
Legal Position for the Implementation of Inheritance Distribution

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ABSTRACT

This study aims to determine the legal position of the distribution of inheritance in Sonuo Village, West Bolangitang District, North Bolaang Mongondow Regency. This type of research is normative-empirical, by taking a sociological juridical research approach (Sociological jurisprudence) which is based on a legal provision regarding the norm system, but observing how the reactions and interactions occur when the norm system works in society. Based on this view, empirical legal research using a Sociological Jurisprudence approach is a research. The results of this study indicate that the practice of dividing inheritance used by the people of Sonuo Village is using traditional procedures. Inherited property is for the heirs themselves without discriminating between sons and daughters. There are parents who divide their wealth to the heirs during his lifetime, and there are also later after the heirs die. The people of Sonuo Village, since then, have been more inclined to the Inheritance Sharing scheme which has been passed down from ancestors/customs in the village. Until now, the people of Sonuo Village, which still cannot be called modern society, still adhere to the beliefs or beliefs that have been passed down from their previous parents in determining the distribution of inheritance, which is certainly different from the point of view of Islamic law in determining inheritance.

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1. Introduction

Humans are living beings, for which each of these living beings will die at a predetermined moment. No one knows when death will come to a person, because death is the secret of Allah SWT. Death cannot be desired or avoided. As a self-enslaved being, one can only be prepared if at some point death comes. When death comes to a person then he will leave all the members of his family, and also leave all the property he has. In this case, a rule is needed that will discuss the division of property left by a person who died and also family members who are entitled to the property.¹

There are several rules in Islam regarding the distribution of property, one of the laws governing the relationship between human beings is the law of inheritance. The law of inheritance according to the KHI (Compilation of Islamic Law) in Article 171 letter (a) is "the law that regulates the transfer of ownership rights to the inheritance (tirkah) of the heirs, determines who is entitled to become heirs and their respective parts." Islamic inheritance law is a set of rules regarding the process of dividing the inheritance of people who have died and determining which heirs are entitled to get the inheritance.²

Inheritance law occupies an important role in Islamic law, the verses of the Qur'an regulate inheritance law clearly and in detail, everyone will experience it. Therefore, inheritance is also one of the subjects that is often discussed and often this inheritance law can cause disputes between heirs. The problem or problem that is often always a problem in the distribution of inheritance is that in the distribution of inheritance there is one child who gets their respective share which has been determined in Islamic inheritance, but in giving that share they feel differentiated in terms of the child is biological children, but the difference is gender and because of the lack of knowledge in Islamic inheritance law, Islamic inheritance law is often forgotten.

Islamic inheritance as part of Islamic law and more specifically part of the muammalah aspect of civil law, cannot be separated from other aspects of Islamic teachings. Therefore, the study of its rules must be based on the same source as other aspects of Islamic teachings.³

Inheritance law is one of the important sciences in Islam, it is proven that at the beginning of its growth it has been able to change the order or inheritance system that applies to the Arab Jahiliyah society. Customary inheritance law is customary law that regulates and contains lineage regarding the system and principles of inheritance law, regarding inheritance, heirs and heirs and the way in which the inheritance is transferred to control and ownership of the heir. Customary inheritance law can also be said to be the law of passing on assets from one generation to their descendants. Customary law is mostly unwritten, although some are recorded in regional scripts,

¹Aulia Mutiah, Novy Sri Pratiwi Hardani, *Islamic Inheritance Law*, (Yogyakarta: Pustaka Yustisia, 2015), 1

²*Ibid.*, 15

³Abdul Ghofur Anshori, *Inheritance Law in Indonesia: Existence and Adaptability*, (Yogyakarta: Gadjamada University press, 2012), 6

some are even recorded in an unsystematic way but only as a guide, not absolutely must be carried out, except those that are God's orders. However, the customary law of inheritance that has existed for generations has resulted in the Indonesian people, especially the people of the village of Sonuo, West Bolangitang District, North Bolaang Mongondow Regency, more likely to use customary inheritance law as inheritance distribution compared to using Islamic inheritance law.

Like it or not, that's the truth. Islamic law collapsed not because it was damaged by the enemies of ALLAH SWT, but collapsed by itself due to the commonness and ignorance of Muslims towards sharia knowledge in their religion.

As for the case in Sonuo Village, a person who is still alive has been fighting over his property to be distributed as inheritance, I have heard quite often that sometimes the fuss is about the owner of the property himself, but not infrequently the fuss is about the prospective heirs. Whereas according to sharia there is no division of inheritance as long as the owner of the property is still alive. Because one of the conditions in the distribution of inheritance is the death of the heir. If the heir is still alive, then it has nothing to do with the distribution of the inheritance. What is usually done is only a grant or will, but not for inheritance.

In general, the inheritance inherited by the Sonuo Village community is all property owned either in the form of permanent objects such as yard land, houses, and others. Based on the Articles of Inheritance Law in the KHI (Compilation of Islamic Law) in Article 176 Chapter III of the Amount of Part, "a daughter if there is only one she gets half of the share, if two or more people together they get two-thirds of the share, and if the daughter together the same as boys are two to one with girls." As for the distribution of inheritance in Sonuo village, the distribution of inheritance is divided equally between men and women in accordance with local customary inheritance law. Because the distribution of inheritance according to the local community, both boys and girls are children, so that the distribution of inheritance is equalized because it is considered more fair and will not cause conflict between siblings.

This shows that the inheritance provisions are orders. Allah SWT to all Muslims. As Muslims, carrying out provisions relating to inheritance law is an obligation that must be carried out, because it is a form of manifestation of faith and piety to Allah and His Messenger. The author sees that the people of Sonuo Village all adhere to Islam, the procedure for inheritance distribution should be in accordance with the Islamic inheritance law system. Because the distribution procedure is good and clear explanation of the determination of the parts of the heirs is the distribution procedure that has been regulated based on the Islamic inheritance law system.

However, it is very unfortunate, in fact the people of Sonuo Village, which can be said are all Muslim, in fact almost no one carries out the distribution of inheritance in accordance with Islamic teachings.

Table 1. Distribution of inheritance in Sonuo Village, West Bolangitang District, North Bolaang Mongondow Regency, 2017 -2019 .

Year	Islamic Law / Islamic Law Compilation	Customary Inheritance Law
2017	1	3
2018	2	4
2019	2	4

Source: Primary data, 2017 (Edited).

Judging from the data above, in 2017 the Sonuo village community used the distribution of inheritance in the Compilation of Islamic Law compared to the distribution of customary inheritance law. Meanwhile, in 2018-2019 the distribution of inheritance through customary inheritance law has increased compared to the distribution of inheritance through Islamic law. /Compilation of Islamic Law.

In the case of the last three years, the Muslim Community of Sonuo Village, Kec. West Bolangitang Kab. North Bolaang Mongondow in the distribution of inheritance, some people use the distribution of inheritance by dividing sons and daughters equally between sons and daughters based on deliberation and even worse, there is one right of the heirs who wants to order/force the heirs to inheritance will soon be distributed. And the distribution of the inheritance is carried out, but in the division of the inheritance the heir has not died. However, this method often causes problems, but the problem does not reach the court, it is only examined, given direction and reconciled by the Village Head, Sonuo Village. And the problem is very impactful for the descendants (family) because with this problem the heirs who initially agreed turned out to finally deny the distribution of the inheritance, so jealousy arose among the heirs. So that the sense of family they have is tenuous.

2. Method

normative -empirical, using a sociological juridical research approach (Sociological jurisprudence) which is based on a legal provision regarding the norm system, but observes how the reactions and interactions occur when the norm system works in society. Based on this view, empirical legal research using a Sociological Jurisprudence approach is a research. ⁴Furthermore, the data is analyzed descriptively which is qualitative in nature with a deductive procedure thinking line with thoughts that start from a general proposition whose truth has been believed and ends at a conclusion of new knowledge that is more specific.

3. Analysis or Discussion

⁴Mukti Fajar ND, *Normative and Empirical Legal Research Dualism* , (Yogyakarta: PustakaPelajar, 2017), 35

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Most of the Indonesian people, in this case, we are on a *demarcation line* (in this case as a separator) between customary law and Islamic law, where Islamic law in some communities who are Muslim has not applied as it should, for example in the Muslim community of Sonuo Village, Kec. West Bolangitang Kab. North Bolaang Mongondow. Indigenous peoples of Indonesia have their own customary law of inheritance. Where usually their customary law is influenced by the family system and the inheritance system they adhere to.

The existence of Islam in Indonesia has more or less influenced local customs, or more or less religious practices have been influenced by local customs. This includes matters relating to inheritance issues.

For people who hold fast to Islam, then he will continue to be consistent with the belief to distribute inheritance in Islamic ways (*faraid*). However, not a few, people who are known for their strong Islam, in the end use ways of implementing inheritance distribution according to local customs and habits. So this is a problem in the social order, on the one hand the provisions of Islam (*faraid*) are Islamic law that must be implemented, on the other hand people do not believe in and use Islamic law (*faraid*).

In addition to the practice of distributing inheritance in Sonuo Village, customary interference in this aspect of inheritance is still very strictly felt by the community in general. From several informants that the researcher interviewed, namely the Village Head, Sonuo Village, Mr. Harsono Puasa, that the distribution of inheritance was also carried out by the community, but the implementation was different from Islamic law. The distribution of Inheritance in Sonuo Village basically uses a different method, if in general Men get a bigger share than Women, then in Sonuo Village it is evenly distributed. The purpose of the equalization is that if men get a 1% share, then women also get an equal 1% share.

Furthermore, he explained that of course the religious figures in this village knew that this was not in accordance with what was stipulated in religion, especially the distribution of inheritance in Islamic law. However, in practice the people in Sonuo Village are more inclined to use the traditional inheritance distribution system. Because so far, people have used customary methods in determining the distribution of inheritance, of course this cannot be changed instantly, this requires a process, and the process certainly takes quite a long time.

The chairman of the BPD Sonuo Village also said the same thing; "The people of Sonuo Village in Dalam, the distribution of inheritance is done according to custom but it is different from the distribution according to actual Islamic law. This different division of inheritance is caused by the culture of the North Bolaang Mongondow community, especially in Sonuo Village, which holds very strong customs."

From the explanation above, it can be understood that the distribution of inheritance to the people of Sonuo Village is carried out by custom. This is caused by the condition of the people who are Indigenous people who hold fast to the Customs that have existed

in society since time immemorial.

However, unlike the explanation above, a number of people in Sonuo Village recognize the distribution of inheritance based on Islamic law. This is done by people who have a fairly good understanding of religion. As the opinion of Mr. Djasri Hulata as one of the religious leaders in Sonuo Village, namely the distribution of boys is equal to two girls and if the children are all girls more than two, then their share is $\frac{2}{3}$ of the property left behind. If the daughter is alone, then yes she gets half of the property. And for each mother and father $\frac{1}{6}$ of the property left behind. The researcher's observations show that generally in Sonuo Village, the inheritance is divided by the heirs themselves without distinguishing between sons and daughters, and the inheritance is divided equally. The heir's child dies before his parents, then the person concerned only gets a grant in the amount in accordance with the sincerity of his brother. There are parents who share their assets with their heirs, if they are still alive, and some later, after death, the heirs themselves divide the inheritance.

Overview of Islamic Law on the Practice of Sharing the Inheritance of the Muslim Community Sonuo Village, Kec. West BolangItang, Kab. North Bolaangmongondow.

The importance of distributing Inheritance to those who are left as fair as possible has been regulated in Islam, preventing conflicts between heirs and avoiding fraternity of brotherhood between living families.

Before the author describes the review of Islamic law the practice of dividing inheritance in Sonuo Village, the author will first describe the Islamic concept of the distribution of inheritance:

1. Children's Inheritance⁵

- a) The share of boys is as much as two parts of girls
- b) If the deceased dies, only one daughter (no sons)
- c) boy) he gets .
- d) If it is only a girl and they have one or more people, they will get $\frac{2}{3}$ and it will be divided equally between them.

2. Parent's Inheritance Hak⁶

- a) If the deceased has children, the father and mother each get $\frac{1}{6}$.
- b) If you do not leave the child and no other heirs, the mother gets $\frac{1}{3}$ and the father gets the rest.
- c) If beside your mother and father there are relatives of the deceased, then the mother gets $\frac{1}{6}$.

3. Inheritance Rights of Husband and Wife⁷

- a) Husband gets if the wife does not leave the child.

⁵Al-Shaikah Muhammad bin Saleh al-Usaimin, Tahsil al-Fara'id, trans. Abu Najiyah Muhammad, *Inheritance in Islamic law*, (Tegal-Central Java: al-saf Media, 2009), 54

⁶Shohibul Munir, *Fara'id Science*, (Bandung: PT. Al-Ma'arif, 1984), 18

⁷Dian Khairul Umah, *Fiki Mawaris*, (Bandung: CV. Pustaka Setia, 2009), 71

- b) The husband gets if the wife leaves the child.
 - c) The wife gets if the husband does not leave the child.
 - d) Wife leaves 1/8 if husband leaves children.
4. Inheritance Rights of Seibu Brothers

The half-sister of a man or woman who was left behind when the deceased did not have children and a father. ⁸Got 1/6. But they are more than one then they get 1/3 and in equal shares between them either male or female.

5. When Dividing Inheritance Property

All the above divisions of inheritance can only be implemented after first settling the will and debts of the deceased.

6. Some Provisions About Inheritance Law

- a) Making a will should not be more than 1/3 because it brings harm to the heirs.
- b) A will does not apply to his heirs except with the consent of the other heirs.

In this case, the results of an interview with Mr. Hamzah Pontoh as a Community in Dese Sonuo For the practice of distribution, distributing the property according to what the parents willed before death, namely all assets must be divided equally, meaning that for boys the share is the same as for children. Sujatmiko Van Gobel as the Sonuo Village official stated that in one family husband/wife, son/son, daughter divides inheritance through joint deliberation. With their cohesiveness, mutual deliberation was born, the practice of dividing them between men and women is equal in the amount of inheritance, if the man is one, the woman is also one."

It is different from the results of the interview with Mr. Kisman Payagi as the community of Sonuo Village that the distribution practices in Sonuo Village are different, there are those who divide inheritance by deliberation, there are also those who divide inheritance based on their own will. That is, the inheritance is distributed without the knowledge of the heirs. "For example, in my village. I am 4 brothers, because from a financial point of view I am not the same as them, so the distribution of the inheritance is more to me, even though it is against Islamic law."

Meanwhile, according to the results of the interview with Mrs. Nurmin Payagi, she said that the distribution of inheritance to the community, especially the heirs who are entitled to receive the inheritance, is divided equally, provided that all the heirs have agreed and agreed to the decision.

From the explanation above, it is understood that the practice of dividing inheritance in the Sonuo Village community, Kec. West Bolangitang Kab. North Bolaang Mongondow divided equally with the provisions of Islamic teachings will cause conflict in the family. This is as conveyed by Zubair Oli`i as the Sonuo Village Community:

⁸Rachmadi Usman, *Islamic Inheritance Law: In Dimasi Compilation of Islamic Law*, (Bandung: CV. Mandar Manju, 2009), 87

"In my opinion, the practice of distributing inheritance is almost the average for the community, they share it based on an agreement. Why did it happen? If we overspend, it will create a gap between our families, so we divide the inheritance equally between boys and girls."

As for the practice of dividing inheritance which has problems or causes conflict, or one of the heirs objected, the case for the distribution of inheritance is brought to the Religious Courts, as the institution authorized to decide inheritance cases. This was conveyed by Sulaeman Oli`i as the Head of Hamlet 1 Sonuo Village that, if in the distribution of inheritance there are objections to the results of their deliberation or are not satisfied with the wishes of the other heirs, then the person concerned can file a complaint with the State Religious Court. .

This is in line with what was conveyed by Riflian Hualata, as the Head of Dusun II of Sonuo Village who said that the practice of dividing inheritance in the Sonuo Village community, the majority of which is Muslim, basically always relies on the distribution of inheritance regulated by Islam. But as if it has become a tradition and of course to minimize or even avoid problems, the community carries out the practice of dividing inheritance based on the results of family deliberation. It aims to give equal portions to the heirs on the basis of self-sincerity and a sense of brotherhood that must always be maintained.

4. Conclusion

In the practice of dividing inheritance used by the people of Sonuo Village, it is customary to use customs. Inherited property is for the heirs themselves without discriminating between sons and daughters. There are parents who divide their wealth to the heirs during his lifetime, and there are also later after the heirs die. The people of Sonuo Village, since then, have been more inclined to the Inheritance Sharing scheme which has been passed down from ancestors/customs in the village. Until now, the people of Sonuo Village, which still cannot be called modern society, still adhere to the beliefs or beliefs that have been passed down from their previous parents in determining the distribution of inheritance, which is certainly different from the point of view of Islamic law in determining inheritance.

References

- Abdul Ghofur Anshori, *Inheritance Law in Indonesia: Existence and Adaptability* , Yogyakarta: Gadjamada University press, 2012 .
- Al-Shaikah Muhammad bin Saleh al-Usaimin, Tahsil al-Fara`id, trans. Abu Najiyah Muhammad, *Inheritance in Islamic law*, Tegal-Central Java: al-saf Media, 2009 .
- Aulia Mutiah, Novy Sri Pratiwi Hardani, *Islamic Inheritance Law* , Yogyakarta: Pustaka Yustisia, 2015 .
- Dian Khairul Umah, *Fiki Mawaris*, Bandung: CV. Faithful Library, 2009 .

Mukti Fajar ND, *The Dualism of Normative and Empirical Legal Research* , Yogyakarta: Student Library, 2017 .

Rachmadi Usman, *Islamic Inheritance Law: In Dimasi Compilation of Islamic Law*, Bandung: CV. Mandar Manju, 2009.

Shohibul Munir, *Fara`id Science*, Bandung: PT. Al-Ma'arif, 1984 .