Amir, *Pelaksanaan Hukum Kewarisan Islam Dalam Lingkungan Adat Minangkabau* (Jakarta: Gunung Agung, 1984).

⁴⁴ Mohamad Rana, "Pengaruh Teori Receptie Dalam Perkembangan Hukum Islam Di Indonesia," *Mahkamah: Jurnal Kajian Hukum Islam* 3, no. 1 (2018): 17-34.

⁴⁵ Chairul Fahmi, "The Snouck Hurgronje's Doctrine in Conquering the Holy Revolts of Acehnese Natives," *Heritage of Nusantara: International Journal of Religious Literature and Heritage* 10, no. 2 (December 20, 2021): 248-73, <https://doi.org/10.31291/hn.v10i2.628>.

This integration also influences social norms and values in the Minangkabau community. The principle of "*adat basandi syarak, syarak basandi kitabullah*" (custom is based on Islamic law, and Islamic law is based on the Quran) embodies the community's approach to balancing tradition and religious obligations. This principle encourages accepting customary practices as long as they align with Islamic teachings, reinforcing the community's cultural identity while adhering to religious values.

APPLYING RECEPTIE THEORY IN THE MINANGKABAU CONTEXT: LEGAL AND SOCIAL ANALYSIS

The author argues that the intervention of Islamic law in Minangkabau customary law regarding inheritance began with a long debate about the inheritance system existing in the Minangkabau community, which adheres to a matrilineal system. This debate resulted in decisions and formulations at the Customary Congress held in Bukittinggi in May 1952, which were then reinforced by the findings of a seminar held in Padang, stating that Islamic law applies to low ancestral property or livelihood property, while customary law applies to high ancestral property. Thus, the inheritance laws in the Minangkabau custom are comparable to those in the Compilation of Islamic Law. The commonality resides in the low ancestral characteristic. Low ancestral property is inheritance, as defined in Article 171 letter (c), divided and owned individually by the heirs under the concept of *faraidh*. The difference lies in high ancestral property. High ancestral property is not inheritance as defined in Article 171 letter (e) because the high ancestral property is not distributed to individuals but collectively distributed to the community according to the maternal lineage (matrilineal), so the distribution does not use the concept of *faraidh* but uses the provisions applicable in the Minangkabau customary community.⁴⁶

Low ancestral property is not distributed based on *faraidh* in some Minangkabau communities. It means that it is not distributed to individuals but collectively shared and owned jointly by the women of a clan according to the maternal lineage. This practice is justified by Minangkabau custom and has long been in use. Men have no objections to their parents handing low ancestral property to their daughters to be jointly owned based on maternal lineage. This provision was also agreed upon in the Workshop on Harmonization of Customary Perception

⁴⁶ Yasirman, *Hukum Keluarga: Karakteristik Dan Prospek Doktrin Islam Dan Adat Dalam Masyarakat Matrelinela Minangkabau* (Jakarta: Rajawali Press, 2013).

Based on Local Wisdom and Religious Teachings on February 6, 2002, in Padang, stating that for low ancestral property. However, the concept of *faraidh* is applied. The distribution can be based on the agreement of the heirs. Thus, the clan can jointly own or own low ancestral property based on the maternal lineage.⁴⁷ Inheritance collectively based on this agreement bears resemblance to the principle of peace found in the Compilation of Islamic Law Article 183 and the collective principal Article 189, stating that agricultural land less than 2 hectares should be maintained as a unit as initially and utilized for the common interests of the respective heirs. Inheritance in Minangkabau aligns well with the collective principle in the provisions of Minangkabau customary inheritance.

When compared to the three theories of customary law influenced by Islamic law (*receptio in complexu* theory, *receptie* theory, and *receptio a contrario* theory), the author believes that the Receptie a Contrario theory still applies to inheritance in Minangkabau, as Hazairin and Sayuti Thalib state that, "customary law can apply if it does not contradict Islamic law." In Minangkabau, recognized for its customary solid law, violating customary law is considered disgraceful. However, customary law is not considered as such if it contradicts Islamic law (sharia), as evidenced by their proverb: "Custom based on sharia, sharia-based on the Quran. Furthermore, it means that sharia governs while custom applies."⁴⁸ According to A. Qodry Azizy, this fact suggests that the theory of Receptie a Contrario is in line with customary practices (*urf*) in the discussion of the principles of Islamic jurisprudence regarding the *fiqhiyah* maxim "*al-adah muhakkamah*" (customary practices can be a legal source), one of the conditions being if it does not contradict Islamic law or Sharia law.⁴⁹

CONCLUSION

Based on the research, the *receptio a contrario* theory remains applicable in inheritance matters in Minangkabau, by the views of Hazairin and Sayuti Thalib, that "customary law can apply if it does not contradict Islamic law." In Minangkabau, where adherence to customary law is strong, breaching it is considered shameful. However, customary law is not recognized as such if it conflicts with Islamic law (sharia), as indicated by their proverb: "Custom originates from *syarak*, *syarak*

⁴⁷ Yasirman, *Hukum Keluarga: Karakteristik dan Prospek Doktrin Islam dan Adat Dalam Masyarakat Matrelineal Minangkabau*, 155.

⁴⁸ Kasman Bakry, "Teori Keberlakuan Hukum Islam di Indonesia", *NUKHBATUL 'ULUM: Jurnal Bidang Kajian Islam* 1, no. 1 (2013): 39-54.

⁴⁹ Leo Dwi Cahyono, "Pandangan Hukum Islam Terhadap Sanksi Adat Ditinggikan Janjang Di Minangkabau", *Sakena: Jurnal Hukum Keluarga* 6 no.1, 2021, 42-53.

originates from the Quran. *Syarak* governs, custom applies." This underscores the alignment of the *receptio a contrario* theory with customary practices (*urf*) within the context of Islamic legal principles related to the *fiqhiyah* maxim "*al-'adah muhakkamah*" (customary practices as a legal source), with the condition that it does not contradict Islamic law or sharia. Thus, the author hopes to eliminate any remaining differences of opinion among scholars of Islamic jurisprudence and the public regarding the inheritance rules in Minangkabau, which may be perceived as different from Islamic law. Minangkabau inheritance rules align closely with those outlined in the Compilation of Islamic Law.

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