THE ROLE OF

Indigenous Figures

IN THE SETTLEMENT OF MUSLIM INHERITAGES DISPUTES IN SUMATERA

THE ROLE OF *Indigenous Figures* IN THE SETTLEMENT OF MUSLIM INHERITAGES DISPUTES IN SUMATERA

Dr. H. Fatahuddin Aziz Siregar, M. Ag.
Dr. Muhammad Arsad Nasution, M. Ag.
Dr. Abdul Nasser Hasibuan, M.Si.

Merdeka Kreasi

Perpustakaan Nasional: Katalog Dalam Terbitan (KDT)

Fatahuddin Aziz Siregar, dkk.
The Role of Indigenous Figure in the Settlement of Muslim Inheritages Disputes in Sumatera
—Ed. 1, Cet. 1. —Medan: Merdeka Kreasi, 2022
x, 144 hlm., 24 cm.
Bibliografi: hlm. 129
ISBN:

2022.

Dr. Fatahuddin Aziz Siregar, M. Ag.
Dr. Muhammad Arsad Nasution, M. Ag.
Dr. Abdul Nasser Hasibuan, M. Si.

the Role of Indigenous Figure in the Settlement of Muslim in Heritages Disputes in Sumatera

Cetakan ke-1, April 2022

Hak penerbitan pada CV. Merdeka Kreasi Group

Layout : Tim Kreatif Merdeka Kreasi
Desain Cover : Tim Kreatif Merdeka Kreasi

Dicetak di Merdeka Kreasi Group

CV. Merdeka Kreasi Group
Penerbit Nasional
Anggota IKAPI No. 148/SUT/2021

Alamat : Jl. Gagak Hitam, Komplek Bumi Seroja Permai Villa 18, Medan Sunggal 20128
Telepon : 061 8086 7977/ 0821-6710-1076
Email : merdekakreasi2019@gmail.com
Website : merdekakreasi.co.id

PREFACE

Alhamdulillah, this research can be completed in accordance with a predetermined schedule. This research is an intellectual work that is expected to be able to enrich the scientific treasures of Islamic law, especially those related to the object of this research, the settlement of inheritance disputes. The results of this study are also the fulfillment of researchers' academic obligations as scientists who must carry out scientific development in accordance with the area of research competence. In addition, as an activity facilitated by the Research and Community Service Institution of the IAIN Padangsidimpuan Community through the Litabdimas program, the results of this study are also accountable, both administrative and academic.

Researchers feel indebted to many parties in the completion of the research report. The Chancellor and leadership elements of IAIN Padangsidimpuan, including those who technically manage research activities, were the Chair and Secretary of the LPPM, the Head of the Center for Research and Scientific Publications and their staff. Regarding the content of the research, the researcher is indebted to the informants and colleagues who have contributed to the completion of this research.

With prayer, I hope that this research can fill a few gaps in the research topic lacuna, and God willing, will be followed by the creative works of researchers on various occasions.

Medan, April 2022

Head of the Research Team

Dr. H. Fatahuddin Aziz Siregar, M. Ag.

(This Page is Intentionally Left Blank)

TABLE OF CONTENT

Chapter One

INTRODUCTION

A. BACKGROUND

Society consists of many individuals, and each individual has their own interests to live together in an evolutionary system. Furthermore, society is defined as a unit of human life that interacts and according to a particular system of customs that is continuous and bound by a sense of shared identity.[1] In indigenous communities, togetherness is so closely intertwined because it is bound by kinship. In the Batak tradition which adopts a patrilineal system, for example, kinship is formulated in the *Dalihan Natolu* system. *Dalihan Natolu* means three furnaces that support the community in all aspects of life and are perceived as balance, conformity, and harmony.[2] It can also be added that *Dalihan Natolu*'s kinship is basically a major cultural value and occupies the highest position in Tapanuli society, even higher than religious values.[3]

1 Koentjoroningrat, *Pengantar Ilmu Antropologi*, (Jakarta: Rineka Cipta, 2009), pg. 115

2 Basyral Hamidy Harahap, *Siala Sampagul,* (Bandung: Pustaka, 2004), pg. 24.

3 Basyral Hamidy Harahap dan Hotman M. Siahaan, *Orientasi Nilai-Nilai Budaya Batak: Suatu Pendekatan Terhadap Perilaku Batak Toba dan Angkola Mandailing (*Jakarta: Willem Iskandar, 1987), pg. 197

Different kinship patterns can be found in the Minangkabau region which adopts a matrilineal system. According to this system the lineage is drawn up only through the female links, as bloodlines.[4] The Minangkabau people are known as the largest adherents of the matrilineal system in the world. This society is also known as a society that is still faithful in carrying out its traditions and customs. On the other hand the Minang people also better identify themselves as Muslims. Thus the Minangkabau community becomes a unique and always interesting community to discuss and research. In daily life, customs run well and even now have a good place in the context of regional autonomy. The density of the adat nagari plays a role in running the nagari government even though it is not yet in an ideal form.[5]

Both paternity patterns, both patrilineal and matrilineal, are widely adopted by indigenous peoples of the Sumatran island region. The patrilineal lineages, in addition to the Batak indigenous people were also embraced by the Gayo, Nias, and Lampung Pepaduan indigenous peoples. While the matrilineal system, besides the indigenous peoples of Minangkabau, was also adopted by the indigenous people of Kerinci, Semendo (South Sumatra), and Lampung Paminggir. Linear with the inherited kinship system, in relation to customary legal inheritance, these two kinship poles calculate the heirs according to their kinship system. In the patrilineal system, the heirs are boys and other relatives. Similarly, in the matrilineal system, in Minangkabau high inheritance falls on female relatives.

Until now, the inheritance system practiced empirically by the community has experienced a shift. in indigenous peoples, both adherents of matrilineal and patrilineal who adhere to the religion of Islam, the exercise of their inheritance has received such a real influence from Islamic law. Apart from the phenomenon of the change, the distribution of inheritance often leads to disputes that do not find a way to settle independently by the internal family that shares the in heritance. The deadlock in completing the distribution sometimes

4 Hazairin, *Hendak Kemana Hukum Islam,* (Jakarta: Tinta Mas, 1960), pg. 7

5 Yasril Yunus, "Aktor Kultural dalam Pemerintahan Terendah di Sumatera Barat (Posisi Ninik Mamak dalam Struktural Adat dan Penyelenggaraan Pemerintahan Formal) on *Jurnal Humanus, Vol. XII No. 1 Tahun 2013*, pg. 31

requires the involvement of parties outside the family to find the best solution.

In the past, traditional leaders who came from elements of kinship themselves became effective mediators to resolve various disputes that arose in the community. But along with the stretching of kinship, its function has also declined, especially related to solving family problems. At present, many families prefer legal channels to resolve family problems, including the inheritance conflict resolution. Strangely, inheritance that is supposed to be classified as a civil matter sometimes involves the police. When the researchers asked the police, they argued that the police should not refuse public complaints, even though then the efforts made were more towards peaceful settlement. This phenomenon is interesting to study. The researcher wants to see more about how the role of indigenous figures today in the settlement of inheritance cases.

B. RESEARCH PROBLEMS

1. What is the role of indigenous figures in the settlement of inheritance disputes in Sumatra?
2. What are the factors influence the role of indigenous figures in the settlement of inheritance disputes in Sumatra?

C. PURPOSES OF RESEARCH

1. Knowing the role of indigenous figures in the settlement of inheritance disputes in Sumatra
2. Know the various factors that can influence the role of indigenous figures in the settlement of inheritance disputes.

D. RESEARCH STUDY

Research that discusses the implementation of inheritance in a particular area was carried out by many researchers. Among the prominent ones, for example, conducted by Amir Syarifuddin was the Implementation of Islamic Inheritance Law in the Minangkabau

Indigenous Environment. Amir Syariruddin found that there was a harmonious blend of Islamic and traditional law in Minangkabau, including the distribution of inheritance.[6] There is a change in the customary inheritance system of the Minangkabau, which was originally a matrilineal system, then changes occur along with changes in family structure that leads to nuclear families consisting of fathers, mothers and children.

Subsequent research by Otje Salman who conducted a study entitled The Implementation of Inheritance Law in Cirebon Area was seen from the Customary Inheritance Laws and Islamic Inheritance Laws. This dissertation was then published in book form by the publisher of PT. Bandung Alumni on 1995 for the first printing, and re-printed in 2007 as the second printing with the title Public Law Awareness to Inheritance Law. The research emphasizes an approach based on legal awareness in the community. An approach which at that time was still relatively new and had not been carried out by previous researchers.

The discussion is carried out by first reviewing family law and marriage law. In his explanation, Otje said that the discussion of family law and marriage law needs to be delivered first with the consideration that the discussion of inheritance is focused on three main things, including what is the object of inheritance (inheritance), who is entitled to the inheritance (heirs) and how rules of distribution. Otje's research concluded that more people apply customary inheritance law, whereas the application of Islamic inheritance law is very limited. In general, community legal awareness of the applicable inheritance law is relatively low.[7]

Azhari Akmal Tarigan examines the issue of inheritance in areas that are still fairly strong in holding traditional values. his research is titled Implementation of Inheritance Law in the Karo Muslim Community in North Sumatra. Tarigan found that there had actually

6 Amir Syarifuddin, *Pelaksanaan Hukum Kewarisan Islam dalam Lingkungan Adat Minangkabau*, (Jakarta: Gunung Agung, 1990), pg. 169

7 Otje Salman Salman, *Kesadaran Hukum Masyarakat terhadap Hukum Waris*, (Bandung: P.T. Alumni, 2007), pg. 161

been a shift in customary inheritance, even if Muslim communities in this region were asked how they divided inheritance in general they answered that it was divided according to customary provisions. The reason used is very simple that customary law has been used and practiced by the community consistently before Islam came.[8]

The issue of the distribution of inheritance to the community with a patrilineal kinship system is the inheritance rights of girls. According to Tarigan, the community was mapped into 3 groups in relation to the pattern of inheritance of girls. First, customary provisions are carried out in full, which means not giving the slightest share to girls; second, giving parts to girls but in very small portions; and third, give equal shares between boys and girls. Tarigan concluded that the implementation of the distribution of inheritance to Muslim communities in Tanah Karo was to use adat laws more dynamically.

In the South Tapanuli region, Mudzakkir Khotib conducted research in the form of a thesis to obtain a Bachelor of Religion at the Faculty of Sharia IAIN Sunan Kalijaga Yogyakarta in 1998 with the title Implementation of the Distribution of Inheritance to Patrilinial Muslim Communities in South Tapanuli. His research found that the people of South Tapanuli had not fully implemented the Islamic inheritance law. There are variations in the distribution of inheritance in the Muslim community in South Tapanuli. Communities in the Padang Bolak sub-district, for example, who have a relatively strong tradition, tend to divide their assets according to the provisions of customary law. While many people in the Mandailing area practice the provisions of Islamic inheritance law.

This study discusses the implementation of the distribution of inheritance in the region more critically using the perspective of legal sociology. Data has been collected to see the actual condition of the distribution of inheritance in the Batak indigenous people in South Tapanuli. This research comprehensively discusses the form of inheritance distribution by first mapping the implementation of

8 Azhari Akmal Tarigan, *Pelaksanaan Hukum Waris di Masyarakat Karo Muslim Sumatera Utara*, *Jurnal al-Ahkam* Nol XIV, No. 2, Juli 2014, hlm. 201.

the tradition and its relation to Islamic law, then being discredited to the practice of inheritance distribution while still observing the interrelation of the practice referred to in the map. This research is clearly different from what Mudzakkir has done which only describes its implementation, while the researcher conducts an analysis to explain the factors that have influenced the current divisions.

The latest research is conducted by Fatahuddin Aziz Siregar under the title Islamic Law in Shifting Customary Inheritance in South Tapanuli. This research found that Islamic law has contributed to changing the way the inheritance is traditionally distributed. The practice of distributing inheritance in a community that initially did not give a share to the mother, then gave a portion of 1/3 or 1/6 according to the conditions. A wife who was not originally an heir, then received a portion in accordance with the provisions of Islamic law which stipulates that the wife's portion is 1/4 or 1/8 according to the family's condition. A girl who was originally only a recipient of olong ate then became an heir who received a 1/2 or 2/3 portion. On a national scale, Islamic law, which then goes through a process of legislation, becomes a legal provision, both in the form of material law and formal law, so that it becomes a force to enforce Islamic inheritance law in this region. Islamic law has also influenced traditional inheritance institutions to become more Islamic. Olong Ate Institute currently has a new meaning inspired by the concept of Zawil Arham. Olong ate becomes a flexible solution. Can be a solution in giving a part to a successor heir. It can also be an additional part that completes the faraidh section for female heirs.[9]

It appears that all of the above research focuses more on how Islamic law influences customary law in terms of the distribution of inheritance. While this research is more focused on resolving inheritance conflicts without questioning whether a family divides inheritance by referring to Islamic law or customary law. This research intends to investigate whether indigenous figure are still reliable in resolving many inheritance conflicts that occur in various regions in Sumatra.

9 Fatahuddin Aziz Siregar, *Hukum Islam dalam Pergeseran Kewarisan Adat Batak di Tapanuli Selatan*, (Disertation on Pascasarjana Program IAIN Imam Bonjol Padang, 2017), pg. 411

E. CONCEPT OR RELEVANT THEORY

1. Dispute

When conflicts of interest occur within the community, disputes or conflicts often arise. This dispute can arise at all levels. Disputes between groups, between companies or between countries. In summary, disputes can be civil or public in nature, can be local or national scale.

A dispute occurs because one party feels disadvantaged by another party, then the party who feels his interests are disturbed expresses his disappointment to the second party. The parties then disagree with each other whether factual or just in their perception.[10]

There are many theories that cause disputes, including the theory of public relations that sees disputes arise as a result of community rivalries, the principle of negotiation theory that views disputes arising from differences that should be negotiated, the theory of idendity that sees disputes as a group of people feel their identities can be threatened by other groups, and theories of human needs.

The theory of human needs is the most relevant theory in this discussion. This theory finds that disputes occur because a group of people feels their needs cannot be met because they are blocked by another person or party. These needs can be in the form of substantive needs, procedural needs and psychological needs. Substantive needs relate to human needs that are material, such as the need for the availability of money, food clothing, shelter and the need for material welfare. Procedural needs are related to social relations. Whereas psychological needs are related to nonmaterial needs, such as respect for their existence and participation in society.

A dispute certainly requires a complete solution. Settlement of this dispute can be through two alternatives, namely litigation and non-litigation. Litigation is the process of resolving disputes through court proceedings. Litigation requires a settlement in which the parties

10 Takdir Rahmadi,*Mediasi Penyelesaian Sengketa Melalui Pendekatan Mufakat*, (Jakarta: Rajawali Pers, 2011), pg. 1.

face each other, each trying to defend their rights, and the final result is a judge's decision that is a win-lose solution.[11] This settlement model is formal and requires the ability of the parties involved to show the truth of their arguments. Litigation necessitates the ability of a lawyer, and often decisions do not represent the real truth because of limitations in the skills of a lawyer. This method can also pose several risks. At least the litigation method requires a relatively high time and cost. Another excess is the emergence of new, worse problems, even though the dispute has been resolved, but the parties are then hostile to one another.

This condition then makes justice seekers seek alternative better solutions. The way to find a solution without causing even worse consequences than the problem itself. The non-litigation path in this case is taken. A method that does not go through a formal process in the judiciary. Non-litigation also provides several alternatives that can be taken, such as arbitration, negotiation, mediation, conciliation, and expert judgment. These methods rule out formal settlement before the court. This method is also known as Alternative Dispute Resolution.

Mediation is a form of non-litigation relevant to this research. Mediation is basically the same as negotiations involving third parties, who have no interest in the disputed problem. This third party is expected to make the bargaining process more effective, so that this party is demanded to control the procedures and problems to be resolved. In this case, Dalihan Natolu occupies the position of mediator. Dalihan Natolu is an institution that is considered to understand well the disputes that occur between the parties. According to this method, an agreement is not made by a mediator, but merely supports the establishment of a dialogue that is honest and full of openness towards reaching a solutive agreement.

11 Nurnaningsih Amriani, *Mediasi Alternatif Penyelesaian Sengketa di Pengadilan*, (Jakarta: Grafindo Persada, 2012), pg. 16

2. Theory of Change

No society will avoid change. Change is a characteristic of humans as dynamic beings. Social change is something that is inherent with society. It can even be said that, society itself is a change. Nothing is fixed but the change itself. Every community will continue to move even with a relatively small intensity.

In sociology including legal sociology, change is caused by several factors, first the progressive cumulation of technological discoveries.[12] New discoveries in technology will influence the way individuals interact with others.[13] Communities that have been in desperate need of others and have implications for the strength of social ties in a particular community including indigenous communities, then no longer need too much help from others because they are replaced by technology. Traditional instruments were replaced by new instruments that were considered more effective and efficient. In turn, it will affect the mindset, attitude and behavior of the community, and will even overhaul the socio-cultural system and structure, both political, economic, cultural, and including the legal field.[14] Bonds that have been formed so firmly have become increasingly loose, including for example customary rules. Second, contact between cultures which then causes diffusion, the process of spreading cultural elements from individuals to other individuals, and from one society to another society. People will receive a new value if they feel that the new element has benefits.[15] Third, social movements carried out in an organized, massive and sustainable manner will also be a factor in changing society.

12 Soerjono Soekanto, *Pokok-pokok Sosiologi Hukum*, (Jakarta: Rajawali Pers, 2012), pg. 108.

13 Nanang Martono, *Sosiologi Perubahan Sosial: Perspektif Klasik, Modern, Posmodern, dan Poskolonial*, (Jakarta: Rajawali Pers, 2012), pg.16

14 Abdul Ghofur Anshori, *Hukum Kewarisan Islam di Indonesia: Eksistensi dan Adaptabilitas,* (Yogyakarta: Gadjah Mada University Press, 2012),pg. 69.

15 Sorjono Soekanto, *Sosiologi Suatu Pengantar,* (Jakarta: Rajawali Pers, 1997), pg. 362.

F. DATA EXTRACTING METHODS AND TECHNIQUES

1. Location and Time of Research

The research is located on the island of Sumatra, considering variations in the character of the people of this region so that the data collected is complete and can provide a comprehensive picture of the object of research. Data will be extracted from areas that are fairly strong in practicing patrilineal kinship systems, such as North Sumatra, especially the Tapanuli region inhabited by Batak ethnic communities, accompanied by Gayo, Semendo and Lampung Pepaduan. Data was also extracted from areas that practiced matrilineal kinship, especially in the Minangkabau region, particularly those included in the administration of West Sumatra. This is done so that the data collected fully illustrates the objective and overall conditions. The time of the research is from April 2019 to completion.

2. Types and Nature of Research

This research is a field research[16], and included in the study of sociological law, which examines legal events with sociological analysis, in this case the sociology of law. In sociological law research, law is conceptualized as a social institution that is realy associated with other social variables[17]. While the nature of this study is descriptive-analytical.

3. Data Source

The data source of this research was the informant, and based on the research needs, the data was collected from indigenous figure in the areas mentioned above, as well as community members who distributed inheritance, particularly the distribution of inheritance accompanied by disputes. Data, of course, becomes complete and complete by collecting data from various documents that contain data on customary law.

16 Jenis penelitian ini lebih banyak dilakukan dalam penelitan kualitatif. Suharsimi Arikunto, ***Prosedur Penelitian: Suatu Pendekatan Praktik,*** (Jakarta: PT Rineka Cipta, 2006), pg. **10.**

17 Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Jakarta: Rajawali Press, 2012), pg. 133

4. Data Collection Technique

a. Observation

Observation is the most important data collection technique in qualitative research and field research. With observation, researchers can gain experience and knowledge that is very personal which is sometimes difficult to express in words and often not revealed in interviews[18]. With observation, researchers capture the symptoms as a whole and a comprehensive picture of the object and subject of research. However, because the distribution of inheritance is a closed issue, especially if the distribution of inheritance in a family is accompanied by a dispute, this technique is not widely used. However, at least the researcher can capture the data quite completely because the researcher has the opportunity to become an expert witness in several cases of inheritance disputes. So observation in this case is participatory. With this type of observation, the data obtained are more complete, sharp, and can find out the level of meaning of each behavior that appears.[19]

b. Interview

In a structured interview the researcher has prepared a research instrument in the form of written questions asked to informants. To get deeper information about research problems, the researcher also uses unstructured interviews.[20] Based on an analysis of each answer from the informant, the researcher asked a follow-up question that was more focused on the purpose of the study.

Interviews can explore fully and in-depth about the settlement of inheritance disputes with indigenous peoples in the various regions mentioned above. This technique becomes the main way to get the data needed, although in fact the most

18 Sugiyono, *Memahami Penelitian Kualititaf*, (Bandung: CV Alpabeta, 2008), pg. 66-67.

19 *Ibid*., pg. 64

20 *Ibid*., pg. 74

ideal technique to comprehensively capture an event is by observation, but because the distribution of inheritance is an activity that is closed then observation in this case is quite limited. Therefore, researchers maximize interview techniques with several relevant informants. Related to that, the determination of informants was carried out using purposive sampling technique. Interviews were conducted with several parties, as the informant mentioned, such as members of the community who carried out the distribution of inheritance accompanied by disputes. Related to this, a very important interview is of course conducted with indigenous figure.

To complete the data needs, interviews were also conducted with the police, considering that the community often complained about inheritance disputes with law enforcement officers.

c. Documentation

Through this method the researcher looks for data about the things or factors needed to analyze the problem. This method is very important in this study, to examine books related to the research theme. This method is so reliable and significant for capturing written data, the reliability is related to the persistence of the data, does not change, so that if there is an error can be corrected again.[21]

To get authentic theoretical data about tradition, this technique is more reliable. Because the real form of tradition is more likely to be found in a variety of literature that talks about tradition compared to interviewing indigenous figure. Because interviews with indigenous figure only produce data on traditions that they understand today, which have changed a lot.

21 Suharsimi Arikunto, ***Op.Cit.,*** pg. 231

G. DISCUSSION PLAN

The discussion starts with an introduction, which consists of the background of the problem to see how the problem arises and needs to do research; problem formulation as work guidelines to focus on the problems that have been formulated; research objectives so that this research activity is directed; previous research studies to describe the position of this research among similar studies that have been done, and prove that the same theme has never been examined; relevant concepts or theories to become a knife for analyzing collected data, methods and techniques for extracting data as a way to extract data, and ending with a discussion plan and reference literature.

The second chapter discusses sociodemography and tradition in various research areas. This chapter is placed after the introduction to first understand the location of the research in sociodemographic and applicable customs. The discussion consists of a brief history and geographical circumstances to understand well the sociodemographic conditions and customs that apply in the area. The discussion was then followed by an explanation of demographics and socioeconomic conditions and customs to obtain a comprehensive understanding of the community, especially customs practiced to show the traditional patterns of interaction carried out by the community in general with an emphasis on discussion on the kinship system adopted.

The third chapter describes inheritance, both according to the Islamic legal system and according to tradition, containing the principles of inheritance, heirs, portions, and ways of inheritance. This discussion is to see how the ideal rules for the distribution of inheritance are expected, to fulfill a sense of justice in accordance with the inheritance system of both Islamic and customary law.

The fourth chapter reviews disputes and changes, it is important to comprehensively understand the emergence of disputes including inheritance disputes and ways that can be taken as a solution to the problem. The discussion starts from the understanding of the dispute, the reasons for the emergence of the dispute, the resolution of the dispute with the emphasis on alternative dispute resolution, especially

mediation. Then proceed with a discussion of change and the causes of change to understand exactly how the change in the role of indigenous figure in the context of resolving inheritance disputes.

The research findings are reviewed in the fifth chapter. Field data on the role of indigenous figure in the settlement of inheritance and the factors that influence it are presented at the same time with the necessary analysis based on the theory previously explained.

The discussion concludes in the sixth chapter in the form of a conclusion consisting of research conclusions and suggestions.

Chapter Two

THE LAW OF ISLAMIC HERITAGE

A. DEFINITION OF FIQH MAWARIS

Fiqh Mawaris is a form of *idafah* (compound) consisting of two words, fiqh and mawaris, which lead to a unity of meaning. To get a comprehensive understanding of this term, the etymological definition will be described first.

Fiqh is a derivative of f*aqaha* which means understanding. While *mawaris* is a plural form, the singular form is *miras*. This word itself is a derivation of *warisa* which means to inherit. The word inherited in Indonesian thus -can be seen clearly-, adopted from Arabic. If you want to translate it in Indonesian, you can't find a word that represents its meaning, so the word '*waris*' is then used in Bahasa. Referring to the Indonesian Dictionary, it is stated that inheriting (inheritance) is derived from Arabic which means receiving inheritance from someone, especially parents.[1]

It can further be explained that if an isim transformed from a film is then converted to a plural form, then the plural function is nothing but li-tanwi '(diversification), not to show a large number. Meaning like this will be increasingly felt when we begin to enter the discussion of various types of Mawaris.

1 Department of Education and Culture, *Kamus Besar Bahasa Indonesia*, (Jakarta: Balai Pustaka, 1995), pg. 1125.

As for the terminology, there are the following definitions:

Muhammad Ali as-Sabuni formulated mawaris as the transfer of the rights of a deceased person to his surviving heirs, with the ownership he left behind could be in the form of material possessions or in the form of rights from various *syari'iy* rights.[2] Ahmad Abdul Jawad gives a definition that is in line with that but with a more detailed explanation. According to him, Science (Fiqh) mawaris is one of the many shari'ah sciences that are extracted from the Qur'an and as-Sunnah and al-Jima. The use of inheritance is to every heir with his shariah right from inheritance. Whereas al-Irs, al-Miras or al-Maurus is something of goodness left by someone who dies who can be possessed and turn to his heirs after his death.[3]

Asy-Syarbini in Mugni al-Muhtaj defines fiqh mawaris as fiqh whose object discusses the distribution of inheritance, understands the calculation to know clearly the distribution of inheritance and parts that must be received by each entitled to inheritance.[4]

Just to compare with the formulations submitted by civil law expert Wirjono Prodjodikoro in defining inheritance, he stated "the question of whether and how various rights and obligations regarding one's wealth at the time of death will be transferred to others who are still alive."[5]

Knowing the various definitions of fiqh mawaris above, we can take the substance, and then formulate it simply into "the science that discusses the transfer of rights from a deceased to his heirs who are still alive, as well as their respective parts of shari'iy."

---

2 Muhammad Ali As-Sabuni, *Al-Mawaris fi Asy-Syari'ah Al-Islamiyyah fi Dau' Al-Kitab* wa *As-Sunnah*, (Damsyiq: Dar Al-Qalam, 1989),pg. 34.

3 Ahmad 'Abd al-Jawad *Usul 'Ilm Al-Mawaris*, (Damsyiq: Matba'ah Hasyim, 1975), pg.1. look Husain Muhammad Makhluf, *Al-Mawaris, fi Asy-syari'ah Al-Islamiyyah*, 4th print. (Ttp: Matba'ah Al-Madniy, 1976), pg. 9

4 Muhammad Asy-Syarbini Al-Khatib, *Mugni Al-Muhtaj*, (Kairo: Mustafa Al-Baby Al-Halaby, 1958), pg. III: 3.

5 Wirjono Prodjodikoro, *Hukum Warisan di Indonesia*, (Bandung: Sumur Bandung, 1983), pg. 13.

A little explanation of this definition offer; transfer of assets means discussing a process, the process of transferring ownership of the property of the deceased to his heirs. Talking about the process, we actually need to elaborate on a procedure for the distribution of inheritance which is carried out sequentially and systematically. This is reviewed in a separate section in this textbook. Regarding treasures 'tirkah' there are differences among scholars. According to the Hanafi school, tirkah is only in the form of assets. Ibn Hazam has the same opinion as this. According to him God requires the transfer of ownership left by someone who has died is limited to property, not other forms. As for rights, they are not inherited if those rights are directly related to property or the meaning of assets such as clothing rights and rights attached to owned land such as the right to build buildings and management. Meanwhile, according to Malikiyah, Shafi'iyah and Hanabilah tirkah includes everything left by a person who died, both in the form of property and rights, even though the rights are not related to property.[6] Perhaps those included in the category of rights that are not directly related to property such as copyright (royalties) and similar things.

It also needs to be explained briefly, that the fiqh of mawaris has the equivalent word, faraid. This term reflects the normativity of Islamic inheritance law, because the word is an invented word from farada which means to determine. Faraid is the plural of faridah, which when combined with the name of Allah means the provisions (hudud) which are ordered and forbidden by Allah.[7] In various scattered books of fiqh there is a lot of information in line with this.[8] In the inheritance verse lafaz farada comes in the form of *isim maf'ul*, *nasiban mafruda*.[9] If the lafaz *farada* is derivated in the *wazan taf'il* the meaning can be for the appraiser, and it can also mean *tafsil*.[10] So lafaz سورة انزلناها وفرضناها (some read *faradnaha*, other else *farradnaha*), which means we explain

6 As-Syyaid Sabiq, *Fiqh As-Sunnah*, 4th print. (Beirut: Dar Al-Fiqr, 1983), pg. III: 425.

7 Abu Al-Fadal Jamal Ad-Din Muhammad Ibn Mukram Ibn Manzur Al-Ifriqiy Al-Misriy, *Lisan Al-Arab*, 3rd print. (Beirut: Dar As-Sadir, 1994), pg. VII. 202

8 Look at example; Ibrahim Al-Bajuri, *Hasiyah Al-Bajuri*, (Ttp: Dar Al-Fiqr, t. t), pg II: 68

9 An-Nisa' (4): 7.

10 Ibn Manzur, *Lisan…*, VII: 202

it in detail. Thus the term *faraid* means the provisions of Allah regarding the division of inheritance in detail, which at the same time also shows the parts specified for each heir to be rigid, as desired by the term *al-faraud al-muqaddarah*.

B. PRINCIPLES OF ISLAMIC INHERITANCE

Based on the rules of Islamic inheritance law which were traced from various sources, the ulama drew the normative provisions of Islamic inheritance to the level of principle as follows:[11]

1. *Ijbari* Principle

Ijbari literally means coercion. It means that the inheritance of property is something that happens "forced", taking place on its own, without manipulation from anyone. So, if a person dies, the ownership of his property has automatically transferred to the rightful heirs.

The principle of ijbari in this transition can be seen from the word of God in Surah an-Nisa (4): 7. This verse explains that for a man or woman has a "fate" from the inheritance of parents and close relatives. The word fate means part, share or ration in the form of something received from another party. From the word 'fate' it can be understood that in the assets left behind by the heir, whether we realize it or not, there are inheritance rights. In this case, the testator doesn't need to promise anything before he dies; likewise the heir does not need to claim his rights, because the property will automatically change ownership by the death of the testator.

But if concretely, the property has not reached the hands of the person concerned, then that is another matter. And for the sake of that (execution) the party concerned can ask for the determination as heirs, and the consequences and subsequent requests for execution to the competent authority. Included in the scope of this "coercion" is the testator himself, for example he cannot unilaterally make a will that does not give an inheritance to one of the heirs he dislikes. Thus, *ijbari* is reflected as an absolute law (compulsary law).

11 Amiur Nuruddin, "Azas azas Hukum Kewarisan KHI, on Muh. Daud Ali, *Berbagai Pandangan Terhadap Kompilasi Hukum Islam*, (Jakarta: Ditbinbapera), pg. 88.

2. Bilateral

Bilateral is used to refer to the reality of the inheritance system without any difference between one lineage to another, but each party (mother and father line) has the same rights.[12] In this context, Islamic inheritance is assumed to be a revolution in the provisions of inheritance, after previously the Arab inheritance system in Islamic women was thus slumped. Not only do women not get inheritance, they even become part of the inherited property. At that time, inheritance was dominated by men, adult relatives and an inheritance based on oaths.[13] This practice is eliminated by the word of God which at the same time forms the basis of the following bilateral inheritance:

لِلرِّجَالِ نَصِيْبٌ مِّمَّا تَرَكَ الْوَالِدٰنِ وَالْاَقْرَبُوْنَ ۠ وَلِلنِّسَآءِ نَصِيْبٌ مِّمَّا تَرَكَ الْوَالِدٰنِ وَالْاَقْرَبُوْنَ مِمَّا قَلَّ مِنْهُ اَوْ كَثُرَ ۗ نَصِيْبًا مَّفْرُوْضًا

"For men there is a right to share in the inheritance of both parents and their relatives, and for women there is a right to share (also) from the inheritance from both parents and relatives, either a little or a lot according to a predetermined share." (An-Nisa:7)

The above verse clearly brings enthusiasm to elevate the degree of women, even with a clause that each (male and female) receives their portion according to the provisions, there are those who receive a large portion (male) while the (female) is smaller .

More specifically, this bilateral principle can be clearly seen in the word of God in Surah an-Nisa (4) verses 11, 12 and 176. In verse 11 it is stated:

a. The daughter has the right to receive inheritance from her parents as received by the son, by comparison a son receives the proportion received by two daughters.

12 A. Sukri Sarmadi, *Transendensi Keadilan Hukum Waris Islam Transformatif*, (Jakarta: Rajawali Pers, 1997), hlm.20.

13 As-Sayyid Sabiq, *Fiqh*..., III: 424.

b. The mother is entitled to inheritance from her child, both male and female. Similarly, fathers as male heirs are entitled to receive inheritance from their children, both male and female.[14]

3. Individual

Each heir becomes the full owner of the assets that are a part of it. Therefore, each heir is free to do *tasaruf* of the property. This also means that if an heir is treated unfairly, he has the freedom to respond to the treatment he receives. He may sit still, allowing the wrongdoing that befalls him, and demanding to get his rights.

4. Justice

This principle requires a balance of rights and obligations of each heir, as well as other aspects whose focus is justice.

In this regard, a man usually receives a double portion of the woman at all levels. This is because men are primarily responsible for family livelihoods. In addition, heirs from the *far'u waris* group usually get a larger portion of the "*usul*" group, a straight line up. This is because the responsibility is moving downward, means that a father is responsible for saving his child from poverty, not the other way around. Even though in practice many children care for their parents, so it is more the child's love for their parents. In the original concept it was the parents who were responsible for looking after their children. This is proof that Islam is more oriented towards a good and happy future.[15]

5. The Principle of Death

Talking about inheritance in a family is completely irrelevant if parents, or anyone who is also a family member who owns the property, is still alive. Conversely, if someone dies, as already mentioned on the principle of *ijbari* then the property is automatically transferred to the heirs who are entitled to receive it.

---

14 Amir Syarifuddin, *Hukum Kewarisan Islam,*

15 Dja'far Abdul Muchith, "Keadilan dan Keluwesan Hukum Waris Islam Yang Unik", in *Mimbar Hukum: Aktualisasi Hukum Islam* No. 54 Year XII 2001 September-October.

A person may die essentially, meaning without proof can be known and stated that he has died. It could also die "*hukmy*", that is, someone who was judged by a judge's decision was declared dead. This can happen as in the case of someone who is declared missing (*mafqud*) without knowing where and how the situation is. Through the judge's decision, after going through certain evidences he was declared dead.[16] Such decisions have binding legal force and are the basis of execution. Another possibility is that someone will die "*taqdiri*", assuming that someone has died. For example, because someone fought on the battlefield and long after that he never appeared, it was strongly suspected that he had died on the battlefield. The difference with die "*hukmy*" die "*taqdiri*" not through a judicial process.

C. SOURCES AND RELATIONSHIPS WITH NATIONAL INHERITANCE LAW

1. Sources of Islamic Inheritance Law

a. Al-Qur'an

As understood, the whole Islamic doctrine comes from the Qur'an which is the primary source, as well as Islamic inheritance law. Islamic inheritance law is a direct expression of the holy texts of the Qur'an. The Islamic inheritance law is even the only form of rule that passes directly through the Qur'an in great detail. There are no other rules that are appointed by the Qur'an as complete as Mawaris.[17]

Muhammad Ali As-sabini said that ownership of assets through inheritance was one of the most important reasons for ownership.[18] Such understanding he concludes from the rules contained in the Qur'an. We do not know exactly whether the priority of ownership of this inheritance exceeds the ownership of assets through one's own business. It's just

16 Ahmad Rofiq, *Fiqh Mawaris*, 3rd printing, (Jakarta: P. T. Raja Grafindo Persada, 1998), pg. 22

17 Muhammad Ali As-Sabuni , *Al-Mawaris…*, pg. 33.

18 *Ibid.*

that, from his expression, it is seen how Mawaris occupy a high position in the universe of Islamic law. Even if many are sad and object to this statement, it is actually caused by a misunderstanding. Some people say that this delivery is out of place, because in reality many people are fighting over inheritance issues. Though this happens possible because people do not carry out the ideal provisions of the Qur'an regarding inheritance.

And it becomes an undeniable fact that its appearance is presented in texts that are detailed, systematic, concrete and realistic. Sometimes, in the first place revealed, the inheritance provisions are responsive, he answers and gives certainty to legal problems. However, further the emergence of inheritance rules is to fill the needs of Islamic law as a construction of teachings.[19]

Regarding the first, Sayyid Sabiq explained that the an-Nisa verse verse 11 was revealed to answer the problem of inheritance faced by the wife of a friend named Sa'ad ibn Rabi'.[20] As for his case, Sa'ad ibn Rabi's wife came to the Rasullullah (PBUH) along with his two daughters. Then said: "O Rasulullah, these two daughters are descendants of Sa'ad ibn Rabi" who were killed as martyrs while fighting with you in the battle of Uhud. Then the uncle of these two children (Sa'ad ibn Rabi's brother) took all of Sa'ad's inheritance, leaving nothing to either of them. These two daughters could not have married without fees. "Rasulullah said:" Allah has made a regulation about it, then the following verse of mawaris (an-Nisa: 11) follows:[21]

يُوْصِيْكُمُ اللّٰهُ فِيْٓ اَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْاُنْثَيَيْنِ ۚ فَاِنْ كُنَّ نِسَآءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ ۚ وَاِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ ۗ وَلِاَبَوَيْهِ لِكُلِّ وَاحِدٍ

19 A. Sukri Sarmadi, *Transendensi…*, pg. 1.

20 An-Sayyid Sabiq, Fiqh…, pg. 424

21 An-Nisa' (4): 11.

مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ اِنْ كَانَ لَهٗ وَلَدٌ ۚ فَاِنْ لَّمْ يَكُنْ لَّهٗ وَلَدٌ وَّوَرِثَهٗٓ اَبَوٰهُ فَلِاُمِّهِ الثُّلُثُ ۚ فَاِنْ كَانَ لَهٗٓ اِخْوَةٌ فَلِاُمِّهِ السُّدُسُ مِنْۢ بَعْدِ وَصِيَّةٍ يُّوْصِيْ بِهَآ اَوْ دَيْنٍ ۗ اٰبَآؤُكُمْ وَاَبْنَآؤُكُمْ ۚ لَا تَدْرُوْنَ اَيُّهُمْ اَقْرَبُ لَكُمْ نَفْعًا ۗ فَرِيْضَةً مِّنَ اللّٰهِ ۗ اِنَّ اللّٰهَ كَانَ عَلِيْمًا حَكِيْمًا

"Allah has prescribed (obligatory) on you regarding (the division of inheritance for) your children, (it) the share of a son is equal to the share of two daughters. And if the children are all girls whose number is more than two, then their share is two-thirds of the property left behind. If she (daughter) is only one, then she gets half (the property left behind). And for both parents, the share of each one-sixth of the property left behind, if he (the deceased) has children. If he (who dies) has no children and he is inherited by his two parents (only), then his mother gets a third. If he (the deceased) has several siblings, then his mother gets one-sixth. (The distributions mentioned above) after (fulfillment of) the will he made or (and after paying) the debt. (About) your parents and your children, you do not know which of them will benefit you more. This is God's decree. Indeed, Allah is All-Knowing, All-Wise." (An-Nisa: 11)

After that, the Prophet ordered that the uncle's two daughters give two thirds to both of them, one-eighth for Sa'ad's widow, while Sa'ad's brother gets the rest (5/24).

Besides that, it can also be said that because of the importance of faraid knowledge with facts arranged in such detail in the Qur'an there are several suggestions for studying it.

b. As-Sunnah

Although Mawaris gets a complex portion of the discussion in the Qur'an, it still needs additional explanation, because there are still some things that have not been explicitly regulated in it. Hierarchically, of course the next rule is as-Sunnah, some of which are as follows:

قال رسول الله صلى الله عليه وسلم الحقوا الفرائض بأهلها فما بقي فهو لأولى رجل ذكر

"Give certain parts to people who are entitled. After that (the rest) give to men, the first man."

This Hadith talks about the method of dividing the inheritance, after which the Ashab al-furud receive their share and there is still some remaining wealth. Referring to the hadith above, the remaining assets are given to male heirs based on their closeness.

عن أسامة بن زيد أن النبي صلى الله عليه وسلم قال لايرث المسلم الكافر ولايرث الكافر المسلم

The hadith narrated by Muslims from Usamah brings the message of interrupting the relationship between one Muslim and non-Muslims. Such provisions have never been stated by the Qur'an.

عن سعد بن ابي وقاص رضي الله عنهم قال جاء النبي صلى الله عليه وسلم يعودني وأنا بمكة وهو يكره أن يموت فى الأرض التى هاجر منها قال

يرحم الله ابن عقراء قلت يا رسول الله اصي بمالي كله قال لا قلت فالشطر قال لا قلت الثلث قال فالثلث كثير انك ان تدع ورثتك اغنيآء خير من ان تدعهم عالة يتكففون الناس فى ايديهم وانك مهما انفقت من نفقة فإنها صدقة حتى اللقمة التى ترفعها الى فى امرأتك وعسى الله ان يرفعك فينتفع بك ناس ويضر بك آخرون ولم يكن له يومئذ إلا إبنة

Bukhari's hadith from Sa'ad ibn Abi Waqqas informs about the maximum allowable will, which is one third of the total assets.

In relation to being a source of law, the three hadiths that have been cited merely show a few examples, as munsyi'ah to grow (establish) laws that have not been determined by the Qur'an.[22]

c. Ijtihad

In actualizing mawaris, it turns out that certain obstacles arise that require the creativity of thinking of the scholars who meet the qualifications for it. For example, what is the solution that will be taken if the total sum of the total heirs is not fulfilled exactly as stated textually in the Qur'an? After devoting all his intellectual efforts, the mujtahid introduced the resolution of cases like this with the *aul* method, regarding this will be discussed in a separate section. Another example, if the portion of the heir composition, in this case there is no *asabah* - is less than one, then to whom is the rest given? And how to divide it? Mujtahid scholars address this problem with their thinking products known as the *raad* method. But even this we encounter many versions.

22 Abdul Wahhab Khallaf, '*Ilm Usul Al-Fiqh*, 8th printing, (Ttp: Ad-Dar Al-Kuwaitiyah, 1968), pg. 40.

In addition, the concept of shared assets has recently been introduced. This relates to which assets are actually considered as maurus. Regarding these problems there are also ideas that are not similar.

The above phenomenon inspired many Muslim scholars to rethink the system of inheritance distribution as a whole because according to them the inheritance law belongs to the profane, not sacred. About this matter will not be discussed at length here. We only intend to show that within certain limits ijtihad is indeed necessary. However, it needs to be emphasized that ijtihad is actually used in the discussion of inheritance simply because it is needed by its special conditions, and even then it is limited to application (*tatbiqy*), may not make a completely new understanding, given the principles that include Islamic inheritance law itself.

2. Relationship of Islamic Inheritance Law with National Inheritance Law

Speaking of law in Indonesia, this law is actually being discussed how exactly in the form of the state. In its history, the founding figures of the state from the Islamic group have actually struggled with all their strength in every era to establish an Islamic state, which has consequences for the enactment of Islamic law as a whole.[23] Efforts to form an Islamic state have failed. The next effort is pursued with a struggle that is not purely structured, but tries to make the color of Islam appear impressive in the country's constitution. This matter has also ended with the abolition of the Jakarta charter. Distinctive parts of Islam abolished.

Because law in a country is a political product,[24] representatives of Muslims in the legislature continue to struggle to enact Islamic

23 Moh. Nasir is one of many national figures with the principle that religion and the state must unite in order to ensure the enactment of Islamic law. See Effendy Bahtiar, Islam and the State, (Jakarta: Paramadina, 1998), p. 79

24 Research dissertation by Moh Mahfud MD, there is a conclusion, which becomes the theorem of his theory "The Politics of Determinants of Law". See Moh. Mahmud MD, Indonesian Legal Politics, (Jakarta: P. T. Pustaka LP3ES, 1998), p. 13

law. And until now in Indonesia Islamic law has greatly influenced national law including inheritance issues, and already has a strong judicial institution as a realization tool. Constitution Number. 7 of 1989 at least has realized the dream of the Indonesian Islamic community to realize their obligations to fulfill the law.[25] In article 46 which explains the absolute competence of the Religious Courts, the case of inheritance is one of its authorities.[26] While the material law is contained in the Compilation of Islamic Law (KHI) and has received government legislation in the form of Presidential Instruction (Inpres) to the Minister of Religion for use by Government Agencies and by the people who need it. The instruction was carried out with the decree of the Minister of Religion No. 154 dated July 22, 1991. The compilation of Islamic Law is expected to be a guideline for judges within the Religious Courts when deciding on cases that are under their authority for uniformity to occur,[27] concerning inheritance. And it turns out that the provisions regarding the portion of property for men and women in the Compilation of Islamic Law refer exactly to the Qur'anic verse.[28] This fact proves conclusively that the majority of Muslims believe fully in the legal justice of Islamic inheritance, because the process of compiling Islamic Law Compilation is carried out in a participatory manner. It was composed by involving government officials, judges, and representative community leaders (ulama, zu'ama and intellectuals).[29]

25 Before being approved for later to be ratified and enacted, Constitution No. 7 of 1989 concerning the Religious Court first undergoes a very tough discussion, both within the government and in the House of Representatives. See Muchtar Zarkasi, "Historical Framework for the Establishment of Law No. 7 of 1989," in the Role of the Law: Actualization of Islamic Law, No. 1 Year I 1990, p. 1-15.

26 Constitution No. 7 of 1989 concerning Religious Courts.

27 This does not mean that mathematics is the creativity of judges, but it is intended to minimize the disparity of decisions in the same case. And based on Acep Zoni Saeful Mubarak's research it turns out that in the Tasikmalaya Religious Court, the Compilation of Islamic Law is effective, even by local legal practitioners, it is expected to be upgraded to be constitution. See Acep Zoni Saeful Mubarak, Compilation Function of Islamic Law as a Source of Law in the Religious Court of Tasikmalaya Regency, (Thesis on the IAIN Sunan Kalijaga Postgraduate Program in Yogyakarta, unpublished), p. 20-27.

28 Compilation of Islamic Law, Article 176

29 Cik Hasan Bisri, "Kompilasi Hukum Islam dalam Sistem Hukum Nasional", on Cik Hasan Bisri (ed), *Kompilasi Hukum Islam dalam Sistem Hukum Nasional*, (Jakarta: Logas Wacana Ilmu, 1999), p. 15.

Associated with absolute competence which includes inheritance, a disturbing anomaly occurred. On the one hand, the constitution gives the Religious Courts the authority to settle inheritance cases, but on the other hand this constitution then states that in the event of a dispute regarding property rights or other civil rights in the cases referred to in article 49, then specifically regarding the object in dispute must be decided in advance by the court in the General Court environment.[30] This means that Constitution Number 7 of 1989 limits the authority of the Religious Courts themselves. In fact, the problem referred to in article 50 is an integral part of inheritance cases that are inseparable from its distribution and in a unity of the Islamic inheritance system. If a dispute regarding an object is submitted to the General Court, it is most likely that the determination of inheritance is not based on Islamic law. The explanation of law number 2, the sixth paragraph, increasingly shows the seriousness of the maker in actualizing Islamic inheritance law, stating that in connection with this (the field of inheritance), the parties before litigation can consider choosing what law to use in the distribution of inheritance.[31]

This clause causes inheritance to become an optional case that allows justice seekers to determine their own, or even deliberately avoid the provisions of Islamic inheritance law. Ironically, this option only applies to inheritance issues, while other issues that become the absolute competence of the Religious Courts institutions are not polluted with this kind of ambiguity.

If we look closely, Constitution No.7 year 1989 actually tries to raise the principle of Islamic personality in which there is affirmation:

a. The litigants must be Muslim.
b. Disputed civil cases must be related to marital, inheritance, wills and grants, endowments and alms.
c. The legal relationship which underlies certain civil rights is based on Islamic law.[32]

30 Constitution No. 7 of 1989 concerning Religious Courts, Article 50.

31 *Ibid*, General Explanation.

32 Yahya Harahap, Position of Authority and Religious Court Procedure Constitution No. 7 of 1989.

Sticking to the principle of Islamic personality that was introduced itself, it should be followed by consistency to make all the provisions contained in this constitution remain in the frame of the principle.

Alhamdulillah, the anomaly in Constitution Number 7 of 1989 was corrected with the issuance of the Republic of Indonesia Constitution Number 3 of 2006 concerning Amendments to Constitution Number 7 of 1989 concerning Religious Courts. In Article 49 of the constitution, mentioned cases which constitute absolute competence from the Religious Courts, include.

a. Marriage.
b. Inheritance.
c. Will.
d. Grant.
e. Waqf.
f. Zakat.
g. Infaq.
h. Sadaqah.
i. Islamic economics. [33]

Thus, the constitution reiterates several authorities of the Religious Court, one of which is inheritance. In addition, it appears that the authority of the Religious Courts was expanded to include Islamic economic matters. More than that, Muslims are certainly happy with the provisions contained in the amendment to article 50. It is stated that if there is a dispute over ownership of the legal subject between people who are Muslims, the object of the dispute is decided by the religious court. A provision that changes the previous provision which states that the dispute was decided by the court in the General Courts.

Then, the general explanation in Constitution No. 7 of 1989 concerning Religious Courts which states: "The parties before the case may consider choosing what law to use in the distribution of inheritance", was declared abolished.[34]

33 The Constitution of the Republic of Indonesia Number 3 of 2006, concerning Amendment to the Constitution of Number 7 of 1989 concerning Article 49 of the Religious Courts.

34 Constitution of the Republic of Indonesia Number 3 of 2006, concerning Amendment to Constitution Number 7 of 1989 concerning Religious Courts, General Explanation

This means that the case of inheritance has become an absolute competence of the Religious Courts, and is no longer an optional case, where the parties can choose the inheritance law which they consider fairer.

However, as with the Compilation of Islamic Law, many parties view it as merely a suggestion, because its position is not so strong. It is as if that "this material regulation concerns certain Islamic civil law, if you like it please use it, if not, it may be abandoned." There should be serious efforts organized, planned and ongoing to improve the status of the material law to the Constitution level.

D. GENERAL UNDERSTANDING OF TESTATOR, INHERITANCE AND HEIRS

There are three pillars of inheritance, including testator, inheritance, and heir. That is, the implementation of inheritance is considered valid if all three of these variables exist factually. The three variables will be explained at once together with the terms and conditions as follows:

1. Testator

Testator is a technical inheritance term translated from 'mawaris' refer to a person who dies, both his death is substantial (without requiring proof can be known with the eyes of his death with certainty), hukmy (based on court decisions), taqdiry (based on expert allegations) with leaving a certain amount of wealth (tirkah) and having relatives who will inherit his property, which are referred to as heirs. So, the testator here is intended as a person who inherits his property. A term that contradicts the popular usage of the term, which is usually a testator or 'pewaris' in Indonesian, meaning a person who inherits or someone who receives something from someone, especially his parents. For example the term "pewaris tunggal" is interpreted as the only person who receives an inheritance. Furthermore, if it is called an heir, what is meant is the technical term fiqh mawaris which is actually in line with the meaning of the book according to the Indonesian language which is good and right.[35]

35 Ministry of Education and Culture, Indonesian Language Dictionary, (Jakarta: Balai Pustaka, 1995), p. 1125.

The requirements for being a testator are automatically included in the definition, which is that they have actually died. So, if the property is distributed by the heir when he is still alive, the property is a grant, not an inheritance. This practice is widespread in our society with the aim of deliberately avoiding the imposition of Islamic inheritance law (hilah, juridical fiction). They on average doubted the fairness of Islamic inheritance law. For these people, aqeedah and its obedience to the law need to be questioned in essence. Their behavior is possible because their lives have been wrong when do *tasarruf* and distributing their wealth to their children. If during their life since the beginning it has been fair, then they give up the distribution of assets in full to the justice provisions of the Islamic inheritance law after his death.

2. Inheritance

In Arabic, the term al-Maurus is used. Maurus is an inheritance that is ready to be divided after deducting the costs required by the testator for his treatment, if he dies, he needs funds because he was sick, then pays for fardu kifayah, pays debt, and carries out a will. As stated in the previous section, there is a term that has a meaning similar to that of a maurus, tirkah. Which tirkah is an intact inheritance, before it is used for liabilities that must be fulfilled before distribution of inheritance.

Meanwhile, the form of inheritance in general is a collection of objects in the form of valuable and valuable goods, or it can also be abstract objects (invisible), such as various kinds of rights. Tangible objects can be in the form of fixed objects, movable objects, and receivables. While the rights include material rights, the right of monopoly to use something, the right to withdraw the yield from an agriculture or plantation and others.[36]

3. Heir

Al-Waris is the original term to refer to heirs. The definition is a number of people who are entitled to receive inheritance from the testator because of the causes of inheritance relations. The requirement to count as someone's inheritance must be in a state of life when the

36 M. Idris Ramulyo, *Hukum Kewarisan Islam*, (Jakarta: Indhilco, 1987), p. 53.

testator dies. Even if there is a reason for inheritance to him, but if he had already passed away, then he was not included as an heir, instead he would become a testator for that person.

The heirs are divided into two groups. The first is called *zawil furud*, is a group of people who get certain parts according to the instructions of revelation. The second is called *asabah*, the plural form of *asib*, understood as the person who kills all the remaining assets after *zawil furud* takes their part. This also means that if wealth has been spent by *zawil furud*, *asabah* does not get anything, unless he is the son of the testator, then he cannot be prevented by a situation. In fact, its existence prevents others.[37] Hadith of the Prophet:

عن ابي هريرة عن النبي صلى الله عليه وسلم قال ما من مؤمن الا وانا اولى به فى الدنيا والأخرة إقرؤا إن شئتم ﴿النبي اولى بالمؤمنين من انفسهم﴾

فأيما مؤمن هلك وترك مالا فليرثه عصبته من كانوا ومن ترك دينا اوضياعا فليأتيني فإني مولاه

Father and so on to the genealogy above can also not get a part as asabah. Even so, because he is dual, he could be *zawil furud* and could also be *asabah* – in the end he will still be able to be a part, because in such conditions he becomes *zawil furud*.

Asabah is broadly divided into two, *asabah nasbiyah* and *asabah sababiyah*. The first one is then divided into three groups, includes *asabah binafsih, asabah bi gairih* and *asabah ma'a gairih*.

Asabah binafsih is addressed to the heirs who can spend the rest of the assets themselves or take the whole independently without depending on other heirs. The group of heirs who are classified as

37 As-Sayyid Sabiq, *Fiqh…*, p. 437.

asabah binafsih only consists of male heirs, they are; descendants of the heirs from the male party (boys and so on and below) which is called *juz'u al-mait*, the father's heir and so onwards which is called *usul al-mait*; brother termed *juz'u abihi*; uncle's heir called *juz'u al-jadd*.[38]

Then, *asabah bigairih* is *asabah* consisting of female heirs, who basically become *zawil furud*, in which they get half of the total assets if alone, $^{2}/_{3}$ if it consists of two or more people. And when with her or with them there are brothers, they (all of them and the brother) become *asabah*. They did not become *asabah* themselves, but were withdrawn by their brothers who from the beginning were indeed *asabah*, in accordance with the term *asabah bigairih* (asabah because of other people). They are: daughters, both single and more, grandchildren of either single or many sons, biological sisters and half-sisters from one father. When they become *asabah* with their brothers, the provisions of 2: 1 apply between men and women.

Then *asabah ma'al gair* is a female heir who needs another female heir, to become asabah. This means he can get asabah status with other heirs who are also women, while the other person does not belong to asabah. Asabah of this type consists of only two types (both individual and collective), namely: biological sister (single or many) when she is together with a daughter or a grandson of a boy, half sister from one father (single or many) when together with a daughter or granddaughter of a boy. *Asabah ma'al gair* used up the remaining assets after *zawil furud* took their respective parts.

The second group is *asabah sababiyah*, which is *asabah* for liberating slaves. This group is in the last order in terms of priority to get a share of the inheritance. they will only get their share when there is no zawil furud, asabah sababiyah, and zawil arham. It can be said that in practice this group no longer exists for the present, it is still discussed as a fiqh discourse only

38 *Ibid*, p. 348

E. CAUSE OF INHERITANCE REALTIONSHIP AND ITS BARRIER

1. Causes of Inheritance Relationships

According to Islamic law which is known primarily from the verses of the Qur'an, the inherited causes are of three types, including:[39]

a. Nasabah Haqiqiy (Kinship)

Those people who inherit the property of a person who died, because they have blood ties. If during the period of ignorance was limited to only relatives from the group of men, then Islam has revised, so that certain women also get a share. And if during the period of Jahiliyah only adults were given a share, then Islam stipulates that children are entitled to inheritance, even a baby in the womb is given the same rights as an adult. And based on the individual principle, he has the full portion of the assets.

The passage which proclaims inheritance based on kinship is the An-Nisa letter verse 7, which has been quoted, which means:

For a man there is a share of the inheritance of the mother and father's relatives, and for women there is a share of the inheritance of the mother-father and relatives, either a little or a lot according to the predetermined part.[40]

Blood ties in this case are divided into two categories, relatives in a straight line, both up and down especially far'u waris (descendants of people who died, boys and girls and so on down). There is a provision, that a far'u waris, from the level of grandchildren to the bottom, still gets a share if he is a descendant of the line of men even if a woman. Instead he becomes zawil arham, if he is a descendant of the woman even though he is a man. So, it appears that men are still more important than women. Nas related to this are:[41]

39 As-Sayyid Sabiq, *Fiqh As-sunnah*, (Beirut: Dar Al-Fikr, 1983), p. III: 426

40 An-Nisa' (4): 7

41 Al-Anfal (8): 75

وأولو الأرحام بعضهم اولى ببعض

Then the second group is a straight line to the side. If there is inheritance which only consists of this group, it is called inheritance by "*kalalah*". Explained further in a separate section.

Heirs who are in a straight line, down and up are more important than heirs who are in a horizontal line. In this regard the concept of *hajib* and *mahjub* is known.

The basic word of the two terms is hajb which literally means a prohibition, as for the meaning, preventing a person from obtaining part of his inheritance, either being prevented from obtaining the whole (he becomes a person who does not get it at all), or being prevented from obtaining a portion (the part being reduced from part origin) because there are other heirs who are closer.[42]

Being *hijab* is different from being hindered, where the *hija*b is caused by someone else who is closer, while being hindered is the person concerned.

Hijab is divided into two; first, *hijab nuqsan* is the reduction of one part of the heirs of an heir due to the existence of another heir. Included in this group are:

- Husband, he being *mahjub* to get ½, part of it changed to ¼ because of the children (both boys and girls).
- Wife, being *mahjub* to get ¼ its share changed to only 1/8 because of the child (male and or female).
- Mother being *mahjub* to get part 1/3 (the maximum part) changed to 1/6 because of children or relatives.
- The granddaughter of a boy, she was *mahjub* to get a half share of only 1/6 (to complete the number 2/3) because of a daughter who had already gotten ½.
- Elder sister, get 1/6. She was veiled from getting ½, because of his biological sister.

42 As-Sayyid Sabiq, Fiqh..., p. III: 440.

Second, *hijab hirman* is a person who is prevented from obtaining property, not left behind at all because of other heirs who are closer. All heirs can experience this except for six people who are counted as core heirs, namely: father and mother, son and daughter, and husband and wife.

b. *Nasabah Hukmy,* or Some Call it Al-Wala '

The inheritance relationship that arises because someone frees slaves, or it can also be due to the help-help agreement. But the last is only in the classical fiqh discourse, this practice is almost non-existent or maybe even gone. The first is termed wala al-ataqah or 'usubah sababiyah and the second is called wala' al-muwalah, ie wala 'which arises because of the willingness to help each other between two parties through a trusteeship agreement.[43] People who liberate slaves are called mu'tiq, if women are called mu'tiqah. Rescuers are called maula, and those who are helped are mawali.

The portion of the person who frees the slave is 1/6 of the total wealth. However, many parties see that the problem of liberating these slaves in fact factually existed in the proto-Islamic law era. As for now this type of inheritance is no longer found. This problem is part of the history of the past, and Islam itself came to bring the spirit of the abolition of slavery.

c. Legitimage marriage, and the proposition[44]

The verse carries the imperative message that husband and wife inherit each other. The husband and wife referred to here are of course husband and wife based on a marriage that meets the requirements and harmony. The experts seem different in view of meeting the requirements and harmony to be considered a legal marriage. If we refer to the marriage law that applies positively in Indonesia, as long as it meets the marriage requirements according to their respective religions, it is considered to be adequate and legally valid.

43 Abd Al-Azim Ayarf ad-Din, *Ahkam al-Miras Wa al-Wasiyat Fi Asy-Syari'at Al-Islamiyyah*, (Kairo: Dar Al-Fiqr Al-Hadis, 1962), p. 6

44 An-Nisa' (4): 12

Some say that a new marriage is complete by registering it with an authorized institution. At the level of law Pakistan is more advanced than Indonesia by regulating it in the "Islamic Family Law Ordinance of 1961," article 5 paragraph 1 states "Every marriage solemnized under Muslim law shall be registered in accordance with provisions of this ordinance". [45]

Apart from the controversy of marriage registration, in the legal relationship the registration is absolutely necessary. If a certain person's spouse dies, then to prove he is being married to a spouse who dies it can only be done with written evidence. The importance of written evidence is actually only in the case in question. However, preventive measures are more important so that a husband or wife left by his spouse is not cheated by the family of the deceased by saying there has never been a legal marriage between the person and the deceased.

Included in this understanding, especially for wives who are considered legitimate to receive inheritance, are wives who are being ruled by raj'i. When her husband dies, while she is in the iddah period, the wife has the right to get the inheritance according to the condition of her family. If there is a child he gets $^1/_8$ if there is no child he gets ¼ part. The wife still gets a part of the inheritance because legally the marriage relationship with her husband has not been broken.[46]

2. Barrier from Inheritance (Mawani 'Al-Irs)

What is meant by people who are prevented from inheritance are people who are basically entitled to a number of parts of inheritance, because one of the reasons inheritance is in him. However, because he has one particular staff his inheritance rights are void.[47] People like this are called mahrums. There are three agreed inheritance barriers, and one that is debated. The following explanation:

45 Tahir Mahmood, *Family Law Reform in the Muslim World*, (Bombay: N. M. Tripathi, 1972), p. 258.

46 Ahmad Rofiq, *Fiqh Mawaris*, (Jakarta: P. T. Raja Grafindo Persada, 1998), p 36

47 As-sayyid Sabiq, *Fiqh*…., hlm 427

a. Slavery

The status of a slave attached to a person keeps him from receiving an inheritance, when in fact he is one who according to inheritance gets a share. The obstacle referred to was not due to his humanitarian factors, but because he was more in legal view as a person who was incapable of taking legal action.[48] In connection with this the Qur'an states:[49]

ضرب الله مثلا عبدا مملوكا لا يقدر على شيئ

Historically, slaves existed and were a dark part of human history, including in the Islamic community of the past. Perhaps the reality of slavery, at least the actions that led to slavery have not yet disappeared from the face of the earth, while legally slavery has been abolished by all nation states. Decisive and clear the attitude shown by Islam towards slavery, namely rejecting it and actively trying to eliminate it. During the revelation, slavery was still a phenomenon, then Islam showed its partiality to this oppressed person by establishing the rule of kifarat in the form of freeing slaves. If a Muslim violates the law, one of the sanctions is to free the slave.

While slaves still existed, there were inheritance provisions stating that they could not inherit property, on the contrary they did not inherit property. A person's slave status absolutely makes him weak from a legal point of view, regardless of the status of slavery. Either he is fully owned by his master, or who has the status of a mukatab slave, that is, a slave who gradually frees himself through his work wage, is still considered incompetent before the law.

48 Ahmad Rofiq*, Hukum Islam di Indonesia*, (Jakarta P. T. Raja Grafindo persad, 1998), hlm. 405.

49 An-Nahl (16): 75

حدثنا ابو النعمان حدثنا ابو عوانة عن مغيرة عن ابراهم قال ليس للمكاتب ميراث ما بقي عليه شيئ من مكاتبته

b. Murder

Most of the scholars agree that murder is the reason for obstruction of someone inheriting property from the person he killed. New differences arise when speech leads to the killing of what counts to impede inheritance. The evidence is:

ليس للقاتل شيئ

If a person kills his heir unlawfully, it seems that no one denies the loss of inheritance from the perpetrators of the killings.

Regarding accidental killings there are various opinions. Shafi'i, for example, says that every murder precludes an inheritance, whatever type of murder he commits, including murder by insane people and children. Even if the killings were carried out according to the rights and according to the law, such as murder because he was sentenced to death or because of qisas. Hanafiah scholars exclude indirect killings (tasabbub), killings of rights such as execution by executioners, killings by people who are not capable of taking legal action and killings due to self-defense. Meanwhile Malikiyah places more emphasis on deliberate killing, either directly or indirectly, such as ordering someone else to kill someone or by giving him poison to die slowly. Malikiyah's opinion seems to require proof, if it involves indirect killing. Here the active role of judges is highly demanded. As for Hanabilah, it is argued that killings that block inheritance are killings that are punishable by any kind of punishment, including diyat.

From all of the above opinions, the majority of ulama believe that killing that hinders inheritance is all kinds of killings

except those which are justified by sharia. Shafi'i is even more violent by introducing all types of killings.

c. Religious Differences

Scholars also agreed on obstruction of inheritance due to religious differences. A Muslim and a non-Muslim do not inherit each other from the Prophet's hadith:

عن أسامة بن زيد أن النبي صلى الله عليه وسلم قال

لايرث المسلم الكافر ولايرث الكافر المسلم

It's just that the similarity of opinion of the ulama is only related to obstruction of a non-muslin from inheriting the wealth of a Muslim. While on the contrary, some argue that it may. There is no obstacle for a Muslim to inherit wealth from a non-Muslim. If the first case points to the possibility of the apostasy of a Muslim from the religion of Islam, it means that the father, brothers and children who are Muslim he no longer has the right to inherit it (as a phenomenon that may occur in life).[50] So in the second case, it may be that in non-Muslim families such as a son converts to Islam then for the Sunni group the inheritance relationship is still broken. As for the Shafi'i group, the Muslim child is entitled to inheritance in accordance with his position as a child.

Dealing with the second case, the Prophet gave an example by not giving a part to Ali and Ja'far who were Muslims from the inheritance of Abu Talib who until the end of his life still did not convert to Islam.

When the death of a testator is the basis for seeing the religion of his heirs. A heir who is a Muslim at the time of the death of the testator has the right to inherit property. This means that an heir, say a child, was not Muslim when his Muslim father

50 A. Sukri Sarmadi, *Transendensi keadilan Hukum Waris Islam Transformatif*, (Jakarta: P. T. Raja Grafindo Persada, 1998), p. 29.

passed away, after that he just converted to Islam with the motivation to get the right of inheritance, was considered not entitled to take certain parts of his father's inheritance, even when he was Muslim his father's inheritance not yet shared. Such provisions are a form of consistency to the ijbari principle which considers assets automatically transferred to their heirs when someone dies. But if the property has not been delivered to the rightful ones because of due consideration. Obviously it is not appropriate to divide the assets shortly after the death of the testator. Because the transfer of property actually took place at the time of the death of the testator, while the heir concerned at that time was not Muslim, he was not eligible and was not entitled to get the inheritance.

3. Obligations Regarding Inheritance, Order and How to Settle It

It is inevitable that the assets distributed to the heirs are clean assets and fully the individual rights of each heir. Therefore, there is an obligation that precedes the distribution of assets so that they are no longer related to other rights. As for the rights of the deceased as well as being an obligation for the heirs to fulfill it are:

a. Tajhiz

Tajhiz was carried out before other rights, moreover, the distribution of inheritance.[51] Tajhiz costs, including a series of arrangements for the corpse since death until delivered to the place of the last burial. The most important thing from the tajhiz besides carrying out shari'ah, - relating to the deceased- is the last form of respect that is done in relation to social life.

All costs arising from the implementation of the fard kifayah are paid from the property of the person who died, involving the costs of bathing, sensing, taking him to the cemetery and his own burial. It should be noted that all the rituals must be made in a natural way, not too simple so as to give the

51 Husain Muhammad Makhluf, *al-Mawaris fi asy-Syari'ah al-Islamiyah*, cet. 4. (Ttp: Matba'ah al-Madniy, 1976), p. 11.

impression as if the deceased is underappreciated, and not to overdo it like some of the practices found in some community traditions in many places. In some areas in South Tapanuli, for example, there is an adat ceremony that is not completed in one day, there are additional events known as pasidung ari (perfecting customary obligations), which sometimes are caused by insufficient funds in the first implementation, so there is a delay to complete the shortage - deficiencies that are considered taboo and can damage the family's reputation by ignoring them.[52] We should refer to the following word of God in addressing this matter:

ولذين اذا انفقوا لم يسرفوا ولم يفتروا وكان بين ذالك قواما

Thus, the cost of being borne by the property of the deceased is only limited to the implementation of a Shari'i religious ritual. Regardless of whether or not the operation may exceed the shari'ah limits, the costs incurred are not borne by the assets of the testator.

And as mentioned before, the calculation of the cost of the tajhiz must be prioritized before payment of debt. This opinion is practiced in general and among the four, Imam Mazhab, and Imam Ahmad, have this same opinion. While Imam Hanafi, Malik and Shafi'i are of the opinion that paying off debt must take precedence. The reason is, if the debt is not paid off in advance, the body is like being pawned.[53]

Further explained, treatment also includes costs incurred during the testator's illness before his death. Problems then arise when the assets left are insufficient. Some scholars say that the lack of funds is covered by the testator's family. Syafiiyah, Hanafiyah and Hanabilah confined to families who were dependent on the testator during his lifetime. Because it is they who feel the pleasure of the testator, they also receive

52 Parsadaan Marga Harahap dohot Anak Boruna, *Horja Adat Istiadat Dalian Na Tolu,* (Jakarta: Parsadaan Marga Harahap Dohot Anak Boruna in Jakarta Sahumaliangna, 1993), p. 462.

53 Abd Al-'Azim Syaraf Ad-Din, *Ahkam Al-Miras wa Al-Wasiat Fi Asy-Syari'at Al-Islamiyah*, (Kairo: Dar al-Fikr Al-Hadis, 1962), p. 12

property if there is excess, so it is natural, reasonable and logical if they also bear the cost of care.

b. Pay Off Debt

Ibn Hazam and Shafi'i prioritize debt payments to Allah SWT such as zakat and expiation, rather than paying debts to humans. Whereas Hanafiyah states that debt to God has fallen by itself when a person dies. The heir has no obligation to pay it unless the whole heir agrees to do so or if the deceased himself has the will to do it. Under conditions of inheritance, it is the same as a will to others who must be paid by the heirs and taken a maximum of one third of the inheritance after deducting the cost of handling the remains and after paying off their debts to humans. This is if the deceased leaves the heir, if he does not leave the heir, then the obligation to pay a debt to God in the form of a will can be taken from the total assets left behind. While the Hanabilah classify debt between God and debt to humans, they also agreed to say that debt to humans in the form of certain assets compared to debt absolutely.[54]

Please note, that paying off a person's debt dies by taking his own wealth based on the word of God:[55]

كُتِبَ عَلَيْكُمْ اِذَا حَضَرَ اَحَدَكُمُ الْمَوْتُ اِنْ تَرَكَ خَيْرًا ۖ الْوَصِيَّةُ لِلْوَالِدَيْنِ وَالْاَقْرَبِيْنَ بِالْمَعْرُوْفِ ۚ حَقًّا عَلَى الْمُتَّقِيْنَ ۗ

"Obligatory on you, when death is about to pick up a person from among you, if he leaves wealth, wills for both parents and close relatives in a good way, (as) an obligation for those who are pious." (Al-Baqarah: 180)

54 As-Sayyid Sabiq, *Fiqh….*, p. 426

55 An-Nisa (4): 11

c. Carrying Out a Will

The next sequence is to carry out the will of a maximum of one third of the remaining assets of the debt settlement. If the nominal amount of a will exceeds a third, then according to some scholars, the implementation depends on the agreement of the heirs.[56] The implementation of the will itself is based on the following word of God:[57]

... مِنۢ بَعْدِ وَصِيَّةٍ يُّوْصِيْنَ بِهَآ اَوْ دَيْنٍ ...

"Partly (fulfilled) the will they made or (and after being paid) the debt." (An-Nisa: 12)

Seeing the editorial of the verse, the will is mandatory for people who feel there are signs that they will soon be near death. In this case, scholars have differences of opinion. Ibn Zuhri and Abu Mihlaj are of the view that making a will is obligatory for every Muslim who leaves wealth without considering the amount, a little or a lot. Some scholars agree with this, just say for example the following names: Ibn Hazm, Ibn 'Umar, Talhah, Az-Zubair, Abdulaah Ibn Abi Aufa, Talhah Ibn Mutarrif, Tawus and Sa'abi who refer their opinions to Sulaiman. The argument they put forward is that such an understanding is directly pointed to by the word of Allah, Surah Al-Baqarah verse 180 as quoted.[58] Another opinion states mandatory wills of both parents and relatives who are not heirs, as desired by the same paragraph. While the opinion of most scholars including Zaidiyah, the law is not fardu for everyone who will leave property, nor is it obligatory for parents and relatives who are not heirs like the two previous opinions, but the law can be mandatory, sunnah, haram, makruh and mubah accordingly with its condition. In this opinion, a will is required in the event that there are

56 Ahmad 'Abd Jawad, *Usul 'Ilm Al-Mawaris*, (Damsyiq: Matba'ah Hasyim, 1975), p. 1.

57 Al-Baqarah (2): 180.

58 As-Sayyid Sabiq, *Fiqh*..., p 416

matters of shari'a which are feared to be unfulfilled if there is no will. Sunnah is carried out on parents and relatives, it is forbidden if it brings harm to the heirs, makruh if the wills only have a little wealth, and mubah against the rich, both relatives and distant people.[59]

A somewhat different opinion from Wahbah az-Zuhaili, who said that the law of a will is sunnah, even if someone who has wealth is in good health, without getting a little sick. Death is unpredictable and preventive action needs to be taken to safeguard unwanted things. For him under normal circumstances a person is not obliged to make a will, because this practice was never exemplified by his friends[60]. Wahbah reminded that there are two important things that need to be considered in a will, the first is that a will is not addressed to an heir unless another heir allows it and secondly there must be a maximum limit on the amount of one third of the estate.[61]

And if we pay attention to the letter an-Nisa 'paragraph 4 quoted earlier, as if the implementation of a will takes precedence over debt payments. When in fact the use of the word *au* in the verse is not *li al-tartib* (does not function to sort), the mention of both (wills and debts) prioritizing the distribution of inheritance does indicate the implementation of the two things to initiate the distribution of inheritance, but it does (which is mentioned earlier preceding the implementation referred to later) does not apply between each other. This is only according to the custom of composing sentences which are usually something small placed in front of the big one, the will is generally smaller than the debt.[62]

59 *Ibid*, p. 417-418

60 Wahbah Az-Zuhaili, *Al-Fiqh Al-Islamy Wa Adillatuhu* (Damaskus: Dasr Al-Fikr, 1984), p. III: 11.

61 *Ibid*, hlm. 7-8.

62 Abu Abdillah Muhammad Ibn Ahmad ibn Abi Bakar ibn Farh Al-Qurtubi, *Al-Jami' Li Ahkam Al-Qur'an*, cet. 2, (Kairo: Dar Asy- Syab, 1372 Law), V: 74

The Prophet gave directions for the procedure for settling inheritance concerning debts and wills through the following words:[63]

حدثنا ابن عمر حدثنا سفيان بن عيينة عن ابي اسحاق المهداني عن الحارث عن علي ان النبي صلى الله عليه وسلم قضى بالدين قبل الوصية وانتم تقرون الوصية قبل الدين قال ابو عيسى والعمل على هذا عند عامة اهل العلم انه يبدأ بالدين قبل الوصية

4. *Zawil Furud's* Heirs And Their Rights

Ashabul furud or *zawil furud* are heirs who get a certain portion (fate) from six kinds of parts, namely: ½, ¼, 1/8, 2/3, 1/3, and 1/6. There are 12 people belonging to ashabul furud, four of whom are male heirs and eight female heirs.[64] It is clear how Islam places women in an honorable position in the distribution of inheritance. Of the total 12 heirs of zawil furud, most (2/3) are female. So the legal revolution (in the form of raising the rank of women) introduced by Islam through the provisions of inheritance is not a mere figment. However, it does not also mean that men are prioritized, because there is a provision that becomes a kind of grand theory that states الأنثيين مثل حظ الأنثيين so it can easily be reasoned, if the female part is known then the male part can be calculated by doubling the female part. Overall ashabul furud

63 AL-Hajh Hasan Irany, *Jami' At-Tirmizi Ma'a Sarh Tuhfah Al-Ahwazy*, "Abwab Al-Wasaya, Bab Ma Ja'a Yabdau bi Ad-Dayn Qabla Al-Wasiyyah," (Beirut: Dar Al-Kitab Al-'Araby, t. t), III: 190, The Hadith is narrated by At-Tirmizy from Ibn Abi 'Umar from Sufyan Iban Uyaynah from Abi Ishaq Al-Hamdany from Al-Haris from Ali.

64 Some scholars say Ashabul Furud consists of 10 people. Noting the details there is no difference, the people they classify as ashabul furud are exactly the same, there is no difference at all. The calculation is different because some scholars consider father and mother to be one with the term abwani / abwaini and also count husband and wife to be one with the terms zawjani / zawjaini. See for example Abu Muhammad Muwaffiq Ad-Din; Abdullah Ibn Qudamah Al-Maqdisy, Al-Kafi Fi Fiqh Al-Imam Al-Mujabbal Ahmad Ibn Hanbal, (Ttp: Al-Maktab Al-Islamy, t. T), II: 527.

are: [A]. Male; fathers, grandfathers and so on and up, thousand brothers and husbands. [B]. women; wife, daughter, biological sister, sister with 1 father, sister with 1 mother, granddaughter of son, mother, grandmother, and so on and upwards.[65]

Furthermore, the rules relating to each ashabul furud are described as follows:

a. Father

The father's part begins with the word of God:[66]

... وَلِاَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ اِنْ كَانَ لَهٗ وَلَدٌ فَاِنْ لَّمْ يَكُنْ لَّهٗ وَلَدٌ وَّوَرِثَهٗٓ اَبَوٰهُ فَلِاُمِّهِ الثُّلُثُ ...

And for both parents, the share of each one-sixth of the property left behind, if he (the deceased) has children. If he (who dies) has no children and he is inherited by his two parents (only), then his mother gets a third. (An-Nisa: 11)

There are three possibilities for a father in the distribution of inheritance, including:

- Inheriting wealth by becoming a zul fard if in the heir composition there is a descendant of the heir from the male (male child or grandchild of male child), under such circumstances the father gets a 1/6 portion.
- The father inherits the assets from the testator as the asabah, if there is no descendant of the testator, male or female. Father can take the entire estate if he is alone, without another heir.[67] Or the father finish off the remaining assets after another ashabul furud took part, if there are other heirs.

65 As-Sayyid Sabiq, *Fiqh*..., hlm. 430

66 An-Nisa' (4): 11.

67 Regarding this matter, there are no scholars who refute, they agree. See Abu Al-Walid Muhammada Ibn Ahmad Ibn Muhammad Ibn Ahmad Ibn Rusyad Al-Qurtuby, Bidayah Al-Mujtahid Fi Nihayah Al-Muqtasid, (Ttp: Dar Al-Fikr, t. T), I: 256

- Father inherits property as zul fard as well as asabah. This happens if among the heirs there is *far'u waris* who is female (daughter or granddaughter of a boy). In such circumstances the father is initially given a part of 1/6, then takes the rest if the assets are still in excess as if other heirs got their share.

b. Sahih Grandfather

There are the terms *sahih* grandfather (*jadd sahih*) and *fasid* grandfather (*jadd fasid*). *Sahih* grandfather is a grandfather whose relationship to the heir is not interspersed by a woman. *Sahih* grandfather, for example, father from father and so on, which even though it is very unlikely at least at the concept level is possible to inherit.

Grandfather's inheritance is determined by ijma'[68]. The proposition stated:

عن عمران بن حسين ان رجلا اتى النبي صلى الله عليه وسلم فقال ان ابن ابنتي مات فمالي من ميراثه فقالك السدس فلما ادبر دعاه فقال لك السدس آخر فلما ادبر دعاه فقال السدس الأخر طمعة قال قتادة فلايدرون مع أي شيئ ورثه قال قتادة اقل شيئ ورث الجد السدس

In general, it can be said that grandfather's inheritance is the same as father's. For this reason, the provision applies that grandfather be veiled by the presence of a father, and occupy the position of the father if he has died first. Besides that there are additional provisions that distinguish between fathers and grandfathers, including:

68 As-Sayyid Sabiq, *Fiqh...*, p. 431

- Father's mother (grandmother) was veiled by father but not veiled by grandfather.
- If the testator leaves his parents and partner (husband or wife), then the mother gets the remaining third after being taken by the husband or wife, known as al-mas'alah 'umariyah (garra'iyyah), but if grandfather replaces the position of father, then Mother takes a third of the total assets.
- According to the Shafi'i and Maliki Mazhab, siblings with 1 father are not veiled by grandfather, while they are veiled by fathers. Meanwhile, according to Abu Hanifah, his siblings and paternal siblings were veiled by grandfather as they were veiled by my father, because there was no difference between the two (grandfather did replace dad's position).

c. Brother With 1 Mother

Allah SWT said:[69]

... وَاِنْ كَانَ رَجُلٌ يُّوْرَثُ كَلٰلَةً اَوِ امْرَاَةٌ وَّلَهٗٓ اَخٌ اَوْ اُخْتٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُۚ فَاِنْ كَانُوْٓا اَكْثَرَ مِنْ ذٰلِكَ فَهُمْ شُرَكَآءُ فِى الثُّلُثِ ...

"If a person dies, both male and female, who has not left a father and left no children, but has a brother (same mother) or a sister (same mother), then for each of the two types of siblings that's one-sixth of the treasure. But if there are more than one brothers in a mother, then they are together in the third part."(An-Nisa: 12)

Kalalah referred to in the paragraph above is a person who does not have parents and children, both male and female, or in other words the testator does not have a family from a vertical line (proposal and furu'). Whereas what is meant by siblings (male and female here are brothers and sisters with the same mother. The case of inheritance with one mother is as follows:

69 An-Nisa (4): 12

- A sibling with 1 mother gets 1/6 part, both male and female.
- 1/3 part if it consists of at least two people, men and women in this case are the same. It could be that the formation consists of two people of the same sex, it could also be a man and a woman. And so on so with all possible variations.
- Not getting the slightest inheritance, if they are together with *Far'u Waris*, that is a son or grandson of a son. They are also hindered by proposals of male heirs like fathers and grandfathers, and are not veiled by mothers and grandmothers.

d. Husband

Allah SWT said: [70]

وَلَكُمْ نِصْفُ مَا تَرَكَ اَزْوَاجُكُمْ اِنْ لَّمْ يَكُنْ لَّهُنَّ وَلَدٌ ۚ فَاِنْ كَانَ لَهُنَّ وَلَدٌ فَلَكُمُ الرُّبُعُ مِمَّا تَرَكْنَ ...

"And your share (husbands) is one-half of the property left by your wives, if they do not have children. If they (your wives) have children, then you will get a quarter of the property they left behind ..." (An-Nisa: 12)

Based on this verse, it is understood that there are two possible parts of a husband left by his wife, including:

- Inherit half the property, when there is no descendant of the wife who is an heir, such as a boy and so on down, a daughter, then a daughter of a son. The children referred to here are all the children of his wife, both the children of the husband as well (which they produce from a legal marriage) and the children of his wife from his previous marriages.

70 An-Nisa (4): 12

- Inherit ¼ property if there is no descendant of the wife who is an heir.[71]

e. Wife

The word of Allah:[72]

... وَلَهُنَّ الرُّبُعُ مِمَّا تَرَكْتُمْ اِنْ لَّمْ يَكُنْ لَّكُمْ وَلَدٌ ۚ فَاِنْ كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمُنُ مِمَّا تَرَكْتُمْ ...

"... Wives get a quarter of what you leave if you have no children. If you have children, then the wives get one-eighth of the property that you leave behind..."(An-Nisa: 12)

The verse informs us that there are two possible parts of a wife in inheriting wealth, including:

- Entitled to get a quarter of her husband's property when no husband's descendants are classified as heirs, either the husband of the child with him or the husband of another wife.
- Entitled to receive 1/8 part when there is a child who is a descendant of a husband who is an heir. If the wife is more than one person, the ¼ and 1/8 parts are shared equally by all testator's wives.
- It also needs to be explained that the wife divorced by *talaq raj'I* by the testator is also entitled to get his share as long as the prospective ex-husband dies during the *iddah* period.

71 The wife's descendants are not classified as heirs, such as daughters of daughters, do not reduce the husband's part and also not reduce the wife's part. Because basically, the husband and wife part is reduced to provide a separate portion for children who are indeed heirs.

72 An-Nisa (4): 12

f. Biological Daughter

Allah said:[73]

يُوْصِيْكُمُ اللّٰهُ فِيْٓ اَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْاُنْثَيَيْنِ ۚ فَاِنْ كُنَّ نِسَآءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ ۚ وَاِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ ...

"Allah has prescribed (obligatory) on you regarding (the division of inheritance for) your children, (ie) the share of a son is equal to the share of two daughters. And if the children are all girls whose number is more than two, then their share is two-thirds of the property left behind. If she (daughter) is only one, then she gets half (the property left behind)... (An-Nisa: 11)

The above verse mandates that there are three possible parts for girls, which are:[74]

- Girls get a half share of the whole inheritance.
- Girls accept 2/3 if they consist of at least two people and are not accompanied by boys.
- A girl is domiciled as an asabah when she is together with a boy and the conditions apply for boys to get two parts of the female portion. If a girl is made up of several people and so is a boy, every boy is a 2: 1 rule enforced consistently.

g. Biological Sister

Allah said:[75]

يَسْتَفْتُوْنَكَ ۗ قُلِ اللّٰهُ يُفْتِيْكُمْ فِى الْكَلٰلَةِ ۗ اِنِ امْرُؤٌا هَلَكَ

73 An-Nisa' (4): 11

74 The word walad includes boys and girls, because it is a derivative of tawallud

75 An-Nisa' (4): 176

لَيْسَ لَهٗ وَلَدٌ وَّلَهٗٓ اُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ ۚ وَهُوَ يَرِثُهَآ اِنْ لَّمْ يَكُنْ لَّهَا وَلَدٌ ۚ فَاِنْ كَانَتَا اثْنَتَيْنِ فَلَهُمَا الثُّلُثٰنِ مِمَّا تَرَكَ ۭ وَاِنْ كَانُوْٓا اِخْوَةً رِّجَالًا وَّنِسَآءً فَلِلذَّكَرِ مِثْلُ حَظِّ الْاُنْثَيَيْنِ ۭ ...

"They ask you for a fatwa (about losing). Say, "Allah gives you a fatwa regarding kalalah (ie), if a person dies and he has no children but has a sister, then his share (his sister) is half of the property he left behind, and his male brother inherits (all of your property). daughter), if she has no children. But if there are two sisters, then for them two thirds of the property left behind. And if they (the heirs consist of) brothers and sisters, then the share of a brother is equal to the share of two sisters..." (An-Nisa: 176)

There are five possible inheritance siblings, including:

- A biological sister gets ½, if not together with a son, grandson of a son, father (she was hijab hirman by these three people), grandfather (she was hijab nuqsan according to shafi'i I, hijab hirman according to Abu Hanifah), and her biological brother (she became asabah bil gair with him).
- Obtain part 2/3 of the treasure if it is not shared with the people mentioned in the first point.
- f there is a brother without the other persons mentioned earlier, then the brother withdraws her as asabah bil gair, the 2: 1 rule applies between male and female.
- Becoming asabah ma'al gair with two or more daughters, together with two grandchildren of sons or more sons. She took the rest after they took part as ashabul furud.
- Her right is lost if there are *far'u* including heirs, such as boys and grandchildren of sons, also lost by the existence of asl inheritance such as father (agreed by all scholars) and grandfather (according to some opinions as discussed).

h. Sister With 1 Father

Inheritance of a sister with 1 father is faced with one of the 6 (six) alternatives:

- Get half the wealth if she is alone.
- 2/3 parts, for a minimum of two sisters with 1 father.
- Obtain 1/6 of the estate, if alone and together with a biological sister, to fulfill the 2/3 portion (because the biological sister has already taken ½ the portion, 2 / 3-1 / 2 = 1/6).
- Becoming *asabah bil gair*, if a sister inherits joint property with a brother with 1 father, also applies 2: 1 provisions between half-brother and half-sister with 1 father
- Become *asabah ma'al gair*, if she inherits together with a daughter or granddaughter of a boy (regardless of the number of daughters or grandchildren of the boy). A sister with 1 father (one or many) in this condition shares the remainder after them (the daughter or grandchild takes part).
- Covered by the following people:
  - The existence of original male or faru male heirs (father, grandfather, sons, grandchildren of sons).
  - Biological Brother.
  - Biological sister, if the biological sister becomes *'asabah ma'al gair* with a daughter or granddaughter of a boy.
  - Two siblings, unless they are together with half-brother with one father. Then the half-sister with 1 father became *asabah* together with her brother, they then took part of the remainder with the provisions of 2:1 between men and women.

i. Sister With One Mother

The inheritance of a sister with 1 mother is the same as the inheritance of a brother with 1 mother.

j. Grand Daughter of a Boy

There are five alternative inheritance for granddaughters from sons, including:

- Obtain half the wealth, if she is alone and has no sons.
- Get 2/3 if it consists of at least two people, without a son.
- Getting 1/6, if together with a girl to perfect 2/3, except if with her the grandson of a son, then she becomes *asabah bil gair*. They take the leftovers, men get twice the women's part.
- Covered by the presence of men.
- Covered by the existence of two daughters, except with her there is a grandson of a son (his own brother), then she becomes *'asabah bil gair*.

k. Mother

Allah said:[76]

... وَلِاَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ اِنْ كَانَ لَهٗ وَلَدٌ ۚ فَاِنْ لَّمْ يَكُنْ لَّهٗ وَلَدٌ وَّوَرِثَهٗٓ اَبَوٰهُ فَلِاُمِّهِ الثُّلُثُ ۚ فَاِنْ كَانَ لَهٗٓ اِخْوَةٌ فَلِاُمِّهِ السُّدُسُ ...

"... And for both parents, the share of each one-sixth of the property left behind, if he (the deceased) has children. If he (who dies) has no children and he is inherited by his two parents (only), then his mother gets a third. If he (the deceased) has several siblings, then his mother gets one-sixth..." (An-Nisa: 11)

There are three possibilities for mothers to inherit wealth, including:

- The mother is entitled to 1/6 of the total assets, if there is a walad or child of a son (walad ibn) and so on down. Mothers also get the same portion, when there

76 An-Nisa' (4): 11

are groups (at least two people). Sibling from all sides (biological siblings, siblings with 1 father and siblings with 1 mother). Looking at the above verse the lafaz anak (walad) comes in a general form, where the lafaz includes boys and girls and so on, as long as the offspring are classified as heirs rather than *zawil arham*.[77] This kind of conclusive understanding is always held as long as there is no qarinah that specializes in one of the two.

- Take 1/3 part of the property if none of the people mentioned above.
- Take the remaining third if no person is mentioned before, with the heir composition of one partner (husband or wife) and testator parents. So the husband or wife takes the portion first (1/2 if the husband, and ¼ if the wife), then 1/3 of the rest is taken by the mother, then the father receives all the remaining assets.

l. Grand Mother

قبيصة بن دؤيب قال جاءت الجدة الى ابي بكر تسأله ميراثها قال فقال لها مالك فى كتاب الله شيئ ومالك في سنة رسول الله صلى الله عليه وسلم شيئ فارجعي حتى اسأل الناس فسأل الناس فقال المغيرة بن شعبة حضرت رسولالله صلى الله عليه وسلم فأعطاها السدس فقال ابو بكر هل معك غيرك فقام محمد بن مسلمة الأنصاري فقال مثل ما قال المغيرة بن شعبة

77 Hasan Ahman Al-Khatib, *Al-Fiqh Al-Muqaran*, (Kualalumpur: Matba'ah Dar at-Ta'lif, 1957), p. 273

فأنفذه لها ابو بكر قال ثم جآءت الجدة الأخرى الى عمر بن خطاب تسأله ميراثها فقال مالك في كتاب الله شيئ ولكن هو ذالك السدس فإنجتمعتما فيه فهو بينكما وايدكما خلت به فهو لها

There are three alternatives to grandmother's inheritance, including:

- Grandma will get 1/6th portion, if she herself, the part is taken completely, if Grandma consists of several people then the portion taken 1/6 is divided equally. For example there is a grandmother from the mother and grandmother from the father, then each gets 1/6: 2 = 1/6 x ½ = 1/12.
- A grandmother who is closer covers a grandmother who is further away.
- Grandmothers on the part of the mother are denied by the existence of the mother, and grandmothers on the part of the father are denied their rights by the existence of the father

F. PROBLEMS IN FARAID SETTLEMENT

1. *Musyarakah*

Musyarakah is a method of settling property, when a biological brother as an *asabah* does not obtain property because it has already been shared by other heirs. Among the heirs, there is a brother with 1 mother who gets a fairly large share in his capacity as one of the ashabul furud, even though siblings should be more important than him. For example, one person dies, leaving her husband, mother and two brothers with 1 mother. Textual division is:

a. Husband : 1/2 = 3/6
b. Mother : 1/6 = 1/6

c. Brother with one mother : 1/3 = 2/6 +
Total (assets has been divided) : 6/6

A brother who has the status of asabah does not get the remaining portion. Injustice occurs when a biological sibling does not obtain property, whereas two half siblings with one mother obtain property, even though the degree closer to the person who dies is his biological sibling. In order to make the division more fulfilling a sense of justice, the whole brothers and sisters then divided equally without differentiating between men and women. The above case is resolved in the following ways:

a. Husband : 1/2 = 3/6
b. Mother : 1/6 = 2/6
c. All siblings : 2/6 where each one gets 1/3 x 1/3 = 1/9

2. Inheritance of Infants in the Womb and Mafqud People

a. Inheritance of Infants in the Womb

As understood, in Islamic inheritance law even a child is seen to have full rights to inheritance is like an adult human. Infants in the womb are no exception to these general rules. As long as it is believed that he is alive when the heir dies, he becomes the owner of his share in accordance with his inheritance status. When he becomes a child of the deceased, he gets the same share as his other siblings.

It's just that there are obstacles to giving part to the baby in the womb. The constraint concerns the sex. Gender determines the size of the baby's part. For some cases perhaps knowing the sex of the baby is not an obstacle. Modern medical instruments can medically confirm the sex of the baby. But in some communities, ensuring the sex of the baby in the womb is still something that is quite difficult. Even for people who are able to access modern technology even though there are actually obstacles, when the baby is in a certain position, his

gender cannot be identified through the use of ultrasound technology.

Regardless, whether or not the sex can be ascertained, careful measures of the main characteristics normally used by fiqh. For the perspective of fiqh requires the completion of the division of inheritance where one of the heirs is a baby in the womb, in his own way.

The solution is done by making two estimates, the baby's estimation is male and female. Then the property distributed in advance to other heirs (if the condition of the property must be shared immediately) is the calculation of the baby boy. Furthermore, as much as a man's wealth, the property prepared for him was in accordance with what was supposed to be. If it turns out she's a woman, and the rest is distributed back to the other heirs.

Example: A person dies leaving a wife who is seven months pregnant, leaving a son and a daughter, the method of distribution is:

b. If estimated the baby is boy

- Wife : 1/8 = 6/48
- Son : 2/6 x 7/8 = 14/48
- Daughter : 1/6 x 7/8 = 7/48
- Daughter : 1/6 x 7/8 = 7/48
- Baby in the womb : 2/6 x 7/8 = 14/48

c. If estimated the baby is girl

- Wife : 1/8
- Son : 2/5 x 7/8 = 14/40
- Daughter : 1/5 x 7/8 = 7/40
- Daughter : 1/5 x 7/8 = 7/40
- Baby in the womb : 1/5 x 7/8 = 7/40

Of the two possibilities the first alternative is greater, then the greater amount is used as a waiting asset.

d. The Inheritance of the Mafqud

Mafqud is a person whose news is unknown, whether it's his domicile and especially his circumstances, whether he is alive or has died.[78]

Regarding inheritance, a missing person may become a testator and may also become an heir. If he is a person who has assets (testator), the ulama agrees not to share his wealth until there is evidence that can be legally accounted for showing his death.

The new judge can determine his death based on the testimony of people who are considered fair and honest. Or it could be based on normal life spans for the average person. The first can indicate death in essence, while the second can indicate death in a legal manner, where there is still the possibility of the person living. However, the judge's decision can be used as a basis for sharing his assets.[79]

Scholars have differences of opinion regarding the deadline that can be used as a basis for the death of someone considered at least legally. It was reported from Malik that he once said the deadline for a mafqud was calculated to have died was four years since his departure because Umar ra said:

أيما امرأة فقدت زوجها فلم تدر اين هو فإنها تنتظر اربع سنين ثم تعتد اربعة اشهر وعشرا ثم تحل[80]

"A woman who loses her husband and does not know where he is, should she wait for four years. Then undergo the iddah for four months and ten days. After that she may remarry."

78 As-Sayyid Sabiq, *op.cit.*, h. 452

79 *Ibid*

80 Al-Imam Malik ibn Anas, *Kitab al-Muwatta`*, Hadis No. 44, (Kairo: Dar al-Rayyan li al-Turas, 1988), Jilid I, h. 390

More valid information says that Abu Hanifa, Shafi'i and Malik did not provide clear time limits. This issue was left entirely to the Judge's ijtihad.

3. Dual Inheritance and *Munasakhah*

Multiple inheritance is a matter of a person who receives inheritance from various directions,[81] such as a situation where he is entitled to obtain the inheritance from his father who died, at the same time coincidentally his own son died leaving a legacy which means he is in two circumstances, namely as an expert inheritance for his father and as an heir too for his child.

Then another case, a person died, when his wealth had not been distributed, one of his heirs died. This delay can continue so that when assets are to be distributed there must be witnesses. Approximately this is what is meant by munasakhah.

Example 1:

A person dies, leaving a treasure of Rp. 18 million with heirs (A). (B) daughter, (C) father. At the same time, also died (D) - who already has a child named (E) - who is a child of (A), inheritance (D) of 24 million IDR.

The solution:

Phase I:

a. C (father) gets : 1/6 x 18 million IDR: 3 million IDR
b. A and B : 5/6 with details
c. A gets 2/3 x 5/6 : 10/18 x 18 million IDR: 10 million IDR
d. B gets 1/3 x 5/6 : 5/18 x 18 million IDR: 5 million IDR

Phase II:

a. A as a father gets : 1/6 x 24 million IDR: 4 million IDR
b. E as child of A : 5/6 x 24 million IDR: 20 million IDR

81 A. Sukris Sarmidi, *op.cit.* h. 218

A in this case gets a share of multiple inheritance from his father in the amount of 10 million IDR and 4 million IDR, in total, 14 million IDR.

Example 2:

A person dies leaving the following relatives: a son (A), a daughter (B), and a wife (C). The amount is 120 million IDR. Before his wealth was distributed, A died, he owned 26 million IDR. His heir (C) as mother and child D.

The solution:

Phase I:

a. Wife (C) gets : 1/8 x 120 million IDR = 15 millions IDR
b. Son (A) get : 2/3 x 105 million IDR = 70 million IDR
c. Daughter (B) gets : 1/3 x 105 million IDR = 35 million IDR +

Total = 120 million IDR

Phase II:

A treasure which then died before the implementation of the distribution plus the portion of his inheritance was Rp. 96 million. The distribution:

a. (C) as a mother gets: 1/6 x 96 million IDR = Rp. 16 million IDR
b. (D) as a child gets: 5/6 x 96 million IDR + 80 million IDR

It appears that (C) gets a ~~share twice, including as a wife of 15~~ million IDR and as mother of (A)16 million IDR. The amount is 31 million IDR.

4. Inheritance of *Khunsa Musykil*

What is meant by khunsa musykil is a person whose genitals are not clear. His obscurity makes people doubt and it is really difficult to ascertain their gender. The ambiguity may be due to not having any

firm genitals or maybe also because someone has two genitals at once.

The ambiguity referred to herein therefore concerns the physical, not the psychology with behavior that contradicts the genitals, not included in the understanding of *khunsa musykil*. Such people are people whose status is clearly inherited based on faraid rules.

The first effort made in addressing the *Khunsa Musykil* is to pay attention to its tendencies. If the tendency can be observed, his inheritance will be punished according to the tendency of his nature and behavior. If it turns out that the tendency is not observed, the solution according to pro Shafi'i scholars is to make two possibilities. Assets of part of a man's portion were set aside for him, but what was given was a woman's portion. This difference is used as a waiting assets. Meanwhile, according to Hanafiah, the portion is the smallest of the two possibilities (the female portion).

Example

One dies leaving his wife and son, and his daughter and khunsa musykil. The distribution:

Considered as a Man:

a. Wife : 1/8 = 5/40
b. Son : 2/5 x 7/8 = 14/40
c. Daughter : 1/5 x 7/8 = 7/40
d. *Khunsa musykil* child : 2/5 x 7/8 = 14/40

Considered as a Female:

a. Wife : 1/8 = 4/32
b. Son : 2/4 x 7/8 = 14/32
c. Daughter : ¼ x 7/8 = 7/32
d. *Khunsa musykil* child : ¼ x 7/8 = 7/32

According to Hanafi to khunsa musykil directly given the smallest part, between the two possibilities. So for *khunsa musykil* is 7/32.

Meanwhile, according to Shafi'i supporters, all heirs are given the smallest portion. To other than *khunsa musykil* given alternative I, while to him himself was given alternative II. Then the difference between 14/40 - 7/32 = 56/120 - 35/120 = 21/120 is made as a waiting asset.

If then the tendency is seen, the rest is given appropriately to those who are entitled. If he has a male tendency, the treasure is given to him. And if it tends to be a woman, the waiting assets are given to boys and girls. Boys take 2/3 parts = 14/120 and girls take 1/3 parts = 7/120.

G. TESTAMENT AS AN ALTERNATIVE INHERITANCE

1. Testament Definition

The definition of a testament or a will is actually a classical rule of life, which is related to property. It's just that many wills are practiced in the usual way. It is reported that in the Roman tradition, a will is the prerogative of the head of the family. He is free to will without any ties, and often he wills to others.[82]

In a word a will means al-Isa '.[83] God's Word follows:

Meaning:

"you who believe, if one of you faces death, while he will testify, then let (the testament) be witnessed by two righteous people among you, or two people of different faiths with you, if you are on a journey on earth then you are struck by the danger of death".(QS Al-Ma`idah: 106).

As for the terminology interpreted by fiqh scholars with varied. Among them Al-Kasani, defines it as a name for something that is required by those who submit a will (*al-musi*) about his property after his death.[84] This formulation was rejected by many, because it was deemed not '*jami*', whereas a definition came in the form of *jami'* (including all its variants). Moreover, this definition is condemned as a wrong definition. The will is not something that is required by a musi. Even if a will is considered obligatory, the obligation is appointed by the Shariah, not the person.

Sayyid Sabiq defines it as *tamlik* (possession of property) which is associated with the period after death voluntarily.[85]

82 Wahbah Az-Zuhaili, *Al-Fiqh Al-Islamy Wa Adillatuh*, (Damaskus: Dar Al-Fikr, 1984), p. 7

83 Hasan Ahmad al-Khatab, *Al-Fiqh Al-Muqaran*, (Mesir: Dar At-Ta'lif, 1957), p. 56.

84 Hasan Ahmad Al-Khatib, *op.cit*., p 57

85 As-Sayyid Sabiq, *Fiqh As-Sunnah*, (Beirut: Dar Al-Fikr, 1983), Jilid III, p. 414

This definition shows the difference between a will and a grants. Ownership based on grants takes place spontaneously, and ownership in a will takes place after the death of a person who has a will. Differences from other aspects can be revealed that the grant is only related to the material, while the will, can be in the form of material, accounts receivable or benefits.

2. The Law of Testament

According to Shafi'i there are five wills, including: [86]

a. Obligatory, is a will to fulfill the obligations ordered by religion such as paying off debt, zakat, expiation, and others.

b. Haram, is a will for motives of crime, immorality, then a will like this is considered null and void and must not be done (even must not be worked on) by the person who receives the will.

c. Makruh, is a will that exceeds 1/3 of the assets owned.

d. Sunnah, is a will to those who need help.

e. Mubah, is a will to someone who is capable, who does not need compensation. For example people who are able to meet their own needs, or even excess.

3. Terms of Testament

Regarding a will, is actually always related to three factors, three factors, better known as part of the will, consisting of *musi* (wills, who gave a will), *musa lah* (who receive wills), and *musa bih* (objects or things that are inherited). So that when the conditions of the will are discussed, in fact what always appears in the discussion of the scholars is the conditions and each of these factors. This means that there is a *musi* condition, there is a *musa lah* condition and there is a *musa bih* condition. Here are the details:

a. *Musi* Condition

There are several conditions that must be fulfilled cumulatively so that his will is considered to be imperative, must be carried out after his death, namely:

86 Abdurrahman Al-Jaziri, *Al-Fiqh 'Ala Mazahib Al-'Arba'ah*, (Beirut: Dar Al-Fikr, 1991), Jilid III, p. 316

- *Musi* must be an independent person, not a slave.
- Baligh, a will is considered perfectly valid if it is carried out by a person who has matured before the law.
- Sensible, not done by a crazy person, lacks sense and the kind.[87]

In addition to the three conditions above there are also those that add to the fourth condition, a *musi* must actually act on his own choice, not because he is forced or forced.

Some scholars abbreviate the three conditions (or it could be the four conditions above) as "capable of taking legal actions". The three conditions above are conditions that guarantee a person who is truly responsible for his actions, and truly aware of the consequences of his own behavior.

Sayyid Sabiq further explained, that a person who is considered to be less capable in legal terms, then if he wills, his will is invalid, as well as not required to be carried out, for example, a will made by a child, a slave or someone who is counted as behaving badly. However, there are exceptions when it comes to two things, including:

- The will of a child who has reached the level of mumayyiz, especially concerning the administration of his fard kifayah including burial as long as he is within the limits of benefit.
- The will of a person who is deemed to behave badly may be executed if his will is in the form of a virtue such as teaching the Qur'an, building a mosque, and building a hospital.[88]

If he has an heir, his will can be carried out by taking his entire estate, if heirs allow it. If the heirs object, then it is carried out in accordance with the general provisions of the will, a maximum of 1/3 of his assets.

87 Hasan Ahmad Al-Kahtib,*op.cit*., h. 102. Also see Sayyid Sabiq, *op.cit.*, p. 419

88 *Ibid*

Dealing with the conditions above, Imam Malik believes differently. According to him, the will of someone whose mind is less than perfect, or the will of someone who is still a child is still considered valid, when the willor understands the meaning of getting closer to God. A criterion that is indeed very clear and reasonable.

b. *Musa lah* Condition (Who Receive Wills)

The conditions that must be fulfilled by a recipient of a will are:

- Testament recipients are not heirs to testaments.

  The Prophet once gave instructions that there is no will for heirs. Even though the Hadith of the Messenger of Allah is sometimes considered as 'khabar ahad', many scholars have based their opinions on this hadith, and practiced by most people. In the case of Shafi'i commenting that Allah actually sent down the will, then after that revealed the inheritance verse. This fact contains two possibilities, the will remains valid along with the validity of the inheritance verse. It is possible that the two verses of the will have been rejected by the inheritance verse. Ulama then examined this fact, and came to the conclusion that the possibility of the two was stronger because the emergence of the Prophet's affirmation was quoted.

  It's just that there is the possibility of a testamentary will to his heirs and remains considered valid. For example a will to his brother, where the testament has a child. Then his child passed away first, so his brother changed his status to heir because there was no child who covered his brother when he died. Such a situation is clearly a will of an heir.[89]

- If a testamentary recipient is a particular person.

  Meaning that it is explicitly directed to a person, then the recipient of the will must actually be present when the will is delivering his will.

89 Ibid, p 421

That is, the recipient of a will actually exists physically at the time of consent (pronunciation of a will), or is in the presumption, for example, a will of a baby in the womb. Then the baby is assumed to exist, just like its existence in a legacy perspective. And if a testamentary recipient is not categorical, like a will delivered by a testament by saying "I will testify to the children of the Fulan", the recipient of the will may not be present at the actual time of consent, provided he forms when the testament dies.[90] The child is even entitled to receive a will, even if born after the death of a testament, provided that it is still within a period of six months after the death of the testament.

- A person who receives a will does not kill the will.

  If the recipient of the will kills the testament, and is not a legitimate murder and can be tolerated by law, then his will is considered null and void. In the meantime Abu Hanifa and Muhammad argued that the will was not abolished, but the validity of his execution depended on the willingness of the heirs. As long as the heirs approve it, the will is still valid.

c. *Musa bih* Condition (Objects, or Things Inherited)

   It is required that something inherited can be transferred ownership. Thus, inheriting property in the form of a type of object or benefit is legal. It is also possible to leave certain fruit trees. This is also the case with future offspring, provided that the fruit, or livestock, are indeed present at the time the testament dies.[91]

4. Pillars of a Testament

Some Hanafiah scholars state that the pillars of the will are only one, is al-ijab[92] from the testament, for example he said I will make a will to the fulan or with lafaz that is similar to him. The qabul is not a testament to a will, but a condition of a will. This opinion is considered

90 *Ibid*

91 *Ibid*

92 Wahbah Az-Zuhaili, *op.cit.*, h. 13

to present the opinion of Hanafiah groups, as well as opinions that are considered 'rajihh' (strong) for Hanafiah. The argument they have that ownership of a person who receives a will is the same as ownership of an heir, will shift after death. It is clear that the ownership of the heirs is not carried out with qabul.

The opinion of most scholars is different from Hanafiah, where they hold to the opinion that there are four pillars, including:

a. *Musi*, (a will, a person who has a will)

b. *Musa lah* (testamentary)

c. *Musa bih* (which was inherited), and

5. Limitation of Wills

Generally, scholars assume that the maximum amount of assets that can be inherited is 1/3 of the total assets.[93] If the number exceeds 1/3 then its validity depends very much on the willingness of the heirs to accept it.[94] Without the heir's consent, an executable will must be within that limit. The remaining balance is returned to the first balance of the asset.

Only, the maximum limit of 1/3 is debated in terms of whether 1/3 of the assets left (tirkah), or 1/3 of the inheritance, after the obligations relating to the asset are fulfilled. According to Shafi'i and Hanafi the amount of 1/3 of the inheritance in its form which is still intact, before being spent to administer fardu kifayah and debt repayment.

6. Cancellation of a Will

Basically, the existence of a will remains as long as there is no desire of the will to annul the will.[95] In addition to canceling the will of the will directly, there are three things that cancel the will, including:

a. The loss of the inherited substance as a whole. If only partially lost or destroyed then the will is considered null and void in the destroyed part, and remains valid in the remaining parts.

93 Muhammad Ibn Ahmad Ibn Rusy Al-Qurtubi, *Bidayat Al-Mujtahid Wa Nihayat Al-Muqtasid,* (Kairo: Maktabat Al-Kulliyat Al-Azhariyyah, 1969), Vol II, p. 203

94 Hasan Ahman Al-Khatib, *op.cit*, h. 134

95 Hasan Ahmad Al-Khatib, *op.cit*, p. 169

b. Impairment of the quality of a person who has a will in the eyes of the law, where the disturbance of the person who has a will is disturbed so that he or she becomes less capable of carrying out legal actions. For example the testament becomes permanently insane. Regarding this matter, most scholars consider the permanent measure of mental disorders based on time, which is at least a year[96] with the consideration that the period of mental disorders during the year has resulted in the destruction of all forms of worship.

c. If the person who receives a will dies earlier than the will, the will also becomes null and void. Some scholars generally argue that the cancellation of a will in this way is based on the consideration that a will is a gift, so it is not possible to give something to someone who has died. The logic is that giving in a will is assumed to take place automatically at the time of the testament's death, not at the time of the consent, even when the consent determines the validity of the will. The will at that time was indeed valid, but then it was canceled, because at the time the terjadinya atiyyah (gift) was received.

G. INHERITANCE IN POSITIVE LAW

1. Inheritance in Compilation of Islamic Law

Talking about the law in Indonesia is actually discussing exactly what the shape of the country is. In its history, the founding figures of the state from the Islamic group have actually struggled with all their strength in every era trying to establish an Islamic state, the consequence of course is the enactment of Islamic law as a whole[97]. In the meantime the formation of an Islamic state had failed. Subsequent efforts were then pursued in a struggle that was not purely structural in nature, but sought for the color of Islam to appear impressive in the country's constitution. This matter has also ended with the abolition

96 Sayyid Sabiq, *op.cit.*, p. 423

97 Moh. Nasir is one of many national figures with religious principles and the state must unite in order to ensure the enactment of Islamic law. See Effendy Bahtiar, Islam and the State, (Jakarta: Paramadina, 1998), p. 79

of the Jakarta charter. Distinctive parts of Islam abolished.

Because law in a country is a political product[98], representatives of the Islamic Ummah in the legislature continue to struggle to enact Islamic law. And until now in Indonesia Islamic law has colored a lot of national law including inheritance issues, and already has a strong judicial institution as a realization tool. Constitution No. 7 of 1989 has more or less realized the dream of the Indonesian Islamic community to realize the obligation to fulfill its law.[99] In article 46 which explains the absolute competence of the Religious Courts of inheritance cases is one of its authorities.[100] While the material law is contained in the Compilation of Islamic Law (KHI) which has been given government legislation in the form of a Presidential Instruction (Inpres) to the Minister of Religion for use by Government Agencies and by the people who need it. The instruction was carried out with the decree of the Minister of Religion No. 154 dated July 22, 1991. The compilation of Islamic Law is expected to be a guideline for judges within the Religious Courts when deciding on cases which are under their authority for uniformity to occur,[101] concerning inheritance. And it turns out that the provisions of the male and female sections in the Compilation of Islamic Law refer exactly to the Qur'anic verses.[102] This fact proves conclusively that the majority of Muslims believe fully in the legal justice of Islamic inheritance, because the process of compiling Islamic Law Compilation is carried out in a participatory manner. It was composed by involving government officials, judges, and

98 In his dissertation research Moh Mahfud MD made a conclusion into his theoretical granad "The Politics of Determinants of Law". See Moh. Mahmud MD, Indonesian Legal Politics, (Jakarta: P. T. Pustaka LP3ES, 1998), p. 13

99 Before being approved and then enacted as well as being enacted, Law No. 7 of 1989 concerning the Religious Courts preceded a very large amount of discussion, both among the government and the House of Representatives. See Muchtar Zarkasi, "Historical Framework for the Establishment of Constitution No. 7 of 1989," in the Role of the Law: Actualization of Islamic Law, No. 1 Year I 1990, p. 1-15

100 Constitution No. 7 of 1989 concerning Religious Courts

101 This does not mean that mathematics is a judge's creativity, but it is intended to minimize the disparity in decisions in the same case. And based on Acep Zoni Saeful Mubarak's research, it turns out that the Tasikmalaya Religious Court in KHI is effective, even by local legal practitioners expected to be upgraded to constitutional status. See Acep Zoni Saeful Mubarak, Compilation Function of Islamic Law as a Source of Law in the Religious Court of Tasikmalaya Regency, (Thesis at the IAIN Sunan Kalijaga Postgraduate Program in Yogyakarta, unpublished), p. 20-27

102 Compilation of Islamic Law, Article 176

representative community leaders (ulama, zu'ama and intellectuals).[103]

Regarding absolute competence which includes inheritance, an anomaly occurred that was disturbing. On the one hand the law gives the Religious Courts the authority to settle inheritance cases, but on the other hand the Act itself states that in the event of a dispute regarding property rights or other civil rights in the cases referred to in article 49, then specifically regarding the object in dispute must be decided in advance by the court in the General Court environment.[104] This means that the Constitution number 7 of 1989 limits the authority of the Religious Courts themselves. In fact, the problem referred to in article 50 is an integral part of inheritance cases that are inseparable from its distribution and in a unity of the Islamic inheritance system. If the dispute regarding the object is submitted to the General Court, it is most likely that the determination of inheritance is not based on Islamic law. The explanation of law number 2, the sixth paragraph, increasingly shows the seriousness of the maker in actualizing Islamic inheritance law, stating that in connection with this (the field of inheritance), the parties before litigation can consider choosing what law to use in the distribution of inheritance.[105]

This clause causes inheritance to become an optional case, which makes it possible for justice seekers to determine for themselves or even deliberately shy away from the provisions of Islamic inheritance law. Ironically, this option only applies to inheritance issues, while other problems that become the absolute competence of the Religious Courts institutions are not polluted with this kind of ambiguity.

If we look closely, constitution No.7 of 1989 actually tries to elevate the principle of Islamic personality in which affirmations are found:

a. The litigants must be equally Muslim.
b. Disputed civil cases must be related to marriages, inheritance, wills and grants, endowments and alms.

103 Cik Hasan Bisri, "Compilation of Islamic Law in the National Legal System", in Cik Hasan Bisri (ed), Compilation of Islamic Law in the National Legal System, (Jakarta: Logas Wacana Ilmu, 1999), p. 15

104 Constitution No. 7 of 1989 concerning Religious Courts

105 Ibid, General Explanation

c. The legal relationship that underlies certain civil rights is based on Islamic law.[106]

Adhering to the principle of Islamic personality which it introduced itself, it should be followed by consistency to make all the provisions contained in this Constitution remain within the framework of the principle.

Alhamdulillah, the anomaly that occurred in Constitution No. 7/1989 was corrected by the issuance of the Republic of Indonesia's Constitution No. 3/2006 concerning Amendments to Constitution No. 7/1989 concerning Religious Courts. Article 49 of the law states cases which constitute the absolute competence of the Religious Courts, including:

a. Marriage.
b. Inheritance.
c. Will.
d. Grant.
e. Waqf.
f. Zakat.
g. Infaq.
h. Alms
i. Islamic Economics[107]

Thus, the constitution reiterates several authorities of the Religious Court, one of which is inheritance. In addition, it appears that the authority of the Religious Courts was expanded to include Islamic economic matters. More than that, Muslims are certainly happy with the provisions contained in the amendment to article 50. It is stated that if there is a dispute over ownership of the legal subject between people who are Muslims, the object of the dispute is decided by the religious court. A provision that changes the previous provision which states that the dispute was decided by the court in the General Courts.

Then, the general explanation in Constitution No. 7 of 1989 concerning Religious Courts which states: "The parties before the case may consider choosing what law to use in the distribution of inheritance", was declared abolished.[108]

106 M. Yahya Harahap, Position of Authority and Procedure of Religious Courts, Constitution No. 7 of 1989.

107 Constitution of the Republic of Indonesia Number 3 of 2006, concerning Amendment to Constitution Number 7 of 1989 concerning Religious Courts article 49

108 The Constitution of the Republic of Indonesia Number 3 of 2006, concerning Amendment

This means that the case of inheritance has become an absolute competence of the Religious Courts, and is no longer an optional case, where the parties can choose the inheritance law which they consider fairer.

However, as with the Compilation of Islamic Law, many parties view it as merely a suggestion, because its position is not so strong. It is as if that "this material regulation concerns certain Islamic civil law, if you like it please use it, if not, it may be abandoned." There should be serious efforts organized, planned and ongoing to improve the status of the material law to the Constitution level.

Regarding the substance of the Compilation of Islamic Law, most of it is more representative of classical fiqh rules. Some Islamic countries such as Somalia, for example, have moved away from the classical understanding of the distribution of inheritance, especially the ratio of the proportion of boys to girls. In this country the ratio of the proportion between men and women is 1: 1. For Somalis, to implement this rule is in the context of carrying out Islamic law. This does not mean that they assess the inheritance of Islam as being unable to fulfill people's sense of justice and then create their own rules outside of Islam. The rules they reformulated were an adaptive form of Islamic inheritance. In short, by implementing these rules, they at the same time also felt that they were carrying out Islamic teachings.

In Indonesia official regulations in the form of a Compilation of Islamic Law still regulate that a male part is equal to two daughters. There are some rules that look different from classical fiqh discourse. The Compilation of Islamic Law stipulates that if a child dies earlier than his father, then he can be replaced by his child and receive a share as large as the portion he should receive. The division of shared assets is also considered to be an Indonesian fiqh which is extracted from traditions that live in the community.

to the Constitution of Number 7 of 1989 concerning Article 49 of the Religious Courts

2. Wajibah Will

A Wajibah will is a will given to a person who is not an heir, while in fact he is a person who really needs compensation. The authorities or judges as state apparatuses have the authority to force or give mandatory decisions that are later known as *wajibah* wills to certain people in certain circumstances. Named a *wajibah* will because of the loss of the element of endeavor in giving a will, and the emergence of the element of obligation through statutory regulations or court rulings, without depending on the willingness of the person who wills and the will of the recipient of the will.[109]

In Egyptian family law, for example, male grandchildren through daughters are given compulsory wills, because in the perspective of a *mawaris*, he is not among those entitled to receive the inheritance. Anticipatory action is taken to prevent him from the deterioration of life without material abilities. A grandson through a daughter, who has been left by his parents certainly needs more financial support. The *wajibah will* intended here is not a testament to the willingness of the testator or heir in general. *Wajibah will* here are seen as wills that take place automatically with certain considerations.

Compilation of Islamic Law, Indonesian-style collective ijtihad products, including very brave to make new innovations in the provisions of the obligatory wills. Adopted children are given a will when they do not receive a will from their adoptive parents. A *wajibah will* is not a will that has been empirically submitted by the testator. This type of will is never actually said or made in writing by the testator. However, this will is seen in the eyes of the law because of certain interests, providing security for adopted children. This step is considered necessary because the child has no relationship with biological parents. In most cases, an adopted child will never know who the real biological parents are. In conditions that really need this later, legally a will is deemed obligatory to give a certain portion to an adopted child.

109 Fatchur Rahman, *Ilmu Waris*, (Bandung: Al-Ma'arif, tt.), p. 62-63

Sociologically, adopted children are children who are deliberately taken because of the interests of adoptive parents and adopted children themselves, which interests are in place of biological children in the purpose of affection. So it's natural if the adopted child gets a right to enjoy wealth from his adopted parents. With this assumption coupled with the ability to have a will in Islamic law, Islamic jurisprudents in Indonesia contain *wajibah* wills in the Compilation of Islamic Law.[110] Conversely, when an adopted child dies his adoptive father also gets a share of the inheritance through *wajibah* will instruments.

The provisions of the *wajibah* wills can be found in the Compilation of Islamic Law article 209 as follows:

a. The inheritance of adopted children is divided according to articles 176 to 193 above, whereas for adoptive parents who do not receive a will, are given a *wajibah* will as much as 1/3 of the inheritance of their adopted child.
b. For adoptive children who do not receive a will, are given a *wajibah* will as much as 1/3 of the inheritance of their adopted parents.

The term of *wajibah will* is actually a new discovery of the 20th century, before the term was not known in the discourse of fiqh. Linking the term wajibah will with adopted children or adoptive parents is indeed an Indonesian invention.[111]

3. Substitute Heirs

Discussions about substitute heirs are always conducted by referring to the opinion of an Indonesian Islamic jurist, Hazairin. According to Hazairin the heirs are grouped into three, namely zu al-faraid, zu al-qarabat, and mawali. In the discourse of fiqh mawaris, the heirs of the first group are usually called zawu al-furud, then the second group is a synonym of asabah and the latter, the third group in the concept of Islamic inheritance law hereinafter commonly referred

110 M. Fahmi Al Amruzi, *Rekonstruksi Wasiat Wajibah dalam Kompilasi Hukum Islam*, (Yogyakarta: Aswaja Pressindo, 2012), p. 157

111 M. Atho Mudzhar, *Membaca Gelombang Ijtihad: Antara Tradisi dan Literasi*, (Yogyakarta: Titian Ilahi Press, 1998), p. 163

to as substitute heirs.

The existence of mawali is excavated from verse 33 of surah An-Nisa, which explicitly mentions the term explicitly, as follows:

Meaning:

"And for each of us (male and female) we have set mawali (heirs) for what was left by both his parents and his close relatives. And the person whom you swore allegiance to, give them their share. Truly Allah is all-witnessing everything". (Q. S. An-Nisa`: 33)

Based on the above verse, Hazairin then expressed his opinion that all heirs, both men and women, were entitled to obtain a portion of the inheritance from their parents and close relatives. To the children who are still alive, their fate will certainly be given as heirs, but in addition to the section for boys, it must also be given a part to the mawali held by Allah SWT for the Fulan, in other words the Fulan mawali participates as an heir for his father or mother, and not the Fulan himself. Based on the general principle that the Qur'an establishes an inheritance relationship based on blood ties between the testator and his family members who are still alive. In this context Hazairin stated that he could only think that what was meant by Mawali was that Fulan was a family member who had died earlier than the testator. As for those who are still alive, it has been announced through an-Nisa verse 11. The person who is the closest person to Fulan to be the most appropriate person to replace him is his own biological child who of course still has a close blood relationship with the testator. As explained above, this blood relationship is the basis for an inheritance relationship.[112]

For Hazairin, verse 33 of surah an-Nisa` can be translated as follows:

For the deceased child of God to initiate mawali as heir in the inheritance of father or mother; and for the late aqrabun, God made mawali as heirs in the legacy of his fellow aqrabun.[113] In more detail

112 Hazairin, *Hukum Kewarisan Bilateral Menurut Alquran dan Hadis*, (Jakarta: Penerbit Tintamas, 1982), h. 28

113 Ibid., p. 29

Hazairin discusses the position of the substitute heir specifically in a separate chapter in his book, in Chapter V Principal Lines of Priority and Principal Lines starting from page 19 to page 44.

In inheritance according to fiqh, heirs must be in a state of life when the testator dies, but by adopting the interpretation related to mawali from Hazairin, the Compilation of Islamic Law does not require that heirs be in a state of life at the time the heir dies. The rules of substitute heirs in the Compilation of Islamic Law are contained in article 185, as follows:

a. Heirs who die earlier than the heir may be replaced by their children, except those mentioned in Article 173.
b. The part of an heir must not exceed the portion of the heir who is equal to that of the heir.

In view of Article 185 above, it is as if mawali is not a necessity, because the diction used is the word "can" which means facultative, not imperative. But in practice, since the KHI was issued, the Religious Court's decision has yet to be found that does not provide a part of the successor heirs, especially the offspring of children.[114]

4. Joint Assets

Referring to the Compilation of Islamic Law, assets in marriage are regulated in Articles 85 through 97 in Book I (one). In terminology, assets in a marriage or syirkah are defined as assets generated either individually or together with a husband and wife as long as the marriage is underway, hereafter referred to as joint assets, without questioning whose names are listed in between the husband / wife (Article 1 letter f Chapter General requirements).

Concerns about the marriage assets in practice often become a complicated and protracted problem, not resolved as it should. Based on this consideration, then the Compilation of Islamic Law provides an opportunity for both parties (husband / wife) to enter into an agreement before the marriage takes place. The agreement is expected

114 Destri Budi Nugraheni dan Haniah Ilhami, *Pembaruan Hukum Kewarisan Islam di Indonesia*, (Yogyakarta: Gadjah Mada University Press, 2014), h. 48

to be able to clarify the position of assets in the marriage so as to cause clear separation of ownership rights over the assets obtained and those brought before the marriage takes place. A marriage agreement may include mixing personal assets, separating their respective livelihoods and establishing their respective authority to make mortgages on personal property and joint property or company property as long as it does not contradict Islamic law.

In accordance with the rules contained in Article 36 paragraph (2) of Constitution Number 1 of 1974 concerning Marriage (hereafter the Marriage Law), the Compilation of Islamic Law further provides a limit that there is no process of mixing assets in a marriage. That is, assets that are brought before the marriage remain the property of each party who brought it into a marriage. Legal action in the form of marriage does not necessarily change the status of ownership of these assets into joint ownership. Assets carried by the wife remain the wife's rights, and are fully controlled by the wife, as well as the assets obtained by the husband before marriage remain the husband's rights and are fully controlled by him. The source of the assets can be in the form of gifts, grants, alms or other forms that are special gifts for one of the parties in a marriage bond.

It is explained in (Article 91 paragraph (1) to paragraph (3)) the compilation of Islamic law that joint property can be in the form of:

a. Tangible objects, including movable and immovable objects, as well as securities;
b. Intangible objects, including rights and obligations.

The joint assets are the responsibility of both parties. Each husband or wife is responsible for maintaining the existence of shared assets. If for example the joint assets are in the possession of one of the parties, then the responsibility for the joint assets is attached to the party that controls them. Both husband and wife are not permitted to transfer ownership or ownership of the property to other parties. The transfer is meant only possible if both parties (husband and wife) both agree.

Chapter Three

DISPUTES AND SOCIAL CHANGE

A. DEFINITION OF DISPUTE

Dispute is a feeling of dissatisfaction from one party to the second party, which is conveyed to the second party and raises differences of opinion between them. This can be seen in disputes that occur in an agreement in which one party defaults on the agreement so as to cause dissatisfaction with the other party which gives rise to differences of opinion or mismatch between the two.[1] In the Indonesian dictionary, a dispute is defined as everything that causes dissent, dissension and disagreement.[2] In foreign terms (English) expressed by the word 'conflict' or dispute.[3] The word conflict in English is often interpreted as conflict, different from dispute which is interpreted as a dispute. Both of these words mean the existence of disharmony between the two parties due to differences of opinion or interests between the two parties. Conflict or dispute can also be interpreted as an object that causes differences of opinion, interests, or perceptions between the two parties that have

1 Sudarsono, *Kamus Hukum,* (Jakarta: Rineka Cipta, 2002), 3rd printing, p., 433

2 Department of Education and Culture, *Kamus Besar Bahasa Indonesia,* (Jakarta: Balai Pustaka, 1990), p., 643

3 John M.Echlos and Hasan Shadily, *Kamus Inggris Indonesia dan Indonesia Inggris,* (Jakarta: Gramedia, 1996), p., 138

surfaced either in the form of contention, or disharmony. Dissent, dissatisfaction or disappointment is only called a dispute if it has been stated directly to the second party. The parties intended in this definition can occur between individuals and individuals, between institutions or agencies, the people and the government, and so forth.

Thus, a dispute or conflict occurs when there are disputed elements that are either civil or criminal in nature, and there are two or more parties who dispute the object of the dispute, and what has been disputed has surfaced in the form of a dispute or in the form of other legal actions. Each group or party has the same interests in the object of the dispute.

The most important thing that is an element of dispute is that there are parties who feel disadvantaged. Although there are different perceptions or opinions about a problem, but there is no element that feels disadvantaged, then conflict or dispute will not occur in the problem. Therefore, the key word for the occurrence of a dispute is the presence of parties who feel disadvantaged either in civil or criminal relations.[4] Every dispute or conflict that occurs usually has legal consequences. If the conflict is related to a criminal such as a land dispute that results in a murder, then the legal consequence will be the determination of the law for the criminal. If the dispute is related to civil law such as an agreement or agreement that results in losses for other parties, then the legal result is compensation or determination of rights.

4 Sarjita, *Teknik dan Strategi Penyelesaian Sengketa Pertanahan,* (Yogyakarta : Tugujogja Pustaka, 2005), p., 8

B. CAUSE OF DISPUTES

The cause of the dispute can be classified in several theories, including:[5]

1. Relationship in Community

This theory is based on the emergence of distrust between members of society and rivalry between community groups. This distrust or rivalization can be related to religious, tribal, skin color, and stratification issues in society. Conflicts like these usually cannot be resolved through a violent approach but close dialogue, foster mutual understanding between groups, and foster values of tolerance among them.

2. Principle Negotiation

This theory explains that disputes can occur due to differences of opinion between the parties such as land ownership disputes, if there are two buyers of a parcel of land. Differences of opinion occur between the two land buyers, one party believes ownership is on their side based on the evidence they have, the other party provides the same opinion or argument. Settlement of problems in disputes such as this is usually done by legal proof of the evidence presented at the trial.

3. Identity

This theory argues that disputes or conflicts can occur due to self or group identity that is threatened by other parties. Conflicts like these are usually resolved by giving space to groups whose identity is threatened to explain their true position. Patterns of uniformity, similarity, and the search for the nature of values or essence that can be drawn in common must be done so that conflicts do not continue to occur. The spirit of tolerance and togetherness must be developed between the two parties so that none of them feels that their identity is threatened.

5 Takdir Rahmadi, *Penyelesaian Sengketa Melalui Pendekatan Mufakat,* (Jakarta: Rajawali Pers, 2011), p., 8

4. Theory of Misunderstanding Between Cultures

This theory argues that conflicts or disputes can occur because of misunderstandings between cultures, termed social prejudices such as white social prejudice against blacks who consider blacks to be inclined towards marginalized and marginalized societies and are synonymous with bad behavior. Conflict resolution like this also emphasizes dialogue between cultures. An explanation of the patterns of life, habits, institutions that exist in the culture of the community openly must be explained so that misunderstandings or social prejudices that have been created can be resolved again

5. Transformation Theory

This theory suggests that conflicts or disputes can occur because of the lack of equality and justice and inequality in society. This can be exemplified by the economic and plastic disparities in society. Papuans feel they don't get justice in equitable economic development, so this area is vulnerable to community versus government conflict. Conflicts like these can be resolved by making economic improvements and regional development, restructuring political structures, and efforts to build wider employment opportunities. Reconciliation is also needed in handling this conflict.

6. the Theory of Human Needs and Interests

This theory emphasizes that conflict or dispute is caused by the disruption of human needs.

C. ALTERNATIVE DISPUTE RESOLUTION / MEDIATION DISPUTE SETTLEMENT

Mediation is derived from English mediation, dispute resolution using the negotiation method or consensus agreement between two disputing parties, which is recommended by a neutral third party who has knowledge of the matter in dispute.[6] The third party as an

6 Ibid, p. 12

intermediary between the two parties to the dispute, does not have the authority to make decisions. He only offers offers or solutions to disputed problems. In general, mediators as mediators come to the disputing parties voluntarily, although there is a possibility of giving thanks for their efforts to resolve the dispute.

The existence of a mediator as an intermediary between two disputing parties is not always successful in reconciling the two disputing parties. Sometimes an agreement cannot be reached by both parties even though the mediator has taken pains to reconcile, so that the mediation is deadlocked (deadlock, stalemate). This is the difference between mediation and litigation. The judge in processing the case as a litigation institution must give the final decision in the form of a court case, even after the judge's decision was issued, both parties were still not satisfied with the decision. Therefore, the litigation process still gives its verdict after the case process is filed in accordance with the procedural law, even though there is dissatisfaction from one of the parties who attempted.

The essence of mediation is an agreement or agreement from both parties. The mediator is the mediator between the two disputing parties trying to bring an agreement or agreement between the two parties together. The mediator will analyze and explore the source of the dispute so that he can find a point of agreement and agreement that allows the two parties to the dispute to be reconciled. Mediation efforts undertaken by mediators to find agreements and agreements between the parties are far more difficult than the work of judges to decide cases in litigation efforts. The mediator's success in realizing an agreement between the parties to the dispute is far more perfect in reconciling the two parties when compared to the litigation decision. This means that the litigation decision still raises the pros and cons, for those who win feel satisfied with the judicial decision, but the losers will feel disappointed. This is different from the results of the mediation which gives satisfaction to both parties to the dispute because the mediator's success in finding a meeting point of their agreement and agreement.

The main factor of the mediator's success is the neutral mediator in mediating the parties (impartial). The neutrality can be realized if the mediator has no interest at all in resolving the dispute, the mediator does not feel disadvantaged or benefited from the completion of the dispute of the parties. There are two things that become the task of the mediator include:[7]

1. Tasks of a Procedural Nature

   Such as the tasks of leading, guiding, designing session sessions and negotiations.

2. Substantial Assignments

   Provide suggestions to the parties related to the essence of the dispute. In this section, the mediator must analyze in depth the root causes of the dispute, the material laws relating to the dispute, and the psychological sides that allow the parties to reconcile whether by approaching the moral values of their religious beliefs, or the customs held by the parties.

When mediating with the parties, there are times when the mediator is active. This relates to parties who do not have a broader insight into their dispute. Mediators in this condition actively offer constructive offers to the parties so that an agreement can be found between them. On the other hand, those who have broad insights into the dispute, the mediator only gives a provocation to bring their opinions together.

There are several benefits to solving a problem with mediation such as:[8]

1. Settlement of disputes is informal.
2. Settlement of disputes is carried out by the parties themselves so that a win-win solution is more likely to be obtained.
3. The period of completion is relatively short.
4. Does not require a large fee.

7 *Ibid, p. 14*

8 Yahya Harahap, *Arbitrase* (Jakarta: Sinar Grafika *2008*), p.,.236

5. Proof is not really needed.
6. Settlement of more confidential (confidential) disputes
7. The relations between the parties are more cooperative
8. More intensive communication
9. The results obtained are joint agreement or mutual agreement
10. The results obtained do not cause disappointment, emotion and resentment from the parties.

D. SOCIAL CHANGE AND THE CAUSES OF CHANGE

Social change is a change in people's lives that takes place continuously and will never stop, because no one community stops at a certain point of all time. This means that even though sociologists provide a classification of static and dynamic societies, what is meant by static societies is a society that changes very little and runs slowly, meaning that in a static society it still experiences changes. The dynamic community is a society that experiences a variety of rapid changes.

Humans have a very important role to change society. Changes occur in accordance with the nature and nature of human beings who always want to make changes, because humans have the nature of being always dissatisfied with what they have achieved, wanting to find something new to change things to be better suited to their needs.

Humans as creatures of God, equipped with the mind to meet their needs. Human strength lies in these minds, as a potential in humans that are not possessed by other creatures. Intellect is the ability to think. The ability to think is used by humans to solve life problems they face. Morals is part of the conscience, in the form of a combination of mind and feeling, which can distinguish between good and bad things.

Armed with these minds humans have seven abilities that function to: produce, create, treat, renew, improve, develop, and improve everything in their interactions with nature and other humans.[9]

9 Herimanto dan Winarno. *Ilmu Sosial & Budaya Dasar* (Jakarta: PT. Bumi Akasara, . (2009), p., 53

In the life of society can be found various forms of social change which can be described as follows:[10]

1. Slow Social Change

Social change, slowly known as evolution, is a change that takes a long time, with a series of small changes that follow one another. This evolutionary feature of change as if the change did not occur in society, proceeded slowly and generally did not result in the disintegration of life. Changes occur slowly because people try to adjust to the needs, conditions and new conditions that arise in line with community growth. Therefore, the changes that occur through evolution occur naturally, without a specific plan or will.

2. Quick Social Change

Rapid social change is called revolution. Besides occurring quickly, it also involves matters that are fundamental to people's lives and social institutions, and often leads to disintegration in social, economic and political life.

3. Small Social Changes

Small social changes are changes that occur in the elements of social structure that do not bring direct influence / meaning to society because it does not affect various aspects of life and social institutions.

10 Soerjono Soekanto, *Sosiologi Suatu Pengantar*, (Jakarta: RajaGrafindo Persada (Rajawali Perss), 2012), p., 228

Chapter Four

RESEARCH AND RESULT

A. THE ROLE OF MINANGKABAU INDIGENOUS FIGURE

In fact there are three words that are very rarely understood by people including the Minangkabau themselves, even the indigenous figures also often do not understand well. Tribe to mother, mother to mother, nation to fathert ribe as the life of the Minangkabau people is very colorful.

Analogous to the Koran which consists of 30 Juz as the main guideline of Muslims, in MInangkabau custom, the uatama guidelines are summarized in Constitution Number 20. Constitution Number 20 is constitusion No. 20.

1. Adat Nan Ampek

a. Adat Nan Sabana Adat.

   For example the nature of fire is burning, the nature of water is wetting. This becomes the rule.

b. Customized Customs.

   A and b, babuhua die, remain unchanged, knotted in the natural expression takambang become a teacher. These rules are described in the *pepatah petitih*:

"Gabak dihulu tanda kahujan cewang di langit tando kapaneh".

B is a derivative of A. A and B are the basic rules. Distributed by C and D below.

For example marriage, the basic principle is *'sigai mancari anau, anau tetap sigai baranjak'*. In marital tradition, the place to stay after marriage takes a matrilocal pattern. The couple is domiciled in T

c. Adat Teradat

d. Customs

C and D babuhua sentakk, can change. Can be added, can also be reduced or eliminated altogether. In accordance with the conditions that surround it. Adjustments can be made by first agreeing to consensus. Harmonious to the conditions of each nagari.

2. Undang Nan Ampek (Undang Luak Jo Rantau)

It is suspected that the state wants legal unification, as far as customary law can be set aside, even though custom is a wealth of its own.

Minang people are experiencing a crisis that is very alarming, both traditionally and religiously. Religion and adat are not understood properly. Even though the Minagkabau traditional order is very complete and very well ordered.

Many previous generations succeeded and emerged as highly reliable individuals, even though they did not experience formal education that was too high, but were educated by learning to nature and the highly noble Minang culture. They have very good personalities. In itself engraved a blend of customs and religion. Having excellent oration skills, and other abilities.

One good education is education in the mosque. Minangkabau boys are usually forged in a small mosque that is available in every nigari. Nagari is a non-formal education that is so reliable. In the mosque a Minang man learned about many things. Trained both physical and mental martial arts. Musholla is a gathering place for all people with diverse backgrounds. In that place there are wise people who convey a

lot of wisdom. There are also people who behave improperly. Studying black magic, compassion and a variety of other scientific treasures. Musholla for example is also a haven for divorced men from his wife. There are also parents who were left dead by his wife. At night, teenagers will usually listen to various kinds of stories from these people about their life experiences and complaints about their lives. This condition turns out to make a teenager who spends most of his time in the mosque can make a selection of these various behavior, and will form a strong character. Like cooking, it is necessary to mix various spices that give a pleasant taste, then the various experiences give color which then forms a strong personal figure.

There is a tendency for the younger generation now to consider all the old as irrelevant and unimportant. In fact, great people who were born in the Minangkabau realm, such as Muhammad Hatta, Agus Salim and other national figures emerged as strong individuals because they were surrounded by the Minangkabau culture that is based on the noble tradition based on sharia.

Customary for the Minangkabau people is like the 1945 Constitution as a constitutional state. Every state organizer and all citizens must understand, live and guide the constitution so that the objectives of the state are achieved well. Analogous to this, Minangkabau people can also achieve their life goals. Either as a person, part of the family or part of the community certainly has a purpose in life, which is happiness. Be happy in social life in the natural Minangkabau must be guided by the existing rules. Everyone certainly wants to be happy in their lives. Minangkabau people in living their lives as part of a people, tribe, jorong, nagari, kampong must be guided by adat and shara. If you want to live happily in the Minagkabau realm then there is no other event except to follow the customary path and shara. Life in the Minangkabau realm must know the way of the duo, the way of the world and the way of the hereafter. These two paths are called *adat basandi syara syara basandi Kitabullah*. These two things become Minangkabau cultural identity. If in the context of a state, a prosperous just society would never be achieved if it was not guided by the Pancasila and the 1945 Constitution in a pure and consistent

manner, then the Minangkabau community would also never achieve haikiki happiness if it did not take two traditional and religious paths.

In contrast to the phenomena in some regions which conflict between adat and religion, in Minangkabau, adat and religion operate in harmony. The custom that is elaborated in the *pepatah petitih* which was excavated from the realm of *takambang (sunnatullah)* which in the language of religion is a verse of kauniyah. If you want to know and understand adat well, you must understand the *pepatah petitih*, pantun, gurindam who use figurative language. This is like a person who wants to understand Islam, must understand the Koran and Hadith. Before Islam came, the Minangkabau had been able to read the verses of Allah in the form of verses of kauniyah. Islam calls *walantajida lisunnatillahi tabdila*, the Minangkabau custom stated

tak lakang dek paneh, tak lapuak dek hujan, dianjak tak layua, dibubuik tak mati

Customary harmony with Islam since ancient times can be proven by the fact that since a long time ago if someone died, they were buried. This is different from the traditions of the ancients who burned or washed away the body. Yet according to a history, the Minangkabau people had embraced Hinduism, but if they died their bodies had never been burned as it was taught in Hinduism. For the Minang people, this historical fact becomes clear evidence, that from the beginning Islam and Minangkabau adat went hand in hand. People who do not have a cemetery cannot claim to be Minangkabau. This is illustrated in the phrase *bapandam bapakuburan, basawah baladang*. If then Islam teaches that there is a grave, barzah, surge, hell and so on, then the substance of this teaching is like confirming the truth of the Minangkabau custom. Therefore, for the Minangkabau people, Islam is truly a *rahmatan lil'alamin* and perfects the existence of Minagkabau customs and culture. (Irsal very Idrus datuak Lelo Sampono)

The Minangkabau traditional order always takes metaphors from nature, flora and fauna. For example regarding the appointment of the progenitor must be based on the rules that are revealed in the sentence *batuang tumbuah di buku, karambia tumbuah di mato*. This means that

bamboo shoots grow in the internodes, coconuts grow in the eyes of coconuts. It means that the appointment of a prince must be based on a clear text, derived from the title of the prince who is his mother. The title of the head cannot just appear without a basis.

Custom and Shara; as described above must be seriously practiced in everyday life. If these two rules are abandoned, then the Minangkabau people like life without a clear handle and direction as reflected in the proverb. Today, most people have lived without being guided by these two guidelines. Or those who choose to take only one way, so as to prioritize the world only or vice versa only care about the afterlife and ignore the life of the world. Ignoring adat and shara will cause life obscurity as illustrated in the *pepatah petitih*:

Simuncak mati tarambau
Kaladang mambaok ladiang
Lukolah pao kaduonyo
Adat jo syarak di Minangkabau
Umpamo aua jo tabiang
Sanda manyanda kaduonyo
Pariangan manjadi tampuik tangkai
Pagaruyuang pusek tanah datar
Tigo luak urang mangatokan
Adat jo syarak kok bacarai
Tampek bagantuang nanlah sakah
Bakeh bapijak nan lah taban.
Tasindorong jajak manurun, tatukiak jajak mandaki
Adat jo syarak kok tasusun, bumi sanang padi manjadi
Gantang dibodi caniago, cupak di koto rang piliang
Dunia sudah kiamat tibo, labuah luruih jalan basimpang
Limbago jalan batampuah, itu nan utang ninik mamak
Sarugo di Iman taguah, narako dilaku awak.

Shara 'clearly has the guidance of the Koran, then gave rise to many branches of science, now more of which are symbolically and ceremonially formal but lacking in meaning and substance. The Koran was enlivened through the Musabaqah Tilawatil Quran event, but it was not sought to be truly grounded and carried out consistently. Moreover, customs that do not have written rules. Tambo is indeed available, but it is not a traditional book, it has been mixed with other non-traditional content. Tambo was made after Hinduism and Islam brought a new tradition, the written tradition, while the original Minangkabau tradition was an oral tradition. True custom is an articulation of *'takambang'* nature then stored in the Minang memory. According to oral stories, the Minangkabau custom was formulated by three figures namely Datuak Parpatiah nan sabatang, Dt. Katumanggungan and Dt. Simarajo nan Balego-lego. This custom is then passed down through the generations through speech media. As the expression *warih bajawek, tutua badanga*. Because it is transformed verbally through the speech media, there is a bias, and tends to experience distortion. It is suspected that adat will continue to be eroded, diminished and will eventually disappear. *Mandapek urang dahulu, kahilangan urang kudian,* while the experts who master it are also increasingly rare. The last customary guardians are the datuak pengulu who are responsible for looking after their nephew's children. A master datuk will be given a title which is basically *baban*. Learning from nature, takambang becomes a teacher lifting weights, for example at the head, we must use a *singguluang* (pedestal), as the saying goes *bababan basingguluang*. *Singguluang* for a datuk is the science of adat. It is naive for a dukuh datuk, as a leader for his nephew, if he does not have adequate knowledge about adat. This is in line with the expression of *al'ilmu qabla'amal*. If a person is given the mandate to be a leader even though he has no knowledge of leadership then the implementation will be wrong. According to him at this time many datuk pengulu, ninik mamak who was appointed without sufficient knowledge.

Irsal very idrus said that the government did not pay enough attention to the preservation of Minagkabau adat. Lately the Minangkabau traditional subjects have even been abolished in schools.

Previously, besides being studied in schools in the province of West Sumatra, adat also received attention and a special place in government. Idrus Hakimi dt. Radjo Penghulu, for example, sat on the Regional Representative Council of West Sumatra for 5 periods representing indigenous peoples. Idrus Hakimi is a traditional expert who is also a scholar, an ideal figure to be a headman datuk.

There were no planned and simultaneous efforts to revitalize Minangkabau adat. At present there are indeed many organizations working in the customary field, for example MTKAM, the Ninik Mamak Minangkabau Association, Mamak Bodi Chaniago Association, and the Minangkabau Natural Customary Institution (LKAAM), and there are efforts to form the Mamak Lareh Niniak Association. Until the early 90s, LKAAM was the only Minangkabau adat institution. Now, because there are too many indigenous organizations, it makes efforts to revive Minangkabau adat not well organized. This is like a ship controlled by many skippers, so it is not clear the direction and purpose. Whereas it should, as the principle of the Minangkabau people who study the *Takambang* nature, natural law requires that one ship be controlled by one skipper. Because there are too many traditional institutions, customary patterns are now very religious. Though Minangkabau adat should only be one and uniform, even though there is variation and differentiation at the nagari level. Supposedly, it applies the *headman Sandiko, ulama sakitab*. A further consequence of this condition is the appearance of a headman who is not in accordance with tradition rules. The headman should have fulfilled the provisions, agreed to be joined and then brought to nigari, then arranged as a form of adat inauguration.

When tradition gets a place, LKAAM is fully facilitated by the government. In every regional development planning activity, in the past the one who was always given a respected place to be a guest speaker was an element of traditional leaders from LKAAM, religious leaders from MUI and intellectuals from prominent campuses. At present customary institutions and MUI do not get budgets from local governments,because in general the existence of tradition is not ideal, traditional institutions do not function optimally. However, if there is

a cross-dispute in family and community life, the parties to the dispute still come to the source of the forerunner to conduct mediation. Some people do not put their trust in the prince datuk, because they know exactly that, the traditional leader does not understand the customary rules well. They feel that the decision of the head of the prince is no longer in accordance with adat. It was alleged that the traditional leaders decided the dispute, including inheritance deliberations based on their personal opinions, did not refer to customary rules, because they did not master the rules. When in fact, all aspects of life have been regulated by custom in constitution No. 20. According to Irsal, the ruler who truly understands constitution number 20 does not reach 5%. Far from understanding the whole, concerned with the task of knowledge alone, many have not mastered it well. This condition which is not ideal has a fatal effect which is in the traditional expression called *tungkek mambao rabah*.

Inheritance in Minangkabau is divided into two, including *high Pusako*, whose inheritance is based on matrilineal patterns and *low pusako*, whose ownership is transferred to heirs based on faraids who perform bilateral patterns. *High Pusako* switched its management from Mamak to nephew. It can also be said that *high pusako* are managed based on customary rules, *low pusako* is based on Islamic law. *High Pusako* can be in the form of immaterial, like a title, it can also be in the form of material, like a rice field. Ideally, one should know that the family lineage is four upward and four downward. So, for example if someone dies, they can know who the title of tradition will be inherited from, as well as other material wealth. The tribe descended on male and female descendants, sako descended on men but from the female lineage, while pusako descended on women.

If heirlooms, for example, want to be divided or transferred ownership to the heirs, it must first be determined with certainty whether the status of the treasure is *high or low pusako*.

Basically, pusako is controlled by women, men are only tasked with processing it. Rice yields and other sources of income will be held by women. The key will be held tightly by women. *Rangkiang* at the gadang house will be held by the women. Women in this case

are referred to as *limpapeh rumah nan gadang*. Minang people even feel proud of this system. In general, they are of the view that the existence of property can continue to survive because it is managed by women. Even if the treasure is controlled by men, then most likely the treasure will be reduced and in the end it can even be used up for nothing. The use of these assets in a group is managed by the head of the datuk based on an agreement. The use of pusako is described in terms of *ganggam bauntuk, pegang bamasiang*, meaning that only the results of management are the property of members of the clan. While property rights remain with the people authorized to the headman datuk. Every headman should know all the ins and outs of the wealth that is in his people. Are these assets pusako property, search property, property grants, or other types.

The pusako assets cannot change hands at all through buying and selling transactions. The Pusako may only be mortgaged and even then it is limited for four pressing reasons, including: *rumah gadang katirisan, gadih gadang, mambangkik batang tarandam*. Now there has begun to be a deviation from this customary rule. *Pusako* has already begun to be sold and is certainly a violation of tradition.

Regarding this dual system of inheritance, diverse attitudes emerged from the Minagkabau figures themselves. Ahmad Khatib al-Minangkabawi, a great ulama and an Imam of the Masjidi Haram, expressed his disapproval of the Minangkabau customary inheritance system. For him, the system is contrary to Islamic teachings. This opinion was also agreed by Safrudin Halimy Kamaluddin who stated that the Minagkabau traditional inheritance system was incompatible with Islamic law. While opinions suggest that there is no conflict between tradition and Islam in the inheritance of Abduk Malik Karim Amrullah. He saw that the transfer of customary assets actually used waqf and musabalah instruments that had been practiced by Umar ibn Khattab.

Disputes sometimes arise due to the unclear status of a property, whether it is high or low pusako treasure, as told by Emrizal Dt. Alang Basa. He once resolved disputes in his capacity as a headman datuk. One woman objected to the distribution of assets that gave her brother more portions.

If an inheritance dispute cannot be resolved through mediation by traditional instruments, then take formal legal remedies, litigation paths to the court. For example, starting at the first level at the Religious Courts, an end to appeal was not taken. It turned out that it could not be resolved and then made an appeal, so this method was referred to as *Kusuik sarang tampua, api manyudahi*. Win becomes charcoal, lose becomes ash. If the case reaches the police, 'niniak ammak' will feel ashamed, then pick up the case. The headman who has sensitivity should feel ashamed of his nephew's affairs, for example up to the police, or formal justice institutions. It should be resolved first in the people, not resolved then in the nagari. Sometimes there are also officials who do not want to handle a case if it has not been tried through traditional justice in the nagari. The resolution of the case should have taken the way in the traditional saying called *naiak bajanjang*, *turun Batangga*. So sequentially starting from the settlement at the level of the people by the headman,

B. THE ROLE OF INDIGENOUS FIGURE IN ACEH

Tracking the inheritance law of the Acehnese people, before the arrival of Islam in this area could not be found anymore. This is due to the contiguity of customary law which is very much integrated with sharia law. The combination is the same as a substance with properties that can not be distinguished and separated between the two Islamic inheritance law has become the customary law of Aceh inheritance. Thus, when asked about Aceh's customary inheritance law, the answer is Islamic inheritance law. The combination of the aceh customary law with Islamic law was symbolized by the phrase: *"adat dengon hukum lagee zat dengon sifeut"* meaning tradition with sharia such as substance with nature.[1]

Even though Aceh›s customary law has been integrated with Islamic law, customary inheritance that is common is still found in Aceh›s customary inheritance, such as the inheritance of parents in the customs of coastal Aceh (Banda Aceh, Perlak, and other coastal areas

1 Interview with the Chairperson of the Aceh Traditional Council (MAA), H. Badruzzaman Ismail, SH M.Hum on September 8, 2019

of Aceh) hand it over to girls youngest. If in certain cases, the youngest daughter cannot inhabit the inheritance, then it is left to the youngest son. Aceh Gayo is different from Aceh Pesisir, for the people of Aceh Gayo the inheritance from the parents is left to the youngest son.[2]

Delayed distribution of inheritance, also includes Aceh's customary inheritance law. A father who has died, inheritance is not necessarily shared with the heirs. If the father dies the inheritance is usually controlled by the mother. All inheritance that is managed by the mother will be used for all the needs of family members. This mastery continues until all family members have an established life. If the mother does not have the ability to manage this inheritance, the management is left to the oldest child. Family unity and family dignity are held by the eldest child after his parents have died. The oldest family will manage all the inheritance to account for family members until all family members have an established life. The inheritance will be distributed by the eldest child after all members of the family have a stable life.[3]

Common assets are also known in the customary inheritance of the people of Aceh, termed shared assets. Acehnese people recognize three forms of inheritance in their customary inheritance namely seharkat (shared) assets, inherited assets, and individual assets specifically given to husband or wife based on their achievements, such as gifts from the government for special creations and awards given to a husband or wife. Shared assets are also divided into the category of domination of acquisition of assets, whether a husband or wife, if the shared assets are more dominated by a husband then the division of assets becomes 1: 2, conversely if the more dominant wife gets union property then the distribution is directed at the similarity between the part of women and Male. Thus the distribution of inheritance is sometimes based on the social status of the heirs. Heirs who have a stable life often surrender more property to his brother who is weak economy. If there is a dispute in the distribution of the inheritance of the people of Aceh this time the division is based on Islamic teaching. The stages of inheritance are usually carried out in the following steps:

2 Interview with Fahmi, a resident of Banda Aceh on September 7, 2019

3 Interview with the Chairperson of the Aceh Traditional Council (MAA), H. Badruzzaman Ismail, SH M.Hum on September 8, 2019

1. Identification of assets, whether there is inherited wealth, or special gifts to the husband.
2. Separation of burlap assets with luggage, or special gift from an official.
3. The union property is distributed to the wife of 50%, the rest is then distributed based on Islamic inheritance.[4]

1. Inheritance Dispute

Inheritance disputes in the Banda Aceh community are usually resolved first by the Banda Aceh community customary institutions. If a dispute cannot be reconciled at this level, then the dispute resolution will proceed to the Shariah Court. In general, disputes that occur in Acehnese society such as inheritance disputes are usually resolved by *gampong*[5] traditional institutions, which consist of geudjhik, Tuha Peut, and Tuha Lapan. If a gampong traditional institution cannot solve it then it is raised to *Mukiem*[6]. If this has not yet been reconciled, the case will be transferred to the court. This traditional institution has a strong position because this institution has been formally regulated in constitution No. 44 of 1999 and Qanun[7] No. 09 of 2008 concerning Aceh's special governance system. Both of these traditional institutions have the authority to hear disputes over inheritance in Aceh's society. If the two elements of the indigenous figure do not have knowledge of inheritance, they will summon people who are able to provide explanations of the distribution of inheritance based on Islamic law.[8]

4 Interview with the Chairperson of the Aceh Traditional Council (MAA), H. Badruzzaman Ismail, SH M.Hum on September 8, 2019

5 The traditional institution in the village consists of religious scholars, clever scholars, traditional leaders, and elements of government. Interview with respondents September 7, 2019

6 Mukiem, according to H. Badruzzaman Ismail, was different from the camat in the Aceh governmental institution. Camat does not have a specific area, Camat only serves to assist administrative affairs as an extension of the Governor. The owner of the area is a mukiem led by an Imam Mukiem. This term was introduced by the Iskandar Muda Government for the term mukimin in Islamic law which consists of 40 families as a condition for establishing Friday prayers.

7 The naming of rules as qanun according to H. Badruzzaman Ismail, which has its own uniqueness to the people of Aceh, their level of compliance with the rules in the qanun is higher than the law because the qanun is a familiar term and customary language in Acehnese society.

8 Interview with the Chairperson of the Aceh Traditional Council (MAA), H. Badruzzaman Ismail, SH M.Hum on September 8, 2019

Settlement of inheritance disputes is usually related to disputes between heirs in terms of determining each part of the heirs, whether using a system of inheritance distribution based on Islamic law, or based on agreement only. Aceh traditional figure Adnan Ali, a member of the Aceh Consultative Assembly (MPU), explained that disputes over inheritance disputes such as this were not resolved by the most votes of all heirs. This means that if 4 heirs are in dispute, 3 of them agree to use the distribution of inheritance with the Islamic inheritance system then not the most votes are used, but indigenous figure only explain that 3 people out of 4 brothers want the division of inheritance with Islamic law, then the traditional leaders only explains part three of those heirs based on Islamic law. After this explanation is completed the heirs are left to make a decision whether the distribution of inheritance is carried out with the Islamic legal system or based on agreement only.[9]

The role of traditional institutions of gampong and mukiem is very strategic in Acehnese society. Inheritance cases are usually settled at the judicial level of this traditional institution. Inheritance disputes must not be directly reported to the Shari'ah Court, but must first be resolved at the gampong level then mukiem, and then to the Shari'ah Court. The parties who complained about their inheritance case to the Sharia Court without going through the two traditional institutions, the process will usually be returned to the traditional institution. Thus the role of adat institutions in resolving disputes must be very strong within Aceh's indigenous people.[10]

C. THE ROLE OF INDIGENOUS FIGURE IN SOUTH SUMATERA

Palembang residents are a unique community. After the passing of the Srivijaya kingdom, there was a struggle for the throne of Demak. The party that lost the war then fled to another area. The group

9 Interview with indigneous figure Adnan Ali, member of the Aceh Consultative Council (MPU) September 7, 2019

10 Interview with the Chairperson of the Aceh Traditional Council (MAA), H. Badruzzaman Ismail, SH M.Hum on September 8, 2019

then arrived in Palembang. Then there was assimilation between the defeated troops in Demak and the local population. So in fact the ethnic that is now developing in the city area of Palembang is a mixture of ethnic Malays and Javanese. This combination can be clearly seen from the variety of languages that are used practically in the daily lives of Palembang people. The basic language is Malay, but absorbs a lot of terms derived from Javanese. For example kulo, iwak etc.

Politically, a Malay sultanate was established which was a protectorate state that was subject to the kingdom of Demak, so at that time there was an obligation to offer tribute periodically. The kingdom was named Sultanate of Palembang Darussalam which was founded by Sultan Abdurrahman

This kingdom is a government that enforces Islamic law so tightly. For example in the aspect of art and culture, women are prohibited from appearing as singers or dancers, because showing the shape of a woman's body is an act that is forbidden by Islam. It is a disgrace for a family and feel insulted if there are children who appear as puppets.

The rules that are enforced as a guide to people's lives are the words of the Sultan which are oriented towards Islamic law. The Sultan's word is a living law and effective, consistently obeyed by the people of Palembang City. Determination of Ramadan I and 1 Shawwal for example, is fully guided by the words of the Sultan and then followed by the whole community.

For the periphery, there is a legal provision called Simbur Cahaya. This rule had appeared before the era of the empire, and still maintained as part of local wisdom that was effective enough. Simbur Cahaya is even a source of law that is expected to enrich national law.

As a result of losing the war with the Dutch troops, the palace was burned and all astnya disappeared because of burning and some were taken to the Netherlands. While the royal relatives were evacuated to Ternate. At present it is relatively difficult to trace the royal heritage in the form of important and historic items and in the form of influence in life in society.

Relatively, there are no traditional leaders who still have an influence on the lives of Palembang people. In carrying out community traditions at marriage ceremonies, for example, it is not guided by a person who is a respected traditional figure, as for example there is still an effective function in other regions in Sumatra, such as in the Tapanuli region and the Minang realm. In Palembang, traditional traditions are guided by someone who is considered to have sufficient knowledge about customs and traditions, regardless of their background. This means that anyone can be a person who guides the implementation of tradition in marriage as long as they have adequate capacity of traditional knowledge.

As a manifestation of compliance with Islamic law, the implementation of marriage is more Islamic law. The contract was held at the groom's house without the bride present. The contract was only attended by the guardian of the bride. At present, this tradition is still relatively enduring, of course, the implementation has begun to emerge that does not fully refer to the old tradition. On the other hand, Palembang during the colonial period is somewhat homogeneous, and there is a kind of prohibition for people from other regions to enter the city of Palembang to then permanently reside in the city. Raden Muhammad Ali Hanafiah told that his grandfather, Cek Shaykh in his capacity as Demang, was the first person to give immigrants permission to live and become citizens of the city of Palembang, so he was dubbed the Raden Kafir. This is a breakthrough that has stirred up the stability of Palembang residents who are considered to be very protective and highly safeguarding traditional traditions and values with Islamic nuances. At that time cycling alone was considered as an activity which was forbidden and forbidden in religion. Cek Shaykh as a progressive and reformative figure then do a lot of change.

At the moment concerning the effort to preserve customs and culture, Regional Regulation No. 9 of 2009 concerning.

About the Board of Customary Trustees and Indigenous Stakeholders. But actually, starting in 2005 there have been efforts to revitalize adat. However, the institution formed was not independent. RM Ali Hanafiah stated that it was felt that this institution was not

independent, its existence was to succeed the government program. The general chairperson of this customary supervisor is ex officio held by the Mayor. While the Chief Executive was held by a native Palembang figure. This structure is actually a strength in itself because it involves the Mayor. Often, institutions at the regional or national level do not seem to have the strength and do not function effectively because they do not have the support of the government. Moreover, it turns out that the appointed Chairperson is a community figure who understands local customs and culture well. In this case, actually it takes the ability to communicate with the local government which actually has been an inhern part of the organization.

It was also explained that the implementation of adat began to be eroded due to the poor **economic conditions** of the community. Implementation of adat requires a **large fee**, especially if the tradition is carried out in full and complete. From this cost aspect, the community will implement adat, for example at the time of marriage according to their economic capabilities. This is certainly a principle that is quite good, because it does not force yourself. This is different from the principle of some people in South Tapanuli who are sometimes forced to sell land or owe money to carry out *horja godang*.

Another obstacle, of course, is the availability of human resources, who still understand traditions and customs well. The next obstacle is time availability. The implementation of the tradition as practiced by the ancient indigenous peoples requires a very long time. This might be caused by people's lives which are still fairly simple. Community professions, which are generally farmers, have such free time to linger in carrying out a long series of traditional ceremonies. The time they have will be more free, if for example the implementation of adat in the post-harvest period and waiting for the next planting season. The emptiness of time is filled and the community feels comforted by the implementation of such a long tradition. At present the people of the city have a different lifestyle. Their time is taken up to fight for each other's family life. This change has reduced the concern for tradition.

There used to be a standardized form of tradition, especially from the aspect of cost calculation, with a medium form, not too simple so that it seemed not charismatic, and also not too luxurious so as not to burden. The customary practice formulated by Cek Shaykh has lasted quite a long time, because it is considered to be a middle ground of this problem.

One thing that is interesting, in the dynamics between tradition and religion of the people of Palembang has a principle that is reflected in the phrase *Adat dipangku syara' dijunjung*. This means that the tradition is carried out as a tradition abandoned by the ancestors, but religion has a higher position which is described in the sentence: *dijunjung* or upheld. If for example there is a conflict between religion and tradition, religion must take precedence, because it is the highest rule that must be obeyed.

Society understands adat as a rule that is flexible and not sacred, so that if desired by a changing situation the tradition needs to be adjusted to the actual conditions of the community. Customary fanaticism is not seen in the Palembang city community. Traditions are considered complementary, while religion is primary. There is an option for every person or family who will conduct a custom event to make a choice of custom packages according to their abilities.

Changes in adat can be seen very clearly at this time, that the implementation of the marriage contract no longer has to be in the bridegroom's residence. On one hand, this seems like a change in adat, which is actually also a phenomenon in each adat area. However, for the Palembang region, this change is more reflective of the flexibility of adat which has been around for a long time. An interesting thing, the people of Palembang city have never entered into a marriage contract in the mosque precisely because of compliance with the teachings of Islam itself. They are worried that if a marriage ceremony is held at the mosque, there will be a menstruating woman who is a relative of one of the brides entering the mosque. Even though they strictly adhere to the provisions of fiqh which prohibit menstruating women from entering the mosque.

In terms of inheritance, the distribution of testator's property is divided according to Islamic law. Concerning the portion of a child's portion, it is carried out according to the provisions of Islamic law that the portion of a daughter is half of that of a boy. Inheritance conflicts are resolved by elders in a family. Differences of opinion in the distribution of inheritance do not necessarily lead to litigation efforts. The people of Palembang city are people who highly respect older people, so people who are classified as older people in large families, such as uncles, or even grandfathers if still alive will usually be effective mediators in resolving inheritance disputes. Family elders will try wholeheartedly to reconcile disputing families, and not to stick up in the community because it is a family disgrace.

In addition, to avoid conflicts or even inheritance disputes, the determination of heirs in the Religious Courts is carried out. The Religious Court was chosen because it is an official institution that in the opinion of the most competent people in completing the distribution of inheritance. Even though religious courts are involved, efforts are made to avoid litigation through a lawsuit process, but the Court is positioned as an institution that provides certainty and mediation between heirs and not in the context of disputes. The completion of this model is also effective in the distribution of inheritance while anticipating conflicts or inheritance disputes. Based on the experience of the heirs, this settlement can really complete the distribution of inheritance without leaving conflict.

To ensure that all heirs receive their respective rights, this process involves elders who are considered to be most aware of the ins and outs of the family concerned. Usually there is one person who holds the secrets of a family that will be opened at the right time when needed. Ali Hanifiah explained that there was a testator who died and had a second wife who was married under the hand, not through an official legal registrar in the state at the Office of Religious Affairs. The elder of the family then revealed the fact that the heir was a polygamist and had three children from his second wife who were married by Sirri. While the first wife who was officially married there were also three children. So before it is divided, it is necessary to make sure who, and how many

people are heirs and are entitled to the distribution of inheritance, so that no rights are violated which in the future has the potential to cause conflict or inheritance dispute. The practice of informal marriage itself is allegedly widely practiced by economically capable people. Sometimes the practice of polygamy is uncovered accidentally in the dynamics of social life. There is a practice of polygamy which is then known from the data of parents at school. There was a person who sent his children to a different wife and was actually kept secret, in the same school. The school later learned that the children who did not know each other turned out to be siblings with 1 father, from the same parent data.

There is also an unofficial practice of polygamy with the agreement that when a child is born, the child is accompanied by the father. After that, Siri's wife, in accordance with the agreement, after receiving compensation in a certain amount, left her husband and child, female, migrated to Lampung province. The old wife considers the child to be adopted as an adopted child because she helped to take the child to the General Hospital, when in fact it was the biological child of the husband and his young wife who were married by Sirri, and had gone abroad. Not long after that, the elderly wife became pregnant and then gave birth to a child, so the two children grew up and grew up together. The husband kept it a secret that his first child was his biological child, but it was revealed when he married the child that the husband insisted on becoming a guardian and called his daughter by his own name. The husband is forced to admit that the child is actually his biological child.

The elder is also a person who knows the existence of inheritance. Because in the past, the determination of boundaries of property was carried out without written evidence, the elders clearly knew the assets of a testator. Land purchase transactions are usually not supported by written evidence, but are based entirely on the principle of mutual trust.

Because the material law on the distribution of inheritance refers entirely to Islamic law, in this case the role of the *indigenous figure* is not so apparent. For the people who are the most masters of Islamic law, of course, those who study Islamic law academically, namely Islamic

law scholars, both religious teachers, judges or academics on campus. In addition, the existence of traditional institutions is not considered to be rooted, does not emerge itself from the community so that it does not feel like an institution that is united with the community, but instead is seen as part of government programs. In contrast to the existence of the ninik mamak in Minagkabau which is an inseparable part of the existence of the community itself. Then it can also be added that the effort to revive traditional institutions and in turn revitalize customary norms, get obstacles from elements present in society and government. There are those who see the effort to revive this custom as an opportunity to gain social and economic benefits, and when this is seen, then make the motor of the dominance of the business and then not too eager to complete the effort to revitalize the tradition.

Ali Hanafiah said that as a native Palembang son who was also a descendant of the Palembang sultanate's relatives, he felt compelled to form an independent traditional institution, because according to him this method was actually the most effective way to revive Palembang Malay customs. It's just that he felt alone and did not get adequate support from other figures. He then called proverbs. There was no raft by a reed. While the support of the heirs of the Sultan of Palembang Darussalam is not possible, because there is currently a struggle for the throne of the Sultanate of Palembang by two descendants of the Sultan who claim that he is the title holder of the Sultan. Even though these two figures were not domiciled in the palace as official symbols of the empire, because since 1825 the palace had been burned down by the Dutch. At present there are relatively no historical relics of the empire that can still be witnessed. At the time of the war, everything related to the empire was completely eliminated by the Dutch army. At that time the Dutch army had such strong motivation to destroy the Palembang Darussalam Empire, because they had received a promise of rewards in the form of a two-level promotion and payment of salary equivalent to 12 months of normal salary. Now only a fortress if for example made of material that can be burned must have been destroyed. The fort was now used by the military as a base and was not rebuilt and was later occupied by descendants of the Sultan of Palembang.

Some people take other ways in completing the distribution of inheritance, by consulting with religious leaders. In the city of Palembang there is a Religious Consultation Bureau which is a form of devotion to the Great Mosque of Sultan Mahmud Badaruddin I Jayo Wikramo, located in Palembang City Center. Religious consultations are served every Tuesday and Thursday from 09.00 to 12.00 West Indonesia Time. The implementation of this consultation went well and used relatively good administration. Everyone can be consulted on all religious issues. Before consulting, the person is required to first fill out a form containing data and issues to be consulted. From the form provided by the management, it can be seen that the problem areas can be related to inheritance, family, health, and other problems. Based on Tholib's information, many people use consulting services on every schedule provided. The people who came consulted were not only from around the city area of Palembang, but also came from various other regions in South Sumatra that were considered to have a considerable distance. That is, the Consultation Bureau has been trusted by the community and becomes the foundation of settlement of various religious questions. Because Islam is presented as a religion that regulates all problems, people come to consult about many things, including problems that were not foreseen. For example, because of problems with insomnia, romance and many other problems.

And quite a lot of those who came consulted about the problem of inheritance distribution. This bureau is only in charge of serving the questions raised by the community, and it is hoped that with the knowledge they get from consulting they can then solve their respective problems. In general, the settlement recommendations submitted by the Consultation Bureau are sufficient to be the basis for the settlement of parties who will divide inheritance. Tholib said of course there were also those who felt dissatisfied and proceeded to the official justice institution. Consultation is usually carried out personally by the heirs who come alone. So it is not a settlement that presents all the heirs and provides a concrete, direct solution to the execution of the settlement of the distribution of assets. However, there are also a number of cases that have been disputed and then

ask for ffaraid settlement instructions. For example, there are cases of inheritance disputes between brothers and sisters who have no children. The husband and wife have passed away and left quite a lot of wealth, and do not have children as heirs. The siblings on the part of the husband feel that they are the most entitled to get property, as well as the sisters on the part of the women. The two parties each brought a lawyer when consulting with the Great Mosque Religious Consultation Bureau. The bureau offered a resolution, but the parties proceeded to the Religious Court. The consultation bureau usually emphasizes the moral aspect, not merely giving advice from the legal aspect, so that the parties then reduce their selfish tension, and seek a common ground for a peaceful settlement. The consultation bureau also ascertain whether the residents who come to consult have truly understood it after being explained by experts who submit suggestions for settlement. After truly understanding, then the consultation may be over. The person who was consulted was also given suggestions for settlement and written calculations to be then applied by the heirs.

Some people bring a case of inheritance on a criminal matter because it is suspected that there are those who deliberately control their own inheritance more than the proper amount. Burhanuddin as a lecturer in Fiqh Mawaris UIN Raden Fatah Palembang admitted that he was often assigned by the Dean of the Faculty of Sharia and Law at the request of the Palembang City Police or South Sumatra Regional Police. Actually inheritance is a civil law area but it can be related to the criminal element with the alleged embezzlement of inheritance. An amicable settlement will be sought by clarifying the part that should be faraid, if it is exceeded it will be subject to the article on the embezzlement of assets. Not infrequently Burhanuddin as an expert witness suggested to go to the Religious Court to realize legal certainty. Reporting to the police is usually pursued because no agreement was found in the family meeting.

In the Semende tribe there is a position known as Meraje, which is a family elder who is respected and listened to by all members of the extended family. Meraje is the one who takes the role to solve all problems and conflicts or disputes that occur in the family. Meraje

will also play a role in solving problems that occur between families. Meraje from one family will negotiate with Meraje from another family to find the best form of solution. All family matters, in principle, must be approved by Meraje. If a child is going to get married, for example, he must first ask for his blessing. Without Meraje's blessing, the community is also not willing and will not give any response to be involved in the marriage of the child. When a family expresses its intention to marry off a child, the community will question Meraje's blessing. Ideally, Meraje must immediately present his agreement. Included in the mourning event, a body could not be buried without Meraje's knowledge. If Meraje cannot attend, then at least Meraje knows and conveys his absence. As an ordinary person, Meraje can also be involved in a family and community problem. Then the role of solving the problem is *'Payung Jurai Semende'*, *Jenang Jurai*. This jurai is a kind of big family dynasty. This jurai can sometimes also be used for political purposes in village head elections, for example. Candidates who will win political contestation are usually the ones with the greatest jurai. However, when the jurai is not compact and not committed to the unity of the jurai, it can also be a threat that weakens, and even results in defeat.

Large problems will be resolved at the level of the jurai involving a large number of people. Violations of the law, in addition to being subject to criminal penalties, are still compounded by traditional sanctions which are decided at a jurai meeting. A person who commits murder will be subject to additional punishment in the form of 'diyat kalua', which is demanded by the victim's extended family. The penalty can be in the form of one hundred head of cattle which will be borne by the extended family of the perpetrators who are paid in contributions.

Meraje is only authorized in the internal family. Does not have territorial authority, the authority is only familial. This means that it is limited to the extended family only. As far as the internal affairs of the family are concerned, they will be fully obeyed by all family members. Deviations still occur, that in very few cases there are family members who disobey and ignore their Meraje, do not comply with the solutions submitted by the Meraje concerned.

Related to inheritance, the term 'Tunggu Tubang' is known, that is, a person who is given the authority to control the fields, fields and other assets to be processed and managed for the common good. *Tunggu tubang* itself means pile guard, meaning that guarding and caring for family assets. The oldest daughter in a family will play the role of waiting for the tubang. If in a family there are no daughters, then the wife of the eldest son who then functions as a waiting tubang called *'tunggu tubang ngangkit'*. In the next development, *tunggu tubang* will be given to children who live in the village or village where family assets such as rice fields, gardens, ponds and other forms are located. Thus *tunggu tubang* has experienced a shift in accordance with the needs of a particular family. Now many families who give this waiting position are not to the eldest daughter, or the wife of the eldest son. People who are supposed to automatically hold the position of *tunggu tubang* are often not domiciled in their hometown for some reason. They live their lives in other cities or regions because of pursuing a certain profession or marrying a spouse who comes from another region, and then choose to dominate in the spouse's family. On the one hand the phenomenon of the community leaving the village becomes an indicator of the progress achieved by the person due to the improvement in education and various other improvements that he has achieved. But on the other hand it becomes a kind of vulnerability for the continuation of family property, or it can even be a source of conflict.

In this case, the Semendo tribe community looks realistic and prioritizes the purpose of the referred custom of waiting tubang. The main substance and purpose of waiting for tubang is to protect, maintain, manage or if possible develop assets owned by extended families. This main goal is impossible to achieve if it is carried out by someone who is not domiciled at the location of the family's assets. If *tunggu tubang* to be forced to be held by the eldest daughter even though she is not domiciled in the village yard, it is likely that the family assets will be neglected, not properly managed.

Tunggu tubang to do its work under Meraje's supervision. If *tunggu tubang* to be seen to have started to diverge in managing the inheritance, it will be reminded and straightened out by Meraje. This

is a way to ensure that family inheritance is shared to meet the needs of all family members. Thus, *tunggu tubang* is not biased arbitrarily destroying property for personal gain only. Hendri Suherman said that today, there is a tendency for *tunggu tubang* to master themselves for their personal interests, the inheritance of parents because they are influenced by a third person, usually by the couple of *tunggu tubang*. The temptation to shift the function of family assets is so great, because of the increasing economic needs of the family, to support the various costs of family life. According to customary rules, *tunggu tubang* is obliged to ensure that all of its siblings live properly. Family assets are used to ensure that no family lives miserably, fulfilling their primary life needs. Although her siblings turned out to be all well-off, if their siblings returned to their hometown at a certain moment, usually on Eid al-Fitr, *tunggu tubang* was obliged to entertain their brothers in the hometown. At this time many people have ignored these obligations, and do not want to share with their siblings even if they only receive services when they return home to give up longing with their fellow relatives. *Tunggu tubang* in this case often do not understand the duties and functions as desired by custom. There are some who feel they have a respectable place because they are in the position of *tunggu tubang*. So she felt she should be served as a form of respect from her brothers who came from overseas. Wait, see that his siblings are more advanced and have better economic capabilities than her. Therefore she thinks that her brother does not need to be treated. In some families jealousy sometimes arises to his siblings who are more successful from all aspects. Higher education, economic ability also far exceeds him, the children of his siblings are also many who have succeeded in education and employment. This fact makes *tunggu tubang* feel jealous and then it impacts on not carrying out the task of *tunggu tubang* as they should.

Property management by taking benefits without being allowed to have this, is similar to high pusako in West Sumatra, but different in its implementation. Assets controlled by *Tunggu tubang* do not differentiate the source of wealth whether it is a family hereditary inheritance that is categorized as high pusako, or the search results are referred to as low pusako. The tradition of *tunggu tubang* is still perpetuated by the

Semenda tribe until now. This *tunggu tubang* property has traditionally taken place, without the support of the state administration. So the property does not have a certificate or other written evidence.

In the event of a dispute over the resolution of tradition it is still effective. If, for example, someone tries to withdraw a dispute over the property of *tunggu tubang* into the realm of law through an official judicial institution, the Court will see whether there has been a customary peaceful effort. If not, the Court will ask the parties to return to their hometowns first to be mediated by Meraje from the family concerned.

Zuhdi as an Islamic inheritance expert who served at UIN Raden Fatah was also often asked for personal explanation by the community members who would share the inheritance. Usually people or families who come to ask for advice, then will comply with the advice and apply it in dividing inheritance. Zuhdi conveyed a fairly unique experience when giving a problem of inheritance, one day when he was visited by an heir to be asked for an explanation of the distribution of inheritance in accordance with the conditions of his family. The person was not satisfied, then went to the Indonesian Ulema Council in Palembang. By the chairman of the MUI, Zuhdi was asked to provide an explanation. This means that the person tries to avoid Zuhdi because his advice is considered unfavorable to the person concerned, so looking for suggestions that may be different and can provide benefits, but apparently meeting again with the same person.

In this Semende tribe, there are no respected figures who influence the society as a whole. Only traditional family figures can be referred to as figures who maintain traditions or customs. Actually Meraje is similar to Datuk Penghulu in Minangkabau. The difference lies in the absence of authority figures on a regional basis, while in Minangkabau customary instruments are arranged starting from the family level to the community level.

D. ROLE OF INDIGENOUS PEOPLE IN DELI

Medan is a land of Deli, which is under the Sultanate of Deli 'darul almu'tazim billah.

Deli used to be under the rule of the Aceh kingdom during Sultan Iskandar Muda. Deli was founded in the 1630s. The Sultanate of Deli oversees 9 regions and becomes 4 cities / regencies, namely Medan City which is the capital of North Sumatra province, part of Deli Serdang Regency, part of Serdang Bedagai, and Tebing Tinggi city.

Deli sultanate as the Monarchists oversees 9 regions which are also like kingdoms. These 9 regions are local kings. Each region is headed by Chief Urung with the title Datuk. For example, for the region of Medan Sunggal, there is an undo head who holds the title of Sri Indra Pahlawan.

Deli empire equipment consist of mufti authorized in the religious field, for example, determine the beginning of Ramadan, Eid al-Fitr and various other religious issues. There is a prime minister, there is a secretary, there is a right and left a heralds.

There is a written regulation called qanun which has been lost and cannot be traced back to its existence. During the deli forestry period, there was a formal rule governing certain sanctions for violators. The royal administrative system and all official documents have been lost without a trace due to several factors, such as:

1. There was a fire in the palace in 1946
2. The period of turmoil between the transfer of the Sultanate of Deli to the government of the Republic of Indonesia.
3. The occurrence of social revolution, the weakening of the role of the Sultanate of Deli.
4. The Sultanate does not have a de yure and de facto role, and there is no support for the preservation of the Sultanate's assets, which are documents owned by the empire.

At present existing in certain people, usually imperial relatives are documents compiled on personal initiative based on the direct experience of the person concerned. The document is certainly not an official document of the empire. Ideally, there are 3 components that are responsible for preserving the treasures of the Deli Sultanate, namely the holders of the Deli Sultanate, Deli sultanates relatives and the Deli Malay people. The three components must synergize and play an active role in maintaining the wealth of the Malay Deli tradition in accordance with their respective proportions.

At present, routine activities are still held called the Junjung Duli event, a kind of open house event, or such as Sungkeman in Java, which is held after the Eid al-Fitr and Eid al-Adha prayers. This activity was attended by all components of the empire in full. It's just that the implementation of this event is not as vibrant as it used to be because especially the limited financial capacity.

The Deli Sultanate throne holders are also still preserved from the descendants of the original Sultan Deli and there has never been a struggle for the successor to the Sultan's throne. Since 1630 until now, it is still the main heir, the son of the previous Sultan. The sultan who is enthroned is now the 14th Sultan named Sri Paduka Sultan Deli XIV Tuanku Mahmud Lamantjiji Perkasa Alam, born August 29, 1998, ascended the throne on July 22, 2005. This situation has been going on since the independence of the Republic of Indonesia, precisely since the time of the Deli XI sultan. The role of the customary head is itself with a fading effect. Like a proverb **there is a time, there are people**. Sultan's power had a time, and today there are other official power holders. Based on the course of history, the existence of the Deli sultanate experienced ups and downs and influence that went hand in hand with the strengthening or weakening of the empire's power. The Sultanate of Deli in this case through 5 phases of government, including:

1. Phase when under the rule of the Sultanate of Aceh Iskandar Muda.
2. Phase when under the Sultanate of Siak Riau.
3. The stand-alone phase.

4. Colonial period. At this time the Sultanate of Deli was not annexed by the colonial government, but was in a position equivalent to the colonial government. Sultan Deli was recognized by the Colonial and all forms of relations were arranged in the form of cooperation, for example there was the Deed of van Konsesi. All forms of administrative relations were signed by both parties between the Sultanate of Deli and the colonial government. There are joint arrangements regarding concession rights, usage rights, business use rights and other matters in the form of written cooperation that illustrates the equality of the Deli Sultanate and the Colonial Government.
5. The governance phase of the Unitary Republic of Indonesia. This happened at the time of Sultan XI who declared joining the Republican Unitary State which was carried out without any written documents. In this phase, the Deli sultanate still received recognition from the government, for example there was a letter stating that the Deli Sultan was indeed a sultan who was enthroned in the Deli Sultanate. The letter was issued by the Governor of North Sumatra, but was not recorded in the State Gazette. This is different for example with the recognition of the Sultanate of Yogyakarta as set forth in the State Gazette.

Of the five phases, when viewed from the tasks and functions of the Sultan Deli, in the beginning did not know Trias politica. In this early period, Sultan Deli concurrently all state duties. The Sultan is the head of government, as well as a warlord, head of the religious and other fields. In the course of time then developed with a variety of devolution of authority, so that new positions were known, such as the Prime Minister Datuk, there were tengku tumenggung, admiral tengku, tengku treasurer and other duties. The tasks are analogous to the duties of state officials in general as they are now in the government system of the Unitary Republic of Indonesia. The Sultan is equal to the president, the head of the commander is the same as the Commander of the Indonesian National Army, Mufti is the same as the Ministry of Religion. Now among these authorities, only one authority remains, as the customary head.

The rule that is consistently implemented in the Deli Sultanate is Islamic law. All rules relating to the norms of state life are fully referred to Islamic law. The relatives of the empire were also subject to the provisions of Islamic law. For example, related to state assets, the Deli sultanate relatives did not try to transfer state assets into personal assets. There is a strict separation from the Sultan's role as head of state / government and his role as head of the family. Regarding state assets, it is still maintained for the sake of the continuity of the Deli Sultanate, a set of family assets are divided according to faraid provisions. There is no division according to adat that differs from Islamic law. Regarding the distribution for children, for example, the Islamic legal provisions governing the portion of 2: 1 division between boys and girls. This purchase has been going on for generations. The sultanate did not know any other way of division that was different from the provisions of this Islamic law. Tradition and religion are two entities that are one and have become intrinsic legal awareness. For a long time, if the sultan died, his wealth which was a private property separated from state assets would always be divided according to faraid provisions.

There is a traditional part that lasted a long time, which was identified as not constituting Islamic teachings, such as the plain flour ceremony. This ceremony is now undergoing Islamization in its administration, which is replacing the old utterances with prayers and other Islamic reading. So the traditional ceremony which according to some as a 'bid'ah, still refers to servitude to God. The ceremony is even intended to get a blessing from Allah with readings that are easy to say. For example reading surah al-Ikhlas because usually every Muslim memorizes this short surah.

To oversee the implementation of the official regulations of the empire, a judicial institution was formed. There were two types of laws that prevailed at that time, namely the European Law which applied to Europeans and the Far East. For indigenous people, customary law applies under the Sultan Deli. European law applies in the Gementee region, and Malay customary law applies in the Swapraja region. There is a customary density which is a court for indigenous people who are

equipped with prisons. For the Gementee area there is a representative of Sultan Deli. Material and formal Hokum refers to Malay customary law. Office in front of Maimun Palace to try indigenous people.

Islamic law as a formal law is applied consistently including in criminal cases. Adulterers are sentenced to stoning or whipping. Thieves are punished by cutting off hands or fingers. In addition, social sanctions are more severe than criminal sanctions themselves. The offspring who will share the shame of his father's behavior, because he will be known as a child of a thief based on physical characteristics due to physical punishment itself.

At this time, at least there are still symbols of the existence of the Sultanate of Deli, namely the Sultan there is still a hereditary and uninterrupted even though its role is now limited to the customary head, secondly, can still see the outer regalia in the form of the greatness of the symbols that still exist, namely Maimun Palace, Masjid al Mahson is still under Sultan Deli. The administrative density office no longer exists. The Deli Sultanate administration building was formerly multi-functional including for the judiciary, borrowed to become the Deli Serdang Regent's office. Thirdly, there are still customary apparatuses consisting of large viziers with the title of Tumenggung, Tengku Admiral, Head of Religion and others. The head of religion is now called the High Priest who is currently held by Drs. H. Sheikh Salim Ulumuddin Sira. The four Sultan Deli still has customary territories. Fifth, there are still indigenous peoples and relatives.

The indigenous peoples of Deli are incorporated in various organizations as a means of affirming their attachments, with the indigenous culture of Malay. For example, there is the Formad (Deli Indigenous Peoples Forum), IKD (Deli Family Association), Mahadi (Deli Indigenous Law Society), the organization functions as a forum for unity and efforts to revitalize the Malay Deli customs. This organization is also a place to discuss various dynamics of community life problems with Malay Deli. The Sultan is the protector of all Malay traditional peoples organizations. If needed by a condition that urges Sultan Deli can intervene to solve community problems.

Regarding inheritance issues in the sultan's family, there was a division of inheritance through what was called the 1925 Agreement, namely the agreement on the distribution of the inheritance of the Sultan IX who died in 1924. What is called the 1925 treaty should more accurately be called a will containing about the way the distribution of inheritance by mentioning the heirs and the number of their respective parts. Examining the contents of the letter, the substance is in line with Islamic law governing the distribution of the inheritance of sons and daughters 2:1.

As for the inheritance dispute that occurs in the community, if it concerns land that was formerly included Sultan's grant (land belonging to the Sultanate of Deli), then the community will submit an application to Sultan Deli to provide clarification on the status of the land. Until now a lot of land was based on a letter issued by the National Land Agency which was Grant Sultan's land. Often the land that belongs to the Sultan Grant area has been granted by Sultan Deli to one of his relatives or even to the community. There is land that is given through abundant gift to certain individuals because it is deemed to have served the Deli empire. There is also what is given through the instrument to cultivate a garden, is a person who is given land for business through a plantation business. Both types of land ownership devolution from the sultan's granting remain under the control of the sultanate. If the land is to change hands, it must be approved by Sultan Deli to ensure that the land remains in the hands of people with the same Aqeedah as the Sultanate of Deli.

Every land transaction through the sale and purchase method or other means, whether between individuals, or between private and investors, or the government with investors or other forms must be in the knowledge of Sultan Deli because Sultan Deli's rights remain attached to the land that belongs to Grant Sutan's territory. This was done in writing through correspondence. The person or institution will deliver a letter to the Sultan to obtain a written clarification that will be returned by the Sultan through an official letter from the empire.

The role of the Deli sultanate as a tradition holder in the settlement of inheritance disputes, is simply to clarify land related to the sultanate. While concerning the resolution of the substance of the dispute, it can be said that it does not have a significant role.

There is still a state appreciation for the existence of the Sultanate of Deli. For example, in every implementation of the commemoration of the independence of the Republic of Indonesia, the flag of the deli sultan continued to be raised. The existence of the Sultanate of Deli was still recognized by the people and respected by the state. That is, the community still recognizes the greatness of the Deli Sultanate's history and views it as one of the institutions that also gives meaning to life and builds civilization. While from the side of the country there is respect, not recognition. Because recognition is given to kingdoms that still have political power and are involved in official government in a particular region.

The influence of Malay tradition in today's society is still felt with certain adjustments, and its implementation is highly dependent on the financial capacity of the community who will hold the traditional ceremony. The ceremonies are performed on important events in the journey of life such as conducting a wedding party.

There are organizations initiated by the community, including IMAMU (Association of North Medan Malay Indigenous Peoples). The community expects attention from the regional government, both provincial and city / district. Until now these hopes have not been fulfilled. According to the community, this hope can only be realized if there is a more intensive approach. On many occasions, the Governor of North Sumatra Province, Edy Rahmayadi, was seen wearing Malay traditional clothes called *teluk belanga*. The public wants the government's attention to be realized in the form of regional regulations as contained in the Riau province.

Regarding the various problems that arise in the community usually will be taken deliberation efforts by the internal family itself. If these efforts have not been successful, then the religious leaders will solve them. Religious figures have more place in the community because

Malay people usually identify themselves as Muslims. So if a dispute concerns Malays who are Muslim, then they will come to the Ulama to ask for suggestions for resolution. Concerning the distribution of inheritance is always settled according to faraid rules. Usually the community will behave *sami'na wa atha'na*, to the suggestions given by religious leaders. There are almost no cases of inheritance that take litigation efforts in disputes with religious justice institutions. The Malay community is considered to be a less conflicting community, preferring peaceful efforts. Even if for example there are parties who are dissatisfied with the distribution of inheritance, they prefer to let the way for him actually does not meet the sense of justice.

Distribution of inheritance is usually not immediately done after a testator dies. The heirs feel reluctant to allude to the problem of inheritance distribution. Not infrequently the property is divided, long after the testator dies. For example, the assets of a testator are divided by his grandchildren, because the children of the testator have not done so, resulting in multiple inheritance. However, inheritance disputes still occur rarely, and are sufficiently resolved by one's own family, or even if it is not complete, just go to the ulama.

One thing that can be seen from the character of the Malays, is not too dazzled by wealth. This attitude on the one hand brings goodness, because then there is not much dispute regarding the struggle for property, including inheritance as many ethnic communities do. But on the other hand, the Malay community is lagging behind other ethnic communities, because it does not have a high work ethic. The majority of Malay people who work as fishermen will usually go out to sea if they have been forced by primary household needs. Fish catches at sea are then used to meet primary needs only, not many prepare for future needs by saving the results that have been obtained. Usually they are more likely to be able to eat with a pleasant menu. There is a term that is often heard from this ethnicity, so that the roof is leaning, as long as eating fat.

In important events they hold *tepung tawar*, at the time of marriage, birth, get a position. This ceremony is conducted according to traditional traditions, then usually followed by a marhaban event.

This ceremony will be guided by traditional figures called **telangkai**. This telangkai is a figure who is considered to have mastered the Malay tradition, not originating from a relative of the empire, nor is it hereditary. However, using these telangkai services is optional. If a family feels the need for strings, he can invite, and vice versa. If the person feels the need to revive the Malay tradition then he will call telangkai. The role of telangkai is limited to ceremonial ceremonies, it has no role at all in people's lives, not even counted as community leaders.

So, in the community that is counted as community leaders, only ulama. Unlike in the Tapanuli region, which consists of many components which are referred to as *'pastak parhutaon'*. There is no community structure as in Tapanuli society. So that the traditional ceremony is not too long, like in the Tapanuli area, where all elements deliver remarks termed *Markobar*. This society is fairly simple, and there are not many protocols, the important thing is the purpose of achieving it well. So it appears that the community is fairly Islamic. There is no set of customs that are filled with a kind of mystical belief. Malay does not practice non-shari'a customs.

(This Page is Intentionally Left Blank)

Chapter Five

CONCLUSIONS AND RECOMMENDATIONS

A. CONCLUSIONS

Based on the discussion in the previous chapters, especially the results of research in various regions of the island of Sumatra, it can be summarized as follows:

1. Indigenous figure in general still play a role especially in areas where traditional leaders automatically coincide with the existence of the community itself. For example, in the Minangkabau community, where indigenous figure are the Datuk Penghulu who emerge due to kinship. Likewise in the Ogan community in South Sumatra, where every family has a Meraje, a respected position and mediator in every family problem. While in areas that had once been controlled by large empires such as in Palembang City with the Palembang Sultanate and Medan City with the Deli Sultanate, the indigenous figure did not play a role anymore. Let alone in resolving disputes, at traditional ceremonies that are traditional saaja, no longer found the existence of traditional leaders. The residence palace is a symbol that according to the sultanate's relatives, in fact, its existence is a traditional leader, but it does not have any influence in people's lives. In Medan

City, concerning the settlement of inheritance disputes, the Sultanate of Deli only acts to provide clarification related to the status of land included in the Grant Sultan's territory, whether it has been granted to the community through the abundant instruments or is still owned by Deli. In the Minangkabau community the indigenous figure are still relatively divided even though their charisma has faded. Datuk penghulu is still respected and some are still pro-active in mediating and resolving inheritance disputes among his people. If it is not finished it can go up to the adat court in '*Kerapatan Adat Nagari*'. Aceh is a special case, because it is an area that is able to revitalize adat while at the same time reviving the function of the adat court called the Gampong Court.

2. Factors that influence the waning role of *indigenous figure* are because they have experienced Islamization in all aspects of their lives, including inheritance rules, the accompanying institutions, are judicial institutions. In this area of Islamization, the settlement of inheritance disputes was taken by the Ulama. In Medan, for example, there are no more community leaders from traditional elements, community leaders only consist of scholars who play an active role in the community. Besides that, modernization also influences the role of adat. The emergence of formal institutions such as the Office of Religious Affairs and Majlis Ulama Indonesia has also taken over traditional roles. Besides that there are also religious leaders who are also *indigenous figure*. For this category, tradition still plays a role but is supported by religion (Islam).

B. RECOMMENDATIONS

1. It is recommended for indigenous peoples to be able to revive traditional values that actually function to bring order to the community, especially because each customary regulation actually contains moral values, such as helping and respecting each other. These values can also play a role in resolving disputes with the community.
2. The government is advised to play an active role in reviving traditional institutions in each region. Aceh is a clear example of the success of revitalizing adat which is very effective through regional regulation.

(This Page is Intentionally Left Blank)

BIBLIOGRAPHY

Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, Jakarta: Rajawali Press, 2011.

Amriani, Nurnaningsih, *Mediasi Alternatif Penyelesaian Sengketa di Pengadilan*, Jakarta: Grafindo Persada, 2012.

Anshori, Abdul Ghofur, *Hukum Kewarisan Islam di Indonesia: Eksistensi dan Adaptabilitas,* Yogyakarta: Gadjah Mada University Press, 2012.

Arikunto, Suharsimi, *Prosedur Penelitian: Suatu Pendekatan Praktik,* Jakarta: PT. Rineka Cipta, 2006.

Harahap, Basyral Hamidy dan Hotman M. Siahaan, *Orientasi Nilai-Nilai Budaya Batak: Suatu Pendekatan Terhadap Perilaku Batak Toba dan Angkola Mandailing* (Jakarta: Willem Iskandar, 1987.

Harahap, Basyral Hamidy, *Siala Sampagul,* Bandung: Pustaka, 2004.

Hazairin, *Hendak Kemana Hukum Islam,* Jakarta: Tinta Mas, 1960.

Koentjoroningrat, *Pengantar Ilmu Antropologi*, Jakarta: Rineka Cipta, 2009.

Martono, Nanang, *Sosiologi Perubahan Sosial: Perspektif Klasik, Modern, Posmodern, dan Poskolonial*, Jakarta: Rajawali Pers, 2012.

Pulungan, Abbas, *Peranan Dalihan Na Tolu dalam Proses Interaksi Antara Nilai-nilai Adat dengan Islam Pada Masyarakat Mandailng dan Angkola Tapanuli Selatan,* Disertasi Pada Program Pascasarjana IAIN Sunan kalijaga Yogyakarta.

Rahmadi, Takdir,*Mediasi Penyelesaan Sengketa Melalui Pendekatan Mufakat*, Jakarta: Rajawali Pers, 2011.

Salman, Otje, *Kesadaran Hukum Masyarakat terhadap Hukum Waris*, Bandung: P.T. Alumni, 2007.

Siregar, Fatahuddin Aziz, *Hukum Islam dalam Pergeseran Kewarisan Adat Batak di Tapanuli Selatan*, Disertasi pada Program Pascasarjana IAIN Imam Bonjol Padang, 2017.

Soekanto, Soerjono, *Pokok-pokok Sosiologi Hukum*, Jakarta: Rajawali Pers, 2012.

_____, *Sosiologi Suatu Pengantar,* Jakarta: Rajawali Pers, 1997.

Sugiyono, *Memahami Penelitian Kualititaf*, Bandung: CV Alpabeta, 2008.

Syarifuddin, Amir, *Pelaksanaan Hukum Kewarisan Islam dalam Lingkungan Adat Minangkabau*, Jakarta: Gunung Agung, 1990.

Tarigan, Azhari Akmal, "Pelaksanaan Hukum Waris di Masyarakat Karo Muslim Sumatera Utara", *Jurnal al-Ahkam* Nol XIV, No. 2, Juli 2014.

Yunus, Yasril, "Aktor Kultural dalam Pemerintahan Terendah di Sumatera Barat (Posisi Ninik Mamak dalam Struktural Adat dan Penyelenggaraan Pemerintahan Formal) dalam *Jurnal Humanus, Vol. XII No. 1 Tahun 2013*.

BIOGRAPHY

A. PERSONAL IDENTITY

Name	: Fatahuddin Aziz Siregar
Place, Date of Birth	: Padangsidimpuan, 28Th November 1973
Gender	: Male
Occupation	: IAIN Padangsidimpuan Lecturer
Office Address	: Jl. HT Rizal Nurdin Street KM. 4,5 Sihitang Pegency. Padangsidimpuan City.
Home Address	: Jati Street, Lk. II Pijorkoling Pegency. Padangsidimpuan City.
Mobile	: 085275251726
Scopus ID	: 57216348220
Reviewer Litapdimas ID	: 20201818140305
Researcher ID	: 202811730207884
NIRA	: 2109210360065023957

B. FAMILY

Father	: Drs.H. Mahabat Siregar
Occupation	: Retired Lecturer IAIN Padangsidimpuan
Mother	: Dra. Hj. Kartini Nasution
Occupation	: Retired Lecturer IAIN Padangsidimpuan
Parents Address	: Mawar Strett, Aman Alley No. 6 Padangsidimpuan City.
Wife	: Yusroyani Mardia, S.Ter. Keb.
Occupation	: Government Employees
Work Unit	: Padangmatinggi Public Health Centers
Son	: Hamim Faiz Mahbub
Occupation	: Student of SMA Muhammadiyah I Yogyakarta

C. EDUCATION

1. State Elementary School No. 142437 Padangsidimpuan, passed in 1986.
2. State Junior High School (MTsN) Padangsidimpuan, passed in 1989.
3. Special Program High School (MAPK) Padang Panjang, passed in 1992
4. Bachelor Degree of IAIN Sunan Kalijaga Yogyakarta, passed in 1998.
5. Master's Degree in Islamic Law Study Program, Family Law Concentration in IAIN Sunan Kalijaga Yogyakarta, passed in 2001.
6. Doctorate`s Degree in Islamic Law, Postgraduate IAIN Imam Bonjol Padang, passed in 2011- 2016

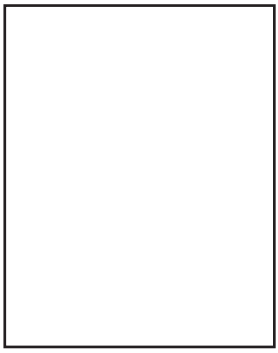
D. WORK EXPERIENCE

1. Functional Position of Lecturer
   a. Assistant Expert Fiqh Mawaris Course, in 2003.
   b. Lector of Mawaris Fiqh Course, in 2005.
   c. Head of Fiqh Mawaris Lecturer, in 2013.
2. Structural Positions
   a. Secretary of the Center for Research and Community Service STAIN Padangsidimpuan, in 2005-2006.
   b. Head of Center for Research and Community Service STAIN Padangsidimpuan, in 2006-2014.
   c. Dean of the Faculty of Economics and Islamic Business IAIN Padangsidimpuan, in 2014-2018.
   d. Dean of the Faculty of Sharia and Law IAIN Padangsidimpuan, in 2018-2022.

E. SCIENTIFIC RESEARCH

1. A Study of Interfaith Marriages According to Muhammad Abduh, (S-1 Thesis at the Sharia Faculty of IAIN Sunan Kalijaga Yogyakarta).
2. Sociological versus Normative Approaches in Understanding Islamic Law (Thesis on the Postgraduate Program of IAIN Sunan Kalijaga Yogyakarta).
3. The Role of Islamic Law in Shifting Batak Inheritance in South Tapanuli, (Dissertation at Postgraduate IAIN Imam Bonjol Padang).
4. "Islamic Family Law in Algeria" in Family Law in the Modern Islamic World: A Comparative Study and Expansion of Modern Laws from the Books of Fiqh (Book published by Ciputat Press, 2003).

5. The Concept of Justice in the *Hujjah Baligah* Manuscript in the Religious Classical Manuscript, Malay Edition (Published by the Research and Development Center for Religious Literature, Research and Development and Training of the Ministry of Religion of the Republic of Indonesia, 2009).
6. Distribution of Inheritance Based on Agreement According to the Qur'an and Sunnah.
7. Contemporary Ijtihad Method: Study of the Fatwa of Abdul Aziz Bin Baz.
8. Islam Nusantara, ulemas, and social media: understanding the pros and cons of Islam Nusantara among ulemas of West Sumatra (Indonesian Journal of Islam and Muslim Societies Vol 9, No 2. 2019)



A. PERSONAL IDENTITY

Name	: Muhammad Arsad Nasution
Gender	: Male
Position	: Head Lecturer/IV.a
NIP/NIK	: 197303112001121004
NIDN	: 2011037302
E-mail	: Arsad_73@yahoo.co.id
Mobile	: 0813 6175 5761
Office Address	: Jl. T. Rizal Nurdin Street, Km. 4,5 Sihitang Pegency. Padangsidimpuan City
Telephone/Fax	: (0634) 22080, Fax. (0634) 24022
Graduates Earned	: Ahwal Al-Syahsiyah, HES.
Courses Taught	: Tafsir Ayat Ahkam. Ayat-ayat Ekonomi Syari'ah. Ilmu Falak, Qira'at al-Kutub.

B. EDUCATION

1. Bachelor Degree of IAIN Imam Bonjol, Padang. Religious Courts Study Program, passed in 1998.

   Thesis Title "Pelaksanaan Thalak Liar Di Kecamatan Batang Angkola".

2. Master's Degree in Islamic Law Study Program, passed in 2001.

   Thesis Title "Wilayah Hisbah Dalam Sistem Pemerintahan Islam".

3. Doctorate`s Degree in Islamic Law, Postgraduate IAIN Imam Bonjol Padang, 2017.

   Dissertation Title "Hukum Islam Tentang Ketenagakerjaan".

C. LIST OF RESEARCH FOR THE LAST 5 YEARS

1. Dictate

   a. Tafsir Ayat Ahkam Volume I and II. (Dictate)

2. Research

   a. Perception of the Academic Community of STAIN Padangsidimpuan About the Talfiq Problem. (collective research in 2012).

   b. Map of Da'wah City of Padangsidimpuan. (collective research in 2012).

   c. Academic Study on the Expansion of Padang Bolak Subdistrict into: Padang Bolak Subdistrict (main) and Padang Bolak Tonga Subdistrict, North Padang Lawas Regency. (collective research in 2011).

   d. Madhhab Fanaticism in Islamic Boarding Schools: A Case Study in Purba Baru Musthafawiyah Islamic Boarding School. (collective research in 2009).

   e. Customary Penetration of Islamic Law in Batang Angkola District. (collective research in 2010).

f. the perception of HES Students of the Faculty of Sharia and Law on the Subject of Tafsir Verse Ahkam Syari'ah Economics. (collective research in 2017).

3. Publication

a. Journal "El-Qanuniy" Judul Tulisan: *"Qazf Dalam Perspektif Syari'ah Dan Hukum Fositif Di Indonesia"*. [el-Qanuniy`s journal, vol.4, No.02 July 2012, ISSN 2085-6123 (unaccredited)].

b. Journal "El-Qanuniy" Post Title: *"Metode Ijtihad Ibn Taimiyah (Analisis Terhadaf Kitab "Majmu' Fatawa" Kaya Taqiyuddin Ibn Taimiyah"*. [el-Qanuniy`s journal Vol 4 No. 01 in 2012. ISSN. 2086-6121 (unaccredited)].

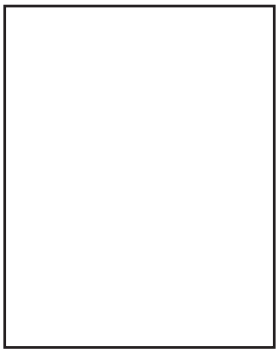
c. Journal "Fitrah" Post Title: *"Universalitas Hukum Islam sebagai Corak Keabadian (Suatu Tinjauan terhadap Prinsip Dasar Hukum Islam)"*. [Fitrah`s journal Vol XII No. 02 Juny-December, in 2012. ISSN. 2086-6121 (unaccredited)].

d. Mazhab Fanaticism in the Islamic Boarding School: A Case Study in the Purba Baru Musthafawiyah Islamic Boarding School. (Individual Research in 2009).

e. Journal "Tazkir" Post Title: *"Fanatisme Mazhab di Lingkungan Pesantren Case Study at the Musthafawiyah Purba Baru Islamic Boarding School"*. [(Tazkir`s journal Vol.5, No.2 December 2010, ISSN 2086-1923 (unaccredited)].

D. DEDICATION

1. Title : Pemberdayaan Ekonomi Masyarakat Pesisir.
   Location : Muara Opu Village, Muara Batang Toru District South Tapanuli Regency, North Sumatra.



A. PERSONAL IDENTITY

Name	: Abdul Nasser Hasibuan
Gender	: Male
Date of Birth	: Paringgonan, 25Th May 1973
Position	: Lecturer
NIP/NIK	: 197905252006041004
NIDN	: 2025057902
E-mail	: abdulnasserhasibuan@gmail.com
Mobile	: 081361196434
Home Address	: Sihitang Pegency, Padangsidimpuan Tenggara, Padangsidimpuan City, North Sumatera.
Office Address	: Jl. T. Rizal Nurdin Street, Km. 4,5 Sihitang Pegency. Padangsidimpuan City
Telephone/Fax	: (0634) 22080, Fax. (0634) 24022
Graduates Earned	: Bachelor degree of Islamic Banking Master's Degree in Islamic Economic
Courses Taught	: Accountancy

B. EDUCATION

1. Bachelor Degree of University of North Sumatra in Accounting Study Program, passed in 1999-2005.

   Thesis Title :"Analisis Proses Elektronik Data Prosessing Terhadap Penjualan PT. Pelaju Jaya Medan"

2. Master's Degree of University of North Sumatra in Accounting Study Program, passed in 2007-2009.

   Thesis Title: "Analisis Karakteristik Perusahaan dan Ekonomi Makro terhadap Return Saham Bursa Efek Indonesia"

3. Doctorate`s Degree of University of North Sumatra in Accounting Science Study Program, passed in 2012-2017.

   Dissertation Title : "Analisis Diterminan Kualitas Pelaporan Keuangan dan Pengaruhnya terhadap Konsekuensi Ekonomi Perusahaan Manufaktur Bursa Efek Indonesia"

C. LIST OF RESEARCH FOR THE LAST 5 YEARS

1. Research

   a. "Pegaruh Latar Belakang Pendidikan dan Program Pembinaan Kepribadian Akhlak (Kelompok/Ilmu Pengetahuan **Tahun** 2015). **NO. SK-**393".

3. Publication

   a. Scientific Article Title: *Effects of Auditor Quality on Market-besed and Accounting-based Financial Statement Quality and Its Impacts on Economic Consequences (A Case Indonesian Capital Market)*. No.14 (2017) Issue No. : 12 (2).

      Journal : *Internasional Journal of Economic Research*.

      Link URL: http://serialsjournals.com/articles. php? volumes no_id = 1332 dan journals_id = 41 & volumes_ id = 1068 dan http://repository usu.ac.id/bitstream/ handle/123456789/69458/Similarity.pdf?sequence=3 dan is Allowed=y.

b. Scientific Article Title: *Analysis Of Financial Performance Characteristics Toward The Quality Of Financial Report And Impact On Economic Consequences Of Manufacturing Industry In Bursa Efek Indonesia*. e-ISSN: 2278-487X, p-ISSN: 231 (2018).

Journal: *IOSR Journal of Business and Management (IOSR-JBM)*.

Link URL: http://www.iosrjournals.org/iosr-jbm/papers/Vol20-issue8/Version-5/B2008050710.pdf

c. Scientific Article Title: *Company Monitoring Analysis on Financial Report Quality in Indonesia Stock Exchange Manufacturing Sector.* Vol. 4, No. 4, December 2018.

Journal: *Academic Journal of Economic Studies*

Link URL: https://econpapers.repec.org/article/khescajes/v_3a4_3ay_3a2018_3ai_3a4_3ap_3a162-175.htm

NOTES