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

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### Abstract:

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

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

**Keywords:**

Islamic Inheritance, Minangkabau, Dispute Settlement, *Punah*

**Abstrak**

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

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

#### Kata Kunci:

Kewarisan Islam; Minangkabau; Penyelesaian Sengketa; Punah

#### Introduction

The concept of *punah* is interpreted differently by the Minangkabau community and Islamic inheritance law (*faraidh*), thus, the two interpretations are used in solving inheritance disputes. The meaning of *Punah* in Islamic inheritance law is found in the concept of *kalalah* inheritance. A person is called *kalalah* if he has no offspring (children) and parents (father) passed away. People who have a kinship in the family, be it from the top line (parents) or the bottom line (descendants), are called *kalalah*<sup>1</sup>. However, some also interpret *kalalah* as people with no offspring at all.<sup>2</sup> The term *kalalah* can be used for heiress and heirs. However, several opinions of linguists suggest the meaning of *kalalah*: *first*, someone who does not have children and parents; *second*, someone who does not have children, parents, and siblings; *third*, someone who does not have family and relatives. The first meaning is a representative meaning of the opinion of the majority of scholars. Meanwhile, *kalalah* heirs include siblings or brothers and sisters. The term *kalalah* can be used for heiress and heirs. Meanwhile, *kalalah* heirs include siblings or brothers and sisters<sup>3</sup>.

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

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

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

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Principally, inheritance transfers ownership rights from the deceased to the living heirs<sup>4</sup>. *Kalalah* inheritance, which transfers ownership rights from the deceased to the living heirs is mentioned in the Qur'an Surah an-Nisa' verse 12 and 176. Verse 12 describes the share of each heir who gets the inheritance, including the *Kalalah* inheritance<sup>5</sup>. The mentioned verse explains the settlement of the share for the *Kalalah (Punah)* inheritance by emphasizing that both brothers and sisters are also counted as an heir if the late person does not have a father and children as heirs but only has a brother or sister instead. In verse 176, meanwhile, the *Kalalah* inheritance is identified for the heirs of siblings (siblings and agnate siblings, both male and female).

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

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

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

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

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

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2 the kinship group<sup>8</sup>. The provision of this high ancestral inheritance assets, in principle, cannot be sold or pawned to the public, as the Minang proverb says: *dijua tak dimakan bali, digadai tak dimakan sando* (which means that it can be sold but cannot be bought, pawned but cannot be held). If there is an urgent condition for an inheritance, it may be sold or pawned for the common good, but all lineage members must approve it. For example, a woman in the clan is not married (does not have the cost to get married and is eligible for marriage in terms of age), or someone dies and the body has not yet been buried. Under Minangkabau customary law, which is based on matrilineal, namely maternal law, then the inheritance system in Minangkabau custom is applied and calculated based on maternal lineage. According to the mother's lineage, the inheritance is shared with family members of the mother's line.<sup>9</sup>

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

In terms of community reality, the settlement of inheritance

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

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

<sup>10</sup> (Chairul Anwar, 1997: 89-90)

<sup>11</sup> (Chairul Anwar, 1997: 91)



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

The son's role in the high inheritance in Minangkabau is only as of *mamak waris adat* or *mamak kepala adat* (a person with complete control over the high inheritance and is in charge of supervising, maintaining, and developing the high inheritance property so that it does not run out), who is responsible for supervising the inheritance assets<sup>16</sup>. Settlement of inheritance disputes (according to

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

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

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

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

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

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

Handling disputes over customary land tenure through the customary court of West Sumatra, such as customary land disputes, namely the *pacuan kudo*, occurred due to the status of customary land and unclear *ranji* (structure), resulting in an unclear distribution of assets. Disputes over customary land tenure are resolved through customary court, which is subsequently forwarded to the District Court.<sup>20</sup> To avoid conflicts and disputes, it is necessary to apply an Islamic inheritance system in inheritance distribution to create harmony and justice<sup>21</sup>.

Although the Minangkabau community adheres to the customary inheritance system, they still consider the Islamic inheritance system. If there is a dispute, the Tribal Council settles it amicably<sup>22</sup>. Eric expressed the same thing that high ancestral

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

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

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

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

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

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

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

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inheritance cannot be divided equally among heirs because Minangkabau tradition applies a collective inheritance system. In contrast, low ancestral inheritance applies to Islamic inheritance law<sup>23</sup>. Settlement of inheritance disputes can also be accomplished through mediation through *takharruj* (the heir's exit or resignation from receiving his share rights of the inheritance) or *tasaluh* (peace), which means the willingness and agreement between the heirs<sup>24</sup> <sup>25</sup>. It is completed in order that the distribution of inheritance follows each provision. It is also known as distributive justice, in which someone obtains a share according to their rights<sup>26</sup>. The gender justice system also characterizes the distribution of Islamic inheritance, in which men and women are equally qualified for a share of the inheritance, in line with each heir's share.<sup>27</sup>

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

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

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

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

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

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

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

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

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

### Method

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

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

**Discussion and Result****Overview of Nagari Salareh Aia**

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

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

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

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

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

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

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

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

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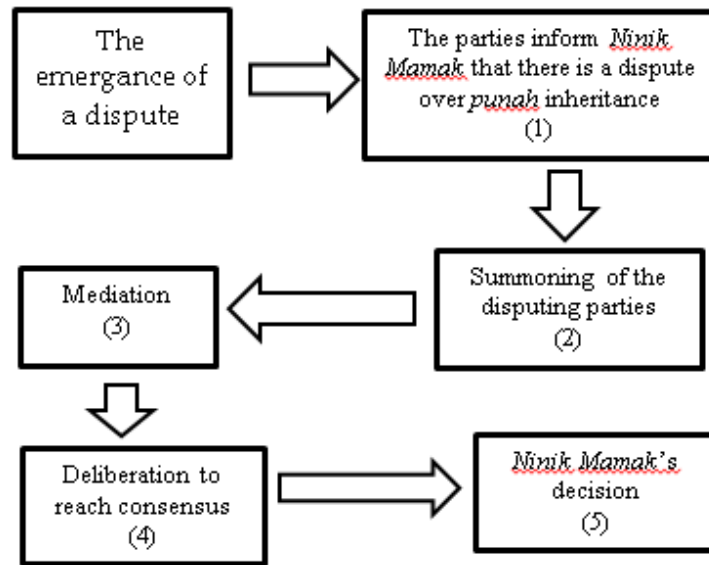


Figure 1. The settlement stages of *punah* inheritance disputes in *Nagari Salareh Aia*

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

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

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

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

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

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<sup>33</sup> Arman Dt. Tan Mangindo, Wawancara, 22 December 2021. Pucuk Adat Nan 15

<sup>34</sup> Asril Dt. Rangkayo Mulia, Wawancara, 23 December 2021

<sup>35</sup> Arman Dt. Tan Mangindo, Wawancara, 22 December 2021

<sup>36</sup> Arman Dt. Tan Mangindo, Wawancara, 22 December 2021



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

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

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

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

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

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<sup>37</sup> Asril Dt. Rangkayo Mulia, Wawancara, 23 December 2021

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

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

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

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

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<sup>38</sup> Ratmiyati, Wawancara, 23 Desember 2021.

<sup>39</sup> Yerman, Wawancara, 21 Desember 2021

<sup>40</sup> Kasiman Dt. Marajo Nan Tinggi, "Wawancara," 2021.

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

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

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

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

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

<sup>42</sup> Ratmiyati, Wawancara, 23 December 2021.

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

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

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

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

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

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

### Patterns for Settlement of Punah Inheritance

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

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

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

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

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

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

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<sup>44</sup> Arman Dt. Tan Mangindo, Wawancara, 22 December 2021. Pucuk Adat Nan 15

<sup>45</sup> Asril Dt. Rangkayo Mulia, Wawancara, 23 December 2021

<sup>46</sup> Yerman, Wawancara, 21 December 2021

<sup>47</sup> Rabuman Dt. Jelo, Wawancara, 23 December 2021.

<sup>48</sup> Asril Dt. Rangkayo Mulia, Wawancara, 23 December 2021

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

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

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

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

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

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<sup>49</sup> Asril Dt. Rangkayo Mulia, Wawancara, 23 December 2021, Yerman, Wawancara. 21 December 2021,

<sup>50</sup> Kasiman Dt. Marajo Nan Tinggi. Wawancara, 26 December 2021.

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

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

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

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

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



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

The nature of customary law that applies in society is not a proposition that is determined by *syar'i*. However, this customary law includes *'urf* in the maintenance of *mashlahah* (*Mashlahah* is a concept that is used as the primary consideration in solving Islamic law problems because its principle is the protection of the law's objective purpose (*maqasid al-syari'ah*), which is the preservation of religion, soul, mind, lineage, and property) in society. The intended *maslahat* is one that clearly maintains the five parts; the protection of religious beliefs, the protection of the soul, the protection of the mind, the protection of family and descendants (human dignity), and the protection of property<sup>52</sup>. As stated by al-Ghadzali is *hifzu al-Kulliyat al-Khams*<sup>53</sup>. Related to this present research on the customary settlement of *Punah* inheritance disputes in Nagari Salareh Aia, Palembang sub-district, the implementation of this customary settlement is relevant to *mashlahah mursalah*, which aims to preserve offspring and property

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

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

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

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

### Conclusion

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

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