

## Integration of Islamic Inheritance and Customary Inheritance: A Study of the Mandailing Community in Tanjung Village

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<p><b>Article History</b> Received : 2019-07-04 Revised: 2019-07-14 Published: 2019-07-30</p> <p><b>Keywords:</b> <i>Division, Inheritance, Islam, Customs.</i></p>	<p>Inheritance law is a part of civil law in Indonesia that regulates the transfer of rights and ownership of property from a deceased person to heirs entitled to receive it. Inheritance law plays an important role because death creates legal consequences regarding the distribution of assets left by the deceased. However, inheritance disputes frequently occur in society, particularly concerning inheritance distribution patterns and the determination of heirs' rights. In Indonesia, inheritance distribution is regulated not only by the Compilation of Islamic Law but also by customary inheritance systems based on ethnic traditions and local cultural values, which often lead to differences in implementation. This study aims to analyze inheritance distribution practices and examine the interaction between Islamic inheritance law and ethnic customary law in resolving inheritance disputes. The research employs an empirical juridical method with a sociological approach to understand legal practices within society. Data were collected through observations and analysis of social phenomena related to inheritance disputes. The findings indicate that inheritance distribution is influenced by legal awareness, religious values, customary traditions, and family agreements. The coexistence of Islamic inheritance law and customary inheritance law reflects the dynamic nature of inheritance regulation in Indonesia. Therefore, harmonization between legal norms, religious principles, and customary values is necessary to minimize inheritance disputes and promote justice among heirs. This study is expected to contribute to the development of inheritance law and provide references for resolving inheritance disputes within Indonesia's plural legal system.</p>

### I. INTRODUCTION

Inheritance law in Islamic teachings is the oldest form of law in Indonesian society. The history of Islamic law in Indonesia began with practices and developments related to the Islamic context of Indonesian society in particular. The development of inheritance law in Indonesia has provided Muslims with knowledge on how to discuss differences in inheritance distribution. In Indonesia, we encounter three patterns of inheritance distribution: Islamic law, customary law, and colonial law. Islamic inheritance law can be influenced by two types of law: customary law and civil law, as civil law has a significant impact on human relationships, particularly in Islamic family law regarding inheritance matters.

Based on the provisions contained in Article 171 Letter (a) of the Compilation of Islamic Law

(KHI), it is stated that "inheritance law is the law that regulates the transfer of ownership rights of the inheritance (tirkah) of the testator, determining who has the right to be an heir and how much each person's share is."

Basically, the division of inheritance must be in accordance with the Qur'an, hadith and KHI, there are differences in the division between men and women, where in the division a system of two parts for men and one part for women applies.

Another opinion is that the inheritance provisions, which are inseparable from Islamic family law, have undergone several reforms in their implementation. This is because Islamic law can change according to needs. Therefore, Islamic inheritance law in some Muslim regions may differ in its implementation, possibly due to

changes in values and structures within society (Kusniati Rafiah, 2005).

Customary law is a custom referring to a series of long-standing rules that have become part of the culture to this day. Customary law is considered to be one that meets four elements: traditional, hereditary, religious, and prioritizes the common good. The sources of customary law are tradition, customary jurisprudence, and traditional leaders.

A small example of the enforcement of customary law that remains deeply ingrained today is the inheritance distribution pattern among the Mandailing people. In this case, customary law is the legal priority used to distribute inheritance, particularly for the Mandailing people in Tanjung Medan Village. In this area, inheritance distribution is based on a pattern that differs from the Compilation of Islamic Law. In the Mandailing, inheritance distribution patterns are only shared by men, while women receive no inheritance at all.

## II. RESEARCH METHODS

This study uses an empirical juridical method to determine how inheritance is distributed among the Mandailing people in Tanjung Medan Village. It also aims to identify and explore facts that can be used to address several issues, particularly those related to inheritance distribution. The approach employed in this study is sociological, utilizing secondary and primary legal sources.

## III. RESULTS AND DISCUSSION

### A. Understanding Inheritance in Islamic Law

Islamic law provides an understanding of inheritance referring to the rules for distributing assets owned by a deceased person to heirs (miras) or anyone who has the right and does not have the right to receive inheritance assets and knowing how much the distribution is to each heir.

In Islamic Law there are several principles or principles regarding how assets are transferred from heirs to heirs to heirs. The principle is as follows:

#### a. Ijbari Principle

The principle of Ijbari is the transfer of property from a deceased testator to his heirs according to provisions determined by Allah without depending on the will of the testator and his heirs (Suhrawardi K. Lubis, Komis Simanjuntak, 2008)

#### b. Bilateral Principle

The principle of bilaterality is that a person receives inheritance from both sides of the family, whether male or female, this has been explained in verses 7 and 11 of Surah An-Nisa.

#### c. Individual Principle

The individual principle is that heirs are entitled to the portion they receive without any relationship with other heirs.

#### d. The Principle of Balanced Justice

The principle of balanced justice is the balance between rights and obligations and the balance between needs and benefits. In other words, gender does not determine inheritance rights.

#### e. Principle of Inheritance Due to Death

The assets of a person who has not died cannot be divided among the heirs, which means that the assets cannot be divided before the testator dies.

### B. Sources of Islamic Inheritance Law

Some sources of Islamic inheritance law include:

#### a. Al-Qur'an

The Qur'an is the first and highest source of law for Muslims, which also contains regulations regarding inheritance law. The verses of the Qur'an that discuss inheritance can be seen in Surah An-Nisa verses 11-12, and the verses that further emphasize the division of inheritance between men and women are found in Surah An-Nisa 176.

#### b. Hadith

Hadith is the second source of law in Islam and there are several hadiths that contain information about the distribution of inheritance.

One of them is a hadith narrated by Muslim, the meaning of which is:

*From Ibn Abbas Ra. The Prophet Muhammad SAW said, "Give inheritance to those who are entitled to it, then the rest goes to men who are more important."*(HR Muslim) (Imam Az-Zabidi, 2002).

Hadith narrated by Bukhari and Muslim means:

*"Leave the parts to the expert, then the more is for the man who is closer."*(HR Bukhari and Muslim).

In this hadith it is clearly explained that the share of boys is greater than the share of girls (Muhammad bin Ismail Al-Bukhari, 1992).

#### c. Ijma and Ijtihad

The Prophet's companions reached a consensus on the distribution of inheritance, or the science of faraid, and all agreed on this. Therefore, ijma and ijtihad are also considered sources of Islamic inheritance law.

### C. Heirs and Heirs According to the Compilation of Islamic Law

Islamic inheritance law applies to Indonesian citizens who adhere to Islam, where the implementation of Islamic inheritance law is further regulated in Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law.

The Compilation of Islamic Law provides the following definition of Islamic inheritance law:

Inheritance law is the law that regulates the transfer of ownership rights to inherited property from the testator, and also determines who has the right to be an heir and how much each person gets.

According to Islamic inheritance law, the portion to be received by the heirs has been determined based on the provisions of Allah SWT and the guidance of the Prophet Muhammad SAW and the amount depends on the circumstances of the heirs who have joint inheritance rights so that

each heir can change depending on the conditions. However, if the heir does not intend to claim his rights because he feels he has met his needs, then his inheritance rights can be transferred to another heir, namely to the party who needs it more, something like this is allowed as long as there is an agreement and sincerity from each heir.

Islam has regulated very clearly and well regarding who the heirs are who have the right to receive an inheritance along with the amount, as well as the Compilation of Islamic Law as a form of positive law in Indonesia, as regulated in KHI article 176, it is stated that in the distribution of inheritance between sons and daughters the ratio is 2:1, where daughters get 1/2 of the assets if alone, if 2 or more people then each gets 2/3 but if each party wants to share it amicably, then it can be shared amicably in accordance with the agreement of each party.

### D. Heirs and Heirs According to the Mandailing Tribe

In the Mandailing traditional family system, only sons are called heirs because after a daughter marries, she becomes the direct responsibility of her husband, not her parents. This is what happens in inheritance practices in the Mandailing tribe.

In the distribution of inheritance of the Mandailing tribe, there are three main heirs.

- a. The eldest son
- b. The youngest son
- c. The eldest and youngest son

All legitimate sons have the right to inherit from their parents' assets. If the parents have no sons, the inheritance can still be used by either their daughters or their wives, as they have no sons. Apart from that, the heirs in Mandailing custom also consist of:

- a. Adopted children, however, in this case only receive an inheritance from the joint assets of their adoptive parents, not from inheritance.

- b. The father and mother, as well as the heir's siblings, will inherit if the heir does not have sons or adopted children.
- c. The closest family, if there are no sons, adopted children, as well as the heir's father, mother and siblings.
- d. Customary partnership, inherits if the heir does not have sons, adopted children, father, mother, and siblings and the heir's closest family.

#### **E. Definition of Inheritance According to the Mandailing Tribe**

The definition is all the assets left by the heir, in this case the deceased parents, whether in the form of joint assets that have been divided or undivided or indeed not divided. The meaning of inheritance in the Batak Mandailing tradition is inheritance in the form of money and also inheritance that has been passed down from generation to generation or called heirloom property. Regarding inheritance, especially in the Mandailing tradition, it can be divided into 2 types:

1. Joint assets with family members that can be shared, such as (rice fields, houses, gold).
2. Assets that are not permitted to be shared are ancestral lands that have been passed down from generation to generation, such as (traditional clothing, traditional tools, such as keris and others).

As stated by community leader Mangaraja Panusunan Siregar, an example of indivisible property is the Bale Sirih, a tool used to perform ritual ceremonies during Mandailing weddings. It is wrapped in yellow cloth, symbolizing happiness, and contains ingredients such as betel leaves, gambier, areca nut, and betel lime.

#### **F. Time for Distribution of Inheritance in Mandailing Customs**

##### **a. Distribution of Inheritance Before Death**

This is done if the heir is married, therefore the heir can distribute some of the assets he owns to the heir who is married, this is so that the heir

can support his family and so that the heir does not depend on his parents and has his own income, but the heir is prohibited from selling the inheritance without the permission of the heir, this is because the inheritance that is inherited has not fully become the property of the heir or the heir still has rights to the inheritance and can withdraw the inheritance that has been given.

In Mandailing customs, the distribution of inheritance rarely causes conflict, because the distribution of family assets begins when the parents or heirs are still alive or is called a grant, usually this is done when the parents are already old.

##### **b. Distribution of Inheritance After Death**

The distribution of inheritance is carried out after the testator's death. The distribution of inheritance assets begins with a deliberation by the heirs, which can also be held after the third night after the testator's death. It should be noted that if the deliberation does not go well or causes conflict, the first step is for the heirs to invite Kahanggi, Anak Boru, and Mora to provide suggestions or proposals on how to resolve the distribution of assets.

If the problem remains unresolved, the heirs can summon the Hatobangon, or traditional leaders, to resolve the conflict within the family. In this case, the heirs choose to summon the Kahanggi, Anak Boru, Mora, and Hatobangon (traditional leaders) so that the conflict can be resolved amicably, prioritizing the common good and preventing family discord. This is the reason the Mandailing tribe maintains such strong and sacred kinship ties.

#### **G. The Practice of Distribution of Inheritance of the Mandailing Tribe in Tanjung Medan Village**

Indonesia has a population with a majority of Muslims and has various very diverse tribes, of course, in the implementation of inheritance distribution will also differ and adjusted to each belief, one of which is the Customary Law that

applies to Mandailing in Tanjung Medan Village. As for the distribution of inheritance in this area, men receive a full share of the property upon the death of the testator, while women do not receive any portion at all because once the woman is married, she has become the property and obligation of the husband to fulfill all the needs and requirements of the woman in the household.

In the Mandailing community, the youngest son can inherit all the inheritance because he is the one who has lived with his parents the longest, the assets that can be inherited are assets in the form of money or assets that are of a continuing nature. This can be implemented after the testator dies or before the testator dies, in addition, the Mandailing custom in the distribution of inheritance recognizes the clan inheritance system, thus making it possible for an adopted child while using the clan of his adoptive parents (father) to receive inheritance, because if a child is adopted by a family then the child will be given the same clan as his adoptive parents.

#### **H. Determination of Portion or Number of Heirs**

In the distribution of inheritance according to Mandailing customs, the amount or portion of the inheritance for each heir is not determined, as is the case with the distribution of inheritance in other customary systems. So, even though the distribution of customary inheritance prioritizes equality and justice, this does not mean that each heir will receive the same portion of the inheritance (Hadikesuma, 1993).

In contrast to Islamic Law, in the case of Islamic inheritance, there is a certain number of parts which in the Qur'an's regulations are known as *Furudhul Muqaddarah*. This is because the Mandailing inheritance law only passes on to descendants and these descendants are only sons. This is what differentiates the inheritance distribution system between the inheritance distribution system in Mandailing customs and the inheritance distribution system in Islam, where the inheritance distribution in the

Mandailing tribe does not recognize a wider range of heirs like Islamic Law.

In Mandailing customs, the distribution of assets is not based on quantity, but rather on the form and type of property left by the heir. Essentially, inheritance in the Mandailing tribe only refers to land, rice fields, and houses. In the distribution process, the most important thing is who gets what, and most importantly, that all heirs agree on their respective shares.

#### **I. Obstacles to Inheritance Distribution that Occur in the Mandailing Tribe**

a. The influence of beliefs from a religious perspective

This occurs due to the existence of religious laws or regulations. For example, inheritance law in the Mandailing tribe existed in customary law before Islam introduced it. Thus, the process of accepting Islamic inheritance law as a legal system coincided with customary inheritance law regulations.

b. Factors from the Marriage Aspect

When a marriage occurs within the Mandailing tribe, a person is required to marry a member of another tribe or group with the aim of maintaining descendants based on the paternal line.

c. No Sanctions Apply During Inheritance Implementation

Most Mandailing people assume that inheritance matters are family matters only, meaning that there should be no interference from outsiders or people other than the family.

#### **IV. CONCLUSION AND SUGGESTIONS**

##### **A. Conclusion**

According to the Compilation of Islamic Law (KHI), there are five principles regarding the transfer of assets from the testator to the heirs. These include the principle of *ijbari*, the principle of *bilaterality*, the principle of *individuality*, the

principle of balanced justice, and the principle of inheritance due to death. Meanwhile, sources of Islamic inheritance law also include the Qur'an, Hadith, Ijma and Ijtihad. There are three heirs in the Mandailing tribe: the eldest son, the youngest son, and the eldest and youngest sons. In addition, heirs in Mandailing customs also consist of adopted children, the father and mother, and siblings of the testator, the closest family, and the customary association. In Mandailing customary inheritance can be divided into two types: joint property with family members that can be divided, and property that cannot be divided, namely ancestral land that has been passed down through generations. The appropriate time for dividing inheritance in Mandailing customs is when, the distribution of inheritance before death and the distribution of inheritance after death.

Furthermore, it is also explained how the practice of dividing inheritance in the Mandailing tribe, if he is a man, he gets the entire property upon the death of the testator, if he is a woman, he does not get any portion at all on the grounds that if the woman is married, she has become the property and obligation of her husband to fulfill her needs and requirements. Next, regarding the determination of the portion or number of heirs in Mandailing customs, the distribution of property is not based on the form and type of property left by the testator. And finally, the obstacles in the distribution of inheritance that often occur in the Mandailing tribe include the influence of religious beliefs, factors related to marriage, and the absence of sanctions during the implementation of inheritance.

### B. Suggetions

It is recommended that efforts be made to harmonize the implementation of Mandailing customary inheritance law with the principles of Islamic inheritance law to ensure fairness and legal certainty in inheritance distribution. Greater legal awareness and education should be provided to communities regarding the principles

of inheritance in the Compilation of Islamic Law (KHI), particularly concerning balanced justice and the rights of all heirs. In addition, customary leaders, religious leaders, and local communities are encouraged to strengthen dialogue in resolving differences between customary practices and Islamic legal provisions, especially regarding the inheritance rights of women.

Furthermore, clearer regulations and supervision mechanisms are needed to minimize disputes arising from inheritance distribution practices, including issues related to marriage, religious beliefs, and the absence of sanctions in customary inheritance implementation. It is also important to encourage mediation and family-based deliberation processes to maintain social harmony while ensuring equitable inheritance distribution. Future research is expected to further examine the development and adaptation of customary inheritance systems within Indonesia's plural legal framework to support more just and inclusive inheritance practices.

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