

**THE ROLE OF SHARIA AND ADAT LAW
IN RESOLVING INHERITANCE DISPUTES: A STUDY IN BUKIT
DISTRICT, BENER MERIAH REGENCY, INDONESIA**

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ABSTRACT

This study examines the factors contributing to inheritance disputes and the corresponding settlement mechanism in the Bukit District of Bener Meriah Regency, Aceh province. The juridical-empirical method is employed to analyze this phenomenon. In the Bukit District, the distribution of inheritance is predominantly governed by Islamic Law. However, certain villages adhere to the Adat (Customary) Law, which mandates equal shares and has resulted in conflicts among heirs. The study identifies several factors that contribute to these disputes, including perceived injustice where female heirs believe they have contributed more to the care of the deceased, economic disparities among family members, and strained relationships and communication among heirs. The primary approach is to apply Islamic inheritance law, with recourse to the Adat law as a secondary option when the former proves ineffective (disputes).

Keyword: Settlement; Inheritance Dispute; Islamic Law, Adat Law, Bener Meriah Regency.

INTRODUCTION

The customary laws and the religious law, particularly Islam, occupy a strategic position in the context of the development of national legal materials. In Indonesia, customary law plays an important role in governing the society. Although it is not a formal legal entity, it is often referred to by some societies to base their actions and decisions (Ilyas, Rani, Bahri, & Sufyan, 2023).

Adat Law is one of the legal rules that is still being applied in many regions to become the basis or the source for settlement in every problem that occurs. Almost any problem can be solved through Adat law including matters related to inheritance. Adat inheritance law is a distinctive system of inheritance law that is applicable in the Adat law area and prevails in each of the Adat environments. Therefore, it is known by several different names, depending on area and environment (Judiasih & Fakhriah, 2018). The people who live in rural areas often use Adat law as the regulation for inheritance because Adat law has been implemented and applied through generations, despite being unwritten, the rules are applied accordingly in every aspect of people's lives.

Besides Adat law, there is an Islamic Law. Islamic inheritance law is one aspect regulated in the Qur'an and the Sunnah of the Prophet because it is the settlement of property-related inheritance cases. If the distribution is not transparent and is not based on apparent legal force, there will be potential for the emergence of disputes or disputes among the heirs (Khosyi'ah & Rusyana, 2022). The rules about inheritance have been stipulated by Allah through his word that is mentioned in the Quran, especially in verses 7, 8, 11, 12, and 176 of surah An-Nisa' in which the meaning, direction, and purpose are obvious. Things that require explanations, either affirming or detailing have been conveyed by Rasul Allah (Messenger of God) through his hadiths. Such rules have been collected in the sheets of the *fiqh* book, and become the guideline for Muslims in settling the issue regarding inheritance (Syarifuddin, 2004).

There is a term known in Islam as *Faraid*. *Faraid* is the provisions that regulate individuals who are included as the heirs who are entitled to an inheritance, the heirs who are not entitled to an inheritance, and the respective share (Khisni, 2013). Sharia acknowledges the transfer of inheritance of someone when he is still alive in the world to his heirs when he passes away, both heirs or heiress without differentiating them as a child or an adult.

There are three pillars of inheritance in Islam, first *Al-Munawarith* people who died and their heirs are entitled to inheritance. Second *Al-Warith* people are entitled to inherit the heir's inheritance due to kinship ties (*Nasab*) or marriage ties. Third is *Al-Mawarith* inheritance assets are all types of objects or ownership left by the testator, either money or land (Hamdani, Pebrianti, Dzulhijjah, & Maricar. Hudzaifah Muhammad, 2022).

This study focused on the substance of the occurring problem, regarding the distribution of inheritance in the Bukit District of Bener Meriah Regency. The reason behind the selection of Bukit District of Bener Meriah Regency as the research location was because this area is known for its culture and other things directly related to the problem of this study, namely the settlement of inheritance disputes. In addition, a couple of disputes during the inheritance distribution had occurred in this location. This condition became appealing to be studied regarding the settlement of the dispute of inheritance distribution.

According to the preliminary study, while the provisions in Islamic law that are stipulated as the Adat law in most of the villages have clearly regulated the method and procedure to distribute inheritance, disputes during the distribution of inheritance still occurred in Bukit District of Bener Meriah Regency. This condition happened because the heirs did not agree with the kind of law implemented during the distribution process of inheritance because Adat law is the applied law in the village and the stipulation of Islamic law as the Adat law was done by the local people as well.

This condition is indicated by the cases of inheritance disputes in 2017-2018. There were two cases of dispute regarding the distribution of family inheritance in

the Bukit District of Bener Meriah Regency. It can be seen that the distribution of inheritance did not get consent from the heir because the share received by the heir was equal to the share received by the heiress, and this distribution was carried out by using the Adat law applied in the village. The heir assumed that an equal share does not match the different needs and responsibilities of a son and a daughter. By contrast, as an entitled heiress, the daughter also had a principle and insisted that she should get an equal share like the heir in which the distribution of this inheritance was based on the Adat law of the village.

In this case, the deceased did not leave a will that elaborated on the share received by his heir/heiress. Due to the unavailability of the will, the heir and heiress believed that they had equal rights on the inheritance and wanted to obtain their respective shares as the entitled heirs. Therefore, this writing discussed several things, namely the factors causing the dispute of inheritance in Bukit District of Bener Meriah Regency, and the settlement mechanism of inheritance disputes in Bukit District of Bener Meriah Regency.

RESEARCH METHOD

This study used a juridical-empirical method as an approach that observes a legal reality in a community. This approach is used to see legal aspects of social interaction within a community and works as a support to identify and clarify the non-legal findings for the sake of research or legal writing (Z. Ali, 2009). In this study, a collection, objective identification, and analysis of the settlement mechanism of inheritance disputes in the Bukit district of Bener Meriah Regency will be performed. In a community life that is full of kinship and togetherness, it is possible that problems related to inheritance distribution will occur. The kinship and togetherness cannot guarantee that life within the environment will always be comfortable and peaceful (Ernawati, 2018). Peace in Islam is called as *Al-Sulh*, which linguistically means “reducing conflicts”, while terminologically means the agreement to amicably end a dispute or fight between two conflicting parties

(Munawir, 1984). The settlement of inheritance disputes through Adat will present local figures as the intermediary, for instance, *Reje Kampung* or *Imum Kampung* who will help the conflicted parties to achieve a mutual agreement in which both parties will find an amicable resolution (Rukiah & Herman, 2011).

RESEARCH OUTCOME AND DISCUSSION

1) Factors Causing the Inheritance Disputes in the Bukit District of Bener Meriah Regency

Death is an event that will certainly be faced by every human. It has been clearly explained that every living creature will die. The problem is when the deceased person leaves wealth, commonly called an inheritance. An heir who is entitled to the inheritance will consider the system to distribute the inheritance and what kind of law will be applied in the distribution process of the inheritance.

In principle, the teachings of Islamic law have regulated the distribution of inheritance impeccably. It starts from the individuals who become the heir, the rights and responsibilities of the heir, the share received by each heir, and others. Islam has formulated clearly and managed every aspect of human life with no exception regarding the inheritance law. Determination of the share of male and female heirs as regulated in the Qur'an is the fairest rule. According to the Qur'an, justice determines that the share of men is equal to that of two women well known that men have more significant burdens and responsibilities than women. Justice in Islam is not always the same according to needs and responsibilities. That is because the protection of women both in Islamic law and positive law includes the right to get good treatment, education, dowry, living, inheritance, the right to choose a life partner, and the right to try and get results from their efforts (Tarmizi, Sandra, Jumra, & Yadi, 2022)

While a very obvious rule to solve the problem that will occur during the inheritance distribution is available, disputes or conflicts during the inheritance distribution were still found, despite that the distribution of inheritance had been done with the law, principles, and procedures stipulated in Islam.

Dispute itself means a conflict occurs between two parties or more in which the first party conveys dissatisfaction to the second party. In principle, the issue of inheritance is easy to solve if all heir understands the knowledge and agrees on the law approach to be used in the distribution. The inheritance distribution can be said as complicated if the heirs do not understand the knowledge about inheritance and do not in the same opinion regarding the distribution which eventually raises conflicts between the heirs.

In the study conducted by the researcher in the village of Bukit District of Bener Meriah Regency, the researcher saw and figured out that the conflicts between heirs commonly occurred because the heirs carried out the inheritance distribution by referring to *faraid* law, i.e., the heir receives a higher share than the heiress. The researchers perceived that there are factors that affected the occurring conflicts. These are the factors that can be elucidated by the researcher from the analysis results:

1. The Injustice Factor

The inheritance distribution used *faraid* law which was considered by the heiress as unfair and underestimating for women (B.G, 2019). This was because the heiress thought that she was the one who took care of the deceased and spent more time with the deceased during his sickness, while the heir only asked about the condition of the deceased (Wahyuni, 2019). While verse 11 of Surah An-Nisa in the Quran has explained that the share for sons and daughters is not equal but fair, the heiress still assumed that a fair share is if all heir receives the same share.

Musdah Mulia (An activist of women) criticizes the division of inheritance in Islam that has been applied in Indonesia. Musdah interpreted and recontextualized the inheritance verse in accordance with the social conditions of Indonesian society. For example, in the case of the distribution of inheritance, the property is given to those who have the closest access to the testator. Women in this case are the ones who take care of their parents both during illness and health, but when dividing the

inheritance, it is men who get more shares than men, according to Musdah this is an injustice that must receive attention. (Sriani, 2018).

Long before that, a scholar from Indonesia Munawir Sjadzali had a controversial thought about the Islamic inheritance. Generally in Islamic jurisprudence, the share of property inherited by a female heir is half of the property given to a male. Sjadzali proposed that women are equal to men in inheritance as defined by civil law (KUHP). He points out the legal reasons because a female gets half of what a male gets in Islamic inheritance has been abandoned by the Muslims of Indonesia either directly or not. (Permana, 2018)

In terms of Islamic inheritance, the division equal between the inheritance of men and women just happens to the mother's brother. Either male or female, the mother's brother has equal rights of inheritance. The terms are different from father brothers and father mother brother's that the right of estate as well as son and daughter. As described surat al-Nisa verse 11. Most exegetes explain the brother and sister in this verse is the brother and sister mothers. This verse states that the mother's brother, male or female has equal rights of inheritance (Permana, 2018).

2. The Factor of Economic Equality

When the heiresses considered that the inheritance distribution by *faraid* law is unfair because, in their perspective from the economic side, the heirs have economically fulfilled their daily needs, unlike the heiresses who were economically insufficient. For instance, during the care for the deceased, the heiresses had to spend a quite amount of money for the parent, let alone their poor economic condition. Thus, the heiresses insisted that they should get the same share as the heirs (Sakdiah, 2019).

In addition, they also need a lot of money to send their children to school. Working as farmers who only get income during the harvest season is considered insufficient to fulfill all of their economic needs. The husband of the heiress is also not an employee who gets regular income from work, so they need a lot of money to fulfill their family's economic needs.

In the beginning, the heiress did not mind the inheritance distribution that used *faraid* law (2:1) because she assumed that the parents had sacrificed everything for their children. However, as time went on, she needed more money to afford her economy. Thus, the heiress asked for the same share with the heir to support her economy (Sakdiah, 2019).

3. The Harmony in Family Relationship

Aside from the factors mentioned above, another factor that often triggers dispute and conflict during the distribution of inheritance is the less harmonic relationship between the heirs who are entitled to the inheritance. According to the study conducted by the researcher, the researcher found that there was a factor of less harmonic family communication and relationships among the heirs (Samiaty, 2019). This finding is consistent with the information from the respondent during the interview in which the heirs did not indicate any concern towards each other and the disparity in opinion, resulting in disputes within the family relationship.

In addition, the less harmonic condition of the heirs' family might also be caused by the economic factor of their family, resulting in a dispute because the needs of an adequate life were not fulfilled. This condition may occur because the heiress had struggled to treat the deceased during his life with a poor economic condition, the heiress instead received a smaller share during the inheritance distribution, causing the family to be divided. This situation surely caused all heirs to consider themselves as the most rightful heir during the inheritance distribution.

The issue of the inheritance distribution in which the heirs do not have a mutual agreement and are selfish will end up in disharmony within the family. The family was fine and known by the community to never have any conflict until the time of the inheritance distribution. It seems like the inheritance distribution is the reason why a family is divided (B.G, 2019).

There are many other families that don't have any issue with the system used for inheritance distribution because the most important thing is the harmony within the family and how the harmony can be maintained, so the public would not see the

family poorly. They assume that wealth can be found, but harmony in the family is the aspect that should be maintained as an example for future generations (Wahyuni, 2019).

4. The Factor of Education

The difference in education levels between the son and daughter was also the reason for the inheritance disputes. In some families, sons acquire higher educations while daughters don't. This condition caused the sons to be more successful and more economically self-sufficient compared to the daughters (Bukhari, 2019). In this context, the daughters often compare their education levels as they can only complete their high school while the sons can continue to university level. In addition, there will be no one who take care of the parents if the daughter continues her education at university, especially outside the town.

Based on the description above, it is clearly illustrated that the dispute and conflict in the distribution of inheritance in a family relationship generally occur due to the factor of injustice in which the heiresses perceive that they contributed the most in nursing the deceased; the factor of economic equality between the heir and heiress in a family, and the factor of less harmonic relationship and communication among the heirs within the family.

A different argument was expressed by the heir who did not accept the share proposed by the heiress in which the provision in Islam states that the share of the inheritance that will be received is two shares for the son and one share for the daughter as mentioned in Article 176 of the Compilation of Islamic Laws and Verse 11 of Surah An-Nisa'. Therefore, based on this law, the heir still maintains the right over the inheritance (Sarifuddin, 2019).

2) The Settlement Mechanism of Inheritance Disputes in Bukit District of Bener Meriah Regency

According to the provisions in Islam, the distribution of inheritance is called *faraid* law, which means that the share between sons and daughters in receiving an

inheritance is two to one. It means that the heir (a son) receives a bigger share of the inheritance compared to the heiress. In addition, it is possible that the distribution of inheritance is performed by Adat, namely based on the mutual agreement of the family that the inheritance is distributed equally towards every heir without differentiating the heirs' gender.

In Islamic teachings, the distribution of inheritance has to be done immediately by the heirs and it should not be long after the corpse is managed along with various related activities. If the inheritance distribution is delayed, it might affect the family's harmony, the kinship will be cracked or even broken only to obtain the inheritance which is considered as their right (Hudri, 2019).

According to the study conducted in the village of Bukit District of Bener Meriah Regency, the inheritance distribution is performed through two methods, namely by following the Islamic Law (*fara'id* law) that is applied as the Adat law in some villages or by following the Adat law itself in which the inheritance distribution is based on the mutual agreement/family's consensus.

In the distribution of inheritance, the first mechanism is following the Islamic law that is applied as the Adat law (*fara'id* law), namely dividing the inheritance according to the provisions in the Quran, i.e., verses 11 and 12 of Surah An-Nisa'.

The *Imum Kampung* who knows and understands the distribution of inheritance in reference to Islamic law will be the intermediary for the heirs during the distribution of inheritance and will explain the share that will be received by each party.

If the mechanism does not find a bright spot and raises denials from the heirs, thus, the next step is returning the mechanism of inheritance distribution to the family that is based on mutual agreement, namely dividing the inheritance among the heirs in an equal share by involving the *Imum Kampung* or *Reje Kampung* as the intermediary to prevent the disagreement that might occur. In general, the inheritance distribution by Adat law is through the mechanism shown as follows; (B.G, 2019);

First, gather all the heirs in one of the heirs' houses or the deceased's house, from the oldest to the youngest children by involving *Imum Kampung* or *Reje Kampung* as the intermediary in the occurring dispute. The gathering of these heirs is aimed for the inheritance distribution and all things related to the heir management can be known by all heirs. This effort is also aimed at preventing further conflicts after the inheritance distribution is determined by the related heirs. *Imum Kampung* or *Reje Kampung*'s involvement is as the mediator if there is a dissent during the process of dispute settlement between heirs, which can make the dispute worse, and common ground cannot be found.

The next mechanism is by detailing all assets inherited by the deceased, either in the forms of land, farm, house, money, or debt. This is meant for all heirs to know the assets owned by the deceased and the amount of assets that will be expensed to fulfill the liability of heirs to the deceased, including the repayment of debt or the granting of a will that uses the assets of the deceased.

If the liability towards the deceased has been settled and the inherited assets are still remaining, thus, the inheritance for the heirs will be immediately distributed. But first, the heirs will be asked regarding their opinion on what law will be applied in the inheritance distribution, and this is when the dispute might occur. Generally, the heir in the family will tend to use Islamic law (two shares for sons and one share for daughters). Unlike the heiress who demands equal distribution or the distribution that is based on Adat law.

This is the stage where the *Imum Kampung* or *Reje Kampung* contributes. The dissent regarding the selection of law that will be applied in the inheritance distribution becomes the task of *Imum Kampung* or *Reje Kampung* as the intermediary and give the best advice for both parties by considering all related factors and reasons conveyed by both parties, as elaborated by the researcher in the previous discussion chapter.

After the *Imum Kampung* or *Reje Kampung* acquires the explanation of both parties, thus, the *Imum Kampung* or *Reje Kampung* determines that the distribution of inheritance is performed through the provision in Islam, i.e., faraid law. If one of

the parties disagrees, then the decision is handed over to the family by using the mutual agreement, namely dividing the inheritance equally.

Furthermore, the inheritance distribution is performed according to the procedure mentioned above, the heir who initially objected to the equal distribution will eventually accept the share that has been mutually agreed. No heir would protest this matter because it is considered fairer and eases the heirs to repay the deceased's debts. Through equal distribution, the heirs can cooperate in repaying the debt, and fulfill other liabilities, such as holding an event to remember the death of the deceased. This activity will strengthen the kinship among heirs because the obtained and spent shares are equal, so no one will object or feel that the decision is unfair (Bedah, 2019).

If there is an heir who is unsatisfied with the agreement, the person will still receive the agreed share despite being forced to. The heirs who initially wanted twice the share of the heiress will accept the mutual agreement with a heavy heart to avoid any dispute among heirs during the inheritance distribution before the *Imum Kampung* or *Reje Kampung* to honor the good name of the family or the deceased.

Those who don't feel satisfied with their share of the inheritance will not bring the case to the court, namely to the Sharia Council, because it wastes a lot of time and cost to solve the dispute, which is not worth the expense. Even though the heirs (who feel objected) do not extend the dispute of the inheritance distribution to the court and still accept the result of the mutual agreement that has been agreed by the heirs and witnessed by the *Imum Kampung* or *Reje Kampung*, the victim here is the relationship among the heirs as a family that was initially well preserved and good in the eyes of the local people is ruined just because of the matter of distributing inheritance in the family (B.G, 2019).

The equal distribution of inheritance through a deliberation process and mutual agreement among heirs is based on a feeling of affection that all heirs are equal. The inheritance distribution by Adat should involve *sarak opat* to work as the

intermediary in reducing the conflict should a dispute occur during the inheritance distribution. *Sarak opat* comes from two words, namely *sarak* which means area/village, and *opat* which means four people who consist of Reje Kampung (Village Head), *Petue* (an elder person who knows the Adat system), *Imem Kampung*, and *Rakyat Genap Mupakat* (a united society) (Bukhari, 2019).

The roles of each element of the *sarak opat* are as follows: (1) *Reje*, who becomes the chief of the Adat community, has a crucial role in managing the community life. In making a decision, a *Reje* must always be fair and wise. He must weigh equally and consider all of the consequences of his decision. *Imem* has a specific role, he is obliged to enforce Islamic norms and keep the norms to not being violated in every conducted action. (2) *Petue* must always observe, investigate, and even know all circumstances and developments within the community. He must immediately respond and resolve disputes that occur and immediately convey what he knows and the problems he cannot solve to *Reje*. (3) *Rakyat Genap Mupakat* is to assess the course of government and social life. In addition, the people also have a role to supervise the three elements of "*sarak opat*" above, whether they carry out their respective roles in accordance with the norms of Gayo customs or not (M. D. Ali, 1991).

In the cases that occurred, despite the presence of *sarak opat* to solve the cases emerged in the family, there were still some families who did not involve all of the elements of *sarak opat*. In general, only *Imem Kampung* or *Reje Kampung* who is being involved, who is considered by the community as more knowledgeable and can be the intermediary to solve the occurring conflict. The settlement of inheritance distribution by Adat law is considered as more effective and obeyed by the people because there are individuals who remind them despite being unwritten.

Further, it can be observed that, if the inheritance distribution by faraid law is applied, only a part of the heirs accept and are sincere, especially the heirs. However, inwardly, the heiresses cannot accept sincerely and feel objected, because they argue that the party who faces more difficulties in nursing the deceased is the heiress, therefore, this causes conflict within the family. This conflict is the reason

why the relationship among heirs that was fine became bad and less harmonic, causing them to ignore each other (M. D. Ali, 1991).

The settlement by Adat law based on the family agreement that distributes the inheritance with equal shares is the most used method for inheritance disputes in the village, and this method is allowed by Allah (B.G, 2019). Instead, the agreement among heirs will make the intimacy and harmony within the family last and properly preserved.

However, some villages still use the *faraid* law which is made as the Adat law to solve inheritance disputes because this law is a provision sourced from the Quran. The heiresses will still have to accept their share, even though they assume that the share is unfair, and will not file a lawsuit to the Sharia Council because the cost will be larger than the received share (Ahdi, 2019).

Based on this elaboration, the settlement mechanism adopted in the disputes of inheritance distribution is that the heirs can use Adat law, namely equal distributions for the heir and heiress based on kinship by involving Imum Kampung or Reje Kampung. The settlement can also be done by the *faraid* system that is applied as the Adat law in most villages, which is based on the provisions in the Quran, namely two shares for the heir and one share for the heiress.

However, the inheritance distribution mechanism by Adat law that is based on mutual agreement, namely by equally dividing the inheritance to the heirs by involving Imum Kampung or Reje Kampung as the intermediary, is the most dominant mechanism for settling the distribution of inheritance in the villages in Bukit District of Bener Meriah Regency.

CONCLUSION

Several factors contribute to conflicts or disputes that arise during the distribution of inheritance. These factors include the presence of injustice, economic inequality, and disharmony in family relationships. These factors

frequently serve as triggers for disputes or conflicts during the inheritance distribution process in the Bukit District of Bener Meriah Regency.

In the Bukit District, the distribution of inheritance is conducted through two methods: adherence to Islamic law, specifically the *faraid law*, or adherence to Adat law, which is based on mutual agreement. The initial approach in the inheritance distribution process is to follow the Islamic law (*faraid law*). However, if this approach encounters challenges or objections from the heirs, the subsequent approach is to revert to the family-based mechanism of inheritance distribution, which emphasizes equal distribution through mutual agreement.

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