**Sharing The Heritage of The Simalungun Batak Muslim Community: Realities and Implications**

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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 in it. 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 Bata Tribe, then analyzing the pattern of distribution and utilization of inheritance. The results of this study indicate that there are 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. There are people who are reluctant to sell heritage assets and choose to keep them in order to preserve culture. There are those who choose the distribution of inheritance based on faraid law, deliberation, fair distribution, or relying on the provisions given by their parents during their lifetime. The division by way of deliberation can be done as long as it is not intended to conflict with Islamic inheritance law, and it is also possible to divide the share for each heir with an equal share as long as it follows the instructions of the Islamic Compilation. Law. and takharruj instructions.

Keywords: Law, Inheritance, Division

Abstrak

Penelitian ini bertujuan untuk mengetahuipola 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 menunjukan, 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 *takharruj*.

Kata Kunci: Hukum, Warisan, Pembagian

**Introduction**

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

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 maintained properly and not divided by inheritance. The reality that often occurs in the inheritance division is a dispute between heirs relating to their rights in it. Not infrequently this to give 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 with religion, so it does not overwrite potential conflicts that can arise in the future. Of course this is considered not in accordance with 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 carried out based on the results of the deliberation between the oldest brothers led by the agreement which is then obeyed by the heirs

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 accompanied by the reality of the fields obtained by several related parties.

**Location and research method**

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 method used is observation and interviews accompanied by legal analyst at the results found in the field.

**Inheritance Sharing 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 in a lawful manner. It also recognizes the transfer of ownership of one's property during his lifetime to heirs after his death, both male and female, without distinguishing between children and adults. The Qur'an has explained completely and perfectly about the law of inheritance and matters concerning each heir, so that 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 law of inheritance and the value of its division. Only a few inheritance laws are determined based on the hadith of the Prophet and the agreement of the scholars. In Islamic law, there is no law described by the Qur'an as detailed and detailed as the law of inheritance. This is because inheritance is one of the most important ways of ownership of property, while property (as is commonly known) is the joint of human life, both personal and community and with this property the wheel of life can run. [[1]](#footnote-1)

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

Islamic inheritance law is a translation of the term "Fiqh Mawaris" which means the law relating to the transfer or transfer of property of people who have died (heirs) to people who are still alive.

According to M. Ali Al-Shabuni, the notion of 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 and so on.

In fiqh books, inheritance is more often referred to as farâ'id (فرائض) mufradnya (فریضة) 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 determ*ined (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 the distribution of property after the owner of the property dies. Meanwhile, according to KHI are: 'the law that regulates the transfer of property rights to the inheritance (tirkah) of heirs, who are entitled to become heirs and part of each heir itself.' [[2]](#footnote-2)

Islamic inheritance law is a law that regulates everything related to the transfer 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, is very closely related to the word fardh. which means an obligation that must be carried out. [[3]](#footnote-3)

Inheritance law is a law that regulates the inheritance of someone who has died which is given to those who are entitled, such as: family and society who are more entitled. [[4]](#footnote-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]](#footnote-5) the property of the relics of parents in their families is not immediately distributed because it is will be woried if divided and then sold by the heirs caused by 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), the majority of assets in the form of land are finally sold and separated from the ownership of the heirs. For decades, this heritage is managed with a dam alternately by each heir 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, in the end, 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 that applies in the region will slowly disappear and change. Habit and culture is something that must be preserved and developed so that his descendants will still know the culture and habits of his ancestors.

This family initially chose to process with their heritage. However, about 10 years after managing heritage without being divided before, they agreed to do a division in accordance with Islamic law. Where the distribution of boys is twice as bigger than 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 boys doubled from the girl's ration. After dividing this heritage, there is one heir who handed over the part of its properties to be used by young sisters to be managed and used for their daily needs. Some of his legacy was also managed by their oldest brother, because he was still categorized and established in the economic field and had a personal business managed by his small family.

Here we can see the distribution of inheritance by holding a meeting or deliberation between children led by the eldest brother, and in fact it is not only carried out by the family but also by other Simalungun tribal Muslim communities.

Another case was found in another family in the Tebing Tinggi area, the father who died in 2008,[[6]](#footnote-6) the inheritance was distributed immediately after his death by his children. During his life the heir had two wives and both of his wives were still alive when he died. All inheritance distributions are carried out on a faraid basis, where the son gets a share that is twice as large as the daughter's share. While his two wives at that time 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: faraidh) which was distributed to all his children. Where the son of the deceased gets a share that is twice as large as his daughter.

In the implementation of the distribution of inheritance among the community, it is not uncommon to use a system of buying and selling or barter or grants between fellow 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 evenly the land objects that become inherited assets. Where 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 is required to make a sale and purchase or other 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 his children and his 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 has to buy excess land from another heir who is the owner of the property.

In a different place, precisely in Simalungun Regency,[[7]](#footnote-7) there are heirs who also 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 is still alive and has not died. After the death of his parents, a meeting was held to determine the distribution options to be taken by the heirs. Then the heirs choose the option to divide the inheritance proportionally among the heirs, but with an agreement not to sell the inheritance to other parties, and 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 inherited land is left to other heirs. The main house which is the object of inheritance which in the end is not occupied by any heirs, because the youngest daughter who is the voter of the inheritance house already has a house not far from the inheritance house. However, he 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 stop by or come to their hometown.

Yusuf Sinaga explained[[8]](#footnote-8) 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 land is managed by the heirs and are reluctant to sell the land that is the object of their inheritance. In other words, the division of inheritance is postponed between the heirs. In addition, usually the distribution of inheritance is usually done after both parents of the heirs die. Before both of them die or only one person dies, the inheritance has not been distributed to the heirs.

But on the other hand, as stated by onother person,[[9]](#footnote-9) that 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 most of the land has been sold by the heirs 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 are also founding cases related to inheritance distribution. [[10]](#footnote-10) Where, there is an adopted child who is a girl who comes from a different tribe (read: Batak Mandailing) in Simalungun Regency, who received a very large 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 inheritance to each heir who can relate to his father and mother. [[11]](#footnote-11) In general, the Muslim community of the Simalungun tribe divides 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 chaired by the eldest brother, they often hold consensus deliberation to choose the choice of the distribution of inheritance to be taken, whether according to faraid or Islamic law, or an agreement based on a fair distribution, or the distribution according to what has been completed. by his parents. heirs) while still alive.

It seems that this has become part of the customs of the Simalungun Batak community, especially those who are Muslim. As expressed by Rahmat Saragih,[[12]](#footnote-12) a resident of Pematang Siantar City, that the eldest child has a big 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 various differences and misunderstandings to occur due to his lack of wisdom in determining the distribution in this deliberation.

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

In addition, it is not uncommon 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 also sometimes delays are made to honor each heir because all heirs use 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 sale of land 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. 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.

The existence of various delays in the distribution of inheritance often results 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 a society. In the Big Indonesian Dictionary, implication is defined as a direct result or result of the findings of a study, but linguistically it means something that has been concluded in it. [[13]](#footnote-13)

Implication according to Irfan is everything that is produced by the policy formulation process. In other words, implications are the consequences and consequences caused by the implementation of certain policies or activities.[[14]](#footnote-14) This implication is the impact or direct result of the findings produced which are usually in research.

Based on the description above, what is meant by the implications in this study are legal consequences that occur or are 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 the Muslim community of the Simalungun tribe, which is 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 is carried out starting with deliberation at the family level led by the eldest brother and his siblings. This meeting is usually held shortly after the departure 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 that was brought to 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 found, it will be carried out at a higher level. If the deliberation has not resulted in an agreement, then the distribution can be resolved by presenting traditional leaders and/or religious leaders, or resolved at the village level, then to the sub-district level and so on to the local Religious Court.

In the Qur'an, Allah SWT commands humans to conduct deliberation to take various formulations or decisions from a problem that occurs. Allah said, and consult 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 opinion of the author, the distribution of inheritance through this method of deliberation includes the distribution of inheritance based on Islamic law (non-faraidh), 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 and the heirs are informed about the share of property that will each be obtained from the division by faraid.

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 and differences of opinion among the heirs, due to several tendencies shared by one or more of the parties involved. Inside it.

The division by way of deliberation may be carried out as long as 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. heir. heir. heir. Islamic compilation. Law.

2. Fair Distribution of Inheritance

In the field, inheritance is often divided equally among the heirs. Of course this is not in accordance with the determination of the distribution of inheritance 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 on the basis of 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 the law that is zhanniy. It is not permissible to change the qath'i law into zhanniy law or change the zhanniy law into qath'i law.[[15]](#footnote-15)

In contrast to the above, Muhammad Syahrur did not question the problematic parts of the inheritance, but 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.[[16]](#footnote-16)

One of the wisdoms in determining that the share of men in inheritance is equal to two women is that a man in addition to needing a living for himself also needs a living for his wife, children or children (his family). Herein lies the reason why men should get two halves. As for women, 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 inheritance will still be higher than men's in terms of earning a living.[[17]](#footnote-17)

Ibn Kathir explained that the provisions for the distribution of inheritance were based on a balance of rights and obligations as a form of partiality of Islamic inheritance law towards women, not only being equal, but exceeding what is expected to get a sense of justice.[[18]](#footnote-18)

Muhammad Ali al-Shabuni (d. 2021) states that one of the wisdoms of increasing the share of a man's inheritance which is equal to the share of two daughters or the husband's share which is double the wife's share, is out of necessity. from 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) really needs a bigger cost of living with a number of obligations (responsibilities) that are heavier than the responsibilities of women. Therefore, men need wealth more than women. [[19]](#footnote-19)

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. Can be done evenly, but this division is done after each heir knows the share of the previous inheritance distribution. If it is known, it is possible for one party or each party to 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 hold a deliberation 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, the determination of the distribution by deliberation should be done after knowing part or part of each heir, then one or more of them can donate part of it to those in need by using an appropriate sharia contract such as a 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 Sharing

Based on the search conducted, there are several factors that cause the Simalungun Tribe Muslim community to delay the distribution of inheritance, 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. Not infrequently, due to the practice of delaying the distribution of inheritance, husband and wife do not get anything from their spouse's inheritance.

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, which includes delaying the distribution of inheritance due to certain things. Usually this meeting is dominated by older brothers (kakak) and sons. Meanwhile, girls usually only follow what has been agreed in the deliberation.

c. Lack of understanding of accelerated inheritance distribution

This factor is related to several previous factors. The Islamic heritage system that has been established according to sharia is still not widely known by various groups. If the understanding of the distribution of inheritance that must be carried out immediately is sufficient among the people, of course there will be no people who delay the distribution of inheritance.

In the field, it was found that this fact occurred because of an inadequate understanding of religion (especially regarding inheritance law), so 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 who are still small

Many people assume that children who become heirs do not need to immediately get a share of their inheritance when they are small. Given the lack of skills in managing assets, it is feared that they could spend assets in an inappropriate way. But of course this reason cannot be used as a basis for delaying inheritance, because small children who have not been able to take care of assets can be represented by their guardians to be able to hold and manage assets according to their own benefit.

This does not mean that when the heirs are small, the inheritance can be deferred and distributed by the faraid. Various ways can be done as a solution to wasting assets due to the inability to manage the inheritance of early childhood.

Inheritance assets must be immediately distributed to the heirs, and if there are heirs who are still considered relatively small, then the property can be kept by the guardian and used according to his own interests without violating the law regarding the property of orphans.

e. There are parties who want to control the inheritance

This phenomenon can occur if there is a tendency from several parties to control the inheritance. Where, 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 own heirs or from other parties.

In the research conducted, 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 is automatically transferred 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. [[20]](#footnote-20) The principle of ijbar in the distribution of inheritance is a form of God's command to immediately distribute inheritance in the event of death. [[21]](#footnote-21)

The principle of ijbar is a form of distributional justice where upon the death of the heir, the inheritance automatically passes to the heirs regardless of who the inheritance will be distributed to. [[22]](#footnote-22)

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

This is in accordance with the rules of fiqh,

درء المفاسد أولى من جلب المصالح[[23]](#footnote-23)

In a problem, rejecting the elements that cause harm is better than bringing benefits from the problem. That is, something that prevents harm 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, so that it has an impact on the emergence of problems between heirs. Utilization by some heirs of inheritance land that has not been distributed also 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. So 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 they are not immediately traded by the heirs is an act. . . which need 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. been in the area for a long time. Moreover, 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, management. with profit sharing, waqf and others. so.

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. There are heirs who 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. legacy. legacy. heir ownership. This is because the inheritance left by the heirs is in the form of land which is distributed to the heirs.

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

In addition, one of the objectives of the division of inheritance is so 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 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. The implementation of this sale and purchase must also be carried out in accordance with the rules and guidelines of religious teachings, so as 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. [[24]](#footnote-24) There is another opinion which states that a grant is a form of kindness used by the recipient, either in the form of property or otherwise. [[25]](#footnote-25) 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. [[26]](#footnote-26)

According to Wahbah Zuhaily, [[27]](#footnote-27) basically grants, alms, gifts and athiyyah 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

1. 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

2. If the gift is intended to glorify or because of a sense of conta, then it is called a gift.

3. If it is given without a purpose, namely in alms and giving, then it is called a grant.

4. If the gift is given by one person to another when he is sick before death, it is called athiyyah.

In terminology, a grant is a gift of ownership of something forever, which is also considered a gift or a gift that does not expect anything behind the gift. [[28]](#footnote-28) Meanwhile, Wahbah Zuhaily stated that the 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 meaning of 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*.[[29]](#footnote-29)

Ali Haidar argues, grants are (transfer) ownership of property 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. In fact, the legal basis of the grant he gave was the word of God,

If you are honored with something honorable, then repay that honor with something better than it, or repay that honor (with something similar). Verily Allah takes into account everything. (Surat an-Nisaa: 86). Although the majority of scholars interpret this tahiyyah with greetings, but he interprets it as a gift or a gift. [[30]](#footnote-30)

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 grantor loses ownership of the goods after he has donated his property. However, it is not uncommon for people to have the wrong perception about grants which are considered parental wills. Where, the will in question is often given to heirs who were given a will before death. In fact, it was also found that the granting of wills to heirs exceeded one-third of the inheritance, which is certainly not in accordance with the rules in Islamic law.

According to Wahbah Al-Zuhaili, will is iisha (giving messages, orders, forgiveness, guardianship) and etymologically interpreted as a promise to another person to carry out a certain 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 death of the testator. *[[31]](#footnote-31)*

The fulfillment of all valid wills of the heirs is obligatory as long as it does not exceed one third of the total 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 debts of the testator. [[32]](#footnote-32)

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.

If viewed 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, not before. Whereas 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 have a strong understanding of religion and religiosity, the distribution of inheritance is carried out according to faraid law based on the Qur'an and hadith. In addition, there are also those who hold deliberations to determine the distribution of inheritance. Where, usually the deliberations are led by the eldest brother to determine the distribution of inheritance for the heirs.

In the community there are also those who divide inheritance evenly and or rely on the sustenance given by their parents during their life. Where during his life parents have entrusted a plot of land 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.

Not infrequently 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 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 sale of land 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 that is carried out evenly between several heirs is certainly not in accordance with the determination of the distribution of inheritance based on faraidh which is ijbari. Each heir who gets the inheritance needs to 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 as long as it is not intended to conflict with Islamic inheritance law.

B. Suggestion

1. Religious leaders and traditional leaders need to join hands in disseminating the application of the distribution and utilization of inheritance according to Islamic law to the Muslim community of the Simalungun Tribe, in order to accommodate the habits of the people who are reluctant to easily sell land and heritage assets to maintain the culture and memories they have shared with the community their predecessors.

2. The government and policy makers from the Ministry of Religion, universities and Islamic law-based economics as well as other parties need to provide a broad understanding to the public regarding the various existing sharia contracts that can also be applied in their distribution and utilization inheritance by society.

3. Other researchers can conduct similar research to further disseminate the application of contracts in various other fields, especially those related to the habits of the Indonesian people through in-depth and comprehensive studies.

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