

The Transfer of Use of High Heirloom Property in Solok District in Maqashid Al-Syariah Review

Ramadhani^{1*}, Irvan Refliandi², Syafriadi B³

^{1*} Universitas Islam Negeri Imam Bonjol Padang, Indonesia. E-mail: ramadhani291197@gmail.com

² Universitas Islam Negeri Sjech M. Djamil Djambek Bukittinggi, Indonesia. E-mail: irvanrefliandi09@gmail.com

³ Universitas Islam Negeri Sjech M. Djamil Djambek Bukittinggi, Indonesia. E-mail: syafnhila@gmail.com

Abstract: The transfer of the utilization of high inheritance assets in Nagari Muara Panas, Bukit Sundi District, Solok Regency often reaps pros and cons, because basically, high inheritance assets may not be sold or pawned except for four reasons, but the facts often show that high inheritance assets are used for the benefit of personal. This is what causes divisions among the people because of the transition from the utilization of the high inheritance property. The purpose of this study was to analyze the Maqashid al-Shariah review of the transfer of utilization of high inheritance assets in Nagari Muara Panas, Solok Regency. This type of research is field research. Data collection techniques in this study were carried out through interviews and documentation. The results of this study indicate that the form of diversion of the use of high heirlooms that occurred in Nagari Muara Panas, Bukit Sundi District, Solok Regency was carried out by pawning and trading by owners of high heirlooms for reasons of personal gain. Furthermore, Maqashid al-Shariah's review of the transfer of utilization of high inheritance assets in Nagari Muara Panas is permissible in order to preserve the soul in the form of medical treatment and preserve the mind in the form of educational expenses, all of which can be categorized at the dharuriyyat level. and this is at the level of tahsiniyyat.

Keywords: Heirloom Transfer; Inheritance Management; Maqashid Review; Solok District

1. Introduction

High heirloom property in Solok District holds significant historical and cultural value for the Minangkabau community. This property encompasses not only physical assets such as land or buildings but also reflects the identity, heritage, and socio-cultural continuity of the local community. As a symbol of ancestral wealth, high heirloom property denotes the social status and honor of a family. Its management reflects the customary principles that have been passed down through generations, making it more than just property but also a guardian of tradition and ancestral values. Socially, high heirloom property often serves as a source of pride and collective responsibility, binding family and community members in strong and lasting ties. Thus, high heirloom property possesses not only economic value but also profound moral and spiritual worth, contributing to the stability and unity of Minangkabau society.

The passage of time and evolving social dynamics, there arises an urgent need to revisit the rules and practices related to the use of high heirloom property. Modernization, urbanization, and changing societal patterns bring new challenges in the preservation and management of high heirloom property. Many aspects of customary law may no longer be relevant or sufficient to address contemporary issues. For instance, population growth and increasing economic needs often trigger conflicts in the distribution and use of high heirloom property. Additionally, population migration from rural areas to cities and the influence of globalization threaten the preservation of traditional values. Therefore, efforts are needed to harmonize customary law with modern developments to ensure the wise and sustainable management of high heirloom property. These efforts must also consider the principles of Maqashid Al-Syariah, which aim to achieve public welfare and prevent harm, so that high heirloom property can continue to benefit both present and future generations.

The process of transferring the use of high heirloom property in Solok District is meticulously regulated by Minangkabau customary law, deeply rooted in tradition and ancestral values. The first step in this process is a family deliberation, involving all extended family members who have rights

to the heirloom property.¹ This deliberation aims to reach a collective agreement on how the property will be used or transferred. In this discussion, every family member is given the opportunity to express their opinions and aspirations, ensuring that the decision truly reflects the collective will. This deliberative process is crucial not only for reaching a consensus but also for strengthening family bonds and maintaining harmony within the extended family.

Once the family deliberation reaches an agreement, the next step is to obtain approval from the customary leader or penghulu adat.² The penghulu adat plays a central role in upholding customary law and ensuring that any transfer of high heirloom property is conducted in accordance with accepted rules and norms. The approval from the penghulu adat acts as verification that the transfer process complies with legitimate and community-accepted customary provisions. Additionally, other customary figures are often involved in this process as witnesses, providing additional legitimacy to the decision. The entire process is well-documented to avoid future disputes and to ensure the protection of the rights of all involved parties.

From the perspective of Maqashid Al-Syariah, which aims to achieve public welfare and prevent harm, the process of transferring high heirloom property in Solok District strongly aligns with these principles.³ First, the principle of property protection is evident in the careful management to ensure that the heirloom property is wisely managed and not misused. The deliberation and customary approval prevent unilateral decisions that could harm any party. Second, by involving all family members in the deliberation, this process ensures that the rights of descendants are respected and fairly inherited, in line with the principle of protecting progeny in Maqashid Al-Syariah. Third, with the role of the penghulu adat and other customary figures, this process aims to prevent conflicts and harm that may arise from property transfer, reflecting a clear effort to achieve public welfare. Furthermore, by maintaining family and community harmony, this process also supports the protection of life and intellect, avoiding disputes that could cause emotional and mental harm. Overall, the process of transferring the use of high heirloom property in Solok District not only reflects justice and welfare in the context of customary law but also aligns with the principles of Sharia, making it an exemplary model for managing ancestral property in the modern era.

Investigating the mechanism of transferring the use of high heirloom property in Solok District from the perspective of Maqashid Al-Syariah aims to evaluate the conformity of these practices with the Sharia objectives, which include the protection of religion, life, intellect, progeny, and property. This research is highly significant as it provides deep insights into the interaction between customary law and Islamic law in the context of managing high heirloom property. By understanding how these two legal systems can complement each other, this research can offer recommendations for the community and policymakers to improve the practices of transferring high heirloom property to be more in line with the principles of Maqashid Al-Syariah. This is expected to help maintain social harmony, protect the rights of descendants, and ensure that the management of inherited property is not only economically beneficial but also advantageous for all parties involved. Additionally, this research contributes to the academic literature related to the study of Maqashid Al-Syariah in the local Indonesian context, which currently requires substantial development. Thus, the results of this research can serve as an important reference for academics, legal practitioners, and the general public in understanding and implementing Sharia principles in the management of high heirloom property.

¹ Elfia Elfia, Meirison Meirison, and Qasim Muhammadi, 'Distribution of Heritage Association of Harta Pusaka Tinggi And Harta Pusaka Rendah in Padang Pariaman', *Al-Ahkam* 30, no. 1 (30 April 2020): 39, <https://doi.org/10.21580/ahkam.2020.30.1.5273>.

² Arizon Ridwan, Zulkifli Zulkifli, and Amri Effendi, 'PERALIHAN HARTA PUSAKA TINGGI MENURUT HUKUM ADAT DAN HUKUM ISLAM (Studi Kasus Di Jorong Nan IX Nagari Salimpaung)', *JISRAH: Jurnal Integrasi Ilmu Syariah* 3, no. 2 (31 August 2022): 227, <https://doi.org/10.31958/jisrah.v3i2.4946>.

³ Purnama Hidayah Harahap et al., 'Religious Court Decisions Regarding the Revocation of Grant (Hibah) in the Perspective of Islamic Jurisprudence', *Al-Manahij: Jurnal Kajian Hukum Islam*, 17 November 2023, 215–32, <https://doi.org/10.24090/mnh.v17i2.9767>.

2. Method

The research will adhere to the principles of research ethics, including data validity, confidentiality of information, and respect for research participants. Permission and approval will be obtained from the authorities before starting data collection. This study is expected to provide deeper insights into the dynamics of determining the nasab of children outside marriage in the Islamic legal system in Indonesia. The results of the study can make a significant contribution to the development of family law and religious court policies, as well as strengthen the understanding of the interaction between religious and legal norms in the current Indonesian social context. This research is a normative legal study, with the primary data sources obtained from books, journal articles, and media news. As a legal research project grounded in library research, the data collection process involves an extensive review of materials related to the research issues, which are then categorized according to the sub-topics in the paper. This method ensures a comprehensive understanding of the subject matter by systematically organizing information. The initial phase of data collection includes identifying and selecting relevant literature that addresses the research questions. These sources are meticulously read and analyzed to extract pertinent information. Once gathered, the data is organized into categories that align with the study's framework, allowing for a structured analysis. This methodical approach not only aids in managing the vast amount of information but also helps in identifying patterns and themes that are crucial to the research. By consolidating data from various scholarly and media sources, the study establishes a robust foundation for in-depth analysis.

The subsequent step involves a qualitative analysis of the collected data. This process begins with a descriptive analysis, where the data is thoroughly examined and detailed. Following this, a comparative analysis is conducted to juxtapose the findings with other relevant data, which helps in identifying similarities, differences, and unique insights. This comparison is essential for understanding the broader context and implications of the research findings. The final phase of the analysis is the synthesis and conclusion, where the insights gained from the descriptive and comparative analyses are integrated to form coherent conclusions. This research emphasizes content analysis, given that the primary data is derived from the study of Islamic legal philosophy. By focusing on content analysis, the research delves into the nuanced interpretations and implications of Islamic legal texts and principles. The ultimate goal of this analysis is to provide a comprehensive understanding of how Islamic legal philosophy supports the notion that former prisoners have the right to become leaders. This approach ensures that the conclusions drawn are well-founded and reflective of the philosophical underpinnings of Islamic law, offering valuable insights into the intersection of legal rights and leadership within an Islamic framework.

3. Analysis or Discussion

3.1. Review of Maqashid Al-Syariah

Maqashid al-Shari'ah is rooted in two fundamental Arabic terms: "maqashid," derived from the root "qashada," which means intention or purpose, and "shari'ah," linguistically referring to "ilalima," denoting the path leading to a water source, metaphorically symbolizing the pathway to life's essential source. According to Mardani, maqashid al-Shari'ah encompasses the intentions of al-Shari' (Allah SWT and the Prophet PBUH) in establishing Islamic law.⁴ These intentions are deeply embedded in the foundational principles drawn from the Quran and the Sunnah (teachings of the Prophet), which serve as the bedrock of Islamic jurisprudence. The maqashid al-Shari'ah principles serve as guiding lights within the Islamic legal framework, directing legal rulings and frameworks that aim to protect and promote fundamental aspects such as religion, life, intellect, progeny, and

⁴ Irvan Refliandi and Mona Eliza, 'Analisis Putusan Hakim Pengadilan Agama Solok Tentang Asal Usul Anak Dan Relevansinya Dengan Maqashid Syariah', *Perwakilan: Journal of Good Governance, Diplomacy, Customary Institutionalization and Social Networks* 1 (17 November 2023): 29–37, <https://doi.org/10.58764/j.prwkl.2023.1.38>.

property.⁵ Beyond mere legal prescriptions, maqashid al-Shari'ah emphasizes broader objectives aimed at enhancing societal welfare, fostering justice, and encouraging ethical conduct. These principles ensure that Islamic law not only addresses individual acts but also strives to create a just and harmonious society where the well-being of individuals and communities is safeguarded. Understanding maqashid al-Shari'ah is essential for comprehending the deeper philosophical and ethical underpinnings of Islamic law. It provides insight into how legal rulings are not isolated prescriptions but are interconnected with broader moral and social goals. By adhering to maqashid al-Shari'ah, Islamic legal scholars and practitioners can navigate contemporary challenges while remaining true to the overarching objectives of promoting human welfare, justice, and moral integrity. Therefore, maqashid al-Shari'ah serves as a pivotal framework that ensures the relevance and applicability of Islamic law in diverse contexts, fostering a balanced approach to governance and societal well-being.

According to Wahbah al-Zuhaili, maqashid al-Shari'ah encompasses the values and objectives inherent in most, if not all, of its laws. These goals and objectives are considered the essence and purposes of Islamic law, as ordained by the legislator (al-shaari) in each legal provision. Central to this understanding is the concept of benefit (maslahah), which encompasses everything necessary for human sustenance and the fulfillment of life. These benefits are categorized into dharuriyat (essential needs), hajiyat (complementary needs), and tahsiniyat (luxuries or refinements). The benefits derived from Islamic Sharia in upholding its objectives (Maqashid al-Shari'ah) are diverse and operate on different levels, not confined to a single dimension. They are designed to ensure the preservation and promotion of vital aspects such as religion, life, intellect, progeny, and property within society. This multi-tiered approach underscores the dynamic and comprehensive nature of Islamic law, which seeks to address human needs and societal challenges across various domains. By acknowledging these diverse levels of benefits, Islamic jurisprudence adapts and evolves to meet contemporary contexts while remaining rooted in the overarching principles of justice, welfare, and moral integrity as outlined by Maqashid al-Shari'ah.⁶

Dharuriyat represents the foundational and indispensable aspects within Islamic law that are deemed essential for human well-being and societal order. One of the paramount dharuriyat is the protection and preservation of property rights, which Islam regards as fundamental to ensuring livelihoods and the legitimacy of economic activities. This emphasis underscores Islam's commitment to upholding justice and fairness in all transactions and economic engagements, thereby safeguarding the basic needs and rights of individuals and communities. Moving to hajjiyat, these are the supplementary needs that support and reinforce the dharuriyat. For instance, while the protection of property ensures the stability and integrity of economic life, the establishment of contracts and agreements becomes necessary (hajjiyat) to facilitate and regulate transactions effectively.⁷ These legal frameworks not only support economic activities but also ensure that interactions among individuals and businesses are conducted in a manner that respects rights and obligations, thereby fostering trust and reliability in commercial dealings. Tahsiniyat, the third level, encompasses matters that elevate and perfect both dharuriyat and hajjiyat. This includes promoting ethical conduct and good business practices, which contribute to the moral refinement of society. By emphasizing the importance of ethical behavior in business and personal transactions, Islamic law aims to cultivate a community that prioritizes integrity, honesty, and fairness in all aspects of life. These values not only enhance individual character but also strengthen social cohesion and harmony, aligning with the overarching objectives of Maqashid al-

⁵ Rizky Alikhsan and Endri Yenti, 'Minangkabau Ethnic Women and the Shadows of Patriarchy Perspective of Customary Law and Islamic Law', *Mazahibuna*, 1 December 2023, <https://doi.org/10.24252/mazahibuna.vi.39207>.

⁶ Suud Sarim Karimullah and Lilyan Eka Mahesti, 'TINJAUAN MAQASHID AL-SYARIAH TERHADAP PERILAKU BERUTANG MASYARAKAT DESA SUKAWANGI PADA MASA PANDEMI COVID-19', *Jurnal Peradaban dan Hukum Islam* 4, no. 1 (27 March 2021): 79–98, <https://doi.org/10.29313/tahkim.v4i1.7274>.

⁷ Muhammad Mahsus, 'TAFSIR KONTEKSTUAL DAN EKSISTENSI PEREMPUAN SERTA IMPLIKASINYA TERHADAP PENYETARAAN BAGIAN WARIS LAKI-LAKI DAN PEREMPUAN', *JIL: Journal of Islamic Law* 1, no. 1 (27 February 2020): 25–44, <https://doi.org/10.24260/jil.v1i1.19>.

Shari'ah. The protection of property is considered vital not only for economic stability but also for the preservation of religious integrity. Islam teaches that damage to property can impact one's spiritual purity and religious devotion, highlighting the interconnectedness between material well-being and spiritual fulfillment. For instance, while engaging in muamalah (transactions), observing Friday prayers (salat al-jumu'ah) takes precedence as a primary religious duty over commercial activities. This prioritization underscores the importance of spiritual obligations in guiding daily life and ensuring that economic pursuits remain grounded in ethical and moral considerations. In summary, Maqashid al-Shari'ah provides a comprehensive framework that integrates legal, ethical, and spiritual dimensions to promote human welfare and societal harmony. By prioritizing dharuriyat, hajjiyat, and tahsiniyat, Islamic jurisprudence aims to establish a just and equitable society where individuals are not only protected in their rights but also encouraged to uphold ethical standards and fulfill their religious duties. This holistic approach ensures that Islamic law remains relevant and adaptive in addressing contemporary challenges while upholding the timeless values of justice, compassion, and righteousness.⁸

Another example illustrating the importance of property integrity within the framework of Maqashid al-Shari'ah is the impact of damaged property on essential matters, such as the validity of religious practices.⁹ For instance, using stolen items, like sarongs, in prayers can compromise the spiritual integrity of worship. Al-Syathibi delves into how Islamic law safeguards property in accordance with the objectives of Maqashid al-Shari'ah. This involves legal provisions sanctioned by Allah SWT that prohibit theft and prescribe penalties for it, prohibit deception and fraud in business transactions, forbid usury, condemn consuming others' property deceitfully, and mandate compensation for damaged goods.¹⁰ These provisions aim to uphold the sanctity and preservation of property rights within Islamic jurisprudence. By enforcing these regulations, Islamic law not only ensures fairness and justice in economic dealings but also reinforces ethical conduct and respect for property ownership. This comprehensive approach underscores Islam's commitment to promoting societal harmony and individual responsibility, aligning legal principles with the broader goals of fostering integrity, equity, and moral rectitude in all aspects of life.

3.2. An Overview of High Inheritance

High inheritance in many cultures represents more than just material wealth; it embodies a collective identity and historical continuity passed down through generations. This communal property, managed traditionally by the mamak or eldest male in the kinship group, holds profound significance in maintaining familial and social cohesion. The process of transferring authority over high inheritance, known as "pusako basalin," underscores the intricate web of customs and norms that governs these assets. Pusako, often consisting of tangible assets like agricultural lands, homes, and natural resources such as forests and ponds, carries symbolic weight due to its role in sustaining livelihoods and preserving cultural heritage. The decision-making authority of the mamak ensures continuity and stability within the community, balancing the preservation of ancestral legacies with the practicalities of communal living.¹¹

In customary law, high inheritance is distinct from livelihood property, which includes assets accrued through the joint efforts of spouses during their marriage. While livelihood property reflects contemporary economic dynamics and contributions within the household, high inheritance remains rooted in historical and cultural values that prioritize communal ownership and

⁸ Tomasz Basiuk, 'Menachem Kaiser's Quest for Family Heirloom and the Aftermath of Historical Trauma', *Porównania* 34, no. 2 (29 December 2023): 53–62, <https://doi.org/10.14746/por.2023.2.4>.

⁹ Fathul Mu'in et al., 'THE PRACTICE OF SUBSTITUTE HAIRS IN INDONESIAN RELIGIOUS COURT: Restricted Interpretation', *Al-Ahwal: Jurnal Hukum Keluarga Islam* 16, no. 1 (30 June 2023): 141, <https://doi.org/10.14421/ahwal.2023.16107>.

¹⁰ Jules Naudet, Adrien Allorant, and Mathieu Ferry, 'Heirs, Corporate Aristocrats and "Meritocrats": The Social Space of Top CEOs and Chairmen in India', *Socio-Economic Review* 16, no. 2 (1 April 2018): 307–39, <https://doi.org/10.1093/ser/mwx035>.

¹¹ Daniel Butt, 'Restitution Post Bellum: Property, Inheritance, and Corrective Justice', *Journal of Applied Philosophy* 36, no. 3 (July 2019): 357–65, <https://doi.org/10.1111/japp.12319>.

stewardship. The rules governing high inheritance, as outlined by scholars like Ibrahim, emphasize community consensus and adherence to traditional practices. Before transferring ownership outside the household, it is customary to notify and allow family members the opportunity to acquire or retain these assets, preserving intra-family cohesion and ensuring equitable distribution. This approach not only upholds the sanctity of communal property but also fosters mutual respect and solidarity among kinship groups. Thus, the management and transfer of high inheritance reflect a delicate balance between honoring ancestral traditions and adapting to contemporary social realities, ensuring the sustainability and integrity of communal assets for future generations.¹²

In traditional contexts,¹³ the handling of high inheritance entails adherence to specific customs and protocols that dictate its management and transfer within the community. Failure to follow these procedures can result in the invalidation of transactions or agreements by those authorized to oversee such property, depending on their hierarchical standing within the community structure. For instance, if high inheritance has not been formally separated from the collective ownership within the household and is erroneously pledged or transferred to individuals outside the immediate family or household unit, these actions are considered improper under customary law. Such missteps highlight the critical importance of respecting established norms to uphold the integrity and rightful stewardship of communal assets.

Customary regulations place strict prohibitions on actions that circumvent the authority of household members in matters concerning high inheritance.¹⁴ It is expressly forbidden for transactions involving these assets to bypass the consent or oversight of household members who hold the rightful authority to manage them. Even if monetary transactions have been completed with individuals outside the household,¹⁵ the responsibility remains with the recipient to return any funds received and restore possession of the property to the designated household member authorized to oversee its management. This ensures that decisions regarding high inheritance are made in accordance with familial consensus and uphold the principles of equity and communal responsibility that define these assets.¹⁶ The governance and transfer of high inheritance within customary frameworks are guided by intricate rules designed to maintain community harmony and preserve the equitable distribution of communal resources. Upholding these rules requires a steadfast commitment to hierarchical protocols and a deep respect for the authority vested in household members to manage communal property. By adhering to these traditions, communities safeguard their ancestral legacies and sustain the cooperative management of resources that underpin their collective well-being and cultural heritage over generations.

3.3. Mechanism for the Transfer of Cultural Heritage Utilisation in Solok Regency

The forms of transfer of the use of high inheritance in Nagari Muara Panas, Bukit Sundi District, Solok Regency are traded and mortgaged. According to Minangkabau customary rules, high inheritance cannot be traded but can be mortgaged based on four things. High inheritance property should not be pawned if not for the four provisions regulated in Minangkabau customs, apart from

¹² Fatya Pramesta Cahyani and Muhammad Ya'kub Aiyub Kadir, 'Guardianship Supervisory in Indonesia: A Comparative Analyzes of Baitul Mal Aceh and the Heirloom Board', *Al-Ahkam* 33, no. 2 (31 October 2023): 231–54, <https://doi.org/10.21580/ahkam.2023.33.2.17080>.

¹³ Triana Ángel Natalia and Burkart Stefan, 'Youth in Livestock and the Power of Education: The Case of "Heirs of Tradition" from Colombia, 2012–2020', *Journal of Rural Studies* 97 (January 2023): 405–15, <https://doi.org/10.1016/j.jrurstud.2022.12.032>.

¹⁴ Jürgen Schlumbohm, 'Stepfamilies, Inheritance, and Living Arrangements in a Rural Society of Germany', *The History of the Family* 27, no. 3 (3 July 2022): 480–92, <https://doi.org/10.1080/1081602X.2021.2003841>.

¹⁵ Merve Tokgöz et al., 'The Potential of Microalgal Sources as Coating Materials: A Case Study for the Development of Biocompatible Surgical Sutures', *Letters in Applied Microbiology* 76, no. 8 (2 August 2023): ovad086, <https://doi.org/10.1093/lambio/ovad086>.

¹⁶ Clayton Winters-Michaud et al., 'Land-use Patterns on Heirs' Property in the American South', *Applied Economic Perspectives and Policy* 46, no. 1 (March 2024): 154–68, <https://doi.org/10.1002/aep.13354>.

the above provisions, high inheritance must not be pawned by tungganai or niniak mamak in the gadang house. Cases that occur in the field of high inheritance mortgage are not for reasons that have been determined customarily. The practice of pawning and buying and selling high inheritance assets that occurred in Nagari Muara Panas, Bukit Sundi District, Solok Regency was known by the niniak mamak and pawnbrokers in the tribe. The practice of pawning and buying and selling high inheritance is still carried out even though it does not meet the requirements contained in the Minangkabau customary rules such as Rumah Gadang Katirisan, Gadih Gadang Alun Balaki, Mayiek Tabujua Diateh Rumah, Mambangik Batang Tarandam. This happens because the practice of pawning and buying and selling high inheritance is the last way that can be done to meet very urgent needs (Dharuriyat).

The forms of cases of diversion of the use of high inheritance that occurred in Nagari Muara Panas, Bukit Sundi District, Solok Regency, there are already people who sell and pawn high inheritances, people who have diverted the use of high inheritances. Examples of cases that the author encountered in the field of perpetrators who mortgaged high property that were diverted from their use such as the use for medical expenses, education and home renovation were three perpetrators, namely. The case in which the author interviewed Mrs. RL, a Tanjuang tribe, who mortgaged a high inheritance in the form of a plot of rice fields obtained information that, for education and repairing houses. (There is no money when the child is in school so that the child does not drop out of school, finally based on the relationship with the mamak, we sell the inheritance we have and after that the money is a little excess so that it is still useful, finally we do it for the renovation of the house which is also abandoned). Mrs. RL sold a high inheritance in the form of a plot of rice fields to Mrs. NR in the form of a plot of rice fields at a price of Rp. 17,000,000, in 2019 with witnesses Adrian and Syafril and Indrawarman.

The boundaries of the land are the north with Santi, the south with Siman Pono Kayo, the west with N.Dt. Malano Basa, the east with Roslaini. The mechanisms that are passed in the process of buying and selling high inheritance include: the seller holds a deliberation with the niniak mamak and the RL people, from the deliberation an agreement is reached for the ability to sell high inheritance, and the signing of the agreement will not demand in the future, then the pawnbroker looks for a person who will receive a plot of rice and determines the price agreement to hold the pawn, ending with the signing of the sale and purchase letter between RL and NR, as well as witnesses present in the process along with the signatures of the parties who have the land boundary.

Based on the author's interview with NR, information was obtained that the background was that I received a mortgage from liana for education and home repairs. As for the problems that occurred and before they could be mortgaged, in the pawn letter it was sounded that only borrowing and borrowing, so that when it was taken to the other family they only saw in terms of borrowing instead of pawning or selling, so that it was not too difficult and became a problem in the house with the other family, and in fact the property really wanted to be sold in the future. After being traced, it turned out that the high inheritance that was pawned with the intention of selling was not a high inheritance belonging to his tribe but a high inheritance belonging to other people who had no redemption from the owner because the family had become extinct.

Furthermore, the second case that the author encountered in the field is: Mrs. with the initials AS the Caniago tribe sold a high inheritance to Mrs. SY in the form of a plot of land covering an area of 20 m² (worth ± Rp. 15,000,000,-) in 2017. According to the results of the negotiations of the elders at that time, there were two people who did not agree with me to sell the high inheritance, because they thought that their rights to the land were also related to the land together. From some people who disagreed, finally the tenants in the house looked for a way out by dividing the land so that there would be no disputes, which in the end reached an agreement to sell the inheritance land to repair the mother's house. The mechanism of the sale of the high inheritance is: through deliberation, a wholehearted agreement was obtained by the US, then the signing of an agreement not to sue in the future, the signing of a sale and purchase agreement between the seller (US) and the buyer (SY), as well as witnesses (Mansur and N. Dt. Malano Bosa) who were present in the process along with the signatures of the parties who have land boundaries (Jarana, Roslina, Kamisah and Nasarwin). In the sale of this high inheritance, the one who bought it was Mrs. SY

because she knew that Mrs. SH was in need of money to repair her house

As for the conditions for being allowed to sell high inheritance if it is in accordance with the provisions of Minangkabau customs, for example, such as the gadang katirisan house, can be used for education costs, gadih gadang rando talatak, for example, nephews or relatives make mistakes that can bring disgrace to the people, such as violating the twenty law, so that the pride of the people is not dropped by other tribes and communities. Because in the law the person who violates the law is abandoned or thrown away throughout the custom before filling in the error. From here, it is permissible to sell or pawn high inheritance and finally to redeem the shame, you have to pay to other niniak mamak.¹⁷ Mayiek tabujua is a house, meaning a group or nephew gets a disaster, for example, a disaster beyond human ability. For example, there is no cost for the management of the funeral procession, the debt during life is also too much. Mambangik batang tarandam means to appoint a leader or sako, both in religion, state and national. High boeh inheritance is mortgaged or sold if it is in accordance with the provisions of Minangkabau customs. The utilization of high inheritance that occurred in Nagari Muara Panas, Bukit Sundi District, Solok Regency has not been in accordance with the applicable rules, because there are many traditional stakeholders who do not understand customary rules and twist the customary rules themselves, so they take advantage of their positions to do so.

In general, traditional stakeholders often struggle to grasp the intricacies of transferring the use of high inheritance, despite understanding its prohibition. Despite this understanding, some proceed with such transfers out of ignorance, while others do so reluctantly due to fear or pressure from their nephews. This dilemma is reflected in the Minangkabau proverb: "Kamanakan barajo ka mamak Mamak barajo ka pangulu barajo ka mufakaik Mufakai barajo ka nan bana Nan bana barajo manuruik alua jo patuik," emphasizing the hierarchical transfer of responsibilities from generation to generation, starting from the maternal uncle (mamak kamanakan) to the mamak.

High inheritance, whether in the form of sako (individual property) or pusako (communal heirloom), distinguishes the rights of authority and usage based on gender roles. Specifically, men traditionally hold authority over sako, while women possess the right to utilize high inheritance. However, any transfer of high inheritance usage requires careful deliberation and consensus among key stakeholders, including the head of the family, dubulang (village leader), community representatives, and relevant authorities. Importantly, high inheritance cannot be bartered or sold, aligning with cultural norms that emphasize honoring the hard work and foresight of ancestors who diligently managed and preserved these assets over generations.

According to Syahrial Dt. Sati, the management of high inheritance within traditional communities underscores a nuanced approach. Syahrial emphasized that under certain circumstances, such as when a crisis threatens the survival of the tribe, the collective use or even trading of high inheritance becomes permissible. He explained that this decision is only considered after all other community resources have been exhausted, with high inheritance recognized as the last resort to ensure the tribe's continuity. Syahrial underscored the importance of consensus-building among stakeholders, including family heads, village leaders, and community representatives, in determining the appropriateness of such actions. He noted that any transaction involving high inheritance adheres strictly to customary norms, ensuring transparency, fairness, and collective agreement. Prior to making any decision, extensive deliberations are conducted to explore alternatives and assess the long-term implications for the community. The proceeds from such transactions are used to address the crisis at hand, aiming to restore stability and safeguard the welfare of all community members. Syahrial emphasized that this approach reflects a commitment to community solidarity and responsible stewardship of communal assets, navigating the delicate balance between preserving cultural heritage and pragmatically addressing contemporary challenges within traditional societies.

According to Sutan Mudo, in Islam, a comprehensive regulatory framework encompasses all aspects of life, ensuring actions are aligned with religious principles and ethical standards. High

¹⁷ Wening Purbatin Palupi, 'Peran Harta Dalam Pengembangan Aktivitas Bisnis Islami', *STAI At-Tahdzib.Jombang* Volume 1 Nomor 2 (2013).

inheritance practices, such as waqf (endowment), exemplify mechanisms that allow for the perpetual benefit of descendants, even beyond direct heirs. For instance, properties can be endowed to generate rental income, supporting future generations indefinitely. However, neglecting or omitting to inform nephews about their rightful inheritance goes against Islamic principles. This oversight can lead to their rights being undermined or appropriated, especially if they assume leadership roles like datuak (community leader) over extended periods without acknowledgment of their entitlements. Such practices contradict Islamic ideals of equity and transparency, which emphasize clear communication and fair distribution of assets to uphold communal welfare and ensure justice for all members of the community.

According to Malin Ameh, in times of emergencies, when the only recourse is to pawn or sell high inheritances, these actions are considered permissible (mubah) under Islamic jurisprudence. However, in the context of contemporary society, if the intention behind such transactions is to alleviate financial hardship or address pressing needs, there is also the option to seek assistance through charitable donations to mosques or community funds. Yet, if there are no viable alternatives available, engaging in such transactions becomes impermissible, as it denies future generations the opportunity to benefit from their rightful inheritance. Emergencies, which permit actions that would otherwise be prohibited, strictly justify these actions only out of necessity. Therefore, participating in pawning, which essentially equates to selling, should be approached with caution and in adherence to Islamic ethical principles, ensuring the preservation and rightful distribution of familial inheritances for the collective benefit and welfare of the community.

It seems like you're discussing a specific case of the transfer of high inheritance in Nagari Muara Panas, Bukit Sundi District, Solok Regency. This case occurred due to an economic crisis that compelled the high inheritance to be pawned and traded, contrary to the customary provisions of Minangkabau. According to the author's findings in the field, the circumstances under which high inheritance can be traded include the termination of the lineage from the last male descendant in the tribe. Additionally, other conditions must be fulfilled, such as permission from the village head, consent from the family and ninik mamak (elders), and clarity regarding the status of the high inheritance. In accordance with customary rules, the sale of high inheritance must proceed through a consensus deliberation process among tribal members. This agreement needs approval from all sasuku (tribal members) and heirs involved. The case in Nagari Muara Panas, however, did not meet these criteria because the male lineage was not terminated. Therefore, the conditions necessary for the sale of high inheritance were not satisfied in this instance. This highlights the importance of adhering to customary norms and legal frameworks to ensure the proper management and preservation of high inheritance within traditional communities.

Even though it is customary to sell high inheritance if it has met the conditions for it to be allowed to sell high racial inheritance,¹⁸ it must go through a consensus deliberation process first because the custom arises because of a consensus,¹⁹ but the case of buying and selling high inheritance that occurred in Nagari Muara Panas, Bukit Sundi District, Solok Regency did not meet the terms and conditions in which it is permissible to sell high inheritance. People in the village or people in the tribe have the right to prohibit or cancel people who sell or pawn high inheritance if they do not follow the custom.²⁰ If the act is also carried out, by not wanting to heed the customary prohibition, then the work of the people on both sides, both the seller and the buyer, is declared wrong and null and void. If people in the village or in the tribe know but do not prohibit the act of the person who sells the pawn of high inheritance, then in the end all the friends of the person who likes to sell the pawn outside the customary provisions, will bring trouble to the villagers or to the tribe, because

¹⁸ Yong Kyu Gam et al., 'How Inheritance Law Affects Family Firm Performance: Evidence from a Natural Experiment', *Pacific-Basin Finance Journal* 59 (February 2020): 101243, <https://doi.org/10.1016/j.pacfin.2019.101243>.

¹⁹ Husni A., 'Pembagian Waris Harta Pusaka Rendah Tidak Bergerak Dalam Masyarakat Minangkabau Kenagarian Kurai', *The Indonesia Journal of Islamic Family Law*. Volume 06 Nomor 02 (2016).

²⁰ Khairuddin Hasballah, Dhaiful Mubarrak, and Saddam Rassanjani, 'Disparity in Judge Decisions in Resolving Rad Inheritance Disputes: Case Study at the Sharia Court in Banda Aceh City', *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (30 December 2023): 249, <https://doi.org/10.22373/ujhk.v6i2.8612>.

they have lacked the property in the tribe.

4. Maqashid al-Syariah on the Transfer of Utilisation of High Cultural Heritage

The concept of high inheritance management within the framework of Maqasid al-Shariah reveals a structured approach to understanding its utilization across various needs. At the primary level, known as al-dharuriyah,²¹ the necessity for pawning or selling high inheritance arises in critical situations where essential human needs must be met. For instance, funds may be required urgently for education expenses or medical emergencies.²² These instances are justified under Shariah when they directly contribute to preserving life and well-being, aligning with the overarching goal of maintaining human benefit as mandated by Islamic principles. This level underscores the importance of prioritizing basic survival needs and ensuring that resources are utilized responsibly to safeguard the welfare of individuals and families.²³

Moving to al-hajiyah, the secondary level of needs encompasses those that enhance the quality of life and facilitate societal stability. In this context,²⁴ decisions to pawn or sell high inheritance might be made to finance endeavors that contribute to communal well-being, such as property maintenance or investments in community leadership. Such decisions typically involve consensus-building among family members and community stakeholders to ensure that these transactions serve broader communal interests without compromising ethical standards. This level emphasizes the importance of responsible stewardship of communal assets, ensuring that decisions are guided by principles of equity, fairness, and communal welfare.

At the al-tahsiniyah level, which pertains to tertiary needs related to cultural enrichment and societal aesthetics, decisions regarding high inheritance might involve expenditures for events like weddings or cultural celebrations. While these needs are less critical than those at the primary and secondary levels, they contribute to enhancing the social fabric and cultural identity of communities. Thus, decisions to pawn or sell high inheritance at this level are guided by considerations of preserving cultural heritage and promoting social cohesion, ensuring that such expenditures do not undermine essential needs or ethical guidelines prescribed by Shariah.²⁵

The purpose of the Maqashid Sharia above which is known as Al-Dharuriyyat Al-Khamsah (five main things that must be maintained),²⁶ Furthermore, the review of Maqashid al-Syariah on the transfer of the use of high inheritance in Nagari Muara Panas, Bukit Sundi District, Solok Regency is permissible in order to preserve the soul (hifzh al-nafs) in the form of treatment, because it maintains the right to live honorably and preserves the soul so as to avoid acts of persecution and avoid limbs From the act of injuring limbs and maintaining intellect (hifzh al-"aql) in the form of education costs in order to ensure the intellect from a damage that causes a person concerned to

²¹ Christine Fertig, 'Stem Families in Rural Northwestern Germany? Family Systems, Intergenerational Relations and Family Contracts', *The History of the Family* 23, no. 2 (3 April 2018): 196–217, <https://doi.org/10.1080/1081602X.2016.1265571>.

²² Gam et al., 'How Inheritance Law Affects Family Firm Performance'.

²³ Harnides Harnides, Syahrizal Abbas, and Khairuddin Hasballah, 'Gender Justice in Inheritance Distribution Practices in South Aceh, Indonesia', *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (20 June 2023): 1293, <https://doi.org/10.22373/sjhk.v7i2.16688>.

²⁴ Nana Kartika, 'ANALYSIS OF LEGAL ASPECTS ON SALE AND PURCHASE OF HIGH HERITAGE LAND DISPUTES', *International Journal of Economic, Technology and Social Sciences (Injects)* 2, no. 1 (9 April 2021): 75–80, <https://doi.org/10.53695/injects.v2i1.230>.

²⁵ Zainuddin Mappong and Lili Lili, 'Right to Self Submission to Western Inheritance Law for the Heirs Of Islamic Religion Whom the Property Leaver Has Different Religion', *Journal of Law and Sustainable Development* 11, no. 2 (17 July 2023): e423, <https://doi.org/10.55908/sdgs.v11i2.423>.

²⁶ Fertig, 'Stem Families in Rural Northwestern Germany?'

be useless in the community, and if education is not given to him can cause a crime, and can even become garbage in society which can all be categorized in the rank of dharuriyyat.²⁷

Then it is also permissible in the framework of maintaining offspring (hifzh al-nasl) in the form of making a house, so that it can survive and develop healthily as well as the head of the head which aims to appoint a leader in a tribe for a place of grievances for the people led by the head and guide his nephews to a better path which is in the rank of hajjiyat. The transfer of the use of high inheritance is not allowed in order to maintain offspring (hifzh al-nasl) in the form of male marriage expenses, because in Islam so that a person who wants to maintain his offspring is enough to marry, if he does not have the ability to give a dowry, then the dowry is enough to be an iron ring which in the end raises the offspring in this case is only in the tahsiniyyat rank.²⁸

The transfer of property rights to high inheritances that occurred in Nagari Muara Panas, Bukit Sundi District, Solok Regency by means of mortgage and sale must meet the principles and conditions of pawn and sale according to Islamic law. The sale and purchase of high inheritance that occurred in Nagari Muara Panas, Bukit Sundi District, Solok Regency has met the applicable conditions and has been agreed upon by the people in the gadang house. The buying and selling and pawning that are carried out have also fulfilled the elements and reached the existing level of sophistication. Although a high inheritance cannot be the perfect or personal property of the pawnbroker, the high inheritance may be pawned as long as it is justified by custom, after going through deliberation and consensus, because the custom is born from deliberation and consensus. "Rejecting damage takes precedence over attracting benefits".²⁹

The adherence to these principles provides crucial support for the Minangkabau indigenous community, where high inheritance is prevalent, in managing their assets according to established norms and regulations within Nagari Muara Panas, Bukit Sundi District, Solok Regency. Following these guidelines ensures that decisions regarding the use of high inheritance are made thoughtfully,³⁰ considering both religious and cultural obligations. This approach not only upholds customary laws governing inheritance practices but also promotes responsible stewardship of communal resources. It emphasizes the importance of Maqasid al-Shariah principles, prioritizing the preservation of human welfare, equity among community members, and the integrity of cultural heritage. Therefore, by adhering to these guidelines, the Minangkabau community can effectively navigate the complexities of managing high inheritance while fostering harmony and sustainable development within their traditional socio-cultural framework.

5. Conclusion

Based on the case of the diversion of high inheritance use in Nagari Muara Panas, Bukit Sundi District, Solok Regency through pawning and trading, community members have cited urgent needs such as medical treatments, education costs, building private houses, and covering wedding expenses. These decisions are deliberated upon to achieve consensus among stakeholders, ensuring alignment with both customary practices and Islamic principles. According to Maqashid

²⁷ Vidyadhara Prawiratama Nugraha, Andry Harijanto, and Akhmad Muslih, 'A COMPARATIVE STUDY BETWEEN THE CUSTOMARY INHERITANCE LEGAL SYSTEM OF THE COMMUNITY AND THE ISLAMIC INHERITANCE LEGAL SYSTEM ON INHERITANCE DISTRIBUTION IN MUKOMUKO CITY DISTRICT OF MUKOMUKO REGENCY', *Bengkoelen Justice : Jurnal Ilmu Hukum* 13, no. 1 (1 June 2023): 104–16, <https://doi.org/10.33369/jbengkoelenjust.v13i1.27804>.

²⁸ Beni Rahmad, Endri Yenti, and Hanif Aidhil Alwana, 'The Existence of High Heirloom Assets in Nagari Muaro Paiti and Their Relevance to Contemporary Islamic Inheritance', *Al Hurriyah : Jurnal Hukum Islam* 7, no. 2 (31 December 2022): 141, <https://doi.org/10.30983/alhurriyah.v7i2.5404>.

²⁹ Ridwan, 'Gender Equality in Islamic Inheritance Law: Rereading Muhammad Shahrur's Thought', *Al-Manahij: Jurnal Kajian Hukum Islam*, 25 November 2022, 181–92, <https://doi.org/10.24090/mnh.v16i2.6916>.

³⁰ Akon Baba, Robert Zabawa, and Andrew Zekeri, 'Utilization of Property Among African American Heir and Titled Landowners in Alabama's Black Belt', *The Review of Black Political Economy* 45, no. 4 (December 2018): 325–38, <https://doi.org/10.1177/0034644619838378>.

al-Shariah, which aims to preserve essentials for human life known as Al-Dharuriyyat Al-Khamsah (the five necessities), utilizing high inheritance for medical care (hifzh al-nafs) and education expenses (hifzh al-'aql) falls under the category of necessities (dharuriyyat), crucial for maintaining individual welfare and intellectual development. Supporting offspring (hifzh al-nasl) through home construction, particularly for community leadership purposes (hajjiyat), is considered permissible as it contributes to the continuity and stability of the community. However, expenditures related to wedding costs, categorized as enhancements (tahsiniyyat), are viewed as less urgent and therefore exceed the permissible bounds for utilizing high inheritance. The approval and implementation of these decisions in Nagari Muara Panas, Bukit Sundi District, Solok Regency highlight the community's adherence to Islamic ethical principles and customary norms, emphasizing the importance of responsible stewardship and consensus-driven decision-making in managing communal resources amidst varying socio-economic needs. This approach not only respects cultural heritage but also fosters sustainable development and community solidarity, ensuring equitable distribution and preservation of resources for future generations.

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