



The Postponement of The Implementation of Inheritance Distribution in The Seunuddon Community, North Aceh in The Perspective of ‘*Urf* Theory and Legal Pluralism

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Abstrak

The objective of this study is to investigate the act of postponing the execution of inheritance distribution in the Seunuddon village, located in North Aceh. This study employs sociological legal approaches, which are examined through the lenses of *al-'urf* and the notion of legal pluralism. Data was gathered through extensive interviews conducted with religious leaders, community leaders, and successors. This study determined that delays in the distribution of inheritance in Seunuddon had persisted for an extended period, with some cases resulting in *patah titi* and subsequent complications. The delay arises due to entrenched customs, the survival of one parent, inadequate economic conditions, lack of family discussions regarding inheritance division, reluctance to distribute the inheritance immediately due to feelings of embarrassment, and the incapacity of young children to handle the inheritance. Secondly, while examining customary Islamic law, the act of delaying the allocation of inheritance is encompassed within the concepts of '*urf sahih* (valid custom) and '*urf fasid* (invalid custom). Out of the four cases examined, three cases did not present any issues related to inheritance, as each party got and obtained the legacy funds. Nevertheless, there are instances in which the designated successor has deceased (*patah titi*), leading to complications in the process of inheriting assets. Within the framework of '*urf theory*, the initial three instances can be classified as '*urf sahih*, however, the final instance is deemed '*urf fasid* due to its propensity for generating injustice, albeit preserving the bond of brotherhood. According to the doctrine of legal pluralism, there exists a dialectic and accommodation between Islamic law and societal customs to provide social harmonization and integration.

Keywords: Inheritance, ‘*urf theory*, Legal Pluralism, Islamic Family Law

Abstrak

Penelitian ini bertujuan untuk mengkaji tentang praktik penundaan pelaksanaan pembagian warisan pada masyarakat Seunuddon, Aceh Utara. Penelitian ini menggunakan metode hukum sosiologis yang dianalisis dengan teori dalam konsep al-'urf dan teori pluralisme hukum. Data dikumpulkan dengan cara wawancara mendalam dengan tokoh agama, tokoh masyarakat dan ahli waris. Penelitian tersebut menyimpulkan bahwa: pertama, penundaan pembagian harta warisan di Seunuddon sudah terjadi sejak lama, bahkan ada yang telah menyebabkan patah titi yang kemudian melahirkan masalah. Penundaan ini terjadi karena mengikuti kebiasaan yang telah berlangsung lama, salah satu orang tua masih hidup, ekonomi yang tidak berkecukupan, tidak ada keluarga membicarakan pembagian harta warisan, perasaan malu bila warisan segera dibagikan dan anak yang masih kecil belum mampu mengelola harta warisan. Kedua, dalam tinjauan hukum Islam adat penundaan pembagian warisan termasuk dalam 'urf sah (baik) dan 'urf fasid (buruk). Dari empat kasus yang dikaji, tiga kasus tidak menimbulkan masalah kewarisan, karena masing-masing pihak menerima dan memperoleh hasil harta warisan tersebut. Namun ada kasus yang ahli warisnya sudah meninggal (patah titi) yang kemudian menyebabkan permasalahan dalam kewarisan. Dalam konteks teori 'urf, tiga kasus pertama dapat dikategorikan sebagai 'urf yang baik, sedangkan kasus terakhir adalah 'urf fasid karena menimbulkan ketidakadilan, namun persaudaraan tetap terjaga. Sejalan dengan itu, menurut teori pluralisme hukum terjadi dialektika dan akomodasi antara hukum Islam dan adat dalam masyarakat untuk menjaga harmonisasi dan integrasi sosial.

Kata Kunci: *Warisan, teori 'urf, pluralisme hukum, hukum keluarga Islam*

Introduction

The Islamic legal system has established an inheritance system that is based on the most optimal, prudent, and equitable principles. In Islam, the inheritance system establishes the entitlements of individuals, regardless of their gender, to possess and control assets. This includes the transfer of property rights throughout one's lifetime to their heirs, as well as after their death, without distinguishing between minors and adults.¹ The Islamic inheritance law is a crucial aspect of Islamic jurisprudence since it delineates the principles governing the division of inheritance,² including the specific shares allotted to each eligible recipient.³

¹ Siah Khosyi'ah and Ayi Yunus Rusyana, "Inheritance Settlement of Descendants of Children and Siblings in Islamic Law with Local Wisdom in Indonesia," *Cogent Social Science* 8, No. 1 (2022). Mursyid Djawas, et.al., "The Construction of Islamic Inheritance Law: A Comparative Study of The Islamic Jurisprudence and The Compilation of Islamic Law," *JURIS: Jurnal Ilmiah Syari'ah* 21, No. 2 (2022).

² Ismail Ismail, et.al., "The Contribution of 'Urf to the Reform of Islamic Inheritance Law in Indonesia," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 22, No. 2 (2022), p. 165-178. Ahmad Rofiq, *Hukum Islam di Indonesia*, (Jakarta: Raja Grafindo Persada, 2000), p. 356.

The Islamic inheritance law governs the transfer of ownership of an heir's inheritance, establishes the eligibility of heirs, decides the specific share each heir is entitled to, and regulates the timing of asset distribution to the heirs.⁴ When a person dies, they will leave behind two main things: heirs and an inheritance.⁵ When it comes to the division of inherited assets, it is necessary to first ensure the fulfillment of certain rights about the heirs. If these rights have been satisfied, then the remaining portion of the heir's inheritance can be allocated to his successors in line with the stipulations of the Al-Qur'an, al-Sunnah, and consensus (*ijma'*).

The rights of the heir and his inheritance encompass expenses associated with the preparation of the heir's remains, the settlement of the heir's debts, and the execution of the heir's testamentary wishes.⁶ Regarding the provisions and rights of heirs in the Al-Qur'an, QS. al-Nisa verse 7 states that men have the right to share in the assets inherited from their parents and relatives. Similarly, women also have rights and shares in the assets inherited from their parents and relatives, regardless of the amount, as determined by the portion allocated to them (Q.S. an-Nisa: 7).

As stated by M. Quraish Shihab, this passage elucidates the rights that must be upheld but are frequently disregarded, specifically referring to inheritance rights. In essence, the verse highlights that adult males or orphaned youngsters are entitled to specific shares as specified by Allah SWT.⁷ For Muslims, the implementation of inheritance laws is a mandatory duty that must be fulfilled, as it represents a manifestation of faith and allegiance to Allah and His Messenger.⁸

In Islam, it is advised to expedite the distribution of inheritance to prevent potential conflicts within the family or discrepancies in the value or amount of inherited assets. The occurrence of delays in the distribution of inheritance will result in unjust treatment towards the rightful owners of these entitlements. Particularly when the holder of these rights operates within an economy that has not yet reached a satisfactory level of development. Inherited assets, or inheritance, can potentially lead to fluctuations in price or value that may result in negative consequences.⁹

It is advisable to promptly disperse inherited assets since it is a duty. However, it is common for individuals to delay the execution of inheritance

³ Ahmad Rofiq, *Hukum Perdata Islam di Indonesia*, (Jakarta: Raja Grafindo Persada, 2013), p. 281.

⁴ Mardani, *Hukum Kewarisan Islam di Indonesia*, (Jakarta: Raja Grafindo Persada, 2014), p.1.

⁵ Wahyu Muljono, *Hukumwaris Islam dan Pemecahannya* (Yogyakarta: Magister Ilmu Hukum FH-UJB, 2010), p. 12.

⁶ Gamal Achyar, *Nilai Adil dalam Pembagian Warisan Menurut Hukum Islam*, (Darussalam-Banda Aceh, 2018), p. 6

⁷ M. Quraish Shihab, *Tafsir al-Misbah: Pesan, Kesan, dan Keserasian Al-Qur'an*, (Jakarta: Lentera Hati, 2012), p. 423.

⁸ Suhrawardi K. Lubis and Komis Simanjuntak, *Hukum Waris Islam*, (Jakarta: Sinar Grafika, 2007), p. 143.

⁹ Rahmawati, *Tenggat Waktu Pembagian Warisan dalam Perspektif Hukum Islam Jurnal Diponegoro Law 5*, No 3 (2016).

distribution to a later date, often even several days or months, in order to align with the prevailing customary laws of that jurisdiction. Customary law is an oral system within a community that evolves and advances through public consciousness. Customary law originates from the practical necessity, lifestyle, and worldview that form the cultural fabric of the community in which it is practiced.¹⁰

The Islamic inheritance law is applicable to Muslims worldwide, including in Indonesia. Nevertheless, the allocation of inheritance is also influenced by societal customs and cultural factors. For instance, in Aceh, there exist provisions that reconcile the Islamic law and local customs in several situations, such as the treatment of joint property, the inheritance rights of individuals from different religions, and the requirement for adopted children to have mandatory wills as alternative heirs. The customary accommodation in the Islamic law arises from the inherent flexibility, adaptability, and dynamism of the law, as well as the favorable sociological conditions and the characteristics of the Acehnese people.¹¹

Similarly, the allocation of inherited wealth within the Banjar and Dayak ethnic communities in Kalimantan. Dynamic adaptations of the Islamic law and custom can be observed in the various forms of accommodation, particularly in the case of inheritance rights for granddaughters' successors. An adaptation has occurred in the Islamic law, with a focus on prioritizing *maqâshid al-syariah*.¹² The continuing dispute persists between *fiqh*, the Compilation of Islamic Law, and the norms prevalent in Kalimantan society.

Within the Javanese community, the allocation of inheritance is referred to as "*sepikul segendongan*," which entails that sons are entitled to a part that is twice as large as that of daughters. The Sepikul-Segendong principle entails that both men and women are entitled to equal inheritance rights, while the distribution of shares differs. Men, who are deemed to possess more significant duties and obligations, receive a greater number of shares (*sepikul*) compared to women. Women, as Muslims, are expected to adhere to and comply with the regulations outlined in Islamic law. Within this particular environment, it seems that the inheritance law in Java is subject to a dialectical relationship between the Islamic and customary law.¹³

¹⁰ Sigit Sapto Nugroho, *Pengantar Hukum Adat Indonesia*, (Solo: Pustaka Iltizam, 2016), p. 37-38.

¹¹ Ilyas Ilyas, et.al., "The Accommodation of Customary Law to Islamic Law: Distribution of Inheritance in Aceh from a Pluralism Perspectives," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, No. 2 (2023).

¹² Wahidah Ideham, "Substitute Heirs in the Compilation of Islamic Law: An Overview from Gender Equality Perspective Case Study of the Religious Courts in Banjarmasin," *Samarah: Jurnal hukum Keluarga dan Hukum Islam* 6, No. 2 (2022). Syaikhu Syaikhu, "Legal Harmonization in the Distribution of Inheritance in the Dayak Ngaju Community in Central Kalimantan, Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, No. 1 (2023).

¹³ Leni Nurmala and Yoslan Koni, "Differences and Similarities in The Division of Inheritance Law According to Islamic Law and Javanese Customary Law in Indonesia in A Comparative Study of Law," *International Journal of Educational Review Law and Social Sciences* 2, No. 1 (2022), p.129-142.

Furthermore, the allocation of inheritance within the Bugis-Makassar population in South Sulawesi is based on Islamic law and customs, specifically *syara'* and *ade'*, which are intricately connected to the *pangadereng* system. There are three forms of division: division while the family is still intact, division when one of the parents has died, and division when both parents have died. The distribution of assets can vary, with some cases involving equal division and others based on principles of fairness. In the latter scenario, individuals who have invested significant resources, such as those who have pursued higher education and achieved a high standard of living, may relinquish their inheritance rights in favor of less affluent relatives or those who have provided care for their parents in rural areas. The conventional distribution system places importance on achieving mutual benefit in order to realize several *maqāshid al-shari'ah* ideals, including safeguarding the preservation of life, dignity, and possessions.¹⁴

This study is significant in elucidating the issue of delays in the distribution of inheritances in Seunuddon, North Aceh. This study employs sociological legal methodologies, which are examined through the application of theories related to *al-'urf* and the philosophy of legal pluralism. Data was gathered through comprehensive interviews conducted with religious leaders, community leaders, and successors. The legal pluralism method, which is originated from anthropological and social legal studies, is a recent development in the field of law and Islamic law. Due to the strong effect of custom, the study of inheritance distribution cannot be dissociated from the theory of *'urf* and legal pluralism.

The Distribution of the Inheritance

The term "*mawarits*" is the plural form of "*mirats*" (including "*irts*," "*wirts*," "*wiratsah*," and "*turats*," which is sometimes known as "*mauruts*"). It refers to the assets and possessions left behind by a deceased individual that are passed on to their rightful heirs. *Faraid* is the plural form of the word *faridhah*, and the word is derived from "*Fardhu*". In Mawaris Fiqh Ulama, *Fardhu* refers to the portion that has been specified by *syara'*, such as *nisfu* (1/2), *rubu'* (1/4), and others.¹⁵ According to Hasby Ash Shidieqy, *Faraidh* is a field of study that enables us to determine the recipient of an inheritance, the specific amount received by each heir, and the appropriate method of dividing it.¹⁶ According to Sayyid Sabiq, *faraidh* is the plural form of *faridhah*, derived from the word *fardh*, which refers to the predetermined portion of inheritance for heirs. The study of this allocation is known as the Science of Inheritance and the Science of *Faraidh* in Islamic literature.¹⁷

¹⁴ Abdul Mutakabbir, et.al., "The System of Inheritance Distribution in South Sulawesi," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 23, No. 1 (2023).

¹⁵ Khairuddin dan Zakiul Fuadi, *Belajar Praktis Fiqh Mawaris*, (Banda Aceh: Fakultas Syariah dan Ekonomi Islam UIN Ar-Raniry, 2014), p. 1.

¹⁶ Hasby Ash Shidieqy, *Fiqh Mawaris*, (Cet. I: Jakarta: Bulan Bintang, 1973), p. 18

¹⁷ Sayyid Sabiq, *Fikih Sunah*, (Jakarta: Pena Pundi Aksara, 2012), p. 602.

According to the previous statement, it can be inferred that the science of Faraid focuses on the transfer of ownership rights to assets. Specifically, it deals with determining the rightful heirs, their respective shares, the timing of inheritance distribution (*tirkah*), and the method of dividing the inheritance.¹⁸

Procrastination, as defined by the Big Indonesian Dictionary (KBBI), refers to the deliberate act of postponing or delaying a task.¹⁹ The delay in this context pertains to the gradual distribution of inheritance, specifically the period between the death of the one providing the inheritance and the actual distribution of the inheritance. In other words, upon the testator's demise, the inheritance is not immediately allocated to the heirs, but rather postponed until a specified timeframe. This delay is primarily intended to ensure that the heir, who is still a minor, reaches adulthood, becomes self-sufficient, and is no longer reliant on their parents' wealth.²⁰

Each Muslim is obligated to adhere to the rules of the *Shari'a*, or the Islamic law, as prescribed by the Sharih scriptures unless other texts declare that such adherence is not obligatory.²¹ Similarly, there is no provision in *faraid* legislation that exempts the necessary division of inheritance according to *faraid* provisions.²²

The Islamic jurisprudence has developed inheritance regulations for both men and women, as Islam acknowledges the transfer of an individual's possessions to their successors after their demise, without differentiating between minors and adults.²³ In Islamic inheritance law, the transfer of assets is exclusively attributed to the event of death. Put simply, if the heirs are still alive, a person's assets do not transfer to them.²⁴

The Al-Qur'an does not explicitly limit the timing of inheritance distribution. However, Islam encourages us to promptly engage in acts of virtue. This verse may be found in Surah Al-Imran of the Al-Qur'an, specifically in verse 133:

وَسَارِعُوا إِلَىٰ مَغْفِرَةٍ مِّن رَّبِّكُمْ وَجَنَّةٍ عَرْضُهَا السَّمَاوَاتُ وَالْأَرْضُ أُعِدَّتْ لِلْمُتَّقِينَ

Meaning: "And hasten towards forgiveness from your Lord and a Paradise as vast as the heavens and the earth, prepared for those mindful 'of Allah' (QS. Al-Imran:133).

As perceived by M. Quraish Shihab, the interpretation of Surah Al-Imran verse 133 in the Qur'an is to promptly engage in virtuous actions, in order to obtain

¹⁸ Muhammad Amin Suma, *Keadilan Hukum Waris Islam (dalam Pendekatan Teks dan Konteks)*, (Cet. I: Jakarta: Rajawali Pers, 2013), p. 11.

¹⁹ W.J. S Poerwadarminta, *Kamus Umum Bahasa Indonesia...*, p. 148.

²⁰ Dwi Putra Jaya, *Hukum Kewarisan di Indonesia*, (Bengkulu: Zara Abadi, 2020), p. 162

²¹ Fatchur Rahman, *Ilmu Waris*, (Bandung: Alma'arif), p. 34

²² Suhrawardi K. Lubis dan Komis Simanjuntak, *Hukum Waris Islam*, (Jakarta: Sinar Grafika, 1995), p. 3.

²³ Eman Suparman, *Intisari Hukum Waris Indonesia*, (Bandung: Mandar Maju, 1991), p. 9

²⁴ Suhrawardi K. Lubis dan Komis Simanjuntak, *Hukum Waris Islam...*, p. 41

profound absolution from Allah for any transgressions committed. Furthermore, in order to ensure that you are granted an expansive paradise, spanning the entire planet, it is exclusively reserved for those who possess a deep reverence for Allah and fear His retribution. This passage reinforces the notion that anything that leads to Allah's forgiveness must be expedited, as it is a divine decree.²⁵

Accelerating the implementation of the inheritance distribution in this situation is a benevolent act that brings forgiveness from Allah SWT. Essentially, the property left by the heir is a trust that must be promptly fulfilled or transferred to its rightful owner. Postponing the distribution is equivalent to being unreliable and appropriating someone else's property, while also engaging in manipulation of others' possessions. Although we are instructed to be reliable, as stated by Allah SWT in the Al-Qur'an surah An-nisa' verse 58:

﴿إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا﴾

Meaning: *Indeed, Allah commands you to return trusts to their rightful owners; and when you judge between people, judge with fairness. What a noble commandment from Allah to you! Surely Allah is All-Hearing, All-Seeing*" (QS. An-Nisa: 58).

Disregarding the equitable allocation of inherited assets can detrimentally affect the heirs, leading to the forfeiture of their entitlements as a result of the misconduct or self-serving actions of other heirs, so compromising the integrity of the situation. This will inevitably influence the occurrence of conflicts among co-inheritors, and potentially even lead to a deterioration in relationships among family members.²⁶

Delays in the distribution of inheritance can lead to disagreements and the deterioration of amicable ties between families, since some individuals may feel aggrieved by their siblings or other family members. In addition, postponing the allocation of inherited assets will provide challenges in their future distribution, particularly if the delay spans several years, as there is a possibility that some of the beneficiaries may pass away.²⁷

According to the Islamic jurisprudence, it is obligatory to prevent and mitigate harm, particularly where it pertains to the rights of others, as stipulated in the Ushul Fiqh principle of "*al dhararu yuzal*".²⁸ Considering the adverse consequences that arise from postponing or disregarding the distribution of

²⁵ M. Quraish Shihab, *Tafsir al-Misbah*.

²⁶ Faridah Wahidah, *Praktik Penyelesaian Harta Warisan Pada Masyarakat Banjar*, (Banjarmasin: Antasari Press, 2018), p. 66-67.

²⁷ Dwi Putra Jaya, *Hukum Kewarisan di Indonesia*, p. 167.

²⁸ Abdul Mujib, *Kaidah-Kaidah Ushul Fiqih*, (Jakarta: Kalam Mulia, 1994), p. 34.

inherited assets, it is imperative to promptly execute the order to divide these assets to prevent future unwanted outcomes.²⁹

Strategies in Dividing Inheritance

In accordance with the Islamic law, in the event of the death of an heir, it is a custom in the Acehese society to hold a *kenduri* (celebration) before the distribution of the inheritance takes place. The commemoration of death commences on the initial day of passing and continues until the seventh day. According to the Islamic law, the distribution of inheritance assets is contingent upon the resolution of the deceased's *tajhiz* rights, satisfaction of their debts, and the implementation of the inheritance. Within the Acehese community, inheritance is also allocated to finance the expenses associated with the *tahlilan*, a multi-day commemoration of the deceased.

The process of distributing inheritance is determined by the principles of the Islamic law, which are outlined in the field of *faraid*, and involves classifying heirs into *dzawil furudh* heirs and *ashabah* heirs. During an inheritance distribution event, it is customary for relatives who are not heirs or heirs who are unaware of their entitlement to attend. In Aceh, the distribution of inheritance occurs either on the 7th, 10th, 10th, or 40th day following the death of the testator. The distribution is often conducted by the local *teungku imuem*, under the observation of the village leaders and traditional *tuha* elders. The *teungku imuem* plays a significant role in the inheritance division process as they are responsible for identifying the heirs and allocating specific portions of the inheritance to each heir, irrespective of gender. The distinction is predicated upon the stipulations delineated in the passages of the Qur'an and the Hadith of the Prophet PBUH. In addition to deriving guidance from the Al-Qur'an and Hadith, *Tuengku Imuem* also draws guidance from *fiqh* books, particularly those associated with the Shafi'i school of thought.³⁰

Nevertheless, the distribution of inheritance is also executed through an agreement or a careful consideration in the customary law. This principle entails that every successor consistently prioritizes careful consideration and agreement as the primary foundation for organizing and resolving the successor's legacy. Thus, it is imperative that the inheritance process does not involve actions that impose the desires of one party over another by asserting rights without taking into account the interests of other beneficiaries. Typically, when it comes to settling the distribution of inherited assets, the elder heirs take charge of the deliberations. It is important that the agreement reached among the heirs is followed and respected, particularly when it comes to implementing the settlement.³¹

The distribution of inheritance is consistently conducted harmoniously and cordially among the rightful heirs. Peaceful distribution typically entails the

²⁹ Wahidah, Faridah, *Praktik Penyelesaian Harta Warisan Pada Masyarakat Banjar...*, p. 67.

³⁰ Syahrizal, *Hukum Adat dan Hukum Islam di Indonesia...*, p. 214-215.

³¹ Syahrizal, *Hukum Adat dan Hukum Islam di Indonesia...*, p. 240.

involvement of either close or distant relatives who serve as mediators. If other family members have been unable to reach an agreement on the distribution of inheritance, then the *teungku meunasah*, *teungku imuem*, *keuchik*, and village elders, who are considered to have authority, will make peaceful efforts to address the issue.³²

Inheritance Distribution as view in the 'Urf

In the Islamic jurisprudence, custom is referred to as 'urf. The term 'urf, in its etymological sense, refers to something that is deemed favorable and widely accepted based on rational judgment. According to Abdul-Karim Zaidan, the term 'urf refers to the customs and practices that a society has adopted and followed in its daily life, whether in speech or action:

مَا أَلْفَهُ الْمَجْتَمِعُ وَاعْتَادَ وَسَارَ عَلَيْهِ فِي حَيَاتِهِ مِنْ قَوْلٍ أَوْ فِعْلٍ

Meaning: "something that has transitioned from being unfamiliar to a community to becoming a customary and ingrained part of their daily lives, manifesting through actions or language."

According to Sharia', there is no distinction between the phrases *al-'urf* and *al-'adah*. A custom refers to a habitual action or practice, commonly referred to as *al-'urf al-amaly* (deed). An example of such a custom is observed in buying and selling transactions, where parties exchange a specific amount of money without formal consent, as the price of goods and the customary practices are already established.³³

Al-'urf al-qauliy refers to the interpretation of the term "*walad*" in common Arabic, which exclusively pertains to males and not females. Similarly, the term "*lahm*" refers to the flesh of animals other than fish, despite the fact that fish is also considered flesh. However, based on prevailing norms, fish is not classified as "*lahm*" (meat).³⁴

'Urf, in terms of its legal validity, is categorized into two types: *'urf shahih* and *'urf fasid*.³⁵ '*Sahih urf* refers to customs that are practiced by individuals and are in accordance with the principles of shari'ah. These customs do not contradict any haram (forbidden) actions and do not negate any necessary obligations. For instance, the customary practices in the realm of commerce concerning indents, the customary practices of settling dowry payments, whether in cash or debt, the customary practices of a person proposing to a woman by presenting a gift, distinct from a dowry, and so on.³⁶ The law of 'urf is valid and should be upheld, both in the creation of legislation and in the judicial system. A mujtahid must examine

³² Syahrizal, *Hukum Adat dan Hukum Islam di Indonesia...*, p. 227

³³ Ahmad Sudirman Abbas, *Dasar-Dasar Masail Fiqhiyyah*, (Jakarta: Banyu Kencana, 2003), p 73.

³⁴ Ahmad Sudirman Abbas, *Dasar-Dasar Masail Fiqhiyyah...*, p 73

³⁵ Muhammad Abu Zahra, *Ushul-al-Fiqh* (Mesir: Dar al-Fikr al-Arabi, 1958), p. 219

³⁶ Mukhtar Yahya, Fatchur rahman, *Dasar-Dasar Pembinaan Hukum Fiqh Islam*, (Bandung: PT Alma'arif, 1986), p. 110

traditions while formulating laws, as something that has established a customary practice and is consistently followed by people, then it becomes a necessity, gains consensus, and is seen advantageous. Provided that it does not contradict Sharia law, one must give it due consideration.³⁷

Meanwhile, '*urf fasid* refers to a concept that is familiar to humans, yet goes against Sharia. It involves making permissible what is forbidden and nullifying what is mandatory. Examples of mutual understanding among humans include acknowledging the presence of bad activities during child birth rites, as well as the acceptance of engaging in usurious transactions or gambling agreements.³⁸

Regarding '*urf fasid* (damaged '*urf*), there is no need to uphold it, as doing so would contradict the principles of '*sharia*' or nullify its provisions. If parties involved in broken contracts, such as usury, deceit, or deception, have reached a mutual understanding, '*urf* does not play a role in legitimizing it.³⁹

The Ulama justify the use of '*urf* in legal decision-making for the following reasons: 1) Numerous '*sharia* laws have seemingly evolved from established Arab customs, such as the requirement of guardians in marriage and the family structure in the distribution of inheritance; 2) Many Arab customs, both in language and actions, continue to serve as relevant guidelines in contemporary society.⁴⁰

The Ulama who engage in the application of '*urf* in interpreting and executing '*Istibath* of the law have established a number of prerequisites for accepting '*urf*, which include:⁴¹

1. Customs, also known as '*urf*, are advantageous and can be embraced based on rationality. This need has become a standard practice for genuine customs or '*urf*, serving as a prerequisite for widespread approval,
2. Customs or '*urf* are universally and uniformly applicable among individuals inside the customary setting, or among the majority of its populace. Al-Suyuthi stated that the customs that are considered are the ones that are generally applicable. If the situation is disorderly, it will not be considered".
3. The customs or '*urf* that were utilized in establishing the law were already in effect at that time, and not '*urf* that came about afterwards. Therefore, the existence of '*urf* is a prerequisite prior to the implementation of the Law. If '*urf* is delayed, it is disregarded.⁴²
4. Customs or '*urf* do not contradict or disregard established '*sharia* propositions' or conflict with definitive principles. Indeed, this criterion further emphasizes the necessity of accepting adat or legitimate customs. If these practices contradict established texts or '*sharia* principles, they are

³⁷ Abdul Wahab Khallaf, *Ilmu Ushul Fiqih*, (Semarang: Toha Putra Group, 2014), p. 150.

³⁸ Rachmat Syafe'i, *Ilmu Ushul Fiqih*, (Bandung: Pustaka Setia, 2007), p. 101.

³⁹ Rachmat Syafe'i, *Ilmu Ushul Fiqih*, ..., p. 102

⁴⁰ Basiq Djalil, *Ilmu Ushul Fiqh*, (Jakarta: Prenada Media, 2016), p. 161.

⁴¹ Amir Syarifuddin, *Ushul Fiqh Jilid II*, (Jakarta: Kencana, 2009), p. 400.

⁴² Amir Syarifuddin, *Ushul Fiqh Jilid II*..., p. 401

considered fasid customs, which the ulama have unanimously agreed to reject.⁴³

According to the above explanation, it is clear that 'urf refers to a conventional behavior or conduct that is observed within a culture. The distribution of inheritance in 'urf follows the same pattern as the distribution in the customs of a society.

Concerning the customary inheritance system in Indonesia, there exist three distinct types: collective inheritance, major inheritance, and individual inheritance. These systems determine who receives inheritance in the country. Indeed, within the three inheritance systems, there are to some extents is the form of hybridization.

a. The Collective System

Collective inheritance refers to the situation where heirs collectively receive inherited assets that have not been split individually. Under this inheritance system, heirs are prohibited from personally possessing inherited assets, but are permitted to utilize, develop, process, and derive benefits from them (referred to as "*gangam bauntui*" in Minangkabau). Typically, this system of collective inheritance pertains to the passing down of ancestral assets, known as "inheritance," such as agricultural land or valuable heirlooms like prime land, rice fields, and traditional houses. These assets are managed by the *Mamak*, the leader of the heirs, and utilized jointly by the nephews. In Ambon, the land is governed by the head of the *dati*, whereas in Minahasa, it is referred to as "*kalakeran*" land, which is administered by *Tua Unteranak*, *Haka Umbana*, or *Mapontol*. Nowadays, this land can be bought or sold with the agreement of all members of a common family.⁴⁴

b. The Majority System

If the inheritance remains undivided and is solely under the control of the eldest child, who has exclusive rights to utilize, manage, and collect the proceeds, along with the responsibility to support and care for their younger siblings until they become self-sufficient, this inheritance system is referred to as "majorat inheritance". In the Lampung region, the *pepadun* tradition dictates that the eldest male child, known as the "anak punyimbang" or "*majorat* male," inherits all of the inheritance. Similarly, this principle is also applicable in Irian Jaya, specifically in the Yos Sudarso Bay region of Jayapura Regency. In the Semendo district of South Sumatra, the control of all inherited property is vested in female youngsters known as "waiting tubing" or treasure keepers. These treasure keepers are escorted by "*paying jurai*" who act as female mayors.⁴⁵

⁴³ Amir Syarifuddin, *Ushul Fiqh Jilid II...*, p. 402

⁴⁴ Hilman Hadikusuma, *Pengantar Ilmu Hukum Adat Indonesia*, (Bandar Lampung: Mandar Maju, 1992), p. 212

⁴⁵ Bushar Muhammad, *Pokok-pokok Hukum Adat*, (Jakarta: Pradya Paramita, 2004), p. 43.

c. Individual System

An inheritance is considered a "individual inheritance" when the inherited assets can be divided and owned separately with "property rights". This indicates that each successor has the right to use, process, and enjoy the benefits of the assets, as well as transact them, particularly after the testator's death. This inheritance method is extensively applicable in both parental groups and western inheritance law, as defined by the Civil Code (BW) and Islamic Inheritance Law.⁴⁶

Inheritance Division in Seunuddon: 'Urf and Legal Pluralism Theory Perspective

In relation to the allocation of inheritance as observed in the Seunuduun community in North Aceh, there are four specific scenarios that will be elucidated, namely: first, in Gampong Meurebo Puntong, the process of distributing the inheritance was delayed specifically for the family of Zakaria, who is one of the heirs. Zakaria was a beneficiary who passed away, leaving behind a spouse named Sauda and six offspring. He bequeathed a total of 7 parcels of rice fields, 1.5 hectares of land, a house and property totaling 20 x 50 meters, and a family enterprise called Doorsmear, which specializes in car and motorcycle cleaning services located in front of his residence. Zakaria passed away in 2017, leaving behind six children. Among them, one child is married and share his household. Meanwhile, the remaining five children are unmarried and at their schooling age and share the main household.

Sauda honestly puts that the inheritance has yet to be distributed. The local community has observed and grown aware of a recurring pattern where inheritance is not distributed due to the presence of a matriarchal figure in the household. Saudah stated that in the event of the parents' demise, the inherited assets would be promptly dispersed, necessitating the mutual exchange of assets among the children. However, she suggests that it is preferable to refrain from sharing the assets as long as she is alive.⁴⁷

Furthermore, she asserted that another factor impeding the distribution of the bequest was the presence of underage, immature, and legally incapable children who were not yet eligible to receive their share. Even in the event of immediate distribution, the assets may become irretrievable and unusable by the child. Saudah also stated that broaching the topic of inheritance distribution immediately following the testator's demise is highly stigmatized.⁴⁸ If the distribution of inheritance is discussed immediately following the testator's decease, would result in the assumption and one of the family members is willing to immediately secure their share and are unwilling to engage in joint usage. Furthermore, the economic

⁴⁶ Hilman Hadikusuma, *Pengantar Ilmu Hukum Adat Indonesia...*, p. 213.

⁴⁷ Interview with Saudah, a community member of Gampong Meurebo Puntong, Seunuddon, May 1, 2021.

⁴⁸ Interview with Saudah, a community member of Gampong Meurebo Puntong, Seunuddon, May 1, 2021.

condition is quite dire, hence it is advisable to pool resources as long as a maternal figure is still alive

Second, in Gampong Mane Kawan, there was a significant postponement in the distribution of inheritance within the family of an individual named Nurdin. In 2018, he passed away, leaving behind a wife named Ernawati and four children. Ernawati stated that the bequest left by her late husband has not yet been allocated. The remaining assets were of 8 parcels of rice fields, a dwelling, and a tract of land spanning 20 by 60 meters. The distribution of the inheritance was withheld due to the fact that all the children were still minors. She is solely responsible for all fees and expenses. Consequently, sharing it is not feasible. Currently, the benefits of the rice fields can be utilized for various purposes, such as covering daily expenses and funding schooling, in addition to serving as a source of income as a tailor.⁴⁹

In addition, Ernawati states that inheritance is not promptly dispersed due to local customs. As per her account, the majority of individuals in Mane Kawan refrained from promptly dispersing their bequest due to the fact that their mother was still alive. In the event of the father's demise, the mother assumes complete management of the assets. Ernawati further stated that the distribution of assets will occur once the children reach adulthood and establish their own families, demonstrating their capability to independently manage the assets. Additionally, the assets will be distributed in the event of Ernawati's remarriage, ensuring that her children's assets remain separate from those of her new spouse.⁵⁰

Third, the occurrence of inheritance delay in Gampong Tanjong Pineung pertains to the family of the deceased heir, Hadid, who passed away in 2017. Hadid's demise resulted in the surviving of his spouse and two offspring. He possessed assets in the form of a residential property spanning an area of 30 by 80 meters and a commercial establishment. Based on his son's assertion, the inheritance has not yet been dispersed and managed collectively up to this point. The rationale behind their decision was that their mother is still alive, they reached a mutual agreement to divide the inheritance, allowing them to savor the fruits of the family business. Both individuals are aware that the distribution of inheritance should be expedited, but in the Seunuddon District, it is customary for most families to refrain from distributing inheritance while the mother is still alive.⁵¹

Fourth, the Gampong Mane Kawan case, which involves the deferral of the transfer of inheritance to the family of Latif's rightful heir. He passed away a considerable time ago, and his spouse also passed away. They have a total of three children, consisting of one daughter and two sons. Additionally, her daughter and one son, named Syik, have passed away, leaving behind four children and a wife. However, the bequest from her grandmother has not yet been acquired. Presently,

⁴⁹Interview with Ernawati, a community member of Gampong Mane Kawan, Seunuddon, May 3, 2021.

⁵⁰Interview with Ernawati, a community member of Gampong Mane Kawan, Seunuddon, May 3, 2021.

⁵¹Interviewed of Marhaban, the heir of (Hadid), a community member of Gampong Tanjong Pineung, Seunuddon, May 4, 2021.

her uncle possesses the inheritance. Zubaidah, Syik's wife, stated that there had been a prolonged delay in dividing the bequest following the death of her husband's father. Following the death of her husband's father, they did not promptly expedite the allocation of the bequest. Instead, they protracted the distribution for an extended period until her husband's demise. Shik has passed away, and as a result, the children of the deceased Syik have not yet received any entitlement to the inheritance, as the property is presently within the possession of his uncle.⁵²

Hobbi states that the practice of delaying the distribution of inheritance in the community of the Seunuddon sub-district has been a long-standing tradition passed down through generations. This delay is attributed to the community's belief that there is no urgency in immediate distribution of inheritance. Based on his perspective, this comprehension leads to a habitual pattern, such as the postponement of inheritance that takes place in sub-district communities of Seunuddon. In the Islamic jurisprudence, this practice is referred to as '*urf*', as it has been consistently observed by the society over an extended period of time. Moreover, as per his statement, the term '*urf*' is not widely recognized in the society, yet they are familiar with it under the conventional term, despite the fact that both terms have identical meanings. Their lack of familiarity with the term '*urf*' can be attributed to their limited exposure to higher education institutions such as dayahs (Private Islamic Educational Institution) or universities.⁵³

Moreover, he attributes the delay to the prevailing societal habit that hinders the prompt distribution of inheritance. Based on the wife's consultation with religious authorities, the assets should have been promptly dispersed at the death of both parents. Nevertheless, the offspring of the deceased household. Syik is not engaging in a dispute about this matter; rather, they just believe that there are entitlements to the property that should be experienced. Refrain from taking issues into one's own hands, as one prioritizes the significance of friendship above all other concerns⁵⁴

According to M. Tahir, custom refers to a well-known human practice that becomes a tradition. This encompasses both verbal expressions and actions. Regarding the postponement of inheritance distribution, it is both an action and a customary practice. When it comes to comprehending the concept of *sharia*, there is essentially no distinction between adat and '*urf*'. Hence, the deferment of the inheritance allocation in Seunuddon District is a manifestation of an enduring traditional practice or *urf* observed by the community. However, it is necessary to examine whether it is sanctioned by customs or '*urf*' and approved by religion, or

⁵²Interview with Zubaidah, Syik' wife (the son of Latif), a community member of Gampong Mane Kawan, Seunuddon, May 5, 2021.

⁵³Interview with Hobbi, the Muslim cleric (*imam*) of Gampong Mane Kawan, Seunuddon, August 12, 2021.

⁵⁴Interview with Zubaidah, Syik's wife (the son of Latif), a community member of Gampong Mane Kawan, Seunuddon, May 5, 2021.

vice versa. Not all customs are in line with the *Shari'a*, since there are numerous customs are in direct contradiction with Islamic law.⁵⁵

Conversely, *'urf* should be implemented while considering the relevant human necessities that are suitable for the current circumstances and generally applicable to the majority of the local population. It is crucial to carefully consider both perspectives mentioned above while implementing the Islamic law. Failing to align these perspectives may lead to legal *istinbat* being influenced by personal inclinations and favoring specific groups. Thus, delaying the allocation of inherited assets aligns with the principle of *'urf*, which states that *'urf* is valid when it encompasses the aforementioned elements.

In order to evaluate the advantages or disadvantages of delaying the distribution of inheritance, it is essential to examine the underlying motivations for deferring the inheritance and how it becomes a recurring practice. Based on the aforementioned data points, various factors were identified, including established customs in Seunuddon sub district, the presence of at least one surviving parent, inadequate economic resources, and a reluctance among families to address the issue of inheritance division. Similarly, there is a sense of disgrace associated with promptly distributing inherited money, since it implies that the heirs are excessively attached to the goods and that young children lack the ability to handle them.⁵⁶

Out of the four aforementioned examples, three cases did not result in any issues related to inheritance, as each participant got and acquired the inheritance funds. Nevertheless, there is a scenario in which the designated successor has passed away (*patah titi*), resulting in complications regarding inheritance. Specifically, this issue has arisen in the Gampong Mane Kawan case, leading to a delay in the distribution of inheritance to the family of Latif's designated successor. Within the framework of *'urf* theory, the initial three instances can be classified as *'urf* *sahih* (valid customary practices), however the final instance is deemed *'urf* *fasid* (defective customary practice) due to its propensity for generating injustice, albeit preserving the sense of brotherhood.

Patah titi refers to situations in inheritance cases where an heir dies before the person they were supposed to inherit from, resulting in the remaining descendants of the heir being unable to claim their inheritance rights. The act of *patah titi* shares similarities with *fiqh*, specifically in the aspect of not acknowledging a substitute successor. *Fiqh*, on the other hand, only acknowledges a substitute for the role of heir. The Ulama and traditional authorities perceive that this practice leads to divergent opinions, with some in agreement and others in disagreement. Individuals who have a different viewpoint are more inclined to using the term "testament," indicating that although grandchildren may not directly

⁵⁵Interview with M. Tahir, a religious leader, the head Islamic Learning Circle of Nurush Shadiqin Kecamatan Seunuddon, August 12, 2021.

⁵⁶Interview with Iskandar Puteh, a community leader at Seunuddon, the one who postpone the distribution of the inheritance, May 5, 2021.

get an inheritance, there are instances where they acquire property through a legal document specifying the distribution of assets after death. In addition, the successor heirs mentioned in the KHI, despite not being acknowledged in traditional legal and literary sources, are still acknowledged based on the principles of Islamic law, namely to provide fairness and advantage.⁵⁷

Regarding the distribution of inheritance discussed before, when examined through the lens of al-'urf theory and legal pluralism, there is a harmonization between the Islamic and customary law. This adaptation significantly influences the reinforcement of preservation and adherence to customs, with the law serving as a mechanism of social control and the establishment of Islamic law inside society. Any alteration to the inheritance law system has the potential to disturb the long-established societal cohesion. This phenomenon is also known as legal pluralism, which acknowledges and allows for the coexistence of multiple legal systems within a society. In the framework of legal pluralism, the accommodation of customs in the Islamic law theoretically allows for harmonization. This theory prioritizes harmonization as its main objective, rather than the receptive theory, which leads to conflict and disagreement between legal systems, namely the Islamic law and the customary law.⁵⁸

In the context of 'urf theory and legal pluralism, custom holds significant importance in the reform of the Islamic law and plays a crucial role in the reform of inheritance law in Indonesia. The Compilation of the Islamic Law provides explicit guidance on various aspects, such as the inheritance rights of adopted children and adoptive parents, *zawul arḥām* (returning inherited property to the original family), *radd* (disinheritance), *walad* (legitimate child), shared property ownership, and substitute heirs. The 'urf of shared assets, which is acknowledged by the Islamic law, stems from the cultural and traditional practices of native Indonesia.⁵⁹

Conclusion

From the discussion about the postponement of the implementation of inheritance distribution in the Seunuddon District community, it can be inferred that the implementation of inheritance distribution in that community is not being expedited. The implementation process has been prolonged for several years, and it has even caused emotional distress among those who were supposed to receive an inheritance. The majority of individuals in Seunuddon District have adopted the practice of consistently delaying the implementation. This tradition is upheld for two specific reasons: firstly, due to its longstanding practice, and secondly, since one of the parents is still alive. e) The economy is inadequate, d) Families avoid discussing the allocation of inherited assets, e) Feeling ashamed about rapidly

⁵⁷ Khairuddin Hasballah, et.al., "*Patah Titi* and Substitute Heirs," p. 299. Fauzi Fauzi, "The Concept of *Patah Titi*: The Problem of Inheritance and Its Solution in Aceh Tengah," *Studia Islamika* 26, No. 1 (2019).

⁵⁸ Wahidah Ideham, "Substitute Heirs in the Compilation of Islamic Law," p. 196.

⁵⁹ Ismail Ismail, et.al., "The Contribution of 'Urf to the Reform of Islamic Inheritance,"

distributing inherited assets, as if the heirs have a strong attachment to them. d) young children who lack the ability to handle inherited assets. Out of the four examples examined, three cases did not result in any issues related to inheritance, as each partner got and obtained the assets from the inheritance. Nevertheless, there are instances in which the designated successor has deceased (*patah titi*), leading to complications in the process of inheriting assets. Within the framework of 'urf theory, the initial three instances can be classified as 'urf *sahih*, however the final instance is deemed 'urf *fasid* due to its propensity for generating injustice, albeit preserving the bond of brotherhood. Within the framework of legal pluralism, the interaction between the Islamic law and societal customs involves dialectics and accommodation, aiming to uphold social harmonization and integration. According to the Islamic law, friendship and social integration take precedence over all other matters.

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