

The Struggle of Custom and Sharia: Classic Dilemma of Inheritance Settlement in Javanese and Minangkabau Ethnic Communities in Indonesia

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Abstract

This research aims at determining the reasons and causes for dividing inheritance before the death of the testator, as well as the implications of this inheritance division pattern on the heirs. The disagreement between custom (also known as *adat*) and Sharia creates an issue in the division of inheritance in Sungai Duo Village, South Solok Regency, Indonesia. In its principle, inheritance is divided after the testator dies. However, in Sungai Duo Village it applies differently, where inheritance is distributed before the testator passed away. This is empirical legal research using a qualitative legal approach, which was investigated through the Islamic inheritance law's perspectives. The data included primary data, which were obtained from interviews, and secondary data generated from document studies. Data were analyzed through several stages, including data reduction, data display, and verification. Based on the research findings, the reasons for dividing inheritance before the testator dies are: first, to avoid disputes between the heirs; second, lack of knowledge of the heirs concerning the Islamic inheritance system, resulting in inheritance division contradicts the provisions of Sharia; third, inheritance division pattern applied in society is dominated by customs that have been passed down for generations, and fourth, the diverse community of Minangkabau and Javanese ethnicity causes their inheritance division pattern to reflect their regional customs. The

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implication of this inheritance division pattern to the heirs is that there is peace for the heirs in terms of inheritance responsibility because they consider the heirs to have had the maturity and ability to manage the assets of their parents who are no longer able to manage these assets. So that it can improve their children's economies or serve as a support for those who are married. These findings also prove the existence of legal duality, namely Islamic inheritance law and customary inheritance law. However, it appears that customary inheritance law is more prevalent than Islamic inheritance law.

Keywords: Custom; Inheritance; Sharia

Introduction

The community of Sungai Duo in South Solok, West Sumatera holds on to their understanding and custom that inheritance can be divided before the testator dies, although this understanding contradicts the Sharia. Indeed, the inheritance rules in Islamic law have explained the transfer of inheritance, grouping heirs, and the portion of inheritance that is inherited.¹ According to Islamic inheritance law, there are three elements in the transfer of assets: the testator, the inheritance, and the heirs. Testators are those who died and left something behind, such as property or debt. The inheritance can be lawfully passed to the deceased's living family, known as the heir. The testator's assets can be passed to the heirs if the testator has been declared legally dead. The principle of *ijbari* stipulates in Islamic inheritance that inheritance is transferred automatically, without the need for approval from a testator or heirs, because what causes the transfer of assets to heirs is a Sharia provision. The death of the testator is an absolute prerequisite for the transfer of assets to the heirs. In other words, there will never be a transfer of assets in the name of inheritance as long as the owner of the property has not died. The concept of *ijbari* is also consistent with the principle of "only as a result of death," which is another aspect of the Islamic inheritance principle. This idea also distinguishes Islamic inheritance from inheritance in Western civil law. In Islamic inheritance law, there is only one cause of inheritance transfer, which is death. The fundamental principle in the transfer of this inheritance is not consistently enforced by the community, resulting in certain contradictions with existing standards in practice. Especially if the process of settling inheritance is related to particular places or customs that may be influenced by the kinship system and others. This is supported by several existing studies. Those research can be divided into three

¹ Mardani, *Hukum Kewarisan Islam DI Indonesia*, 2014th ed. (Jakarta: Rajawali Press, 2014), 1.

research domains: the amalgamation and influence of customary law and Islamic law in inheritance distribution, inheritance typology, and inheritance transfer.

Anwar Fauzi discovered that the people of Malang had a fusion of customary law and the law of the location in which they resided. Malang residents chose to use the conventional legal system rather than the customary law.² The same situation occurred in the Gunungsari area of West Lombok Regency, where the dispute was not merely conceptual.³ The Rao community on the border of West Sumatra, inhabited by ethnic Minangkabau and Mandailing, is a plural society with two kinship systems, patrilineal and matrilineal systems, as well as a new kinship system developed during the social integration process.⁴ As noted by Lalu Supriadi, different customs, and cultures have given rise to numerous typologies of inheritance distribution, allowing Islamic inheritance law to be employed as a solution when there is an inheritance dispute driven by greed⁵, Labih Fahmi considered using Quranic texts to settle inheritance issues between sons and daughters⁶, the Rombok people attribute these differences to cultural factors such as the presence of parents (both father and mother), the existence of heirs, and the condition of heirs.⁷ Palangkaraya people use Islamic law to settle and prioritize inheritance disputes in a peaceful manner⁸. The people of Bandar Lampung make the youngest child who has full control over property ownership, not the husband or wife.⁹ The influence of custom on inheritance division can also be seen in Fachrir Rahman's statement that

² Anwar Fauzi, "Dualitas Hukum Waris Minangkabau Dan Islam (Studi Konstruksi Sosial Masyarakat Muslim Minangkabau Di Malang)," *Jurisdictie*, November 21, 2012, <https://doi.org/10.18860/j.v0i0.2180>.

³ Abdullah, Akhmad Syahri, "Tradisi Pembagian Waris Di Kecamatan Gunungsari Kabupaten Lombok Barat," *JURNAL HUKUM ISLAM*, 1, 18 (June 2020), <https://doi.org/DOI:https://doi.org/10.28918/jhi.v18i1.2658>.

⁴ Noviard Noviard and Syafwan Rozi, "Penerapan nilai toleransi antar budaya dalam pelaksanaan hukum kewarisan Islam pada masyarakat perbatasan di Rao Pasaman Sumatera Barat," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 17, no. 1 (June 30, 2017): 85, <https://doi.org/10.18326/ijtihad.v17i1.85-112>.

⁵ Lalu Supriadi Bin Mujib, "Revitalisasi hukum waris Islam dalam penyelesaian kasus sengketa tanah waris pada masyarakat Sasak," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 19, no. 1 (June 1, 2019): 67–88, <https://doi.org/10.18326/ijtihad.v19i1.67-88>.

⁶ Labib Fahmi, "Hermeneutika Emillio Betti dan Aplikasinya dalam Menafsirkan Sistem Kewarisan 2:1 pada Surat an-Nisa Ayat 11," *Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam* 2, no. 1 (November 4, 2018): 143, <https://doi.org/10.30659/jua.v2i1.3120>.

⁷ Zainal Arifin Haji munir, "Analysis of Patterns for Inheritance Dispute Settlement in the Tradition of Sasak Community in Lombok," *Mazahib* 20, no. 2 (January 12, 2022): 225–50, <https://doi.org/10.21093/mj.v20i2.3774>.

⁸ Syaikhu, "The Dispute Settlements Of Inheritance In Palangka Raya: A Legal Anthropology Approach," n.d.

⁹ Abdul Qodir Zaelani, Syamsul Hilal, and Abdul Hanif, "Joint Property Inheritance Distribution Practiced by Community of Bandar Lampung," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 5, no. 1 (January 12, 2022), <https://doi.org/10.30659/jua.v5i1.15561>.

traditional rituals are one of the community's traditions that move society.¹⁰ This also occurs among the Minangkabau people, causing the settlement of high inheritances passed down from generation to generation to be regarded as inferior. High inheritance dispute resolution differs from Islamic inheritance law.¹¹

In the practice of **inheritance** division, a method used to avoid inheritance conflicts in the Matraman community in East Java is the negotiation model.¹² This is similar to the people of Gayo Lues who also hold deliberations to distribute inheritance involving family and relatives.¹³ Inheritance is utilized for more than just the handling of corpses and distribution to heirs; it is also used for various purposes and matters determined by society.¹⁴ The people of Madura split inheritance evenly between men and women.¹⁵ According to research on humanism in the distribution of inheritance in the Madura Sampang Community, the eldest child receives greater shares than the others because he or she becomes the leader.¹⁶ The tradition of sharing the inheritance with the youngest daughter has been practiced in the Lemblang Aceh community for a long time by providing greater inheritance parts than other heirs. The youngest daughter is frequently given a house as an inheritance.¹⁷ Meanwhile, the people

¹⁰ Fachrir Rahman, "Patuq dalam Tradisi Kematian Masyarakat Desa Kuta (Sebuah Tinjauan Antropologi Hukum Islam)," *SAMARAH: Jurnal Hukum Keluarga dan Hukum Islam* 3, no. 2 (November 20, 2019): 342, <https://doi.org/10.22373/sjhk.v3i2.3925>.

¹¹ Rahmadanil Rahmadanil and Rifka Zuwanda, "Application of Inheritance Law in Minangkabau According to Islamic Law," *JURNAL HUKUM ISLAM* 19, no. 2 (December 21, 2021): 349–65, <https://doi.org/10.28918/jhi.v19i2.5087>.

¹² Miftahul Huda, Niswatul Hidayati, and Khairil Umami, "Fiqh And Custom Negotiation In Inheritance Dispute Tradition At Mataraman Society, East Java," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 15, no. 2 (December 29, 2020): 224–50, <https://doi.org/10.19105/al-ihkam.v15i2.3787>.

¹³ Lifa Datun Nisa, "Distribution of Poh Roh Assets Due To A Divorce In Gayo Lues Society," *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 19, 21 (2019): 283–303, <https://doi.org/DOI: Http://Doi.Org/10.19105/Al-Ihkam.V14i2.2203>.

¹⁴ Zaitun Muzana, Jasni Bin Sulong, and Faisal Husen Ismail, "Customary Practices of Sharing Inheritance: An Analysis of Society Practices in Pidie Aceh Darussalam," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 11, no. 2 (January 2, 2017): 275, <https://doi.org/10.19105/al-ihkam.v11i2.1037>.

¹⁵ Mohammad Hipni, "The Study of Maqashidi Sharia Toward Maduresse Traditional Inheritance by Using System Approach," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 14, no. 1 (June 30, 2019): 50, <https://doi.org/10.19105/al-ihkam.v14i1.2159>. Lifa Datun Nisa, "Distribution of Poh Roh Assets Due To A Divorce In Gayo Lues Society," *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 19, 21 (2019): 283–303, <https://doi.org/DOI: Http://Doi.Org/10.19105/Al-Ihkam.V14i2.2203>.

¹⁶ Adah wahyuni, Harisah, "Humanisme In Heritance Distribution In Sampang Maduresse Culture," *Jurnal Ilmu Syariah* 19, no. 2019 (n.d.).

¹⁷ Israr Hirdayadi Israr Hirdayadi and M.Ansar M.Ansar, "Tehnik Pembagian Warisan terhadap Anak Bungsu Perempuan dalam Masyarakat Kemukiman Lamblang Kec. Kuta Baro

of Lampung follow a male-majority inheritance system that favors sons over daughters because sons are the heirs to their father's lineage, whereas daughters are prepared to become other people's family members, strengthening other people's descendants.¹⁸

Mutual agreement (*ishlah*) in inheritance distribution is permitted as long as the rights of each heir are considered and there is no dispute in the distribution of inheritance.¹⁹ This type of division occurs in Sukadana Village, Kayu Agung Sub-district (OKI), but it causes a loss of harmony and peace in the family, giving rise to greed and a strong sense of belonging, anger, hatred, and revenge, which can be fatal and lead to the breakdown of the family.²⁰ Similarly, the people of Bulakan Village, Belik Sub-district, Pematang Regency, usually utilize deliberations in inheritance distribution.²¹ Inheritance disputes can be settled using *takharruj* and *tasalub* with the willingness and agreement of both parties to the issue after knowing their respective shares²². Resolving the distribution of inheritance by donating it to other parties is not contrary to Islamic inheritance law because it has a *mashlahah* for heirs. However, referring to Islamic inheritance provisions, no more than one-third of the inheritance may be donated²³. In Cimanuk, scholars or community leaders often split the inheritance among the testator's brothers or sisters by making the *ashabah* either a brother, a biological sister, or a father who becomes a joint heir with the daughter.²⁴ The existence of Islamic law in the customary inheritance system is influenced by the kinship system through the settlement of *al-takharruj*. In the

Kab. Aceh Besar Menurut Hukum Islam,” *SAMARAH: Jurnal Hukum Keluarga dan Hukum Islam* 2, no. 1 (May 5, 2018): 237, <https://doi.org/10.22373/sjhc.v2i1.3114>.

¹⁸ Yenni Oktavia, “Proses Pembagian Warisan Adat Lampung Pesisir Perspektif Hukum Waris Islam (Studi Kasus Di Kecamatan Talang Padang Kabupaten Tanggamus,” *LAIN Metro*, 8, 2020.

¹⁹ Tarmizi Tarmizi, “Inheritance System of Bugis Community in District Tellu Siattinge Bone, South Sulawesi (Perspective of Islamic law),” *SAMARAH: Jurnal Hukum Keluarga dan Hukum Islam* 4, no. 1 (June 30, 2020): 179, <https://doi.org/10.22373/sjhc.v4i1.6784>.

²⁰ Muhammad Hidayat, “Pembagian Harta Warisan Menurut Hukum Adat Kecamatan Kayuagung (Studi Kasus Di Kelurahan Sukadana Kecamatan Kayuagung Kabupaten Oki,” *Universitas Srinjaya Inderalaya*, n.d., 4.

²¹ Tubagus Fahmi, “Sistim Pembagian Waris Pada Masyarakat DI Desa Bulakan Kecamatan Belik Kabupaten Pematang,” *LAIN Purwokerto*, 2020, 5.

²² Lego Karjoko et al., “Islamic Court’s Approach to Land Dispute in Inheritance Cases” 21, no. 2 (2021): 26.

²³ Ahmad Ropei et al., “Penyelesaian Warisan Melalui Hibah Dalam Perspektif Hukum Islam” 23, no. 1 (2021).

²⁴ Yusuf Somawinata and Hafidz Taqiyuddin, “Hak Waris Anak Perempuan Di Cimanuk (Antara Kompilasi Hukum Islam Dan Penetapan Pengadilan Agama Nomor 69/Pdt.p/2013/Pdlg)” 5, no. 2 (2020): 229–52, <https://doi.org/10.29240/jhi.v5i2.1839>.

resolution of this inheritance, which cannot be isolated from Islamic law, one of the methods used is al-takharuj following the concept of *islah*²⁵.

The research mentioned above explains the division of customary inheritance in their respective regions, however, this present research will investigate different phenomena that occurred in the Sungai Duo community in South Solok Regency. The majority of the Sungai Duo community members are Muslims of Javanese origin who arrived in 1963 as part of the transmigration program. In this community, the division of inheritance is carried out when the testator has not died. This is considered normal conduct and does not breach any rules. Furthermore, according to the information provided by the head of the local community, Kasiano,²⁶ the implementation of this type of inheritance distribution pattern has become a custom and is ingrained, making it difficult to change. Even though all of the people are Muslim, the community uses this tradition, which is still strong, as a guide to carry it out in accordance with societal customs. The method of dividing assets that occurs in the Sungai Duo community is regarded as a distribution of inheritance because there is no process for distributing other assets once the owner of the property dies, and this is also not a testament. It is also emphasized by Payasti, one of the heirs in the Sungai Duo community, who stated,

*“The process of dividing the inheritance is carried out before the parents die. The property of the parents will be divided among the children, particularly when many of their children are married and the parents feel they are getting old.”*²⁷

Implementing inheritance division in this manner is difficult to change since it has become embedded in society as an inherent habit and is highly trusted. This implementation is repeated and becomes prevalent from the local community's viewpoints. This has been happening for generations and from ancient times. If this practice is not followed, it creates an anomaly in society. The dividing of inheritance when the testator has not died is contrary to the prevalence regulated in Islamic Sharia. This also opposes the teachings stipulated by Al-Quran verses and the Compilation of Islamic Law. The requirement that must be met, as previously stated, is that the testator has unquestionably died. This satisfies the principle of inheritance due to death, which states that the testator's property moves to the heir following his death.²⁸

²⁵ Laras Shesa, Oloan Muda Hasim Harahap, and Elimartati Elimartati, “Eksistensi Hukum Islam dalam Sistem Waris Adat yang Dipengaruhi Sistem Kekerabatan Melalui Penyelesaian al-Takharuj,” *Al-Istinbath: Jurnal Hukum Islam* 6, no. 1 (May 25, 2021): 145, <https://doi.org/10.29240/jhi.v6i1.2643>.

²⁶ Interview with Kasiano (Heir) on 26 September 2021

²⁷ Interview with Payasti (Heir) on 27 September 2021

²⁸ Muhammad Abu Zahrah, *Al-Tirkatu Wa Al-Mirats* (Kairo: Dar Al-Fikr AL-Arabiyy, 1975).

As Muslims, the people of Sungai Duo should follow Sharia, which is governed by Islamic law. In this circumstance, the inheritance must be divided after the testator's death, but society's conduct thus far disregards the conditions stipulated in Islamic law, breaching both Qur'anic verses and inheritance principles, namely the principle of *ijbari* and the principle of due to death. This research aims to investigate the reasons for dividing inheritance before the testator dies and the implications for the heirs' rights in the inheritance.

The current study is field research. The subject was the Sungai Duo community members, which was investigated through a social science approach and Islamic law. Data were collected using interviews and document studies. This research was carried out in Jorong Sungai Duo, Nagari Luak Kapau Alam Pauh Duo, Pauh Duo Sub-district, South Solok Regency, West Sumatra Province. The research includes both primary and secondary data sources. Primary data were obtained from interviews with family members of the deceased or testator and the heirs. Meanwhile, secondary data included interviews with the heads of the Sungai Duo community and elder community leaders. Data analysis was carried out through steps of interview transcribing, material scanning, compiling field data and grouping it according to information sources, and reading the full data set. The first step is to construct a general sense of the gathered data and explain its overall meaning. The coding step was used for detailed data analysis, which is the process of processing data that is sorted into several parts of writing before studying it.²⁹

Discussion

Sungai Duo is one of six jorong in Kenagarian Luak Kapau Alam Pauh Duo, Pauh Duo Sub-district, South Solok Regency, West Sumatra Province. In general, the tribes of South Solok, particularly Nagari Luak Kapau, are Minangkabau. The community is generally very guided by religious norms and local customs. The process of deliberation is applied to the decision-making stage in government administration. This stage encompasses all elements of society, including Niniak Mamak, Cadiak Pandai, Alim Ulama, Bundo Kandang, and youth who are members of the Nagari Consultative Body.

Jorong Sungai Duo and Jorong Taratak Tinggi are two jorongs where the majority of people are Javanese. The two groups are made up of people who have migrated from the island of Java. The two jorongs adhere to Javanese customs and traditions, both in terms of language and art. The Sungai Duo people also adhere to a patrilineal kinship system. The customary government system in this community is governed by a clan chief who serves as the highest level of customary government in his clan. This society's patrilineal system

²⁹ Rosman GB, Wilson BL, *Number And Words Combining Quantitative And Qualitative Methods In A Single Large, Evaluation Review*, 1985.

fosters the idea that men must be able to survive, particularly those who are already married. As a result, the practice of dividing inheritance while the testator is still alive is frequently used as an initial capital for offspring in the early days of a family.

There are several inheritance division patterns implemented by the Sungai Duo community. When a marriage between Javanese and Minangkabau ethnicity occurs, it will affect the division of inheritance if one of the husband and wife dies. If the man is of the Javanese ethnic group and the woman is of the Minang ethnic group, inheritance is distributed according to Javanese custom since the woman must follow the custom or tradition followed by her husband. In the Javanese custom that applies to this community, assets tend to be divided according to the provisions of Islamic law with a patrilineal system. The distribution of inheritance is done when the testator is still alive. Then, if the man is from the Minang tribe and the woman is from the Javanese tribe, inheritance is distributed according to Minang custom using a matrilineal system. Apart from colliding with marital norms, the mixing of these two ethnicities also has implications for the division of inheritance. The point of discussion in this article is the distribution of inheritance according to Javanese custom by splitting assets before the testator dies.³⁰

The Causes and Reasons for Dividing Inheritance Before the Testator Dies

There are various reasons or causes that the Sungai Duo community cites as the foundation for the distribution of inheritance. Based on the interview findings, it was discovered that various circumstances are prompting the Sungai Duo Community to carry out inheritance distribution while the testator has not died, including:

First, custom or tradition. It is inextricably linked to the good intentions and goals shared by the local community. According to field interviews, there are numerous aims and objectives of the division of inheritance when the testator has not died. First, to avoid disagreements between heirs, or in this case, children. Kasiano, the head of the Sungai Duo community, explained as follows:

*In the Sungai Duo community, only the children inherit their parents' assets. Children have a right to their parent's property. Other family members can't inherit.*³¹

From this interview, it is found that the inheritance is distributed only to the testator's children, and other relatives are not entitled to inherit the inheritance, because in society, parents will work only for their children, and

³⁰ Interview with the clan's chief of the Sungai Duo community on 30 December 2021

³¹ Interview with the clan's chief of the Sungai Duo community on 30 December 2021

siblings or other family members are not people who have the right to the assets of their parents, and children are not entitled to the assets of their siblings.

Second, to provide capital to grown children and parents consider they are no longer capable of maintaining their own assets so those assets are transferred to children as capital. It is explained by one of the heirs who received the inheritance when the testator had not died, namely Payasti, as follows:

*The distribution of inheritance is carried out before the parents die. Particularly when children establish their own families and parents believe they are no longer young, their property will be split among the children.*³²

In the Sungai Duo community, inheritance is distributed while the parents are still alive. Children who are considered grown and generally have their own families are given the inheritance, and children who are not married usually remain with their parents, and their share is still managed by their parents. Parents divide inheritance when they are still alive because they believe they are no longer young and are incapable to handle their land.

Third, another reason why people carry out this pattern of inheritance distribution is because of ancestors' customs or traditions that have been passed down from generation to generation. Semik, an informant, stated the following:

*That has been the practice since long ago. So far, this tradition is still used*³³.

As an indigenous people with strong customs, the inhabitants of Sungai Duo will find it difficult to break a habit that has been practiced repeatedly. Similarly, in the distribution of inherited assets, a system of dividing assets by ancestors has been in place since ancient times and is still in use today. The custom reason is what the people hold firmly and it is still difficult to accept the truth.

Fourth, in addition to customs, it is also related to the developing ethnicity of the majority of the Sungai Duo community. The ethnicity or tribe that develops in the Sungai Duo Community is the Javanese. As stated by Hartati as follows:

*The majority of people in Sungai Duo are Javanese. Most of us are married to other Javanese so that people of Javanese origin can continue to thrive and Javanese culture can be preserved.*³⁴

According to the informant, the vast majority of the Sungai Duo community is of pure Javanese ancestry, with no blending with other tribes.

³² Interview with one of the heirs on 24 September 2021

³³ Interview with one of the traditional leaders on 23 September 2021

³⁴ Interview with one of the heirs on 26 September 2021

Despite living in a largely Minang community, the Sungai Duo community maintains its culture and beliefs through its strong traditions. Understanding or belief in ancestral practices remains strong. The following are some of the reasons why the community distributes inheritance before the testator dies:

First, lack of education

Education is knowledge that can be attained in a variety of ways, both formal and informal. Inadequate education can be caused by a lack of educational facilities, enthusiasm, or circumstances that make obtaining an education difficult. When researchers told the informant that inheritance should be distributed when the testator died, as specified in the Quran, he responded. As revealed by Maser:

This is due to a lack of knowledge caused by the Sungai Duo community's poor level of education.³⁵

According to the informant above, it is apparent that not many individuals have knowledge of the rules of the Islamic method of sharing inheritance. Even when several informants were asked if they knew what the provisions were in the distribution of inheritance, both in terms of the testator, the heirs, and the inheritance, the majority of them responded that they did not know and did not understand this because they had never been and had never learned about inheritance. Lack of education is caused by a variety of problems in one's home. Household difficulties are not just related to attention, affection, and responsibility, but also to economic issues, health factors, and laziness that cannot be remedied. The disparity between income and spending then has an impact on the level of education. Economic issues are one of the variables that promote the educational process. Many factors influence education in the Sungai Duo community, including economic inadequacy and limited educational facilities.

Supriningsih, the informant, provided the following explanation concerning the low education of the people of Sungai Duo:

Few residents hold a bachelor's degree. Almost all Sungai Duo residents still have a low level of education. The typical elementary school graduate, and many old people who did not attend school and are illiterate. Those with university degrees are still rare, and they are mostly from the 1990s generation.³⁶

Education has not yet become a priority in the Sungai Duo community, hence there are still many illiterates due to a shortage of educated people. Motivation to learn and passion for school is still low in the community, particularly among parents who do not see education as crucial for their

³⁵ Interview with one of the heirs on 23 September 2021

³⁶ Interview with one of the heirs on 23 September 2021

children. However, it is different for the testators or parents, the majority of them do not attend school because school is not yet their top priority, and economic considerations also influence this schooling. Darmi, the informant, revealed the following:

There are few educated people. Education is still not a top priority for parents in Jorong Sungai Duo in particular. The reason for this is that, aside from the fact that the area is isolated and distant from the center of education and crowds, the people's major source of income is farming, therefore there is no need for higher education or schools. So this is the reason not to attend school.³⁷

According to the statements above, education was not a priority for parents in Jorong Sungai Duo in particular during that time. Education is not a priority for most parents for a variety of reasons. The education level of the majority of the informants who acted as heirs demonstrates this, as practically all graduated from elementary school and some did not complete elementary school. It stands to reason that they are uninformed of inheritance laws. Similarly, the recitation forums never discuss the provisions of inheritance or even the application of the division of inheritance that is divided when the testator has not died. This was practiced first by the parents and was passed down from generation to generation. In fact, this has now become a Sungai Duo community custom.

Second, the economic factor. In terms of economics, the majority of the Sungai Duo population is made up of farmers who rely on cultivation and farming. Semik, the informant, revealed the following:

The majority of the Sungai Duo Community's livelihoods include farming, gardening, coffee farming, and rice and vegetable cultivation.³⁸

Based on the informant's explanation, the majority of the Sungai Duo community's livelihoods are farming, whether it is rubber, coffee, or even growing vegetables. This corresponds to the climate and weather of Sungai Duo, South Solok Regency. This economic factor is used as one of the reasons for the division of inheritance when the testator is still alive. Assets are objects that will be given by the testator to the heirs as inheritance.

Similarly, people's income in the economy is mediocre, so when their children marry and do not yet have the capital to start their life, this property from their parents will become their living resources. Their lives are far from prosperous when their needs and income are compared. The good faith of the parents is one of the reasons why the Sungai Duo community divides the inheritance while the testator is still alive. However, the problem in this

³⁷ Interview with one of the heirs on 24 September 2021

³⁸ Interview with one of the heirs on 23 September 2021

pattern is that the property is delivered to the heirs when the testators or parents are still alive, which contradicts Islamic law.

Third, income. Many people anticipate getting satisfying outcomes from whatever intention they pursue because, in general, no one wants to lose or live in poverty. However, results always necessitate hard work, and tremendous effort will yield great results. Everyone has made numerous efforts to increase their income and improve their level of living, such as the Sungai Duo community's livelihoods, which include farming, producing crops, cutting rubber, gardening, and growing vegetables. According to an informant, Ponimen, the income earned by the majority of the Sungai Duo community is insufficient to meet the needs:

*The majority of the Sungai Duo Community's income is in the 1000,000 to 200,000 range per month. They solely make a living from farming. Farmers' income is not high.*³⁹

Referring to the information above, the majority of people have low incomes and livelihoods that do not meet all of their needs. Frequently, income does not equal expenses. According to informant Sukasni, most of the Sungai Duo people are of middle to lower socioeconomic status:

*The Sungai Duo community is made up of a middle-to-lower-income society where the majority of the community's work is farming, which is frequently insufficient to support their individual needs.*⁴⁰

Based on this explanation, the majority of the community's work is farming, which is frequently insufficient to cover their daily needs. As a result, the Sungai Duo community's economy can be identified as medium to lower level. This study demonstrates that the community's practice of dividing inheritance before the testator's death intends to prevent future inheritance conflicts. Disputes frequently emerge as a result of unequal inheritance distribution among heirs.⁴¹

Islamic inheritance law is a scientific area that addresses inheritance, how it is transferred, who is entitled to it, and how much each heir's share is. The implementation of inheritance distribution in the Sungai Duo community differs from the implementation of inheritance distribution as stipulated by Islamic law. Almost the whole Sungai Duo community follows an inheritance distribution system passed down from generation to generation. Some of the criticisms of this inheritance distribution pattern are as follows:

³⁹ Interview with one of the heirs on 24 September 2021

⁴⁰ Interview with one of the heirs on 26 September 2021

⁴¹ Lego Karjoko, Abdul Kadir Jaelani, Hillare Tegan, "Islamic Court's Approach to Land Dispute In Heritance Cases," *AHKAM : Jurnal Ilmu Syariah* 21, no. 2 (2021).

First, inheritance. In this case, the assets employed as inheritance objects are assets owned by parents, whether they are self-acquired assets or inherited assets gained from previous parents. In Islamic law, inheritance refers to everything left by the testator that can be legitimately passed on to his heirs. Meanwhile, left assets are any property that a deceased individual left behind when he died. Sukasni, an informant, stated the following:

*The assets that are inherited are those acquired by our parents. And all of the parent's assets will be passed on to the child as an inheritance. Whether it is their acquired property or assets obtained from the inheritance of previous parents.*⁴²

In this case, the inheritance referred to by the Sungai Duo community differs from Islamic law. In Islam, inheritance is defined as what is left by the testator and is free of all other people's rights. However, there is a different perception in the community when the distribution of inheritance is carried out when the testator has not died. If the property is divided when the testator is still alive, the rights of other people in the property are not paid. This contradicts the concept of inheritance in Islamic law.

Second, the testator. A testator is someone who has died and left anything that his living family can inherit. Based on the idea that the transfer of property from the testator to the heir occurs after the testator's death, the term "testator" refers to someone who has died. Meanwhile, the Sungai Duo community's concept of the testator conflicts with Islamic legal norms. The testators will share the property with their children when they feel that their children can manage the property. In the Sungai Duo community, inheritance is distributed while the testator or owner of the property is still alive. The parents determine the share of the inheritance, which is then distributed to their children. The division mechanism used is a deliberative system, and the children must be able to accept whatever is given to them as property.

The distribution of assets in the Sungai Duo community is known as inheritance sharing because there is no process for dividing assets after parents die. These assets are normally given to children when they are considered mature and capable of managing the assets provided to them by their parents. Parents offer these assets to reduce the burden on their children when they establish a family and to provide children with capital to sustain their families. However, in this circumstance, the position of parents as testators is inappropriate. Then, when researchers addressed questions on inheritance matters, such as heirs, testators, and inheritance, society had no idea of this. This is because of a lack of education and information about the inheritance. The informant Karsimah revealed the following information in an interview:

⁴² Interview with one of the heirs on 26 September 2021

*I do not understand the conditions required for being an heir and the testator's requirements for inheritance distribution. This is because I was never educated or informed about it.*⁴³

Based on the information conveyed by the informant, even though all Sungai Duo residents are Muslims, no one understands or is aware of the laws or Islamic law surrounding inheritance. What society holds is that assets will be given when parents believe they are no longer capable of managing their own assets and their children are considered capable of managing assets and are already married. When the property is given to the child, the property becomes the child's asset as the next owner. If the children are not yet married, it is the parent's responsibility to manage and maintain their assets until the children are married.

Third, the heirs. In fiqh, heirs are those who are entitled to the deceased's inheritance. It has been explained that individuals who are entitled to inherit are those who have kinship or a marital link with the testator. Based on observations and interviews in the field, the definition of heirs in society differs greatly from the heirs defined in fiqh. Darto, the informant, revealed the following:

*Parents work hard for the sake of their children. When it comes to inheritance, the child is the one who is entitled to the assets of the parents. Parents' property will not be available to siblings or other parties.*⁴⁴

From this interview, individuals who become heirs in the distribution of assets in the Sungai Duo community are solely children. Among the criteria for children who can be considered as heirs are those who are married or children who are adults and are able to manage the assets given to them by their parents. Children who have not yet married will continue to live with their parents and will receive the same amount of property as other children. However, the assets of young children will be managed first by their parents. Similarly, relatives have no legal right to the testator's assets. This shows a contradiction when viewed from the provisions of Islamic law. Islamic Shari'a, especially fiqh, mentions that the heirs are not only children but also other relatives based on the provisions of dzul furud, dzul arham, and asabah in their respective shares. If seen from the division, it is also not appropriate between the theory in fiqh and practice in the field. The informant Tuti Supriyanti said as follows:

*In distributing inheritance, sometimes men receive more share than women, and sometimes it is shared equally, but this rarely causes conflict because the one who divides it is the person who is most entitled to the property.*⁴⁵

⁴³ Interview with one of the heirs on 23 September 2021

⁴⁴ Interview with one of the heirs on 28 September 2021

⁴⁵ Interview with one of the heirs on 26 September 2021

Darto, the other informant, argued:

*The heirs will receive whatever the parents give. The process used is also mostly deliberation so if someone is dissatisfied, they may express their opinion, but this rarely happens. The share of men and women is equal, but if the share of one party is higher, it is not a problem for us.*⁴⁶ (Darto, 28/9/2019)

Based on the information provided by the informants above, it is obvious that the inheritance distribution is not in accordance with Shari'a, where the share ratio between men and women is 2:1, but in society the share is unclear. Some divide the inheritance by distributing it equally between men and women. This absolutely contradicts Islamic teaching. However, this could also be due to a lack of public education on the subject of inheritance. However, rules remain rules until other rules can refute them.

The distribution of inheritance while the testator is still alive, as performed by the Sungai Duo community in South Solok Regency, is a non-Islamic Sharia-compliant custom or tradition known as *al-'urf fasid*. Although the distribution of inheritance has been carried out from generation to generation and has been followed by the community for a long time, this custom violates the Shari'a. This division of inheritance is considered to be *fasid* because:

1. The testator is still alive when the inheritance is divided.
2. The heirs entitled to the testator's property are only the children. Meanwhile, in Islamic law, heirs include not only children, but also other heirs such as siblings, grandparents, aunts, and so on.

There is also a rule in ushul fiqh that says, *العادة المحكمة*, which means that a custom or *urf* can be employed as a law if it does not contradict qhat'i propositions such as the Qur'an and Sunnah and gives birth to *mashlahah* in them. However, the Sungai Duo Community considers inheritance distribution they practice to contain *mashlahah*, namely avoiding future disputes between heirs, yet this process deviates and contradicts specified principles. The distribution of inheritance when the testator has not died, as occurred in the Sungai Duo Community, South Solok Regency, is a custom and tradition that does not need to be maintained or preserved by the community because it violates Shari'a contained in the Qur'an and Sunnah, also known as *al-'urf fasid*.

Conclusion

This research elicits several reasons for dividing inheritance before the testator dies, including *first*, to avoid disputes between the heirs; *second*, lack of knowledge of the heirs concerning the Islamic inheritance system, resulting in inheritance distribution contradicting the provisions of Sharia; *third*, inheritance

⁴⁶ Interview with one of the heirs on 28 September 2021

division pattern applied in society is dominated by customs that have been passed down for generations, and *fourth*, the diverse community of Minangkabau and Javanese ethnicity causes their inheritance distribution pattern to reflect their regional customs.

The implication of this inheritance distribution pattern to the heirs is that there is peace for the heirs in terms of inheritance responsibility because they consider the heirs to have had the maturity and ability to manage the assets of their parents who are no longer able to manage these assets. This inheritance division is expected to improve their children's economies or serve as a support for those who are married. These findings also prove the existence of legal duality, namely Islamic inheritance law and customary inheritance law. However, it appears that customary inheritance law is more prevalent than Islamic inheritance law. Furthermore, there is a shift in the inheritance system, which may be seen in the inheritance process as well as changes in the form and classification of inherited assets. A number of factors influence the occurrence of this change, including religious conversion, social engagement with new residents, and migration to other locations.

References

- Abdullah, Akhmad Syahri. "Tradisi Pembagian Waris Di Kecamatan Gunungsari Kabupaten Lombok Barat." *JURNAL HUKUM ISLAM*, 1, 18 (June 2020).
<https://doi.org/10.28918/jhi.v18i1.2658>.
- Adah wahyuni, Harisah. "Humanisme In Heritance Distribution In Sampang Madurese Culture." *AHKAM: Jurnal Ilmu Syariah* 19, no. 2019 (n.d.).
- Anshori Abdul Ghofur. *Filsafat Hukum Kewarisan Islam*. Yogyakarta: UII Press, 2005.
- Bin Mujib, Lalu Supriadi. "Revitalisasi hukum waris Islam dalam penyelesaian kasus sengketa tanah waris pada masyarakat Sasak." *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 19, no. 1 (June 1, 2019): 67–88.
<https://doi.org/10.18326/ijtihad.v19i1.67-88>.
- Fahmi, Labib. "Hermeneutika Emilio Betti dan Aplikasinya dalam Menafsirkan Sistem Kewarisan 2:1 pada Surat an-Nisa Ayat 11." *Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam* 2, no. 1 (November 4, 2018): 143.
<https://doi.org/10.30659/jua.v2i1.3120>.
- Fauzi, Anwar. "Dualitas Hukum Waris Minangkabau Dan Islam (Studi Konstruksi Sosial Masyarakat Muslim Minangkabau Di Malang)." *JURISDICTIONE*, November 21, 2012.
<https://doi.org/10.18860/j.v0i0.2180>.

- Haji munir, Zainal Arifin. "Analysis of Patterns for Inheritance Dispute Settlement in the Tradition of Sasak Community in Lombok." *Mazahib* 20, no. 2 (January 12, 2022): 225–50. <https://doi.org/10.21093/mj.v20i2.3774>.
- Hipni, Mohammad. "The Study of Maqashidi Sharia Toward Maduresse Traditional Inheritance by Using System Approach." *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 14, no. 1 (June 30, 2019): 50. <https://doi.org/10.19105/al-ihkam.v14i1.2159>.
- Huda, Miftahul, Niswatul Hidayati, and Khairil Umami. "Fiqh And Custom Negotiation In Inheritance Dispute Tradition At Mataraman Society, East Java." *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 15, no. 2 (December 29, 2020): 224–50. <https://doi.org/10.19105/al-ihkam.v15i2.3787>.
- Israr Hirdayadi, Israr Hirdayadi, and M.Ansar M.Ansar. "Tehnik Pembagian Warisan terhadap Anak Bungsu Perempuan dalam Masyarakat Kemukiman Lamblang Kec. Kuta Baro Kab. Aceh Besar Menurut Hukum Islam." *SAMARAH: Jurnal Hukum Keluarga dan Hukum Islam* 2, no. 1 (May 5, 2018): 237. <https://doi.org/10.22373/sjhc.v2i1.3114>.
- Karjoko, Lego, Abdul Kadir Jaelani, Hilaire Tegnan, and Henning Glaser. "Islamic Court's Approach to Land Dispute in Inheritance Cases" 21, no. 2 (2021): 26.
- Khaerunnisa. "Pemahaman Masyarakat Terhadap Pembagian Harta Warisan Islam Di Kecamatan Watunohu Kabupaten Kolaka Utara." UIN Alauddin Makasar, 2017.
- Lego Karjoko, Abdul Kadir Jaelani, Hillare Tegnan. "Islamic Court's Approach to Land Dispute In Heritance Cases." *AHKAM: Jurnal Ilmu Syariah* 21, no. 2 (2021).
- Lifa Datun Nisa. "Distribution of Poh Roh Assets Due To A Divorce In Gayo Lues Society." *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 19, 21 (2019): 283–303. <https://doi.org/DOI: Http://Doi.Org/10.19105/Al-Ihkam.V14i2.2203>.
- Mardani. *Hukum Kewarisan Islam DI Indonesia*. 2014th ed. Jakarta: Rajawali Press, 2014.
- Muhammad Abu Zahrah. *Al-Tirkatu Wa Al-Mirats*. Kairo: Dar Al-Fikr AL-Arabiy, 1975.
- Muhammad Hidayat. "Pembagian Harta Warisan Menurut Hukum Adat Kecamatan Kayuagung (Studi Kasus Di Kelurahan Sukadana

- Kecamatan Kayuagung Kabupaten Oki.” *Universitas Srivijaya Inderalaya*, n.d., 4.
- Mustari Haris. “Sistim Pembagian Harta Warisan Pada Masyarakat Islam Di Desa Palalakang Kecamatan Galesong Kabupaten Takalar.” *UIN Alauddin Makasar*, 2016, 5.
- Muzana, Zaitun, Jasni Bin Sulong, and Faisal Husen Ismail. “Customary Practices of Sharing Inheritance: An Analysis of Society Practices in Pidie Aceh Darussalam.” *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 11, no. 2 (January 2, 2017): 275. <https://doi.org/10.19105/al-ihkam.v11i2.1037>.
- Noviardi, Noviardi, and Syafwan Rozi. “Penerapan nilai toleransi antar budaya dalam pelaksanaan hukum kewarisan Islam pada masyarakat perbatasan di Rao Pasaman Sumatera Barat.” *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 17, no. 1 (June 30, 2017): 85. <https://doi.org/10.18326/ijtihad.v17i1.85-112>.
- Rahmadanil, Rahmadanil, and Rifka Zuwanda. “Application of Inheritance Law in Minangkabau According to Islamic Law.” *JURNAL HUKUM ISLAM* 19, no. 2 (December 21, 2021): 349–65. <https://doi.org/10.28918/jhi.v19i2.5087>.
- Rahman, Fachrir. “Patuq dalam Tradisi Kematian Masyarakat Desa Kuta (Sebuah Tinjauan Antropologi Hukum Islam).” *SAMARAH: Jurnal Hukum Keluarga dan Hukum Islam* 3, no. 2 (November 20, 2019): 342. <https://doi.org/10.22373/sjhc.v3i2.3925>.
- Ropei, Ahmad, Yusuf Faisal Ali, Siah Khosyiah, M Asro, K H Sahal Mahfudh, Reza Fauzi Nazar, Mohamad Ainun Najib, et al. “Penyelesaian Warisan Melalui Hibah Dalam Perspektif Hukum Islam” 23, no. 1 (2021).
- Rosman GB, Wilson BL. *Number And Words Combining Quantitative And Qualitative Methods In A Single Large, Evaluation Review*, 1985.
- Shesa, Laras, Oloan Muda Hasim Harahap, and Elimartati Elimartati. “Eksistensi Hukum Islam dalam Sistem Waris Adat yang Dipengaruhi Sistem Keekerabatan Melalui Penyelesaian al-Takharujj.” *Al-Istinbath: Jurnal Hukum Islam* 6, no. 1 (May 25, 2021): 145. <https://doi.org/10.29240/jhi.v6i1.2643>.
- Somawinata, Yusuf, and Hafidz Taqiyuddin. “Hak Waris Anak Perempuan Di Cimanuk (Antara Kompilasi Hukum Islam Dan Penetapan Pengadilan Agama Nomor 69/Pdt.p/2013/Pdlg)” 5, no. 2 (2020): 229–52. <https://doi.org/10.29240/jhi.v5i2.1839>.

- Syaikhu. "The Dispute Settlements Of Inheritance In Palangka Raya : A Legal Anthropology Approach," n.d.
- Tarmizi, Tarmizi. "Inheritance System of Bugis Community in District Tellu Siattinge Bone, South Sulawesi (Perspective of Islamic law)." *SAMARAH: Jurnal Hukum Keluarga dan Hukum Islam* 4, no. 1 (June 30, 2020): 179. <https://doi.org/10.22373/sjkh.v4i1.6784>.
- Tubagus Fahmi. "Sistim Pembagian Waris Pada Masyarakat DI Desa Bulakan Kecamatan Belik Kabupaten Pematang." *LAIN Purwokerto*, 2020, 5.
- Yenni Oktavia. "Proses Pembagian Warisan Adat Lampung Pesiir Perspektif Hukum Waris Islam (Studi Kasus Di Kecamatan Talang Padang Kabupaten Tanggamus)." *LAIN Metro*, 8, 2020.
- Zaelani, Abdul Qodir, Syamsul Hilal, and Abdul Hanif. "Joint Property Inheritance Distribution Practiced by Community of Bandar Lampung." *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 5, no. 1 (January 12, 2022). <https://doi.org/10.30659/jua.v5i1.15561>.

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