

Inheritance Property Distribution Models Among the Muslim Community of Borneo-Nusantara

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Abstract: This article is aimed at describing the model of transfer of property to heirs in the inheritance of the Muslim community of Borneo-Nusantara. On the one hand, the Muslim community of Borneo is obedient and subject to the doctrine of Islam, but on the other hand, they also cannot avoid the local culture that lives in the Borneo community. This research is classified as descriptive-qualitative research using a legal sociology approach. Data collection was carried out through electronic and manual searches from sources in the form of books, manuscript articles, or other information materials related to the problem being studied. Data analysis was carried out using content analysis techniques. This study found that there were at least 6 models of transfer of property to heirs practiced by the Muslim Community of Borneo-Nusantara, namely: 1) *farâ'idh-ishlâh*, 2) *ishlâh* (deliberation), 3) *hibah-wasiat*, 4) *hibah*, 5) *wasiat*, and 6) *munâsakhah* which are carried out by each ethnic group in every place in Borneo-Nusantara according to the needs and socio-cultural of the surrounding community. This study concludes that the inheritance system among the Muslim community of Borneo Nusantara is implemented dynamically following the socio-cultural development of the local community. This phenomenon is a unique characteristic of the transfer of property in the inheritance system of the Muslim community of Borneo-Nusantara that contributes practically to solving inheritance problems.

Keywords: customary inheritance system, Islamic inheritance system, Muslim community of Borneo Nusantara

Abstrak: Artikel ini bertujuan mendeskripsikan model peralihan harta kepada ahli waris dalam kewarisan masyarakat Muslim Borneo-Nusantara. Pada satu sisi, masyarakat Muslim Borneo taat dan tunduk pada doktrin agama Islam namun pada sisi lain mereka juga tidak dapat menghindar dari budaya lokal yang hidup dalam masyarakat Borneo. Penelitian ini tergolong penelitian deskriptif-kualitatif dengan pendekatan sosiologi hukum. Pengumpulan data dilakukan melalui penelusuran secara elektronik dan manual dari sumbernya berupa buku, artikel manuskrip, atau bahan informasi lain yang terkait dengan permasalahan yang sedang diteliti. Analisis data dilakukan dengan menggunakan teknik analisis konten. Penelitian ini menemukan setidaknya ada 6 model peralihan harta kepada ahli waris yang dipraktikkan masyarakat Muslim Borneo-Nusantara yaitu: 1) *farâ'idh-ishlâh*, 2) *ishlâh* (musyawarah kekerabatan), 3) *hibah-wasiat*, 4) *hibah*, 5) *wasiat*, dan 6) *munâsakhah* yang dilaksanakan oleh

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setiap etnis di setiap tempat di Borneo-Nusantara sesuai dengan kebutuhan dan sosio kultural masyarakat yang melingkupinya. Penelitian ini menyimpulkan bahwa sistem kewarisan di kalangan masyarakat Muslim Borneo Nusantara dilaksanakan secara dinamis mengikuti perkembangan sosio-kultural masyarakat setempat. Fenomena ini merupakan kekhasan peralihan harta dalam kewarisan masyarakat Muslim Borneo-Nusantara dan berkontribusi praktis dalam penyelesaian persoalan waris.

Keyword: sistem kewarisan adat, sistem kewarisan Islam, masyarakat Muslim Borneo Nusantara

Introduction

The study of Islam Nusantara, both from a legal and religious aspect, is an actual issue.¹ This is marked by the increasingly intense constellation of thought, religion, and even politics involving issues of the archipelago. In fact, from a legal and religious perspective, the issue of "law and Islam Nusantara" is currently a discourse that is "booming" and becoming a topic of discussion, or even a source of polemic among the Muslim community itself.

One topic that is also part of the issue of Islam Nusantara is the issue of inheritance. This issue is often the object of discussion and study pursued by Muslim intellectuals, including those living in the Borneo-Nusantara region. This is because the issue of Islamic inheritance is an inherent sub-section of the study of Fiqh.

The term Fiqh Nusantara has been used since the 1940s when it was still called Indonesian Fiqh. The term Indonesian Fiqh was initially introduced by Hasbi Ash-Shiddieqy who was the initiator of Indonesian fiqh.² Recently, the term of Fiqh Nusantara has resurfaced since the 33rd NU Congress was held in Jombang, East Java, on 1-5 August 2015, which carried the theme of Islam Nusantara which also included Fiqh Nusantara.³

¹ M. Noor Harisudin, *Fiqh Nusantara*, 1st edn (Surabaya: Pena Salsabila, 2019), pp. 1–3.

² Shiddiqi Nourouzzaman, 'Fiqh Indonesia, Penggagas dan Gagasannya', (Yogyakarta: Pustaka Pelajar, 1997), pp. 50-80.

³ Muhammad Noor Harisudin, 'Islām wa Fiqh Nusantara: al-Tanâfus 'alâ al-Huwiyyah wa 'Alâqat al-Sultâh wa al-Ramz al-Dînî li Jam'iyah Nahdlatul Ulama', *Studia Islamika*, 24.3 (2017): 503–54, doi:10.15408/sdi.v24i3.4324.

Normatively, Islamic Inheritance in Borneo-Nusantara follows the guidance of the Qur'an and Sunnah, which is based on Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law (KHI). Most of the Borneo-Nusantara community follows the Shafi'i school of thought, however, in implementing inheritance law, they do not always follow the legal provisions applicable to the Shafi'i school of thought. This phenomenon can be seen from the way they divide inheritance assets which do not follow the calculation of *farâidh* but rather use deliberation between heirs known by the South Kalimantan community as "*Badamai*".⁴

In the judicial realm, such a tendency can also be traced in the Pontianak Religious Court Decision of West Kalimantan which stipulates that daughters can veil their siblings or granddaughters, or grandsons from the female line can veil their siblings.⁵ This decision indirectly illustrates that there has been a shift in the legal paradigm in the local Religious Court institution from juridical-normative to juridical-sociological or from normative textual tendencies to socio-cultural contextual. This phenomenon also shows that inheritance distribution among Muslims in Borneo-Nusantara can influence the judge's considerations when deciding on inheritance cases.

Viewed from a sociological perspective, the diversity and the uniqueness of the inheritance system among the Muslim community in Borneo-Nusantara indicates the existence of assimilation or acculturation between Islamic teachings and local traditional/cultural values. Although in principle Islamic inheritance is absolute because it is sourced from the Qur'an and Sunnah, when it comes into contact with the traditional and cultural values living in the midst of society, it turns out that it must undergo "adjustment". The shift caused by the conflict between religious norms and cultural values is what attracts the author's attention to research it in more depth.

⁴ Gusti Muzainah, 'Sistem Kewarisan pada Masyarakat Banjar', *Journal of Indonesian Adat Law (JIAL)*, 2.2 (Jakarta: 2018): 65–85.

⁵ Muhammad Hasan, 'Construction of Modern Islamic Inheritance Law Based on Ijtihad of the Judges at the Religious Court of Pontianak, West Kalimantan', *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, 7.2 (2023): 650–668, doi:10.22373/sjhk.v7i2.8852.

The practices of inheritance among the Muslim community of Kalimantan are indeed interesting. Before this research was conducted, there had been several studies on the same object but different in terms of covering the region, focus, and approach. These studies include the research by Wahidah and Faridah who studied the practice of Inheritance Settlement in Banjar Society.⁶ Then the research of Gusti Muzainah and Syaikhu who examined the pattern of inheritance distribution among the Palangkaraya ulama families.⁷ Furthermore, research by Zasri M. Ali who reviewed the inheritance system of Rokan Hulu Malay Customs.⁸ Also research by Wahidah and Alias Azhar who discussed the application of *farâidh* provisions in wills.⁹ Then Muzainah's research on Inheritance in the Banjar community system.¹⁰ Also Zasri M. Ali's research on Inheritance in Malay society,¹¹ and several other studies having a narrower focus, partial, and limited to only one region or one issue.

This study has limitations and shortcomings in terms of scope of coverage which is only limited to the Muslim Dayak tribe, the Banjar tribe, and the Malay tribe in certain areas in the Borneo Nusantara Region. In addition, this research is also very dependent on the researcher's perspective on primary documents.

Research Methods

This research can be classified as descriptive-qualitative research with a sociology of law approach. This is because this research aims to describe

⁶ Wahidah and Faridah, *Praktik Penyelesaian Harta Warisan pada Masyarakat Banjar*. Banjarmasin: Antasari Press, 2018), p.133.

⁷ Gusti Muzainah and Syaikhu Syaikhu, 'Pembagian Warisan Keluarga Ulama Palangka Raya dalam Tinjauan Hukum Waris Adat Masyarakat Banjar', *Jurnal Hadratul Madaniyah*, 7.1 (2020): 20–25.

⁸ Zasri M. Ali, 'Sistem Kewarisan Adat Melayu Rokan Hulu (Analisis Sosiologis dan Hukum Islam)', *Kutubkhanah*, 14.2 (2011): 204–22.

⁹ Wahidah Wahidah and Alias Azhar, 'Implementation of Faraidh's Provisions in Hibah Wasiat (A Case in South Banjar Kalimantan)', *Al-'Adalah*, 16.2 (2019): 375–392, doi:10.24042/adalah.v16i2.4578.

¹⁰ Muzainah, 'Sistem Kewarisan pada Masyarakat Banjar'.

¹¹ Zasri M. Ali, 'Sistem Kewarisan Adat Melayu Rokan Hulu (Analisis Sosiologis dan Hukum Islam)', *Kutubkhanah*, 14.2 (2011): 204–222; Lani Regina Yulanda, 'Inheritance of Community Property in Melayu Siak Community', *International Journal of Multicultural and Multireligious Understanding*, 6.3 (2019): 234–41.

the inheritance practices of the Muslim community of Borneo-Nusantara based on data and facts. This research, in addition to presenting data, also analyzes and interprets data, and compares/connects facts to then be constructed to obtain conclusions.

Data collection activities are carried out by searching for academic manuscripts in the form of books, manuscripts, or articles related to the topic studied. These materials come from data sources in this study, both printed and non-printed materials. While data analysis uses an interactive condensation model developed by Miles and Huberman.¹²

Results and Discussion

It can be stated here that among the Muslim community of Borneo-Nusantara, there is no dominant inheritance distribution habit. This is indicated by the existence of six models of inheritance systems to heirs that are practiced among the local community, namely: 1) *farâidh-ishlâh*, 2) *ishlâh* (kinship deliberation), 3) *hibah-wasiat*, 4) *hibah*, 5) *wasiat*, 6) *munâsakhah*. Each of these models is described in detail as follows.

Inheritance with the *Farâidh-Ishlâh* Model

Farâidh-Ishlâh is the division of inheritance according to the provisions of the science of *farâidh* (a division of inheritance according to Sharia). After all, heirs know their respective portions based on *farâidh*, then they deliberate to determine the portion outside of those provisions voluntarily.¹³

The *farâidh-ishlâh* inheritance distribution model is generally practiced in the city of Banjarmasin and is carried out through the *Badamai* institution. There are two types of inheritance distribution systems in the *Badamai* institution, namely *farâidh-ishlâh* and *ishlâh*. The process of dividing inheritance with *farâidh-ishlâh* is by applying *farâidh* first. In

¹² Matthew B. Miles, A. Michael Huberman, and Johnny Saldana, *Qualitative Data Analysis* (SAGE, 2014), p. 12.

¹³ Gusti Muzainah, 'Sistem Kewarisan pada Masyarakat Banjar', *Journal of Indonesian Adat Law (JIAL)*, 2.2 (Jakarta: 2018): 65–85.

this process, a religious figure called *Tuan Guru* calculates the percentage of each heir's share according to the provisions of *farâidh*, including, if any, determining other heirs based on the will or testamentary gift and their respective shares. After all heirs have stated that they accept their share, it is continued with *ishlâh*, namely agreeing to give the received share to the other heirs.

This inheritance distribution model with the *farâidh-ishlâh* system is applied by the heirs because they are worried that if they do not implement the rules of Sharia, the property obtained will not be blessed. By implementing the inheritance distribution through the *farâidh-ishlâh* system, even though the distribution is carried out based on deliberation, the heirs feel calm because they feel that they have carried out their obligations as Muslims by dividing the inheritance according to the provisions of Sharia.¹⁴

Outside the city of Banjarmasin, such as in Tapin Regency, Hulu Sungai Regency, Sintang Regency, Tanjung Rema Darat Regency, and in several other places, the *farâidh-ishlâh* distribution system is also implemented, with or without the involvement of religious figures/ulama.

In Tapin Regency, for example, the division of inheritance is still carried out with *farâidh*, but the male heirs will usually give some of their portions to the daughters so that the portions between the sons and daughters are the same.¹⁵ In Hulu Sungai Selatan Regency, the division with the *farâidh-ishlâh* system has also been carried out on inherited property in the form of land. After the proceeds from the sale of the land are divided, the heirs (children) agree to give all the portions obtained to their mothers.¹⁶

In Sintang Regency, the Melingkat Ingar Malay Customary Community even imposes sanctions in the form of cancellation and return of inheritance portions if *farâidh* is not applied. This rule is written

¹⁴ Riana Kesuma Ayu, 'Reformulasi Pembagian dan Penyelesaian Ahli Waris *Miratsut Taqdiri* dalam Hukum Kewarisan Islam', *DE JURE Critical Laws Journal*, 2.2 (2021): 21. Read also Gusti Muzainah, *Asas Kemanfaatan Tentang Kedudukan Perempuan dalam Hukum Waris Adat Masyarakat Banjar*, editor by Anwar Hafidzi (Yogyakarta: Pustaka Akademika, 2016),93-95.

¹⁵ Wahidah and Faridah.

¹⁶ Wahidah and Faridah.

in the Malay customary law of Melingkat Ingar Silat Village in Chapter X concerning "Customary Inheritance".¹⁷ The reason for implementing *farâidh* in customary law is that the local Malay residents are all Muslims so the application of the *farâidh* law, which is based on the Qur'an and Hadith, is considered appropriate to be implemented. However, after the distribution by *farâidh* is carried out, if the recipients of the inheritance want to give their portions to other heirs, this is permitted. If the assets left behind are in the form of a house or land, then the assets must be sold or valued first and then divided according to *farâidh*.

Furthermore, among the Malay community of Sambas, the division with the *farâidh* system has been implemented since 1620 AD during the leadership of Sultan Moehammad Tsafioeddin. Unfortunately, this system now seems to be abandoned.¹⁸ Based on the results of the survey conducted, only 3 out of 46 respondents (6%) apply *farâidh* as a guideline for the distribution of their inheritance and even then it must be through an agreement between the heirs.

Next, in Samarinda Regency, local scholars also implement the *farâidh* distribution system. The main reason for implementing *farâidh* in the distribution of inheritance according to local scholars is because Muslims must implement the distribution system as determined in the Qur'an and Hadith. Muslims must also know their respective shares in advance through *farâidh*. If after that the heir wants to give his rights to other heirs, then this is permitted.¹⁹

The same thing can be found in several other areas, such as Martapura District, Tanjung Rema Darat Regency, and Banjarmasin City. In these areas, the distribution of inheritance is carried out in various ways, some use the *farâidh* method, some use *ishlâh*, and some use *farâidh-ishlâh*.²⁰

¹⁷ Sudarto, Anyan, and Lusila Parida, 'Hukum Adat Melayu Melingkat Ingar Silat Kecamatan Kayan Hilir Kabupaten Sintang', *Jurnal Pengabdian Masyarakat Khatulistiwa*, 1.2 (2019): 82–96, doi:10.31932/jpmk.v1i2.321.

¹⁸ Fitriyani, 'Sistem Kewarisan Pada Masyarakat Hukum Adat Melayu Sambas Kabupaten Sambas Kalimantan Barat' (Unpublished Thesis, Universitas Diponegoro, 2002).

¹⁹ Akhmad Haries and Darmawati, 'Pelaksanaan Pembagian Waris di Kalangan Ulama di Kota Samarinda: Analisis Pendekatan Normatif Sosiologis', *FENOMENA*, 10.2 (2018): 149-169.

²⁰ Adi Parhan and Abdul Ghofur Anshori, 'Pelaksanaan Pembagian Waris pada Masyarakat Muslim Kelurahan Tanjung Rema Darat Kecamatan Martapura Kabupaten Banjar Kalimantan

The inheritance mechanism with the *farâidh-ishlâh* model (dividing inheritance according to *farâidh*, then continuing with kinship deliberation) is an effort and caution of the recipient of the inheritance. Deliberation is the best method for heirs to resolve the distribution of inheritance, whether there is a dispute or not. Although the *farâidh-ishlâh* method still accommodates *farâidh*, the final execution is not based on the results of the *farâidh* calculation, but on the deliberation.

Viewed from a Sharia perspective, the application of the *farâidh-ishlâh* model in the inheritance system of the Borneo Muslim Community has fulfilled the elements and principles of Islamic inheritance. According to Islamic law, this is indeed very possible to do because in essence all heirs already know their respective rights even though later the portion changes based on their own agreement and willingness. In the term of fiqh, such is known as *takharruj*, namely the heir declares to leave the position as an heir and give his share to the other heirs.²¹

Inheritance with the *Ishlah* Model

In the previous description, it has been explained that in addition to implementing the division of inheritance through *farâidh-ishlâh*, the *Badamai* Institution in Banjar also holds a division of inheritance through *ishlâh*. The difference between the first and the second model is that in the *farâidh-ishlâh* model, the implementation is preceded by a division through *farâidh*. In the second model, the division through *farâidh* is not carried out, except if there is a dispute between the heirs, then the division through *farâidh* is used.²²

In *islâh*, the heirs hold a deliberation among themselves are witnessed by *Tuan Guru/Ulama'* and *Tetua Adat*. In this forum, there is no certain

Selatan' (Unpublished Thesis, Universitas Gadjah Mada, 2012); Rezeki Maulana and Abdul Ghofur Anshori, 'Penerapan Hukum Kewarisan Islam dalam Pembagian Arisan pada Masyarakat Muslim di Kota Banjarmasin' (Unpublished Thesis, Universitas Gadjah Mada, 2010) <http://etd.repository.ugm.ac.id/home/detail_pencarian/48238> [accessed 2 July 2022].

²¹ Wahbah al-Zuhayli, *al-Fiqh al-Islâmi Wa Adillatuh*, 2nd edn, 8 vols (Bayrût: Dâr al-Fikr: 1985), p. 101; Maryam Ahmad al-Dâghistâni, *al-Mawârith fi al-Shari'ah al-Islâmiyyah 'alâ Madhâhib al-Arba'ah* (Jâmi'ah al-Azhar, 2001), p. 99.

²² Muzainah and Syaikh.

percentage as in *farâidh*, but the division is more based on considerations of the economic conditions of the heirs. This *ishlâh* is carried out to reduce the economic disparity between the heirs which can result in quarrels between them.²³ So the main purpose of the deliberation is to bring benefits to all heirs.

Ishlâh, in the view of the Banjar community, is a system of inheritance distribution based on deliberation led/witnessed by the *Tuan Guru* but does not always involve the traditional leader or community leader. The Muslim scholars and the Banjar community consider that the distribution through *ishlâh* (deliberation) does not violate Islamic law because inheritance issues are not included in worship but in the *muâmalah* (social relationship).

In reality, the distribution of inheritance through *ishlâh* has various methods and variations. Among the Dayak Meratus-Loksado community, *ishlâh* is carried out according to an agreement based on customary provisions and attended by the *Pengulu Adat* in the hall as a mediator. If a dispute occurs, the resolution is also through kinship resolution attended by the *Pengulu Adat* and Head of Neighbourhood (RT) as mediators.²⁴ Whereas in Bagendang Permai Village, Mentaya Hilir District, the distribution of inheritance through deliberation (*ishlâh*) is led and distributed by the eldest child. The reason for adopting this method of inheritance distribution by deliberation is on the one hand, that the people of Bagendang Permai village do not understand the *farâidh* distribution system, also such distribution has become a habit of the people of Bagendang Permai village.²⁵ Therefore, distribution by deliberation is the only alternative method that can be taken to divide the inheritance in society.

Among the Muslim Dayak Lawangan Paku Karau community, *ishlâh* is carried out by dividing the inheritance into equal parts but

²³ Wahidah and Faridah, p. 4.

²⁴ Gusti Muzainah and Miftah Faridh, *Akulturası Hukum Waris Adat pada Masyarakat Dayak Meratus* (Banjarmasin: Antasari Press, 2019).

²⁵ Dedy Irawan, 'Kewenangan Anak Tertua dalam Pembagian Harta Waris (Studi di Desa Bagendang Permai Kecamatan Mentaya Hilir Utara Kabupaten Kotawaringin Timur)', *Jurnal Studi Agama dan Masyarakat*, 12.2 (2017): 144, doi:10.23971/jsam.v12i2.466.

can be changed to suit the needs of the heirs. Heirs who have many needs, get more inheritance. Conversely, if their needs are few, they get a small inheritance. This type of distribution is carried out by deliberation between family members.²⁶

Equal distribution can also be found among the Dayak Ngaju community of Central Kalimantan. Here, the heirs should receive the same portion or share equally, however, due to economic differences between the heirs, the portion to be received by each heir is reconsidered through deliberation.²⁷ Almost similar to this method, the Muslim community in Jekan Raya District, Palangka Raya City gives the heirs certain portions based on their respective needs. Thus, the portion of each heir can be the same, or different, or delegated to other heirs according to what has been mutually agreed upon. Elsewhere, namely among the Dayak Maanyan Paju Lima community, Petangkep Tutui District, the portions to be received by each heir are determined together through deliberation between the heirs, Damang Traditional Chief, and *Pengulu Adat*. Almost the same thing is also applied in the Dayak Lawangan Community of Ampah Village, where the implementation of inheritance distribution is carried out through family deliberation and led by the *mantra* and *pengulu*. Meanwhile, in Dayak Village, Kelam Permai District, Sintang Regency, if a conflict arises over inheritance from a *muwarits* who has a different ethnic marriage, the resolution is facilitated by the traditional head through deliberation between the parties.²⁸

Another variant of this *ishlah* division can be found among the Dayak Kanayatn Community of Pahokng Village, Mempawah Hulu District. Here, the inheritance distribution is not carried out in front of the *Tuan Guru* or Adat leader but through family deliberation led by the husband/

²⁶ Rikawati, 'Peranan Kepala Adat dalam Penyelesaian Sengketa Warisan pada Suku Dayak Lawangan Paku Karau di Kecamatan Dusun Tengah Kabupaten Barito Selatan Kalimantan Tengah' (Unpublished Thesis, Universitas Diponegoro, 2003).

²⁷ Syaikhu, 'Kewarisan Adat Dayak Ngaju Kalimantan Tengah (Dialektika Hukum Islam, Hukum Adat dan Kuh Perdata)', 2022 <<https://idr.uin-antasari.ac.id/19009/>> [accessed 15 July 2022].

²⁸ Utami, 'Tradisi Masyarakat Muslim dalam Membagi Harta Warisan Secara Kekeluargaan (Studi di Kecamatan Jekan Raya Kota Palangka Raya)', *Jurnal Studi Agama dan Masyarakat*, 12.2 (2017): 197, doi: 10.23971/jsam.v12i2.479.

wife of the *muwarits*. If both are not present, then one of the children acts as the head of the heir. If a dispute occurs, the first stage of settlement is carried out through deliberation, if it has not been completed, then a customary deliberation is carried out. Furthermore, it can be resolved through the courts if no agreement has been reached.²⁹ On the other hand, the Dayak Agabaq Community of Lumbis District, Nunukan Regency also carries out inheritance distribution through deliberation. However, if a dispute occurs, it is resolved through deliberation by presenting the extended family. If through deliberation no consensus has been reached, it is continued through Adat institutions.³⁰

Elsewhere, namely among the Dayak Maanyan Paju Lima community, Petangkep Tutui District, the portions that will be received by each heir are determined together through deliberation between the heirs, Damang Adat leader and *Pengulu Adat*.³¹ Almost the same thing is also applied in the Dayak Lawangan Community of Ampah Village, where the implementation of inheritance distribution is carried out through family deliberation and led by the *Mantir* and *Pengulu*.³² Meanwhile, in the Dayak Village of Kelam Permai District, Sintang Regency, if a conflict arises over inheritance originating from *muwarits* who have inter-tribal marriages, the resolution is facilitated by the traditional head through deliberation between the parties.³³

²⁹ Purnawan, 'Pelaksanaan Pembagian Harta Warisan pada Masyarakat Adat Dayak Kanayatn di Desa Pahokng Kecamatan Mempawah Hulu Kabupaten Landak Propinsi Kalimantan Barat' (Unpublished Thesis, Universitas Diponegoro, 2003).

³⁰ Victor Ola Tokan and Pudjiastuti, 'Sistem Pewarisan Adat Suku Dayak Agabaq di Kecamatan Lumbis, Kabupaten Nunukan, Propinsi Kalimantan Timur' (Universitas Gadjah Mada, 2011) <[http:// etd.repository. ugm.ac.id/home/detail_pencarian/51744](http://etd.repository.ugm.ac.id/home/detail_pencarian/51744)> [accessed 2 July 2022].

³¹ Dwiki Widhiasih, 'Pelaksanaan Pewarisan Masyarakat Adat Dayak Maanyan Paju Lima (Benua Lima) di Kecamatan Patangkep Tutui Kalimantan Tengah' (Universitas Gadjah Mada, 2008) <[http:// etd.repository.ugm.ac.id/penelitian/detail/38806](http://etd.repository.ugm.ac.id/penelitian/detail/38806)> [accessed 2 August 2022].

³² Budiarto Santoso, 'Kedudukan Anak di Luar Perkawinan dalam Hukum Waris Adat Suku Dayak Lawangan di Desa Ampah Kecamatan Dusun Tengah Kabupaten Barito Timur', *Tampung Penyang*, 17.02 (2019): 50–72, doi:10.33363/tampung-penyang.v17i01.397.

³³ Yanuar Ruswandi and Djoko Sukisno, 'Pembagian Harta Warisan pada Masyarakat Suku Dayak Desa yang Melakukan Perkawinan Antar Suku di Kecamatan Kelam Permai Kabupaten Sintang Provinsi Kalimantan Barat' (Unpublished Thesis, Universitas Gadjah Mada, 2016) <[http://etd.repository.ugm.ac.id/ penelitian/ detail/103906](http://etd.repository.ugm.ac.id/penelitian/detail/103906)> [accessed 30 June 2022].

The Sambas Malay Community, initially divided inheritance by implementing the *farâidh* distribution system. Then, they switched to using the deliberation (*ishlâh*) distribution system based on the agreement and sincerity of family members. This transition was caused by changes in values in society and the absence of someone who could be asked about *farâidh* during the leadership of the previous Sultanate.³⁴ In contrast to this tendency, scholars and citizens of Samarinda city, in addition to implementing *farâidh*, also implement a family deliberation (*ishlâh*) division system. The portion received by the heirs varies because it depends on the economic conditions of each, so there is no percentage portion as in *farâidh*. This method can be used to reduce the economic gap between heirs and prevent disputes in the future.

Inheritance with the *ishlâh* model (dividing inheritance by deliberation) is basically a conscious effort by the recipient of the inheritance to share the inheritance. Deliberation is the best method for heirs in an effort to resolve the division of inheritance, whether due to disputes or not. Several scholars suggest that the division by deliberation be started with the *farâidh* system because it is the obligation of Muslims to carry out the division of inheritance based on *farâidh*.³⁵

According to Islamic law, inheritance with the *ishlâh* model fulfills the principles of Islamic inheritance as long as it has fulfilled the pillars and requirements of Islamic inheritance. However, this model of inheritance prioritizes the aspect of deliberation and ignores the normative aspect of inheritance law. This model of inheritance can be justified when the heirs understand the Islamic inheritance law well and can accept the results of the deliberation unanimously.

Last but not least, the presence of the inheritance distribution method of *farâidh-ishlâh* and *ishlâh* is an alternative solution to inheritance problems. *Farâidh-ishlâh* and *ishlâh* have strong legality because they are built from the socio-cultural community and are implemented continuously in society. Although the transfer of inheritance assets carried

³⁴ Fitriyani.

³⁵ Haries and Darmawati.

out with this *ishlâh* model seems to violate the *farâidh* norm, as such is done by people who understand *farâidh* it means that it has provided strong legal legality. In the Usul Fiqh, customs carried out continuously from one generation to the next are known as *urf/adah*, and become a source of law as long as they do not conflict with the Sharia.³⁶ The customs of the *ahl al-Madînah* in the tradition of Imam Mâlik became a source/method of determining the law.³⁷

Inheritance with the *Hibah-Wasiat* (Grant-Will) Model

Hibah-Wasiat (grant-will) is a system of an inheritance distribution carried out by means of distribution when the *muwarits* (owner of the property) is still alive. At that time, some ownership rights have been transferred to the heirs, and the complete transfer only occurs when the *muwarits* dies. The communities that implement this model are Banjar, Ngaju Dayak, Central Kalimantan Dayak, Tobak Dayak, Tayan Hilir District, Kapuas Hulu Regency, and Sambas Melayu.

For the Banjar community, a grant-will is a combination of inheritance distribution with a grant-and-will system. In this grant will, the property is still in the ownership and control of the *muwarits* until he dies. The process involves *Tuan Guru* so that the consideration is based on *farâidh*. Usually, the *muwarits* recites: "When I am finished, I will give A's property to B and so on". The purpose of carrying out a grant-will is so that there is no inheritance dispute after the *muwarits* dies.³⁸ If there is a dispute or disagreement, the Banjar community assumes that the *muwarits* will be tortured in their grave.³⁹

³⁶ Alî bin Abî Alî bin Muhammad bin Salim Sayf al-Dîn Abî al-Hasan al-Amidî, *al-Ihkâm Fi Ushûl al-Ahkâm* (Bayrût: Muassasah al-Halabî, 1967), p. 201; Muhammad Abû Zahrah, *Ushûl al-Fiqh* (Bayrût: Dâr al-Fikr al-'Araby, 1957), p. 61-99; Abû Hâmid Muḥammad al-Ghazâlî, *Ushul al-Fiqh* (Bayrût: Dâr al-Fikr, 1988 M/1409 H), p. 161.

³⁷ Muhammad Hasan, 'Model Pengembangan Hukum Islam Berbasis Kedaerahan: Kajian Terhadap Ijma' *Ahl al-Madînah* dan Implikasinya', *Ulumuna*, 19.1 (2015): 159–80, doi:10.20414/ujis.v19i1.1255.

³⁸ Muzainah, *Asas Kemanfaatan Tentang Kedudukan Perempuan dalam Hukum Waris Adat Masyarakat Banjar*; Wahidah and Faridah.

³⁹ Wahidah and Faridah.

The distribution of inheritance using the grant-will (*hibah-wasiat*) model is also carried out by the Banjar community in the Hulu Sungai Selatan Regency. One example of how to divide it is that the *muwarits* when he was alive, told his wife that one-third of his land would be given to his 4 children who did not yet have permanent jobs, while his other 3 children did not receive a grant, but only received it through inheritance, namely two-thirds of the land which was also distributed to the other 4 children who had received a grant.⁴⁰ Meanwhile, in the Banjar and Hulu Sungai Utara Regency communities, the grant-will was carried out so that the portion received by the daughter was not much different from the son so that the portion between the daughter and son was balanced.⁴¹

For the Dayak Ngaju, Dayak Central Kalimantan, and Dayak Tobak communities in the Tayan Hilir-Sanggau District, the appointment of heirs was carried out while the *muwarits* was alive, but the transfer of property to the heirs was carried out when the *muwarits* had died. The reason for implementing the will-grant system is so that the assets owned by the *muwarits* can be given to the heirs deemed appropriate and to prevent inheritance disputes between the heirs.⁴²

In the Sambas Malay community, generally, the notification to the heirs is delivered verbally without the presence of the village head or someone of the same level. The distribution can be carried out while the *muwarits* are alive, but it is carried out when the *muwarits* die. In one case, the distribution of inheritance was carried out when the parents (*muwarits* and their spouse) were still alive. Then when one of them died, the spouse, namely the father/mother (husband/wife of the *muwarits*) carried out the distribution of their spouse's inheritance.

⁴⁰ Wahidah and Faridah.

⁴¹ Syaugi Mubarak Seff, H Badrian, and Zulpa Makiah, 'Praktik Hiyal di Bidang Fikih Ibadah, Muamalah dan Hukum Keluarga di Kabupaten Banjar dan Hulu Sungai Utara (Studi Eksploratif Mengenai Motivasi, Bentuk dan Tata Cara)', 2.3 (2014): 29.

⁴² Sri Kayun, 'Kedudukan Anak Angkat dalam Mewarisi Harta Orang Tua Angkatnya Menurut Hukum Adat Dayak', *Belom Bahadat*, 8.1 (2019), doi:10.33363/bb.v8i1.342; Syaikhu; Sartika Dewi, 'Kedudukan Anak Angkat dalam Mewarisi Harta Orang Tua Angkatnya Menurut Hukum Adat Dayak Tobak di Kecamatan Tayan Hilir Kabupaten Sanggau Provinsi Kalimantan Barat', *Notarius: Jurnal Studi Kenotariatan*, 1.1 (2011): 19–36.

Inheritance with the *Hibah* (Grant) Model

Hibah is defined as the division and transfer of assets while the donor is still alive. However, in some cases, *hibah* is counted as part of the inheritance.⁴³ The Borneo communities implementing this system are Banjar, Dayak Meratus Loksado Village, and Samarinda City. For the Banjar community, a *Hibah* or '*Dibari*' is a way of dividing assets from the heir to the heir according to the wishes of the heir. The distribution process is gathering the heirs with/or without other heirs. Then the heir conveys his purpose for distributing the inheritance. In addition to the heirs, community leaders such as *Tuan Guru RT Head* or *Lurah* are also present as witnesses. The method of distribution, for example, "*Heir Y gets a house, N gets a boat*" and so on.⁴⁴ The distribution of this grant is usually accompanied by deliberation. If the assets are still in the possession of the heir after the distribution, the heirs will let it go, because they assume that the heir still has the right to control the assets.⁴⁵

In Banjarmasin City, the grant is given by the wife of the heir. She divided her husband's inheritance and gave her portion to her children. The portion is adjusted to the *farâidh*.⁴⁶ In Hulu Sungai Tengah, the division is done by direct grant (verbally) with an equal portion between sons and daughters. Furthermore, the Dayak Meratus community of Loksado Village who are Muslim applies a grant system, namely the property is given by the *muwarits* to the heirs while the *muwarits* are still alive. This grant system causes the heirs to consist only of children.

As for the people of Samarinda City, in addition to the distribution with the *farâidh* and deliberation systems, the ulama and the community in Samarinda City usually apply a grant system. Grants are when the

⁴³ Wahidah and Faridah.

⁴⁴ Muzainah, *Asas Kemanfaatan Tentang Kedudukan Perempuan dalam Hukum Waris Adat Masyarakat Banjar*.

⁴⁵ Ahmad Haries, 'Pembagian Harta Warisan dalam Islam: Studi Kasus pada Keluarga Ulama Banjar di Kabupaten Hulu Sungai Utara Provinsi Kalimantan Selatan', *Jurnal Diskursus Islam*, 2.2 (2014): 191–208, doi:10.24252/jdi.v2i2.6520; Ramadhaniati, Nur Kamila, and Yulkarnaen Harahab, 'Pelaksanaan Pembagian Waris pada Masyarakat Muslim Suku Banjar di Kabupaten Tapin Provinsi Kalimantan Selatan' (Unpublished Thesis, Universitas Gadjah Mada, 2008) <http://etd.repository.ugm.ac.id/home/detail_pencarian/40432> [accessed 6 February 2022].

⁴⁶ Wahidah and Faridah.

muwarits while still alive distribute his/her property to the heirs according to He/She wishes. The implementation process is the same as the Banjar community in dividing inheritance with grants.⁴⁷ Muslims in this area may know about Islamic inheritance law. However, they do not apply it because they do not know how to apply it and prefer existing customary law. Their knowledge is limited to grants given before the *muwarits* die as inheritance.⁴⁸

Inheritance with a *Wasiat* (Will) Model

A *Wasiat* (will) means a message or direction from parents to heirs regarding how to treat their property after they die. The distribution of inheritance with the *wasiyat* model is carried out by the Banjar Jekan Raya, Banjar Kota Palangka Raya, Dayak Kanayatn, and Dayak Pakpak villages of Nanga Ungai. For the Banjar community, the distribution of inheritance can be done by one of them with a *wasiat* (will) or *ba'amanah*. The contents of the *wasiat* are the appointment of heirs who receive certain portions, the appointment of heirs other than their heirs, or can also contain a prohibition on dividing the inheritance. The *wasiat* can be delivered verbally to the heirs witnessed by relatives and the *Tuan Guru*. However, it can also be done by delivering it only to the *Tuan Guru* without the knowledge of the heirs. The distribution of inheritance with a *wasiat* system is motivated by the assessment of the *muwarits* to the heirs. The aim is so that the heirs do not fight over the inheritance. Because according to the community, if a dispute occurs due to inheritance, the impact on the *muwarits* is that they will not be at peace in their graves.

In the Tabalong district, a method of inheritance distribution was found with a written will (*ba'amanah*) by the *muwarits* to his heirs.⁴⁹ The content concerns the *muwarits'* request that his assets be divided equally among his heirs. For the Muslim community of Jekan Raya District and Palangka Raya City, in one case, an inheritance distribution was found

⁴⁷ Haries and Darmawati.

⁴⁸ Muzainah and Faridh.

⁴⁹ Muzainah, *Asas Kemanfaatan Tentang Kedudukan Perempuan dalam Hukum Waris Adat Masyarakat Banjar*.

based on a will (message) delivered to the heirs to divide the inheritance according to kinship with equal shares between fellow heirs.⁵⁰ This is also done by the Kanayatn community.⁵¹ As for the Dayak Pakpak community of Nanga Ungai Village, the process is carried out by the Temenggung (Customary leader) together with the heirs according to the orders of the *muwarits* during his lifetime, such as to the heirs to whom the assets will be handed down. Automatically, the assets left behind are given to those mentioned. If it is in the form of garden land or a house, then the distribution can be done by ordering the wife to be divided equally among all children.⁵²

Models of inheritance distribution through *hibah-wasiat* (wills-grant), *hibah*, (grant), and *wasiat* (wills) are motivated by the interests, concerns, and efforts of the heirs to avoid injustice in the distribution of inheritance and to avoid disputes among the heirs. The will referred to in this context is not the same as a will in general, a will in this context is more about messages and directions from parents (husband and or wife) to their children so that their assets after they die are distributed to their children according to their directions. Parents do this because they know more comprehensively about which of their children has contributed the most to the family or in obtaining family assets and which of them needs the most for the continuation of their life.

Viewed from the side of the inheritance law, these three methods (gift-will, grant, and will) in the context of the transfer of property are not quite right to be called inheritance. This is because all elements of inheritance have not been fulfilled as no one died.⁵³ Inheritance is indeed a transfer of property that occurs lives *ijbari*⁵⁴ Due to death. In fact, in Yilmaz's description, a will should not be given to the heirs.⁵⁵

⁵⁰ Utami.

⁵¹ Purnawan.

⁵² Tri Minarti, 'Pembagian Harta Warisan pada Masyarakat Adat Dayak Pakpak oleh Temenggung Adat Menurut Hukum Adat Dayak Papak di Desa Nanga Ungai Kecamatan Kayan Hulu', *Perahu (Penerangan Hukum): Jurnal Ilmu Hukum*, 9.1 (2021), doi:10.51826/perahu.v9i1.493.

⁵³ Muhammad Hasan, *Ilmu Kewarisan Islam* (Yogyakarta: Istana Agency, 2024), p. 19.

⁵⁴ Amir Syarifuddin, *Hukum Kewarisan Islam* (Jakarta: Prenada Media, 2015), p. 17.

⁵⁵ İbrahim Yılmaz, 'İslâm Hukukunda Vasiyet Yolıyla Varisleri Mirastan Mahrum Etmeye

However, viewed from the purpose and argumentation of the will in the context of Borneo-Nusantara inheritance, it still has an urgent meaning for the continuity and sustainability of family as well as in the context of continuing the responsibility of parents to their children.⁵⁶ That all their descendants are protected by their responsibilities. The author views *wasiat* (will) in this context is a direction or instruction from parents to their children.

According to Islamic law, heirs may or may not implement the *hibah-wasiat*, (grant-will) and *wasiat* (will) models. This means that it is very dependent on the heirs after the death of the testator. Therefore, the prospective heir as the perfect owner of the property should give it to the people he wants legally and perfectly since he is still alive. So, it does not obscure the contracts in Islam, both the *ikhtiyary* and the *ijbary* contracts.

Inheritance with the *Munâsakhah* Model

Munâsakhah is a delay in the implementation of inheritance distribution so that there are heirs who die before the inheritance is distributed.⁵⁷ The distribution of inheritance in the *munâsakhah* category is found in areas that implement the postponement of inheritance distribution.⁵⁸ The delay is caused by the applicable customary law rules or deliberation, or because the heirs feel they do not need the inheritance yet so that the inheritance is not taken care of and neglected.

This *munâsakhah* inheritance model can be found in the Banjar community. Several inheritance problems in the Banjar community are generally in the form of *munâsakhah*, because people in South Kalimantan tend not to immediately divide inheritance. The reason is that one of the parents is still alive, or there are young children of the heirs, or

Yönelik Tasarrufların Sınırlandırılması', *Cumhuriyet İlahiyat Dergisi*, 21.3 (2017): 1739–74, doi:10.18505/cuid.314744.

⁵⁶ Hasan, 'Construction of Modern Islamic Inheritance Law Based on Ijtihad of the Judges at the Religious Court of Pontianak, West Kalimantan'.

⁵⁷ Muhammad Hasan, 'Kasus-Kasus Kontroversi Dalam Kewarisan', (Yogyakarta: Istana Agency, 2024) p. 43.

⁵⁸ Wahidah and Faridah.

the property will be used for all ritual needs. Another reason for the withholding of distribution is that there is a will that prohibits the distribution of certain assets, and this is the beginning of the problem of *munâsakhah* inheritance. In addition, the Banjar community adheres to the mayoral inheritance system which can cause mixed assets and unclear portions that should be obtained by the heirs.⁵⁹

The Banjar community that implements this type of inheritance model is in two districts, namely Tabalong Regency and Hulu Sungai Utara Regency. In Tabalong Regency there is one case of *munâsakhah* where the first *muwarits* is the husband of the second *muwarits*. The heirs between *muwarits* 1 and 2 are the same, namely 3 sons and 2 daughters. The settlement is carried out with a *wasiat*/will (for the assets of the first *muwarits*) and *farâidh* (for the assets of the second *muwarits*). Meanwhile, in Hulu Sungai Utara Regency, the distribution of inheritance is carried out 18 years after the *muwarits* died, so at the time of distribution 2 of the 10 heirs have died. Therefore, the distribution is based on *farâidh*, and then the portion of the two children is given to their descendants (the grandchildren of the first *muwarits*).⁶⁰

Conclusion

The implementation of Islamic inheritance among the Muslim communities of Borneo-Nusantara is carried out in a varied manner. The transfer of assets from the testator to the heirs is carried out using several methods, namely the consistent application of *farâidh*, and the mixed application of *farâidh*. For those who apply *farâidh* in a mixed way, they argue that *farâidh* must be understood and obeyed together although in the end what is applied is the result of deliberation. In addition, there is a transfer of assets carried out before the testator dies, which in their view is also a division of inheritance that aims to bring more peace. These models are applied by the Borneo-Nusantara community according to the surrounding social conditions including the needs and socio-cultural conditions of the community.

⁵⁹ Wahidah and Faridah.

⁶⁰ Wahidah and Faridah.

This study found that there are six inheritance models practiced by the Muslim community of Borneo-Nusantara, namely 1) *farâidh-ishlâh*, 2) *ishlâh* (kinship deliberation), 3) *hibah-wasiat*, 4) *hibah*, 5) *wasiat* and 6) *munâsakhah*. These models are implemented by almost every ethnic group according to the needs and socio-cultural of the surrounding community. These models are the characteristics of the implementation of inheritance in the Borneo-Nusantara community as an alternative solution to inheritance problems.

Author Contribution

Muhammad Hasan, as the main author in the preparation of this article, contributed to designing and compiling the research concept, conducting data collection, and writing the main manuscript in its entirety. Dahlia Haliah Ma'û contributed to writing the methodology section, editing the manuscript, and the data analysis process. Muallim helped in compiling the systematic draft of the manuscript, compiling the introduction section, and literature review.

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