



SHARING THE HERITAGE OF THE SIMALUNGUN BATAK MUSLIM COMMUNITY: REALITIES AND IMPLICATIONS

*Muhammad Zuhirsyan**

Departement of Finance and Islamic Banking, Politeknik Negeri Medan, Indonesia
Email: muhammadzuhirsyan@polmed.ac.id

Pagar

Postgraduate Program, UIN Sumatera Utara, Indonesia
Email: pagar@uinsu.ac.id

Ansari Yamamah

Faculty of Sharia and law, UIN Sumatera Utara, Indonesia
Email: ansariyamamah@yahoo.com

**Corresponding author*

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Abstract: This study aims to determine the pattern of implementation of the distribution of inheritance by the Muslim community of the Simalungun Batak tribe in North Sumatra in terms of the reality and implications involved. The research model in this study is qualitative, while the approaches used are *fiqh muamalah* and family law approaches. Data were obtained from in-depth interviews and field observations by observing the application of inheritance law in the Muslim community of the Simalungun Batak Tribe, then analyzing the pattern of distribution and utilization of inheritance. The results of this study indicate variations in the pattern of implementation of the distribution of inheritance carried out by the Muslim community of the Simalungun Batak Tribe in North Sumatra. Some people are reluctant to sell heritage assets and choose to keep them to preserve culture. Some choose the inheritance distribution based on *faraid* law, deliberation, fair distribution, or rely on the provisions given by their parents during their lifetime. The division by way of deliberation can be done if it is not intended to conflict with Islamic inheritance law. It is also possible to divide the share for each heir with an equal share if it follows the instructions of the Islamic Compilation Law and *takharruj* instructions.

Penelitian ini bertujuan untuk mengetahui pola pelaksanaan pembagian harta warisan yang dilakukan masyarakat Muslim suku Batak Simalungun di Sumatera Utara, dari sudut reaitas dan implikasi yang terkait di dalamnya. Model penelitian penelitian ini adalah kualitatif, sedangkan pendekatan yang digunakan adalah pendekatan fikih muamalah dan hukum keluarga. Data didapat dari proses wawancara mendalam dan observasi lapangan dengan mengamati penerapan hukum waris pada masyarakat muslim Suku Bata Simalungun, selanjutnya menganalisis pola pembagian dan pemanfaatan harta warisan.

Hasil penelitian ini menunjukkan, variasi pola penerapam pembagian harta warisan yang dilakukan masyarakat Muslim Suku Batak Simalungun di Sumatera Utara. Ada kalangan yang enggan menjual harta warisan dan memilih mempertahankannya demi mempertahankan budaya. Ada kalangan yang memilih pembagian warisan berdasarkan hukum faraidh, musyawarah, bagi rata, atau bersandar pada ketetapan yang diberikan orang tua mereka semasa hidupnya. Pembagian dengan cara musyawarah boleh saja dilakukan asalkan tidak dimaksudkan untuk menentang hukum waris Islam, dan juga dapat menetapkan bagian untuk masing-masing ahli waris dengan porsi sama-rata asalkan mengikuti petunjuk Kompilasi Hukum Islam dan petunjuk takharuj.

Keywords: *Law; Inheritance; Division*

INTRODUCTION

One rule in Islam is about inheritance law. God has determined various ways to distribute the legal inheritance to ensure the sustainability of Muslim assets distributed to their relatives. As part of *Fiqh Muamalah*, inheritance can be applied by all parties to win *Falah*, both in the world and hereafter.

Islamic law must be present at the same time being this solution and mitigation occurs among the Muslim community so that the Muslim community can live peacefully and the relationship between family groups can be adequately maintained and not divided by inheritance. The reality that often occurs in the inheritance division is a dispute between heirs relating to their rights. Not infrequently, this gives birth to disputes and hostilities between fellow relatives.

It was found that the reality of the relics was not directly distributed but still exists, and some are managed together by their children. In other words, they allow inheritance without being shared by religion, so it does not overwrite potential conflicts that can arise in the future. Of course, this is considered not by the contents of Islamic teachings, who need a distribution of inheritance as soon as the property owner dies.

In addition, there is also a division based on the results of the deliberation between the oldest brothers led by the agreement obeyed by the heirs then. Based on some of these phenomena, this paper will try to explain the legal analysis of an Islamic perspective associated with various forms of distribution heritage carried out by the community and the reality of the fields obtained by several related parties.

The location of the research conducted is in several regions in North Sumatra, where there is a Simalungun Muslim community in it, among several regions, namely Bedagai Serdang Regency, Tebingtinggi City, Pematang Siantar City, and Simalungun Regency North Sumatra. The study method is observation and interviews accompanied by a legal analyst at the results found in the field.

INHERITANCE DISTRIBUTION SYSTEM IN THE PERSPECTIVE OF ISLAMIC LAW

Islamic law has regulated the inheritance system as well as possible, full of accuracy and justice. Therefore, Islam recognizes private ownership of property acquired lawfully. It also recognizes the transfer of ownership of one's property during his lifetime to heirs after his death, male and female, without distinguishing between children and adults. The Qur'an has explained the law of inheritance and matters concerning each heir, so there is no gap for a person to determine the share of inheritance according to his own will. Thus, the Qur'an becomes the basis of the inheritance law and its share's value. Only a few inheritance laws are determined based on the Prophet's hadith and the scholars' agreement. In Islamic law, no law is described by the Qur'an as detailed as the law of inheritance. This is because inheritance is one of the essential ways of ownership of property, while property (as it is commonly known) is joint of human life, both personal and community. With this property, the wheel of life can run.¹

Inheritance law cannot be ruled out in the discussion of Islamic law because the law relates to various levels of society and is needed very much. Inheritance law is part of family law in a society based on a bilateral hereditary system.

Islamic inheritance law translates the term "Fiqh Mawaris," which refers to the distribution or distribution of property owned by people who died (heirs) to people still alive. According to M. Ali Al-Shabuni, inheritance, according to language, is the transfer of something from one person to another or from one person to another. And according to the language of inheritance, it is not limited to inheritance but is broader about the inheritance of knowledge, for example, glory, position, physical form, house, etc.

In Fiqh books, inheritance is more often referred to as *farâ'id* (فرائض) *mufrad* (فريضة), which means provisions. This understanding is based on the words of Allah SWT: "When in fact you have determined the obligation (dowry), then pay half of the obligation (dowry) that you have determined (Q.S. Al-Baqarah: 237).

The word "inheritance," whose origin is *waratsa*, is one of the branches of Islamic science that discusses the problem of property distribution after the property owner dies. Meanwhile, according to KHI, 'the law regulates the distribution of property rights to the inheritance (*tirkah*) of heirs, who are entitled to become heirs and part of each heir itself.'²

Islamic inheritance law is a law that regulates everything related to the distribution of rights and or obligations of a person's property after he dies to his heirs. Islamic inheritance law is also called *faraidh* law, the plural form of the word *faridha*, which is very closely related to the word *fardh*, which means an obligation

¹ Muhammad Ali Shabuni, *Al-Mawarits fi al-Syari'ah Islamiyah fi Dhawi al-Kitab wa al-Sunnah*, (Kairo: Darul Hadis, tth), 33

² Zakiah Daradjat, *Ilmu Fiqh*, Yogyakarta: PT Dana Bhakti Wakaf, 1995, 2

that must be carried out.³ Inheritance law regulates the inheritance of someone who died, which is given to those who are entitled, such as family and society, who are more entitled.⁴

THE REALITY OF THE DISTRIBUTION OF THE HERITAGE OF THE MUSLIM COMMUNITY IN THE BATAK SYMALUNGUN TRIBE

Based on interviews with Mr. Bahtiaruddin Saragih,⁵ the property of the relics of parents in their families is not immediately distributed because it will be worried if divided and then sold by the heirs caused of various needs, it can cause loss of property ownership from the hands of the heirs. In addition, if the relics must be sold to meet the implementation of the inheritance distribution (in the form of funds/rupiah), most assets in the form of land are finally sold and separated from the ownership of the heirs. For decades, each heir has managed this heritage with a dam alternately without being preceded by the official division based on *Faraidh* and others.

It seems that this reason cannot be considered for making it up, because the area if a lot of land in it is sold, finally, ethnicity in this region will slowly be moved and move to other areas because capital owners are relatively large and or immigrants who then have land, so the culture preserved in the region will slowly disappear and change. Habit and culture must be preserved and developed so that their descendants keep in touch with the culture and habits of their ancestors.

This family initially chose to process with their heritage. However, they agreed to divide by Islamic law about 10 years after managing heritage without being divided before. The distribution of boys is twice as significant as the division received by the daughter. The agreement they took after meeting all the heirs led by their oldest brother, and then carried out the distribution of Islamic law, where the distribution of men doubled from the woman ratio. After dividing this heritage, one heir handed over part of its properties to be used by young sisters to be managed and used for their daily needs. Their oldest brother also managed some of his legacies because he was still categorized and established in the economic field and had a personal business managed by his small family.

Here we can recognize the distribution of inheritance by holding a meeting or deliberation between children led by the eldest brother. The family and other Simalungun tribal Muslim communities carry it out.

Another case was found in another family in the Tebing Tinggi area, the father died in 2008,⁶ and the inheritance was distributed immediately after his death by

³ Habiburrahman, *Rekonstruksi Hukum Islam Di Indonesia*, (Jakarta: Kencana, 2011), 10

⁴ Martosedono, *Hukum Waris*, Semarang: Dahara Prize, 1998, 3.

⁵ Interview on June 2, 2021

⁶ The results of an interview with his son, Mr. Taufan Purba, in Paya Pasir Village, Serdang Bedagai, North Sumatra, May 22, 2021

his children. During his life, the heir had two wives; both of his wives were still alive when he died. All inheritance distributions are based on *faraid* law, where the son gets a share twice as large as the daughter. At the same time, his two wives got a share according to the *faraid* rules, which were divided equally between them. All the property left behind now belongs to each of his children and his two wives.

Then, when one of the heirs died in 2015, the distribution of inheritance was also carried out according to Islamic law (read: *faraid*), which was distributed to all his children, where the son of the deceased gets a share twice as large as his daughter. In implementing the distribution of inheritance among the community, it is not uncommon to use a system of buying and selling or barter or grants between heirs. This is because the partial ownership of a piece of inherited land by one of the heirs, for example, is incomplete due to his brother's ownership of the land.

The distribution of inheritance can also occur by dividing the land objects of inherited assets evenly. This equal distribution requires one heir to receive a share from the other heirs, so to make the inheritance land intact, one of the heirs must make a sale and purchase or another contract.

In the distribution of inheritance, it is sometimes necessary to have the willingness of one of the heirs to give part of his property to another party. For example, an heir must give a small portion of the ownership of the inheritance to the other heirs so that the inheritance can be divided equally.

In the distribution of property in the form of land, for example, sometimes there is a sale and purchase between each heir because one of the children and husband are outside the city, and the share is the same as that of the inheritance – other heirs. In addition, in the distribution of inheritance that exceeds the proper inheritance, because of the difficulty of dividing according to the distribution of Islamic inheritance, sometimes an heir must buy excess land from another heir, the property owner.

In a different place, especially in Simalungun Regency,⁷ some heirs directly distribute the land inherited from their parents. The distribution is done after the death of his parents. If one of them has not died, then this inheritance is not divided among the heirs but postponed out of respect for the existence of one of the parents who are still alive and has not died. After the death of his parents, a meeting is held to determine the distribution options to be taken by the heirs. Then, the heirs divide the inheritance proportionally among the heirs but with an agreement not to sell the inheritance to other parties. If it has to be sold due to various needs, the priority of the sale is given to fellow heirs.

However, after the division of inheritance in this family, some heirs choose not to take care of part of their land because their residence is far from the inherited land. In addition, some of them have a sufficient economy so that the processing of the

⁷ Interview with Ida Damayanti Saragih, on 1 January 2021

inherited land is left to other heirs. The main house is the object of inheritance which, in the end, is not occupied by any heirs because the youngest daughter, who is the inheritance house voter, already has a house not far from the inheritance house. However, she is still in charge of the monthly cleaning and operation of the house. The main house is always used for large family gatherings and a place to stay for relatives who visit or come to their hometown.

Yusuf Sinaga explained that the custom carried out in his family environment, the Muslim community of the Simalungun tribe in the Sipispis Serdang Bedagai region, also did not distribute inheritance directly. However, the heirs manage the land and are reluctant to sell the land as the object of their inheritance. In other words, the division of inheritance is postponed between the heirs. In addition, the distribution of inheritance is usually done after both parents of the heirs die. Before both die or only one person dies, the inheritance has not been distributed to the heirs.

On the other hand, as stated by another person,⁸ his family divided the inheritance by deliberation, without any difference of opinion between them. Finally, the inheritance of the heirs is distributed to the heirs. Even now, the heirs have sold most of the land to meet their various needs. In the distribution of inheritance, there is a deliberation led by the eldest brother. In the deliberation, it was decided to divide the inheritance equally among the heirs, both men and women. This equal distribution is done to avoid disputes between fellow heirs.

We also found cases related to inheritance distribution.⁹ There is an adopted child, a girl from a different tribe (read: Batak Mandailing) in Simalungun Regency, who received a substantial inheritance from her adoptive parents from the Simalungun Batak Tribe. This adopted daughter gets relatively large assets from the inheritance of her adoptive parents based on family approval (read: brother, sister, brother) from her adoptive parents.

FORMS OF DISTRIBUTION OF INHERITANCE TO MUSLIMS OF THE SIMALUNGUN TRIBE

Bilateral kinship in the Islamic inheritance law system gives an inheritance to each heir who can relate to his father and mother.¹⁰ In general, the Muslim community of the Simalungun tribe distributes the inheritance of the heirs who have died according to the agreement they have agreed between them. In this tribal custom, the distribution of inheritance by agreement is carried out based on provisions made or led by a meeting of the eldest male heirs.

In a meeting led by the eldest brother, they often hold consensus deliberation to choose the choice of distribution of inheritance to be taken, whether according to

⁸ Interview on November 2, 2020

⁹ Interview with a family at Huta 5 Bandar Tinggi Kabupaten Simalungun

¹⁰ Al-Yasa Abu Bakar, *Ahli Waris Sepertalian Darah*, (Jakarta: INIS, 1998), 17

faraid or Islamic law, an agreement based on fair distribution, or the distribution according to what has been completed by his parents' heirs) while still alive.

This has become part of the Simalungun Batak community's customs, especially those of Muslims. Rahmat Saragih, a resident of Pematang Siantar City, expressed that the eldest child has a significant role in the distribution of his parents' inheritance. Meanwhile, girls usually only hear and accept the decisions of deliberation. In fact, according to him, the deliberations in determining the distribution of inheritance are sometimes dominated by brothers and sisters, so it is not uncommon for differences and misunderstandings to occur due to his lack of wisdom in determining the distribution in this deliberation.

According to Heru Damanik, a community cleric in his area, the distribution of inheritance by the Muslim community of the Simalungun Tribe is carried out in various ways. Some apply the distribution equally among the heirs, and some do the distribution according to Islamic law. Some do it based on the distribution that their parents have determined before death. Not a few of them did not immediately distribute the inheritance but postponed it until the next few years. Mostly, this results in the emergence of intriguing differences of opinion, which also end up at the Religious Courts table.

In addition, it is typical for the distribution of assets to be carried out long after the testator dies. In other words, the heirs delay the distribution of the inheritance to the heirs. This is based on respect for one of the two surviving parents, and sometimes delays are made to honor each heir because all heirs use the joint property. In addition, there is another reason, namely the delay in the distribution of inheritance by managing joint assets between the heirs because of the desire that there is no land sale by the heirs after the inheritance distribution is carried out. There are historical values and efforts to protect culture from the entry of foreign cultures that can affect the situation in a place because the entry of a new culture in an area can change the various customs and cultures that have been running in the area for years. Various delays in inheritance distribution often result in differences of opinion, especially if one of the heirs (especially the eldest brother) dies before the distribution is carried out.

LEGAL ANALYSIS OF THE IMPLEMENTATION PATTERN OF COMMUNITY INHERITANCE DISTRIBUTION

In addition to describing reality, this study also discusses the implications of the reality that occurs in society. In the KBBI, the implication is defined as a direct result or result of the findings of a study, but linguistically it means something being concluded in it.¹¹ The implication, according to Irfan, is everything produced by the policy formulation process. In other words, implications are the consequences and

¹¹ Departemen Pendidikan dan Kebudayaan, *Kamus Besar Bahasa Indonesia*, (Jakarta: Penerbit Balai Pustaka, 1998), 114

consequences caused by implementing specific policies or activities.¹² This implication is the impact or direct result of the findings produced, usually in research.

Based on the description above, what is meant by the implications in this study are legal consequences that occurred or were caused by an event of inheritance distribution in the Muslim community of the Simalungun Tribe within the scope of Islamic law.

1. Deliberation in Determining the Distribution of Inheritance

The distribution of inheritance through deliberation is a community tradition, including in the Muslim community of the Simalungun tribe, carried out from generation to generation and has been done since its predecessors. The division of inheritance by deliberation is based on a sense of kinship and a fair distribution of property among the heirs. The distribution starts with deliberation at the family level, led by the eldest brother and his siblings. This meeting is usually held shortly after the death of their parents. As is often the case, these deliberations resulted in an agreement on the distribution and use of the inheritance. The results of this meeting then became the basis for the village government to initiate steps to legitimize the distribution of inheritance. In other words, after this *muswarah* is carried out and the results are submitted to the village government, the village head issues a letter of determination of the heirs and the amount of the share that will be received by each heir, which has binding legal force. However, if no agreement is made, it will be carried out at a higher level. Suppose the deliberation has not resulted in an agreement. In that case, the distribution can be resolved by presenting traditional leaders or religious leaders, or resolved at the village level, then to the sub-district level, and then to the local Religious Court.

In the Qur'an, Allah SWT commands humans to deliberate to take various formulations or decisions from a problem that occurred. Allah said and consulted with them in this matter. (Surat Ali Imran: 159).

God said, And (for) those who accept (obey) the call of their Lord and establish prayer, while their affairs are (decided) by deliberation between them; and they spend part of the sustenance We have given them. (Sura al-Shura: 38)

In the author's opinion, the distribution of inheritance through this method of deliberation includes the distribution of inheritance based on Islamic law (non-*afraid*), in this case, deliberation because the deliberation itself is part of the commandments of religious teachings. However, ideally, this deliberation is carried out, and decisions are made in it after the division of inheritance is carried out in a *faraid* manner. The heirs are informed about the share of property that will each be obtained from the division by *faraid*.

¹² M. Irfan Islamy, *Prinsip-prinsip Perumusan Kebijakan Negara*, (Jakarta: Sinar Grafika, 2000), 14-115

Indeed, deliberation in the distribution of inheritance is not a disgraceful act. However, in practice, it is not uncommon for the domination of the eldest son of the heirs to sometimes lead to sharp differences of opinion among the heirs due to several tendencies shared by one or more of the parties involved internally.

The division by way of deliberation may be carried out if it is not intended to conflict with Islamic inheritance law. If possible, it is also permissible to divide the share for each heir with an equal share as long as it follows the instructions of the heirs, based on Islamic Compilation Law.

2. Fair Distribution of Inheritance

Inheritance is often divided equally among the heirs. Of course, this does not follow the determination of inheritance distribution based on *faraid*, which is *ijbari*.

According to Yusuf al-Qardawi, it is not permissible to open the door to *ijtihad* in the laws that have been established based on the *qath'i*, al-Qur'an argument only based on changes in cultural reality and social structure because the provisions of the parts of the inheritance are *qath'i* which are based on a balance between the rights and obligations of each heir. The law that has been *qath'i* must remain in its *qath'i* position as well as in *zhanniy* law. It is not permissible to change the *qath'i* law into *zhanniy* law or the *zhanniy* law into *qath'i* law.¹³

In contrast, Muhammad Syahrur did not question the problematic parts of inheritance. Still, according to him, the parts of the inheritance cannot be generalized if they do not follow their multiples. These sections fall into the category of maximum and minimum limits at once.¹⁴

One of the wisdom in determining that the share of men in inheritance equally being distributed to two women is that a man, in addition to needing a living for himself, also needs a living for his wife and children (his family). Herein lies the reason why men should get two halves. As for the woman, she will only support herself, whereas if she gets married, her husband's livelihood will be guaranteed. Therefore, there is a saying that women's share of the inheritance will still be higher than men's in terms of earning a living.¹⁵

Ibn Kathir explained that the inheritance distribution provisions were based on a balance of rights and obligations as a form of partiality of Islamic inheritance law towards women, not only equal but exceeding what is expected to get a sense of justice.¹⁶

Muhammad Ali al-Shabuni (d. 2021) states that one of the wisdom of increasing the share of a man's inheritance equally to the share of two daughters or the husband's share, which is double the wife's share is out of necessity from the

¹³ Fathurrahman Djamil, *Filsafat Hukum Islam*, (Jakarta: Logos Wacana Ilmu, 1997), 132- 133.

¹⁴ Muhammad Syahrur, *Al-Kitab Wa Al-Qur'an: Qira'ah Mua'şirah*, (Damaskus: al-Ahali li al-Ṭaba'ah wa al-Naşr wa al-Tawzi', 1990), 457-462

¹⁵ Rasyid Ridha, *Tafsir Alquran al-Ahkam* (Tafsir al-Manar), Jld. 4 (t.t: t.p., t.t), 406

¹⁶ Al-'Alamah bin 'Abdurrahman al-Dimasyqi, *Fiqh Empat Mazhab* (Bandung: Harsyimi, 1980), 408-409

husband/father, finance his household life – in addition to managing commercial assets, economic business, and other responsibilities – more than the assets his wife/daughter needs. He (the man) needs a more significant cost of living with some obligations (responsibilities) heavier than women's responsibilities. Therefore, men need wealth more than women.¹⁷

But, of course, equity is not impossible in the distribution of inheritance. This is because the backgrounds of the heirs may differ from one another or from one region to another. It can be done evenly, but this division is done after each heir knows the share of the previous inheritance distribution. If it is known, one party or each party can give their share (read: grant) to another party so that all parties receive the inheritance equally.

Based on this, each heir who gets the inheritance must place his share based on the *faraid* distribution first, then deliberate to determine the distribution agreed upon by each heir. At the time before the birth of the contract, as stipulated in the deliberation, the share of each heir based on the *faraid* share may be subsidized to several parties, who, according to the deliberations, participants are entitled to a higher share due to various factors such as economics and others. The subsidy referred to here is to give a small portion to the needy through ways that also refer to the perspective of Islamic law, such as a written contract as proof for all parties of this subsidy.

As stated above, determining the distribution by deliberation should be done after knowing part or part of each heir. One or more of them can donate part of it to those in need by using an appropriate sharia contract such as sharia contract. . . grants or the like . . . This contract can later be accounted for by all parties and can be evidence of the agreement made, thereby minimizing problems that may arise in the future.

3. Postponement of Inheritance Distribution

Based on the search conducted, several factors are causing the delay of inheritance distribution in the Simalungun Tribe Muslim community, including the following:

a. One of the heirs is still alive (father/mother of heirs)

This phenomenon is not uncommon in the Muslim community of the Simalungun Batak Tribe. The practice of delaying inheritance distribution in the tradition of the Simalungun Muslim community, which is carried out on the grounds of respecting one of the two surviving parents, certainly has no basis. In the Islamic inheritance law system, the husband or wife is the heir when the spouse dies. Generally, due to the practice of delaying the distribution of inheritance, the husband and wife do not get anything from their spouse's inheritance.

¹⁷ Muhammad Ali As-Sabuni, *Shaafwah al-Tafasir*, jilid 1 (Beirut: Dar al-Fikr, t.t), 265.

b. Agreement of heirs

In the Simalungun Tribe, the distribution of inheritance is often done with the agreement of the heirs regarding inheritance, a provision usually determined by the eldest brother, including the delay of the inheritance distribution due to certain things. Usually, this meeting is dominated by older brothers and sons. Meanwhile, girls usually only follow what has been agreed upon in the deliberation.

c. Lack of understanding of accelerated inheritance distribution

This factor is related to several previous factors. The Islamic heritage system established according to sharia is still not widely known by various groups. If the understanding of the distribution of inheritance is sufficient among the people, of course, there will be no people delaying the distribution of inheritance.

It was found that this fact occurred because of an inadequate understanding of religion (especially regarding inheritance law). Thus, it was assumed that the distribution of inheritance could be postponed at an unspecified time. In addition, the dissemination of information related to the acceleration of inheritance distribution has not been widely found in the community. Religious leaders usually only disseminate knowledge related to worship rather than *muamalah*, especially inheritance.

d. There are heirs/ many of who are still kids

Many assume that children as heirs do not need to immediately get a share of their inheritance when they are kids. Given the lack of skills in managing assets, it is worrisome that they could inappropriately spend assets. But of course, this reason cannot be used as a basis for delaying inheritance because their guardians can represent young who have not been able to take care of assets to be able to hold and manage assets according to their benefit.

This does not mean that when the heirs are young, the inheritance can be deferred and distributed by the *faraid*. Various ways can be done to distribute assets due to the inability to manage the inheritance of early childhood.

Inheritance assets must be immediately distributed to the heirs. Suppose some heirs are still considered relatively young. In that case, the property can be kept by the guardian and used according to his interests without violating the law regarding the property of orphans.

e. Parties who want to control the inheritance

This phenomenon can occur if there is a tendency from several parties to control the inheritance. Therefore, this delay is expected to pave the way for irresponsible parties to take over the inheritance. Parties who are not responsible here can come from their heirs or other parties.

In the research, the authors found that this phenomenon occurred in several circles of the Simalungun Batak Muslim community, both from heirs and outside

parties or outside heirs. Therefore, delaying the distribution of inheritance is not feasible, considering this factor can cause various losses in the community.

Delaying the distribution of inheritance is an act that is contrary to the principle of *ijbar*, where the inheritance of the heirs automatically distributes to the heirs with the number of shares based on the provisions of the Qur'an, the hadith of the Prophet Muhammad, permission, and *qiyas*. Therefore, neither the heir nor the heirs can determine the amount of their share, and they cannot change it.¹⁸ The principle of *ijbar* in the distribution of inheritance is a form of God's command to distribute inheritance immediately after death.

The principle of *ijbar* is distributional justice. After the heir's death, the inheritance automatically passes to the heirs regardless of who the inheritance will be distributed to.¹⁹

This delay (read: in the distribution of inheritance) is an act that is not worth doing because the consequences will be significant in the future.

This is following the rules of fiqh,

درء المفساد أولى من جلب المصالح²⁰

In a problem, rejecting the elements that cause harm is better than bringing benefits from the problem. That prevents harm and should be prioritized over obtaining benefits or benefits because the damage can be more dangerous and widespread if done or left unchecked.

It could be that various unwanted things will happen to the object of inheritance that has an impact on the emergence of problems between heirs. Utilization by some heirs of inheritance land that has not also been distributed often creates new problems in the future, such as the emergence of jealousy from some other heirs or others because of unbalanced management and so on. Therefore, delays in the distribution of inheritance must be avoided and carried out immediately after the testator dies.

The delay in the distribution of inheritance which is also carried out by several families in the Simalungun Batak Muslim community because of the desire to maintain and preserve the inheritance of the heirs so that the heirs do not immediately trade them is an act that needs to be analyzed in depth related to practice.

Perhaps this is based on the concern that if the inheritance from parents is divided and then sold, which will indirectly result in the loss of property rights of the heirs due to selling the land due to various factors so that the culture in the area will be lost, change over time, and disrupt habits in the area since past. Moreover,

¹⁸ Amir Syarifuddin, *Pelaksanaan Hukum Kewarisan Islam Dalam Lingkungan Adat Minangkabau*, (Jakarta: Gunung Agung, 1984), 18

¹⁹ Suhrawardi K. Lubis and Komis Simanjuntak, *Hukum Waris Islam (Lengkap Dan Praktis)*, (Jakarta: Sinar Grafika, 2007), 137

²⁰ Ali Haidar, *Duraru al-Hukkam (Syarh Majallah al-Ahkam)*, Riyadh: Daru Alim al-Kutub, 2003, 27

with the gradual entry of large capital owners, it is feared that it will displace indigenous peoples in the area, which at the same time will eliminate various customs that have existed since their ancestors.

In the end, the heirs manage the joint property of the inheritance without any distribution of the inheritance first. Through the deliberation that has been carried out, they jointly manage the inheritance on terms that have been mutually agreed upon. For example, the share of sons who have larger families than daughters who incidentally are only housewives and accompanies their husbands.

At first glance, it appears that the suspension of inheritance and joint management according to the needs and benefits of each heir is in line with the benefit that is the goal of Islamic law.

It is recommended to continue the distribution while communicating with the heirs to find the best solution for all parties. One solution that can be applied is the application of sharia contracts in the distribution and management of inheritance so that all forms related to the distribution and management of inheritance can run according to Islamic law, both in terms of buying and selling and management with profit sharing, *waqf*, etc.

On the other hand, the negative impacts of delaying the distribution of inheritance for the Simalungun Batak Muslims were also found, including:

- a. Conflict between heirs
- b. There is a reduction in the rights of the heirs from what they should be
- c. Some heirs died before the distribution of inheritance
- d. A disconnection occurred

4. Distribution by buying and selling several parts of the inheritance

Sometimes there is a fact that the inheritance of an heir must be sold to fulfill the implementation of the distribution of inheritance (in the form of funds/ rupiah) so that most of the property in the form of land is eventually sold and separated from the inheritance, legacy, and heir's ownership. This is because the inheritance left by the heirs is in the form of land distributed to the heirs.

Of course, this will result in an ethnic group from a tribe being slowly evicted and moving to other areas because of brokers or immigrants who then own the land so that, in the end, the prevailing culture in an area. The area will slowly disappear and change. Customs and culture must be preserved and developed by the community so that their descendants still bond to the culture and customs of their ancestors.

In addition, one of the objectives of the division of inheritance is that the heirs can continue to use the property to survive and continue the existence of the family who owns the property. Thus, various ways that result in the loss or displacement of inherited assets that can be categorized as dangerous or *mafsadah* because they can result in the wastage of property can be prevented.

Based on this, the sale and purchase of inheritance between heirs must take precedence over the sale of inheritance to other parties, to be distributed to the heirs. One or one of the heirs can buy his brother's share of the inheritance so that the part he buys can then be owned, while the other heirs can receive money from the sale of the inheritance because they may need it. This sale and purchase must also be implemented in accordance with the rules and guidelines of religious teachings to minimize problems that may arise in the future. With a clear sales record (read: contract), it can minimize various bad possibilities that can happen in the future.

5. Determination of the Distribution of Wealth through Parental Grants Before Death

The word grant (*hibah*) comes from the word *wahaba-wahban-hibah*, which means to give.²¹ Another opinion states that a grant is a form of kindness used by the recipient, either in the form of property or otherwise.²² Kamal Hamdi stated, in the language of the grant, it is a form of *tabarru'* and kindness to others, even though it is not in the form of money or according to what can be used.²³

According to Wahbah Zuhaily, grants, alms, gifts, and *athiyah* include grants according to their language. In other words, the definition of grant according to language is almost the same as the meaning of alms, gifts, and *athiyah*. The difference is as follows.

- a. If a gift to another person is intended to draw closer to Allah and is given to someone who is in dire need without expecting a replacement, then it is called alms
- b. If the gift is intended to glorify or because of a sense of *conta*, it is called a gift.
- c. It is called a grant if it is given without a purpose, namely in alms and giving.
- d. If the gift is given by one person to another when he is sick before death, it is called *athiyah*.

In terminology, a grant is a gift of ownership of something forever, which is also considered a gift that does not expect anything behind the gift.²⁴ Meanwhile, Wahbah Zuhaily stated that a grant contract is a grant contract (*tabarru'*) without expecting and not taking substitute goods (exchange). Because if this contract is carried out in a way that the party receiving the goods must give or deliver other goods in exchange, the contract will automatically change to a sale and purchase transaction contract. The object of the grant or grant contract (*tabarru'*) is usually in the form of money, goods and objects, *immovable property dan movable property*.²⁵

²¹ Ahmad Warson Munawwir, *Al-Munawwir Kamus Arab-Indonesia*, (Yogyakarta: Munawwir, 1997). 1584

²² Ali Haidar, *Duraru al-Hukam (Syarh Majallatul Ahkam)*, (Riyadh: Daru Alami al-Kutub, 2003), Jld. II, 389

²³ Kamal Hamdi, *al-Mawarits Wal Hibah Wal Washiyah*, (Iskandariyah: Mansya' al-Ma'arif, 1998), 154

²⁴ Muhammad Bakar Ismail, *Al-Fiqh al-Wadhih*, Jld. III, Terjm. M. Zuhirsyan dkk, (Selangor: Berlian Publications, 2008), 133

²⁵ Wahbah Zuhaily, *Al-Muamalah Al-Maliyah Al-Mu'ashirah (Buhuts Wa Fatawa Wa Hulul)*, (Damaskus: Daru Al-Fikr, 2002), 507

Ali Haidar argues that grants are (distribution) property ownership to others without any reward. According to him, grants and alms can be included in this definition because they are not part of the grant corridor. The basis of the grant he gave was the word of God,

“If you are honored with something honorable, repay that honor with something better than it, or repay that honor (with something similar). Verily Allah considers everything”. (Surat an-Nisaa: 86)

It refers that although the major of scholars interpret this *tahiyah* with greetings, he interprets it as a gift or a gift.²⁶

If the determination of inheritance is in the form of a grant, then there seems to be no problem, considering that this grant is permissible and based on sharia. However, it should be emphasized that the result of a grant is that the grant giver loses ownership of the goods after he has distributed his property. However, it is not uncommon for people to have the wrong perception about grants considering parental wills in which the will question is often given to heirs who were given a will before death. It was also found that the granting of wills to heirs exceeded one-third of the inheritance, which is certainly not following the rules of Islamic law.

According to Wahbah Al-Zuhaili, a will is *iisha* (giving messages, orders, forgiveness, guardianship) and is etymologically interpreted as a promise to another person to do a specific job during his life or after his death. Etymologically, a will is defined as a promise to another person to carry out a job during his life or after leaving it; *aushaitu lahu au ilaih*; I gave him a message or an order, meaning I made him a *washi* (executor) who will control the people after him (recipients/*mushaa alaih*). This meaning is popularly known as the word *wishayah*. Meanwhile, according to *syar'i* is a gift from one person to another, either in the form of goods, receivables, or something useful, so that the heir becomes the owner of the gift after the testator's death.²⁷

The fulfillment of all valid wills of the heirs is obligatory as long as it does not exceed one-third of the inheritance of the heirs if the will is intended for people who are not heirs and there is no protest from one or even all heirs. A will is made after the funeral expenses and funds are issued to pay the testator's debts.²⁸

Before death, an heir has determined the distribution of the inheritance to be given to the heirs. After submission, the heirs usually begin to use or manage the inheritance given so that it becomes a grant. For example, a plot of land, the heir after a plot of land is handed over to him, he immediately undertakes the management or utilization of the land.

²⁶ Wahbah Zuhaily, *Al-Muamalah Al-Maliyah Al-Mu'ashirah*, 389

²⁷ Wahbah Zuhaily, *Al-Fiqh Al-Islami Wa Adillatuhu*, Jld. 10, 7440

²⁸ Amir Syarifuddin, *Pelaksanaan Hukum Kewarisan Islam Dalam Lingkungan Adat Minangkabau*, (Jakarta: Gunung Agung, 1984), 284

If it is recognized from the form, of course, one can determine the distribution of land to be given to his heirs, but this cannot be called an inheritance or will. This is because the inheritance is distributed to the heirs after the testator dies. Unlike in Islamic law, wills cannot be given to heirs.

CONCLUSION

First, the pattern of inheritance distribution carried out by the Muslim community of the Simalungun Batak tribe in North Sumatra varies. For those who strongly understand religion and religiosity, the distribution of inheritance is carried out according to *faraid* law based on the Qur'an and hadith. In addition, some hold deliberations to determine the inheritance distribution. The deliberations are usually led by the eldest brother to determine the distribution of inheritance for the heirs.

In the community, some divide inheritance evenly and or rely on the sustenance given by their parents during their life. During his life, his parents entrusted a plot or several plots of land to their children to be managed. After their parents died, the land they managed based on the parents' decree was still used as the basis for dividing the inheritance.

Generally, the distribution of property is done long after the testator dies. In other words, the heirs delay the distribution of the inheritance to the heirs. The reason is that respect for one of the two parents is still alive, and sometimes delays are made to honor each heir because all heirs use the joint property. In addition, there is another reason, namely the delay in the distribution of inheritance by managing joint assets between the heirs because of the desire that there is no land sale by the heirs after the inheritance distribution is carried out. Given there are historical values and efforts to protect culture from the entry of foreign cultures, that can affect the situation in a place.

The distribution of inheritance carried out evenly between several heirs is certainly not following the determination of the inheritance distribution based on *faraidh*, which is *ijbari*. Each heir who gets the inheritance must place his share based on the division of *faraid*, then hold a deliberation to determine the distribution that is agreed equally by each heir.

According to the author's opinion, the distribution of inheritance through the method of deliberation includes the distribution of inheritance based on Islamic law (non-*faraidh*) because the deliberation itself is part of the commandments of religious teachings. However, ideally, this deliberation is carried out, and decisions are made in it after the distribution of the inheritance is carried out in a *faraid* manner and notified to the heirs of the portion that will be obtained from the division in a *faraid*. Distribution by way of deliberation may be carried out if it is not intended to conflict with Islamic inheritance law.

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