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## The Implementation of Inheritance Based on The Tribe of Kaili Ledo and Islamic Inheritance Laws

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### Abstract

Law is an inherent part of Indonesian society, which does not only national law but also customary law. One of the customary laws in Indonesia is the Kaili customary law. Kaili customary law is only applicable to specific communities. Whereas Islamic law applies broadly to all Muslims. One of them is in the field of inheritance law. From many disputes that occur in inheritance law, the distribution of heritage in inheritance law has always been a major problem that occurs in society, both in Kaili's customary inheritance and Islamic inheritance laws. It is interesting to find out more that each of the rules has different dispute resolution where Kaili's customary inheritance law trusts Totua nu ada as a person who has the capability to distribute the heritage. This study was conducted by the Conceptual and Comparative Approach. In conclusion, Kaili indigenous community, are familiar with customary institutions, and, in Islamic law, they have the Religious Courts to resolve their inheritance disputes.

**Keywords:** customary inheritance law; Islamic law; division of inheritance.

### Abstrak

Hukum merupakan salah satu bagian yang melekat pada masyarakat Indonesia, di mana tidak hanya berlaku hukum nasional saja tetapi juga hukum adatnya. Salah satu hukum adat yang ada di Indonesia adalah hukum adat kaili. Hukum adat kaili hanya berlaku dalam masyarakat tertentu saja. Sedangkan hukum islam berlaku secara luas untuk seluruh umat muslim. Salah satunya adalah bidang hukum waris. Dari sekian banyak sengketa yang terjadi dalam hukum waris, pembagian harta dalam hukum waris selalu menjadi masalah utama yang terjadi dalam masyarakat, baik dalam waris adat suku kaili ataupun dalam waris islam. Menjadi hal yang menarik untuk dikaji bahwa setiap aturannya mempunyai penyelesaian sengketa yang berbeda dimana dalam hukum waris adat kaili lebih mempercayai Totua nu ada sebagai orang tepercaya untuk pembagian warisan. Dalam penulisan ini dilakukan dengan *conceptual and comparative Approach*. Kesimpulan, dalam masyarakat adat kaili mengenal lembaga adat dan dalam hukum islam melalui Pengadilan Agama untuk penyelesaian sengketa warisnya.

**Kata kunci:** hukum waris adat; hukum Islam; pembagian waris.

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## Introduction

Inheritance law is a part of civil law and a small part of family law. Inheritance law is closely related to human life, which results from the emergence of rights and obligations for himself and the others. Humans will experience a legal event called death which will involve the relationship between him and his parents, relatives, and people who have a direct relationship with him.

The inheritance law governs how to manage the rights and obligations after a person passed away. According to A. Pitlo, the definition of inheritance law is, "the inheritance law is a series of provisions, in which, due to the death of a person, the consequences in the field

of material, are regulated, namely: the result of the transfer of inheritance from the testator to the heirs, both in relation to themselves, as well as third parties"

As we have seen, there are several inheritance legal systems in Indonesia, namely, Burgerlijk Wetboek inheritance law (BW), Islamic inheritance law, and Customary inheritance law. The three systems of the inheritance law regulate how to distribute the heritage. In a time of rapid development, many people have used BW inheritance law to exclude customary inheritance law. The existence of customary law itself has implicitly recognized in the 1945 Constitution of the Republic of Indonesia through its general explanation, which explains, "The 1945 Constitution is the basis of the written law, whereas the Constitution also applies the unwritten law base is the basic rules arising and preserved in the practice of State organizers, although not in writing" (Ilham, 2008).

Unspecified customary law develops in traditional culture as a legal form of empirical experience in the life of Indonesian society. In BW inheritance law, it is believed that a person is free to determine his will about how the inheritance is left after his death. However, when the person concerned does not determine himself when he is alive about what will happen to his inheritance, in which case, the law will determine the management of the inheritance left by him.

The state recognizes the division of land by the people based on customary inheritance law, and their own decision will lead to a dispute. Judges will decide the case based on their respective customary law (Abubakar, 2013). Considering that customary law is a law that reflects the personality and spirit of the nation, it is believed that some of the customary law institutions are certainly still relevant to be used as materials in forming the Indonesian legal system (Dewi, 2005).

This is a verification of the authenticity of customary law since customary law arises from the autonomous community's own compilation. Following Hart's (1961) opinion, customary law is closer to the order of "*primary rules of obligation*" more than state law that is deliberately (aimed) and therefore closer to the order of "*secondary rules of obligation*" (Syamsudin, 2008).

For every Muslim, it is obligatory for him to carry out the rules or regulation of Islamic law, which is directed by clear rules (*nash-nash shariah*). As long as the rules are shown by other rules or regulations that do not specify their non-obligation, the meaning of any provision of the Islamic religious law shall be adhered so long as no other provision (which is later after the preceding provision) states that the preceding provisions are not obligatory (Lubis, et.al., 2008).

Likewise, regarding the inheritance law, there is no single provision which states that the distribution of inheritance is not compulsory. Indonesia is one of the countries that does not guide its people to carry out the distribution of inheritance according to certain legal provisions. Indigenous peoples have the same pattern in resolving conflicts in the community, namely regulating life in the community and imposing sanctions if violated so that restoring becomes very effective (Desi, 2002). However, there are groups of customary

law communities who remain practicing Islam in the distribution of inheritance by customary law, one of which is the Kaili indigenous tribe.

The Kaili tribe is one of the tribes in Sigi Regency. The Kaili tribe inhabits the administrative area in Sigi Regency, Central Sulawesi Province, which is located in the center of Sulawesi island. The area is in borders with Palu City and North Luwu Regency, South Sulawesi Province in the South. In the West it is in borders with North Mamuju and North Mamuju Regencies, as well as Donggala Regency. Meanwhile, in the East, there are Poso and Parigi Moutong Regency.

As with other tribes in Indonesia, Kaili tribe also has customs as parts of cultural wealth in social life. They have the Customary Law as the rules and norms that must be adhered, as well as sanctions. Kaili indigenous tribe is led by an indigenous person who is capable of being a leader and making wise decisions. The community respects him and he has spiritual powers. Therefore, anyone can get the opportunity to lead the indigenous people. The leader is named as *Mangge* (old man). *Mangge* also can be a leader on a tribe war. This situation is very different from the inheritance in Islamic law, where inheritance is directly distributed when the testator has passed away, so it is called ordinary gift or in Islamic law commonly referred to as a grant.

## Research Problems

There are diverse forms of customary inheritance law system, causing different consequences. Therefore, in essence, the inheritance law must be adapted to the custom and culture of each region with the advantages and disadvantages that inherent in the inheritance system.

## Research Methods

This study was conducted to find a comparison of the laws contained in customary inheritance law and Islamic inheritance law. It is expected that this study can deliver an understanding of the comparison of the two laws. According to Marzuki (2005), the essence of legal research requires legal reasoning, analysis of the problems faced, and problem solving. The legal approach was used with a comparative approach to obtain information and comparison of the applicable laws that have specific objectives. This approach was used to seek uniformity in inheritance law. Furthermore, the conceptual approach is taken to understand the concepts that exist in the rules to build concepts to be used as references in this research by moving from the views and doctrines that develop in law concerning the settlement of disputes between the heirs of adat Kaili law and the law of the heirs of Islam.

## Discussion

### **The Heir Dispute Solution Based on Kaili's Customary and Islamic Inheritance Law Systems**

The customary law alliance determines the view of customary law on inheritance law. The following are the alliances (Fauzi, 2016). *First*, the genealogical alliance (based on the

bloodline). In this alliance, the members feel bound to one another because they are descended from the same ancestors, so there is a family relationship among them. *Second*, territorial alliance (based on population, namely territorial legal alliance). The territorial legal alliance members feel bound to each other because they are located in the same area (Abubakar, 2013).

The division of customary inheritance law, in general, is that when there are more than one heirs to receive the inheritance. There is a difference between customary and Islamic laws where Islamic law requires the distribution of inheritance to be clear regardless of the possessions that belong to the inheritance and to redefine the distribution with a certain number each heir would possess. Other customary laws may discuss the distribution of the inheritance left by the deceased person.

The traditional inheritance law contains three main elements, i.e.:

- a) considering the subject of inheritance law, namely who is the testator and who becomes the heir;
- b) considering when the inheritance is transferred and how the transfer will be done;
- c) considering each part of the heirs, as well as considering the object of inheritance law itself, namely any assets called inheritance, and whether these assets can all be inherited.

Based on customary inheritance law, inheritance does not constitute a single unit, which can be valued at the price, but it is a non-divided entity according to the type and the interests of the legal heirs. Inheritance cannot be sold as a whole. Where in this customary law, undivided assets will become the joint property and cannot be owned individually.

In customary law communities that inhabit the Republic of Indonesia, there are elements of traditional inheritance as follows:

- a. A testator is a person who has passed away and left something that can be transferred to his family who is still alive, both family through kinship, marriage, and family through a partnership in the household. Those who are classified as testators include (1) parents, (2) brothers who are not married or who have a family but do not have children, and (3) a husband or wife who dies;
- b. Inheritance is the heritage asset left by someone who died to their heirs. The inheritance consists of inheritance or property, marriage assets, inheritance commonly referred to as *mbara-mbara*, which in the customary inheritance law of the Kaili tribe in Central Sulawesi, and assets that await (Zainudin, 2010); and
- c. Heirs are the people who are entitled to inherit inheritance property, namely biological children, parents, siblings, substitute heirs, and people who have marital relations with the heir. In addition, it is also known as adopted children, stepchildren, and extramarital children, who are usually given part of the inheritance of the heirs, when the heirs share the inheritance between them. In addition, the assets of the heirs are usually given either through a will or through a grant (Zainudin, 2010).

The law of the Kaili's inheritance customary law in the past saw that the wealth was inseparable from humans. Because assets give value to their owners, those who have the advantage of their assets are placed in the community. Based on the function of the property

for the owner, the Kaili community in distributing the total inheritance (traditional leaders) always prioritizes carefulness and caution. If not done carefully, it would cause injustice and dissatisfaction of the heirs.

The distribution of inheritance according to the Kaili's customary inheritance law is obligatory in order to avoid a dispute that might happen in the future. Commonly, before the death, the testator has distributed his inheritance to each heir or written down the will to be read in front of the family of every beneficiary. Old Indigenous parents are in charge of distributing the inheritance to each of the beneficiaries.

In Indonesian traditional society, four kinds of kinship or ancestral kinship are found based on genealogical factors, namely patrilineal kinship system, matrilineal kinship system, bilateral or parental kinship system, and alternated kinship system (Rahmat, 2014). The order of inheritance in the customary inheritance law of Kaili is the parental system, the system of attracting lineages from both sides, both from the father and the mother. Mother, father, sister, brother, aunt or father's sister, uncle or father's brother, as well as aunt's and uncle's children.

If the mother is not available, the one who inherits is a father. If both mother and father are still alive, the one who inherits is a mother. If both of them have passed away, the inheritance goes to the sister. If there is no sister, the one who inherits is the brother. If both sister and brother are still alive, the one who inherits is the sister. If the sister and brother have passed away, the one to inherit is the daughter of the sister. If a sister does not have a child, the one who inherits is the child of the father's brother, in this case or the paternal uncle. The derivation goes as far as possible. If there is no immediate family of the person who passed away, the other relatives can replace the position of their close relatives and act as heirs of the person who has passed away. So in the customary law, the inheritance is always distributed to the family of the deceased person, no matter the distance of their family relationship.

The distribution of the heritage property made by *totua nu ada* for each heir is based on customary law and not on their own accord. By virtue of customary disputes, the heirs may be prevented while the willingness of the heirs may cause disagreement and conflict. In Kaili's customary law, children are distinguished not by sex but by age. The oldest will be the heir. Furthermore, if the son has a daughter, the heir is the daughter. In Kaili's customary law, women are the party that needs to be protected while men are the protectors who are responsible for making a living. Therefore, the inheritance must be managed by a sister because she can organize and become the foundation of family expectation. However, if the death of a deceased person is an adult son while the daughter is not an adult, the one who acts as an heir is the oldest son. In Kaili's Customary Law, the order of the inheritance at the level of the children between the boys and girls is that they are not the sex of the children but their age. The eldest children are entitled to inherit the inheritance. Furthermore, if at the time of the death of a person who has the assets of his heirs consisting of the oldest son and also an adult daughter at that time, the heirs are not the oldest son but an adult daughter. The inheritance of a girl who has grown up in customary law is not

based on age but based on appreciation for women. Therefore, Kaili's customary law strongly upholds and respects the rights of women.

If there is no child in this inheritance case, but there are both his parents and his brothers. In such circumstances, his father and his brothers cannot be positioned as the heirs. The property of the testator is given to his mother. In this case, the husband or father of the person who passed away cannot be positioned as an heir and get a certain portion of the property left by his child. Similarly, his brothers and sisters, both men and women, they cannot act as the heirs because their mother is still alive. If there is an event of death and the testator leaves the property, all of his property is given to his mother. In Kaili's customary law, a mother is considered the most meritorious in the life of a child, therefore in Kaili's customary law highly respects to a woman. As a virtuous human being, it is appropriate that if the property is owned by a child, after the child dies, the ownership of the property is to be transferred to her. A father is only a protector of the family, so if his mother is given the property of his son who has passed away, his father will also take control and take pleasure in the property left by their child. It is because, in customary law, life is not differentiated between husband and wife.

In the Kaili's customary inheritance law, there are several explanations regarding inheritance, namely:

- 1) The inheritance is not an inheritance as a gift from the husband's parents or wife's parents nor is the property sought by the husband or wife before they are married, so the property that can be inherited is the property obtained during the husband and wife together until they are separated;
- 2) The inheritance is a property that has been issued from all requirements in the form of debt and others, so the property distributed is truly a net asset;
- 3) The inheritance is free from the will or grant. Preferred assets are in the form of assets that have value and are long-held, such as coconut trees, buffalo, cattle, garden houses, and rice fields and jewelry items and household appliances. In special cases where there is a daughter, the mother's jewelry is handed to her. Likewise, boys can inherit their father's special possessions such as *guma*, including machetes used in warfare or clothes, spears and other means of warfare handed down to boys. Those special items are not shared by traditional leaders. Instead, living parents directly give to their children who are women or men. According to the Kaili inheritance law, this includes inheritance and the way of inheritance distribution.

However, in the event of a dispute in the distribution of the inheritance, the Customary Institution will settle the dispute, where each of the troubled parties will be asked to hold negotiations in the traditional hall (*Batanya*) as stipulated in the Central Sulawesi Governor Regulation Number 42 of 2013 concerning Guidelines for Customary Justice in Central Sulawesi, Article 5 paragraph (1) Disputes in customary law communities are settled through customary justice; (2) Customary Justice as referred to in paragraph (1) reconciles the parties to the dispute. Each party to the dispute will be accompanied by

witnesses and assistants, if the best solution is found for each party, the parties will sign a document containing the results of the agreement kept by the Customary Institution.

When there is a claim of inheritance through positive legal channels, the agreement can be a binding legal certainty between each party. Literally, the Kaili tribe is divided into several sub-sections, including, Kaili Ledo, Tara, Da'a and others. However, in essence, it still has the same culture and there are not many differences, which are essentially the same habits and goals. If there is something different, the point of difference is only found in the details of the implementation procedure or the traditional ceremony.

Since customary law has been regarded as a law that they must obey in one area, commonly, those who are Muslims override the provisions in carrying out the distribution of inheritance by customary means, even though it should be in accordance with the written and clear provisions in An-Nisa, verse 13 and 14.

تِلْكَ حُدُودُ اللَّهِ وَمَنْ يُطِعِ اللَّهَ وَرَسُولَهُ يُدْخِلْهُ جَنَّاتٍ تَجْرِي مِنْ تَحْتِهَا الْأَنْهَارُ خَالِدِينَ فِيهَا ذَلِكَ الْفَوْزُ الْعَظِيمُ (13) وَمَنْ يَعْصِ اللَّهَ (14) وَرَسُولَهُ وَيَتَعَدَّ حُدُودَهُ يُدْخِلْهُ نَارًا خَالِدًا فِيهَا وَلَهُ عَذَابٌ مُهِينٌ

Meaning:

(13) Those are the laws of God, and whoever obeys Allah and His Messenger, then Allah will put them in heaven where rivers flow beneath them. He in it is eternal and that is a great victory. (14) And whoever disobeys Allah and His Messenger and violates His laws, then Allah will put them in hell. He in it is eternal and for him is despicable torment.

From the above verses, it can be interpreted that all the rules that Allah has mentioned in the previous verses are the rules of Allah. Whoever obeys Allah and the Messenger of Allah, Allah will give him a very big reward, that is, He will put him in heaven, and he will abide therein. This is what is called a great victory. However, those who rebel against Allah and His Messenger and do not obey His rules will be put into hell forever.

The rules governing inheritance come from four sources of Sharia law. The first source is the Qur'an, which is the holy book of Muslims. The second source is called the *sunnah* (*alhadith*) which are the sayings and practices of the Prophet Mohammed. According to Prophet Mohammed (PBUH), this science, which is also called the science of *almyrāt* (علم الميراث) or science of *alfrā'd* (علم الفرائض) or inheritance science is considered half of the knowledge and must be taught to all Muslims. The third source of law, *āgmā'* (إجماع) which refers to a consensus of opinion, which means that lawyers agree on the regulation. Finally, *qyās* (قياس), or analogical reasoning, is used to apply the text rule for one specific situation to another unspecified situation (Al-Jibali, 2005).

In the bequest verses, the testator is reminded in general terms of God's requirements. In the inheritance verses, these requirements are laid down in details (Powers, 1998). It should be noted that of the many legal issues described in the Qur'an, only the problems/rules for the distribution of inheritance are the most thoroughly explained so that the following verses can be observed (Lubis, 2018). (An-Nisa verse 7)

لِلرِّجَالِ مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۗ نَصِيبًا

Meaning:

For men, there is the right of the inheritance of their parents and relatives, and for women, there is a share of the inheritance of their parents and their relatives, as little or as much as they have been assigned.

A $\bar{l}$ frđ (الغرض) (prescription), the Quran and *sunnah* define six fixed shares that cannot be increased or decreased. They are الربع (one-fourth), الثلث (one-third), النصف (half), السدس (one-sixth), الثمن (one-eighth), and الثلثان (two-third). Those shares apply for various heirs, based on the fulfilment of certain conditions, which are prescribed in the Holy Quran and *sunnah* (Zouaoui, 2018).

Islamic law has particular rules for inheritance, resting on the idea of fixed portions and the notion that males should inherit the bulk of the estate. In general, Muslim families believe a women's ace is in the home and that women should receive less because they may not engage in outside work. Thus, while it is accepted that domestic work is of a certain value, it may be disregarded in the issue of inheritance to help provide for sons as general managers of family wealth. Moreover, there is a strong belief that it is a religious duty to take care of the elderly and that intergenerational transfers ought to be adjusted to take care of the aged (Voyce, 2018).

Islam regulates inheritance issues with the goal is to create justice, namely the certainty that the inherited property is property which is a legacy (*at-tirkah*) from people who inherit property/heirs (*al- muwarrith*) and the inheritance can be distributed to heirs. As well the part received by the heir is part of the right and not assets that are the rights of others. If someone takes an inheritance that is not his rights, he has taken the rights of other people in vanity, which is not justified in Islam (Hadi, 20013).

There are several principles found in Islamic inheritance law. The first one is Ijbari Principle, which contains the law of the Islamic inheritance implies that the transfer of the property of a deceased person to his heirs by itself be in accordance with the provisions of God without being dependent on the will of the heir (Muhibbin, 2009). The principle of ijbari in the Islamic inheritance law is not does not mean the burden of heirs. If the heir says that the debtor has bigger debt than the inheritance, they are not obliged to pay all the debts. No matter how big the testator owes, the debt will only be paid as much as the inheritance left. If all the inheritance has been used to pay the debt and there is still the remaining debt, the heirs are not required to pay the remaining debt. Even if the heirs want to pay the rest of the debt, the payment is not something governed by law, but it becomes more of encouragement of morality/virtue (Muhibbin, 2009).

The second principle is the bilateral principle of inheritance law. This principle means that a person receives a right or inheritance part of both parties; from relatives of male descendants and from relatives of female descent. The bilateral basis principle has two dimensions of mutual inheritance as mentioned in Al-Quran Surah An-Nisa verses 7,11,12, and 176, namely (1) between children and their parents, and (2) heirs who do not have children and parents (Zainudin, 2010).



The third principle is the individual principle. Islamic law teaches the principle of inheritance individually, in the sense that inheritance property can be divided into each heir to be owned individually. In the implementation, each heir receives his/her own part without being bound by the other heirs. The entire inheritance property is expressed in a certain value. The amount is distributed to each beneficiary who is entitled to receive it according to the proportions of the respective parts (Syarifudin, 2004).

The next principle is the balanced principle of justice. This principle implies that there must always be a balance between rights and obligations, between what someone has and the obligations that must be fulfilled. For example, men and women have rights that are comparable to the obligations they have in family and community life.

The occurrence of inheritance due to death, on the principle of this inheritance, illustrates that the law of inheritance in Islam only recognizes inheritance, namely inheritance resulting from the death and does not recognize inheritance based on the will made during the life of the heir. In Islamic inheritance law, the concept of death underlies the occurrence of inheritance if the testator dies.

Meanwhile, in the customary inheritance law, the testator's status of being dead or alive is not important (Haries, 2014). The basic principle is closely related to the principle of *Ijbari*, when a person has fulfilled the requirements as the subject of law. In fact, it can act on his will to distribute all his wealth. However, such freedom is only when he is alive. A person does not have the freedom to determine his wealth after he/she dies. Although a person has the freedom to testify, it is limited to only a third of his wealth (Muhibbin, 2009).

The Islamic law of inheritance is the same as the law of customary inheritance. There is an element in Islamic law which is called as harmony. There are several legal elements in the Islamic inheritance law. First, a testator (*muwarrith*), which is a person who has passed away and left an inheritance, and second, inheritance is a good asset in the form of movable, immovable property and assets that are not intended, such as rights intellectual property, copyright and others (Komari, 2015). Each of which must meet various requirements. These elements in the *fiqh* book are called pillars of Islam, and the requirement is called the requirement for every pillar of Islam (Muhibbin, 2009).

In connection with the discussion of inheritance law, there are three tenets of inheriting, namely: 1). testator, i.e., is the person who, at the time of his death, is Islam and leaves the inheritance property and the surviving heirs. In Islamic law, this person is called as a *muwarrith*. According to article 171 b of the Islamic Law Compilation (ILC), the testator is the person who, at the time of his death or is declared dead based on the decision of the religious court of Islam, leaves his/her heirs and inheritance. For *muwarrith*, the provision includes that the abandoned property belongs to him/her, and he/she has actually passed away or as declared by law. According to *fiqh*, the death of a *muwarrith* is divided into three kinds, namely *haqiqy* (actual death), *hukmy* (death based on judge's decision), and *taqdiry* (death according to allegations) (Muhibbin, 2009).

According to Article 171 letter e Compilation of Islamic Law, *Mauruts* (inheritance) is inherited property plus part of the joint assets after being used for the needs of the testator

during the illness until death, the fee of processing corpse (*tajhiz*), debt payments and gifts for relatives. The existence of these assets can be shared with the heirs, after deducting the costs of care/treatment of the heir, funeral, payment of debt, and will. The last element is heirs, namely those who are entitled to inheritance. In short, inheritance can be shared if all the binding obligations have been completed (Komari, 2015).

According to Article 171 c of ILC, the testator is the person who, at the time of his/her death, has a bloodline relationship or marriage relationship with the heirs, is a Moslem, and not obstructed because of the law to be an heir. In Islamic law, material rights in the form of debt are inherited. However, the property shall be in a pure condition, meaning that the inheritance has been deducted by other rights, such as the cost of burial, taxes, zakat, and so forth. Debt to God, in Islamic legal debt, is an addition to people and includes the legal entities owed to Allah. Debt to God is a material obligation to God that must be fulfilled, such as paying *zakat*, *nadzar*, and so forth (Komari, 2015).

In Islamic law, heirs are determined based on *nasab* (bloodline) and marriage, while customary law prioritizes the existence of *nasab* relationship. In addition, the division of Islamic inheritance tends to expand or embrace as much as possible heirs, while the distribution of heirs according to customary law tends to be more restrictive due to the principle of mutual closure between potential parties as heirs (Sudaryanto, 2010).

In Islamic law, the power of testator is limited in two ways. Firstly, he cannot bequest more than 1/3 of his net estate unless the other heirs grant the consent to the bequest, there are no legal heirs, or the only legal heirs is the spouse who gets his/her legal share, thus, leaving the remaining to be bequeathed. Secondly, the testator cannot make a bequest in favour of a legal heir, providing that the bequest does not exceed the bequeathable one-third (Bello, 2015). To illustrate how the distribution of inheritance can be done, a list of some rules has been summarized from Qur'an in Table 1 (Zouaoui, 2015).

**Table 1.** Distribution of Inheritance

Relative Name in English	Relative Name in Arabic	Quranic verse	Testator does not have any offspring	Testator has offsprings
Husband	الزوج	An-Nisaa 4:12	1/2	1/4
Wife	الزوجة	An-Nisaa 4:12	1/4 (Divided among all wives)	1/8 (Divided among all wives)
Son	الإبن	An-Nisaa 4:11, An-Nisaa 4:176	1:2 (male & female of the same class)	1:2 (sons and daughters)
Daughter	البنات	An-Nisaa 4:11	1/2 (only 1 daughter)	2/3 (multiple daughters)
Father	الأب	An-Nisaa 4:11	1/6	1/6
Mother	الأم	An-Nisaa 4:11	1/3	1/6
Full Sister	الشقيقة الأخت	An-Nisaa 4:176	1/2 (only 1 full sister)	2/3 (multiple full sisters)

Maternal Sibling	أخت أو أخ	An-Nisaa 4:12	1/6 (only 1 maternal sibling)	1/3 (multiple maternal siblings)
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The male portion is two portions of the female heirs. Husband, wife, father, mother, son, daughter can never be blocked to inherit the testator. Otherwise, a son can block paternal grandsons, paternal granddaughters, full brothers, full sisters, paternal brothers, paternal sisters, maternal brothers, maternal sisters, full nephews, paternal nephews, and all the rest relatives of the testator. In addition, the absence of offspring can allow some relatives to inherit the testator. In addition, each family member may not permit other family members to inherit according to their class in the family hierarchy which is defined by Islamic law.

In Islamic inheritance law, there is a term called *hijab*. Etymologically, *hijab* means veil, wall, or obstruction. Whereas according to the term is preventing or preventing certain people from being entitled to receive part of the inheritance or to be reduced in part. *Al-hajb* in Arabic means a barrier or an abortion. In addition, in Arabic, the word *hajib* means "artisan or doorman" because the person prevents people from entering certain places without permission to meet the rulers or leaders. *Al-hujub* is divided into two types, i.e. *al-hijab bil washfi* and *al hijab bi asy-syakhshi* (Ikbal, 2018).

*Al-hijab bil washfi* means that people who are affected by the *hajj* are prevented from obtaining their inheritance as a whole, or their inheritance is dropped. Basically, those who are forbidden to the receive inheritance, even though they are included as heirs, are in the form of "status" of a person, either because of a certain case or because of their existence in a certain position, resulting in their right to inherit.

On the other hand, *al-hajb bi asy-syakhshi* is the loss of one's inheritance due to other people who have the right to receive it. *Alhajb bi asy-syakhshi* is divided into two, i.e.: *Hajb hirman* is a barrier that aborts all one's inheritance rights. For example, obstruction of inheritance rights of a grandfather because of the presence of a father, obstruction of inheritance rights of the grandchild because of the presence of children, obstruction of inheritance rights of siblings due to siblings, obstruction of inheritance rights of a grandmother because of the mother, and so on. Included in the *hirman hijab* is the status of the grandchildren whose father first died from the grandfather who would be inherited together with his brothers, In Aceh language it is referred to as a broken *titi*, while in the Compilation of Islamic Law (KHI as the judge of the Religious Courts in the field of inheritance) it is referred to as a substitute heir. According to the provisions of the jurists, they got nothing because there is a *hijab* by their father's brother.

There are four conditions that have been agreed upon by the four Islamic scholars, which can cause an heir not to obtain inheritance and another one that is still contested, namely: 1) murder; 2) slavery; 3) having different religions; 4) being in different Countries; 5) being an adult. The *hajb nuqshan* (reduction of rights) is the obstruction of one's inheritance to get the most shares. In the world of *pharaid*, if the word *al-hajb* is mentioned without other words to follow, it constitutes the meaning of *hajb hirman*. This is an absolute thing and will not be used in the sense of *hajj nuqshan*.

There are heirs who are not likely to be exposed to the *hajib hirman*. They consist of six people who will still get inheritance rights. The six people are male biological children, biological children of women, father, mother, husband and wife. If the person who dies leaves one or even the six, then all must get an inheritance. In Islamic law, a sanction is handed down with the main objective for prevention, teaching, and education. Legal sanctions, as a means of prevention, are the sentences imposed or given to realize the purpose of prevention, that is, it must not be less or heavier than the provisions outlined. Thus, the types of sentences handed down will be different (Khisni and Ulinuha, 2016).

Many people consider it even disadvantageous to feel that the accepted part is unbalanced between one and another when the inheritance distribution is based on Islamic law. Dispute settlement in Islam related to the issue of the heirs is done by the Religious Courts. Article 49 of Law Number 3 of 2006 regarding Religious Courts states that the Religious Courts are in charge and authorized to examine, decide and resolve matters on the first level among Muslims where one of them is the heir.

In solving inheritance problems, there are two areas of authority that need to be distinguished (Rahmatullah, 2016). The first one is the Fatwa Territory. This section only explains the division of each heir, based on the terms that have been explained in the knowledge of *faraidh*/heirs. Anyone who understands the heirs and the issues posed is entitled to provide answers, such as religious figures, or fatwa institutions, or others; the Second is the *qadha* region which discusses what assets must to distribute or which to inherit, until the complete application of inheritance, after what is explained in inheritance. The *qadha* region also has the right to decide on any disputes that occur among heirs. The only ones who have the right to enter this area are government agencies that handle inheritance issues, such as religious courts

The law of studying *faraidh* is *fardhu kifayah*, meaning that if anyone already learns it, the obligation will be abolished to others. In addition. There is also the need to study and teach it. For a Muslim, it is no exception whether he is a man or a woman who does not understand or understand Islamic inheritance law. The law must be carried out (rewarded, not carried out sinfully) for him to learn. On the other hand, those who have understood and control the law of the heirs of Islam are obligated to teach it to others. The obligation of learning and teaching is intended to be among the Muslims (especially in the family) so that there is no dispute because of the division of inheritance property, which will eventually break in the kinship of the Muslim family. This *hadith* places the command of studying and teaching *faraidh* science in line with the command of learning and teaching al Qur'an. This does not indicate that *faraidh* is a science that is important enough to be learned in order to bring justice to society.

When looking at the verses of the heirs in the Qur'an, it can be concluded that God gives a lot of attention to this issue. It is so much detailed and God regulates each of the following heirs with the conditions that must be fulfilled. There we find that God regulates exactly who, how, how much and when distribution of inheritance can be done. There are definitive details that make every Muslim obliged to be submissive and obedient and willing

and accept what God decides. No matter how many parts of the heirs he shares he must receive with great mercy on God *subhânahu wa ta'âlâ*. In the Qur'an the letter of Al-Ahzab verse 36 explicitly states:

وَمَا كَانُوا مِنْكُمْ وَلَا الْمُؤْمِنِينَ إِذَا قَضَىٰ اللَّهُ وَرَسُولُهُ أَمْرًا فَتَآخَرُوا لَهُ خِيفًا فَلَا مَلْجَأَ لَهَا وَلَا وَالِدًا ۗ وَالَّذِينَ يَحْكُمُوا بِالْعِلْمِ لَا يَمُرُّونَ بِالْغَبَاةِ وَالَّذِينَ هُمْ عَنْ غِبَابِهِ مَخْفَىٰ ۗ وَمَا كَانُوا مِنْكُمْ وَلَا الْمُؤْمِنِينَ إِذَا قَضَىٰ اللَّهُ وَرَسُولُهُ أَمْرًا فَتَآخَرُوا لَهُ خِيفًا فَلَا مَلْجَأَ لَهَا وَلَا وَالِدًا ۗ وَالَّذِينَ يَحْكُمُوا بِالْعِلْمِ لَا يَمُرُّونَ بِالْغَبَاةِ وَالَّذِينَ هُمْ عَنْ غِبَابِهِ مَخْفَىٰ ۗ وَمَا كَانُوا مِنْكُمْ وَلَا الْمُؤْمِنِينَ

It means: "And it is not fit for a believer and for a believing woman, if Allah and His Messenger have decreed a decree, there is another option for their affairs. Whoever disobeys Allah and His Messenger is indeed astray with a manifest error."

In the general clarification of Law No. 7 of 1989 on the Religious Courts, there is a sentence which reads: "The parties before the litigation may consider choosing the law used in the distribution of inheritance". (1) Determination of anyone who becomes heir; (2) Determination of inheritance; (3) Determining the portion of each heir; (4) Carry out the distribution of inheritance; (5) Court judgment on a person's application of the determination of who is the beneficiary, and the determination of its parts.

In the general clarification of Law No. 7 of 1989 on the Religious Courts, there is a sentence which reads: "The parties before the litigation may consider choosing the law used in the distribution of inheritance". Now, with the amendment to the Act, the sentence was removed. The general clarification of Law Number 7 of 1989 on the Religious Courts explains that when the inheritance is based on Islamic law, the settlement is executed by the Religious Courts. Furthermore, it is said about uniformity. The general clarification of Law Number 7 of 1989 on the Religious Courts explains that when the inheritance is based on Islamic law, the settlement is executed by the Religious Courts. Furthermore, the uniformity of the Religious Courts in all regions of the archipelago has been distinctly different from each other, due to their basic legal differences. In addition, based on Article 107 of Law No. 7 of 1989 on Religious Courts, the Religious Courts hold the task and authority to complete the request for the distribution of inheritance on the dispute between Muslims under Islamic law.

## Conclusion

Customary law and Islamic law have provided an opportunity to the heirs to determine for themselves whom to carry out the division of inheritance. The presence of the existing Totua nu ada (old customary parents) as a trusted person for the distribution of inheritance is solely done when the parties trust Totua nu ada more. The essence of the party's presence is to suppress conflicts or unconventional relationships within the eligible family as early as possible. This means that there should be no division in the family of the heirs of the inheritance simply because of the division of heritage property is deemed inappropriate.

In the Islamic law on inheritance, the determination of dzawil furudh is very clear, in which Muslims are obliged to obey what is commanded in the Qur'an. In the Qur'an, God sets in definite portions of each, whether those who are part of the heirs or who are obstructed in the inheritance. The existence of these definite details makes every Muslim subject to obedience to the rules. Despite the passage of the Religious Courts, the division of the heirs still returns to what has been set out in the Qur'an.

The comparison between the Islamic inheritance law and the customary inheritance law, principal differences are found which include the following points: *first*, in customary inheritance law, inheritance can be divided, or the distribution can be delayed for quite a long time or only partially divided. Meanwhile, in Islamic inheritance law, each heir can demand the distribution of the inheritance at any time. *Second*, the law of customary inheritance gives adopted children the right to live from the inheritance of their adoptive parents. On the other hand, in Islamic law, this provision is not determined. *Third*, in customary inheritance law, the division is a communal action, moving harmoniously in a friendly atmosphere by paying attention to the special conditions of each inheritance. As for Islamic inheritance law, the parts of the heirs have been determined, and the distribution of inheritance is set according to the provisions. Last, in customary inheritance law, inheritance does not constitute one unit of inheritance but must be considered based on the nature, the origin and the legal position of the respective items contained in the inheritance. In Islamic inheritance law, all of them constitute one unit of inheritance.

### Suggestion

In Kaili Customary inheritance law, it is best to consider how much of the proportion that the heirs will receive. Such a clear division can minimize disputes. Based on the Islamic inheritance law, Muslims cannot support such existing provision although the practice of customary law is still quite strong in Indonesian society.

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