

COMPARATIVE STUDY OF INHERITANCE RIGHTS IN ISLAM AND CIVIL LAW: Analysis of Mashlahah and Maqashid al-Syari`ah

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Abstract: The division of inheritance in the Malay community of Batubara Regency is carried out under prevailing traditional customs. It makes Faraidh law the final (alternative) way after discovering problems during the distribution of inheritance. This article analyzes the review of maslahah and maqashid ash-syari'ah on normal inheritance distribution for the people of Batubara Regency. This research is field research with an empirical study approach. This study found that customary inheritance distribution for the people of Batubara Regency was carried out in various ways, according to the conditions of each inheritance problem. When a wife dies (heir), the inheritance will be directly divided under Islamic inheritance law's provisions; the distribution period is no sooner than 40 days and a maximum of 6 (six) months. If the husband dies (heir), then generally, the inheritance is not distributed until the wife or mother of the heir dies, the heirs of the father or mother are often neglected, and ownership of the house goes to the youngest child or children who live together the heir during life, control of the inheritance is controlled by the eldest son. The customary practice of inheritance distribution for the people of Batubara Regency, which makes the foundation of benefit in the distribution of inheritance in the people of Batubara Regency, is mashlahah mulghah, contrary to the texts of the Koran and the hadiths of the Prophet SAW. In addition, in the maqashid asy-shari'ah scale, it is not achieved regarding the hajiyyat case, namely hifzhul mal.

Keywords: *Inheritance Rights, Customs, Islamic Law, Civil Law, Mashlahat, Maqashid asy-Syari`ah*

Abstrak: Pembagian harta warisan di masyarakat Melayu Kabupaten Batubara dilakukan sesuai dengan kebiasaan adat yang berlaku, dan menjadikan hukum *faraidh* sebagai jalan akhir (alternatif) setelah ditemukannya masalah sewaktu pembagian harta warisan. Artikel ini menganalisis tinjauan *mashlahah* dan *maqashid asy-syari'ah* terhadap praktik pembagian warisan secara adat bagi masyarakat Kabupaten Batubara. Penelitian ini adalah penelitian lapangan (*field research*), dengan pendekatan kajian empiris (*empirical study*). Penelitian ini menemukan bahwa praktik pembagian warisan secara adat bagi masyarakat Kabupaten Batubara dilakukan dengan cara beragam, sesuai dengan kondisi masing-masing masalah warisan. Ketika seorang istri meninggal dunia (pewaris), maka harta warisan akan langsung dibagi-bagi sesuai dengan ketentuan hukum waris Islam, jangka waktu pembagian harta warisan paling cepat setelah 40 hari, dan paling lama 6 (enam) bulan. Apabila suami meninggal dunia (pewaris), maka umumnya harta warisan tidak dibagi-bagikan, hingga istri atau ibu dari ahli waris meninggal dunia, ahli waris ayah atau ibu, kerap kali diabaikan, kepemilikan rumah kepada anak yang paling kecil, atau anak yang tinggal bersama pewaris semasa hidup, penguasaan harta warisan dikuasai oleh anak laki-laki tertua. Praktik pembagian warisan secara adat bagi masyarakat Kabupaten Batubara yang menjadikan kemashlahatan landasan dalam pembagian harta waris di masyarakat Kabupaten Batubara adalah *mashlahah mulghah*, bertentangan dengan nash Alquran dan hadis-hadis Rasul SAW. Selain itu, dalam timbangan *maqashid asy-syari'ah*, perihal perkara *hajiyyat*, yakni *hifzhul mal*, maka tidak tercapai.

Kata Kunci: *Hak Waris, Adat, Hukum Islam, Hukum Perdata, Mashlahat, Maqashid asy-Syari`ah*

Introduction

This research wants to see the pattern and system of an inheritance distribution in the people of Batubara Regency according to custom, which turns out to be temporary findings. There are many patterns of inheritance distribution.¹ Sometimes they quickly distribute the inheritance, at least 40 (forty) days after the death of the heir (father) or 100 (one hundred days).² His mother has passed away. A third model was found, namely the division of inheritance, which negated or eliminated the distribution of heirs due to the transfer of heirs, which initially became the subject of the problem, namely the heir (father) to the heir (mother).³

Another inheritance distribution model by buying existing inherited land, between the respective heirs, by prioritizing payment, even though the rights of each heir do not yet exist, taking into account the needs of one of the less financial heirs; even though this raises new problems, namely the purchase price of the inheritance is no longer appropriate compared to when the inheritance was distributed to other heirs.⁴

This is one of the problems in the customary inheritance distribution system in Batubara Regency; of course, it leaves many problems, and it is not uncommon for disputes between each heir. Even so, the people of Batubara Regency tend not to challenge inheritance disputes to the local Religious Court but prefer to resolve them with family members and sometimes call traditional leaders or community leaders, and even religious leaders to be able to resolve

inheritance disputes. There are inheritance disputes that have been resolved and many that cannot be resolved because the distribution of inheritance has been protracted.⁵

One example of a division denying the inheritance of the heirs is due to the too-long distribution of the inheritance in the obtained cases. The informant mentioned that he had a father who died in 2002. His father is the second son of 8 (eight) siblings and has a father and mother. The problem initially arose when his father (grandfather) passed away in 1990, leaving behind eight children, 5 (five) men (including the informant's father), and 3 (three) women.

Inheritance is a house, and 3 (three) vacant land plots. Simplify the calculation; then, the house and land price is Rp. 450,000,000.00- (three hundred and fifty million rupiahs), the price of 3 (three) plots of vacant land is around Rp. 250,000,000.00, - (two hundred and fifty million rupiah), so the total assets are worth Rp. 700,000,000.00,- (seven hundred million rupiah). When the distribution of the inheritance is hastened, each heir gets a monetary value according to the faraidh calculation.

The problem is that there was no division of the inheritance for many years, so the mother's father (the first heir's wife) died. The distribution of the inheritance was carried out so that, in this case, the informant's father did not receive the inheritance from his father (the first heir) because the heir others focused on settling the inheritance left by the second heir (the mother of the informant's father). The

¹ Afidah Wahyuni and Harisah, 'Humanism in Inheritance Distribution in Sampang Madurese Culture', *Ahkam: Jurnal Ilmu Syariah*, 19.2 (2019) <<https://doi.org/10.15408/ajis.v19i2.13899>>.

² Khairuddin Hasballah, Ridwan Nurdin, and Muslim Zainuddin, 'Patah Titi and Substitute Heirs: A Study of Legal Pluralism on the Inheritance System in Aceh Community', *AHKAM : Jurnal Ilmu Syariah*, 21.2 (2021), 299–324 <<https://doi.org/https://doi.org/10.15408/ajis.v21i2.22792>>.

³ Mujib and others, 'Comparative Study of Fractional Numbers on the Division of Inheritance

Based on Islamic Law and Law of Lampung Pesisir Tribe', in *Journal of Physics: Conference Series*, 2019, MCLV <<https://doi.org/10.1088/1742-6596/1155/1/012075>>.

⁴ Sofyan (Masyarakat Kecamatan Lima Puluh Pesisir, Kabupaten Batubara), wawancara pribadi, Kabupaten Batubara, 14/02/2023.

⁵ Shahbaz Ahmad Cheema, 'Distribution of Inheritance under Islamic Law: An Appraisal of Online Inheritance Calculators', *Journal of Islamic Thought and Civilization*, 11.1 (2021) <<https://doi.org/10.32350/jitc.111.07>>.

informant's father, who should have received the property from the first heir (father's father), did not receive any more inheritance because his mother had died earlier. The informant's father died in 2002, while the informant's grandmother (father's mother) was known to have died in 2016. So that the detailed results of the division of inheritance are obtained as follows:

Table 1. Inheritance Calculation for Wife's Heirs

Inheritance Calculation				
Inheritance		Rp. 700.000.000,00,-		
Origin of Problem		8		
Parts		Rp. 87.500.000,00,-		
Heir s	Status	Distri butio n	Siham	Number of Rights Share of Assets
wife	Ashab Furudh	1/8	1	Rp.87.500.00 0,00,-

The remaining part of the inheritance / Rp. 612,500,000.00, - (six hundred and twelve million and five hundred thousand rupiah) distributed to every boy (totaling five people) and girl (totaling three people), who become `ashobah.

The above is the form of division of each heir, from the inheritance of the heir (father's father), if when heir I (father's father) dies, then the rights of each heir are immediately given, be it the right of the heir's wife (1 person)), and eight heir children (5 boys and three girls).

The heir's wife died in 2016, so only seven children received an inheritance from their mothers who had died (heir). This is because the informant's father (second son), who was one of the heirs, first died, so according to classical fiqh law, the informant's father did not receive the inheritance from the informant's father, on the contrary, the informant's father's mother received the inheritance. Inheritance from the informant's father, who died first.

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Another problem arose when the informant's father died before the informant's grandmother (the informant's father's mother). Supposedly, the mother (from the informant's father) who died became the heir of her child who died earlier, in addition to other heirs, namely one wife of the heir and five children of the heir (two boys and three girls). Due to the fact many years ago, that the informant's father did not inherit from the heir who died (father's father), it seemed that there was a "reply" so that the mother, who was still alive from the heir of the informant's father also did not become the heir. Until this research was done, the problem still existed, the inheritance of the informant whose father had died had not been divided faraidh, and of course, in the future, it has the potential to create disputes over other inheritance issues

Literature Review

Theory of Comparative Studies

The study comes from the word study, defined as research or analysis, while comparative comes from the word compare, which means comparison.⁶ What is meant by

⁶ Angelika Krehl and Sabine Weck, 'Doing Comparative Case Study Research in Urban and Regional Studies: What Can Be Learnt from

Practice?', *European Planning Studies*, 28.9 (2020) <<https://doi.org/10.1080/09654313.2019.1699909>>.

a comparative study in this study is to analyze the distribution problem of inheritance by comparing the customary inheritance system, Islamic law, and the division of heirs' rights in Indonesian civil law.

Theory of Customary Inheritance Rights

Rights are defined as something right, property, or power over something. Inheritance is everything inherited or left behind, whether in the form of inheritance or good name. Adat has the meaning of a rule that has been common and adhered to for a long time.⁷ The word adat is sometimes coupled with the word customs to become "customs." This word means any rule or action that has become a custom from generation to generation. Kamsil term adat with unwritten or statutory law, which is an unwritten customary law.⁸ The customary inheritance in this study is the inheritance system implemented by the majority of the Malay community in Batubara Regency.

The people of Batubara Regency are residents who live in the territorial area of Batubara Regency in terms of population and are registered with the local population service. The people of Batubara Regency referred to in this study are the Malay cultural indigenous Muslim community living in Batubara Regency. The Malay community in Batubara District is ethnically native, although, in terms of population, the majority in Batubara District are Javanese.

⁷ Haidir Rachman, 'Harmonisasi Hukum Adat Dan Hukum Islam Dalam Sistem Pewarisan Di Semende Provinsi Sumatera Selatan Berasaskan Keseimbangan Sebagai Kontribusi Pembentukan Hukum Kewarisan Nasional', *Himmah: Jurnal Kajian Islam Kontemporer*, 3.1 (2021) <<https://doi.org/10.47313/jkik.v3i1.1091>>.

⁸ Putu Dyatmikawati, 'Inheritance Rights of Women Based on Customary Law in Bali', *International Journal of Business, Economics and Law*, 11.4 (2016).

⁹ Ahmed Fekry Ibrahim, 'Islamic Law in Theory: Studies on Jurisprudence in Honor of Bernard Weiss. Edited by A. Kevin Reinhart and Robert Gleave', *Journal of the American Oriental Society*, 137.4 (2021) <<https://doi.org/10.7817/jameroriesoci.137.4.0845>>.

Islamic Law Theory

Islamic law is also known as fiqh, which is a collection of opinions of scholars regarding the law against people who are Muslims.⁹ Islamic law in this study is Islamic law from the Shafi'i school, which is contained in the works of Imam ash-Syafi'i directly or in the books of scholars of the Shafi'iyah school. Islamic law of the Shafi'i school is Islamic law which is adhered to and used as a guideline by the Muslim community in Batubara Regency in many matters, from worship, regarding mu'amalah, and family, to matters of inheritance¹⁰.

Civil Law Theory

What is meant by Civil Law, according to Rahman Syamsuddin, is a series of legal rules regulating one subject to another legal subject.¹¹ Civil Law is taken from the Dutch language, namely *Burgerlijk Recht*, first introduced by Prof. Djojodiguno. Among the sources of Civil Law regarding inheritance contained in the *Burgerlijk Wetboek*, abbreviated as BW, is the Civil Code under the provisions of the Dutch East Indies Law product based on the principle of concordance¹². Inheritance Law is one part of the division of Civil Law known as *erfrecht*, a law that regulates transferring assets from a deceased person to heirs who are still alive.

¹⁰ Šukrija Ramić, 'THE PRONOUNCED (LITERAL) MEANING OF THE LEGISLATIVE TEXT (AL-MANṬŪQ) IN SHAFII SCHOOL OF LAW', *Zbornik Radova* 18, 17, 2019 <<https://doi.org/10.51728/issn.2637-1480.2019.17.253>>.

¹¹ Annissa Rezki, RR Dewi Anggraeni, and Nur Rohim Yunus, 'Application of Civil Law Theory In the Termination of Custody of Adopted Children in Indonesia', *JOURNAL OF LEGAL RESEARCH*, 1.6 (2019) <<https://doi.org/10.15408/jlr.v1i6.15301>>.

¹² Michèle Schmiegelow and Henrik Schmiegelow, *Institutional Competition between Common Law and Civil Law: Theory and Policy*, 2014 <<https://doi.org/10.1007/978-3-642-54660-0>>.

Mashlahat Analysis Theory and Maqashid al-Syari'ah

The analysis is defined as an action in research with its systematics in realizing results that can be accounted for. Mashlahat is a part of *istinbat al-ahkam*, which is used by scholars who are a study of Usul Fiqh Sciences in order to obtain a law (*fiqh*).¹³ Farih explained that *maslahat* comes from the word *shalahah*, *yashluhu*, and *shalahan* means something considered good, proper, and functional. Also interpreted as a path taken in achieving a good goal and not in matters of worship.¹⁴

Mashlahah itself has three kinds, namely: *mashlahah mu'tabara*; *maslahah mulghah*; and *maslahah mursalah*. Asy-Syathibi provides a definition of *maqashid al-shari'ah*,¹⁵ which is an exploration of understanding the purpose of the *shari'ah* that Allah SWT has established, and the purpose of the provisions in the form of commands and prohibitions is for the good of humanity itself. Among the objectives of the *shari'ah* are in order to protect religion, soul, mind, property, and offspring.¹⁶

Method

This research is normative-empirical.¹⁷ The intended empirical research is the practice of the people of Batubara Regency in distributing inheritance. The primary legal material in this study consists of two types. The first is from empirical facts in the field, divided into three types, observation results, interview results, and photos or documentation.

The research location is in Batubara

Regency, which consists of 12 (twelve) sub-districts, namely: 1). Sei Balai District, 2). Tanjung Tiram District, 3). Nibung Hangus District, 4). Talawi District, 5). Datuk Tanah Datar District, 6). Fifty District, 7). Fifty Coastal District, 8). District Datuk Fifty, 9). White Water District, 10). Sei Suka District, 11). Laut Tador District, and finally, 12). Medang Deras district. The twelve districts are the study location population, while the sample is Suharsimi Arikunto, Research Procedure; a Practice Approach, (Jakarta: PT. Rineka Cipta, 2016), h. 193-195. the research location is only 4 (four) districts, namely: 1). Tanjung Tiram District, 2). Nibung Hangus District, 3). Talawi District, 4). Fifty Coastal District.

In general, the commonly used legal material analysis technique consists of three stages, the first stage is data reduction,¹⁸ the second stage is data display, and the third stage is the conclusion.¹⁹

Result and Discussion

The Practice of Customary Inheritance Distribution for the Communities of Batubara Regency.

The practice of sharing inheritance in several forms, according to the conditions of each inheritance problem.

1. Immediate distribution of inherited assets.

The heir is the wife; the inheritance is directly divided according to the provisions of Islamic inheritance law; usually, the distribution of inheritance is the fastest after 40 days and a maximum of 6 (six) months.

¹³ Muhammad Syukri Albani Nasution and Rahmat Hidayat Nasution, *FILSAFAT HUKUM ISLAM & MAQASHID SYARIAH Edisi Pertama*, *FILSAFAT HUKUM ISLAM & MAQASHID SYARIAH Edisi Pertama*, 2020.

¹⁴ Agung Kurniawan and Hamsah Hudafi, 'Konsep Maqashid Syariah Imam Asy-Syatibi Dalam Kitab Al-Muwafaqat', *Al-Mabsut: Jurnal Studi Islam Dan Sosial*, 15.1 (2021), 29-38 <<https://doi.org/10.56997/ALMABSUT.V15I1.502>>.

¹⁵ Abdurrahman Kasdi, 'Maqasyid Syari'ah Perspektif Pemikiran Imam Syatibi Dalam Kitab Al-Muwafaqat', *YUDISIA: Jurnal Pemikiran Hukum*

Dan Hukum Islam, 5.1 (2016) <<https://doi.org/10.21043/YUDISIA.V5I1.693>>.

¹⁶ Muchamad Coirun Nizar, 'Literatur Kajian Maqashid Syari'ah', *Jurnal Ulul Albab*, 35, 2016.

¹⁷ Theresia Anita Christiani, 'Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object', *Procedia - Social and Behavioral Sciences*, 219 (2016) <<https://doi.org/10.1016/j.sbspro.2016.05.006>>.

¹⁸ Yuli Nurmallasari and Rizki Erdiantoro, 'Analisis Deskriptif Kualitatif', *Quanta*, 4.1 (2020).

¹⁹ Wiwin Yuliani, 'Metode Penelitian Deskriptif Kualitatif', *QUANTA*, 2.2 (2018).

The impact of immediacy is generally positive because it can be seen the rights of each heir, both the wife's rights and the rights of children who are the heirs of the deceased father (heir). On the other hand, this can be difficult for wives who have financial deficiencies, especially those who do not have finances or a livelihood, because it is certain that the money inherited from their husbands is used to meet their needs.

2. Postponement of inheritance distribution.

The husband dies, and the inheritance is not distributed until the wife or mother of the heir dies; the object of inheritance is considered to be from the wife's inheritance, no longer from the husband's inheritance.

The impact of postponing the division of inheritance is very much, including:

- a. If the division of inheritance is ended for too long, and it turns out that heirs have died before their mother. This means the heir who should have inherited the property from his father, in the end, does not get anything and leaves no wealth for his children either.
 - b. Another problem with the withdrawal is when there are heirs who have minimal lives, so debts are found between poor heirs to wealthy heirs so that some of their rights later become the payment, which ultimately triggers other problems because the value of the money lent is not the same in value, while the rights of the heirs, for example, a plot of land, the higher the price.
 - c. There is a transfer of hands of inheritance based on an agreement between the mother and some of the other heirs.
 - d. Some heirs control inherited assets such as land and sometimes cause conflicts between family members (heirs).
- ## 3. The inheritance house is given priority to the smallest heirs or those who care for the heirs.

For the distribution of inherited property in the form of a house, priority is given to the smallest heirs or children living with the heir during their lifetime, who serve and look

after the heir. The house is still assessed according to the division of rights of the children living there. If the rights are less than the value of the house, then it often happens that some brothers or sisters donate or give up their share to their younger siblings; if other heirs still want their share of the house, then the youngest sibling or who lives at home can make installment payments, up to an unspecified period. The negative impact is that sometimes arises jealousy arises for some heirs, so that in terms of rights, they still have rights; it is just that it has become a habit, so they are forced to continue to let go of their rights that are not obtained also to get a share of the house, even though the monetary value is fixed they receive.

4. The eldest son controls the inheritance control from the heir (father).

The oldest son, let alone an adult, the custom of the Batubara Regency Malay custom is that he is the most entitled to administer the inheritance left by the heir. The negative impact of controlling the inheritance from the heir (father) is controlled by the eldest son, in the sense that it is the primary determinant of the inheritance. This is a problem because sometimes the eldest son wants to own the land or part of the inheritance. However, it is valued at a lower nominal value than usual, and again it becomes a problem between the biological families of each heir who is also entitled. The positive impact is that other parties cannot control the inheritance because the brother knows best about the conditions and circumstances of the heir's inheritance.

5. Abandonment of the heir's father's and mother's inheritance rights

The heirs of the father or mother should be addressed. Some who understand and understand still inform the father and mother of the heir, and generally, the father or mother of the heir does not take these rights but gives them to other heirs who remain, namely the husband or wife and also the children of the heirs, and the distribution of the grant assets is carried out according to

the faraidh portion as well, to facilitate the distribution of the rights of each heir. The negative impact of ignoring the heir's father's or mother's inheritance rights, among others, is when the heir's mother dies while the assets have yet to be given to the mother. When the mother dies, the mother's inheritance rights also become inheritance for her children. Ultimately, the nieces and uncles fight over the inheritance each hopes to receive from the heir's legacy.

Furthermore, to gain clarity, an analogy can be included, from a comparison between inheritance laws contained in statutory regulations in Indonesia, such as the Compilation of Islamic Law and others, and also in civil law in Indonesia. Information from case examples that existed when the research was carried out. A wife dies (heir), she leaves her husband, 2 (two) sons, and 4 (four) daughters, and leaves a father and mother. The assets left behind are houses with a value of Rp. 350,000,000.00,- (three hundred and fifty million) rupiah, rice field land inherited from parents worth Rp. 25,000,000.00,- (twenty-five million) rupiah, gold jewelry worth Rp. 35,000,000.00,- (thirty-five million) rupiah, cash Rp. 20,000,000.00,- (twenty million rupiahs) rupiah, so the total value of the assets left behind is Rp. 430,000,000.00,- (four hundred and thirty million) rupiahs.

The house cannot be said to be wholly owned by the wife, and it must be divided in half by the husband first so that the heirs' rights amount to Rp. 175,000,000.00,- (one hundred seventy-five million) rupiah, the total amount to be distributed to each heir of the deceased wife's heir is Rp. 255,000,000.00,- (two hundred and fifty-five million) rupiahs. The total that was left in the form of assets worth Rp. 255,000,000.00,- (two hundred and fifty-five million) rupiah, not divided in half by the husband, which is expected, in Malay customary law, the property is the object of inheritance. Below is listed the division of rights of each heir in tabular form, as follows:

Table 2. Inheritance Calculation for All Heirs

Inheritance Calculation				
Inheritance property		Rp. 255.000.000,00,-		
Origin of problem		12		
part		Rp. 21.250.000,00,-		
Heirs	Status	inheritance share	Si ham	Total Rights Share Inheritance
Ibu	Ashab Furud	1/6	2	Rp.42.500.000,00,-
Ayah	Ashab Furud	1/6	2	Rp.42.500.000,00,-
Suami	Ashab Furudh	1/4	3	Rp.63.750.000,00,-
Total		7		Rp.148.750.000,00,-
remainder		5		Rp.106.250.000,00,-

Table 3. Inheritance Calculation for all Children's Heirs ('Ashabah)

Inheritance Calculation				
Inheritance property		Rp.106.250.000,-		
Origin of problem		8		
part		Rp.13.281.250,-		
Heirs	Status	inheritance share	Si ham	Total Rights Share Inheritance
First son	'Ashobah	2/8	2	Rp.26.562.500,-
Second Son	'Ashobah	2/8	2	Rp.26.562.500,-
First daughter	'Ashobah	1/8	1	Rp.13.281.250,-
Second Daughter	'Ashobah	1/8	1	Rp.13.281.250,-
Third Daughter	'Ashobah	1/8	1	Rp.13.281.250,-
Fourth Daughter	'Ashobah	1/8	1	Rp.13.281.250,-
Total		8		Rp.106.250.000,-
remainder		0		Rp.0,00,-

Generally, the practice of distributing inheritance carried out by the Malay community in Batubara Regency is based on the fiqh rules of the Shafi'i school, namely based on the Koran and hadith, as well as the consensus of the clergy. It is just that there

are differences, namely in the implementation of the results of calculating the share of the rights of each heir. For example, when the heir dies, there is leaving the father and mother of them are not hindered in receiving the inheritance from the child, so if a part of each is obtained by faraidh, the rights of the father and mother, it is usually the eldest brother of the heir left by the heir, will directly visit the grandmother or grandfather of the heir, namely the biological parents of the deceased heir.

Evidently, there was no taking of property, which was the right of the father and mother of the heir who died. It was enough for them to know the value, and then the property was returned to the other heirs. The property belonging to the father and mother (the heir's parents) is given back to all heirs, be it to the husband or wife left behind and also to the heir's children only.

Taking the distribution example above, it is known that the mother's rights are Rp. 42,500,000.00, - (forty-two million five hundred thousand rupiah), and the father gets inheritance rights from the heir who dies of the same value, namely Rp. 42,500,000.00, - (forty-two million five hundred thousand rupiah), the total is Rp. 93,000,000.00, - (ninety-three million rupiah). This money will be divided in a faraidh manner, even though it is not part of the heirs, but it is a part of the distribution of inheritance so that each of them gets their rights so that each heir gets the following rights:

Table 4. Calculation of Inheritance for All Children's Heirs (Ashabul Furudh)

Inheritance Calculation				
Inheritance property		Rp.93.000.000,-		
Origin of problem		4		
part		Rp.23.250.000,-		
Heirs	Status	inheritance share	Siham	Total Rights Share Inheritance
husband	Ashabul Furudh	1/4	1	Rp.23.250.000,-
Total			1	Rp.23.250.000,-
Remainder			3	Rp.69.750.000,-

Table 5. Calculation of Inheritance for All Children's Heirs ('Ashabah)

Inheritance Calculation				
Inheritance property		Rp.69.750.000,-		
Origin of problem		8		
part		Rp.8.718.750,00,-		
Heirs	Status	inheritance share	Siham	Total Rights Share Inheritance
First son	'Ashabah	2/8	2	Rp.17.437.500,00,-
Second Son	'Ashabah	2/8	2	Rp.17.437.500,00,-
First daughter	'Ashabah	1/8	1	Rp.8.718.750,00,-
Second Daughter	'Ashabah	1/8	1	Rp.8.718.750,00,-
Third Daughter	'Ashabah	1/8	1	Rp.8.718.750,00,-
Fourth Daughter	'Ashabah	1/8	1	Rp.8.718.750,00,-
Total			8	Rp.69.750.000,00,-
remainder			0	Rp.0,00,-

The portion of the husband's heirs, which initially amounted to Rp. can be seen. 63,750,000.00, - (sixty-three million seven hundred and fifty thousand) rupiahs, and get additional grants from the heir's father and mother of Rp. 23,250,000.00 - (twenty-three million two hundred and fifty thousand) rupiahs, so the total money that is the husband's right is Rp. 87,000,000.00,- (eighty-seven million) rupiahs.

The heirs of 6 (six) children, 2 (two) sons, and 4 (four) daughters also receive additional inheritance rights; previously, a son received inheritance rights from his mother, who died in the amount of Rp. 26,562,500.00, - (twenty-six million five hundred sixty-two thousand and five hundred) rupiahs, get additional grants from the father and mother of the heir (grandparents of the heirs) worth Rp. 17,437,500.00 - (seventeen million four hundred thirty-seven thousand and five hundred) rupiahs, so the total that a son gets

is Rp. 44,000,000.00,- (forty-four million) rupiahs.

A female heir who initially received inheritance rights worth Rp. 13,281,250.00,- (thirteen million two hundred eighty-one thousand two hundred and fifty) rupiahs, getting additional grants from his father and grandfather of Rp. 8,718,750.00, - (eight million seven hundred eighteen thousand seven hundred and fifty) rupiahs, so the total assets obtained by a daughter are Rp. 22,000,000.00,- (twenty-two million) rupiahs. Below is listed in the form of a table the rights of each heir left by the wife's heir before the grant from the father and mother of the heir and after the grant, as follows:

Table 6. Grant Calculation according to Heir Part

Heir	Inheritance Right	Grant Right	Total
Father	Rp. 63.750.000,-	Rp. 23.250.000,-	Rp. 87.000.000,-
First son	Rp.26.562.500,-	Rp. 17.437.500,-	Rp. 44.000.000,-
Second Son	Rp.26.562.500,-	Rp. 17.437.500,-	Rp. 44.000.000,-
First daughter	Rp.13.281.250,-	Rp. 8.718.750,-	Rp. 22.000.000,-
Second Daughter	Rp.13.281.250,-	Rp. 8.718.750,-	Rp. 22.000.000,-
Third Daughter	Rp.13.281.250,-	Rp. 8.718.750,-	Rp. 22.000.000,-
Fourth Daughter	Rp.13.281.250,-	Rp. 8.718.750,-	Rp. 22.000.000,-

There are several habits, or it has become a tradition that has been passed down from generation to generation, that the inheritance of the house is prioritized for the smallest part of the child, even though that part is part of his rights as the heir, so that in this case, the ownership of the abandoned house is no longer a conflict, in the sense you can be sure that the house left by the heir will belong to the youngest child, be it a boy or a girl. Even so, it does not necessarily mean that the house left behind becomes the right of the youngest child, but

it is the right in that the youngest child gets a share of the house after deducting his share of the rights from the assets left behind. Suppose the distribution of the youngest child's assets does not exceed the price or value of the house. In that case, the youngest child can be assisted in transferring it to other heirs, which has become a common habit in the Malay community of Batubara Regency.

The practice of sharing inheritance in several forms, according to the conditions of each inheritance problem. If the heir is the wife, the inheritance is immediately divided according to the provisions of Islamic inheritance law; usually, the distribution of the inheritance is the fastest after 40 days and a maximum of 6 (six) months. Second, the husband dies; the inheritance is distributed when the wife or mother of the heir dies; the object of inheritance is considered to be from the wife's inheritance, no longer from the husband's inheritance. In the distribution of inheritance in the form of a house, priority is given to the youngest child or the child who lived with the heir during his lifetime who serves and looks after the heir.

The house is still assessed according to the division of rights of the children living there. If the rights are less than the value of the house, then it often happens that some brothers or sisters donate or give up their share to their younger siblings; if other heirs still want their share of the house, then the youngest sibling or who lives at home can make installment payments, up to an unspecified period. Mastery of the inheritance from the heir (father) is controlled by the eldest son, in the sense that he is the primary determinant of the inheritance. This problem is because many eldest sons want to own land or part of an inheritance. However, it is valued at a lower nominal value than usual, and again it is a problem between the biological families of each heir who is also entitled. Another problem that occurs in dividing inheritance, the heirs of the father or mother, needs to be addressed.

Regarding the practice of sharing inheritance above, there are many problems. If the division of inheritance is ended for too

long, it turns out that there are heirs who have died before their mother. This means the heir who should have inherited the property from his father, in the end, does not get anything and leaves no wealth for his children either. Another problem with the withdrawal is when there are heirs who have minimal lives, so debts are found between poor heirs to wealthy heirs so that some of their rights later become the payment, which ultimately triggers other problems because the value of the money lent is not the same in value, while the rights of the heirs, for example, a plot of land, the higher the price.

There is a transfer of hands of inheritance based on an agreement between the mother and some of the other heirs. Inherited assets, such as land, are controlled by some heirs and sometimes cause conflicts between family members (heirs). Another problem that occurs in dividing inheritance, the heirs of the father or mother, needs to be addressed. Some who understand and understand still inform the father and mother of the heir, and generally, the father or mother of the heir does not take these rights but gives them to other heirs who remain, namely the husband or wife and also the children of the heirs, and the distribution of the grant assets is carried out according to the faraidh portion as well, to facilitate the distribution of the rights of each heir.

Problems arise when the heir's mother dies while the assets are not given to the mother. When the mother dies, the mother's inheritance rights also become inheritance for her children. Ultimately, the nieces and uncles fight over the inheritance each hopes to receive from the heir's legacy. In general, the Malay indigenous people of Batubara Regency still use faraidh law (Islamic inheritance law) as an alternative, not as the primary law that must be implemented. The usual method is carried out by prioritizing deliberations and the most opinions so that heirs who feel alone and have different opinions are often ostracized, even though they need inheritance as a necessity of life because they are still in a shortage.

Distribution of Inheritance according to Customary Law, Islamic Law, and Civil Law

The distribution of Inheritance carried out by the people of Batubara Regency is often carried out in advance by way of deliberation, meaning there is no definite distribution. For example, part of the land on a particular road belongs to the oldest, part of the fields belongs to the youngest child, and so on. When there is a problem, then they use faraidh law. Customary law gives more power to the eldest son (mayorat system) so that it can provide certainty when the distribution of Inheritance is carried out or not, even if most of the Inheritance in the form of land is controlled by the eldest son.

Inheritance in the form of a house, priority belongs to the youngest child or the child who lives in the house and usually takes care of the heir while he is still alive. Being a fixed property right is calculated from the distribution of inheritance rights according to Islamic inheritance law. According to Islamic law, inheritance law has explicitly provided details of each distribution, as stated in QS. An-Nisa'/4:11, 12, and 176, it is just that it does not say when the Inheritance must be divided.

The obligation to hasten the distribution of inherited assets is only found in QS. An-Nisa'/4:2, this also relates to the distribution of Inheritance to orphans, namely heirs who are still small and not yet mumayyiz.

Other sources of inheritance distribution can be seen in the fiqh books of the Shafi'i school of law; then, for convenience, it can also be seen in Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, in Book II concerning Inheritance Law, starting from Article 171, up to Article 209.

KHI stipulates regarding substitute heirs, while classical fiqh and customary law do not recognize this term, then in customary law, it is complicated to ask for the division of Inheritance to be carried out immediately by other heirs. However, in Article 188 KHI, the division of Inheritance can be requested by heirs to distribute to other heirs; if it is not approved, a lawsuit can be filed in court. Civil

inheritance law is only intended for Europeans and non-Muslims used as a reference in the Civil Code. Regarding Inheritance, issues are regulated in Article 830 to Article 1130. Civil inheritance law is known by several terms, heir (erflater), heir (erfgenaam), and inheritance.

There are 8 (eight) characteristics of civil inheritance law, based on the Civil Code, intended for non-Muslims, bilateral; there is no difference in rights between male and female heirs, heirs are closest to the heir, and inherit individually and not in groups. Inheritance can be done when the heir dies, and a dispute is resolved in the local district court, apart from 5 coals. This understanding can damage the order taught by the Prophet SAW in the form of rules and Islamic law. Although many opinions try to castrate inheritance rules, for various reasons, such as the rigidity of distribution patterns, the lack of fair distribution between sons and daughters, as well as other reasons, for Islamic religious leaders, this is all part of efforts to belittle the law of Allah SWT.

Review of Mashlahah and Maqashid al-Syari'ah on Traditional Inheritance Distribution Practices for the Communities of Batubara Regency

Before reviewing the practice of customary inheritance distribution for the people of Batubara Regency, it is necessary to review a little about mashlahah and maqashid al-shari'ah. It is known that sources in Islam are the Koran, hadith, other than such as ijma, qiyas, istihsan, syar'u man'qablana, and also mashlahah is part of the method or istinbath al-ahkam, namely how to issue laws and find laws from an unsolved problem.²⁰ Sharia is obtained from the two primary sources.²¹

The mashlahah method is an attempt to find a law by looking at the good aspects of a

problem, in the sense of getting the law by avoiding harm that will occur.²² The step of discovering law by using the correct maslahah is that it must not conflict with the sharih or qath'i propositions in the Qur'an and the hadiths of the Prophet SAW. The act of deepening and exploring the law is for the sake of achieving maqashid al-shari'ah so that from every aspect of human life, it is in the context of safeguarding things that are dharuriyah al-khamsah in nature, namely in the context of safeguarding religion (hifzh al-din), safeguarding the soul (hifz al-nafs), safeguarding reason (hifz al-aql), protecting offspring (hifz al-nasl), and dharuriyah al-khamsah the last is protecting property (hifz al-mal).²³

The study under study is related to assets; therefore, it cannot be separated from maqashid asy-shari'ah (the purpose of shari'ah), one of which is to protect assets.²⁴ Inheritance is an inherent part related to property, and its nature is transferred from the heir to the heir who is entitled. Each heir has rights and is entitled to keep the property that belongs to him from the heir who has died. Even so, taking rights is not necessarily permissible in Islam, and to defend them, things must be done.

For example, related to the implementation of the distribution of inheritance according to custom, if it does not conflict with the Shari'a, then it is not a problem; of course, there is a benefit to be achieved. However, the benefit to be achieved must be distinct from the explicit texts in the Qur'an,²⁵ such as the rights of the heirs, be it father or mother, husband or wife, and also heirs in the form of offspring from the heir.

So, it is only permissible to say for the sake of benefit by looking at the meaning of the intended benefit and seeing whether it

²⁰ Wahyu Abdul Jafar, 'Kerangka Istinbath Maslahah Mursalah Sebagai Alternatif Problem Solving Dalam Hukum Islam', *Istinbath: Jurnal Hukum*, 13.1 (2016), 89–108.

²¹ M. Fil. I Prof. Dr. M. Noor Harisudin, *Pengantar Ilmu Fiqh, Pengantar Ilmu Fiqh*, 2019.

²² Jafar.

²³ Kasdi.

²⁴ Nasution and Nasution.

²⁵ Said Syaripuddin, 'Maslahat as Considerations of Islamic Law in View Imam Malik', *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 4.1 (2020), 85–106 <<https://doi.org/10.22373/SJHK.V4I1.6754>>.

violates the Shari'ah.²⁶ Ignoring the rights of other heirs, then the benefit is unacceptable, likewise with some practices of inheritance distribution with the customary system that exists in the people of Batubara Regency.

As Thaib explained, mashlahat aims to bring benefits, and there is goodness, not damage and others. Zahrah also conjectured that mashlahah is part of a mujtahid's way of finding a law that does not conflict with syara'.²⁷ That is why some think that the realm of mashlahat is the realm of mu'amalah which cannot be in the realm of worship or in cases that have been clearly regulated in Islamic religious guidelines.

As explained by Asy-Syathibi, there are three kinds of mashlahat itself, there is what is called mashlahah mu'tabarah, mashlahah mulghah, and the last is mashlahah mursalah.²⁸ Regarding the existence of these three kinds of maslahah, Zahrah explained that what is said with maslahah mu'tabarah is a maslahah that has been made clear in the Qur'an and the Sunnah of the Prophet SAW regarding these rules and matters. Next is mashlahah mulghah, namely maslahah that is contrary to the rules in the Shari'at; the third part of mashlahah is mashlahah mursalah, namely a benefit that one wants to aim for, but the rules are not contained in the Qur'an and Sunnah, nor are they contrary to the values contained in both sources.²⁹

Regarding the practice of the customary distribution system implemented by the Malay community of Batubara Regency, several things are outside the objectives of the maqashid asy-syariah, namely, within the context of hifz al-mal.³⁰ The rights of the heirs

specified in the respective sections of the Koran are sometimes neglected. As previously explained, some practices ignore the rights of the heir's father and mother, even though they are people who are entitled to receive inheritance.

Then some practices prolong and postpone the distribution of inheritance, even though other heirs need to receive their share. Reasons that are not under the Shari'ah, because of fear of being said to be crazy about wealth, embarrassment, and others, even disgrace when the mother is still alive, and the assets are divided, which is something that is considered for the benefit of the people of Batubara Regency. Such maslahah is categorized as maslahah mulghah because it contradicts the verses of the Koran. As stated in QS. An-Nisa/4:2, which orders to hasten the division of the rights of orphans from their parents. Even the rights of the father and mother are clearly stated in QS. An-Nisa'/4:11.

Another issue in the spotlight is the problem of neglecting that the share of brothers is greater than that of sisters. It often happens in a society where there is a disregard for the law of Allah SWT, which emphasizes that the share of boys is twice that of girls, as stated in QS. An-Nisa'/4:11, *liz zakari mitslu hazhizhil fortsayayni*. Based on the legal deliberations and agreements that are not carried out by the heirs, even though there are many pearls of wisdom in the existence of Allah SWT's law and Shari'a, because it is men who are responsible for their mothers and also their wives, while women are not responsible for their mothers

²⁶ Aang Abdul Aziz, 'ANALISIS KRITIS HUKUM TERHADAP KEDUDUKAN AHLI WARIS PENGANTI DALAM HUKUM KELUARGA ISLAM DI INDONESIA', *Asy-Syari'ah*, 19.1 (2019) <<https://doi.org/10.15575/as.v19i1.3506>>.

²⁷ Muhammad Hasbulloh Huda, 'KONSEP MASHLAHAH DALAM PEMBAGIAN AHLI WARIS PENGANTI', *MAQASHID Jurnal Hukum Islam*, 2.2 (2019) <<https://doi.org/10.35897/maqashid.v2i2.194>>.

²⁸ M Hasbi Umar, Muhammad Muhammad, and Warfian Saputra, 'Penerapan Mashlahah Mursalah Sebagai Pertimbangan Hakim Dalam

Memutus Perkara Di Pengadilan Agama', *Wajah Hukum*, 4.2 (2020) <<https://doi.org/10.33087/wjh.v4i2.228>>.

²⁹ Achmad Bahrur Rozi, 'Etika Al-Mashlahah: Studi Pemikiran Moral Mohammad Abed Al-Jabiri', *El-Faqih: Jurnal Pemikiran Dan Hukum Islam*, 6.1 (2020) <<https://doi.org/10.29062/faqih.v6i1.104>>.

³⁰ Zaenudin Mansyur, 'IMPLEMENTASI TEORI MAQASHID SYARI'AH ASY-SYATIBI DALAM MUAMALAH KONTEMPORER', *JURISDIKTIE*, 11.1 (2020) <<https://doi.org/10.18860/j.v11i1.7675>>.

and also their husbands. -each, even they become the responsibility of their husbands later in providing a living.

Even if a wife provides alimony to her husband, not the other way around as is expected, that cannot be used as a legal standard because it is partial. The law that Allah SWT has determined is for the public interest and for the benefit of the general public, which usually exists and occurs, so it cannot be a case that slightly changes the shari'a rules that Allah SWT has determined regarding the distribution of inheritance.

Another rule often applied by the people of Batubara Regency is regarding property ownership in the form of a house. Of course, this is a problem in itself; no matter how intense the agreement is, it is inevitable that someone will feel that their rights have been wronged. Therefore, the good that is given to the youngest child, for example, to his parents before he dies, in the form of dedication, service, and so on, is a kindness that Allah SWT rewards because it cannot be linked to increasing their rights in terms of receiving an inheritance so that it is as if they are getting priority and superiority of position compared to his other siblings.

It is feared that this rule will have more severe consequences. Can you imagine if there was an heir who, during his life, was never devoted or served his parents, would he not have the right to inherit? Of course, he still has the right because there is no prohibition from Allah SWT and His Messenger; it is forbidden for that person to receive an inheritance from the heir. For this reason, the issue of inheritance does not correlate with whether or not the child is devoted to the heir, and indeed that is the law and shari'ah of Allah SWT.

Inheritance law contained in the Koran should not be an alternative way of resolving inheritance but absolutely a law that must be applied.³¹ The mistake that occurs a lot is using faraidh law as a final solution after other methods are applied, which leaves many problems.

In mashlahat, most of the models of the distribution of customs and traditions of the Malay community of Batubara Regency are contrary to the objectives of the shari'ah; among them is that the shari'a regulates inheritance law, namely that each party of the heirs knows their rights under Allah's provisions, and not based on the subjective desires or inclinations of each heir.

Maslahah, used as the basis for the distribution of inheritance in the people of Batubara Regency, is mashlahah mulghah because it contradicts the texts of the Koran and the hadiths of the Prophet SAW. In addition, in the maqasid asy-shari'ah scales, regarding the hajiyyat case, namely hifz al-mal, it is not achieved because the division of inheritance creates problems instead of settling assets in a fair way under the will of Allah SWT and the Prophet SAW. In addition, many rights need to be addressed to fulfill the wishes of other heirs because, according to Islamic law, it is contrary to the objectives of the Shari'ah in the distribution of inheritance.

Conclusion

The practice of sharing inheritance in several forms, according to the conditions of each inheritance problem. Among them are: a. Immediate distribution of inheritance, b. Withdrawal of distribution of inherited assets, c. The inheritance house is given priority to the minor heir or one who takes care of the heir, d. The eldest son and Abandonment of the inheritance rights of the father and mother of the heir control mastery of inheritance from the heir (father)

The distribution of inheritance carried out by the people of Batubara Regency was first carried out by way of deliberation, meaning that there is no definite division; when there is a problem, they use the faraidh law. Customary law gives authority to the eldest son (mayorate system), inheritance in the form of a house; priority belongs to the youngest child or the child who lives in the house, and the inheritance distribution

³¹ Arskal Salim, 'Contemporary Islamic Law in Indonesia: Sharia and Legal Pluralism', *Contemporary Islamic Law in Indonesia: Sharia and*

Legal Pluralism, 6 (2015), 1–214
<<https://doi.org/10.1080/14442213.2015.1125772>>.

period is sometimes hastened and postponed. According to Islamic law, inheritance law has explicitly provided details of each distribution, as stated in QS. An-Nisa'/4:11, 12, and 176, it is just that it does not say when the inheritance must be divided. The obligation to hasten the distribution of inherited assets is only found in QS. An-Nisa'/4:2, this also relates to the distribution of inheritance to orphans. Other sources of inheritance distribution can be seen in the books of the Shafi'i school of jurisprudence, then the Compilation of Islamic Law, starting from Article 171 to Article 209. KHI is regulated regarding substitute heirs, while classical fiqh and customary law do not recognize this term. In customary law, it is not very easy to request that other heirs carry out the inheritance distribution immediately. However, in Article 188 KHI, the distribution of inheritance can be requested by heirs to other heirs to be divided up if it needs to be approved. A lawsuit can be filed in court. Civil inheritance law is only intended for Europeans and non-Muslims, are used as a reference in the Civil Code. Regarding inheritance, issues are regulated in Article 830 to Article 1130. Civil inheritance law's characteristics include being based on the Civil Code, intended for non-Muslims, and bilateral; there is no difference in rights between male and female heirs, and disputes are resolved in court country. Another rule in civil law is regarding people prohibited from becoming heirs listed in Article 838 of the Civil Code. There are 4 (four) groups, the first person who kills the heir, the second person who is sentenced to five years in prison for slandering or committing other crimes against the heir, obstructing the heir regarding a will made by the heir, embezzling, or falsifying the will of the heir. Malay customary law and Islamic law are the same regarding people who are prevented from inheriting due to killing, enslaved people, and due to different religions. In contrast, customary law follows the rules of Islamic law in matters of people being prevented from getting an inheritance.

Inheritance law contained in the Koran should not be an alternative way of resolving

inheritance but absolutely a law that must be applied. The mistake that occurs a lot is using faraidh law as a final solution after other methods are applied, which leaves many problems. In mashlahat, most of the models of the distribution of customs and traditions of the Malay community of Batubara Regency are contrary to the objectives of the shari'ah; among them is that the shari'a regulates inheritance law, namely that each party of the heirs knows their rights under Allah's provisions, and not based on the subjective desires or inclinations of each heir. Maslahah, used as the basis for the distribution of inheritance in the people of Batubara Regency, is mashlahah mulghah because it contradicts the texts of the Koran and the hadiths of the Prophet SAW. In addition, in the maqasid asy-shari'ah scales, regarding the hajiyyat case, namely hifz al-mal, it cannot be achieved.

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