

The Position of *Mamak Kepala Waris* in High Ancestral Inheritance in Minangkabau Indigenous Community¹

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Abstract

There has been a paradigm shift on the legal stance, role and function of '*mamak kepala waris*' in '*harta pusaka tinggi*' –inheritance that has been handed down to generations– in the Minangkabau community. This article examines several legal issues regarding the role of '*mamak kepala waris*' in '*harta pusaka tinggi*' in the Minangkabau indigenous community. Firstly, how is the legal position of *mamak kepala waris* in the management of '*harta pusaka tinggi*' in Minangkabau. Secondly, how is the current development of the role of '*mamak kepala waris*' in '*harta pusaka tinggi*' in the Minangkabau indigenous community. This research is an empirical juridical research with descriptive analysis. The primary data for this study were obtained through observation, interviews with respondents and legal experts, while the secondary data were taken from desk study on legal documents including jurisprudence and legal theories. The results of the study: first, the legal position of '*mamak kepala waris*' is very important in managing, regulating, supervising and being responsible for the properties that have been inherited through generations (*harta pusaka tinggi*) for the benefit of nieces. The *mamak kepala waris* is the holder of the control and maintenance of *harta pusaka tinggi* of the community. Second: the development of the Minangkabau indigenous people is inseparable from the change in their society, because the Minangkabau people are dynamic and able to keep up with the current development both internally and externally.

Keywords: *mamak kepala waris*, *harta pusaka tinggi*, matrilineal descent

Abstrak

Perkembangan zaman mengakibatkan adanya perubahan kedudukan, peran dan fungsi Mamak Kepala Waris terhadap harta pusaka tinggi pada masyarakat Minangkabau. Permasalahan pertama, bagaimanakah kedudukan mamak kepala waris dalam pengurusan harta pusaka tinggi pada masyarakat Minangkabau?. Kedua, bagaimanakah perkembangan kedudukan mamak kepala waris terhadap harta pusaka tinggi pada masyarakat Minangkabau?. Penelitian ini merupakan penelitian yuridis empiris dengan deskriptif analisis. Pengumpulan data dengan data primer yaitu observasi, wawancara pada responden dan narasumber terkait dan data sekunder, yaitu berupa putusan hakim serta teori-teori hukum. Hasil penelitian: pertama, kedudukan mamak kepala waris sangat penting dalam mengurus, mengatur, mengawasi dan bertanggung jawab atas harta pusaka tinggi untuk kepentingan anak kemenakannya (perempuan). Mamak kepala waris pemegang kendali pengaturan dan pemeliharaan terhadap harta pusaka tinggi dari kaumnya disebut. Kedua: perkembangan masyarakat adat Minangkabau tidak terlepas dari adanya perubahan masyarakatnya, karena masyarakat Minangkabau adalah masyarakat yang dinamis dan mampu mengikuti perkembangan zaman baik secara internal maupun eksternal.

Kata Kunci: Mamak Kepala Waris, Harta Pusaka Tinggi, Kekerabatan Matrilineal

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Introduction

Customary law has a traditional style that has been handed down from ancient times and now, the situation is still enforced and maintained by the people. One

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community that still has a traditional nature with a communal style, is that the Minangkabau indigenous community in West Sumatra Province. Therefore, the Minangkabau indigenous community prioritizes common (communal) interests rather than individual interests, so that the relationship between members of the community with one another is based on a sense of togetherness, kinship, help and mutual cooperation.

The customary inheritance law is influenced by the kinship system. There are three kinship systems that apply in community groups, namely; first, the *patrilineal* kinship system, is a kinship system based on the descent of fatherhood that draws its lineage from the male side. The *patrilineal* kinship system applies *perkawinan jujur* (honest marriage) or marriage by paying or giving money or honest goods, which is after a marriage between a man and a woman occurs, the wife releases the customary citizenship from her father's relatives and joins her husband's relatives. The position of the husband is higher than the position of his wife. This kinship system is mostly followed by Batak people, Bali, Lampung, Ambon and so on. Second, the matrilineal kinship system is a kinship system based on the descent of motherhood through the mother who draws his lineage. The matrilineal kinship system applies temporary marriage, so that the position of the wife is higher than that of her husband. The community that adheres to this kinship system is the Minangkabau indigenous community. Third, the parental or bilateral kinship system is a kinship system based on lineage through the descent of fathers and mothers who draw a line based on their descendants through the father and mother and upper. Parental and bilateral communities are widely adopted by Javanese, Kalimantan, Aceh, Dayak community and so on.

Associated with the three existing kinship systems, the form of marriage is one of the main ways to maintain the continuity of the kinship system. Humans cannot develop without marriage, because marriage causes the existence of descent and descent causes a family develops into kinship and society. Therefore, marriage continues human life and society.

Indigenous people behold the purpose of marriage is to form an eternal family and to foster and maintain harmonious and peaceful kinship relations. So marriage according to customary law relates to family, community and family affairs. Indigenous people who are still relatively strong, their kinship principles are based on genealogical descent, then marriage is a living value to be able to continue the descent, maintain the genealogy and social position concerned. Also sometimes marriage is a means of improving kinship. Another aspect of marriage is related to one's position on one's wealth and position towards inheritance of wealth.

The Minangkabau community adheres to a matrilineal kinship system; a blood related family organization that prioritizes the maternal (female) lineage. This system implements *semando* marriage customs, whereby after marriage the husband is under

the influence of his wife's relatives and daughters are their mother's descendants drawn from one mother of origin, while the sons are not their mother's descendants.

The majority of the Minangkabau people are devout and pious Muslims. The saying is a reflection of Minangkabau tradition based on Islamic law and the Holy Qur'an (Noviardi & Rozi, 2017).

Despite the implementation of Islamic Law as the foundation, the Minangkabau community highly respects and practices their customary law. It is evident that there are still many Minangkabau people implementing their customary law in marriage and inheritance system.

Therefore, the Minangkabau people who are Muslim, because the Minangkabau teachings and customary law have become hereditary philosophy based on the provision that their status as Minangkabau community members revoked if they are not Muslims.

The fundamental philosophy of Minang includes *adat basandi syara. Syara basandi kitabullah* can be interpreted as there can be no contradiction between the prevailing custom or habits in the midst of the community including trading, marriage, inheritance sharing, etc. and the philosophy stated in the Qur'an. Consequently, all acts of the people in the *Ranah Minang* (another name for the Minangkabau area) that become habits that are in contrast to the philosophy stated in the Qur'an cannot be categorized as customs (Fauzi, 2018).

In Minangkabau, in a *nagari* ('traditional' village community concept) there are several tribes in which a tribe consists of clans which are divided into several *paruik* (sub-clans) and each *paruik* has a leader and its members strongly support the legal alliance and own inheritance (Syarifuddin, 1987). Likewise, in addition to having leaders and members, a clan owns properties both inherited and acquired by the cooperation of the clan's members.

Property or inheritance known to the Minangkabau community is divided into four parts. First, high ancestral inheritance is inherited from several generations following the matrilineal way. The existence of high ancestral inheritance is related to the history of the establishment of a *kampung* and *koto* followed by opening rice fields as a source of life. The opening of land for rice fields is the result of *galuah taruko* by the founder of the *kampung* and *koto*. The results of the opening of the land from the ancestors were inherited from generation to generation until today. High ancestral inheritance in the form of materials including *gadang* houses, rice fields, and gardens are called "*harta pusako*". In addition, there is a high ancestral inheritance in the form of title inheritance inherited from generation to generation called *adat sako*. High ancestral inheritance is also called *pusako basalin*, because changes occur from generation to generation (Hadikusuma, 1993). In relation to the high ancestral inheritance in Minangkabau, Hadikusuma states that a house of *gadang* or rice fields inheritance belongs to the clan in which the mother is the center of control. The high ancestral inheritance cannot be divided and sold, except in necessary circumstances it can only be pawned. Second, low communal inheritance is all the properties acquired from the work

of one's own work and livelihood. This high ancestral inheritance is allowed to be sold and pawned as needed by the agreement of the heirs. According to Hilman Hadikusuma (Hadikusuma, 1993), high ancestral inheritance is all inheritance from one or two kin groups, for example from one grandfather or grandmother of the descent head, which includes a moderate family. Low ancestral inheritance is a joint property of relatives, of which the ownership is undivided and will continue to grow with the income acquired by the heirs. The example of low ancestral inheritance is there is only one traditional house where members of the family gather, there are several hectares of land for rice fields, and there are several traditional clothing equipment and traditional jewelry.

Third, acquired properties are the properties acquired by a husband and a wife during marriage. The acquired properties by buying or in the terms of the custom are called (*tembilang emas*) are in the form of rice fields, fields, gardens, etc., which if the couple gets divorced, these properties will be divided. In Minangkabau, the people adheres to a matrilineal system. Therefore, if the husband dies, his children are not the heirs of his properties because the children belong to their mother's family making the properties to be inherited by his siblings. Fourth, *suarang* inheritance is the properties owned by an individual as a husband or a wife before and after the marriage.

High ancestral inheritance in the Minangkabau community is a hereditary property. The responsibility holder of control and maintenance of the inheritance of the people is called "*mamak kepala waris*". Therefore, the high ancestral inheritance in Minangkabau is reflected in the saying "from the great-uncles it is handed down to the uncle, from the uncle to his nephews and nieces (*dari niniak turun ka mamak dari mamak turun ka kamanakan*)". In addition, essentially, the high ancestral inheritance cannot be traded as stated in the traditional proverb "*dijual tidak dimakan beli, digadai tidak dimakan sando*", meaning that the high inheritance must not be sold and pawned. Because the high ancestral inheritance was acquired by previous ancestors, every clan in Minangkabau owns communal inheritance. The inheritance is used and utilized by the members of the clan, for the welfare of the family and is mainly used for the leader's nephews or nieces (*kemenakan*).

In necessary circumstances, the high ancestral inheritance can only be pawned, and cannot be traded. Pawning high ancestral inheritance is only allowed in an emergency, so that the ownership rights to the high ancestral inheritance in the form of land and *gadang* house still owned by the owner. The emergency circumstances that need high ancestral inheritance to be pawned must meet specific conditions and must be given permission from *mamak kepala waris*. There are several conditions by which the pawning is allowed. Firstly, *membangkit batang terendam*, meaning that in the Minangkabau, a clan with a lower dignity must improve their dignity to be equal with other clans. The dignity of the clan refers to the title inheritance belonged to the clan. Secondly, *gadis tua tak bersuami*, meaning that women in the structure of the Minangkabau community have higher positions than men. Therefore, girls/women and mothers must be supported by ancestral inheritance. Based on the provisions of

Minangkabau customary law, a mother with no daughter is called an extinct group. Because there is no daughter in a family or clan, it means that there is no heir to receive the high ancestral inheritance. Thirdly, *mayat terbujur di tengah rumah*, meaning that if someone dies, then the members of the family will need a lot of money to bury and pay the inheritor's debts. Fourthly, *rumah gadang ketirisan*, meaning that the house of *gadang* is a symbol of the existence of the clan that must be nurtured for which requiring a lot of money to preserve and maintain it (Haries, 2014).

The position of *mamak kepala waris* in the Minangkabau community is exceptionally important, because it is a position in a clan whose responsibilities are leading all members of the clan, managing, regulating, supervising, and being held responsible for the ancestral inheritance of the clan. Therefore, in his position, *mamak kepala waris* is the one who will manage and expand the high ancestral inheritance for the benefit of his *kemenakan* (Ilusia & Muliadi, 2015). However, in the actuality, the Minangkabau community is not a static society. The Minangkabau community is a dynamic community that constantly keeps up with the current development, so that there are several clans have their high ancestral inheritance sold and transferred or divided. The change in this high ancestral inheritance is clearly in contrast to the fundamental principles of Minangkabau customary law concerning the control of high ancestral inheritance in Minangkabau which has stated a clear principle, of which the high ancestral inheritance cannot be sold or transferred and is permanently owned by a clan. This principle is stated in a traditional proverb "*Kabau Tagak Kubangan Tingga*".

This study aims to analyze the development in the Minangkabau community concerning the development of the position of *mamak kepala waris* in controlling and managing high ancestral inheritance and the development through the jurisprudence. Regarding this development, this study focuses on discussing the problem "The position of *mamak kepala waris* in the high ancestral inheritance in the Minangkabau community".

Research Problems

Two problems will be addressed in this study. First, how is the position of *mamak kepala waris* in the high ancestral inheritance in the Minangkabau community. Second, how is development of the position of *mamak kepala waris* in the high ancestral inheritance in the Minangkabau community.

Research Methods

This research employed empirical juridical research method with descriptive analysis. The primary data were obtained through observation and interviews with respondents and important persons who understand the condition of the Minangkabau community in the matrilineal system that position women in a higher place than men and the position of *mamak kepala waris* in the Minangkabau community and understands its development regarding the position of *mamak kepala waris* in high

ancestral inheritance in the Minangkabau community. The secondary data were taken from desk study on legal documents including jurisprudence and legal theories.

Discussion

I The Position of *Mamak Kepala Waris* in Managing High Ancestral Inheritance in Minangkabau Community

Minangkabau is a place in Indonesia where people can find a community that is regulated by the legal order of the mother, starting from a small environment, from the family, to the uppermost environment, namely a "*nagari*" so that it can be seen that mother's line is a factor that regulates the organization of society, although in our *nagari* we still find other binding factors. Life regulated by the legal order of the mother is what referred to in everyday terms as life according to custom.

Minangkabau inheritance law which is part of customary law that has many ins and outs because at one side of Minangkabau inheritance law is a continuation that is in accordance with the orderly structure according to the law of the mother, but on the other hand, it has relevance and is influenced by the law of sharak (religion) (Anwar, 1997). Therefore, according to the orderly structure according to the law of the mother, the heirs according to Minangkabau customary law are calculated from the line of women (women). In the Minangkabau community these heirs exist, if there are already inheritance left by someone who has died.

The statements above are in accordance with the elements in inheritance, that is, they can be inherited if: (a) Heir, that is, a person or subject who has inheritance while he is still alive or has passed away, his deceased property will continue to be controlled or owned in a situation that is not divided or divided; (b) Inheritance, namely in customary inheritance law, all people who are deserve to receive part of inheritance, namely close family members of the heirs who are deserved and obliged to receive forward inheritance, either tangible or tangible assets (such as position / customary positions and responsibilities, according to the relevant custom and orderly social structure); (c) Inheritance (legacy), namely assets that will be forwarded by the heir when he is still alive or after he dies, to be controlled or owned by the heirs based on the kinship and inheritance system that applies in the indigenous peoples concerned.

In the Minangkabau indigenous community, inheritance can be in the form of high heritage and low inheritance. In relation to high inheritance, the heirs are family members drawn from the mother (female) line. Whereas low inheritance is husband and wife's search assets when husband and wife are still living in marriage. Therefore, most of their lives have been granted to their children when their parents die, those who become their heirs. In connection with a grant that has a large amount of assets, then the niece of the deceased will not remain silent and wants to get a share of the property, so it is not uncommon for this to cause the dispute. The form of search assets can consist of movable properties such as jewelry, cars, houses and others. And which are fixed items such as rice fields and fields.

One important problem in human life is how the process of transitioning wealth (inheritance) to the generation left behind (heirs). As it is the custom of the Minangkabau people, the transfer of high property must not be carried out, such as being sold to other parties but only to be used (*ganggam bauntuak*).

In the Minangkabau indigenous community who deserve to be heirs are daughters, but not solely female heirs who control and regulate inheritance, heirs are accompanied by male relatives of the mother (*mamak*). The inheritance process does not always run smoothly but often causes disputes among heirs. The problem that often occurs in the Minangkabau indigenous community is that high inheritance is used for the benefit of large families (clans). In its implementation, there are often irregularities with the use of inheritance for personal interests and the pawning of the inheritance of people outside the specified conditions.

The position of *mamak* in the Minangkabau indigenous community, there are three, namely:

1. *Mamak* is the Head of the People (*Kepala Kaum*), because the Minangkabau indigenous people who live in groups that are members of a tribe are called the people. A people is led by a man who comes from these people called *Mamak Kepala Kaum*. Therefore, a people consists of several *tungganai*. Someone who uses the title *datuak* is the leader of the people. So *mamak* is also referred to the leader of his people. Appointment of *mamak pengulu kaum* is determined by the prevailing customs. The custom applied in Minangkabau is divided into two harmonies, namely the *bodi caniago* and the *koto piliang*. If the people use *koto piliang*, the appointment of the head of the clan is carried out for generations, from the head of the clan to the nephew. Appointment based on the solubility of *koto piliang*, not chosen but passed down from generation to generation. Meanwhile, if you adhere to *bodi caniago*, the appointment of the head of the people is chosen by the people. As head of the people he is responsible for the people. As *Mamak* he also became a traditional leader. *Mamak* is obliged to maintain, protect, guide, and resolve the problems faced by his nephew. In addition, he also judges the cases that arise in his people. So, a head of the community should be a wise person, a wise person who comes from his deep knowledge of custom and religion. He has noble character and has high authority for his nephew. He was respected by his nephew, because his heart was never seen, never made mistakes in daily life;
2. *Mamak* The Head of Inheritance (*Mamak Kepala Waris*), also called *tungganai*. *Tungganai* is the leader of the people of *Separuik*. His obligation, in addition to saving property that has been hereditary inheritance, he also became the leader of his *saparuik* nephew. *Mamak Kepala Waris (tungganai)* is responsible for developing the inheritance so that he can maintain the unity, togetherness and welfare of his nephew; and
3. *Mamak* As a guide, which is obliged to guide his nephew in the field of custom. Nephew has the right to know things related to *adat nan sabana adat, adat nan*

teradat, adat nan diadatkan, prevailing customs. Other than that the nephew also has the right to know from her *mamak* about all matters relating to family property.

The Minangkabau society adheres to a distinctive kinship system, namely the matrilineal kinship system drawn from the mother or female lineage. The maternal lineage is used as the basis on which people originate and descendants gather in a shared residence and residence in the form of a large traditional house called the *gadang* house. Inside the *gadang* house which plays an important role and is responsible for all its inhabitants, the brothers and sisters from the mother are called *mamak kepala waris*. Therefore the organization of the Minangkabau community is based on the maternal lineage, but those who play an important role in the unity are always men from the maternal line and are usually called brothers of the oldest mothers. However, if there is no brother from the mother as the inheritance *mamak*, then the one who replaces is the oldest male child.

In Minangkabau society the term "*mamak*" or "*tungganai*" is the term for brother of a mother who will be responsible for the existence of a matrilineal family and safeguards and adds the inheritance. If the mother has more than one brother, the one who will be responsible is the oldest one who is assisted by the younger one. If the mother does not have a brother, but the mother has a son, then the one who will be *mamak* is the son.

Based on the provisions of Minangkabau customary law, that *mamak* the head of the inheritance (*mamak kepala waris*), namely the oldest *mamak* (oldest brother or oldest sister of the mother), if there is no oldest (oldest sister of the mother), then the under and so on, according to traditional advice, but in reality it is not always the case, based on the results of the research stated that in certain circumstances it is not always the oldest brother of the mother or who under it can also become an inheritance *mamak*. This happens because first, the mother does not have a brother (for example, has passed away), but the mother has a son, then her son will be the *mamak* the heir of his people; and second, the mother's brother is not pleased to serve as *mamak kepala waris* and hand over the authority and responsibility to his eldest nephew or the eldest son of his sister.

In connection with customary inheritance law based on the matrilineal kinship system, the lineage is drawn from the mother (female), so it is calculated according to the lineage of the mother, namely the brother and sister, grandmother and siblings, both male and female. Therefore, with the matrilineal kinship system, the children (both male and female) can only be heirs of their own mother's inheritance, but only to the extent of low inheritance. However, if the deceased is a boy, his children and widows will not be heirs to high heirlooms, while the heirs will be all his nephews.

The inheritance system in customary law is divided into three types, namely: **First**, Individual inheritance system: The characteristics of the individual inheritance system are inheritance rights to the heirs, this is as applicable according to the laws of the Criminal Code (*KUHP*) and Islamic law, as well as only applies to communities in the customary law society such as patrilineal Batak families and Javanese families that are *parental*. The

weakness of the individual inheritance system, namely the breakdown of inheritance and the stretch of kinship, this can result in the desire to have material in a personal and selfish manner. This individual inheritance system applies in Lampung, Java, Kalimantan, Aceh indigenous communities.

Second, Collective inheritance system. The characteristic of this collective inheritance system is that the inheritance is inherited by more places controlled by a group of heirs in an undivided condition, which seems to be a family legal entity or relative. This kind of heritage is called "*harta pusaka*" in Minangkabau and "*harta menyanak*" in Lampung. The advantage of the individual inheritance system is that with the distribution of inheritance, each individual heir has free ownership rights to each part he has received. While the weakness of this collective system is that it creates a way of thinking that is too narrow, less open because it is always focusing on family interests. This collective inheritance system applies in the Minangkabau indigenous community.

Third, *Mayorat* inheritance system. The characteristics of this major inheritance system are inheritance of the parents (low inheritance) or ancestral inheritance (high heirloom) remains intact and is not distributed to each heir but is controlled by the eldest son (male major) in Balinese and Lampung communities, or remain controlled by female eldest (major female) children in the *matrilineal semendo community* in South Sumatra and Lampung.

This *mayorat* system is of two kinds due to differences in hereditary systems adopted, namely: 1) *Mayorat* male, as applies in the Lampung indigenous community; 2) *Mayorat* female, it applies in the Semendo indigenous community of South Sumatra.

The advantage of this major inheritance system lies in the leadership of the oldest child who replaces the position of his deceased parents to take care of property and use it for the benefit of all family members. The weakness will appear if the oldest child is apparently unable to take care of his parents' property.

The inheritance system in the matrilineal society (Minangkabau) is a system of collective inheritance, this system is influenced by the way of thinking in indigenous communities called communal thinking. This communal way of thinking emphasizes a sense of togetherness in a strong bond, suffering, one idea and goal which cover all fields of life. In the communal inheritance system related to the customary inheritance law in Minangkabau, it is better to leave the inheritance (heritage) intact and not be distributed, inherited jointly by a group of heirs and the results are shared together and then used as inheritance. In the Minangkabau community it is called "*harato pusako*" (inheritance).

In Minangkabau which adheres to the collective inheritance system (women) of inheritance, all daughters who have blood relation are the heirs of their inheritance which are not divided, but are controlled and regulated by their inheritance *mamak* about their usage rights. The heirs of daughters may use, seek and enjoy inheritance such as heirloom rice fields, *gadang* houses together under the supervision of the inheritant's head *mamak*.

The Minangkabau community adheres to a collective inheritance system with two characteristics. First, the inheritance ownership is inherited and transferred from the predecessor to the inheritor as an undivided-ownership unit. However, the inheritor has the right to make use and expand the inheritance. The second characteristic is that the inheritance is inherited by a group of heirs together establish a legal entity by which the inheritance ownership may not be shared among the intended heirs (the inheritance can only be shared in terms of the usage/usage rights). For example: high ancestral inheritance that is the inheritance jointly and continuously owned by kinship from generation to generation, while low communal inheritance that is the inheritance inherited from a mother to her daughters of which the ownership is not divided individually but used together, which later became a high ancestral inheritance. Therefore, the collective inheritance system refers to the thinking that the inheritance should stay intact and undivided, inherited jointly by a group of heirs and the products of the inheritance expansion are shared and used together, which later became a high ancestral inheritance.

In the collective inheritance system adopted by the Minangkabau community, all blood-related daughters are heirs of the inheritance that are ownership-undivided, but can be controlled and managed by *mamak kepala waris* in terms of usage rights. The heirs may use, expand, and enjoy the inheritance including rice fields and *gadang* houses together under the supervision of *mamak kepala waris* (Wintstar, 2007).

There are several authorities possessed by the position of *mamak kepala waris* in the Minangkabau community (Fauzi, 2012). First, *mamak kepala waris* has the authority to manage, regulate, supervise, and be responsible for the high ancestral inheritance of the clan. For example, if there is an abandoned inheritance, *mamak kepala waris* suggests that the land should be utilized. In addition, *mamak kepala waris* can encourage his *kemenakan* to expand the existing inheritance. *Mamak kepala waris* also regulates the products of the inheritance expansion, maintains its preservation, and makes use of it for the benefits of the clan members. Second, *mamak kepala waris* represents the clan for outside affairs and act in, for, and on behalf of the clan, as the statement saying that all issues are in the hand of *mamak kepala waris*. Third, *mamak kepala waris* acts as the leader of the clan who are fully responsible for the safety and welfare of the clan members by utilizing the high ancestral inheritance and as the mediator in the clan who will resolve disputes occurring among clan members regarding personal problems in daily life and problems of inheritance. Fourth, *mamak kepala waris* represents the clan in court, for example as defendants or as plaintiffs. Fifth, *mamak kepala waris* acts as the representatives of the clan in performing transactions on the inheritance of the clan after obtaining approval from all clan members when selling and pawning the inheritance. Sixth, *mamak kepala waris* represents the clan in registering his inheritance, because the inheritance must be registered by the name of *mamak kepala waris* of the clan. Seventh, *mamak kepala waris* is the person in charge in traditional ceremonies in the community (Fauzi, 2012).

Mamak kepala waris must be extremely and carefully responsible in performing his duties. If a *mamak kepala waris* fail to practice the prevailing law of the Minangkabau customary law, a clan meeting must be held. In the clan meeting, the *mamak kepala waris* can be replaced with a new selected *mamak kepala waris*. If a *mamak kepala waris* is unable to perform his duties (under circumstances including critically ill, leaving the clan for working, and/or dead), he has to be reported to the clan member so that a clan meeting could be held to select a new *mamak kepala waris* (Fauzi, 2012).

The position of *mamak kepala waris* in the clan is also closely related to the important role of a tribe headman (*penghulu suku*), because a *penghulu suku* in a tribe is a leader who is responsible to the community. *Penghulu suku* has five roles in leadership, including as a member of the community, as a father of a family, as a leader in a clan (*mamak*), as a *sumando* above his wife's house, and as a *ninik mamak* in his country.

The principle is the implementation of inheritance and efforts to resolve inherited disputes in the Minangkabau indigenous people, namely: 1) Inheritance of high inheritance inherited based on the maternal lineage, called *Paruik*, which manages the property for the benefit of the nephew's child. The management of the people is led by the oldest brother from *paruik*, namely *Mamak Kepala Waris*; 2) Inheritance of low inheritance is influenced by the Islamic heritage system, because the inheritance of low inheritance comes from the livelihoods obtained when the marriage takes place, is inherited to children and wives by using the faraid law.

Factors that have led to inheritance disputes in communities in several regions in Minangkabau, among others, are caused by the first, the misuse of the people's inheritance by *Mamak*, the Head of inheritance, that is by selling inheritance for personal interests, second; the existence of grants of inheritance to other parties, and third; the existence of customary provisions that give the right to use the land owned by the people to *Mamak Kepala Waris* which reaches a period of decades. The legal rule used to settle inheritance disputes is guided by provisions according to Minangkabau customary law, with the first step; prioritizing settlement in a family manner mediated by *ninik mamak* in the community, second; it will be sought to resolve through Customary Institutions in the form of considerations according to customary law and habits that grow and develop in the community, and third; inheritance disputes will be settled through the District Court.

In resolving a custom dispute with the Minangkabau community, especially high heritage, it can be resolved through the *Adat Nagari* Institute. Customary institutions can solve the problem of disputes outside the court and its nature does not decide, but its nature is only to rectify the traditional disputes that occur. Understanding customary justice, that is a process, how to try and resolve consensus agreements and the existence of peace carried out by institutions outside the court as stipulated in the Basic Law on Judicial Power (Undang-Undang Pokok Kekuasaan Kehakiman).

In solving disputes over inheritance, customary law communities generally want a settlement of consensus agreement, harmony, peace and not only limited to the parties

to the dispute but also including all members of the deceased heir. If all efforts in taking the path of consensus and peace in front of the family, relatives and community fail, then the case will then be brought to court. Therefore it will be the duty of the district court judges, high court judges and the supreme court to find the right solution for the customary inheritance dispute, so that jurisprudence (judge's decision) arises.

Based on the matrilineal kinship system, the position of *mamak kepala waris* plays an important role in the community, because *mamak kepala waris* is considered a protector of family members. Moreover, a *mamak kepala waris* is responsible for his *kemenakan*. Therefore, *mamak kepala waris* permanently acts as the spokesperson for every meeting concerning Minangkabau customary law. In conclusion, the duties and responsibilities of a Minangkabau man as *mamak kepala waris* are especially great against to his *kemenakan*. Moreover, the mutual relationship between *mamak* and his *kemenakan*, resulting in the orderly *mamak-kemenakan* relationship in the Minangkabau community based on the matrilineal kinship system. Therefore, the responsibility of *mamak kepala waris* is especially high compared to those of parents to their children. This is because of the duties, responsibilities, and obligation of *mamak kepala waris* as the brother of the mother to his *kemenakan* (nephews and nieces).

It is evident that the relationship between children and their father is not as close as that between children and their mother, because a father works in daylight goes back home in the evening to make a living to fulfil the needs of his kinship and children. A Minangkabau proverb states that "*Anak dipangku kemenakan dibimbing*" (meaning that even though the man is married he (husband) remains in his mother's kinship to care for and support his *kemenakan* like his own children. However, it is not uncommon or prohibited if a father does not support his children because are the responsibility of *mamak kepala waris*. As a result, the position of men in a family to his wife and children particularly low compared to the role and responsibility of *mamak* to his *kemenakan* as *mamak kepala waris*, which is exceptionally high.

The Development of the Position of Mamak Kepala Waris in High Ancestral Inheritance in the Minangkabau Community

Customary law is one of the important sources of law in the framework of developing national law that is directed towards legislation. The psychiatric elements of customary law which have the core personality of the Indonesian nation need to be incorporated into new legal regulations so that the new law is in accordance with the basis of justice and legal feelings of the Indonesians. A variety of problems that arise in the lives of these people certainly want a solution as soon as possible in order to maintain comfort and peace itself.

The legal system that applies to most Indonesians is an unwritten customary law, this is evidenced that most Indonesians still adhere to and are subject to customary law even though in certain fields of customary law the community considers that customary law is only a benchmark for behave in the customary law community itself.

In the original customary law norms of the matrilineal community that maintain the lineage is that of women or mothers. Therefore the customary inheritance law in Minangkabau is closely related to the matrilineal kinship system, namely those from one mother in origin which is calculated from the maternal line, namely the brother and sister of the mother and siblings both male and female, grandmother and her brothers, both male and female, and so on according to the lineage of women. Therefore, all children can only become heirs of their own mother, both for high heritage and for low inheritance. If the deceased is a man (her husband), then his children and widows will not be heirs to his inheritance, but the heirs will be all his nephews (children of his sister).

In the Minangkabau community, men are not arrested as descendants of succession and are not heirs of high heritage, but Minangkabau men are only entitled to inheritance (low inheritance) from their parents (mother). The Minangkabau community is not a static community group, the Minangkabau people are very dynamic and able to keep up with the times. The dynamics of the life of the Minangkabau people continue to be driven towards change and develop, both because of internal factors such as the urge to migrate to leave the area of customary law as well as external factors such as the existence of jurisprudence or judge's decisions. In principle, these changes will certainly affect the occurrence of developments in the position of *mamak kepala waris* to the heirloom of the Minangkabau community.

The development of the Minangkabau community is closely related to the change of the society, because the Minangkabau community is dynamic in nature, so that the people are capable to keep up with the current development both internally and externally. Dynamics is an impetus that develops in certain groups of society to the changes in the organization of the community. There are three elements in dynamics. First, there is a motivation derived from internal groups and external forces that encourage a change. Second, there is a change, the transition from a certain condition to another in the form of a change in all existing conditions or part of a condition. Third, the organization of the community that refers to the rules that motivate the behavior of the community.

The Minangkabau community has changed concerning the characteristics of the Minangkabau community itself. An example of the development of the Minangkabau community is the occurrences in which there are several high ancestral inheritance of their clans have been pawned and even sold or have transferred or is no longer intact. This situation is in contrast to the principle of high ancestral inheritance ownership in the Minangkabau stating that high ancestral inheritance cannot be transferred and is permanently owned by a clan, as stated in the traditional proverb "*Kabau Tagak Kubangan Tingga*" (Poespasari, 2017).

Essentially, the high ancestral inheritance (in the Minangkabau) cannot be sold and can only be pawned under emergency circumstances as mentioned previously and the process of pawning high ancestral inheritance must obtain permission from *mamak*

kepala waris. Since the concept of high ancestral inheritance is a joint right of all clan members and each clan member cannot own the inheritance individually, each clan member can make use of the right to utilize the inheritance, which is regulated by *mamak kepala waris* of the clan (Poespasari, 2017).

The influence of Islam came in Minangkabau region, so that it could influence the customary inheritance law in Minangkabau. In its gradual development, Islamic law has changed a lot in the structure of Minangkabau custom. Islam has introduced a new family structure in the form of a nuclear family which is now known to the Minangkabau people. Islam has changed the rules of Minangkabau customary law related to high inheritance and low inheritance. Islam has also changed the form of inheritance by bringing it to the outside of the *gadang* house environment and stating that both boys and girls are entitled to the inheritance of their parents.

Islam can influence the development and dynamics of the settlement of the distribution of inheritance to the Minangkabau people as in the saying, that "adat basandi syara', syara' basandi kitabullah, mangato syara' mamakai" (Syarifuddin, 1987). "adat basandi syara', syara' basandi kitabullah, adat mangato syara' mamakai" (Syarifuddin, 1987). So that it can be said that almost all Minangkabau people embrace Islam and many other Islamic perception become Minangkabau customary law. Therefore, it can be said that as a man who plays a role as a father or husband in the Minangkabau it is no longer the same as before who mostly acted as *mamak*. Relationships with children are more-tight when compared to the past.

The factor of changing the function of the *gadang* house, the *gadang* house is a feature of a large family of matrilineal kinship systems. In this case the *gadang* house is not only seen as the place of residence of the people, but is now used as a place to become the center of the government of relatives. In addition, the *gadang* house is shared by a large family, where women have the right to live there, a woman from a matrilineal line who is married or not, while her male adult must live in *Surau*. The function of the *gadang* house as the center of the unity of the government, which is located in the role of *mamak kaum bersama* with *bundo train* and *guide girls* to be prepared one time to become the successor of matrilineal descendants, recipients and maintenance of the nobility of the *gadang* house. There, *mamak* also prepares nephew to process, maintain and develop inheritance and become leaders in their environment. But with the growing number of family members, the *Gadang* house is no longer able to accommodate it. Thus there have been many shifts from every supporting element of the house of *gadang* so that by itself the function of the house of *gadang* shows a loss of one of the characteristics of the matrilineal kinship system. The *gadang* house only functions as a symbol of the matrilineal kinship system.

In Minangkabau, in the actuality, the position of high ancestral inheritance has been developing, including the change in position, function and role of *mamak kepala waris* in high ancestral inheritance. For example, in several Minangkabau areas (in Banu Hampu sub-district, Agam City and in Lubuk Kilangan sub-district, Padang City), high

ancestral inheritance depreciates because the inheritance has been sold. In general, high ancestral inheritance in the form of land is sold for construction purposes, for example for the construction of government offices, educational facilities (schools), tourism areas, hotels, for collateral of credit request at the bank (after the certificate of land is issued) and so on. The transfer of rights of high ancestral inheritance in the form of land can be performed after the discussion and consensus of the clan members and the *mamak kepala waris*.

The result of this study shows several development of the position of *mamak kepala waris* in high ancestral inheritance in the Minangkabau community. First, the occurrence of which many Minangkabau people left their customary law community (migrating to Java, Kalimantan, Aceh, Bali, etc.) This migration was not only practiced by clan members but also by *mamak kepala waris*. Therefore, with the *mamak kepala waris* leaving the community, the position, role and function of *mamak kepala waris* related to the management, supervision and control of the high ancestral inheritance depreciate as the *mamak kepala waris* no longer manages and supervises the inheritance in his hometown (Minangkabau) and no longer monitor the developments in his village. Likewise, the function of supervision and management of high ancestral inheritance cannot be performed effectively.

In addition, *semendo* marriages influence the Minangkabau community because after marriage the husband relinquishes his customary citizenship and enters his wife's traditional citizenship. In the Minangkabau community, a man functions as husbands also as "*urang sumando*" which according to the Minangkabau proverb "*urang sumando seperti abu diatas tunggul*" (meaning that if there is a wind, it will fly away) because he has no power at all. However, a Minangkabau man still functions as "*mamak*" for his *kemenakan*, the children of his sisters. His rights and position are not completely separated from his mother's kinship, so that he is responsible for taking care of his *kemenakan*, even though to his wife's relatives, he is "*urang sumando*" (Sitompul, 2017). Therefore, the respondents explained that a man as a *mamak kepala waris* is highly responsible in the clan. However, due to *semendo* marriage in which the custom of marriage proposal from the female side to the male prevailed, after getting married, the husband is under the authority of his wife's relatives and his legal position depends on the form of prevailed *semendo* marriage, so that the position of the *mamak kepala waris* starts to be disregarded. The authority of *mamak kepala waris* who was once considered important, dominant and decisive in the life of his *kemenakan*, has been shifting in terms of values of Minangkabau customary law (Mukhlisin, 2017).

The shift in the role of *mamak kepala waris* is caused by social changes that can be categorized into two things, that are first, changes that come from within the community itself and changes that come from outside the community; these two factors of change will later cause a shift in society. Change as a concept that shows the changes in social phenomena from various levels of human life, starting from the individual level to the world level. A society will definitely experience change and development as well as

the case with the Minangkabau people. Changes that occur in the Minangkabau community related to *Mamak Kepala waris* can influence the continuity of the community's social system. The extent to which changes affect the social change of the community can be seen from the extent to which these communities can withstand these social changes.

There are many developments among the roles of *Mamak Kepala Waris* who are experiencing a shift. *Mamak Kepala Waris* has been preoccupied with his personal affairs, which is taking care of and fulfilling the needs of his own children and wife. Therefore, *Mamak Kepala Waris* at this time no longer understands what the proper role is. The first cause is the age development that has changed the implementation of custom and changed the mindset and perspective of a more individualist society and second, economic inequality that makes *Mamak Kepala Waris* more focused on fulfilling family needs so that a prosperous family can be created ; and third is the decline of knowledge about this matter is a fundamental component, where knowledge of custom is the most important component to maintain the values and norms that are in the tradition of *salingka nagari*

In conclusion, there have been developments of *mamak kepala waris's* position in high ancestral inheritance in the Minangkabau community. The developments have resulted in a shift in the values of customary law in the Minangkabau. The shift in values in customary law may have an impact on the changes of the society. For example, concerning cultural values in which customs and customary provisions of ancestral heritage that are strongly believed to be true as guidance for behaving in their customary law communities, with the shift in values in legal provisions, the Minangkabau people begin to gradually leave the customary law.

In addition, it is necessary to take into account the impact of shifting values of customary law, for the preservation and development of the values of customary law, especially for the Minangkabau community. Therefore, the shift in the position, role and function of *mamak kepala waris* must be given an attention and thought by all elements, including the community, the head of clan, the local government and *mamak kepala waris*.

Conclusion

First, high ancestral inheritance refers to the properties acquired from ancestors, which is then inherited from generation to generation. High ancestral inheritance can be inherited collectively and cannot be traded, unless in emergency circumstances the heritage can only be pawned. Therefore, the position and role of *mamak kepala waris* is responsible for managing, regulating, supervising, and expanding the inheritance of the clan, especially the high ancestral inheritance for the benefit of the *kemenakan*. In addition, there is a high inheritance in the form of morals, that is the title inheritance of the clan inherited from generation to generation, which is called the custom of *sako*.

Second, there is a development of the position of *mamak kepala waris* in high ancestral inheritance in the Minangkabau community. The impact of shifting in values of customary law should be taken into consideration because it is important for the preservation and development of the values of customary law especially for the Minangkabau community.

Suggestion

There are several suggestions for further studies. First, the position of *mamak kepala waris* still needs further consideration from various elements, including the community, *ninik mamak*, and the head of clan so that the changes occurring in the community will develop the values of Minangkabau customary law. Therefore, the development in responsibility of *mamak kepala waris* must not abandon the customs of the Minangkabau community. Second, the research institutions in universities and outside universities should participate in conducting research related to the development of customary law, customary inheritance law and customary land law in Minangkabau to provide helps and ideas in the development of the laws.

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