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Men and Women in The Distribution of Inheritance in Mandar, West Sulawesi, Indonesia

Ulfiani Rahman

Universitas Islam Negeri Alauddin, Makassar
Idham

National Research and Innovation Agency, Indonesia

M. Dalip

Sekolah Tinggi Agama Islam Negeri Majene

Makmur

Sekolah Tinggi Agama Islam Negeri Majene

makmurmandar89@gmail.com

Anwar Sewang

Sekolah Tinggi Agama Islam Negeri Majene

Email: ulfiani.rahman@uin-alauddin.ac.id

Abstract: In general, there are two patterns of inheritance distribution in Indonesia, based on Islamic and customary inheritance laws. This research specifically focused on the distribution of inheritance for men and women in Mandar by scoping the research area in Polewali Mandar Regency, West Sulawesi Province. This research is an empirical legal study using the sociology of law approach. Data collection techniques were obtained through literature study and interviews. The results showed that the Mandar people who lived in Polewali Mandar, West Sulawesi Province, considered that whether son or daughter earned the same sharing, there was no difference. The view that puts the same position between the two has influenced the legal treatment of inheritance. The distribution of inheritance in Mandar, especially for sons and daughters, was found in two patterns, namely, using Islamic inheritance patterns and customary inheritance patterns. This customary inheritance pattern is practiced in the form that they are no longer able to define, whether it is in the form of Islamic law or customary law, dividing the inheritance to their children to be managed by themselves, and some have shared the inheritance with their children, but the heir still manages the assets, and the house of the parents belongs to the youngest child, without distinguishing between the youngest son or the youngest daughter.

Keywords: The distribution of inheritance, inheritance law, Islamic law, customary law, Mandar community.

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Abstrak: Secara umum, ada dua pola pembagian harta warisan di Indonesia, berdasarkan hukum waris Islam dan hukum waris adat. Penelitian ini secara khusus difokuskan pada pembagian harta pusaka bagi laki-laki dan perempuan di Mandar, dengan ruang lingkup wilayah penelitian di Kabupaten Polewali Mandar Provinsi Sulawesi Barat. Penelitian ini merupakan studi hukum empiris dengan menggunakan pendekatan sosiologi hukum. Teknik pengumpulan data diperoleh melalui studi literatur dan wawancara. Hasil penelitian menunjukkan bahwa masyarakat Mandar yang berdomisili di Polewali Mandar Provinsi Sulawesi Barat menganggap bahwa baik anak laki-laki maupun perempuan mendapatkan bagian yang sama, tidak ada perbedaan. Pandangan yang menempatkan kedudukan yang sama di antara keduanya mempengaruhi perlakuan hukum terhadap pewarisan. Pembagian harta warisan di Mandar khususnya untuk putra dan putri ditemukan dalam dua pola, yaitu menggunakan pola pewarisan Islam dan pola pewarisan adat. Pola pewarisan adat ini dipraktikkan dalam bentuk bahwa mereka tidak lagi dapat menentukan apakah itu dalam bentuk hukum Islam atau hukum adat, membagi harta warisan kepada anak-anaknya untuk dikelola sendiri, dan sebagian telah berbagi warisan dengan anak-anaknya, tetapi harta kekayaan tetap dikelola oleh ahli waris, dan rumah orang tua adalah milik anak bungsu, tanpa membedakan antara anak laki-laki bungsu atau anak perempuan bungsu.

Kata Kunci: Pembagian warisan, hukum waris, hukum Islam, hukum adat dan masyarakat Mandar.

Introduction

The arrival of Islam is to complete the previous religion. Likewise, Islam came to Indonesia not merely in a vacuum without rules. Indonesia, better known as the archipelago at that time, consisted of various ethnic groups with their respective customary laws. Indonesia is a multicultural country of ethnic groups, languages, religions, and customs.¹ The various existing regulations cannot divide the current culture. Likewise, in the distribution of inheritance assets, Islam comes with legal rules and customary law in each region.² Including the

¹Ulfiani Rahman and Abu Muslim, "The Harmony of Religious People in the Perspective and Practice of Islamic Groups in Ambon," *Journal of Advance Research in Dynamical & Control Systems*, 12, No. 6 (2020), p. 2501-2515. Sugiri Permana, "Implication of Hazairin and Munawir Sjadzali Thoughts in Establishment of Islamic Inheritance in Indonesia," *Ahkam: Jurnal Ilmu Syariah* 18, No. 2 (2018), p. 375-395.

²Sonny Dewi Judiasih and Laela Fakriah, "Inheritance Law System: Considering The Pluralisme of Customary Law in Indonesia," *Padjadjaran Jurnal Ilmu Hukum* 5, No. 2 (2018), p. 315-330. Rahmat Haniru, "Hukum Waris di Indonesia Perspektif Hukum Islam dan Hukum Adat", *Jurnal Hukum the Indonesian Journal of Islamic Family Law* 4, No. 2 (2014), p. 456-474.

Acehnese, Minangkabau, Javanese, Banjarese, Bugis, and Mandar tribes as part of Indonesia.³

Currently, the regulation of inheritance law (which is part of civil law) in Indonesia is still dualistic and pluralistic. It is said to be dualism and pluralism because there are at least four systems of inheritance law that are established or enforced positive law (enforcement), namely the Western Inheritance Law System, and the Customary Inheritance Law System, the compilation of Islamic law, and the Islamic Inheritance Law System.⁴

The Mandar community, which is predominantly Muslim, usually uses two kinds of inheritance law, distributing the inheritance according to Islamic law and according to the customary law of the Mandar people. Both are applied, and their existence is recognized in the community. The Mandar people are known to adhere to the teachings of their religion, which is Islam, and also uphold their customary values. This is reflected in the expression: “customs are united with sharia. It is integrated with customs. Death will come to customary without sharia. Likewise, there will be death in sharia without customs. As for customs, it is the sharia that becomes the torch; as for the sharia, customs are the strength.”⁵ Therefore the division of inheritance in Mandar society cannot be separated from the dialectic between custom and sharia.

The term “inheritance” comes from the word *al-mirats*, which in Arabic is the *mashdar* (infinitive) form of the word *waritsa-yaritsu-irtsan-mi a tsan*. Its meaning, according to language, is 'the transference of something from one person to another, or from one group to another.⁶ Meanwhile, according to the term, as stated by Ali al-Shabuni and is well-known among the scholars, it is the transference of ownership rights from the deceased to his surviving heirs, whether what is left is in the form of wealth (money), land, or anything in the form of right

³Supriadi and Forbis Ahamed, “The Legal Culture in The Distribution of Heritage Property Among the Muslim Community in Karas Kepoh Village, Pancur District, Rembang Central Java,” *Al-'Adalah* (2021), p. 77-96. Tarmizi, "Inheritance System of Bugis Community in District Tellu Siattinge Bone, South Sulawesi (Perspective of Islamic law)," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 4, No.1 (2020), p. 179-208. Zaitun Muzana, et.al., “Customary Practice of Sharing Inheritance: An Analysis of Society Practices in Pidie Aceh Darussalam,” *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 11, No. 2 (2016), p. 275-292. Fransisca Utami Masakke, et.al., “The Existence of Customary Law in Indonesia,” *Tadulako Law Review* 5, No. (2020), p. 89-98.

⁴Komari, *Laporan Akhir Kompedium Bidang Hukum Waris*, Jakarta: BPHN Puslitbank-Departemen Hukum dan HAM, 2011, p. 3.

⁵Idham, *Moderasi dalam Masyarakat Islam*, Orasi Pengukuhan Profesor Riset Badan Litbang dan Diklat Kementerian Agama RI, 19 November 2019.

⁶Abdul Azis, “Pembagian Waris Berdasarkan Tingkat Kesejahteraan Ekonomi Ahli Waris dalam Tinjauan Maqashid Shariah”, *De Jure Jurnal Hukum dan Syari'ah* 8, No. 1 (2016), p. 48-63. Muhammad Ali ash-Shabuni, *al-Mawaris fi al-Syari'ah al-Islamiyyah fi Dhaw'i al-Kitab wa al-Sunnah*, Jakarta: Dar al-Kutub al-Islamiyah, 2010, p. 29. Also compare with Muhammad bin Salim al-Tarimiy, *Takmilah Zubdatu al-Hadis fi Fiqh al-Mawaris*, Jakarta: Dar al-Kutub al-Islamiyah, 2012, p. 11.

legal property in star's.⁷ Islamic inheritance law is a rule that governs the transference of property from a deceased person to his heirs.⁸ Meanwhile, customary inheritance law is a series of regulations that govern the distribution and the transfer of inheritance or inheritance from one generation to another.⁹ The basis and main source of Islamic law regarding inheritance are the texts contained in the Qur'an and the Sunnah of the Prophet.

There are several writings on the distribution of inheritance, both based on Islamic law and custom, including Supriadi, Ahamed, and Sudaryanto,¹⁰ which discuss the distribution of inheritance from the perspective of Islamic law and Javanese customary law. This paper found that Islamic law regarding the distribution of inheritance according to Javanese customary law, which is carried out by means of *acungan*, *lintiran*, *wekasan*, and *dum dum kupat* or *sigar semangka*, was not justified in Islamic law. In contrast, the distribution of inheritance by means of *segendong sepikulan* was still acceptable in Islamic law because this method was by Islamic law, but the way it was carried on was considered the result of Islamic law reception.

Similar writing was found in Anwar Hidayat,¹¹ which examines the comparison of inheritance distribution based on Islamic law and Customary law. This paper concludes that inheritance is a transference of ownership rights to the inheritance (*tirkah*) of the inheritor, so inheritance is closely related to the scope of human life because every human being must experience a legal case, namely death. In Islamic law, the distribution of inheritance by differentiating the share of male and female heirs is based on the 2: 1 provision. Whereas in the distribution of inheritance according to customary law, it does not differentiate between inheritance experts based on gender, but the division is based on family strata, such as the first child will get a larger amount of inheritance than the second, third, and so on.

Pelealu discussed the position and rights of children in customary inheritance law in Indonesia.¹² This writing concludes that the inheritance system in customary law can be divided into 3 (three) types, namely the individual inheritance system, the collective inheritance system, and the majorate inheritance system. Each inheritance system has advantages and disadvantages. Before the heir dies, in the customary law of inheritance, the inheritance process can be

⁷Muhammad Ali ash-Shabuni, *al-Mawaris fi al-Syari'ah...*, p. 29.

⁸Zainuddin Ali, *Pelaksanaan Hukum Waris di Indonesia*, Jakarta: Sinar Grafika, 2008.

⁹Muhammad Bushar, *Pokok-Pokok Hukum Adat*, Jakarta: Pradnya Paramita, 2006.

¹⁰Agus Sudaryanto, "Aspek Ontologi Pembagian Warisan dalam Hukum Islam dan Hukum Adat Jawa," *Mimbar Hukum* 22, No. 3 (2010), p. 534-552. Supriadi and Forbis Ahamed, *The Legal Culture in The Distribution...*, p. 77-96.

¹¹Anwar Hidayat (et. al), "Kajian Perbandingan dalam Pembagian Warisan Berdasarkan pada Hukum Islam dan Hukum Adat," *Jurnal Justisi Hukum*, 3, No. 1 (2018), p. 79-105.

¹²Firjenis A. Pelealu, "Kedudukan Hukum dan Hak-Hak Anak dalam hukum Waris Adat di Indonesia," *Jurnal Lex Privatum* 6, No. 9 (2018), p.101-115.

carried out by 1) The method of forwarding or transferring 2) The method of appointment 3) The method of leaving a message or will. After the heir dies, it can be carried out by 1) Control of the inheritance and 2) Distribution of inheritance.

Another finding in this paper is that the legal position of biological children in the patrilineal society in inheriting is that boys are the heirs of the offspring. As heirs of their parents/fathers, while girls are not successors and are not heirs, while in matrilineal societies (women), The position of biological children, both girls, and boys, only inherits from their mothers and in the parental kinship system, the positions of boys and girls are not differentiated, they are equal and as heirs are entitled to inheritance from their parents with the same distribution.

Meanwhile, the position and rights of adopted children with their biological parents who have been adopted by other people causing a break with their biological parents. The position of the biological parents has been replaced by the adoptive parents but does not break the relationship between the child's family and the biological parents. Only the relationship in the sense of everyday life is involved with the adoptive parents, and the biological parents may not interfere in matters of caring, maintenance, and education of the adopted child. The legal position of the adopted child against the adoptive parents has the position of the child alone or biological. Adopted children have the right to inheritance and civil rights. The position of stepchildren in the household is a family member that creates mutual rights and obligations. The mother or biological father is the heir, but to the mother or stepfather, the child is not an heir. The position and rights of the out-of-wedlock in the kinship system, in the patrilineal society, they only have a kinship with the mother, and they are the heirs of the mother's relative. While in the matrilineal society, the good kinship relationship between the biological father and the outside child with the family of the biological father is sufficient for recognition by marrying the mother of the child for avoiding calamity and acts that must be reproached, and in parental societies, children outside of marriage are often given an inheritance from their biological father.

Based on the description above, this research examines a crucial issue regarding the position of men and women in the distribution of inheritance of the Mandar tribe in Polewali Mandar Regency, West Sulawesi Province. The main problem to be answered is the view of the Mandar people towards sons and daughters, as well as the practice of dividing the inheritance between sons and daughters of the Mandar people in Polewali Mandar Regency, West Sulawesi.

This research is an empirical legal study using the sociology of law approach.¹³ Data collection techniques were obtained through literature study and interviews. This article only describes or limits itself to the distribution of inheritance for boys and girls in Mandar, Polewali Mandar Regency, West Sulawesi Province.

Mandar as the Research Locus

Mandar is one of the tribes that inhabit most of the land of West Sulawesi province. Apart from being the name of the tribe, Mandar is also the name of a region (territory). The Mandar area, which is now better known as West Sulawesi Province,¹⁴ is on the island of Sulawesi, to be precise, between 1180 and 1190 East Longitude and between 10 and 30 South Latitude, an area that, during the Dutch colonial era included the Central Government Area named Afdeling Mandar, led by an Assistant Resident, which is divided into 4 (four) *onderafdeling*. Each of them was led by a *controleur*. The *Onderafdeling-onderafdeling* were Majene, Mamuju, Polewali and Mamasa.¹⁵

Since the sixteenth century, there had been 7 (seven) kingdoms united in a federation-form administrative organization called "*Pitu Babana Binaga*." C. Van Vollenhoven in Baharuddin Lopa¹⁶ called it "*den zevenbond Mandar*". Then for strategic purposes, the seven kingdoms located on the coast re-held into a more liberated union similar to the form of a confederation with seven other kingdoms located in mountainous areas, which were also bound together in a federation called "*Pitu Ulunna Salu*." Through the alliance of the two groups of kingdoms, then it was called the "*Pitu Babana Binanga-Pitu Ulunna Salu*" association.¹⁷

Pitu Babana Binanga literally means: *Pitu* represents seven; *Babana* means estuary; *Binanga* means river; *Pitu Babana Binanga* means seven river estuaries, which means seven kingdoms on the coast of the Mandar area. *Pitu Ulunna Salu*, literally means: *Pitu* is seven; *ulunna* means upstream; *Salu* means

¹³Salim and Erlies Septiana Nurbani, *Penerapan Teori Hukum pada Penelitian Disertasi dan Tesis*, Buku Kedua, Depok: Rajawali, 2017, p. 16. Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum: Normatif dan Empiris*, Depok: Kencana, 2018, p. 149-151.

¹⁴Idham and Sapriallah, *Sejarah Perjuangan Pembentukan Provinsi Sulawesi Barat*, Yogyakarta: Zadahativa Publishing, 2014.

¹⁵Saharuddin, *Mengenal Pitu Babana Binanga (Mandar) dalam Lintasan Sejarah Pemerintahan Daerah di Sulawesi Selatan*, Ujung Pandang: CV. Mallomo Karya, 1985. Darmawan Mas'ud Rahman, *Puang dan Daeng: Sistem Nilai Budaya Orang Balanipa Mandar*, Yogyakarta: Zadahativa Publishing, 2014.

¹⁶Baharuddin Lopa, *Hukum Laut, Pelayaran, dan Perniagaan*, Bandung: Alumni, 1982.

¹⁷Muh. Idham Khalid Bodi, *Konflik Identitas pada Pemekaran Wilayah*, Yogyakarta: Zadahativa Publishing, 2019.

river. So *Pitu Ulunna Salu* means seven rivers, which means seven kingdoms in the mountainous part of the Mandar area.¹⁸

The formation of the *Pitu Babana Binanga* and *Pitu Ulunna Salu* alliance was pioneered by a king named *To Mepayung* from the Balanipa kingdom. At first, he allied kingdoms located on the coast (estuary) in the form of a Kingdoms congress that gave birth to the *Pitu Babana Binanga* federation. The place where the congress was held was located in a place called *Tamajarra*. Furthermore, the congress is called *the Tamajarra Congress*.

Those who attended the *Tamajarra Congress* from *Pitu Babana Binanga* were: Balanipa Kingdom, Sendana kingdom, Banggae kingdom, Pamboang kingdom, Tappalang kingdom, Mamuju kingdom, and Binuang kingdom (at that time was unable to attend, yet). Whereas from *Pitu Ulunna Salu* were: Rantebulahan Kingdom, Aralle kingdom, Mambi kingdom, Bambang kingdom, Messawa kingdom, Tabulahan kingdom, and Matangnga kingdom.

Regarding the origin of the name Mandar, there are several opinions expressed and written. For example, A. Saiful Sinrang stated that it comes from the word *Mandara* which means light. While Darwis Hamzah's opinion originated from the word *Manda'* which means strong, some argue that it was taken from the name of the Mandar river, which disembugue into the Balanipa Kingdom Center (included in *Pitu Babana Binanga*) and headed to *Pitu Ulunna Salu*. Mandar Bay might also be taken from this name.

The supporting community emphatically recognizes that they come from the Mandar ethnic group. They speak *Mandar* and claim to have their customs and culture, which are called Mandar customs. This confession is always heard among them by calling himself *To Mandar* (Mandarese), who has *ada' To Mandar* (customs of the Mandarese). Based on this recognition, it is understandable when the Buginese call this ethnic group *menre or menre'* (Mandar people). The same word is also found in *Lontar I Lagaligo*.¹⁹ Likewise, the Makassarese mention it with the word *Mandara,*' and the Toraja people call it *To Manda,*' which both mean Mandar people.

Based on Government Regulation 34 of 1952, the Regional Government of South Sulawesi (former of Hadat Tinggi) was dissolved; the former *afdeling* in South Sulawesi became *Swantara* (autonomous), resulting in the former Mandar *afdeling*, which also became one of the *swantara* areas. By means of Law no. 29 of 1959 concerning the formation of Level II regions in Sulawesi, the *Swantara* areas formed by PP. 34 of 1952, including the *Swantara Mandar*

¹⁸Muh. Idham Khalid Bodi, *Makna Lambang Provinsi Sulawesi Barat*, Yogyakarta: Zadahaniwa Publishing, 2015. Ridhwan, et.al., "Kalindaqdaq Tradition of Mandar Community in West Sulawesi: Islamic Education Study Based on Local Wisdom," *El-Harakah* 23, No. 2 (2021), p. 289-309.

¹⁹Andi Zainal Abidin, *Lontara Sebagai Sumber Sejarah Terpendam*, Makassar: Lembaga Penelitian Hukum Universitas Hasanuddin, 1970.

Region, as well as the original *swapraja-swapraja* (such as *Pitu Babana Binanga*) and *Neo Swapraja Kondo Sapata* (ex *kewedanaan Mamasa*) were abolished (disbanded),²⁰ while the employees and officials, including the leaders and members of the *swapraja* as well as the district head, was transferred as a civil servant or autonomous regional employee, and three sectors of Level II Regencies at the former place of *Afdeling* Mandar, namely District of Polewali Mamasa, Majene, and Mamuju. The bias resulting from the *auto das* made many regions at the level I and level II in Indonesia want to expand from their central base. Those three regencies were divided into five regencies, i.e., Polewali Mandar Regency, Majene Regency, Mamuju Regency, North Mamuju Regency, and Mamasa Regency.

The five districts took the initiative to form a separate province from the central province of South Sulawesi, i.e., West Sulawesi Province. By October 5, 2004, the government responded to this initiative through Law no. 26 of 2004, which was inaugurated on October 16, 2004, as a new province as it is today, West Sulawesi. As for the borderline of West Sulawesi Province, namely: a) to the north, it is bordered by Donggala Regency, Central Sulawesi Province; b) to the east is Donggala Regency, Central Sulawesi Province, North Luwu Regency, Tana Toraja Regency, and Pinrang Regency (South Sulawesi Province); c) to the south by Pinrang Regency of South Sulawesi Province and Mandar Bay and d) to the west by the Makassar Strait and Pasir Regency, East Kalimantan Province.²¹

In West Sulawesi Province, with a population of around one million people, 95% are Muslims, and the rest are Catholic and also Protestant Christians. Besides being in the six districts in West Sulawesi Province (Polewali Mandar, Majene, Mamuju, Mamuju Tengah Pasangkayu, and Mamasa), the Mandar people are also found in many districts of Pinrang, Pangkajene Islands, Makassar City-South Sulawesi. Those outside South Sulawesi can be found in Donggala, Toli-Toli of Central Sulawesi, East Kalimantan, East Java, and other areas in Indonesia, which are estimated for more than two and a half million people.

Men and Women from the Mandarese Perspectives

For the Mandar people, there is no difference between boys and girls.²² They believe that both boys and girls are gifts from the Creator. One of the community leaders (Palipoi), who was asked about the elements of determining

²⁰Saharuddin, *Mengenal Pitu Babana Binanga (Mandar) dalam Lintasan Sejarah Pemerintahan Daerah di Sulawesi Selatan*, Ujung Pandang: CV. Mallomo Karya, 1985.

²¹Muh. Idham Khalid Bodi, *Makna Lambang Provinsi Sulawesi Barat*, Yogyakarta: Zadahaniwa Publishing, 2016.

²²Muh. Idham Khalid Bodi, *Sibaliparri: Gender Masyarakat Mandar*, Yogyakarta: Zadahaniwa Publishing, 2015.

a father and mother to humans, as well as their behavior towards their children, replied: “Humans exist because of God's will. We come from male and female substances, and we become human beings in the mother's womb that will be born a few months later. Therefore, we must not compare men and women because we come from man and woman in the mother's womb.”²³

From the results of the above interview, it can be seen that the *cera'* (blood), which is passed on from the male and female to the descendants, remains in a balanced calculation in a certain function. This definition implies that the social stratification that grows (inequality) between men and women does not come up. In fact, calculating a person's blood level is always done based on mathematical calculations. The man's blood level is added to the woman's total; The number is divided in half, and the blood level of the child is obtained. In the calculation of the number $(1+1): 2 = 1$, the blood level impacts the notion of social stratification based on the calculation of blood levels, which they call the term preliminary (color), which means the obligation in protecting. Thus, it can be understood that in every event, especially those related to traditional ceremonies, whether inviting, welcoming, serving the dish, or managing kitchen utensils without any bias between men and women.

Some terms are still heard today for someone who is respected, such as *mara'dia tommuane* (king), *mara'diatobaine* (queen), also referred to as children and descendants of both men and women. Likewise, the terms *pa'bicaratommuane* (customary male holders), *pa'bicaratobaine* (female customary leaders), *kali tommuane* (male kadhi), *kali tobaine* (female kadhi), *cama'tommuane* (male head of district), *cama'tobaine* (female head of district), *kapala tommuane* (male village head), *kapala tobaine* (female village head); all of them get the same respect (equal) that is balanced both in traditional ceremonies and outside ceremonies, they are just the same for the community. Things like this also have an impact on the pattern of inheritance distribution to some Mandar people who view boys and girls equally.²⁴

The Practice of Inheritance Distribution for Boys and Girls in Mandar

1. Based on Islamic Law

Islamic inheritance law is a law that regulates each matter relating to the transference of rights and/or obligations on an individual's assets to his heirs after the death.²⁵ The elements of Islamic inheritance law in the implementation of the inheritance law of the Muslim community who lived in the Republic of Indonesia consist of three elements, namely: heirs, inheritance, and beneficiary

²³Interview with Palippoi, Tradisional Leaders in Polewali Mandar, January 2, 2021.

²⁴Idham dan Ulfiani Rahman, “Implementasi Nilai-Nilai Sibaliparri (Studi Kasus Pendidikan Agama di Mandar)”, *Jurnal Renaissance* 5, No. 1 (2020), p. 610-616.

²⁵A. Khisni, *Hukum Waris Islam*, Semarang: Unissula Press, 2017.

(heir/heirress). The three elements are interrelated, and each has its own provisions.

First, the heir, the heir is a person who, at the time of his death, was Muslim, left inheritance, and a living heir/heirress. The term heir is specifically associated with the process of transferring rights over the property from a person who has passed away to his living family.²⁶ The heirs in Al-Qur'an surah al-Nisa 'verses 7, 11, 12, 33, and 176 consists of parents/father or mother (*al-wālidaini*) and relatives (*al-aqrabīn*). *Al-wālidain* can be referred to as a grandfather or grandmother when a father or mother has died. Likewise, the notion of children (*al-walad*) can be expanded to grandchildren if there are no children as the heir. Also, the understanding of kinship (*al-aqrabīn*) refers to all family members who can be legitimated as heirs, namely the lineage relationship from a straight line up, down, and a line to the side. In addition, the marriage relationship is also the heir, whether a wife or husband.²⁷

Second, inheritance (wealth, property) is mentioned by the Qur'an surah al-Nisa 'verse 7 with the term *taraka* or property to be left behind (al-Qur'an surah al-Nisa' verse 180) is transferred to the person entitled to receive it (heir). *Taraka* is mentioned by al-Qur'an surah al-Nisa 'verses 11 and 12, which is then meant as inheritance consisting of property and rights, the distribution of which is carried out according to the determined part after paying the debt and the inheritor's will. The remaining assets after the fulfillment of these various obligations must be distributed by the heirs as an inheritance.²⁸ Regarding the heir's rights, the *Sunni* clerics set three obligations that the heirs must perform before distributing the heir's inheritance, i.e., the cost of managing the burial, paying off the heir's debt, and fulfilling the heir's will.²⁹

Third, Heirs, heirs of relatives (*nasab*) consist of:

- a) Children, the position of children as the heir, both male and female, is determined by their respective share in the line of law of the Al-Qoran surah al-Nisa 'verse 11, which regulates the acquisition of rights and obligations of a boy and a girl as 2: 1.³⁰ Regulating the acquisition of two or more girls, which is 2/3 of the inheritance. Regulating the acquisition of a daughter, which is 1/2 of the inheritance.³¹

²⁶Husnain Muhammad Makhluḥ, *al-Mawāriṯh fī al-Sharī'ah al-Islāmiyyah*, Kairo: Matabi' al-Ahram al-Tijariyyah, 1971, p. 12.

²⁷Hazairin, *Hukum Kewarisan Bilateral Menurut al-Qur'an dan Hadis*, Jakarta: Tintamas, 1990, p. 6.

²⁸Zainuddin Ali, *Pelaksanaan Hukum Waris...*, p. 46-47.

²⁹Zainuddin Ali, *Pelaksanaan Hukum Waris...*, p. 46-47.

³⁰Syarifuddin, *Ahkām al-Mīrāth wa al-Wasāyā al-Islāmiyyah*, Kairo: Dar al-Fikr al-Hadis, 1962, p. 20.

³¹H.M. Tahir Azhary, *Bunga Rampai Hukum Islam*, Jakarta: Ind-Hild-Co, 1992, p. 6.

- b) Mother-father, the position of parents as heirs, both mother and father have their respective parts as heirs in the three lines of the law of the Al-Quran Surah al-Nisa 'verse 11. First, regulating the acquisition of mother-father, respectively, each person gets 1/6 of the inheritance if the deceased has children. Second, it only determines the acquisition of the mother, which is 1/3 of the inheritance, while the father receives an open share if the deceased has no children or siblings. Third, determine the mother's acquisition of 1/6 of the inheritance if the deceased does not leave children but has siblings, including siblings by father, siblings by mother, or just siblings.³²
- c) Widower and Widow, both of which have been assigned their respective share as heirs in the line of law of the Al-Quran surah al-Nisa 'verse 12. The arrangement of inheritance for a widower is ½ of his wife's inheritance if the wife has no children, but if the wife has children, then the acquisition of ¼ inheritance from his wife. On the other hand, a widow gets ¼ of the inheritance of her husband if the husband does not leave any child. If the husband leaves the child, the widow gets 1/8 of the inheritance of the husband.³³
- d) brotherhood, a brother or sister, either being alone or having several brothers and sisters, their share has been determined as heirs in the legal line of the Al-Quran surah al-Nisa 'verses 12 and 176. Verse 12 regulates the acquisition of a brother or sister, who each receive 1/6 of the inheritance. Also, regulating the acquisition of two or more brothers, all of the brothers share an equal share of 1/3 of the inheritance.³⁴ Verse 176 is the definition of *kalalah*. *Kalalah* is a man or woman who dies without leaving or has no children but only has siblings.³⁵ It also regulates the acquisition of a sister in the amount of ½ the inheritance. Regulates the acquisition of one or more brothers for the entire inheritance. In addition, it also regulates the acquisition of two or more sisters in the amount of 2/3 of the inheritance, then regulates the balance of rights and obligations between brothers and sisters, 2: 1.³⁶
- e) Substitute heir, a child or more by a person, both male and female, who replaces the position of his parents as heirs are determined in the legal line of al-Qur'an surah al-Nisa 'verse 33. This legal line regulates the substitute heir of the mother-father inheritance for the extended family inheritance.

³² Hazairin, *Hukum Kewarisan Bilateral...*, p. 6.

³³ Hazairin, *Hukum Kewarisan Bilateral...*, p. 7.

³⁴ Sajuti Thalib, *Hukum Kewarisan Islam di Indonesia*, Jakarta: Bina Aksara, 1981, p. 135-137.

³⁵ Hazairin, *Hukum Kewarisan Bilateral...*, p. 8.

³⁶ Sajuti Thalib, *Hukum Kewarisan Islam...*, p. 134.

However, the part of each successor heir refers to the provisions of surah al-Nisa 'verses 11, 12, and 176.³⁷

According to Islamic inheritance law, there are three conditions for the existence of inheritance so that it can give someone or an heir the right to receive an inheritance:³⁸

- a) The person who inherits (heir) has passed away, and it can be proven legally that he/she has died. So that if there is a distribution or giving of assets to the family when the heir is still alive, it is not included in the category of inheritance but is called a *hibah* (grant).
- b) The person who inherits (the heir) is still alive when the person who is inheriting passes away.
- c) People who inherit an heir/heirress have a family relationship or kinship, both straight-line ties such as father or grandfather and straight-down relationships such as children, grandchildren, and uncles.
- d) Inherit is based on a will, which is in the form of a person's statement about what he wants after he dies, which the maker can change or revoke as long as he is still alive in accordance with Article 992 of the Civil Code. The method of cancellation must be proceeded with a new will or managed by a notary.

The requirements for making a will prevail on those who are 18 years old (or over) and already married even though they are not 18 years old. Included in the class of heirs based on a will are all boys appointed by the heir by means of a will to be his heirs.³⁹

Islamic inheritance law contains various principles and characteristics. Amir Syarifuddin⁴⁰ classified five principles relating to the nature of transition to heirs, namely, the principle of *ijbari*,⁴¹ bilateral principle,⁴² individual

³⁷ Zainuddin Ali, *Pelaksanaan Hukum Waris...*, p. 50.

³⁸ Ash-Shabuni, Muhammad Ali, *Pembagian Waris Menurut Islam*, (Penerjemah: A.M Basamalah), Jakarta: Gema Insani Press, 1995. Idris Djakfar and Taufik Yahya, *Kompilasi Hukum Kewarisan Islam*, Jakarta: Dunia Pustaka Jaya, 1995.

³⁹ Ahmad Rofiq, *Hukum Perdata Islam di Indonesia*, Jakarta: Rajawali Press, 2013. Abdul Manan, *Reformasi Hukum Islam di Indonesia*, Jakarta: Raja Grafindo Persada, 2006.

⁴⁰ Amir Syarifudin, *Hukum Kewarisan Islam*, Jakarta: Prenada Media, 2005, 19.

⁴¹ The principle of *ijbari* literally means 'compulsion', which is doing something other than one's own will. In the context of Islamic inheritance law, it can be interpreted as a transition from a person who has died to a person who is still alive without any effort from who will die or will who will accept it. The existence of this *ijbari* element can be implemented from the group of heirs, clause by Allah in verses 11, 12, and 176 surah an-Nisa.'

⁴² In the context of Islamic inheritance law, the bilateral principle means that inheritance is transferred to or through two directions. This means that everyone receives inheritance rights from both the male kin and the female kin.

principle,⁴³ balanced justice principle,⁴⁴ and mere principle due to death.⁴⁵ Meanwhile, there are three pillars of Islamic inheritance, *Al-warith* (heir), *Muwarrith* (heir/heiress), and *Mawruth/mirath* (inheritance).⁴⁶

As previously stated, this paper only limits the distribution of inheritance to boys and girls in Mandar. From the research results, it was found that, in general the Mandar community carried out the teachings of Islamic inheritance, namely 2: 1 (two parts for boys and one part for girls). In Mandar culture, the term "mambullei tommuane, mandudungi tobaine" means "men bear, women uphold". Like carrying something, a man is the one who carries two burdens or things, and a woman only has one thing, only one.

One of the informants, Dumaer said, when our parents died long ago, I was the oldest brother. I am five siblings, two boys, and three girls. The way I divided the inheritance was according to the Qur'an, men should carry (two parts) and women uphold (one part). After being divided according to Islamic law, I asked my brother to give a portion to my sister as well; then, it is shared equally.⁴⁷

From experience conveyed by the informant above, it is very clear that as a person who obeys the religion, he divides the inheritance according to the guidance of Islamic law. However, after they divided it, they took the initiative to give a portion of the male part to their female sibling, so the distribution was evenly distributed.

This is not against Islam because Islam promotes peace and the willingness of all parties. The principle of divinity and self-control, the principle of equality and mutual rights, the principle of harmony and kinship, the principle of deliberation and consensus, and the principle of justice⁴⁸. The process of distributing inheritance after the heirs are determined their share of the inheritance is based on the provisions of inheritance law in Islam. This means that each heir is the owner of the inheritance property whose share has been determined. This has a logical consequence that as the heir owns the freedom to take legal action against his property that comes from the inheritance, where the owner of the

⁴³The individual principle implies that each heir is individually entitled to the part he gets without depending on other heirs. The individual character can be seen from Surah an-Nisa 'verse 7 concerning the distribution of inheritance, which states that men and women have the right to inherit from their parents and relatives, regardless of the amount of the assets, with a predetermined share.

⁴⁴The principle of balanced justice is a balance between rights and obligations. Basically, the principle of balanced justice in the context of Islamic inheritance law states that gender differences do not determine inheritance rights in Islam. The legal basis for this principle can be found, among others, in the provisions of the Surah an-Nisa 'verses 7, 11, 12, and 176.

⁴⁵The sole principle of death in Islamic inheritance law implies that the transference of one's property to another only applies after the owner of the property has passed away.

⁴⁶Suparman Usman and Yusuf Somawinata, *Fiqh Mawaris*, Jakarta: Gaya Media Pratama, 2002, p. 163.

⁴⁷Interview with Dumaer, Traditional Leaders in Polewali Mandar, January 5, 2021.

⁴⁸Rahmat Haniru, *Hukum Waris di Indonesia...*, p. 456-474.

inheritance property can release part or all of his rights to be given to other heirs, either with a certain reward or without any compensation.⁴⁹

2. Based on Customary Law

The customs from one region to another can be different. This affects the laws that apply to each group of people, which is known as customary law. Customary law itself is unwritten, only in the form of norms and customs that certain communities in an area must obey. It only applies in that area with certain sanctions for those who violate them. Therefore, customary inheritance law is heavily influenced by social or kinship structures, such as; the bloodline system,⁵⁰ individual system,⁵¹ collective system,⁵² and major system.⁵³

Customary law in society appears in its form as 1) Unwritten law (*ius non skriptum*), the portion is the largest part; 2) Written law (*ius skriptum*), only a small part; 3) Written descriptions. The existence of inheritance law is a part of the kinship system in Indonesia. Therefore, customary inheritance law is rooted in the form of society and familyhood in Indonesia.

Likewise, Mandarese community also recognizes the above point as the mutual willingness and mutual acceptance from the heirs, which in essence, it does not contradict Islamic law, because it is following the objectives of stipulating Islamic law, namely maintaining religion, guarding the soul, maintaining reason, protecting the descendants and saving property. That way, in Islamic law, specifically the category of *fiqh* mentioned that the distribution of the inheritance of the Mandarese Community does not contradict the substance of Islamic law, which is permissible as long as it does not cause oblivion, so is the Islamic Law Compilation (KHI). If the heirs agree peacefully in the distribution of inheritance after being aware of each part, and this matter is separated from taking the property

⁴⁹Ahmad Azhar Nasyir, *Hukum Waris*, Yogyakarta: UII Press, 2001.

⁵⁰ Bloodline system: This system is divided into three types, namely the patrilineal system based on the father's lineage, the matrilineal system based on the mother's lineage, and the bilateral system based on the lineage of both parents

⁵¹Individual system: based on this system, each heir gets or owns the inheritance according to his share. In general, this system is applied to people who adhere to a bilateral social system such as Javanese and Batak.

⁵²Collective System: the heirs receive the inheritance as a unit that is not divided into control or ownership and each heir only has the right to use or receive the proceeds from the assets. An example is an heirloom item in a particular society.

⁵³Majority system: in this system, inheritance is transferred as an undivided unit with the right to control delegated to certain children. For example, to the eldest son who is the leader of the family replacing the position of the father or mother as the head of the family, as in the Balinese and Lampung communities, inheritance is transferred to the eldest child and in South Sumatra to the eldest daughter.

in a way that is not their right as prohibited in the Al-Qur'an. The same thing was found in the Besemah Adat community in Bengkulu.⁵⁴

There is no standard pattern for the distribution of the customary inheritance of the Mandar people, the rules for the distribution work accordingly in the community. In addition to the distribution of inheritance based on Islamic law, in Mandarese community also found:

a. Mixed Law Based on Sincerity

The Mandar people who were the informants of this study generally could not distinguish between Islamic law and customary law. This can be understood because Mandar culture is Islam itself. It cannot be separated. The Mandar customs and the teachings of Islam are integrated into the Mandar culture. So only in the case of inheritance in Mandar, it run naturally based on their habits. For the Mandar people, brotherhood and bloodline are above everything, including inheritance.

One of the informants, Mahfudz said: It is ordinary for the Mandar people that it is no longer known what the inheritance is based on. Whether it is divided based on Islamic law or based on custom. Because when we have agreed and are both happy, there will be no more problems. They will take it to the village leader if they disagree, this can happen because someone is greedy. Some of them have taken it to court, which is very rare.⁵⁵

Regarding the above informant experiences in Mandar, it does not matter which law is implemented, whether based on Islamic teachings or customary law. The distribution of inheritance runs as it is. The important thing is that they are mutually sincere heirs. This happens when the heirs accept a joint decision. However, if there are those who do not agree with the share caused by one of the heirs is not satisfied, then this is where they look for a mediator who can mediate their problem. The mediator is an elder, whether from the family or from the local government. However, if there are still those who are not satisfied, the problem is taken to court to be resolved.

b. Distribution Before Demise

Actually, the distribution or giving of inheritance to the children while the parents are still alive is not included in the inheritance. It is included in *hibah* (gift). The parents gave the grants to their children because they were afraid that problems would arise in the future. One of the informants, Djamalia said: "His father had divided it before he died. The child's name was written on the certificate. When his father died, the children earned each share, but no one

⁵⁴Deni Ramadhan Tri Putra. *Pembagian Harta Warisan Menurut Hukum Adat Besemah Ditinjau Dari Hukum Islam* (Tesis), Bengkulu: Universitas Bengkulu, 2020.

⁵⁵Interview with Mahfudz, Academics in Polewali Mandar, January 12, 2021.

wanted to take it now because I am still alive. The children agreed. I take the results as long as I live.”⁵⁶

The above informant described one of the existing practices in Mandarese community, *hibah*. The grants are given to the children in the form of a certificate in the name of the children, but the person who still manages it is the parent concerned. After the death of the parents, the grants will be handed over to the children as heirs. There is something interesting from the above information, that the children did not want to take the property because, the mother is still alive. The mother is the one who manages the father's inheritance.

There are several kinds of wills found in Mandarese community when the parents as the inheritance are still alive, including to testify that the property goes to the core family, such as the children and wife. There is also a testament that in the future after the death, there will be assets that are donated for the public benefit, such as for the construction of mosques, funerals, donations for orphans, and so on. In addition to *waqaf*, there is also a testament of assets prepared for the ceremony of his death.

This was said by one of the informants, Amran: "When my grandfather was still alive, I still remember very well, his assets were given to my uncle and aunt to be managed by themselves. As for the remaining assets, my grandfather managed it himself and advised that the remaining assets (if he died) were destined for the ceremony of his death (*attumateang*), and the rest is all donated."⁵⁷

The informant's grandfather above was dividing his assets to his children to be managed and enough for himself to support his old age. The assets that he manages are beyond the rights of his children because these assets will be donated and for *attumateang*. This *attumateang* is the wills of the deceased that the property is intended or used for the occasion of his death, such as the shroud, *ta'ziyah* days, and so forth.

c. The House For the Youngest Child

For the Mandar people, the youngest child has its own privileges. In addition to obtaining an inheritance as obtained by the other siblings, the youngest child generally received the parent's house as a gift. It turns out that things like this do not only exist in Mandar, but also in Aceh, especially Aceh Besar District⁵⁸, where the youngest child is not distinguished whether he/she is the youngest daughter or the youngest son, both of them get the same rights.

⁵⁶Interview with Djamalia, Tradisional Leaders in Polewali Mandar, January 15, 2021.

⁵⁷Interview with Amran, Academics in Polewali Mandar, January 3, 2021.

⁵⁸Israr Hirdayadi and M. Ansar, "Teknik Pembagian Warisan terhadap Anak Bungsu Perempuan dalam Masyarakat Kemukiman Lamblang Kecamatan Kuta Baru Kabupaten Aceh Besar Menurut Hukum Islam," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, 2, No. 1 (2018), p. 2549-3167.

One of the informants, Ahmad said: It has become our habit here, that the house is part of the youngest child. Why? Because, in general, the youngest children do not have a home or a family of their own yet. Therefore, they are the one who is accompanied by their parents.⁵⁹

The main consideration that the youngest child is given a house is because of socioeconomic considerations. In general, the youngest child is not yet well established in terms of the economy and also closer to the parents, and in general, the youngest is not married yet. If the youngest child has a family, especially if he is a single parent, he can choose who the child will live with.

Conclusion

The Mandar community in Polewali Mandar Regency, West Sulawesi Province, sees that there are equal rights between boys and girls with no difference in all aspects of life. This view has an impact on the distribution of inheritance. The Mandar people are known to be obedient in carrying out their religious teachings, Islam, as well as obeying their customs. The combination between Islamic teachings and customs creates two patterns of distribution of inheritance, especially to men and women, namely the inheritance pattern based on Islamic teachings, which is 2: 1, and also in Mandar customary pattern. The custom of the distribution of inheritance that occurs in Mandar is that the community does not know the inheritance pattern itself, whether using Islamic or customary methods (mixing method). There are also those who share the inheritance to be managed by their children before the death, but the property is still managed by the heir. The heirs can take the inheritance after the person dies, as well as the house that belongs to the youngest child. The custom of distributing inheritance in Mandar emphasizes the value of brotherhood. For the Mandar people, Brotherhood is above all.

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