

From the viewpoint of Islamic law, the characteristics of the section of heirs relying on conventional constitution (Study on the Banggai Tribe)

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ARTICLE INFO

ABSTRAK

Volume: 1

ISSN:

KEYWORDS

conventional legislation, inheritance, and the Banggai community

Numerous Muslim communities in Central Sulawesi's rural towns and islands regularly divide inheritance according to common rules. One of them is the neighborhood of Popidolon Villages on the Banggai Islands, which has its own inheritance system independent of Islamic inheritance rights. This study uses a normative approach to Islamic law and is a qualitative field study. Through interviews, semi-open observation, and documentation, research data were gathered. According to the study's findings, the Banggai ethnic society still follows the custom of passing down traditions from their ancestors from generation to generation. When someone passes away, the heir's fortune is distributed more in favor of the daughter than the son, which is against the 2:1 principle in the Islamic inheritance law system.

1. Introduction

Ali (1990) defined law as a series of regulations that govern cultural standards and action, including those established or regulated by the state as well as those that emerge naturally from the community. Indonesia has a lengthy history, which has influenced the development of a diverse legal system that includes both written (statutory law) and unwritten law (Ali, 2011). One area of Indonesian law that is relevant is inheritance law. Civil law, which includes inheritance law, is a key factor in determining and reflecting the dominant family law system in a community (Salihima, 2015). Salihima (2015) goes on to say that because everyone experiences death, inheritance law is strongly tied to the length of human life.

However, not all areas with a Muslim majority follow the rules of Islamic inheritance law. In general, inheritance law in Indonesia relates to the concepts and principles of religion, customs, and regulatory norms that apply in a culture. Hadikusuma (2003) claims that inheritance law can generally be applied differently in different parts of Indonesia depending on the local policies in place as well as the local cultural norms. Popidolon Village is one of the Muslim-majority regions that leans more toward the traditional inheritance system than Islamic inheritance law. This community may be found in Central Sulawesi's Liang District of the Banggai Islands Regency. in accordance with information from the Popidolon Village Government Work Plan (2021),

According to reports, this village has a population of 657 people divided among 3 hamlets, with agriculture and plantations providing the majority of the village's income. The residents of this village follow a practice of passing down inheritances from their ancestors, such as Banggai, from one generation to the next. Based on this reality, the researcher wishes to learn more about how the Banggai tribal tribe in Popidolon Village, Banggai Islands, practices inheritance distribution.

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Previous academics have extensively studied the customary law's inheritance system, such as Mufti (2011) who looked at the inheritance of the Bawean Gresik tribe in East Java. Both Suparlan (2019) and Hidayat (2016) conducted research on the distribution of the traditional tribal heritage in Baung Village, but none of the research locations included the indigenous people of the Banggai tribe. Hidayat (2016) examined the inheritance system of indigenous peoples in Kayuagung District. In order to expand scholarly treasures in inheritance studies, the researcher thus aims to investigate the application of the Banggai tribe's traditional inheritance law via the lens of Islamic law.

2. Literature Review

2.1. Rule of Inheritance in Customs

According to Soerjono Soekanto (2003), Indonesia has three customary law-based inheritance systems in place:

- a. Method of inheritance where each heir receives property on their own
- b. System of communal inheritance, whereby the heirs collectively (together) inherit the inheritance and ownership cannot be divided among the heirs like in Minangkabau tradition
- c. If a particular son at the time of the testator's death or the eldest son (one male descendant), is the lone heir, as in Lampung, or the majority of women, as in Semendo, if the eldest rural daughter of the heir dies, is the sole heir.

Only the male line receives an inheritance from indigenous patrilineal peoples; by contrast, only the female line receives an inheritance from indigenous matrilineal peoples. On the basis of the justice principle, some indigenous peoples equally give inheritance to male and female relatives (bilaterally) (Soekanto, 2003). It is therefore not surprising that each kinship system in Indonesian society has its own uniqueness or approach and is different. Customary inheritance law is impacted by the ways and forms of society which are arranged based on genealogical and geographical criteria.

2.2 Sharia System of Inheritance

Islam has a system of inheritance centered on the Qur'anic verses, hadith, ijmak, and ijthihad of the scholars (Salihima, 2015: 27). Fara'idh is the name for inheritance in Islam. Wahbah al-Zauhaily (1989) defined Islamic inheritance as all fiqh laws and calculations used to determine each heir's portion of the inheritance. In contrast, the Compilation of Islamic Law (1991), in article 171 letter a, mentions the definition of Islamic inheritance law as the law that governs the transfer of ownership rights to inheritance (tirkah) of the heirs, establishing who is qualified to become an heir and how much of each of each should be given to each. This knowledge leads to the conclusion that the heir is included in the scope of Islamic inheritance (the deceased), the heir, and the inherited property. These three elements are the pillars of inheritance in Islam.

According to the QS, Islam has established the heirs and the portions they receive in An-Nisa verse 7 as follows::

مَفْرُوضًا نَصِيبًا ۖ كَثْرًا أَوْ مِثْقَلًا مِمَّا وَالْأَقْرَبُونَ وَالْوَالِدَيْنِ تَرَكَ مِمَّا نَصِيبُ وَلِلنِّسَاءِ وَالْأَقْرَبُونَ وَالْوَالِدَيْنِ تَرَكَ مِمَّا نَصِيبُ لِلرِّجَالِ

The literal translation reads: There is a right for males to share in the inheritance from your parents and relatives, and there is a right for women to share (also), a little or a lot depending on the portion that has been decided.

According to this scripture, Islam does not just restrict women's access to inheritance to men. The hadith reported by Muslim, according to Abid Bisri Mostafa (1993), states: "Distribute the inheritance to the lawful heirs, and the remainder is for the closest male family heirs." This hadith served as the foundation for Islamic inheritance laws. Regarding specifically, the components that have been chosen for each majority heir are in in the QS. An-Nisa verses 11-12 and the rest can be traced from the results of the ijthihad of the Companions. According to Moh. Muhibbin and Abdul Wahid (2017), heirs in Islam and their share of assets can be seen in the table as follows:

Table 1:
Islamic law's list of heirs and their allocation

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Type of Heir	Heirs	Obtained Parts and Conditions
Ashabul Furudh:	Husband	1/4 if there are children, 1/2 if there aren't
	Wife	1/8 if there are children, 1/4 if there aren't
	Daughter	If there are more than two people, divide by two-thirds, ½ if there is just one person.
	grandson of a son	If there are more than two people, divide by two-thirds, ½ if there is just one person.
	Father	1/6 if there are children
	Mother	1/3 if there are no children, 1/6 if there are children and with brothers/sisters
	Grandfather (father's father)	1/6 if there are children and no father
	Grandmother (Mother's mother)	1/6 if there are no mother
	Sister	½ if the only one, 2/3 if more than 2, 1/6 if there is a daughter
	Stepsister (father's daughter)	½ if the only child, there is no kids and sister, 2/3 if more than one
	Stepsister (mother's daughter)	1/6 if the only one, 1/3 if there are 2 or more, there are no kids/father/grandson
	Stepbrother (from mother)	1/6 if the only one, 1/3 if there are two or more, there are no kids/father/grandson/granddaughter
Ashabah	Son and grandson	If there are no kids/granddaughter
	Father and grandfather	if there are no sons
	Brother	If there are no son/father/grandfather
	Stepbrother (from father)	If there are no sons, father, or grandfather, dan brothers/sisters
	Nephew	If there are no close relatives (male)
	Nephew from stepbrother/sister (from father)	If there are no close relatives (male)
	Uncle and uncle from stepfather	If there are no close relatives (male)
	Cousins (male)	If there are no close relatives (male)
Zawil Arham	every family member who is not a member of Ashabul Furudh and Ashabah	If there are no other heirs from the ashabul furudh and ashabah categories,

Only the heir's husband/wife, sons, daughters, father, and mother are eligible to inherit if all the heirs are present. From the classification of heirs, it can be inferred that the existence of a descendant relationship (nasab), marital relations, and familial relationships—all of which must be Muslim—may all contribute to a person receiving a portion of the inheritance. As a result, if he is not a member of the same religion as the heir or is an apostate, he will automatically forfeit his inheritance.

Islam also controls how much of the inheritance goes to sons and daughters if they are the heirs. The inheritance obtained by sons and daughters in this situation must be split two to one. Girls receive one share of the property, whereas boys receive two parts (Salihima, 2015: 83). The 2:1 principle refers to the Qur'anic text's QS An-Nisa verse 11 and the principle of fairness, according to which males have a duty to support themselves and provide their wives dowries..

3. Methodology

The normative approach to Islamic law is used as the analytical tool in this qualitative field study. Islamic inheritance law is the method of law that is under discussion in Islam, and it is based on the text of the Qur'an, Hadith, and other normative considerations. The Popidolon Village hamlet in the Liang District of the Banggai Kepulauan Regency is the only area being studied. The Banggai ethnicity and adoption of a traditional system of inheritance distribution in the village community were factors taken into account while choosing the research site.

Primary and secondary data make up research data (Bungin, 2010). The primary data for this study comes from fieldwork data, which was gathered through interviews with Banggai tribe traditional leaders, community leaders, locals, and religious leaders. With the consent and knowledge of village officials, the researchers also carried out semi-open direct observations, namely objectively monitoring the inheritance practices used by Popidolon Village residents, in order to collect correct data (Sukardi: 2003). In addition to conducting interviews and making observations, researchers also gather information by using documentation methods. All information gathered after reduction, visualization, and verification. Before analyzing the data to get a final research conclusion, researchers conducted source training to verify the accuracy of the data.

4. Findings and Discussions

4.1 *The Practice of Sharing Inheritance According to the Customs of the Banggai Tribe in Popidolon Village*

In Popidolon Village, for instance, inheritance disputes are still dealt with strictly in accordance with customary law. As a traditional elder in Popidolon Village, Ahmad Manio recounted how the community splits inheritance according to a system handed down from their ancestors from generation to generation (Interview, 2022). He went on to say:

“Therefore, the elderly used to be distributed in this manner; more women received their share than men because, after being married, women were limited to taking care of the home, whereas men could work to support their families..”

Sarjono Insan, one of the village's religious leaders, claimed that because the bequest was distributed in accordance with mutual consent, there had been no issues. However, if a dispute arises, it is resolved through family means through the mediation of traditional chiefs and community leaders (Interview, 2022). There is no need to go through the legal system if any heirs disagree because the villagers in this community still strongly value family honor. The children and their spouse or wife are the heirs in a scenario where someone passes away, however the wife's portion is frequently not given much attention (Aspin Budin, Interview, 2022). Sons and daughters are therefore given preference in the inheritance distribution. If any property is left over, it is distributed to the heir's wife if there is one, or to the mother if there isn't (Aspin Budin, Interview, 2022).

The Banggai tribe in Popidolon Village has a practice whereby women are granted higher portions of the inheritance than men, taking into consideration the fact that women do not have a source of income. Since most women in the hamlet only handle household duties, it is hoped that if they received more inheritance than men, they would be able to maintain the family's economy. For instance, if a spouse passes away and leaves behind a house, a garden measuring 4 hectares, and Rp 2,500,000, the boys would receive 2 hectares of garden and Rp 1,000,000, while the girls would receive 2 hectares of gardens, a house, and Rp 1,500,000.

As Rahman (Interview, 2022) a community member in Popidolon Village stated, not all members of the community concur with the portion of the distribution.

“Boys should receive a larger portion because they are responsible for supporting the family financially and serve as the head of the home. If it is divided in accordance with Islamic inheritance law, where boys are given more than girls, I would be more in agreement..”

The inheritance distribution system has advantages and disadvantages, but it is still an acceptable practice. This is due to the custom that has been passed down from one generation to the next, whereby they continue to respect the method of inheritance distribution that was taught to them by their forebears. Even while some community members want inheritance to be distributed in accordance with Islamic law, there is a reason for this that has to do with the public's extremely limited understanding of Islamic inheritance. If there are any inheritance conflicts, they are rare, which is another contributing factor. Community leaders can resolve all of these issues amicably, though.

4.2 *Analysis of Sharia Relating to the Banggai Tribe's Practice of Dividing Their Inheritance in Popidolon Village*

The propagation of the Banggai tribe's traditional culture to the Popidolon Village community generally does not follow the Qur'anic directives found in QS An-Nisa verses 11–12. First, according to the Banggai tribe's traditional inheritance system, the wife receives no set portion of the estate and occasionally receives nothing at all, although according to the Qur'an, the wife is entitled to get if she has no children and 1/8 if she does. Even though Islam declares that the biological father and

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mother of the heir are heirs who will unquestionably receive a portion if all is done right, they are not regarded as such in the custom of sharing the inheritance of the community

السُّدُسُ فَلِأَمِّهِ إِخْوَةٌ لَهُ كَانَ فَإِنَّ التَّلْثَ فَلِأَمِّهِ أَبَوَاهُ وَوَرَثَهُ وَوَلَدٌ لَهُ يَكُنْ لَمْ فَإِنَّ وَوَلَدٌ لَهُ كَانَ إِنْ تَرَكَ مِمَّا السُّدُسِ مِنْهُمَا وَاجِدِ لِكُلِّ وَوَلَدٌ لَهُ...

The translation is:

And if he (the heir) has children, the father and mother each receive one-sixth of the property left behind. If he is an heir without children, his mother receives a third of the estate; if he has a brother, his mother receives a sixth.

Islamic inheritance law differs from the Banggai tribal custom that is enforced in the Popidolon community about the portion of the share that boys receive that is less than that of girls. In addition, the pride of Popidolon society is not governed by Islamic inheritance law. The male should have two portions that are larger than the girl. Since it is the man's responsibility to provide for and take care of the family's needs, the Banggai Popidolon tribe's custom of giving larger girls with the understanding that they have no money can truly be broken. Similar to this, a man is required to offer a lady a dowry when she marries. Additionally, the idea of promoting women's economic empowerment conflicts with the fact that other female relatives, such as the heir's wife or natural mother, do not receive the same portion as the daughter.

5. Conclusion

The Syariah inheritance system's concepts of benefit, fairness, and equality must be internalized to modernize the Banggai tribe's traditional law's system of inheritance distribution in Popidolon Village. Changes must be made in accordance with the Shari'a, particularly in the distribution of the share between sons and daughters as well as the right of share for close relatives like the wife and mother of the heir. Prior to this, community leaders, particularly traditional leaders, may get socialization and a transmission of religious knowledge regarding Islamic heirlooms. Regarding the method of settling inheritance disputes, which is done in a family setting from generation to generation, and it can be upheld because it adheres to Islam's founding ideal of peace (islah).

Reference

- Ali, Mohammad Daud (1990). *Hukum Islam, Pengantar Hukum dan Tata Hukum Islam di Indonesia* (Jakarta: PT Raja Grafindo Persada).
- Bungin, Burhan (2010). *Metodologi Penelitian Social, Format-format Kualitatif dan Kuantitatif*. Surabaya: Airlangga University Press.
- Departemen Agama RI (2017). *Al-Qur'an dan Terjemahnya*. Surabaya: Pustaka Assalam.
- Djauhary, Julian Harrisal (2016). *Pembagian Harta Waris Menurut Hukum Adat dan Hukum Islam Di Kecamatan Cempaka Kabupaten Oku Timur*. *Repertorium* (5)2, 42-60.
- Hadikusuma, Hilman (2003). *Pengantar Ilmu Hukum Adat di Indonesia*. Bandar Lampung: CV. Mandar Lampung.
- Hipni, Mohammad dan Muh. Karim (2019). *Akar Budaya Emansipasi Pekerja Imigran Wanita Madura: Kajian terhadap Praktik Waris Adat Madura*. *Kabilah Journal of Social Community*, (4)2, 1-15.
- Jumardin dan Sitti Halimang (2021). *Pembagian Harta Warisan Pada Adat Bugis Bone di Aladadio Perspektif Hukum Islam (Studi di Desa Aladadio Kecamatan Aere Kabupaten Kolaka Timur)*, *Jurnal IAIN Kendari*, 50-60. Diakses 12 Oktober 2022. <https://ejournal.iainkendari.ac.id/index.php/fawaid/article/download/3084/1570>
- Kompilasi Hukum Islam (1991). Yogyakarta: Pustaka Widyatama
- Mostafa, Abid Bisri. *Terjemah Sahih Muslim*. Jilid III: Semarang: Asy Syifa
- Muhibbin, Moh dan Abdul Wahid (2017). *Hukum Kewarisan Islam*. Edisi revisi. Jakarta, Sinar Grafika.
- Republika (2017). *Berdosakah Bila Tak Menjalankan Hukum Waris Islam?* Diakses 10 Oktober 2022, dari Republika Online. <https://www.republika.co.id/berita/mb6xv2/berdosakah-bila-tak-menjalankan-hukum-waris-islam>
- Salihima, Syamsul Bahri (2015). *Perkembangan Pemikiran Pembagian Warisan dalam Hukum Islam dan Implementasinya pada*
- Pengadilan Agama. Jakarta: Prenada Media Group.
- Satria Efendi, M. Zein (2005). *Ushul Fiqh*. Jakarta: Kencana.
- Soekanto, Soerjono (2003). *Hukum Adat Indonesia*. Jakarta: Raja Grafindo Persada.
- Sukardi (2003). *Metodologi Penelitian Pendidikan Kompetensi dan Prakteknya*. Jakarta: Bumi Aksara.

Zuhaili, Wahbah (1989). *Al-Fiqh Islami wa Adillatuh*. Cetakan III. Damaskus: