

Tulisan 2

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11 The Process of Dispute Settlement of Inheritance in Indigenous People Minangkabau, Luhak Nan Tuo, Tanah Datar

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Abstract

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This research was aimed at describing the process of dispute settlement of inheritance in indigenous people Minangkabau, Luhak Nan Tuo, Tanah Datar. This research was qualitative case study. The data were obtained through in-depth interview to each informant. All of the data found were analyzed qualitatively based on Islamic law perspective (Fih Mawarits/Faraidh), cultural and sociological. The results revealed that there were eight Nagari ever have disputes of inheritance, Rambatan, Tanjung Baru, Salimpauang, Tabek Patah, Tabek Pariangan, Sungai Jambu Pariangan, Sumanik, and Barulak and in each village has only one case. While the case type was not only low inheritance, but also a high inheritance. Related to Minangkabau indigeous philosophy "Adat Bersendikan Syara', Syara' Bersendikan Kitabullah (ABS-SBK)" and Islamic law (Fih Mawarits/Faraidh) the Inheritance dispute should be resolved gradually from Mamak Saparuik. If the problem was not resolved, it is brought to Ninik Mamak. If it was not also 4 resolved at that level, then the case is taken to the board density of indigenous (KAN). Meanwhile there were many people of Minangkabau, Luhak Nan Tuo, Tanah Datar resolved the inheritance dispute up to the judiciary, and to the Supreme Court, means this dispute settlement of inheritance was contrary to the Minangkabau indigeous philosophy and Islamic law. This research concluded that whether there is inheritance dispute and will be based on Minangkabau indigeous philosophy and Islamic law, it should be resolved by Mamak Saparuik, Ninik Mamak or to the board density of indigenous (KAN) not to the the judiciary and to the Supreme Court.

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Keywords: Dispute settlement, inheritance, indigenous people minangkabau, luhak nan tuo, tanah datar.

Introduction

Inheritance is a wealth of someone who has died, whether material or immaterial which may be submitted to its offspring by setting the time, manner, and appropriations that have been outlined by the local customary law or religious law (Saleng, 2007; Abbas, 2007; Bashori, 2009; Arto, 2009; Effendi, 2008). Sodiq (1996) asserts that inheritance is the transference of status from the dead to the living person with respect to specific property objects. Siddiqui (2007) defines inheritance as when living persons rightfully acquire dead persons' property'. Inheritance settings in indigenous is called as customary law of inheritance, according to Haar (1989) a set of rules on how the division of inheritance from the heir to the descendants based on the traditions and customs in particular indigenous communities.

As for the Islamic religious laws of inheritance as stated by Syarifuddin (1984) is a set of provisions governing the procedures for transferring the rights from a deceased person to a living person which referred to the book of Fiqh Faraidh. According to religious inheritance law there are 3 main elements related to inheritance, 1) there is someone who died leaving his fortune, which is called the heir; 2) there are those who are entitled to receive the assets left by the heirs; and 3) there is the wealth left by the testator (Saleng, 2007; Arto, 2009; Bashori, 2009).

In the second element above, the recipient of inheritance often disputes among heirs are often brought to the hostility which ultimately requires a more sensible settlement rules. Typically for indigenous peoples, the inheritance dispute resolution based on customary law rules and become a reference for generations since time immemorial. Like for the Islamic community, the Qur'an and the Sunnah became legal reference in managing the settlement of the inheritance case, since Islam is developed lately. In the legislation of Indonesia, the process of the civil disputes settlement (the problem of inheritance) can be done in the form of non-litigation (reconciliation and mediation) and litigation (the judiciary). For indigenous people, the non litigation process can be done through traditional authorities figure based on customary law in their communities. While the settlement through litigation, it refers to the positive regulation that have been formulated by the Government. For non-Muslim citizens it will be finished by the General Court based Code of Civil Law (KUHP). As for the citizens who are Muslims, a settlement in the Religious Courts based Fiqh Faraidh based on Law No. 50 of 2009. The issue further is how the rules of inheritance law for the indigenous people Minangkabau in Luhak Nan Tuo, indigenous territories were pointed out as the origin of the ancestors of Minang community, which has a philosophy "Adat Basandi Syara', Syara' Basandi Kitabullah" (ABS SBK)? Is there a clash between the system lineage matrilineal Minangkabau

traditional form and a system of lineage in Fiqh Faraidh?

If the intention of deepening the Minangkabau traditional philosophy, it is understood that the Minangkabau community has put Islamic law as the backrest in the making, formulating, and implementing custom rules. So that none of the customary rules are escaped from the line Islamic law based on the Qur'an and Sunnah. Therefore, if there is dispute of inheritance, in litigation the settlement process should go through the Religious Courts, which refers entirely to Fiqh Faraidh based on the Law. No. 3 in 2006 Religious Courts, which has been updated by Law No. 50 in 2009. While the non-litigation, the mediator must also make Fiqh Faraidh as the only guideline. How does the reality that occurs in Minang community in Luhak Nan Tuo on inheritance disputes?

Based on data obtained in 2013 in the Religious Courts Batusangkar, it none the case of inheritance disputes. It assumed that never disputes the heir to the indigenous people, the settlement has been sufficiently done in non-litigation, for example through indigeous leaders. However, there was someone who submitted this case to the Local Government through Bagian Pemerintah Nagari and Rantau. Hengki (the interview on March 20, 2014), Bagian Pemberdayaan Potensi Nagari and Perantau in a dispute dissatisfaction a male heir, due to the lower division of heritage is more influenced by the matrilineal kinship system. Although some are settled through the board density of Indigeous (Kerapatan Adat Nagari/KAN), as presented by the Chairman of KAN Tanjung Barulak Batipuh in an interview on March 26, 2014, and completed by the indigenous stakeholders tribal respectively, as in Lubuak Jantan Lintau (interview with the Chairman of KAN on March 27, 2014).

Further issue is how the process of completion by the Regional Government in resolving the cases of inheritance disputes submitted via the Nagari Government Section? It is like the traditional authorities of the KAN Tanjung Barulak, whether the solution is based on Fiqh Faraidh which is based on the system of kinship Parental/Bilateral, as a consequence of the philosophy ABS SBK, as system specific owned by indigenous Minangkabau? Based on some of the issues raised the author wish to search the process of dispute settlement of inheritance in indigenous people Minangkabau, Luhak Nan Tuo, Tanah Datar. Dispute is called the conflict which both are equally implies the divergence of interests between two or more parties. Conflict means a situation in which two or more parties are faced with the different interests, and will develop into a dispute if the parties expressed in statements of dissatisfaction (Usman, 2013).

Inheritance is someone's wealth who has died, whether material or immaterial, which may be submitted to its offspring by setting the time, manner, and appropriations that have been outlined by the local customary law or religious law (Kamal, 1968) (Naim, 1968). In Minangkabau it is called inheritance high and low. As

for the author means by the disputes inheritance here is the situation that the heirs of the parties feel dissatisfied with the process and the result of the division of inheritance, which dissatisfaction is expressed in the form of statements and legal action.

Luhak Nan Tuo is a part of the Luhak in Minangkabau, it is expressed as the origin of the region ancestors Minangkabau, Tanah Datar. During this time there have been relatively few studies are relevant to this research, although different in some ways, both location and research emphasis. This research focused on how the indigenous people of Minangkabau did the dispute settlement of inheritance. The were previous research related to this study. Agustar (2008) did the research about the implementation of the division of Heritage Treasures Search the Indigenous Environmental Minangkabau Padang. The research emphasizes the obstacles that arise in the distributing implementation of the property and preventive efforts. Next Retnowulandari (2000) emphasized the comparison between the legal heritage of Minangkabau embraces matrilineal kinship system with Islamic inheritance law that embraces bilateral kinship system. Nasution (2014) eemphasized research on 4 (four) subdistricts (Baso, Canduang, Ampek Angkek, and Kamang Magek), and the results showed that the implementation of dividing the inheritance for the high heritage is shared collectively and lower inheritance is to the father and mother's family. The difference with the previous studies is in the rese⁴h object location and emphasis. For Luhak is located in Nan Tuo, Tanah Datar, the emphasis on the settlement of disputes of inheritance in the category of low heritage, in addition there is also the implementation of the heir to the category of high heritage.

Materials and Methods

This research ³is qualitative case study by using inductive approach. Creswell (2008) states an inductive approach aimed at reducing the data into a manageable number of themes that addressed the concerns of the study. Qualitative method was applied due to 1) carried out in natural conditions; 2) more descriptive, the primary data source in qualitative research is word and action, so it does not emphasize the number; 3) more emphasis on process rather than product or outcome; 4) the data analysis was performed inductively; and 5) further emphasize the significance (data behind the observed) (Sug¹no, 2007: 9).

Yin (2009) defines case study as an empirical enquiry that investigates a contemporary phenomenon within its real-life context, where the boundaries between the phenomenon and context are not clearly defined, and in which multiple sources of data collection are used. Case study is not a method of data collection. It is a research strategy or design that makes in-depth investigation of a social unit. Any method of data collection can be used

provided it is practical and ethical. Goode and Hatt (1952) say that case studies emphasize an understanding of the whole case and seeing the case within its wider context. A case study is a way of organizing social data, to preserve the unitary character of the object being studied, it is an approach which sees any social u¹ as a whole.

Creswell (2007) states that case study research is a qualitative approach in which the investigator explores a bounded system (a case) or multiple bounded systems (cases) over time through detailed, in-depth data collection involving multiple sources of information (observation, interview, audiovisual method, documents etc.) and reports a case description or case-based themes. A case-study is at once a methodology, a research strategy or design, an object of enquiry as well as a product of enquiry. De Vaus (2001) states that a case is an "object" of enquiry. It is a unit of analysis about which we collect detailed information. In case study design, a unit is studied as a whole within its context. The unit of analysis may be an individual, a family, a household, a community, an organization, an event or a decision. Abercrombie et al., (2006): A case study is a detailed examination of a single example of a class of phenomenon. It is often used in the preliminary stages of an investigation (but often as a primary research strategy) since it provides hypothesis which can be tested systematically using a large number of cases.

The objects of this research were customary dispute settlement institutions in 75 Nagari of Luhak Nan Tuo, Tanah Datar. The source of the data in this study can be categorized into 1) primary, the actors beneficiary of dispute settlement, such as Mamak, prince, and KAN chairman; and 2) secondary, indigenous people are involved in the dispute inheritance and local government officials. The data in this study were obtained through in-depth interview to each informant. Thus interviews were conducted with the questions "open-ended", and leads to the depth of information (Sutopo, 2002). All of the data found were analyzed qualitatively based on the perspective of Islamic law (Fiqh Mawarits/Faraidh), cultural and sociological. Data analy¹ in this research was performed through three stages, data reduction; data display; and conclusion drawing/verification ¹⁰les and Huberman, 1994). According Moleong (2007) activity in qualitative data analysis is done in an interactive and takes place continuously at every stage of research.

Results and Discussion

The Number and Type of Inheritance Dispute Cases in Luhak Nan Tuo

From the results obtained to some traditional authorities in indigenous density (KAN), it turns 75 Nagari in Luhak Nan Tuo, Tanah Datar found eight Nagari ever have disputes of inheritance were Rambatan, Tanjung Baru, Salimpauang, Tabek Patah, Tabek Pariangan, Sungai

Jambu Pariangan, Sumanik, and Barulak. There was only one case in each villages as known by KAN. In tracking the KAN disputed inheritance, the cases can be happened in their area, but it only 8 (eight) villages can be known by KAN. Alternatively, it could be happened the inheritance disputes and resolved at the level of ninik mamak tribal or in saparuik family, but it was not known by KAN. Inheritance disputes are resolved at the level of ninik mamak tribal or in saparuik family cannot be tracked by researcher, due to the breadth of the area and many categories of tribal saparuik in Luhak Nan Tuo, Tanah Datar. The types of disputes that occur in the object of study was not entirely low-inheritance dispute, but some are high-inheritance. Although not all cases of disputes in the form of low inheritance dispute, the researcher is also study the case in the form of high heritage. The reason is, because of the high inheritance settlement process is not enough merely to the completion of customary level alone, but to the highest judicial body, the Supreme Court. An interesting phenomenon that the dispute happened on indigenous people which has a philosophy "Adat Basandi Syara', Syara' Basandi Kitabullah". It means that there has been a shift in values that are no longer uphold the values of brotherhood through consultation in resolving conflicts, but prepared in the form of deep hostility, because it resolved the litigation that lead to lose to win. In the case of asset is not certain how the process of ownership by their ancestors.

The Institution of Dispute Settlement of Inheritance

In Nagari Salimpauang, according to the Chairman of KAN, inheritance dispute was resolved gradually which resolved by Mamak Saparuik. If the problem was not resolved at the level of Ninik Mamak tribal then it is resolved by Datuk include all devices such as tungganai and malin. If it was not also resolved at that level, then the case is taken into the next stage to the density of Indigeous (KAN), where it include some tribal Ninik Mamak in the Nagari. While the cases of inheritance disputes in Salimpauang were always be resolved at the level of KAN, so it was never reached completion at the level of the judiciary.

Different from the case of inheritance disputes in Tabek Patah, based on an interview with the Head of Government Affairs reinforced by the Chairman of KAN, dispute settlement institution of inheritance is continued up to the judiciary, not only the District Court even up to the Supreme Court, after it was not resolved fraternity in saparuik, KAN or by traditional institutions, such as inheritance dispute between Mrs. Khadija with his mother Asnah. Likewise, inheritance disputes in Nagari Tabek Pariangan, based on data obtained inheritance disputes in the name of H. Dt. Batuah, it must be resolved to the judiciary, because there was no common ground and a peaceful solution through the levels and stages of

customary. Like also disputed inheritance in the Nagari Tanjung Baru, based on data obtained through KAN, the settlement of disputes of inheritance was also nothing to the judiciary, even to the Supreme Court, it cannot be resolved in the courts or traditional institutions gradually, as the case of Elma Sulmiarti siblings Dt. Patiah. Their dispute settlement of inheritance were contrary to the Minangkabau indigeous philosophy "Adat Bersendikan Syara', Syara' Bersendikan Kitabullah (ABS-SBK)".

The case of inheritance disputes was successfully traced in this study in Sungai Jambu such as Hasrul case, it can only be resolved at the tribal level. Although the board KAN knew it, but it did not bring to the KAN, moreover to the judiciary. Like also disputes in Nagari Rambatan, no cases were resolved in the courts. It can be resolved through mediation by Datuk chieftain such as the case of Mrs. Jamaloh with Dt. Sinaro which was mediated by Dt. Basa. Their dispute settlement of inheritance were based on the Minangkabau indigeous philosophy "Adat Bersendikan Syara', Syara' Bersendikan Kitabullah (ABS-SBK)". Different from the case of inheritance disputes Arnel Alwi in Sumanik finally settled by the chief beneficiary, while previously been complained by Arnel to the Chairman of KAN and Wali Nagari Sumanik. Even before it has also been submitted to the Head of Government Nagari Tanah Datar. According to Hengki, the head of administration in Nagari Tanah Datar, this case unresolved, Arnel was pain caused mental disorders, making it difficult to request further details.

Legal Basis Dispute Settlement of Inheritance

Dispute settlement of inheritance in Nagari Salimpauang, according to Zulhaidi Salimpauang Wali Nagari, settled customarily based on customary law, property inheritance disputes both high and low. In accordance with the customary provisions in Luhak Nan Tuo, Tanah Datar, all cases of the dispute settlement of inheritance is starting at the level of Mamak saparuik, Mamak tribal, the board density of Indigeous Kerapatan Adat Nagari (KAN), up to the Supreme Court.

If the high inheritance dispute settlement resolved by customary law, this is something worth and necessity, which is shaped matrilineal kinship system. So that the men in the family grove it does not get the part at all except Mamak saparuik or Mamak tribal who authorized to process a small portion of the land productive inheritance to charge his home life. This Mamak got a part is a consequence of the relevant duty as a leader who is responsible for the safety and welfare of the family.

What ¹⁴ associated with Minangkabau indigeous philosophy Adat Bersendikan Syara', Syara' Bersendikan Kitabullah (ABS-SBK), Indigenous carry out what is stated by Syara (Islamic law)? The answer is Islamic law does not recognize inheritance property whose not on individual, but on the tribal (communal). So there is no inheritance of

property settings in the communal ownership status, except the individual ownership. Because there is no provision Syara '9s stated in the texts of the Qur'an and the Hadith, and *ijtihad* (the process of making a legal decision by independent interpretation of the legal sources, the Qur'an and the Sunnah) of the scholars, as stated in the books of Fiqh, treasure communal the dispute settlement of high inheritance as customary law. Islam also put custom as part proposition of law, to the extent not contrary to the principles of Islam. This proved the existence of a legal norms *قلمكم تناعلا*.

By the justification of Islamic law, the dispute settlement of high inheritance as customs Minangkabau matrilineal, that the right to use it only the member of the tribal (adult women only), then such a form has also been running a philosophy of ABS-SBK based on legal norms above. Different from the low inheritance case, treasures individual dies which comes from the earnings alone. While the inheritance dispute is resolved by customary law is matrilineal, that the male heir did not get the part, this way cannot be accommodated by the Islamic law. Because the issue of inheritance is contained in the texts, both the Qur'an, the Hadith, and *ijtihad* as stated in the books of Fiqh Faraidh, which give the inheritance for men *لنم رقتال* (the division of men inheritance twice the women).

As the case in Tabek Patah, that dispute settlement of inheritance was begun from the board density of Indigeous (KAN) was based on customary law. However, there were not satisfied with the decision of the Chairman of KAN, and eventually it settled in the District Court.

While the case which is the object of this study, the purchase of property grandmother parties, according to one party (Asnah), and the purchase of the husband of the other party (Khadijah), it can be ascertained that inheritance disputes are categorized low treasure. It means the solution must be based Islamic law (Fiqh Faraidh). Something that cannot be justified by Islam, if the problem of inheritance as it resolved Matrilineal, as far as the issue of inheritance disputes has been set out clearly in the texts. Moreover, the solution to the general level of the judiciary, which makes the BW civil law (law handed down by Dutch colonizers) were not based on legal norms of Islam, as the legal basis for consideration and decision. This inheritance dispute resolution contrary from the philosophy of ABS-SBK, and the more sad it happened in Luhak Nan Tuo, as the oldest region in the birth and proclaimed the traditional philosophy upheld by the indigenous Minangkabau.

Similarly, in Nagari Tabek the inheritance dispute of Mr Bako to Hafzi family, who settled in the District Court. When viewed in the status of the land as land grants, of course, it is certain that the categories of beneficiaries are located in the areas of low inheritance, which should be resolved by Fiqh Faraidh. However in reality, the dispute is settled in the District Court, as a judicial institution that

does not make Islamic law as a legal reference, but BW (conventional civil law) which is certainly not the same as the provisions of Fiqh Faraidh.

Something sad the tragedy in Tanjung Baru, the inheritance dispute between Datuk Patiah with Elma, who settled in the judiciary, even to the Supreme Court. In accordance with the form and results of judicial decision, will always be a zero-sum which ends will be hostility. Although the case of the high inheritance it is very precise resolved by Minangkabau customary law which upholds the principle of the family through consultation and peace. So the solution will form a win-win solution. There will be no party feels lose or win.

The high inheritance disputes in Nagari Rambatan between Datuk Sinaro with Jamaloh, can be resolved amicably by making Datuk Basa as the chief progenitor. So that the settlement¹³ can be categorized the resolution through institute *alternative dispute resolution (Alternative Dispute Resolution / ADR)*, the method of mediation.

Mediation such as Arbitration as known in the Islamic concept with *tahkim* method. The legal basis, as stated in Qur'an¹² Nisa: 35 as follow.

اهلها نم امكحو لها نم امكحو اوتعبانف امين عبد قانش متفخ ناو ...

"If you are concerned there were disputes between the two, then send an Hakam family man and a Hakam from a family of women".

Although this verse came down as a result of a conflict between a husband named Sa'ad ibn Rabi 'who beat his wife who nusyuz (disobedience to the husband) named Habibah bin Said. However, the scholars agreed that economic disputes (including beneficiaries) can be related to the dispute of the husband, because it is also a civil matter.

In addition to the verses of the Qur'an, the Prophet confirmed the way Abu Shuraih known as Abu Hakam, resolve disputes cases believed by many people can also be used as a proposition of law on this *tahkim*. The argument was reinforced by the case of Umar with a horse seller. In which the horse had fractures due to be tested first by Umar. So that both parties agreed to resolve the dispute to Abu Shuraih.

This inheritance dipute in the Nagari Rambatan can be expressed in accordance with the Islamic law which would correspond to Minangkabau ABS-SBK philosophy. As low inheritance dispute resolution in family Arnel Alwi in Sumanik which cannot be solved completely, because the diseases afflict Arnel. Based on the information submitted by Hengki, the Head of Section of Administration Nagari in Tanah Datar, before the illness, Arnel ever raised the matter of inheritance to Administration Section Nagari. He expressed dissatisfaction in the division of inheritance legacy of his parents, because it is directly controlled by his sister. Sister was deemed necessary to master the estate, according to public opinion of Minangkabau were girls. Actually Arnel required the treasure and feel too have the rights. The problem has been proposed settlement to ninik

Mamak, but the form of the solution is to reinforce control by his sister.

If it is analyzed by Islamic law, this certainly cannot be justified. Because under the provisions of Fiqh Faraidh, boy is entitled to inheritance of their parents. Even distribution exceeds the division for girls with a ratio of 2 : 1. Therefore the Arnel demand becomes useless. The legal efforts was taken by Arnel to the regional government was failed, because it is not within the competence of Local Government. Finally the case was stalled due to mental illness experienced by Arnel. If low inheritance dispute resolution have been resolved not based Fiqh Faraidh, it is contrary to the philosophy of ABS-SBK, although *ninik mamak* looks the customary law patterned of Minangkabau matrilineal as a legal reference. The low inheritance issues are as set out in Fiqh Faraidh. Such case should still be forwarded completion by the indigenous stakeholders, both *ninik mamak* and the board density of Indigenous (KAN). Because it concerns the issue of a personal right which should be considered, especially regard to the issue of Islamic law.

The result of this research was supported by Banks (1976), he found that Islamic law is so thoroughly part of Malay life that one may consider Malay culture part of a Southeast Asian Islamic Great Tradition. It was also strengthened by Awang (2008), he concluded that The Islamic Inheritance Law is a commandment of Allah S.W.T. through the qat'i verses 11, 12 and 176 of al-Nisa. These verses describe the rightful beneficiaries of the inheritance and the portions which they deserve such as 1/2, 1/4, 1/8, 1/3, 2/3, or 1/6. The Islamic Inheritance Law has brought some reformations which did not exist in previous laws. Such law has been commanded by Allah SWT solely to provide justice to all mankind. Thus, the incorporation of the Islamic Inheritance Law has its own philosophy and insight which may not be internalized and embraced by some people today. This law has a clear policy and is comprehensive in nature because it is a commandment from Allah SWT who knows all things.

While Ajani, Bakar and Mikail (2013) found that Islamic Inheritance is observed to be an aspect of the Islamic teachings which Muslims in Nigeria particularly in the South West find extremely difficult to operate. This is not because they do not believe in the principle but because the attendant customs and cultural practices have great influence on the inheritance practices of the people. The non-operation of Islamic inheritance among the Muslims in the area (Nigeria) is a kind of deficiency in line with the Quranic verse that says, 'will you believe in some parts of the Qur'an and show disbelief to the others?' Adopting Islamic inheritance as a means of practically following Allah's injunction. Then Hussaini (2006) describes the law of inheritance as a gift of wisdom for mankind from the Supreme Being.

Conclusion

There were eight Nagari ever have disputes of inheritance, Rambatan, Tanjung Baru, Salimpauang, Tabek Patah, Tabek Pariangan, Sungai Jambu Pariangan, Sumanik, and Barulak and in each village has only one case. While the case type was not only low inheritance, but also a high inheritance. Related to Minangkabau indigenous philosophy "Adat Bersendikan Syara', Syara' Bersendikan Kitabullah (ABS-SBK)" and Islamic law (Fiqh Mawarits/Faraidh) the Inheritance dispute should be resolved gradually from Mamak Saparuik. If the problem was not resolved, it is brought to *Ninik Mamak*. If it was not also resolved at that level, then the case is taken to the board density of indigenous (KAN). Meanwhile there were many people of Minangkabau, *Luhak Nan Tuo*, *Tanah Datar* resolved the inheritance dispute up to the judiciary, and to the Supreme Court, means this dispute settlement of inheritance was contrary to the Minangkabau indigenous philosophy and Islamic law. This research concluded that whether there is inheritance dispute and will be based on Minangkabau indigenous philosophy and Islamic law, it should be resolved by Mamak Saparuik, *Ninik Mamak* or to the board density of indigenous (KAN) not to the the judiciary and to the Supreme Court.

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