



Samarah: Jurnal Hukum Keluarga dan Hukum Islam
Volume 7 No. 2, July 2023
ISSN: 2549 – 3132; E-ISSN: 2549 – 3167
DOI: 10.22373/sjhk.v7i2.16688

Gender Justice in Inheritance Distribution Practices in South Aceh, Indonesia

Harnides

Universitas Islam Negeri Ar-Raniry, Banda Aceh

Syahrizal Abbas

Universitas Islam Negeri Ar-Raniry, Banda Aceh

Khairuddin

Universitas Islam Negeri Ar-Raniry, Banda Aceh

Email: harnides2@gmail.com

Abstract: This paper explores the practices of inheritance distribution among the people of South Aceh who commonly divide inheritance property based on customary inheritance law. Heirs receive their shares of inheritance not according to Islamic law (*furudh al-muqaddarah*), as both male and female heirs earn equal portions. The study of this paper aims to examine the concept of Islamic inheritance law from the perspective of gender equity, the pattern of interaction and formation of customary inheritance law in social institutions, and the basis for the community beliefs in dividing inheritance according to the custom and culture of South Aceh. The study obtained data by observing the practices of inheritance distribution in South Aceh and conducting in-depth interviews with the community figures, the representatives of Ulema Consultative Assembly (*Majelis Permusyawaratan Ulama*/MPU), and the judges at the Tapaktuan Sharia Court using an empirical juridical approach. The results of the study revealed that the concept of Islamic inheritance law has been an alternative and in line with the principle of gender justice for women in South Aceh as a manifestation of the principle of balanced justice. This principle has been reflected in the patterns of inheritance distribution through the respective customary law mechanisms in accordance with the agreement of all heirs. The people in South Aceh have preferred to divide inheritance through the customary law as it has been more flexible and taken into account the socio-economic conditions and values developed in their community.

Keywords: Inheritance Law, Custom, Justice, Gender, South Aceh

|| Submitted: January 07, 2023 || Accepted: June 20, 2023 || Published: June 20, 2023
<http://jurnal.ar-raniry.ac.id/index.php/samarah>

Abstrak. Artikel ini menganalisis praktik pembagian harta warisan di masyarakat Aceh Selatan yang cenderung menggunakan pola pembagian hukum waris adat. Ahli waris menerima harta warisan tidak dibagi secara hukum Islam (*furudh al-muqaddarah*), akan tetapi dibagi secara merata dengan porsi yang sama antara laki-laki dan perempuan. Studi ini bertujuan untuk menganalisis konsep hukum waris Islam menurut perspektif keadilan gender, pola interaksi dan pembentukan hukum waris adat dalam institusi sosial serta dasar pertimbangan keyakinan masyarakat membagi harta waris menurut adat dan budaya Aceh Selatan. Data diperoleh melalui observasi praktik pembagian harta warisan di Aceh Selatan dan wawancara mendalam dengan tokoh masyarakat, majelis permusyawaratan ulama, hakim mahkamah syar'iyah Tapaktuan menggunakan pendekatan yuridis empiris. Hasil penelitian menunjukkan bahwa konsep hukum waris Islam bersifat alternatif dan sejalan dengan prinsip keadilan gender bagi perempuan Aceh Selatan sebagai wujud dari asas keadilan berimbang. Prinsip ini tercermin dari pola pembagian warisan melalui mekanisme hukum adat masing-masing sesuai kesepakatan semua ahli waris. Masyarakat di Aceh Selatan lebih memilih pembagian harta warisan melalui hukum adat dikarenakan lebih fleksibel dan mempertimbangkan kondisi ekonomi, sosial serta nilai-nilai yang berkembang dalam masyarakat Aceh Selatan.

Kata Kunci: Hukum Waris, Adat, Keadilan, Gender, Aceh Selatan

Introduction

Inheritance law is one significant issue that needs attention from *fiqh* (Islamic jurisprudence) *ulema*, Muslim scholars, and other intellectuals. The inheritance law has been mentioned in the holy verses of the Qur'an that Allah revealed to the Prophet Muhammad SAW as a guidance for humankind. The inheritance law, established since the 7th century, has not changed. *Fiqh ulema* argue that the Islamic inheritance law is a command from Allah SWT that must be adhered to as it is without questioning the reasons behind the commandment, and it identifies as *ta'abbudi* (devotional) law, not *ta'aqulli* (rational) law that can be changed. Modifications, however, can be made according to the social and cultural development of

society.¹ The impact of such changes has also brought about a shift in the traditional values and culture of the community. This is reflected in a number of women's activities with multiple roles in domestic and public domains. Under certain conditions, women carry out these roles solely to support the economic needs of the families, some of which are being single parents and having husbands physically unable to earn a living. Such conditions have resulted in a change in perspective towards the issue of inheritance division received by women.²

In this case, Musdah Mulia has criticized the model of inheritance distribution in Indonesia to which she considers as not fulfilling the value of justice. Musdah Mulia interprets and re-contextualizes the inheritance verses in accordance with the socio-cultural conditions that develop within the Indonesian society. She describes that women's activities play a key role in taking care of testators while being healthy and ill, and even after marriage daughters generally live with their parents. However, in the inheritance distribution, the sons earn twice as much as the daughters, even though the sons have no contribution to care for the testators when they were alive. Mulia believes that this situation does not fulfill the sense of justice for women. In fact, men shall take on greater responsibilities and burdens compared to women, whether in earning a living or taking care of the parents.³

The above circumstances are indeed different from those when the inheritance verses revealed at the time of the Prophet Muhammad SAW. At present, it is common for women to earn a living, a condition not found in the past Arab nations. Hence, the conditions at the time of the revelation are inapplicable to the current sociological condition of the Indonesian nation.

The changes in the socio-cultural conditions also exist in the culture of the Aneuk Jamee ethnic group in South Aceh. The Aneuk Jamee people are traditionally more dominant in using the customary law in matters of inheritance distribution. They believe that it can provide women a sense of

¹Al-Robin, "Problematika Hukum Pembagian Waris 2:1 Dalam Pendekatan Teori Qath'i Zhanni", *Sangaji: Jurnal Pemikiran Syariah dan Hukum*, Volume 2 Nomor 1, Maret 2018, p. 109.

²Faqihuddin Abdul Kodir, *Qira'ah Mubadalah: Tafsir Progresif untuk Keadilan Gender dalam Islam*, (Yogyakarta: IRCiSoD, 2019), p. 124.

³Endang Sriani, "Fiqh Mawaris Kontemporer: Pembagian Waris Berkeadilan Gender", *Tawazun: Journal of Sharia Economic Law*, Volume 1 Nomor 2, September 2018, p. 145.

justice, as the Aneuk Jamee people adhere to a matrilineal lineage system. The matrilineal system places the female lineage to dominate in making a number of customary decisions or family issues.⁴

In light of the above discussions, this study concerned with the practices of inheritance distribution in South Aceh, which adheres to a matrilineal system. There are three ethnicities in South Aceh, namely Aneuk Jamee, Kluet, and Acehnese. The three ethnic groups have also influenced the patterns of inheritance distribution as they have different customs (*adat*). The various distribution patterns became an interesting issue to analyze from the concept of gender in terms of inheritance distribution practices in South Aceh.

Gender Justice and Its Implications for Inheritance Distribution

The word “gender” comes from English, which refers to “sex”. In the Webster's New World Dictionary, gender is defined as the visible differences between men and women in terms of values and behaviors.⁵ On the other hand, Webster's Studies Encyclopedia describes that gender is a cultural concept that seeks to make distinctions in roles, behaviors, mentalities, and emotional characteristics between men and women in society.⁶

In the Dictionary of Sociology, sociologists and psychologists explain that gender is more into the categorization of “masculine” and “feminine” through socially attached attributes and social psychology. This is reinforced by anthropologists who emphasize that gender is not defined biologically, but rather in social and cultural concepts. Gender is seen as a cultural and historical aspect, such as the meanings, interpretations, and expressions of the two variants of gender across cultures. The influences of social factors, expressions and gender experiences show that gender cannot be equated simply with sex or sexuality.⁷

To understand the concept of gender, Mansour Fakih distinguishes between gender and sex. Sex is more inclined to the characterization or division of the two human sexes based on the biological characteristics that

⁴Endang Sriani, “Fiqh Mawaris Kontemporer....”, p. 145.

⁵Nassaruddin Umar, *Argumen Kesetaraan Gender*, (Jakarta: Dian Rakyat, 2010), p. 29.

⁶Nassaruddin Umar, *Argumen Kesetaraan Gender...*, p. 30.

⁷Vina Saviana dan Tutik Sulistyowati, *Sosiologi Gender*, (Tangerang Selatan: Universitas Terbuka, 2010), p. 1 and 7.

are inherent, unchanging and non-exchangeable, or known as God's provisions or nature. In contrast, gender is a trait inherent in men or women constructed socially and culturally and exchangeable. Thus, all things that are exchangeable between male and female characteristics can shift from time to time, from place to place, from one class to another. In short, gender is socially constructed, while sex is biologically determined.⁸

In gender, there are differences in roles, functions, and responsibilities between men and women due to social construction. Gender is also understood as the differences that appear between men and women in terms of values and behaviors, or a group of cultural attributes and behaviors that exist between men and women.⁹ Fundamentally, gender is different from biological sex. Biological sex is a gift, identifying whether humans are born as a male or a female. What makes someone masculine or feminine is a combination of basic biological constructs and biological interpretations by the surrounding culture. Gender includes appearance, clothing, attitudes, personality, sexuality, and work inside and outside the household, as well as family responsibilities, among others.¹⁰

Furthermore, gender is a concept of social relations that differentiates (sorts out or separates) the functions and roles between men and women. Differences in functions and roles between men and women are not determined by their biological or natural differences, but by their respective positions, functions, and roles in various life and development.¹¹ According to Eniwati, gender is a concept used to identify differences between men and women from a socio-cultural perspective. Gender in this sense identifies men and women from a non-biological point of view.

The issue of gender is still a polemic due to differences in interpretations and methods used in understanding *nash* (Qur'an and Hadith) texts. Therefore, to identify the relationship between men and women in Islam, one shall return to the main sources held by Muslims, namely the

⁸Iswah Adriana, "Kurikulum Berbasis Gender", *Jurnal Tadris*, Volume 4. Nomor 1. 2009, p. 138.

⁹Dwi Narwoko dan Bagong Yuryanto, *Sosiologi Teks Pengantar dan Terapan*, (Jakarta: Kencana Prenada Media Group, 2004), p. 334.

¹⁰ Julia Cleves Mosse, *Gender dan Pembangunan*, (Yogyakarta: Pustaka Pelajar, 2007), p. 2.

¹¹Dwi Narwoko dan Bagong Yuryanto, *Sosiologi Teks....*, p. 335.

Qur'an, hadith, and other religious texts.¹² One of the Indonesian Muslim scholars who has reviewed inheritance texts is Hazairin. He states that the existence of *Sunni fiqh* in terms of inheritance has been influenced by the patrilineal system, since there are differences in position as some heirs, such as granddaughters, have no inheritance rights compared to grandsons.¹³ The theory of bilateral inheritance proposed by Hazairin takes into account the customary inheritance system and social anthropology that exists in the community.

An effort to renew the understanding of inheritance texts was also initiated by Munawir Sjadzali through the idea of re-actualizing the Islamic inheritance law. This idea, however, has raised the pros and cons among Islamic thinkers. The debate over the distribution of Islamic inheritance has been considered irrelevant to the current development of Indonesian society. The Islamic inheritance law stipulates that the share of men is twice as much as that of women according to the texts of the Qur'an. Munawir Sjadzali has offered that men and women earn equal rights (one to one ratio) in inheritance.¹⁴ Sjadzali's idea emerged as he observed the growing ambiguity among Muslims regarding the distribution of inheritance. Indonesia is home to the majority Muslim population in the world, recognizing and believing that Islamic teachings are the true teachings; however, Muslims in Indonesia are more convinced in resolving inheritance disputes in the General Courts compared to the Religious Courts.¹⁵

Sjadzali's idea of re-actualization has not been fully accepted by other Muslim scholars. The revelation of inheritance verses viewed from a socio-historical perspective had, in fact, a positive impact in the past, and the Islamic inheritance law was seen as reflecting the values of justice. However, the provision for inheritance distribution of a 2:1 ratio seems against the concept of justice and equality, and thus, there are a number of

¹²Eniwati Khaidir, *Pendidikan Islam dan Peningkatan Sumber Daya Perempuan*, (Pekanbaru: LPPM UIN Suska Riau, 2014), p. 16.

¹³Sugiri Permana, "Implications Of Hazairin And Munawir Sjadzali Thoughts In Establishment Of Islamic Inheritance In Indonesia", *AHKAM*, Volume 18 Nomor 2, 2018, p. 380-381.

¹⁴Sugiri Permana, "Implications Of Hazairin And Munawir Sjadzali Thoughts In Establishment Of Islamic Inheritance In Indonesia", *AHKAM*, Volume 18 Nomor 2, 2018, p. 380-381.

¹⁵Moh. Dahlan, "Paradigma Ijtihad Munawir Sjadzali Dalam Reaktualisasi Hukum Islam Di Indonesia", *At-Turas: Jurnal Studi Keislaman*, Volume 7 Nomor 2, Juli-Desember 2020, p. 197-198.

aspects to consider. *First*, comparing with the social reality that occurred in the past, prior to Islam women were not given the right to inherit property and were only objects to be inherited. Hence, the stipulation of the Islamic sharia to grant inheritance rights to women is very fair. Giving inheritance rights to women indicates that Islam views that men and women have the same position in terms of earning inheritance assets. *Second*, concerning the difference in quantity between men and women in inheritance, it is necessary to examine the social setting that existed in family life at the time of revelation, wherein the responsibility for providing a living was fully borne by the men.¹⁶

Customary (*Adat*) Law: Legal Options for Distributing Inheritance in South Aceh

The practice of inheritance distribution among people living in South Aceh is an interesting issue in the context of legal sociology and anthropology. South Aceh as part of the region in Indonesia has a national legal system, namely the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*). The Compilation of Islamic Law is the applied law for judges at the Religious Courts/Sharia Courts. In addition, the pattern of distribution of inheritance in South Aceh society follows a customary distribution mechanism. This mechanism tends to use laws that live and develop within people's lives, and the main orientation in distributing inheritance is balanced justice for all heirs, regardless of gender.

The diversity of laws in matters of inheritance in South Aceh can be classified into three groups. The first is based on whether or not there is an agreement among the heirs, the second is based on the institutional aspect of the settlement, and the third is based on ethnic diversity.

1. Approval of Heirs

There are two models of distribution of inheritance from the perspective of the availability of consent among the surviving heirs practiced by the people of South Aceh. The first model distributes evenly the total amount of inheritance owned by the testator. Each heir gets the same share regardless of male and female genders. The heirs distribute the even portions of inheritance by involving *gampong* (village) officials or respected traditional figures in their *gampong*. The involvement of *gampong* elders, consisting of religious and traditional figures, usually occurs after there is no

¹⁶Munawir Sjadzali, *Ijtihad Kemanusiaan*, (Jakarta: Paramadina, 1997), p. 5.

common ground between the heirs in order to distribute the inheritance left by their parents.¹⁷

Equal distribution is carried out on the basis of the wisdom held by religious and *gampong* traditional figures without any request for approval from the heirs. Despite no approval requested from each heir, it can be implied that each heir is willing to have equal distribution. This can be seen from the absence of resistance or objection submitted by the heirs in terms of the shares distributed by elders. This attitude suggests that each heir completely accepts the amount of inheritance distributed.¹⁸

As the people who are respected greatly, the religious and traditional figures influence the procedure in deciding the amount of inheritance received by the heirs. Currently, the *gampong* people still respect the wise attitude of the community figures. Community figures, when resolving inheritance disputes, always prioritize the aspect of justice for the community so that there are no prolonged conflicts between family members.¹⁹ Therefore, every decision taken by community figures (*gampong* elders) will get a positive response from the locals. According to Muhsin, the priority in inheritance distribution is equity, with the aims of realizing justice for heirs and avoiding disputes and feuds between heirs, which may lead to a negative impact on the continuity of family relations.²⁰ The Chairperson of the Aceh Traditional Council (*Majelis Adat Aceh/MAA*) of South Aceh has also expressed that the main essence of dividing inheritance is to provide justice for all heirs. If justice is felt from the distribution, there will be little dispute among the heirs. Conversely, if the heirs feel that it is unfair, they will certainly reject the distributed assets.²¹

The second distribution pattern is to divide all inherited assets together by taking into account the opinion or approval of each heir. This is different from the first distribution, which distributes equally without asking for the approval of all heirs. In the second model, even though the inheritance is distributed evenly, the religious figures will first explain the male share of a 2:1 ratio to each heir as stipulated in the Islamic law. Therefore, every heir will have an understanding of the share he/she receives

¹⁷Syamsuddin, Head of Mukim Sawang Subdistrict, interview, April 18, 2022.

¹⁸Ahmad Ibrahim BA, Religious Leaders, interview, April 20, 2022.

¹⁹Syaikh Kahar Muzakar, Vice Chairman of MAA South Aceh, April 27, 2022.

²⁰Mukhsin, Meukek Religious Figures, interview, April 20, 2022.

²¹H. Rusli Rasyid, Chairman of MAA South Aceh, interview, April 27, 2022.

according to the inheritance law in Islam. These figures will be invited to the testator's house to convey the share of each heir in accordance with the Islamic religion.²² Afterwards, the heirs will take the initiative to distribute the inheritance together in equal portions regardless of gender.

The equal shares of inheritance are distributed based on the heirs' own initiative and awareness, without any intimidation or coercion from any party. Willingness to distribute the inheritance evenly is shown by the following attitudes, that the male heirs are not willing to share the inheritance if it is not the same as the female heirs and mention that the inheritance is given in the same amount.²³

In this case, the South Aceh MPU remarks that such a distribution pattern is in accordance with the Islamic teachings, as the *gampong* elders have delivered their respective parts. In this sense, there is already an initial understanding of the share accepted by each heir according to the Islamic teachings. Since the inheritance verse is *qath'i* (definitive) in nature and cannot be interpreted further, the amount of inheritance has been firmly stipulated in the Qur'an.²⁴ Anything with *qath'i dalalah* (definitive meanings) cannot be reinterpreted. However, it is permissible for people to distribute the inheritance assets evenly as long as there is the willingness or contentment of each of the heirs.

2. Settlement Institutions

The distribution of inheritance in the context of the people of South Aceh is also practiced in terms of the means of distribution, namely the distribution using national legal instruments, or known as litigation, and the distribution using the customary law that has grown and developed in South Aceh society. Settlement by way of litigation tends to take a long time because it has to follow the stages that have been determined. On the other hand, distribution by way of the customary law (non-litigation) is easier and more efficient, following the wisdom approach of the *gampong* indigenous peoples.

The distribution according to the national law follows the procedure determined by the laws and regulations. The distribution mechanism is carried out by submitting an application for the determination of heirs to the Sharia Court without any disputes between the heirs. If there is a dispute

²²H. T. Armia Ahmad, Chairman of MPU South Aceh, April 20, 2022.

²³Mukhlis Al-Yusufi, MPU South Aceh, April 20, 2022.

²⁴H. T. Armia Ahmad, Chairman of MPU South Aceh, April 20, 2022.

over the heirs, the Aceh Sharia Court has the right to adjudicate and decide on the distribution of inheritance in accordance with national legal rules. This is different from the existence of a claim for inheritance rights against inherited assets, as the product is in the form of a decision so that there is certainty of ownership of each heir.

The consequence that arises if the settlement follows the national law is that it must adhere to the procedures and mechanisms stipulated by the positive law in force in Indonesia. These stages consist of filing a lawsuit, mediation, reading the lawsuit from the plaintiff, answers from the defendant, replication from the plaintiff, duplication from the defendant, evidence from the plaintiff, evidence from the defendant, conclusions from the defendant and plaintiff, and a decision read out by the panel of judges in a trial open to the public.

On the other hand, the distribution of inheritance through non-litigation channels prioritizes deliberation (*musyawarah*), as it is a cultural characteristic of the Acehnese people in solving every problem occurring in society. In any cases with large or small impacts, the people will prioritize deliberation and consensus in order to produce the right solutions in resolving community problems. The desired goal with deliberation and consensus is to figure out a concrete solution for the conflicting parties and to end the cases faced by the community.²⁵

For the people of South Aceh, kinship distribution is conducted by involving the family members, without involving *gampong* community figures. Such distribution is based on a voluntary basis without coercion from other parties so that the assets left by the heirs do not become a dispute within the family in the future. The distribution time is generally determined by the initiative of the whole family. Usually the family distributes the inheritance assets after the testator has passed away by inviting all heirs who are entitled to receive the inheritance. Rusli Rasyid describes that some of the heirs take the initiative to distribute the inheritance property so that the heirs know about it, as well as to identify all of the testator's assets, both in the form of movable and immovable property.²⁶

Some others distribute inheritance property for a relatively long period of time after the death of the testator. In this second model, the heirs

²⁵Ahmad Labib, "Musyawarah Kekeluargaan Studi Kasus Eksistensi Peradilan Adat di Desa Payaman, Kecamatan Solokuro, Kabupaten Lamongan", *Jurnal Ilmu Hukum*, Vol. 14, No. 1, Maret 2011, p. 178.

²⁶H. Rusli Rasyid, Chairman of MAA South Aceh, interview, April 27, 2022.

usually do not question the inheritance, since the family members who live longer can enjoy the assets left behind. For example, the deceased is a husband. The surviving wife and children of the deceased can use the assets left behind for their daily needs and educational expenses needed by the children.²⁷

3. Ethnic Diversity

The community living in the South Aceh region is pluralistic consisting of various ethnic groups. Ethnic differences also affect the distribution pattern of inheritance. The ethnic groups in South Aceh consist of the Acehnese, Aneuk Jamee, and Kluet.

a. Rumah Tuo: Women's Inheritance Rights in the Aneuk Jamee Tradition

The people of South Aceh who live in the Tapaktuan area divide inheritance differently from what is stipulated in the Islamic law. The difference lies in the distribution of inheritance in the form of *rumoh tuo* to daughters. *Rumoh tuo* is an inheritance asset left by the testator specifically gifted to daughters. The priority of giving *rumoh tuo* to daughters is adhered to by the Aneuk Jamee custom, a custom that also applies in Minangkabau, West Sumatra. Married women are not allowed to be taken away by their husbands. *Rumoh tuo* is meant to be a home to live for daughters, with the underlying aim that if there is any conflict between the daughters and their husbands after marriage, then the daughters will not be kicked out of the house.²⁸ This policy aims to provide protection to daughters in guaranteeing women's property rights.

Nevertheless, an issue may arise when there are two or more daughters. In this situation, people adhering to the Aneuk Jamee custom prefer to give it to those with a lower economic level. In addition, if *rumoh tuo* is sold, it will be sold at a lower price with the aim of helping women. The main reason of dividing the inheritance of *rumoh tuo* is based on the principle of helping relatives. Relatives who have higher incomes are expected to help those with lower economic incomes.²⁹

Rumoh tuo is distributed to daughters after family mutual deliberation. According to Muhsin, the deliberation will help decide which daughter will be given *rumoh tuo*. Family deliberation is highly significant

²⁷Teuku Harun Ar-Rasyid, Meukek Traditional Figure, interview, April 27, 2022.

²⁸Mawardi, Religious Leader of Labuhan Haji, interview, April 25, 2022.

²⁹Mawardi, Religious Leader of Labuhan Haji, interview, April 25, 2022.

so that other heirs do not cause a commotion that ends with undesirable events.³⁰ Deliberation is usually held to discuss to whom *rumoh tuo* will be given. After all, *rumoh tuo* is not granted to sons, as it is only to daughters.

In reality, however, families do not always have daughters, as some may only have sons. For example, a case happened in Labuhan Haji with two sons. After the mother died, the *rumoh tuo* was handed over to the two sons, and not to the deceased's husband. This condition indicates that the obligation to hand over *rumoh tuo* to children can change when there are no daughters in the family, and in this case, the sons replaced the daughters to occupy the *rumoh tuo*.

b. Distribution of Harta Pusako Tinggi (High Inheritance Assets)

The logical consequence of the presence of the Minangkabau people in the South Aceh region is their influence on the distribution mechanism of inheritance. The inheritance distribution system as practiced in Minangkabau does not completely apply in the South Aceh region; however, only people from the Minangkabau ethnic group choose to apply this inheritance system, while those from other ethnic groups use their own distribution systems.

One of the inheritance systems that apply in the Minangkabau community is the distribution of *harta pusako tinggi* (high inheritance assets). In the Minangkabau custom, *harta pusako tinggi* is the property passed down from generation to generation from the mother's lineage, which is the key aspect of the system. *Harta pusako tinggi* is shared property rights of people who have blood ties and has been passed down from one generation to another from their ancestors. The property is under the management of the *niniak mamak* (traditional female elders/aunts).³¹ *Harta pusako tinggi* is controlled by women because the Minangkabau people adopt the matrilineal inheritance system. In the Minangkabau custom, property is inherited by family members from the mother's lineage, such as children of deceased sisters (nephews/nieces). The heirs inherit communally

³⁰Mukhsin, Meukek Religious Figure, interview, April 20, 2022.

³¹Ulfa Chaerani Nuriz, Sukirno, Sri Wahyu Ananingsih, "Penerapan Hukum Adat Minang Kabau Dalam Pembagian Warisan Atas Tanah (Studi di : Suku Chaniago di Jorong Ketinggian Kenagarian Guguak VIII Koto, Kecamatan Guguak, Kabupaten Lima Puluh Kota, Ibu Kota Sarilamak)", DIPONEGORO LAW JOURNAL, Volume 6, Nomor 1, Tahun 2017, p. 4.

the property that has become an heirloom.³² There is a very famous saying in Minangkabau as follows:

<i>Babirik birik tabang ka sasak</i>	<i>Babirik- birik terbang ke sasak</i> (Flock of birds flew into the nest)
<i>Dari sasak turun ka halaman</i>	<i>Dari sasak turun ke halaman</i> (From the nest down to the yard)
<i>Dari niniek turun ka mamak</i>	<i>Dari buyut turun ke mamak</i> (From great-grandmothers down to aunts)
<i>Dari mamak turun ka kamanakan</i>	<i>Dari mamak turun ke ponakan</i> (From aunts down to nieces)

The main principle applied to *harta pusako tinggi* is “*Tajua indak dimakan bali, tasando indak dimakan gadai*”, meaning that high inheritance assets cannot be bought, sold, nor mortgaged.³³ *Harta pusako tinggi* is any inherited assets that are given collectively to be managed and used, and not for trade. Therefore, selling high inheritance assets is a very taboo act. The family will feel ashamed if the community finds out that the property has been sold to another party. The rights given to the assets are in the form of management rights, not ownership rights.³⁴ Thus, the people are only entitled to obtain from the high inheritance assets so that all of their respective people can feel the results.

According to Teuku Harun, *harta pusako tinggi* is still practiced by the Minangkabau people who live in South Aceh. The distribution pattern is carried out with the consideration of following the traditions and customs existing in Minangkabau. He points out that the assets of *harta pusako tinggi* are not distributed personally, but are managed and utilized jointly by a

³²Indra Rahmat, “Pengelolaan Harta Pusaka Tinggi Dalam Masyarakat Adat Minangkabau (studi di Kecamatan Batipuh Kabupaten Tanah Datar)”, Volume 8, Nomor 1, Bulan Juni, 2019, hlm. 16.

³³Indra Rahmat, “Pengelolaan Harta Pusaka”, p. 5.

³⁴Amir Syarifuddin, *Pelaksanaan Hukum Kewarisan Islam dalam Lingkungan Adat Minangkabau*, (Jakarta: PT Midas Surya Grafindo, 1982), p. 269.

community. The ones in control of *harta pusako tinggi* is called *niniak mamak*.³⁵

The use of Minangkabau customary inheritance law practiced among the people of South Aceh is inseparable from the presence of the Aneuk Jamee ethnicity who live in South Aceh. The division of this customary law only applies to the community concerned and does not affect the Acehnese and Kluet peoples. The Acehnese still use their own inheritance system, and so do the Kluet.

The people of the Pantan Luas village in Samadua Subdistrict, South Aceh, have practiced the distribution of inheritance of *harta pusako tinggi*. The community owns the property, from *mamak* (uncles/aunts) to nephews/nieces, and not to biological children. *Mamak* regulate the right to manage and use the property. The land property consists of a rice field land of 2 *naleh 4 are* and durian farmland of \pm 1 hectare. The land property is under the supervision of a *mamak*, namely Siti Munawarah, a biological aunt with two siblings, named Jarnalis and Shamhas. Siti Munawarah has six nephews and nieces named Iyul, Taslim, Husna, Jumaidi, Iskandar, and Asma. Although Siti Munawarah manages the land, the crops from the durian farm and rice field are divided in turn among six of them. The distribution of the crops is a form of benefit obtained directly from the *harta pusako tinggi*. Each nephew/niece will get his/her share alternately every year.

c. Distribution of Harta Pusako Rendah (Low Inheritance Assets)

Another distribution system applied in South Aceh is dividing *harta pusako rendah* (low inheritance assets). *Harta pusako rendah* is all assets acquired during the marriage between husband and wife. It is also called premarital property, which refers to the basic capital of each clan. *Harta pusako rendah* is inherited by children, wives, and brothers based on the Islamic inheritance law.³⁶

The practice of distributing *harta pusako rendah* still presents among the people of South Aceh, especially among those of Minang ethnicity. The

³⁵Teuku Harun Ar-Rasyid, Meukek Traditional Figure, interview, April 27, 2022.

³⁶Indra Rahmat, Pengelolaan Harta Pusaka Tinggi Dalam Masyarakat Adat Minangkabau (studi di Kecamatan Batipuh Kabupaten Tanah Datar), Volume 8, Nomor 1, Bulan Juni, 2019, p. 19.

assets are distributed to the heirs who are entitled to the number of shares predetermined in Islamic teachings.

Harta pusako rendah differs significantly from *harta pusako tinggi*. *Harta pusako tinggi* cannot be used as private property, whereas *harta pusako rendah* can become individual rights of each heir. After being distributed to the rightful heirs, the right of ownership immediately turns into the private property of the person who receives it. To facilitate understanding related to inherited assets from a diversity perspective, the following table shows the descriptions of the assets:

No.	Type of Inheritance	Distribution Mechanism
1	<i>Rumoh Tuo</i>	<i>Rumah tuo</i> is one of the inherited assets distributed to female heirs. The distribution is made after internal deliberation within the family to determine the person who receives <i>rumoh tuo</i> .
2	<i>Harta Pusako Tinggi</i> (High Inheritance Assets)	<i>Harta pusako tinggi</i> is any assets passed down from generation to generation among the Aneuk Jamee community. The property is given only to the eldest daughter. The property is given by grandmother to mother, and from mother to eldest daughter, and so on. <i>Harta pusako tinggi</i> cannot be used as the property of each heir, but can only be used jointly with the other heirs and receive benefits from the property. <i>Harta pusako tinggi</i> is a very important treasure for families among the people of South Aceh, especially for people who are of Minang ethnicity. The family will be embarrassed if a family member sells the property to another party.
3	<i>Harta Pusako Rendah</i> (Low Inheritance Assets)	Unlike the case with <i>harta pusako tinggi</i> , <i>harta pusako rendah</i> can be owned personally or individually. The property can be obtained from premarital property

		or joint income between husband and wife and can be distributed to heirs who are entitled according to the shares predetermined in Islam.
--	--	---

4. Ownership Authority of Testator's Property before Death

The division of inheritance based on the authority of the owner of the property indicates that there are people who distribute their wealth before they die. Prospective testators directly identify their assets, both movable and immovable assets, to be distributed to potential heirs.

Such a division is generally performed by requiring certain conditions. For example, the testators may express the following, "*If I die, then the property there is for you. The rice field there is for the second daughter, and the house is for the first daughter*". The expression uses a conditional word, meaning that if one day the testator passes away, then the property will be transferred to the heirs. However, if the testator is still alive, the property will not be transferred.³⁷

5. Time of Inheritance Distribution

First, after the testator dies, the inheritance is immediately distributed. The process of distributing the inheritance is carried out when the testator has passed away. This distribution aims to avoid being an object of ridicule from the surrounding community. Ahmad Ibrahim mentions that, however, some people will sneer at the family if they immediately distribute the inheritance after one's death.

Second, the inheritance is divided after the testator has died in a relatively long period. After the testator's death, the assets are not distributed directly to those who are entitled to receive. This condition can occur if there are no heirs who question the inheritance and the inheritance left behind is usually not a huge amount.³⁸ However, the judges at the Tapaktuan Sharia Court considers that such a distribution system can make it difficult for the parties involved when bringing the matter to the Sharia Court. There are several reasons that make the inheritance not directly distributed difficult to resolve. One reason is the inherited assets have included the assets obtained from the joint property of the husband and wife. Ideally, some of the assets

³⁷Mukhsin, Meukek Religious Figure, interview, April 20, 2022.

³⁸Ahmad Ibrahim BA, Religious Hero, interview, April 20, 2022.

obtained after marriage should be separated in advance before being distributed to each heir. However, as it takes so long to distribute the assets, it is difficult for the parties involved to detect which assets are joint property and which assets are premarital property.³⁹

Premarital property is any assets acquired by the husband or wife before the marriage takes place. Premarital property belongs to each husband and wife, respectively, unless there is a marriage agreement between the husband and wife. If there is no marriage agreement, each party has the right to his/her own premarital assets whether to sell or to pawn them to other parties without the interference of the respective partner. Premarital property can be gained from the inheritance of the husband or wife, grants or gifts from the parents, or assets purchased using one's own money so that the authority of the husband or wife in using the property cannot be intervened by any party.

In contrast, in terms of the joint property, the husband or wife who wants to use the joint property must obtain prior approval from the respective partner. Actions taken on joint property become null and void if there is no consent from either the husband or the wife.⁴⁰

Inheritance Distribution in South Aceh Community from the Perspective of Gender

The practices of dividing inheritance among the people of South Aceh suggest that the distribution systems do not differentiate between male and female sexes. Such distribution has been carried out by the community for a long time and has been passed down from one generation to another. The people of South Aceh consider that dividing the inheritance equally between men and women indicates that they have treated each heir fairly. Here, the concept of justice has been manifested as the inheritance is distributed according to the uses and needs of each heir.

Distributing inheritance assets equally is inseparable from the social changes that occur in society. Social changes also contribute to influencing the amount of inheritance divided. In recent changes, the role of women is no longer the same as that of women in the past who were more active in the

³⁹Muhammad Lukman Hakim, Judge of the Shar'iyah Tapaktuan Court, April 22, 2022.

⁴⁰John Kenedi, *Penyelesaian Sengketa Harta Bersama Dengan Harta Bawaan Ketika Terjadi Perceraian*, *Manhaj: Jurnal Penelitian dan Pengabdian Masyarakat*, Vol. 3 No. 1, 2018, p. 157.

domestic sphere. Women used to be synonymous with householders who would only stay at home and passively receive earnings from their husbands.

The current condition shows the opposite of the past, as women today contribute to earning a living for the family. The role of women has begun to shift from the domestic sphere to the public sphere. Women who live in South Aceh currently engage in various professions. For example, they work as politicians, legal practitioners, academics, traders, and farmers. Women have started to play their role in the public sphere to provide for the family.

The change in the distribution pattern of inheritance in South Aceh is concrete evidence that there has been a shift in the inheritance distribution system regulated in the provisions of sharia law. This difference is affected by several influential factors. The factors include the development of human thought, which tends to consider the social conditions of local people's lives, the protection of women, and the public awareness of inheritance law regulated in the Compilation of Islamic Law. The Compilation of Islamic Law becomes the applied law that acts as a reference for judges in the Religious Courts to adjudicate and decide inheritance cases.⁴¹

Social changes that occur in society have an impact on legal changes. Laws shift following the development of community life. This theory was developed in the socio-anthropological study of law, which determines that a law will change if there is a change in society. As the development of society turns faster, the law shall respond to this by changing, revising, and perfecting pre-existing rules. The *fiqh* rules recognize "*taghayyuril ahkam bi taghayyuril azman wal amkan*" meaning that changes in a law are determined by changes in time and place. Different times and places can affect the existing laws, so adjustments to conditions and times become a necessity.⁴²

In the context of the division of inheritance practiced in South Aceh, the issue becomes interesting when analyzed using the theory of legal sociology-anthropology. One of the reasons is the inheritance divided into the equal number of shares among each heir needs no changing of the existing legal norms, whether the provisions of the Compilation of Islamic Law or of *fiqh*. Differences occur only at the empirical level of society, who distributes equally between men and women without changing the legal rules.

⁴¹Abdul Muthalib, Perubahan Hukum Dengan Sebab Berubahnya Masa, Tempat Dan Keadaan, *Jurnal Hikmah*, Volume 15, No. 1, Januari – Juni 2018, p. 72.

⁴²Abdul Manan, *Aspek-Aspek Pengubah Hukum*, (Jakarta: Kencana, 2005), p. 23

The doctrine developed in the study of legal sociology-anthropology is that changes in society can result in alterations in the law; however, this cannot properly be used in the context of inheritance distribution among the people of South Aceh. The customary distribution of inheritance in South Aceh does not alter any rules of the Islamic law, as it is only different in terms of inheritance shares. It is also conducted on the basis of volunteerism and contentment of all heirs without any coercion from any party. In addition, the inheritance is distributed after each party is aware of the amount of assets regulated in the Islamic law.⁴³

Indeed, the inheritance customary law practiced by the people of South Aceh does not divide the inheritance assets based on the portions determined by the Islamic law; however, this does not mean they ignore the provisions set by Allah. They believe that the most essential aspect that the local community should consider is to protect women. The community understands that the Islamic law set the portion of inheritance for men in two to one ratio of the total amount of assets left by the testator. Hence, the traditional figures who distribute the inheritance to the heirs will first convey the actual inheritance shares predetermined by the Islamic law and ask for their approval to distribute the inheritance according to the customary law that applies and is practiced by the community.

To examine the issue of the division of inheritance in South Aceh, the present study employed the theories of the application of Islamic law in Indonesia, called the theory of *recepti in complexu* and the theory of *recepti*. The theory of *recepti in complexu*, developed by Solomon Keyzer (1823-1868) and L.W.C. Van den Berg (1845-1927), states that people living in Indonesia have accepted the Islamic law as a whole. Customary law only applies if it does not conflict with the Islamic law. The *recepti* theory developed by C. Snouck Hurgronje (1857-1936), Cornelis Van Volleenhouven, and Bertrand Ter Har later challenged the theory of *recepti in complexu*. In principle, the *recepti* theory states that what is practiced by Indonesian people is customary law.⁴⁴

In relation to these theories, there is a similarity in meaning when connecting the two theories with the inheritance distribution systems practiced by the people of South Aceh. From the point of view of the theory

⁴³H. T. Armia Ahmad, Chairman of MPU South Aceh, April 20, 2022.

⁴⁴Anwar Hidayat, M. Gary Gagarin Akbar, Deny Guntara, Kajian Perbandingan Dalam Pembagian Waris Berdasarkan Pada Hukum Islam Dan Hukum Adat, *Jurnal Justisi Hukum*, Vol 3, No. 1, September 2018, p. 90.

of *recepti in complexu*, the law that applies in Indonesia is the Islamic law. In principle, the community puts forward the Islamic law even though the inheritance shares are not based on the law, but rather on the agreement of all heirs to have the shares distributed in equal amounts.

The traditional figures in charge of distributing the inheritance will first request for approval from the heirs, whether they wanted it to be distributed jointly, and inform them the number of shares stipulated in the Islamic law. The customary division of inheritance will only be carried out if all the heirs agree. One example regarding the distribution of inherited assets with equal amounts can be seen from the practice of the people of Gampong Blangblahdeh, Meukek Subdistrict, South Aceh District.

No.	Inheritance Components	Descriptions
1	Testator	H. Hasyim
2	Heirs	Hayatun (Wife) Habibul (First Child) Ismaidar (Second Child) Khaliluddin (Third Child) Ihsan (Fourth Child) Habib (Fifth Child)
3	Inheritance Property	1. Farmlands are divided equally 2. A 5-door shophouse is divided equally 3. Rice fields are divided between sons only 4. <i>Rumoh tuo</i> is for daughters

The above table describes that the inheritance has several components, namely testator, heirs, and inheritance property, the objects distributed to each heir. The division of inheritance here used a kinship approach on the principle of deliberation. The inheritance of the testator distributed in the above case was not divided directly after the death of the male testator (father), but after the death of the female testator (mother). This suggests that the pattern of distribution of inheritance in South Aceh is likely to be handed over to the rightful heirs after a long period after the death of the testators.

The inherited assets distributed to the heirs in the above case were also shared jointly to all the heirs, in which the men were given shop houses, farmlands, and rice fields. On the other hand, the women received *rumoh tuo* that she could live in with their families. The distribution step taken by the *gampong* elders was by first asking the willingness of each heir. All heirs agreed that the inheritance to be shared jointly with all existing heirs. The

parties agreed to divide the inheritance assets to avoid prolonged conflicts within the family.⁴⁵

Concerning the *recepti* theory proposed by C. Snouck Hurgronje (1857-1936), it states that the law that applies in Aceh is the customary law.⁴⁶ By observing the phenomenon of inheritance distribution in South Aceh, this theory has relevant justifications based on the social facts, as evidenced by the way local people distributing inheritance in equal shares to all heirs regardless of gender. This is a proof that the customary law is one of the bases for the community in distributing inheritance.

Another practice of the customary law is that the traditional figures need not ask for the approval of all heirs for the distribution of inheritance assets. The traditional figures may distribute the assets directly in balanced portions without distinguishing the gender of the heirs. The priority principle of division is fairness or balance for each heir in order to avoid conflict among the heirs. In this case, the heirs will not dispute nor reject such a distribution mechanism, as they have given approval for the inheritance to be shared equally with all the heirs.⁴⁷

The practice of providing *rumoh tuo* to women shows a careful attitude of society towards the condition of daughters after they marry. If one day there is continuous conflict and dispute between a husband and wife, the wife will not be forced out of the house because the house is a property given to her by her parents. Whatever problems in the family will be, the woman remains at home. Older generations of parents had envisioned such conditions beforehand, and so empirically, the community still considers giving houses to daughters.

One example of a case that provided protection for daughters can be seen in the Kasman's family. After Kasman and his wife died, the *rumoh tuo* was given to the eldest daughter. The first daughter received *rumoh tuo* because for the daily needs her husband supported his parents-in-law by obtaining the produce from his rice fields and farms. The second daughter did not get *rumoh tuo* since her husband managed her late father's farmland

⁴⁵Teuku Harun Ar-Rasyid, Meukek Traditional Figure, interview, April 27, 2022.

⁴⁶Anwar Hidayat, M. Gary Gagarin Akbar, Deny Guntara, Kajian Perbandingan Dalam Pembagian Waris Berdasarkan Pada Hukum Islam Dan Hukum Adat, *Jurnal Justisi Hukum*, Vol 3, No. 1, September 2018, p. 90.

⁴⁷Sirajuddin, *Legislasi Hukum Islam di Indonesia*, (Yogyakarta: Pustaka Pelajar, 2008), p. 14.

to meet their needs. The status of the land was divided in half with his younger brother.

The above case indicates that in the context of the distribution of inheritance in South Aceh, the values of justice have been upheld. The handover of the house to the eldest daughter occurred because her husband paid for and supported her parents when they were still alive. The gifting of *rumoh tuo* was then very reasonable and fair in the context of inheritance distribution.

Conclusions

The people of South Aceh predominantly use the customary law to distribute inheritance assets. The inheritance law practiced in this area consists of three models of customary laws, namely Aceh, Kluet, and Aneuk Jamee customary inheritance laws. Differences in customs are caused by the plurality of people residing in South Aceh, which also influences the pattern of inheritance distribution. The people adhering to the Minangkabau custom are more likely to give inheritance (houses) to daughters. In contrast, the Acehnese custom tends to distribute the inheritance jointly, including houses, which will be firstly valued to facilitate the process of dividing the inheritance assets.

References

Journals and Books

Abdul Manan, *Aspek-Aspek Pengubah Hukum*, (Jakarta: Kencana, 2005).

Abdul Muthalib, Perubahan Hukum Dengan Sebab Berubahnya Masa, Tempat Dan Keadaan, *Jurnal Hikmah*, Volume 15, No. 1, Januari – Juni 2018..

Ahmad Labib, “Musyawarah Kekeluargaan Studi Kasus Eksistensi Peradilan Adat di Desa Payaman, Kecamatan Solokuro, Kabupaten Lamongan”, *Jurnal Ilmu Hukum*, Vol. 14, No. 1, Maret 2011.

Al-Robin, “Problematika Hukum Pembagian Waris 2:1 Dalam Pendekatan Teori Qath’i Zhanni”, *Sangaji: Jurnal Pemikiran Syariah dan Hukum*, Volume 2 Nomor 1, Maret 2018.

Amir Syarifudidin, *Pelaksanaan Hukum Kewarisan Islam dalam Lingkungan Adat Minangkabau*, (Jakarta: PT Midas Surya Grafindo, 1982).

- Anwar Hidayat, M. Gary Gagarin Akbar, Deny Guntara, Kajian Perbandingan Dalam Pembagian Waris Berdasarkan Pada Hukum Islam Dan Hukum Adat, *Jurnal Justisi Hukum*, Vol 3, No. 1, September 2018.
- Dwi Narwoko dan Bagong Yuryanto, *Sosiologi Teks Pengantar dan Terapan*, (Jakarta: Kencana Prenada Media Group, 2004).
- Endang Sriani, "Fiqh Mawaris Kontemporer: Pembagian Waris Berkeadilan Gender", *Tawazun: Journal of Sharia Economic Law*, Volume 1 Nomor 2, September 2018.
- Eniwati Khaidir, *Pendidikan Islam dan Peningkatan Sumber Daya Perempuan*, (Pekanbaru: LPPM UIN Suska Riau, 2014).
- Faqihuddin Abdul Kodir, *Qira'ah Mubadalah: Tafsir Progresif untuk Keadilan Gender dalam Islam*, (Yogyakarta: IRCiSoD, 2019).
- Indra Rahmat, "Pengelolaan Harta Pusaka Tinggi Dalam Masyarakat Adat Minangkabau (studi di Kecamatan Batipuh Kabupaten Tanah Datar)", Volume 8, Nomor 1, Bulan Juni, 2019.
- Iswah Adriana, "Kurikulum Berbasis Gender", *Jurnal Tadris*, Volume 4. Nomor 1. 2009.
- John Kenedi, Penyelesaian Sengketa Harta Bersama dengan Harta Bawaan Ketika Terjadi Perceraian, *Manhaj: Jurnal Penelitian dan Pengabdian Masyarakat*, Vol. 3 No. 1, 2018.
- Julia Cleves Mosse, *Gender dan Pembangunan*, (Yogyakarta: Pustaka Pelajar, 2007).
- Moh. Dahlan, "Paradigma Ijtihad Munawir Sjadzali Dalam Reaktualisasi Hukum Islam Di Indonesia", *At-Turas: Jurnal Studi Keislaman*, Volume 7 Nomor 2, Juli-Desember 2020.
- Munawir Sjadzali, *Ijtihad Kemanusiaan*, (Jakarta: Paramadina, 1997).
- Nassaruddin Umar, *Argumen Kesetaraan Gender*, (Jakarta: Dian Rakyat, 2010).
- Sirajuddin, *Legislasi Hukum Islam di Indonesia*, (Yogyakarta: Pustaka Pelajar, 2008).
- Sugiri Permana, "Implications Of Hazairin And Munawir Sjadzali Thoughts In Establishment Of Islamic Inheritance In Indonesia", *AHKAM*, Volume 18 Nomor 2, 2018.

Ulfa Chaerani Nuriz, Sukirno, Sri Wahyu Ananingsih, “Penerapan Hukum Adat Minang Kabau Dalam Pembagian Warisan Atas Tanah (Studi di : Suku Chaniago di Jorong Ketinggian Kenagarian Guguak VIII Koto, Kecamatan Guguak, Kabupaten Lima Puluh Kota, Ibu Kota Sarilamak)”, *DIPONEGORO LAW JOURNAL*, Volume 6, Nomor 1, Tahun 2017.

Vina Saviana dan Tutik Sulistyowati, *Sosiologi Gender*, (Tangerang Selatan: Universitas Terbuka, 2010).

Interview

Ahmad Ibrahim BA, Religious Hero, interview, April 20, 2022.

H. Rusli Rasyid, Chairman of MAA South Aceh, interview, April 27, 2022.

H. T. Armia Ahmad, Chairman of MPU South Aceh, April 20, 2022.

Mawardi, Religious Leader of Labuhan Haji, interview, April 25, 2022.

Muhammad Lukman Hakim, Judge of the Shar'iyah Tapaktuan Court, April 22, 2022.

Mukhlis Al-Yusufi, MPU South Aceh, April 20, 2022.

Mukhsin, Meukek Religious Figure, interview, April 20, 2022.

Syaikh Kahar Muzakar, Vice Chairman of MAA South Aceh, April 27, 2022.

Syamsuddin, Head of *Mukim* Sawang Subdistrict, interview, April 18, 2022.

Teuku Harun Ar-Rasyid, Meukek Traditional Figure, interview, April 27, 2022.