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Inheritance Distribution Before Death: A Study in Teluk Kasai, Indonesia

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ARTICLE INFO	ABSTRACT
<p>Keywords : <i>distribution, inheritance, practice, community</i></p> <p>Submitted: 2024-06-01</p> <p>Last revised: 2024-20-01</p> <p>Accepted: 2024-06-28</p> <p>DOI : 10.25077/alj.v9i1.75</p>	<p>The practice of inheritance distribution before the demise of the inheritor is prevalent in the Teluk Kasai community. This study explores this unique custom, contrasting it with the established Islamic inheritance law and the broader Minangkabau tradition. The research, primarily qualitative in nature, employs interviews and literature review to uncover the rationale behind this practice. Findings reveal that the distribution is guided by customary laws, emphasizing consensus and prioritizing the youngest daughter. This approach serves as a conflict prevention mechanism and ensures the economic well-being of inheritors. The study concludes by highlighting the divergence between local custom and Islamic law, underscoring the adaptability of legal systems in response to local needs.</p>

1. Introduction

In legal practice, the division of inheritance must occur as long as the heir is alive, and the practice of dividing inheritance jointly between husband and wife in the form of inheritance and income is most likely to occur after the heir dies. As we all know, inheritance law is a law that regulates the inheritance of the deceased's inheritance and its impact on the heirs¹. Provisions regarding the distribution of inheritance have been expressly regulated in the Qur'an and Indonesian Positive Law²³.

Islam, as a religious doctrine and belief, uses sharia law to determine the ownership of human property, both men and women. Islam also regulates the transfer of property during a person's life to heirs after death, both male and female, without distinguishing between infants and adults⁴. In this way, the deceased's wealth is automatically inherited to survivors who have a relationship with the deceased. In literature or fiqh, it is stated that there are four relationships on which a person receives an inheritance from the deceased: kinship, marriage, wala', and relationships with fellow Muslims⁵.

Article 171(2) of the Compilation of Islamic Law (KHI) stipulates that an heir is a person who inherits and leaves an inheritance after death based on an Islamic court ruling. After the heir dies, the inheritance can be divided. If the heir has not passed away, then the property cannot be said to be an inheritance, and the family members related to the heir have not become heirs⁶. Although the Qur'an and the KHI stipulate that inheritance occurs after the heir dies, in reality, the practice of dividing inheritance during the life of the heir still exists in society, and this is in accordance with the adat of the community itself⁷.

The practice of distributing inheritance before death also occurs in the community of Kampung Teluk Kasai, Kenagarian Koto Nan Duo, Batang Kapas District, Pesisir selatan Regency. Is basically the people of Kampung Teluk Kasai, Kenagarian Koto Nan Duo, Batang Kapas District, Pesisir Selatan Regency, are Minangkabau people who adhere to Islam in accordance with the Minangkabau philosophy "adat based yarak, yarak based Hizbullah." Where it means the philosophy of life held in the Minangkabau community, which makes Islamic teachings the only foundation or guideline for behavior patterns in life.

Minangkabau inheritance is in the form of high inheritance (tribal property) which is inherited based on the mother's lineage and low inheritance (search property), which is

¹Effendi Perangin, *Hukum Waris* (Jakarta: Raja Grafindo, 2010).

²QS. An_Nisa Ayat 12, *Kementerian Agama Republik Indonesia*, n.d.

³'Pasal 171 Sampai Dengan Pasal 193 Kompilasi Hukum Islam' (n.d.).

⁴Muchammad Ali Ash Shabuni, *Ilmu Hukum Waris Menurut Ajaran Islam* (Surabaya: Mutiara Ilmu, 1995).

⁵ Amir Syarifuddin, *Hukum Kewarisan Islam* (Jakarta: Pren Media, 2024). P 174.

⁶'Wildan Qurfa Aini, *Pembagian Harta Warisan Kepada Ahli Waris Masih Hidup Pada Keluarga Idom Di Kelurahan Pasir Jati Kecamatan Ujung Berung Kota Bandung*, Skripsi, Fakultas Syariah UIN Sunan Gunung Jati 2017.', n.d.

⁷Jainudin, *Pembagian Harta Warisan; Telaah Pembagian Warisan Oleh Pewaris Kepada Ahli Waris Sebelum Pewaris Meninggal Pada Masyarakat Bima*, (2020), P. 311, n.d.

inherited based on provisions by dividing the property by fiqh and counting according to Islamic law. Although the people of Batang Kapas District, Pesisir selatan Regency adhere to the Minangkabau inheritance system, but in the practice of distributing inheritance in Kampung Teluk Kasai, Kenagarian Koto Nan Duo, Batang Kapas District, Pesisir selatan Regency, is very different from the Minangkabau people in general. Where the inheritance distribution system is carried out before the death of the heir.

The practice of inheritance distribution in Kampung Teluk Kasai, Kenagarian Koto Nan Duo, Batang Kapas District, South Pesisir Regency has become a habit that has been carried out for generations and is still maintained until now until the next generation and is not influenced by the Minangkabau inheritance system⁸. This is done by the people of Kampung Teluk Kasai, Kenagarian Koto Nan Duo, Batang Kapas District, Pesisir selatan Regency to avoid disputes over the inheritance of their parents after death. From the description of the background above, the author is interested in analyzing how the inheritance distribution system before the heir dies in the community of Kampung Teluk Kasai, Kenagarian Koto Nan Duo, Batang Kapas District, Pesisir selatan Regency.

2. Method

This study adopts a qualitative research approach. Data were collected through in-depth interviews with key informants in the Teluk Kasai community, including traditional leaders, community members, and inheritors. The interviews explored the reasons for the practice, the process of inheritance distribution, and its perceived benefits and challenges. Additionally, a review of relevant literature on inheritance practices in Indonesia was conducted to contextualize the findings.

3. The inheritance distribution system before the heir dies in the community of Kampung Teluk Kasai, Kenagarian Koto Nan Duo, Batang Kapas District, Pesisir selatan Regency.

3.1. The Inheritance Distribution System Prior to the Deceased's Passing

The inheritance system in ancient Rome is a term for the transfer of power to someone chosen by the heir, because they are considered strong and competent to receive rights and assume the responsibilities that will be entrusted to them. Whether the individual is from the heir's family or not Through this process of transferring rights, everything they own passes to the heir from the moment of appointment, even if the heir is still alive⁹.

⁸Interview with Mr. Basril Datuk Maha Rajo Kaum of the Sikumbang Tribe, Teluk Kasai Village on May 4, 2024

⁹Maimun Manawi, *Maimun Manawi, Pengantar Hukum Kewarisan (Surabaya : Pustaka Radja, 2016)*, P. 53. (Surabaya: Pustaka Radja, 2016).

The Islamic inheritance rules are clearly and firmly regulated by the most important legal sources, namely the Quran and Hadith. However, it is possible that the method of distribution and who is entitled to it may vary according to traditional views and local wisdom¹⁰. Basically, the laws governing the division of inheritance, including the distribution of gifts, charity, and inheritance, are regulated by Islamic law. On the other hand, the prevailing legal regulations in Indonesia vary in terms of property division, relying on customary law, Islamic law, and civil law. However, in practice in the community of Kampung Teluk Kasai Kenagarian Koto Nan Duo, Batang Kapas Subdistrict, Pesisir Selatan Regency, the division of inheritance is based on local adat

Adat is understood as all rules of behavior that do not include the realm of law, morality, or religion. That is, it refers to behavior that applies to a certain environment or member of society, although there is no concept of obligation. Adat means commonly used and can be interpreted as a code of conduct, a rule that imposes obligations. In this case, there is a very close relationship between adat and traditions. first appears from the end. When something is constantly happening in a certain environment, there is a view there that it should be¹¹.

Every rule regardless of its source, which is related to one of the actions that people take. In other words, rules are a solution to problems in a person's life. These rules can come from human reason without relying on any other reference than man-made rules. In addition, it is sourced from human ijtihad based on sharia documents as a reference for rule research. Nash rules include the Quran and the Sunnah.

In principle, the distribution of inheritance according to Islamic Law occurs after the heirs pass away. Meanwhile, in the community of Kampung Teluk Kasai, Kenagarian Koto Nan Duo, Batang Kapas District, Pesisir selatan Regency. not based on the provisions of Islamic law, nor positive legal provisions but distributed according to adat or adat, which are based on the wishes of parents and heirs. The distribution of inheritance by heirs to the heirs of the people of Kampung Teluk Kasai, Kenagarian Koto Nan Duo, Batang Kapas District, South Pesisir Regency, aims to avoid disputes between heirs.

The distribution of inheritance before the death of the heir has become a habit whose existence is found in the life of the community ¹². The distribution process is by negotiating the division with the prospective heirs and determining the number of Shares to which the heirs are entitled. The people of Teluk Kasai Kenagarian Koto Nan Duo, Batang Kapas District, Pesisir selatan Regency, consider the distribution of inheritance before the heir dies as a distribution of inheritance. The essence is the distribution of inheritance by the heirs to the heirs before the heirs die, namely . To facilitate the distribution of inheritance, if one of the parents dies, the heirs

¹⁰Amir Syarifuddin, *Hukum Kewarisan Islam*, (Jakarta: Kencana), 2004. P.3.

¹¹Mr. L.J. Apeldom, *Pengantar Ilmu Hukum* (Jakarta: PT. Pradnya Paramita:2011), P.28, n.d.

¹²Rahmad Riski, *Pembagian Harta Warisan Sebelum Pewaris Meninggal Dunia, Studi Kasus Pada Masyarakat Sungai Duo Kabupaten Solok Selatan*, Uin Sunan Kalijaga Yogyakarta, 2022, Vol 3.', n.d.

automatically have an obligation. This will provide certainty to the heirs regarding their share before the heir dies. This is because ownership issues are very vulnerable to causing dissatisfaction and envy caused by greed, so that it has a bad impact on family relationships.

Based on the results of the interviews conducted by the author, it is known that the people of Teluk Kasai Village, Kenagarian Koto Nan Duo, Batang Kapas District, Pesisir selatan Regency. It has its own reasons regarding the distribution of inheritance before the heirs pass away. There are several informants interviewed to obtain information including:

Table 1. informants interviewed to obtain information

No	Nama Informan	Status Informan
1	BasrilDt. Mahara Rajo	Datuk Kaum Sikumbang
2	Bambang Irianto	Community Leaders
3	Nurhayati	Heirs
4	M. Yahya	Heirs
5	Jasnidar	Heirs
6	Andrianto	Heirs

The following is a discussion about the implementation of the distribution of inheritance that is divided when the heirs have not died in the community of Kampung Teluk Kasai, Kenagarian Koto Nan Duo, Batang Kapas District, Pesisir selatan Regency, as follows The Cause of the Community of Teluk Kasai Village, Kenagarian Koto Nan Duo, Batang Kapas District, Pesisir selatan Regency. distribute inheritance nutrients while the heirs are still alive.

In the distribution of inheritance to the people of Kampung Teluk Kasai, Kenagarian Koto Nan Duo, Batang Kapas District, Pesisir selatan Regency, there are several reasons that are used as a basis by the community to divide the inheritance when the heir has not died. As stated by the informant Mr. Basril Dt. Maha Rajo (who is the traditional leader of the Sikumbang tribe of Kampung Teluk Kasai), as the heir of the process of distributing the inheritance that is divided when the heir has not died, as follows:

“Sudah menjadi kebiasaan masyarakat dari dahulu, sehingga pembagian harta warisan sebelum pewaris meninggal masih diterapkan serta dilaksanakan sampai sekarang”

“It has been a habit of the community since ancient times, so that the distribution of inheritance before the heirs die is still applied and implemented until now”.

The informant explained that one of the reasons for the distribution of inheritance before the heir dies is because of the adat or habits that have been applied by the people of Kampung Teluk Kasai, Kenagarian Koto Nan Duo, Batang Kapas District, Pesisir selatan Regency, from generation to generation. In addition to the explanation of the Informant above regarding the reason for the distribution of inheritance, Mr. Bambang Irianto gave the following explanation:

“Pembagian harta warisan dilakukan sebelum pewaris meninggal, terutama ketika ahli waris sudah banyak berkeluarga dan ekonomi ahli waris tidak stabil atau ketika pewaris sudah berusia lanjut”

“The distribution of inheritance is carried out before the heir dies, especially when the heirs have many families and the heirs' economy is unstable or when the heirs are old”.

In the implementation of the distribution of inheritance in the community of Kampung Teluk Kasai, Kenagarian Koto Nan Duo, Batang Kapas District, Pesisir selatan Regency, when the heir has not died. Inheritance is distributed to heirs who are usually familyd, and are mature in managing the property of the heirs. The reason why the heir gave the inheritance when he was still alive was because he was no longer young and felt that he was no longer able to manage his land or rice fields.

From the description and explanation of the informant, there are several reasons that cause the distribution of inheritance before the heir dies, as follows:

- a. Traditions or adat that have been passed down through generations
- b. The economic reasons underlying the distribution of inheritance before the heir's passing
- c. Considering the age factor of the heir, who is already elderly and feels incapable of managing their land or rice fields anymore.

3.2 Implementation of the Distribution of Inheritance of the Community of Teluk Kasai Village, Kenagarian Koto Nan Duo, Batang Kapas District, Pesisir selatan Regency which is carried out before the heir dies

The implementation of the distribution of inheritance of the Community of Teluk Kasai Village, Kenagarian Koto Nan Duo, Batang Kapas District, Pesisir selatan Regency, is aThe process of implementing the distribution that can be taken with various processes and methods of distribution. In the information provided by the informant as the heir, namely by Nurhayati as follows:

“Proses pelaksanaan pembagian harta warisan dilakukan sebelum pewaris meninggal. Pembagian harta warisan memang biasanya dibagi ketika pewaris masih hidup. Dan Pewaris itu sendiri yang akan membaginya dengan pembagian yang dianggap adil dan dengan sistem sama rataa antara laki-laki dan perempuan”.

“The process of implementing the distribution of inheritance is carried out before the heir dies. The distribution of inheritance is usually divided when the heirs are still alive. And the Heir himself will divide it with a fair division and with an equal system between men and women”.

Based on the Informant's explanation above, according to the system, the share received by an heir in this case a child is the same for both men and women. In Direct Distribution Divided by Direct Heirs to heirs and Distribution by heirs to heirs is considered fair because boys and girls get the same share. Furthermore, it was also put forward by the people of Teluk Kasai Village, Kenagarian Koto Nan Duo, Batang Kapas District, Pesisir selatan Regency, named M. Yahya said:

“yang menjadi ahli waris hanya anak dari pewaris saja, orang tua dari pewaris maupun saudara dari pewaris tidak berhak atas warisan pewaris”.

“The only heirs are the children of the heirs, the parents of the heirs and the relatives of the heirs are not entitled to the inheritance of the heirs”.

This is very different from the division of complications of Islamic law and positive law in Indonesia. Based on the explanation above, the siblings and parents of the heirs are not entitled to the inheritance of the heirs, but the inheritance is only for the children of the heirs. Another informant also gave an explanation:

“Pembagian seta pelaksanaan harta warisan dilakukan secara musyawarah yang di hadiri oleh ahli waris saja. dan yang mendapatkan warisan hanya ahli waris (Anak-anak) dari pewaris saja, serta untuk pembagian warisan yang paling banyak mendapatkan adalah anak perempuan terakhir (anak bungsu), dikarenakan pewaris (orang tua) akan tinggal bersama anak perempuan

terakhirnya, dan apabila dalam penerima waris tidak ada anak perempuan terakhir (anak bungsu) maka yang paling banyak dapat atas warisan adalah anak perempuan pertama atau kedua”

"The distribution of inheritance is carried out through deliberation which is attended by heirs only. and those who get the inheritance are only the heirs (children) from the heirs, and for the distribution of the inheritance that gets the most is the last daughter (the youngest child), the heir (parents) will live with the last daughter, and if there is no last daughter (youngest child) in the heirs, then the one who gets the most from the inheritance is the first or second daughter."

Based on the explanation above, the distribution carried out by the people of Kampung Teluk Kasai, Kenagarian Koto Nan Duo, Batang Kapas District, Pesisir selatan Regency, has not been in accordance with the sharia regulated by Islamic law. There are also people who divide by engulfing the division between men and women. However, there is still no justice in the distribution of the inheritance, but something like this is returned to the habits of the people of Kampung Teluk Kasai, Kenagarian Koto Nan Duo, Batang Kapas District, Pesisir selatan Regency itself. Based on the information above, it can be understood in the implementation of the distribution of inheritance before the heirs pass away:

- a. The majority of people divide the inheritance before the heir dies.
- b. In the division of heir rights, both men and women are divided equally.
- c. The distribution of inheritance is only attended by the heirs and those who are entitled to inheritance are only the children of the heirs.
- d. Some people divide the inheritance more to the last daughter (the youngest child).
- e.

3.3 Application of Distribution of Inheritance Before the Death of the Heirs for the Heirs

The application in the process of implementing the distribution of inheritance which is divided when the heirs have not died for the heirs as explained by Mr. Andrianto as follows:

“Proses pembagian warisan pewaris dapat langsung memiliki setelah adanya pembagian warisan oleh pewaris, dan secara langsung sudah beralik kepemilikan yang semulanya adalah milik pewaris menjali milik ahli waris, dan sejauh ini tidak ada pernah terjadi pertikain yang terjadi antara para ahlia waris, setelah pewaris membagi warisan baik masih hidup maupun sudah meninggal dunia”.

"The process of distributing the inheritance of the heirs can be immediately owned after the distribution of the inheritance by the heirs, and directly the ownership that was originally the property of the heirs has been exchanged, and so far there has never been a dispute between the heirs, after the heirs divide the inheritance whether they are alive or deceased".

From the informant's explanation, it can be concluded that after the distribution of the inheritance, the heirs can immediately have from the inheritance that has been divided, and the heirs are greatly helped economically and help an heir who is in need of capital to start a family life. In the application of the distribution of inheritance before the heir dies, namely as a capital support for the heirs, and in the application to the community of Kampung Teluk Kasai, Kenagarian Koto Nan Duo, Batang Kapas District, Pesisir selatan Regency, there has never been a dispute in the distribution of inheritance both when the heir is still alive and when the heir has died.

4. Conclusion

In principle, the distribution of inheritance according to Islamic Law occurs after the heirs pass away. Meanwhile, in the community of Kampung Teluk Kasai, Kenagarian Koto Nan Duo, Batang Kapas District, Pesisir selatan Regency. not based on the provisions of Islamic law, nor positive legal provisions but distributed according to customs or customs, which are based on the wishes of parents and heirs. The distribution of inheritance by heirs to the heirs of the people of Kampung Teluk Kasai, Kenagarian Koto Nan Duo, Batang Kapas District, South Pesisir Regency, aims to avoid disputes between heirs. Customs or habits that have been passed down from generation to generation. With economic reasons that are the background for the distribution of inheritance before the heirs die.

Judging from the age factor of the heirs who are old and feel no longer able to manage their land and rice fields.

The majority of people divide the inheritance before the heir dies. In the division of heir rights is divided equally between men and women, the distribution of inheritance is only attended by the heirs and those who are entitled to inheritance are only the children of the heirs. Some of them divided the inheritance more to the last daughter (the youngest child).

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