

## Legal Study of *Dzurri* Waqf and its Implementation towards Strengthening High Heritage Assets in Minangkabau, West Sumatra, Indonesia

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**Abstract:** One concept of preserving family assets can be carried out through the practice of *dzurri* waqf. In Minangkabau, preservation of family assets is carried out in the form of high inheritance management. This article aims to discuss the legal concept of *dzurri* waqf and its implementation in high inheritance management in Minangkabau, West Sumatra. The findings of this study are very specific because the Minangkabau culture adheres to on one side, a matrilineal system but on the other hand, is based on the Islamic law. The data in this study were obtained through in-depth interviews with four experts, i.e., the expert council of MUI West Sumatra, the Chair of the West Sumatra Indonesian Waqf Board, the Chair of West Sumatra Nazir, and the expert council of the Lembaga Kerapatan Adat Alam Minangkabau (LKAAM) West Sumatra. This study found that first, the concept of *dzurri* waqf is identical to the management of high heirloom assets in Minangkabau. It is proven by some asset management that is almost the same as *dzurri* waqf, i.e., the element of property must be retained in principal and from the element of beneficiaries (*manquf alaih*) who are family members. Second, there is a strategy to maintain high *pusako* treasures through religion, namely by managing high *pusako* treasures, such as *dzurri* waqf management so that the identity of high *pusako* treasures as culture can survive and be managed sustainably. Third, in order to maintain the identity of the high *pusako* treasure, the nazir in the context of *dzurri* waqf is appointed from the *niniak mamak* component as the holder of the power of the high *pusako* treasure.

**Keywords:** Customary Land; High Inheritance; *Dzurri* Waqf.

### Introduction

Communal land ownership is vulnerable to expropriation if there is weak protection from state authorities (Wright, 2011; Yacim et al., 2022). It is because many rural communities rely on customary law for communal land ownership rather than formal law over the land (Knight, 2010; Tiswarni et al., 2023). Meanwhile, due to limited natural resources, many communal lands have been sacrificed for economic purposes, such as logging, plantations, and the construction of large-scale developments. It prioritizes social welfare with policies aimed at encouraging economic development, putting customary lands at high risk from various threats and demands (Syafiq et al., 2015). On the other hand, customary land owned and managed by indigenous peoples is part of their ancestral heritage that must be protected to ensure its existence and continuation because the land is a place to carry out and preserve customary law (Fauzi et al., 2022; Napoh, 2015).

In Minangkabau, communal land is simply called the word *Pusako* or grammatically defined as heirloom (Amran, 2017) which is divided into two, namely low inheritance and high heirloom property. Low inheritance is a property received by a person as a gift from his/her family based on his/her livelihood, purchases, *taruko*, and or has been passed down to one or two straight-line descendants

(Rahmat, 2019). Meanwhile, high inheritance, according to Manggis (1971) cited in the study of Prasna (2018), is customary land that includes forests and fields, mountains and hills, lakes, swamps, and marshes, as well as valleys and rivers. According to Hamka, high heirlooms are assets that have been passed down from generation to generation from previous ancestors. It means that customary land or high heritage land is part of the high inheritance, which is inherited collectively according to the mother's lineage and may not be sold or mortgaged for personal gain or benefit of several people (Prasna, 2018). In addition, inherited land of higher inheritance is also a social guarantee for members of a tribe, clan, or *Nagari*, keeping them out of poverty because it can be used as a source of income (Putri, 2019).

It makes the high inheritance land has its significance in its ownership because this type of land, according to the Minangkabau Customary Land Law regulations, does not have land certificates released by the National Agrarian Law. Customary land is passed down from generation to generation by the ancestors of the former Minangkabau people (Putri, 2019). Nonetheless, the rights to the inheritance of high land can also be issued with the joint ownership of all clan members because it is joint property, and cannot be certified without agreement within the clan (Nugraha et al., 2020). However, there is concern that the inherited land can be certified because there is the term *ganggam bauntuak* for possession of the high inheritance. *Ganggam bauntuak* is similar to a permanent usufructuary right for a person because it is located on a high heritage land, which is jointly owned by the community (Nugraha et al., 2020). If a plot of land has been assigned based on the principle of *ganggam bauntuak*, it belongs to the holder and it can then be passed down to their descendants. However, if a plot of "*ganggam bauntuak*" land is certified, the next risk is that the plot of land can be sold by the right holder. Control of *ganggam bauntuak* is given so that clan members do not dispute over plots of land (Nugraha et al., 2020). The shift in the meaning of *ganggam bauntuak* ownership is a serious problem because if it happens continuously, the high heritage land will face extinction.

Referring to a review of Islamic law, the inheritance of high heritage land is a form of expert waqf or *dzurri waqf*, which has the status of usufructuary rights, instead of property rights (Fitriana, 2021). This *dzurri waqf* is intended for a family's interests and social security (Nissa, 2014) or for one who still has family ties (Zunaidi, 2021). According to research (Fitriana, 2021), high heirlooms are the assets of the ancestors that are donated to their nieces as a will which is passed on to their children and grandchildren. It indicates that high heritage land is substantively similar to *dzurri waqf*, whose benefits are only intended for lineage or family and descendants (Zunaidi, 2021). It happens because of the order of religious life in West Sumatra society which is the result of interaction between customary law and Islam (Medaline, 2018). Another example of the application of *dzurri waqf* is Habib Bugak's Waqf House and Land in Aceh, whose benefits are only used specifically for the Acehnese, as is indicated by a special will (Ichsan, 2018).

Several studies have examined that high heirloom assets cannot be individually owned by members of the community nor can be transferred to other people (Citrawan, 2021; Mahrus, 2021), which is similar to the concept of waqf that cannot be traded (Zunaidi, 2021) and its preservation must be guaranteed (Suganda, 2014). In addition, through the cash waqf movement, it can be done to redeem the mortgaged high *pusako* property and increase its amount. In addition, this research also mentions that it will legalize the property by changing its certificate to a waqf property certificate (Eficandra, 2022). Meanwhile, in the World Heritage tone Town of Zanzibar, waqf is used as one of the heritage conservation models (Khalfan, 2014). Meanwhile, in Indonesia, there is the institutionalization of sharia in state institutions and official regulations, which is a form of rational bureaucratization. The goal is to organize social life, including religious traditions, under the state system (Jahar, 2019). This research is different from those conducted previously since we aim to first examine more deeply how the implementation of expert waqf thinking towards strengthening high heirloom assets in Minangkabau, West Sumatra. Second, it offers strategies for strengthening high heirloom assets through religion by proposing the management model like *dzurri waqf*. Third, the present study determines the manager of high heirloom assets in accordance with the management of *dzurri waqf*.

## Literature Review

Waqf serves as a center for religious and socio-economic development, as well as the provision of all forms of community welfare services (Amin et al., 2023; Bintarto et al., 2022; Hassan et al., 2023; Lamido & Haneef, 2021; Mauluddin & Rahman, 2018). The utilization of waqf proceeds to the health sectors (Ahmad & Rahman, 2018; Yasin, 2023) and community welfare (Jatmiko et al., 2023; Zakiyah, 2011; Zawawi et al., 2023). Based on the purposes, waqf is classified into three types, namely *khairi* waqf, *dzurri* waqf, and *musytarak* waqf (Permana & Rukmanda, 2021). *Khairi* waqf is a form of waqf that is intended for practice or public interest without mentioning a specific recipient or purpose (Borham, 2011). Meanwhile, *dzurri* waqf is devoted only to families who still have family ties (Zunaidi, 2021), whereas *musytarak* waqf aims to be used by both general public and families simultaneously (Permana & Rukmanda, 2021). However, there are differences in the distribution of this waqf across countries. In Egypt, waqf is divided into two types, namely *khairi* waqf and *expert* waqf, while in Syria and Iraq, it is divided into three types, namely *dzurri* waqf, *khairi* waqf, and *musytarak* waqf. In Malaysia, the waqf is divided into typical and general waqf according to its benefits and uses (Don, 2019; Ghazali et al., 2021; Mohammed Noor et al., 2023; Zakariyah et al., 2023).

The concept of *dzurri* waqf refers to a special endowment that is only aimed at certain people, the family (Ahmad Sanusi et al., 2021; Mukhtar et al., 2019). It has been applied since the time of the Prophet Muhammad through the actions of his companions to today's Muslims (Khalil et al., 2021). For example, Abu Bakr donated his piece of land in Mecca which was intended for his descendants who came to Mecca (Khusaeri, 2015), Umar donated a piece of land in Khaibar and gave the results of land management to the poor, relatives, slaves, *fi sabilillah*, *ibnu sabil*, and guests (Kasdi, 2015), and Abu Talhah also donated his date palm garden and Bairuha' lake to the members of his family and relatives (Khalil et al., 2021). In the concept of Islamic law, anyone who has assets and wishes to donate part of their wealth should first consider their relatives among those in need, so waqf is better given to those who need it (Budiman, 2020). However, *dzurri* waqf will also cause problems if the designated children and grandchildren no longer have the right to benefit from the waqf (Ali Azizan et al., 2022) or the *wakif's* children and grandchildren develop so much that it makes it difficult to share the benefits of the property (Bahtiar, 2022).

In Egypt, in the 1946 Waqf Law, it was explained that *dzurri* waqf may only be for two generations and was limited to sixty years. However, following a review, the form of *dzurri* waqf was abolished under the Egyptian Waqf Law. This abolition occurred because the *dzurri* waqf was used to avoid dividing inheritance to the legal heirs, as well as a tool to evade creditors' demands for debts made by the waqif before he donated his assets (Bahtiar, 2022). In addition, some countries have officially abolished *dzurri* waqf, such as Turkey, Syria, Libya, and Tunisia (Wira et al., 2023; Zunaidi, 2021). In Arab, the *dzurri* waqf is recognized to be able to guarantee welfare and sustainability for family life in the future. The most prevalent *dzurri* waqf assets in the Middle East region are in the form of immovable property, such as land, agriculture, and plantations, or the form of movable property; such as stock endowments, money endowments, and others (Suraiya & Jauhari, 2022). Likewise, in Kuwait, *dzurri* waqf is also practiced because the implementation of this waqf is indirectly able to prosper its people and assist the government in overcoming economic problems for the development of the State of Kuwait (Latifah & Jamal, 2019).

However, despite the prevalence of waqf practice in Muslim societies, the practice of *dzurri* waqf is less familiar in Indonesia. The rules regarding *dzurri* waqf are stipulated in Law Number 41 of 2004 concerning waqf in general, and the explanation is detailed in Government Regulation Number 42 of 2006, which governs the implementation of the waqf law (Zunaidi, 2021). Examples of *dzurri* waqf practices are found in the management of high inheritance land in Minangkabau, West Sumatra. High inheritance land has been passed down from generation to generation from the previous ancestors to the present, whose descendants have never been interrupted (Indrasukma, 2021) and (Nugraha et al., 2020). There is a difference of opinion between Sheikh Ahmad Khatib Al-Minangkabawi and Sheikh Rasul (H. Abdul Karim Amrullah) regarding inheritance. The former firmly stated that inheritance is forbidden property and the customary process of inheritance is against religion. On the other hand, according to the latter, the

inheritance is the same as expert waqf assets (*dzurri*) or musabalah assets (Fitriana, 2021). Conceptually, high inheritance cannot be sold and mortgaged (Ramadhani, 2016). This concept refers to the Minangkabau traditional philosophy, namely “*jua ndak makan bali, gadai ndak makan sando*” (Citrawan, 2021). However, in an urgent or emergency situation, the high inheritance can be pawned under four conditions, namely: *mayit tabujua di tengah rumah* (to handle corpse), *Rumah gadang katirisan* (to renovate a house), *gadai gadang alun balaki*, (to hold wedding of a girl), and *mambangik batang tarandam* (to uphold dignity) (Fitriana, 2021).

The concept of high heritage land is synonymous with that of waqf assets in general. Based on the three schools of thought, namely Hanafi, Maliki, and Syafi'i, waqf assets may not be exchanged for other waqf assets. Meanwhile, Hambali justified the exchange of waqf property if it can no longer be as useful as it should be. However, according to those scholars, the exchange of waqf assets is justified in certain circumstances for the benefit of utilizing the waqf assets (Lubis, 2021). In a literature of Sahid et al. (2017), it is explained that customary land is the same as the waqf system in Islam. In addition, Mirwati et al. (2018) explained in their research that the practice of waqf of customary land in West Sumatra was carried out in a family manner, where the pledge was declared by the *mamak* after obtaining approval from members of the clan, both those who live in Minangkabau and those who are wandering.

## Method

This field study aims to explore the legal concept of *dzurri* waqf and its implementation in the management of high heritage assets in Minangkabau, West Sumatra, Indonesia. The data in this study were collected through in-depth interviews with four informants, selected based on their eligibility and ease of their access (Stokes, 2003; Sulistiani, 2021). The selection was also based on their competence as clerics and customary leaders who had extensive knowledge about the practice of *dzurri* waqf and its implementation in high inheritance. They consisted of, first Yaswirman who was a member of the MUI West Sumatra expert council and a Professor of Islamic Law. The second was Japeri Jarab, a chairman of the West Sumatra Indonesian Waqf Board; the third was Sobrias, the chairman of Nazir West Sumatra, and the fourth informant was Yulizar Yunus, the Council of Experts at the *Lembaga Kerapatan Adat Alam Minangkabau* (LKAAM).

This research started by observing the phenomenon of high inheritance management, which is similar to the concept of *dzurri* waqf. The observation was then followed by developing a research design and selecting informants who were representative, appropriate, and contactable to conduct in-depth interviews. The interview sessions began with general questions concerning the concept of *dzurri* waqf and high inheritance. Then, it proceeded to more specific questions aiming to establish the perspective of the informants in interpreting and understanding the problems in the legal concept of *dzurri* waqf and the management of high inheritance in Minangkabau.

In this study, the data were collected, processed, categorized, and generalized so that they could be presented interactively and descriptively. The collected data were then arranged thematically based on the information obtained and data compilation was carried out by classifying the data based on the relevance to the research problems (Sukiati et al., 2023; Syahputra, 2018). The primary data analysis technique used was an interactive model from Miles and Huberman, which includes data reduction, data presentation, and conclusion drawing (Oktarina, 2018). The authors sought to describe the data on the practice of *dzurri* waqf and its implementation on high heritage assets that had been obtained in the field and analyzed so that conclusions could be drawn. The data reported by the authors were based on their actual situation. The location and circumstances and situation of the research are presented as facts, instead of in the form of the authors' interpretation (Rahman & Widiastuti, 2020).

## Results and Discussion

### High Heritage and Concept of *Dzurri* Waqf

The practice of *dzurri* waqf in Islamic law is justified in the hadith of the Prophet narrated by Bukhari and Muslim from Anas bin Malik about the existence of waqf from the Abu Talhah family to his relatives (Budiman, 2020). In Surah Al-Isra verse 26, it is explained that Allah commands us to prioritize own family to fulfill the rights of relatives, people in need, both material and non-material (Budiman, 2020). Conceptually, *dzurri* waqf is designated in the family context as well as certain interests, such as social security (Anas & Ryandono, 2017). In this case, the waqf can guarantee that its closest relatives at any time have an asset to depend on and can protect the virtues of their offspring (Sulong & Zulkifli, 2022) because protecting offspring in Islam is included in one of the *maqāsid al-sharī'ah*, namely *Hifdzu An-Nasl*. It is caring for offspring and looking after sustainability of life in the world and in the hereafter as well as maintaining the continuity and sustainability of the next generation (Alimuddin, 2016; Rusydiana et al., 2022).

The *Hifdzu An-Nasl* is a concept used by the Minangkabau people in the practice of high inheritance assets management. According to Yulizar Yunus, high inheritance is an asset left behind from "*niniak turun ka mamak, dari mamak turun kamanakan, dari kamanakan turun ka cucu*" and so on which are used to care for offspring and maintain survival.

"The origin of high heritage land or customary land in Minangkabau is inseparable from the *marantau* culture of the people. In the Minangkabau customary perspective, there are four overseas kinship clusters, namely *sapiah balahan, kapak radai, kuduang karatan*, and *timbang pacahan*. These four clusters distinguish the kinship between the uterine cord and the nasab cord in Minangkabau based on the mother's or father's line. In every "*rantau*" area they have visited, they will embed training there, which means they open new land or settlements in that location, starting from which, various lands were collected for fields, rice fields, and others that became assets. Apart from that, in concept, if a Minang man marries, he will not bring his "*mancancang latiah*" work to his wife's house, so the asset will be abandoned and will be passed down to become a high treasure from *niniak* to *mamak*, from *mamak* to nephew and from nephew down to grandson and so on. This is done based on the prohibition to leave children and grandchildren who are weak in terms of faith or economy so that the property is utilized as much as possible for the welfare of the people. The commitment is that the property may not be sold or pawned because it is a symbol for a people." (Interview with Yulizar Yunus on 16 February 2023)

The above description shows that the concept of protecting offspring through high inheritance has been practiced since the existence of high inheritance. The traditional Minangkabau history states that with the principle of maternal lineage, one umbrella, one grandmother, and one stomach, the ancestors used to clear the land by means of '*mancancang latiah, opening villages, and courtyards*'. As the number of offspring increased, the Nagari was expanded so that the tribal term appeared, which cannot be separated from *sako* (tribal title). To guarantee the life of their tribal children, they determine the existence of inheritance with the principle of communal ownership (Haron & Hanifuddin, 2012).

The use of this high inheritance is widely used by descendants as an action of utilizing joint assets owned by the Minangkabau community. Apart from that, the inheritance is also a symbol of the bonds between people with blood ties and so that the link does not break, the treasure becomes an oath of property (Fitriana, 2021) and inherited land is also used as a symbol of religious and social status in a matrilineal society (Mirwati et al., 2018). Therefore, high heirlooms in Minangkabau cannot be sold and pawned because they must remain intact and the existence of these assets is to symbolize a tribe (Riska et al., 2021).

Meanwhile, from the Sharia perspective, high inheritance is characterized to resemble waqf assets. In research conducted by (Sumarni et al., 2022), it is stated that there are two public perceptions of waqf, namely waqf for public purposes, such as those used for the construction of mosques, and waqf for the

benefit of families originating from high inheritance assets. Characteristics of high inheritance assets that resemble waqf were also revealed by Japeri Jarab as Chairman of BWI West Sumatra.

"The implementation of high inheritance assets in Minangkabau is 80% similar to that of waqf because these assets cannot be manipulated. Nephews can only receive the benefit. However, in the practice of high inheritance assets, there are incomplete waqf elements in it. There are several components of waqf, namely waqf people, nazirs, waqf pledges. These elements should be explained to the people of Minangkabau so that the will of syar'i can align with customary. In future generations, the practice of managing high inheritance assets can resemble waqf. However, if it is not performed, there will be clashes between mamak and nieces on an ongoing basis." (Interview with Japeri Jarab on February 1, 2023)

This argument shows that the essence of high inheritance is used for the benefit of children and nephews and other descendants in the future. It resembles the concept of *dzurri* waqf, which is also intended for the benefit of the family possessing the property. However, according to research of (Sumarni et al., 2022), the existence of high inheritance assets, like waqf assets that must have a pledge from the wakif, is also marked by a pledge, even though it is not written. It means that there is also a particular pledge before it is passed down to the next generation. Based on some differences and similarities in this concept, Yaswirman, a Professor of Islamic Law and the West Sumatra MUI Council of Experts argued that high heritage land or customary land is identical but not the same as waqf land.

"Waqf property belongs to Allah, which is entrusted to the people, while inherited land belongs to the people, tribe, and community. So, waqf land and high inheritance are identical but not the same, and neither can be inherited. Therefore, customary land can be used by anyone by taking its benefit while the principal remains withheld, and this is what is considered to be appropriate for Umar's waqf land in Khaibar. This concept uses the concept of *istihsan* and *maslahah*." (Interview with Yaswirman, on 3 February 2023).

### Maintenance Concept of High Heritage

High heritage assets in the form of land include the provision that these assets may not be sold and may not be mortgaged (Fitriyana, 2021) except under circumstances that can be justified by custom (Eficandra, 2022). The concept of this property as communal property is intended for the welfare of one descendant. However, there are problems with the existence of this high heritage. As stated by Sobri, Chairperson of West Sumatra Nazir, he quoted the words of Dt. Yus Parpatiah, a Minangkabau humanist.

"Quoting the words of Dt. Yus Parpatiah some time ago, it was said that Minangkabau was in a crisis of high inheritance because people had one vision to certify high inheritance. Their reason is for maintenance so that it is clear it belongs to each party." (Interview with Dr. Sobri, MA, on 1 February 2023).

However, there have been numerous cases in West Sumatra where high heritage assets, which conceptually are communal assets, are converted into individual assets that can be sold. As stated by Japeri Jarab, there were several cases of *niniak mamak* who dared to sell high inheritances. It has been explained that high heritage may not be sold or mortgaged except in certain circumstances that are permitted by custom, as expressed by Dr. Yulizar Yunus, M.Sc.

"The message from *niniak mamak* is that high heritage land cannot be mortgaged and sold. *Digadai tak di makan sando, di jua tak dimakan bali*. Then there are exceptions in the following circumstances, such as *maik tabujua di tengah rumah, rumah gadang katirisan, gaduh gadang tak balaki, pancabauik tareh tabanam* (including delegating '*datuak*' title). In terms of custom, the holder of the authority over the heirloom land is the *niniak mamak*, while the authority to hold and maintain the property is mother, or called *Mandeh Sako* as *ampang puruik*. *Mandeh Sako* is an influential woman who has sufficient knowledge in *adat* and *syara*." (Interview with Yulizar Yunus on 16 February 2023).

The abovementioned concept is also explained in research conducted by Haron (2012) in which, high inheritances may not be sold or pawned. In this case, a *mamak*, who is the mother's male brother, is the guardian of the customary land or high inheritance land. Meanwhile, the mother is acts to hold the keys or

*ampang puruik* and *lumbung* (places for reserves and food materials), which cannot be opened except in circumstances justified by custom. In addition, Yulizar Yunus also revealed that in Minangkabau, the leaders of the *ampek jinih* which include *datuak/penghulu*, *manti*, *malin*, and *dubalang* have to look after the *sako* and *pusako* in their people with power. Then this power is delegated to the authority to care for women. It is done because a man will *basumando* to his wife's house, and he will not stay at his house.

According to (Rahmat, 2019), the management of high inheritance is intended for the welfare of his people and it has illustrated that the land has a social function in society and this is in line with the words contained in Article 6 of Law No. 5 of 1960 concerning the Basic Agrarian Regulations, which reads "all land rights have a social function". *Ganggam Bauntuak* is a high heritage land management right. In custom, this management right is recognized as a usufructuary right. Therefore, according to Yulizar Yunus, the present Minangnese people do not respect their *mamak* and tribe anymore. Since ancestral land is a symbol, if the customary land is finished, *sako jo pusako* is used up, then the *mamak* is also finished.

In other cases, high inheritance land can also be transferred or replaced for development purposes, which is used for the public interests by the government, as mentioned by Yaswirman:

"According to positive law, assets of value can be used by anyone but still belong to the original person, so that the terms usufructuary rights, and building rights appear within a certain period. In terms of state property rights, everything that exists belongs to the state. At one time, if the state wishes to take the land, nothing could hinder it. It corresponds to the concept of *tasadaful* *faith manuthun bi maslahah*, which means the ruler is authorized for the benefit of the general public. There is also the concept of '*tashorruf al-imam ala ar-ra'iyah manuthun bi al-maslahah*', which means, government policy for the people must be based on the principle of benefit. In this case, it includes taking of high inheritance or customary land for the construction of toll roads. So, because the state has property rights, all that can be demanded by the community is subjected to improper compensation. People cannot appeal to cassation to claim their rights back. Especially for customary land to survive, the state must find a replacement, so that it will become the customary land of the people later." (Interview with Yaswirman, on 3 February 2023)

The preceding explanation emphasizes that the high inheritance can be moved to another location, but not to be sold and used for personal gain, as what happened in land acquisition used for toll roads. To resolve the issue of heritage land used for the construction of the toll road, *niniak mamak*, community leaders, and the Nagari government played a prominent role, notably through negotiation, dialogue facilitation, mediation, and compensation (Anggraini et al., 2022).

### **Implementation of the *Dzurri* Waqf Law on the Maintenance of High Heritage Assets**

*Ganggam bauntuak* control over the high heritage in Minangkabau is a serious problem because if it is persistent, the high heritage land will become extinct. The threat of extinction of the high heirlooms in Minangkabau is due to the presence of *niniak mamak* who dare to sell the high heirlooms of his people. In fact, the existence of high heritage assets must be maintained as explained in research of (Fitriana, 2021). Sobri asserted that the existence of high inheritance has legal weaknesses because it is only protected by customary law and it does not have sanctions in the afterlife.

"If a property is a high inheritance, it has a weakness because it is only protected by customary law because it does not have sanctions in the afterlife. As such, the position of this property maintenance is weak. For example, if one of these people agrees to sell their property, a sale and purchase transaction can be carried out. Meanwhile, there are almost no legal sanctions for high inheritance. Then, the safeguard of this property is also weak because it is not based on religious law. Therefore, if people wish to maintain high inheritance assets, the status of these assets should be raised to *dzurri waqf* rather than inheritance." (Interview with Sobri on 1 February 2023).

Referring to the ideas presented by the resource person above, one form of maintenance of high inheritance is to raise the status of high inheritance to become a *dzurri waqf*. This is because there are some similarities between high inheritance and *dzurri waqf*, for both of these assets must be held together and they cannot be traded. But, in fact, this idea is undermined in managing high inheritance because there are

*niniak mamak* who violate these rules. In addition, there are also no special sanctions for this case, especially if the entire clan agrees to sell the high inheritance. Then, this inheritance will cease to exist. Meanwhile, if the status of this high inheritance property is made into *dzurri* waqf status, it will be legally recognized as waqf property. In the Law of the Republic of Indonesia No. 41 of 2004 Article 40, it is stated that assets that have been donated cannot be sold, used as collateral, confiscated, and others (Laws No. 41 of 2004). Therefore, this high inheritance will be maintained in essence. Another similarity lies in how these two assets are allocated, i.e., for the welfare of their families or people. It is in line with the opinion of (Mualimin Mochammad Sahid et al., 2017) that customary land or *pusako* is highly managed in the same way as the waqf system in Islam.

Japeri Jarab expressed a similar viewpoint that the implementation of high inheritance assets in Minangkabau, West Sumatra is 80% resembling waqf. However, the people's mindset about waqf in Minangkabau, West Sumatra has not yet been *kaffah* (perfect). It suggests that education about waqf is still low so the view of high inheritance has not been said to be a waqf concept.

"In practice, the management of high inheritance and waqf is exactly the same. The heirloom has great benefits and the development value is enjoyed by the nephew and the principal assets are retained. Meanwhile, the waqf principal assets are also retained and the value of the benefits is also given to the *mauquf alaih* and in *dzurri* waqf family members are the *mauquf alaih*. It can be implemented if all elements unite in all thoughts on how this inheritance can be managed like waqf in a *kaffah* manner. Like the renewal of waqf pledges every generation. It emphasizes that the material is not inherited but correspondence that can be used as evidence. It is done to avoid disputes between families so that the wakif is officially registered, then a nephew is appointed for management." (Interview with Japeri Jarab, on February 1, 2023)

However, Yaswirman has a different view. If one form of maintaining high inheritance is used through the *dzurri* waqf scheme, the concern is that there will be a conflict with indigenous people because the customary property rights had already existed before the concept of waqf appeared in Indonesia.

"According to the Islamic law, there is no term *ulayat* land, but what does exist in Islam is waqf land. If the term '*urf*' is used, the ownership rights to the local community are acknowledged. If the *ulayat* or high inheritance scheme is changed to a waqf scheme to maintain these assets, there will be a conflict with indigenous peoples because customary property rights had existed before the concept of waqf was introduced in Indonesia. Moreover, if Law 17 of 2022 concerning the Province of West Sumatra develops, the community's communal property rights will be stronger, so there will be resistance. However, to avoid resistance, we must maintain what is already there, as long as there is no conflict unless certain communities agree to such management, opportunities will open up. It means that we cannot do it to indigenous peoples as a whole, but only to certain groups. If this is practiced by a group, it can be used as a model that can be practiced by other groups." (Interview with Yaswirman, on 3 February 2023).

This opinion highlights that the form of maintenance of high inheritance does not have to align with a waqf scheme because if it occurs there will be opportunities for indigenous people's conflicts. Meanwhile, their high inheritance rights have also been regulated by certain rules. In addition, the concept of waqf is also relatively new in Minangkabau, West Sumatra in particular and even in Indonesia. However, the concept of customs is much earlier attached to society.

In another perspective, Yulizar Yunus stated that when the waqf scheme is applied as a whole to customary land or high heritage property, the identity of the customary land or high heritage property will come to extinction. This is in line with the concept of the World Heritage tone Town of Zanzibar where the concept of waqf is used as a model of heritage conservation (Khalfan, 2014). However, only in terms of management, while in the written concept in the form of property legalization, the high *pusako* property is still explained as customary property. But, its management as a form of strengthening must be based on the concept of *dzurri* waqf management.



“If customary land or high inheritance is converted to a waqf scheme as a whole, the identity of the inheritance will be lost, and the uterine relationship will be broken. When the waqf scheme is applied as a whole to communal land, the identity of customary land will also be lost. However, if we want to preserve customary land or high inheritance, the legal umbrella exists if we consider adopting the scenario of conversion to waqf land. However, customary land or high inheritance may be registered as customary land or communal land from one tribe to the National Land Agency (BPN), but its spirit is waqf. All rules for certifying customary land or high inheritance refer to waqf rules. This is due to the fact that these assets are used as much as possible for the welfare of the community, in this case, the niece. Communal assets, like waqf for welfare, must be handled like waqf because their function is clear. But it is not only limited to that, this treasure is also a symbol of the identity of the tribe so if it runs out, the people are finished.” (Interview with Yulizar Yunus on 16 February 2023)

Based on the data above, it is feared that there will be a shift in opinion in the community if the status of high *pusako* land is converted to *dzurri* waqf. Meanwhile, the management of high *pusako* assets has basically referred to the management of waqf assets. However, the weak application of management has led to many cases that have resulted in high *pusako* property to become personal property that can be easily traded. On the other hand, the weakening customary and cultural values on high *pusako* property will disappear when there is a change in the status of *pusako* property. Meanwhile, customary values are a uniqueness inherent in the community itself as a form of reflection of the religion and beliefs adopted by certain community (Adnan & Solihin, 2018) and (Warjiyati, 2018).

Therefore, as a form of combination in maintaining the strength of high *pusako* property as customary land, strong management as well as management is demanded to maintain *dzurri* waqf property. With two identical management concepts, the management of high *pusako* treasures can be guaranteed if the spirit of waqf is adopted. In addition, as a Nazir in the context of waqf management, for the management of high *pusako* assets, a component of *niniak mamak* can be appointed as the power holder for the management of the high *pusako* assets. Meanwhile, the *mauquf alaih* is determined by the family as in accordance with customary rules and the rules of *dzurri* waqf.

## Conclusion

This research found that first, the strengthening family property in Minangkabau, West Sumatra is carried out in the form of high heirloom property management. The management of this high heirloom property is identical to the legal concept and management of *dzurri* waqf in Islam. It can be evidenced by some of the management that is almost the same as *dzurri* waqf in term of the element of property that must be retained in principal and from the element of beneficiaries (*mauquf alaih*) who are family members. Second, there is a strategy to maintain high *pusako* treasures through religion by managing high *pusako* treasures, such as *dzurri* waqf management so that its identity as culture can survive and be managed sustainably. Third, in the implementation of its management to maintain customary identity, the nazir of the *dzurri* waqf context is appointed from the *ninik mamak* component of a tribe. The findings of this study can have implications for the management improvement of high heirloom assets mismanagement, such as the sale of high heirloom assets by family members for personal interests or several people. Therefore, to strengthen the status of the high *pusako* treasure, its management must be accompanied by the management of *dzurri* waqf so that the main assets in the high *pusako* can be maintained in Minangkabau, West Sumatra. The results of this study can open up new research opportunities by adding other variables beyond the concept of law and management to improve this present research.

## Conflict of Interest

This article has not a conflict of interest

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