



Settlement of Estate Disputes in Review From a Legal Anthropological Perspective

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Abstract: This study aims to find out how the settlement pattern is used in the division of inheritance property in North Tamaila village and what factors are obstacles at the time of the division of inheritance property. Emperis type of research with a Case *approach*. result research shows the pattern of dispute resolution through several stages, the first stage which is known as "Mopotihuloo Ahali Lo Wutato" (deliberation between family and heirs) is the first stage of conducting deliberations internally family between the extended family of the parties to the dispute but did not find the result of the agreement, the second stage is carried out, namely mediation, The inhibiting factor in the settlement of inheritance disputes consists of two factors, internal and external factors internal factors include low education, economy, and low religious understanding. Meanwhile, external factors factor in the lack of socialization from the government and counseling by traditional figures related to the system of distribution of inheritance both in the perspective of goGorontaloustomary law, civil law, and Islamic law.

Keywords: Inheritance Disputes; Customs; Village Government.

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1. Introduction

Indonesia is the highest agreement of the shapers of the state, even though it had experienced a constitutional test at the time of the amendment of the 1945 Constitution to the Constitution of the Republic of the United States of Indonesia in 1949, however, the recognition of areas under the auspices of the Indonesian State was still recognized.¹ The absolute requirement of state sovereignty is the existence of a society that complies with the constitution and its government.² Because of its essence, the constitution is a conception of the state that is the basis and limitation of the constellation of state administration systems.³ Therefore, in legal politics, invention of law and the creation of new laws under the objectives of the State is a value that must be implemented to achieve supermajority and legal justice.⁴ Furthermore, the people agreed to enter into a noble treaty (*modus vivendi*) which is outlined in basic law in the form of a state constitution.⁵ Legal protection is very necessary because it seeks to integrate various needs in the association so that there is no clash between needs and one can enjoy all the rights granted by law.⁶ The state is firmly obliged to strive to fulfill the rights of every citizen.⁷

Many disputes occurred in Indonesia that caused light and severe conflicts. Some of these conflicts can be formed from, The struggle for the throne, including the source of life and livelihood, inheritance, wealth, land, and state, the Struggle for the throne, including supremacy, government, prestige/position, Scramble for women.⁸

All of these conflicts currently have their laws. The aspect of anthropology also provides a pattern of dispute resolution that is often applied among the Indonesian people because considering the development of society that often occurs it must adjust to local conditions and culture.⁹

¹Novendri M. Nggilu, "Tinjauan Yuridis Pengaturan Sanksi Pidana Dalam Peraturan Daerah Provinsi Gorontalo," *Lambung Mangkurat Law Journal*. 5, No. 2 (2020): 109–121., 110

²Mellisa Towadi and Nur Mohamad Kasim, "An Indication of China's Policy towards Uighurs and Its Implications by International Law Aspects." *Jambura Law Review*. 3, No. 01 (2021): 55–71., 69

³Ahmad dan Novendri M. Nggilu Fakultas, "Denyut Nadi Amendemen Kelima UUD 1945 Melalui Pelibatan Mahkamah Konstitusi Sebagai Prinsip the Guardian of the Constitution of the Constitution Through the the Principle of the Guardian of the Constitution." *Jurnal Konstitusi*. 16, No. 4 (2019): 785–808., 791

⁴Mohamad Hidayat Muhtar, "Model Politik Hukum Pemberantasan Korupsi Di Indonesia Dalam Rangka Harmonisasi Lembaga Penegak Hukum." *Jambura Law Review*. 1, No. 1 (2019): 68–93., 73

⁵Ramdan Kasim, "Dehumanisasi Pada Penerapan Hukum Pidana Secara Berlebihan (*Overspanning van Het Straftrecht*)," *Jambura Law Review*. 2, No. 1 (2020): 1–29., 3

⁶Jufryanto Puluhalawa, Mellisa Towadi, and Vifi Swarianata, "Perlindungan Hukum Situs Bawah Air Leato / Japanese Cargo Wreck The Legal Protection of The Leato Underwater Site" *Jurnal Reformasi Hukum* 24. No. 2 (2020): 189–208., 197

⁷Julius Mandjo, "The Right to Obtain Free Assistance and Legal Protection for The Indigent People Through Legal Assistance Organizations." *Jambura Law Review*. 3, No. 02 (2021): 365–77., 375

⁸Wisnu Sasongko, *Armageddon 2 : Antara Petaka Dan Rahmat*, Cet. 1 (Jakarta: Gema Insani, 2008). hal 158.

⁹Rini Fidiyani, "Masa Depan Antropologi Hukum," *Hukum Pro Justicia* 27, no. 1 (2009). 63.

Disputes or their use in English called *conflict have* received a double perception among scholars. A dispute is equated with *a* dispute which means a dispute or difference of view that has been known to the parties who are not involved in the dispute. A dispute can be defined as a dispute that occurs between two or more parties accumulated until the parties who are not involved in the dispute become aware of the existence of the dispute.¹⁰

Inheritance is the process of transferring property from the heir to the heir. In customary law, the process of transferring this property can occur when the heir has passed away, or before the heir dies, what is inherited is the heir's property which can be tangible or intangible. The transfer of property that occurs after the heir dies is called a will while the transfer of property before the heir dies is called a grant.¹¹

A conflict is usually accompanied by a violation of rights and ajible from one party to another party so that it can cause losses. In this condition, the law plays an important role in resolving the conflict. Inheritance disputes that occur in society generally rely on the division of inherited property because there are heirs who do not get their rights, or there are some heirs who control the inheritance. Disputes also occur when the estate has been sold by one of the heirs without the consent of the other heirs and the actions of several parties who stall the division of the inheritance with a certain motive. Finally, there was a dispute between the families causing prolonged conflict due to the emergence of discontent for some heirs in addition to the ignorance of the parts that had been arranged in Islam as well agreed and selfishness. Disputes over the division of inheritance according to Islamic law can be resolved by litigation or non-litigation. The settlement of disputes that must be carried out first is a non-litigation settlement, namely the heirs in dispute gather and resolve the dispute over the division of the den gan inheritance through deliberation and consensus. When the deliberations of the consensus do not get the result that is encouraged, it is continued with mediation and one of the heirs in dispute presents a third party to help resolve the dispute over the division of the inheritance according to Islamic law. The settlement can be done by deliberation of the family sec ara areng the heirs. If disputes escalate, then a third party is needed who has the authority and authority to provide justice and judgments with legal force, namely religious courts. The judiciary is pursued as the ultimate step in resolving inheritance disputes.¹²

Inheritance law includes rules and decisions related to the process of forwarding or passing and transferring material and immaterial wealth from one generation to the next. To be able to meet the legal needs of the community in the present and in the future in the context of building legal awareness for the wider community based on Pancasila and the 1945 Constitution, conceptions and legal principles derived from

¹⁰Nurnaningsih Amriani, 2011, *Mediasi Alternatif Penyelesaian Sengketa Perdata di Pengadilan*, Jakarta: Raja Grafindo Press, (2011), 12.

¹¹Maria Kaban, *Penyelesaian Sengketa Waris Tanah Adat Pada Masyarakat Adat Karo*, *Mimbar Hukum*, 28, No 3, (2016), 455

¹²Khozanah Ilma Terok, Zaini Munawir, & Anggreini Atmei Lubis, *Pengaruh Mediasi Dalam Penyelesaian Sengketa Waris*, *JUNCTO: Jurnal Ilmiah Hukum*, 3 No 1 (2021), 13

customary law are applied. And the law of inheritance is one of the smallest parts of family law because it is closely related to the scope of human life, for every human being will inevitably experience a law called death. This will result in problems about how to settle rights and obligations towards family members left behind.¹³

Inheritance law in Indonesia is pluralistic because there are three inheritance law systems, namely the Customary Inheritance Law, Islamic Inheritance Law, and the Civil Code of Inheritance. Indonesia's pluralistic society consists of various ethnic groups. The existence of these communities has various customs and customary laws between one region and another and has its characteristics including customary inheritance laws that apply to its area. Customary inheritance law has its distinctive patterns and properties in Indonesia and is different from Islamic law and western law. The law is family-based, that is, the 2 interests of a harmonious and peaceful life take precedence over the nature of material and selfishness.

The law of inheritance is regulated in Book II of the Civil Code. Article regulating inheritance as many as 300 articles, starting from Article 830 of the Civil Code to Article 1130 of the Civil Code This principle is affirmed in the provisions of Article 830 of the Civil Code (Inheritance only occurs) whenever there is death (from the heir or legal owner of the estate).¹⁴ As soon as a person dies, the heirs by law will replace the position of the heir as the authority to own or manage the property left behind. Regarding the division of inheritance, there are three elements in it, namely: (1) The existence of an heir, (2) Inheritance, and (3) The existence of an heir. Based on the information inherited property is in the form of rights and obligations that can be valued with money. The issue of land disputes between inheritances is currently a scourge because it is thought that inheritance can provide welfare for those who receive an inheritance.¹⁵

In dispute resolution, the view of legal anthropology addresses various human activities(societies) or sciences that speak of humans, which include cultures and customs. In a sense, the custom is a habit that people do for a long time, then the habit is carried out for generations by the surrounding community, in which there are authorities, obligations, and sanctions. While culture is the result of work, creation, and taste. The aspect of taste that includes the human soul embodies all the rules and values of the society that are needed to regulate society.¹⁶

Based on the explanation above, the author finds that in practice inheritance is a common willingness based on the needs and legal standards that apply to each group of people, guided by religious law or state law in force in Indonesia. From the explanation above, the author can conclude that the arrangement for the division of

¹³Prof. Dr. Amir Syarifuddin, *Hukum Kewarisan Islam* (Jakarta: Prenada Media, 2015). 6.

¹⁴Serge Kreutz, "Kitab Undang-Undang Hukum Perdata (Civil Code) Buku Kedua-Benda," *Internasional Journal*, 2011.

¹⁵Pasal 832. "Kitab Undang-Undang Hukum Perdata".

¹⁶Suriyaman Mustari, *Hukum Adat Dahulu, Kini, Dan Akan Datang* (Jakarta: Kencana, 2014). 20.

inheritance is different from one region to another, some use customary law or civil law, specifically adapted to the local situation and the policies of the parties concerned.

The people of northern Tamaila in terms of the division of inheritance trust a head of government in this case the Village Head as a third party to resolve inheritance disputes rather than through the process in court, although only a few community groups consult the issue of inheritance to the village head as a third party. Because some community groups believe that the division of inheritance can be completed by the Village Head rather than through the Trial route in the Religious Court which is quite troublesome and will spend not a small amount of budget to carry out the trial.¹⁷

2. Method

The research method used in this paper is empirical research or field research with a *Case approach*. Observation, interviews, and documentation as an attempt to gain clarity from something that is being contested.

3. Settlement Pattern Used to Resolve Inheritance Disputes in North Tamaila Village, Tolangohula District, Gorontalo Regency

For a developing country like the Indonesian state, the law is always connected with efforts to achieve a much better life than before, so the role or usefulness of the law becomes increasingly important to realize development as mandated in the preamble of the 1945 Constitution, namely the protection of the Indonesian nation and advancing the general welfare of all Indonesians and all Indonesian bloodshed. The law is also built to regulate and limit various kinds of community activities so that immediate order and order are achieved in the community. Based on this, there also appears a product of customary law itself that still exists to grow and take root in the life of the Indonesian people, and then this customary law product is made to regulate the life of the community's regional area.¹⁸

Problems that occur in the northern tamaila village The division of inheritance outside the court in involves the village head as a mediator to resolve inheritance disputes according to Islamic law or religious law adopted by some indigenous people. If there is no consensus in this case some heirs in the heir's family disagree with withe division of inheritance, then the heirs will invite the customary institution and the head of the village government, namely the village head, as a witness and vide input on the division of inheritance.¹⁹

The implementation of mediation or alternative dispute resolution outside the court is stated in Law 30 of 1999 concerning Arbitration and Alternative dispute resolution stated in Article 1 Paragraph 10, namely "altAlternativespute Resolution is an

¹⁷Hasil wawancara bersama Kepala Desa

¹⁸Yanna Galuh Setyowati, Tarissa Aprilya, Akhsal Rico Faldy, Analisis Terhadap Prosedur Penyelesaian Sengketa Warisan Oleh Majelis Adat Aceh, Jurnal Kajian Hukum dan Pendidikan Kewarganegaraan, 1, No 2, (2022), 5

¹⁹Dolot Alhasni. Bakung, "Pemetaan Sosio Yuridis Kewarisan Pada Masyarakat Adat " Ulipu Lo Tomilito To Uwanengo" Di Daerah Gorontalo," *Al Ahkam* 16, no. 2 (2020). 84.

institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement of disputes outside the court by through siltation, negotiation, mediation, conciliation, or expert judgment.²⁰

The implementation of settlement of inheritance disputes in the North Tamaila Village Community, Tolangohula District, Gorontalo Regency, includes non-litigation dispute resolution or settlement of disputes outside the court. Out-of-court dispute resolution is dispute resolution carried out based on an agreement between the parties and the dispute resolution procedure is left entirely to the parties to the dispute which can be done in various ways, namely mediation purposes. The settlement of disputes over the division of inheritance using the energy of a village head is considered to better reflect the spirit of kinship and kinship in the family in addition to maintaining the integrity of the family itself. As a manifestation of mutual respect and a harmonious attitude of toving, dispute resolution is always sought through familial deliberation. Peaceful settlement is preferred by the village head/father to maintain balance in the community's social life.

The dispute resolution pattern used by the people of North Tamaila village uses alternative dispute resolution outside the court, namely with the pattern of internal family deliberation and mediation in this case the village head who is responsible for dispute resolution in North Tamaila Village who is directly appointed by the litigants, by presenting witnesses from the family, from community leaders and traditional leaders by digging up information about the history and The existence of inherited property is a piece of land that is in dispute between the two parties. The most appropriate settlement pattern applied by the people of northern tamaila village is internal family deliberation and mediation which in the local culture is known as "*mopotihuloo ahali lo wutato*" (deliberation between family and heirs or heirs).²¹ Therefore, the author first explains the pattern of settlement of inheritance disputes in north Tamaila Village, namely:

1. Internal Family Deliberations

At this stage, it was attended directly by the parties to the dispute and the children of the parties to the dispute, the discussion of deliberations, namely the family of Mrs. Sarci wanted several coconut trees planted on an area of 1 (one) hectare to be part of it, then for the land to be managed by Mrs. Tini. However, Mrs. Tini's family rejected the suggestion made by Mrs. Sarci because Mrs. Tini thought that she would be harmed in such a division. After all, the land and the crops in the area would be cut down and would be focused on planting corn crops. Due to the absence of suggestions that are considered unfair by the litigants, it was consulted a third party, namely the Head of North Tamaila Village.²²

²⁰"Pasal 1 Ayat 10 Undang-Undang Nomor 30 Tahun 1999 Tentang Arbitrase Dan Alternatif Penyelesaian Sengketa".

²¹"Interview of North Tamaila Village Traditional Stakeholder Mr. Nani Pade, August 10, 2022, 09:20 WITA,".

²²"Wawancara Bersama Ahli Waris Ibu Tini Tanggal 4 Agustus 2022, 11:12 Wita,".

The consent of the heirs themselves means to avoid the occurrence of things that are not wanted after the parents later pass away. In the Compilation of Islamic Law and Islamic law, the fulfillment of harmony and conditions can be seen from the method of distribution. The third party appointed by the disputing party, namely the tamaila village head, uses a deliberative settlement pattern as expressed by the head of the north tamaila village, Mr. Bukhori Borama, he said that the settlement pattern used to resolve this case is the issue of division of inheritance using a mediation settlement pattern and determining the agreed parts because the parties to the dispute, namely the heirs, appoint the head of the villages to determine how the division and amount or nominal they are entitled to get from the inheritance.²³

2. Mediation

The mediation stage is attended directly by the village head who is directly appointed by the litigants as a mediator to resolve the inheritance dispute. The mediator first listened to the dispute between Mrs. Sarci and Mrs. Tini's family, namely a piece of land planted with annual crops. Then listen to what are the obstacles and concerns of the litigants. The collection of all family members concerned, all family members will be collected at the Village Chief's house. In the division of inheritance of the parties concerned, it is as follows:

- 1) The prospective heir, that is, the person entitled to a share of the right of inheritance in this case is the first party (the child of the first wife) and the second party (the third wife) and his children.
- 2) Witnesses, namely close relatives and some KKN students were used as witnesses in the distribution of inheritance. The goal is that if there is a dispute in the division of inheritance, the witness can later explain with his testimony so that it can prevent a dispute. Witnesses themselves can be from the son-in-law of the husband/wife of prospective heirs and public figures such as religious figures, traditional figures, and others
- 3) when everything has been assembled, the Village Head who has been appointed as the mediator will give the intention of the association, namely to divide the inheritance, the Village Head will provide their respective suggestions and inputs for the prospective heirs and the reasons why it was decided this way.
- 4) Request the opinion of the prospective heirs, when the share of the estate has been proposed by the mediator by asking the opinion of each of the prospective heirs regarding their consent of them. Usually, the prospective heirs will agree with the decision that has been made because in that case, the prospective heirs consider the decision of their parents to be the best and fair for all. But it does not rule out the possibility that there are potential heirs who disagree on the matter of the part or layout of the estate, and it will be re-deliberated until there is agreement from all parties.

The Village Head and also a Mediator then went to traditional leaders and several community leaders to explain the history of the land which was disputed between the

family of Mrs. Sarci and Mrs. Tini. Then a second deliberation was held at the village office which was attended by the parties to the dispute and several witnesses from traditional leaders and community leaders and some students. And it is also presented by the notary to agree with the results of the agreement between the parties to the dispute, then from the results of the deliberation agreement, namely the inheritance, namely a plot of land covering an area of one hectare, will be cashed out and the proceeds from the sale of the land will be divided equally between the family of Mrs. Sarci and Mrs. Tini, Then the heirs sign a letter of agreement.

Article 171 letter a compilation of Islamic law (KHI) 13 Article 171 letter f compilation of Islamic law (KHI) 53 Explanation of the pillars and conditions contained in the compilation of Islamic law (KHI) regulated in article 194 and article 195. The condition for the person who will make a will is at least 21 years old, there is no coercion from any party and the property to be inherited is the right of the trustees in its entirety. As for the execution, the will is carried out in the presence of two witnesses or notaries in writing or orally, the will still do not exceed one-third of the estate. it is deemed valid when approved by all heirs.²⁴

1. Pre-settlement of disputes with several steps between loans, building confidence, contacting the warring parties, being aware of cultural differences, determining who is present, determining the purpose of the meeting, the agreement, and the time and place than creating a sense of security for both parties to meet and discuss their dispute.
2. The litigants meet at the village head's house to listen to the information of the parties to the dispute and then the village head goes to one of the litigants and community leaders and traditional leaders to be asked for testimony about the history of the land that is inherited.
3. Before the decision on the distribution of inheritance by the village head, a land deed letter was made first at the PPAT Muhamad fardha Amir, office located on Jalan Prof Dr jhon Aryo katili Paguyaman Kota Tengah, Gorontalo City
4. On Tuesday, November 23, 2021, the litigants were gathered at the village office which was attended by heirs, several community leaders, traditional leaders, and village heads. It was then decided that the estate i.e. a plot of land with an area of 0.1 acres would be sold from the proceeds of the sale to be divided in half and given to the heirs.²⁵
5. Mutual agreement, after all the first party and the second party, has agreed on their respective parts of the mediator will re-clarify it regarding the share of each prospective heir of the previous agreement. According to a statement from Mr. Bukhori Boroma that the share of prospective heirs vary, depending on how the

²⁴"Pasal 194-195. Kompilasi Hukum Islam (KHI)," 2021, <https://www.pengadilanagama.com/2021/12/kompilasi-hukum-islam-khi.html>.

²⁵"Interview with the Head of North Tamaila Village, Mr. Bukhori Boroma S,Pdi. Wednesday 03-August 2022, 13:15 WITA,".

agreement is carried out in the family, the number of shares of prospective heirs that have occurred in North Tamaila Village includes the dispute over inheritance, namely a piece of land planted with annual crops located in the hamlet of mekar Jaya, which is under the customs in North Tamaila Village, the person who first managed the land and has authentic evidence the strong then he who has full title to the land.

Human beings prefer to divide the inheritance by agreeing in family deliberations so that there is no jealousy in the family relationship, this method cannot abort the mandatory law in the division of inheritance except based on mutual respect and being willing to do what has been decided in the division by knowing the exact share of each prospective heir. It can be said that the prospective heir who gets more than the prospective heir gives his share to the part below him with ridha.

The practice of inheritance distribution by the people of North Tamaila village uses two ways of division, the first division is a will grant meaning that a living parent will distribute the inheritance only partly to their children, part of it is for the necessities of life until the parents die. then after that, the property left over will be handed over and redistributed after the parents pass away using a will. second, the way of the will alone means that the estate of the testator will be distributed and handed over to the prospective heir (child) during his life by way of a will and will take effect after his death. If you look at the division using the method of the will, it has fulfilled the pillars of the will contained in the Compilation of Islamic Law, namely:

1. The person who receives the will
2. Wills

The stages of the settlement in mediation are the transfer of the right to own the heritage property (tirkah) regulated in article 171 letter a KHI (Compilation of Islamic Law) and the conditions for the person who will make a will at least 21 years old there is no coercion from any party. Settlement by mediation or deliberation to resolve the dispute over the inheritance, namely a piece of land and the nominal amount obtained by the heirs in the sale, and the proceeds of the sale are divided equally between Mrs. Sarci and Mrs. Tini equal share²⁶.

At the second meeting held at the North Tamaila village office which was attended by heirs including the children of his first wife and children and his second wife and children, several witnesses consisting of traditional figures, notaries, and KKN students. At the result of the deliberations it was decided that a piece of land would be sold from the proceeds would be divided equally between the first party and the second party.

Regarding inheritance, namely a piece of land with an area of 0.1 (zero point one) hectare planted with annual crops, namely coconut trees, the second obstacle is the absence of authentic evidence such as land ownership letters, but I approach it by directing to the two divisions, community leaders and traditional figures related to the

²⁶Op.Cit. Compilation of Islamic Law (KHI).

history and chronology of the land, so that the land in dispute has proof of ownership, namely the land certificate". based on an interview with Mrs. Sarci as the first party or the first wife of Alm Mr. Jufrin Palilati said that the process of dividing the inheritance property will be quite difficult and quite expensive if taken through the court route because the village head is a smart person, the village head is appointed as a judge to divide the inheritance as for the obstacle in the division of inheritance, namely my incomprehension of the law, especially regarding inheritance.²⁷

In an out-of-court settlement, a village head carrying out his duties as a dispute resolution does not need to require a mediator's certificate, because it is the authority of Law Number 6 of 2014 concerning Villages that the Village has the right of the origin and traditional rights in regulating and taking care of the interests of the local community.²⁸ Dispute resolution at the village level mostly uses mediation channels that are based on customary law, but in this case, using the stages of mediation at the village level but is based on Islamic law or the Compilation of Islamic Law (KHI) more specifically North Tamaila Village cannot be separated from positive law, Islamic law, and customary law.²⁹ But in this case, it is more dominant to use customary law and Islamic law. "By using a persuasive and deliberative approach using indigenous language to reach a peace agreement," said the head of North Tamaila Village.

3. 1. Obstacles Faced in Resolving Inheritance Property Disputes in North Tamaila Village, Tolangohula District, Gorontalo Regency in Perikatan

Any legal product that has flaws and weaknesses, cannot be expected to realize the intended legal goals. The purpose of the law to be realized is oriented toward the values of justice, expediency, and legal certainty in all aspects of life in society. Legal objectives can only be realized through the implementation, application, and enforcement of the law (*Law enforcement*). The purpose of the law in question is oriented towards equal rights, obligations, and position before the *law (equality before the law)*, and is not discriminatory.³⁰

Based on the statement of Sarci's mother regarding the inheritance dispute that occurred in her family, it is not under the court because it will take a lot of time and costs so that the village head is appointed by the search mother's family to resolve this problem because the figure of the village head is a knowledgeable person and is considered capable of providing solutions in solving this problem.³¹

Referring to the evolutionary theory of the North Tamaila people, it is still said that the community is lagging behind both in terms of religious understanding and education

²⁷Interview with Mrs. Sarci's Heirs on August 4, 2022, 09:00 WITA,".

²⁸"Undang-Undang Nomor 6 Tahun 2014 Tentang Desa".

²⁹Nur Wahid, "Analisis Penyelesaian Sengketa Tanah Warisan Melalui Jalur Mediasi Tingkat Desa Studi Kasus Desa Mampang Kec. Tombolo Kab. Gowa," *Jurnal Hukum* 3, no. 2 (2012). hal 5.

³⁰Nur Mohamad Kasim, "Studi Komparatif Waris Menurut Hukum Islam Dan Hukum Adat," (2009), 12-42.

³¹"Wawancara Ahli Waris Ibu Sarci Pakaya, 03 Agustus 2022 Pukul 08:20,".

because where one of the areas in the village of northern Tamaila there is an indigenous tribe of Gorontalo, namely *the polahi tribe*, this makes it an obstacle factor in resolving inheritance disputes. In its resolution it experiences obstacles from both internal and external factors, in this case, the factors are as follows :

There are several principles of binding law regulated in Book III of the Civil Code, namely:

1. Internal Factors

The obstacles in determining heritage in North Tamaila Village when viewed from internal factors consist of the:

a. Factor Education

The low level of education and knowledge in people's lives is one of the obstacles in the implementation of inheritance determination in North Tamaila Village, Tolangohula District, Gorontalo Regency, that: The inhibiting factor in the implementation of inheritance in customary law in Gorontalo is the process of shifting values in customary law this often arises in the division of inheritance. The issue of customary inheritance law cannot be separated from family customary law, because the family system used has consequences for determining the rules of inheritance.

b. Economic Factors

Dispute resolution in court is considered to cost a lot of money and is considered more complicated and time-consuming, the settlement of inheritance disputes in court is considered ineffective by rural communities. They were of the view that in court they could spend or reduce the inheritance they received. On this basis, the village community uses more family settlements at the village level by relying on the role of the village head.

c. Factors of Low Religious Understanding

In addition to the educational factor, another factor that is also a barrier or obstacle in the implementation of inheritance in customary law in Gorontalo is none other than the low understanding of religious and cultural values adopted by the Gorontalo community.

The role of religion and cultural values as well as the karmic system adopted by the community in Gorontalo is no less important in determining the rules of inheritance because religion is one of the elements of customary law that cannot be separated from each other.

2. External Factors

a. Government

The government in this case, which has a policy in government, has less attention to village communities because it does not carry out socialization in rural areas related to the distribution of inheritance so there is a lack of understanding of village

communities regarding the division of inheritance and the implementation of the law.³²

b. Custom

Meanwhile, on the external side, the factor that becomes an obstacle is the absence of a customary institution that is legally formed to mediate cases of inheritance disputes, as mandated by Law Number 30 of 1999 concerning Arbitration, namely Article 1 Paragraph 10, namely "Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely the settlement of disputes outside the court using consultation, negotiation, mediation, conciliation, or expert judgment. Article 1, Paragraph 10, explains that the settlement of disputes outside the court requires an institution for resolving disputes even if they are disputed outside the court. The establishment of the institution is also regulated in the Regional Regulation of Gorontalo Province No. 2 of 2016 concerning the Implementation of Customary Institutions. So that the dispute processes for inheritance property cases are not only presenting mediators and witnesses but also carried out by dispute resolution institutions both customarily and based on needs under the mandate of law Number 6 of 2014 concerning Villages, where villages have the authority to regulate and take care of the interests of the community based on the rights of origin, customs and cultural values of the village community.

Based on this, the author argues that the low level of education and the lack of meaning to religious values and manners in the life of the Gorontalo community are one of the factors that hinder the implementation of inheritance in customary law in Gorontalo, in addition to the meaning of Islamic religious values and lack of socialization is also important things that receive serious attention.

The author concludes that the factors that become obstacles to inheritance in customary law in Gorontalo are influenced by internal factors including low education, economy, and low understanding of religious values, especially related to inheritance issues. Meanwhile, the external factor is the lack of socialization of Gorontalo customary inheritance law by competent traditional figures.

4. Conclusion

The pattern of dispute resolution goes through several stages, the first stage is known as "Mopotihuloo Ahali Lo Wutato"(deliberation between family and heirs or heirs) is the first stage of the implementation of deliberation, namely internal family deliberations between the extended family of the parties to the dispute but did not find the result of the agreement, then the second stage is carried out, namely mediation by presenting the village head to be able to provide advice and resolve Inheritance disputes, brought together and then deliberations were carried out to reach an

³²"Wawancara Bersama Kepala Desa Tamaila Utara Bapak Bukhori Boroma S,Pdi. Rabu 03-Agustus 2022, 13:15 Wita."

agreement with several witnesses presented. The inhibiting factors in resolving inheritance disputes in North Tamaila Village, Tolangohula District, Gorontalo Regency, consist of two factors, internal and external internal factors including low education, economy, and low religious understanding. Meanwhile, external factors that become obstacles are the lack of socialization from the government and counseling by indigenous figures related to the system of division of inheritance both in the perspective of Gorontalo customary law, civil law, and Islamic law itself.

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