

INHERITANCE ANOMALY OF DAUGHTER “BATANG ANGKOLA” BASED ON ISLAMIC LAW AND COMMON LAW

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Abstract: This study aimed to determine and analyze the distribution of Angkola customary inheritance to daughters. The type of research was field research, with a qualitative descriptive method, and the approach used legal sociology and a state approach. In contrast, the data types used consisted of primary and secondary data. The findings were that the kinship system used by the Angkola tribe in the distribution of inheritance adheres to a patrilineal kinship system, so with this patrilineal system, the position and inheritance rights of daughters are not recognized by Angkola custom. Even though they are not classified as heirs, daughters can still get a share of their parent's inheritance utilizing Olong Ate, namely giving love from a brother to his sister without a nominal amount. With the concept of Olong Ate, the share received by Daughter cannot be determined; the share for Daughter may be less, more, or equal to the share for boys. If Daughter's share is equal to or bigger than the boys, then there is a clash between Angkola customary and Islamic inheritance laws.

Keywords: *Common Law, Inheritance; Daughter; Angkola Customs, Islamic Law*

Abstrak: Penelitian ini bertujuan untuk mengetahui dan menganalisis pembagian harta peninggalan adat Angkola kepada anak perempuan. Jenis penelitian yang digunakan adalah penelitian lapangan, dengan metode deskriptif kualitatif, dan pendekatan yang digunakan adalah sosiologi hukum dan pendekatan negara. Sebaliknya, jenis data yang digunakan terdiri dari data primer dan data sekunder. Hasil temuan bahwa sistem kekerabatan yang digunakan suku Angkola dalam pembagian harta warisan menganut sistem kekerabatan patrilineal, sehingga dengan sistem patrilineal ini kedudukan dan hak waris anak perempuan tidak diakui oleh adat Angkola. Meski tidak tergolong ahli waris, anak perempuan tetap bisa mendapatkan bagian dari harta warisan orang tuanya dengan memanfaatkan Olong Ate, yaitu pemberian kasih sayang seorang kakak kepada adiknya tanpa nominal. Dengan konsep Olong Ate, bagian yang diterima Putri tidak bisa ditentukan; bagian untuk anak perempuan mungkin lebih sedikit, lebih banyak, atau sama dengan bagian untuk anak laki-laki. Jika bagian anak perempuan sama atau lebih besar dari anak laki-laki, maka terjadi perselisihan antara hukum adat Angkola dan hukum waris Islam.

Kata kunci: *Hukum Positif, Warisan; Anak perempuan; Adat Angkola, Hukum Islam*



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Introduction

Five recognized legal systems in the world are still being implemented and developed. ¹Some of the systems in question are the Common Law system; countries that adhere to this legal system are the United Kingdom and the countries that were once colonized, which is currently generally joined in the Commonwealth of Nations. Second, the Civil Law system originated from Roman law. It was adopted by Continental Western European countries and brought to several of its former colonies by the former Western colonial governments. Third, the customary law system in several Asian and African countries. Fourth, the Islamic legal system, adherents of this legal system are all Muslims wherever they are, whether it is an Islamic state or a country whose population is not only Muslim. And Fifth, the Communist/Socialist legal system was implemented in several communist/socialist countries.²

Indonesia adheres to three of the five legal systems described above. The three legal systems in question are the civil law system, Islamic law, and customary law. The State of Indonesia explains and emphasizes that Indonesia is a rule-of-law country with these three systems following what is stated in Article 1, paragraph (3) of the 1945 Constitution. The distinctive character of the civil law system is the form of laws or regulations that are written (recorded).) and civil law regulations developed in Indonesia since the Dutch colonial period and persist

today. Even though more or less 72 years ago, the Dutch colonial period had ended, it did not rule out the possibility that the regulations that had been created were not being enforced at this time in Indonesia..³

Inheritance is one of the objects whose law and distribution procedures have been determined by the three legal systems above.⁴The problem that often arises in society regarding inherited objects is the process of dividing them. In Indonesia, the distribution of inheritance can be done in three ways. First, referring to Islamic law; second, to civil law from the Dutch colonial legacy (*Hukum Burgelijk Wetboek / BW*); and Third, to the provisions that apply to the customs of each ethnicity or tribe. So it is not surprising that the practice of dividing inheritance in a way other than the stipulations of Islamic law has often occurred in Indonesia.⁵

As practised by the Angkola indigenous people occurred in the South Tapanuli Regency area. In this case, the author limits and takes case examples from the scope of the Angkola indigenous people in Batang Angkola District. The Angkola indigenous people believe in customary law as the right means to distribute inheritance or inheritance. The kinship system used by the Angkola tribe adheres to a patrilineal kinship system, meaning that the lineage system is followed according to the father's line. The position of men is much more prominent than that of women.⁶

In the traditional Angkola culture, the

¹ Sofyan Hadi, "MENGENAL SISTEM HUKUM INDONESIA (Kajian Perbandingan Dengan Sistem Hukum Lainnya) | DiH: Jurnal Ilmu Hukum" (n.d.), accessed April 5, 2023, <https://jurnal.untag-sby.ac.id/index.php/dih/article/view/2244>.

² Syarif Husien and Akhmad Khisni, "Hukum Waris Islam Di Indonesia (Studi Perkembangan Hukum Kewarisan Dalam Kompilasi Hukum Islam Dan Praktek Di Pengadilan Agama)," *Jurnal Akta* 5, no. 1 (March 5, 2017): 75-86.

³ Fajar Nurhardianto, "SISTEM HUKUM DAN POSISI HUKUM INDONESIA," *Jurnal Tapis: Jurnal Teropong Aspirasi Politik Islam* 11, no. 1 (January 7, 2015): 33-44.

⁴ Agus Sudaryanto, "Aspek Ontologi Pembagian Waris Dalam Hukum Islam Dan Hukum Adat Jawa," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 22, no. 3 (2010): 534-552.

⁵ Komari Komari, "EKSISTENSI HUKUM WARIS DI INDONESIA: ANTARA ADAT DAN SYARIAT," *Asy-Syari'ah* 18, no. 1 (2016): 157-172.

⁶ Maryati Bachtiar, "PENERAPAN SISTEM WARIS PADA MASYARAKAT ADAT MELAYU DI KABUPATEN PELALAWAN," *Jurnal Ilmu Hukum* 11, no. 1 (February 20, 2022): 37-52.

term *Olong Ate* is known, which is used when dividing the inheritance, meaning that it is a gift from a brother to a sister to show affection.⁷ There are no customary provisions governing how large a portion must be given by a brother to his sister, but the type of gift is usually in the form of property that may be used for the rest of his life.⁸

In the conventional inheritance system of Angkola and South Tapanuli, Daughter cannot get a share whose distribution process follows the rules of heirs or is not classified as an heir.⁹ This is because the existence of the daughter is traditionally no longer in her father's house but has moved as a whole to the extended family of her husband.¹⁰ Unless there is a deviation in a family, daughters have the right to become heirs.¹² The deviation in question is if the heir does not have sons.¹³

Research on the inheritance of the Angkola custom has been discussed previously by Raja Ritonga and Martua Nasution with the title "The Inheritance System of the Angkola Batak Muslim Society in a Review of the Qur'an (Comparative Study

of Surah An-Nisa Verses 11, 12 and 176). The findings in this study indicate that the Angkola Batak Muslim community adheres to a patrilineal kinship system; namely, the lineage is taken from the male side. Then at the distribution of inheritance, men have a more dominant role than women. So, male heirs control almost all of the inheritance, while female heirs only get a share in gifts from the group of male heirs. Furthermore, the heirs often delay dividing the inheritance if one of the parents is still alive.¹⁴ Meanwhile, the Qur'an, as the main guideline for Islamic inheritance law, is present by giving portions to each heir following the provisions of Allah SWT, namely with provisions on the portion size that is not based on early and large age. Then strictly Islamic inheritance law stipulates that every time there is a death, a determination of the share of each heir must be carried out.¹⁵

Based on the explanation above, this research differs from previous research using the Al-Qur'an perspective. At the same time, this research uses two approaches: Islamic law and customary law. The inheritance of

⁷ Munarif Munarif and Asbar Tantu, "HUKUM WARIS ISLAM DAN HUKUM WARIS PERDATA DI INDONESIA (STUDI PERBANDINGAN)," *AL-MASHADIR: Jurnal Ilmu Hukum dan Ekonomi Islam* 4, no. 2 (July 30, 2022): 138–156.

⁸ Augustini Soedarsih Situmorang, "PELAKSANAAN HUKUM WARIS ADAT MASYARAKAT BATAK TOBA DI KOTA PONTIANAK BERDASARKAN TAP MPRS NO. II TAHUN 1960 DAN PUTUSAN MAHKAMAH AGUNG NO 179K/SIP/1961," *Jurnal Hukum Prodi Ilmu Hukum Fakultas Hukum Untan (Jurnal Mahasiswa S1 Fakultas Hukum) Universitas Tanjungpura* 5, no. 1 (May 8, 2017), accessed April 5, 2023, <https://jurnal.untan.ac.id/index.php/jmfh/article/view/20003>.

⁹ Vincentius Setyawan, "Pancasila As A Philosophical Basis Of Law Formation In Indonesia," *NUSANTARA: Journal Of Law Studies* 2, no. 1 (March 15, 2023): 1–8.

¹⁰ Wahyuziaulaq Wahyu and Ahmad Azmi Perkasa Alam, "Interfaith Marriage Perspective of Fiqh Law and Positive Law," *NUSANTARA: Journal Of Law Studies* 1, no. 1 (December 16, 2022): 33–39.

¹¹ Pani Akhiruddin Siregar, Eka Pertiwi Viranda, and Nilna Mayang Kencana Sirait, "PEMAHAMAN MASYARAKAT MUSLIM DESA MANGKAI BARU TENTANG HUKUM PEMBAGIAN KEWARISAN," *Al-Mustashfa: Jurnal Penelitian Hukum Ekonomi Syariah* 7, no. 1 (June 27, 2022): 62–73.

¹² Abdul Hakim, "Maxim Law Fiqh And Its Application During The Covid-19 Pandemic," *NUSANTARA: Journal Of Law Studies* 1, no. 1 (December 14, 2022): 1–8.

¹³ Wahila N. Sianturi et al., "KEDUDUKAN PEREMPUAN DALAM HUKUM WARIS ADAT BATAK TOBA (DESA UNTEMUNGKUR KECAMATAN MUARA)," *JURNAL RECTUM: Tinjauan Yuridis Penanganan Tindak Pidana* 5, no. 1 (December 31, 2022): 406–424.

¹⁴ Chamim Tohari, "SISTEM KEWARISAN BILATERAL DITINJAU DARI PERSPEKTIF HUKUM ISLAM," *Istinbath: Jurnal Hukum* 15, no. 1 (July 9, 2018): 63–90.

¹⁵ Raja Ritonga and Martua Nasution, "Sistem Waris Masyarakat Muslim Batak Angkola Dalam Tinjauan Alqur'an," *Asy-Syari'ah: Jurnal Hukum Islam* 7, no. 2 (June 25, 2021): 209–233.

the *Olong Ate* custom is a rule that is believed by the Angkola custom and enforced to obtain the share of inheritance for daughters, so here the author is very interested in further researching the inheritance cases of daughters that occurred in Batang Angkola District.

Literature Review

The customary inheritance legal system is influenced by societal patterns and forms, which are based on genealogical and territorial factors.¹⁶ therefore, every kinship system that exists in Indonesian society has a different characteristic or pattern, and each is different.¹⁷ This difference is seen in Table 1. below¹⁸

Table 1. Traditional Inheritance System

No	Customary Inheritance System	Information
1	Patrilineal system	A legal system that draws lineage based on the father's (male) lineage. The heir is a son, an example of the Batak tribe.
2	Matrilineal system	A family system that draws the lineage from the mother's side (female), daughters

¹⁶ Muhamad Imam Muddin, "Inheritance System Mayorat on the Komering Tribe in Urf Perspective," *NUSANTARA: Journal Of Law Studies* 1, no. 1 (December 16, 2022): 21–32.

¹⁷ M. Syaikhul Arif, "MENGENAL SISTEM HUKUM WARIS ADAT," *Siyasah: Jurnal Hukum Tata Negara* 5, no. 1 (July 29, 2022), accessed April 5, 2023, <https://ejournal.an-nadwah.ac.id/index.php/Siyasah/article/view/420>.

¹⁸ Laras Shesa, Oloan Muda Hasim Harahap, and Elimartati Elimartati, "Eksistensi Hukum Islam dalam Sistem Waris Adat yang Dipengaruhi Sistem Kekerabatan Melalui Penyelesaian al-Takharuj," *Al-Istinbath: Jurnal Hukum Islam* 6, no. 1 May (May 25, 2021): 145–164.

¹⁹ Gisca Nur Assyafira, "WARIS BERDASARKAN HUKUM ISLAM DI INDONESIA," *Al-Mashlahah Jurnal Hukum*

		are more prominent than sons, and the heirs are daughters (Minangkabau)
3	Bilateral/Parent system	The family system draws a line of descent from both sides of the father or mother. Boys and Daughters are the same, which is both the same.

In Islam, there is only one inheritance system, namely the bilateral one. Islamic inheritance law regulates the transfer of property from someone who has died to someone still alive.¹⁹ Various names call these rules regarding the transfer of property. In the Islamic legal literature, several terms are found to name inheritance laws, such as *Fara'id*, *Fiqh Mawaris*, and legal inheritance.²⁰ The form of inheritance or inheritance according to Islamic law is very different from the form of inheritance according to Western law as regulated in BW and customary inheritance law.²¹ According to Islamic law, inheritance is "several properties and all the rights of those who died in a clean condition". And other payments caused by the death of the heir".²²

Islam dan Pranata Sosial 8, no. 01 (May 26, 2020): 68–81.

²⁰ Ahmad Fatoni, Muhamamd Zainuddin, and Marwan Hakim, "SISTEM PAKAR PEMBAGIAN HAK WARIS BERDASARKAN HUKUM ISLAM BERBASIS ANDROID DENGAN METODE FORWARD CHAINING," *TEKNIMEDIA: Teknologi Informasi dan Multimedia* 2, no. 2 (2021): 104–111.

²¹ Meta Riskia, "Implementation Of Mudharabah Financing On Baitul Maal According Majelis Ulama Indonesia," *Journal of Nusantara Economy* 1, no. 1 (December 9, 2022): 1–13.

²² Afidah Wahyuni, "Sistem Waris Dalam Perspektif Islam dan Peraturan Perundang-undangan Di Indonesia," *SALAM: Jurnal Sosial dan Budaya Syar-i* 5, no. 2 (August 17, 2018): 147–160.

Method

The type of research that the authors use is field research with a qualitative descriptive method,²³ namely the data that researchers obtain from the field will be examined and analyzed again to produce factual data for this study.²⁵ The approach used is the sociology of law (Socio-Legal)²⁶ and statutory approach (State Approach).²⁷

In determining an informant using the purposive sampling technique.²⁸ The informants in this study are; Traditional Leaders, Religious Leaders, and the Community of Batang Angkola District. The data type used consisted of primary data from research informants through interviews and observation and secondary data from the Batang Angkola sub-district office, books, journals, and other supporting data. The location of this research is in the Batang Angkola sub-district with a focus on the Angkola ethnic group, whose distribution is quite wide, making it easier for researchers to extract data that is appropriate to the

research problem.²⁹ The object of this research is the inheritance of the Angkola indigenous daughter. In contrast, the research subject is the Angkola indigenous people, who are directly involved in the distribution of inheritance..

Results and Discussion

Inheritance Rights of Daughter in Islamic Law

In the past, among the Pre-Islamic Jahiliyah, not only in the Arabian Peninsula,³⁰ they did not give inheritance to women and children (both men and women) at all, but only gave an inheritance to the male line with the male record. has matured and his strength can be relied upon in fighting on the battlefield.³¹ To renew the customary law of Pre-Islamic ignorance,³² the Koran lowered several verses regarding inheritance and one of the inheritance verses referred to is in surah an-Nisa verse 7.³³ The background to the revelation of this verse is following the existing history regarding the case of Aus bin

²³ Desy Maryani et al., "A Model of Implementing Restorative Justice Perspective of Trong Yowari Traditional Jurisdiction, Jayapura Regency," *NUSANTARA: Journal Of Law Studies* 2, no. 1 (March 27, 2023): 40–51.

²⁴ Kusdiyana, Samsudin, and Muhammad Wildan Nur Akmal, "Accuracy of Qibla Direction Mosque at Rest Area Toll Road on the Qibla Jurisprudence Perspective," *NUSANTARA: Journal Of Law Studies* 2, no. 1 (March 19, 2023): 31–39.

²⁵ Robi Musthofa Al Ghazali, "Boarding House Rent Refunds During Covid 19 Based On Sharia Economic Law," *Journal of Nusantara Economy* 1, no. 1 (December 10, 2022): 38–47.

²⁶ Wahyu Ziaulhaq, "Buying and Selling Used Clothing: An Islamic Economy Law Perspective," *Journal of Nusantara Economy* 1, no. 1 (December 10, 2022): 29–37.

²⁷ Muhammad Kurtubi, "Child Playing Online Game in the Sadd Al-Zari'ah's Perspective," *NUSANTARA: Journal Of Law Studies* 1, no. 1 (December 14, 2022): 9–20.

²⁸ Suwarjin, "Contextualization of Employment of Zakat Form The Perspective of Mafhum Muwafaqah," *NUSANTARA: Journal Of Law Studies* 2, no. 1 (March 31, 2023): 62–69.

²⁹ Faiz Zainuddin and Imam Syafi'i, "Environmental Jurisprudence; Environmental Preservation Efforts In Islam," *NUSANTARA: Journal Of Law Studies* 2, no. 1 (March 18, 2023): 23–30.

³⁰ Asrizal Saiin, "MENELAAH HUKUM WARIS PRA-ISLAM DAN AWAL ISLAM SERTA PELETAKAN DASAR-DASAR HUKUM KEWARISAN ISLAM," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 9, no. 1 (March 1, 2017): 125–138.

³¹ Muhammad Fitri Adi, "Hadhonah Rights of Children (Not Mumayyis) Based on Compilation of Islamic Law and Child Protection Act," *NUSANTARA: Journal Of Law Studies* 2, no. 1 (March 15, 2023): 9–22.

³² Amhar Maulana Harahap and Junda Harahap, "PENERAPAN KEWARISAN ISLAM DALAM SEJARAH, HUKUM DAN ASAS-ASASNYA," *El-Ahli: Jurnal Hukum Keluarga Islam* 3, no. 2 (December 28, 2022): 181–193.

³³ suryaningsih, "Impact of Gadget Addicts on Family Harmony Perspective of Islamic Law," *NUSANTARA: Journal Of Law Studies* 1, no. 1 (December 16, 2022): 50–64.

Thabit al-Ansari.³⁴ He was a war hero of Uhud who died leaving several heirs, namely; one wife (Ummu Kahah/Kuhlah), two younger brothers (Arjafah/Arfajah, and Suwa'id) are the uncle of the children of Aus, and three daughters. Following the customary law of Arab Jahiliyah inheritance, only his two younger siblings are entitled to inherit Aus' property, while his wife and three children are not entitled to a share of his inheritance.³⁵

Seeing the injustice in obtaining this inheritance, Umm Kahah (Aus' wife) fought for her women's rights by advocating for the Prophet Muhammad. He told all the sadness and injustice that was felt.³⁶ Starting from the absence of inheritance rights for him, especially for his three daughters, who are still Daughters, even at an early age. Upon Umm Kahah's complaint, the Prophet summoned Suwaid and Arjafah to ask about this. They answered the Apostle "that those who are entitled to receive an inheritance are only male heirs who can find food and face the battlefield, while they (Umm Kahah and her three daughters) are unable to carry weapons in war".³⁷

³⁴ Naskur Naskur, "AHLI WARIS DALAM KOMPILASI HUKUM ISLAM," *Jurnal Ilmiah Al-Syir'ah* 6, no. 2 (September 6, 2016), accessed April 5, 2023, <https://journal.iain-manado.ac.id/index.php/JIS/article/view/251>.

³⁵ Riana Kesuma Ayu, "Kedudukan Pembagian Harta Warisan Bagi Ahli Waris Khuntsa Dalam Perspektif Kemajuan Teknologi," *Lambung Mangkurat Law Journal* 5, no. 2 (September 30, 2020): 190–202.

³⁶ Maulana Iqbalwa, "Practice Brokerage Services for the Sale and Purchase of Coffee from the Perspective of Syari'ah Economics," *NUSANTARA: Journal Of Law Studies* 1, no. 1 (December 16, 2022): 65–76.

³⁷ Ersya Susanti, Adelina Hasyim, and Yunisca Nurmalisa, "Pemahaman Masyarakat Terhadap Pembagian Waris Menurut Hukum Waris Islam Di Desa Banjar Ratu," *Jurnal Kultur Demokrasi* 5, no. 4 (April 27, 2017), accessed April 5, 2023, <http://jurnal.fkip.unila.ac.id/index.php/JKD/article/view/12637>.

³⁸ Siti Afifah Nurullah, "Practice Services Between Sale and Purchase of Coffee Syari'ah

For the answers given by Suwaid and Arjafah, he received a revelation in this case that Allah revealed the verse of the Koran in Surah an-Nisa verse 7.³⁸ The revelation of this verse abolished (*Mansukh*) the customary inheritance law of ignorance as explained above. So this is where the role of Islamic law is seen as a guard in taking away the inheritance rights of daughters to the inheritance of their parents.³⁹

After the verses of the Koran regarding inheritance were revealed, the provisions regarding inheritance distribution received great attention because inheritance distribution often had unfavourable consequences.⁴⁰ So that the parts of the inheritance which are the rights of the heirs are determined in detail in the Qur'an properly, wisely, and fairly.⁴¹

This provision relates to the transfer of property belonging to a person left after death to his heirs, whether the heirs are male or female. The provisions regarding inheritance law are based on QS An-Nisa' (4) paragraph 11:⁴²

Economic Perspective," *Journal of Nusantara Economy* 1, no. 1 (December 10, 2022): 14–28.

³⁹ Muhamad Faisal Tambi, "STUDI KOMPARASI PEMBAGIAN WARISAN MENURUT HUKUM ISLAM DAN HUKUM ADAT," *LEX PRIVATUM* 6, no. 9 (2018), accessed April 5, 2023, <https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/25824>.

⁴⁰ Musda Asmara and Lilis Sahara, "Problems with Choosing a Mate in Islam for People Who Choose a Mate through Social Media," *NUSANTARA: Journal Of Law Studies* 1, no. 1 (December 16, 2022): 40–49.

⁴¹ Dewi Noviarni, "KEWARISAN DALAM HUKUM ISLAM DI INDONESIA," *'Aainul Haq: Jurnal Hukum Keluarga Islam* 1, no. 1 (June 30, 2021): 62–75.

⁴² Kamaruddin Kamaruddin, "PENERAPAN WASIAT WAJIBAH BAGI AHLI WARIS NON MUSLIM (STUDI KASUS PERKARA NO.16K/AG/2010)," *JURNAL ILMIAH MIZANI: Wacana Hukum, Ekonomi, dan Keagamaan* 2, no. 2 (February 5, 2020), accessed April 5, 2023, <https://ejournal.iainbengkulu.ac.id/index.php/mizani/article/view/79>.

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمُ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ ۚ فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ ۚ وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ ۚ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ ۚ وَلَدٌ فَإِنْ لَمْ يَكُنْ لَهُ ۚ وَلَدٌ وَوَرَثَهُ ۚ أَبَوُهُ فَلِأُمِّهِ الثُّلُثُ ۚ فَإِنْ كَانَ لَهُ ۚ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ ۚ أَبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفَعًا ۚ فَرِيضَةٌ مِّنَ اللَّهِ ۚ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا (١١)

Meaning: Allah prescribes (obliges) you regarding (the distribution of inheritance for) your children, (namely) the share of a son is equal to the share of two daughters. If the children are all Daughter with more than two in number, their share is two-thirds of the assets left behind. If she (the daughter) is only one, she gets half (the property left behind). For both parents, each share is one-sixth of the assets left behind, if he (the deceased) has children. If he (the deceased) has no children and he is inherited by both parents (only), his mother gets one-third. If he (the deceased) had several brothers, his mother got one-sixth. (The inheritance is divided) after (fulfilled) the will he made or (and paid off) the debt. (About) your parents and your children, you do not know which of them is of more benefit to you. This is Allah's decree. Verily, Allah is All-Knowing, All-Wise.

The explanation of the verse above states that Allah determines the division of inheritance into three groups: boys, Daughters, and a mix of boys and daughters.⁴³ Besides the above verses, Koranic verses related to Islamic inheritance law are found in QS. An-Nisa (4) verses 7, 8, 12, 33, 176, 180, and 240. While the verses relating to the

position of adopted children in inheritance are found in QS. al-Azhab (33) verse 4.⁴⁴

The hadith also explains the inheritance of daughters. The hadith was narrated by Ibn Mas'ud which reads;

قَضَى النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لِلْإِثْنَيْنِ بِنْتِ النَّصْفِ وَلِإِبْنَتِ ابْنِ السُّدُسِ تَكْمِلَةَ الثَّلَاثِينَ وَمَا بَقِيَ فَلِلْأُخْتِ ۚ

It means: Prophet, peace be upon him. Set 1/2 for daughters and 1/6 for granddaughters (from sons) to complement the 2/3 part, the rest for sisters.

According to A. In his book *Al-Fara'id*, Hasan clearly explained the provisions regarding the portion of inheritance for daughters according to their circumstances. The details are shown in the table below.

Table 2. Share of inheritance for daughter

No	Inheritance Section	The conditions
1	Half	If a person dies, he does not leave heirs but only a daughter
2	Two-thirds	If someone leaves two daughters and does not leave a son
3	Ashobah ma'al Ghair	Suppose someone leaves a daughter and a son. Boys get two parts, while daughters only get one part.

Based on the explanation, along with the legal basis for inheritance as described above, provides concrete evidence of the position and rights of daughters as the heirs

⁴³ Dwi Astuti Wahyu Nurhayati and Novi Tri Oktavia, "Relevance Of Al Mawardi's Reflection In The Development Of Islamic Economic Activities," *Journal of Nusantara Economy* 1, no. 1 (December 10, 2022): 48-58.

⁴⁴ Rizfitriani Alamsyah and Toha Andiko, "Analysis of Inheritance Division Based on Deeds Made Before Notary Perspective Sadd Adz-Dzari'ah (Study at Notary Office of

Bengkulu City)," *JURNAL ILMIAH MIZANI: Wacana Hukum, Ekonomi, dan Keagamaan* 8, no. 1 (October 1, 2021): 55-84.

⁴⁵ Narrated by Imam Bukhari in the *Faraa'id Book*, chapter inheritance of granddaughters along with daughters, Hadith Number 6736, See al-'Askalani, *Fathu al-Bari bi Syarhi Shahih al-Bukhari*, Volume XII, p. 18-19.

of both parents. However, what distinguishes it is that the share that daughters get is smaller than that of boys. In short, Islamic law explains that the share of one son is equal to that of two daughters⁴⁶

According to the majority of scholars, there are 3 reasons why someone inherits the property of someone who has died, namely, kinship, marriage, and *wala'*.⁴⁷ The Malikiyah and Syafi'iyah scholars gave an additional reason to obtain inheritance rights, namely the Islamic path (Islamic relations).⁴⁸ In addition to the causes of inheritance, Islamic law also regulates several causes that cancel or prevent an heir from being entitled to his inheritance rights.⁴⁹ Factors that can hinder inheritance are actions or things that invalidate a person's right (heir) to receive an inheritance and the causes and conditions for inheriting. Three things can hinder inheritance in Islam, agreed by the jurists: murder, religious differences, and slavery.⁵⁰

Inheritance Rights of Angkola Indigenous Daughter

The Angkola tribe, or Angkola Batak, is one of the largest tribes in the Angkola area, South Tapanuli, and the Padangsidempuan city area, North Sumatra Province. The Angkola Batak tribe has a kinship relationship with the Toba Batak and Mandailing Batak clans. The Angkola Batak and the Angkola Batak have their objects if it is said that the Angkola Batak means a broad customary area in the Southern Part of Tapanuli. If it is

called Batang Angkola, it means one of the names of the sub-districts in South Tapanuli Regency, namely Batang Angkola District. Batang Angkola District is one of 15 Districts in South Tapanuli Regency. Batang Angkola District is Main District whose formation has existed since Tapanuli Regency South is formed. According to the data the researchers obtained in 2021, Batang Angkola District consists of 21 villages and most Angkola Customs adhere to Islam.⁵¹

The Angkola Indigenous People are well-known for the thickness of their customs and religion. The community also highly upholds Islamic values in everyday life. Many Islamic education and study institutions established within the region's scope and outside the Batang Angkola District area clearly show that the Angkola indigenous people are diligent about their religious rules.

The obedience of the Angkola indigenous people to religion does not defeat obedience to the customary rules that apply to them. As indigenous peoples in general, the Angkola indigenous people also have rules for transferring ownership of inherited assets to their heirs. All heirs in Angkola customary law are relatives of the men as in the patrilineal kinship system. Following Angkola customary rules, the heirs who are entitled to receive the inheritance are; 1) The heir's male offspring, 2) The heir's father, 3) The heir's father's brother, 4) The heir's grandfather, 5) The heir's father's brother, 6) The ancestors, clan, and as big as the heir,

⁴⁶ Nur Aksin, Rahmat Robi Waliyansyah, and Nugroho Dwi Saputro, "Sistem Pakar Pembagian Harta Waris Menurut Hukum Islam," *Walisono Journal of Information Technology* 2, no. 2 (December 31, 2020): 115-124.

⁴⁷ Yusi Tasika and Giyarsi Giyarsi, "The Effectiveness of the Discussion Method to Increase Students' Understanding and Activeness in Islamic Religious Education Subjects," *Nusantara Education* 1, no. 1 (December 15, 2022): 81-93.

⁴⁸ khairudin Khairudin, "The Practice of Buying and Selling Black Market Goods on The Perspective of Islamic Economic Law," *NUSANTARA: Journal Of Law Studies* 1, no. 1 (2022): 77-85.

⁴⁹ Azwar Fajri, "IJTIHAD TENTANG KEWARISAN CUCU DALAM HUKUM ISLAM DI INDONESIA," *Jurnal Ilmiah Islam Futura* 11, no. 2 (February 1, 2012): 100-122.

⁵⁰ Muhammad Alwin Abdillah and M. Anzaikhan, "Sistem Pembagian Harta Warisan Dalam Hukum Islam:," *Al-Qadha: Jurnal Hukum Islam dan Perundang-Undangan* 9, no. 1 (June 30, 2022): 285-305.

⁵¹ Dian Kemala Dewi, "HAK WARIS PEREMPUAN MENURUT HUKUM ADAT BATAK TOBA SEBELUM DAN SESUDAH KELUARNYA KEPUTUSAN MA. NO. 179K/SIP/1961," *Warta Dharmawangsa* 14, no. 4 (October 1, 2020): 585-601.

7) Huta (Village).⁵²

Whereas daughters do not have the slightest right to inheritance, even though they can get a share of the property, the property received is not an inheritance but a gift from a brother (brother or sister) to his sisters. Giving inheritance like this, the local indigenous people call it *Olong ate*, which means giving to show affection. The amount given to the sister is not stipulated by customary law, but the gift from the brother to the sister must be in the form of property that can be used for the rest of his life.⁵³

Mr. Inggou Daulay⁵⁴ explained that according to the Angkola traditional belief, the reason a Daughter is not entitled to receive the inheritance of their parents or is not classified as an heir is because one day a Daughter will marry a man of her choice, after marriage, the lineage of the daughter who starts at the beginning of her lineage will switch to her parents then turned to her husband. So that the husband, who has the right to be responsible physically and spiritually, is not his parents.

The same matter was also explained by one of the older traditional leaders in the area, that following the customary law in force, the distribution of inheritance fell only to sons and not to daughters. Suppose a daughter insists on asking for a share of the inheritance from her parents. In that case, the customary sanctions set by the local Angkola indigenous people will apply, namely that the daughter will be excluded from her family lineage according to custom.⁵⁵ And if a daughter demands the inheritance of her parent's house in her own right, then according to the beliefs and provisions of the

applicable Angkola customary sanctions the daughter must be expelled from the inheritance house with no respect. Because actually, the parental inheritance house is a part for the youngest son, which may not be handed over to anyone, especially to daughters, whether they are the oldest child, middle child, or youngest child.⁵⁶

Analysis of Angkola Traditional Anomaly Study Practices in Barang Angkola District

The Angkola indigenous people who live in the Batang Angkola sub-district, in particular, are a group of people who obey all legal regulations that apply in their area, be it religious law regulations, customary law, and also positive law. As we know that people who live in rural areas are usually people who are still strong in their customary rules.⁵⁷

According to the Angkola indigenous people who live in Batang Angkola District, inheritance is an object whose distribution process is still under the auspices of customary law. *Olong Ate* is a term the Angkola custom uses to obtain a daughter's share of the inheritance. Even though the position of a daughter is not recognized as an heir, with *Olong Ate*, the daughter gets a share of her parent's inheritance.

The side of the conflict between the customary rules of Angkola and Islamic law is the customary provisions that decide that daughters are not heirs. This decision seemed to go back to the pre-Islamic era of ignorance, which did not recognize daughters as heirs and seemed to contradict Islamic rules, which were written in the Koran Surah An-Nisa verses 7 and 11. The contents of these verses explain the position and rights

⁵² Parsadaan Marga Harahap Dohot Anakboruna in Jakarta Sahumaliangna, *Horja: Customs of Dalihan Na Tolu*, (Bandung: Grafitri, 1993), h. 532.

⁵³ Parsadaan Marga Harahap Dohot Anak Boruna Horja, (Bandung: Grafitri, 1993), h. 537.

⁵⁴ Inggou Daulay, *Pintu Padang I Village Community*, Personal Interview, on August 13 2022, Time: 11.17 WIB.

⁵⁵ Elisa Claudia Gultom, "STUDI KOMPARATIF TERHADAP KEDUDUKAN HAK WARIS ANAK PEREMPUAN BATAK

DALAM HUKUM WARIS ADAT DENGAN HUKUM NASIONAL," *Jurnal Serambi Hukum* 14, no. 01 (January 29, 2021): 10-19.

⁵⁶ Amiruddin Harahap, *Traditional Leader*, Personal Interview, on 13 August 2022, Time: 12.57 WIB.

⁵⁷ Salsabilla Alfida Wulandari et al., "KAJIAN HUKUM ADAT JAWA DAN BATAK TERHADAP AHLI WARIS ANAK LUAR KAWIN," *LONTAR MERAH* 3, no. 1 (June 28, 2020): 239-252.

of a daughter as an heir.⁵⁸

The Compilation of Islamic Law as a collection of Islamic law written and compiled regularly and enforced in Indonesia also strengthens the position and rights of Daughters as heirs. It coincides with Article 174, which explains the groups of heirs, which consist of blood and marriage relations. According to the blood relationship, the first is from the male group (father, son, brother, uncle, and grandfather), and the second is from the female group (mother, Daughter, sister, and grandmother). Furthermore, Article 176 KHI explains the amount of the share that a daughter heir obtains.⁵⁹ Following the contents of the article that the share of the Daughter, if there is only one, is 1/2 if two Daughters or more, then get 2/3 together, and if the Daughter is with boys then the share of boys is 2:1 with the Daughter.⁶⁰

law then the distribution must match the nominal value. While the division of inheritance in this area is still in the form of objects, it is difficult if the inheritance distribution is adjusted according to the actual *faraidh* law. However, in practice, men's share is more than women's, and there must be a sense of agreement with the heirs. This is because the Batang Angkola sub-district division still uses customary law. If the inheritance is a rupiah, the distribution will be carried out using *faraidh* law. If the type of inheritance is in the form of objects or goods, then the distribution must follow applicable customary law.⁶¹

leaders and traditional leaders. Where if the conclusion is drawn from the explanation

of the religious leaders of Batang Angkola Sub-District that the distribution of inheritance in the area does use not only customary law but also applies *faraidh* law. *Faraidh* law is used if the inheritance is in the form of a rupiah, and the distribution is according to customary law if the inheritance is in the form of objects. Moreover, the researcher also concluded that daughters have rights and position as heirs with the sentence put forward by a religious figure "that the share of sons must be greater than that of daughters".⁶²

Contrary to what traditional leaders and some community members conveyed, the researchers obtained data through interviews. The division of inheritance in the Batang Angkola sub-district still uses customary law. The name that applies to the Angkola custom is "Olong Ate," which means the gift of affection a brother gives to his sister. A daughter is not allowed to play a role when her brothers distribute her parents' inheritance because the daughter's share will be given after the brothers have finished discussing the distribution.⁶³

From the counter perspective between traditional leaders and religious leaders in Batang Angkola Subdistrict, the researcher can draw a finding that the invalidity of the position and rights of daughters in the distribution of Angkola customary inheritance is not merely not getting a share of the inheritance inherited from their parents. The daughter still gets a share that comes from the share of each side of her brother, which is set aside and then given to her sister. Even though they call this gift a

⁵⁸ Sakirman Sakirman, "Konvergensi Pembagian Harta Waris Dalam Hukum Islam," *Al-'Adalah* 13, no. 2 (2016): 155-164.

⁵⁹ Wahyu Abdul Jafar, "Legality Of Halal Food Certification On Masalah Mursalah Perspective," *JURNAL ILMIAH MIZANI: Wacana Hukum, Ekonomi, dan Keagamaan* 9, no. 1 (August 16, 2022): 95-108.

⁶⁰ Islamic Law Compilation Act, Book II; Inheritance, (Bandung: Fukosindo Mandiri, 2013), h. 67-69.

⁶¹ Ismail Harahap, *Religious Figure*, Personal Interview, on 20 August 2022, Time: 15.24 WIB.

⁶² Siti Osadanaros Delima, Agung Basuki Prasetyo, and Sri Wahyu Ananingsih, "PERKEMBANGAN HAK WARIS PEREMPUAN PADA SISTEM KEKELUARGAAN PATRILINEAL BATAK (STUDI KASUS PUTUSAN NO.583/PDT.G/2011/PN.JAKSEL)," *Diponegoro Law Journal* 5, no. 2 (March 24, 2016): 1-17.

⁶³ Rimenda Aminarosa Sitepu, "EKSISTENSI AHLI WARIS DALAM HUKUM ADAT BATAK KARO DI SURABAYA," *NOVUM: JURNAL HUKUM* 5, no. 3 (July 15, 2018): 120-128.

form of a man's love for his sister, the property that a daughter receives is an inheritance from her parents. As if the term *Olong Ate* in the Angkola custom is a *qiasan* for mentioning daughters' inheritance.⁶⁴

If *olong ate* a way of obtaining a daughter's share of the inheritance, it is not certain whether the share received by the daughter is less or more, or it could be equal to the son's share. So that the concept of *olong ate* applied by the Angkola custom can have a legal influence on the inheritance of Islamic law.⁶⁵

Following the provisions of Islamic law written in the Koran as a source of Islamic law and the KHI as a guideline for Islamic law in Indonesia, the proportion of male children is greater than that of female children, which, when compared, becomes 2:1. So that if the division of Angkola's ancestral inheritance using the concept of *olong ate* allows for a shift in the provisions of Islamic inheritance law with the 2:1 provision..

Conclusion

The Angkola indigenous people who live in the Batang Angkola sub-district, in particular, are a group of people who obey all legal regulations that apply in their area, be it religious law regulations, customary law, and also positive law. The people of Batang Angkola sub-district still use customary law to divide an inheritance. *Olong Ate* is a term used by the Angkola custom to obtain a daughter's share of the inheritance, even though the position daughter is not recognized as an heir. However, with *Olong Ate*, the daughter gets a share of the inheritance left by her parents.

The customary provisions of Angkola, which apply *Olong Ate* as a way of obtaining the inheritance share of daughters, cannot be determined whether the share received by daughters is less, more, or maybe equal to

that of sons. If the share that daughters get is equal to or bigger than boys, then there is a violation of Islamic law. The provisions of Islamic law written in the Islamic Koran and KHI as guidelines for Islamic law in Indonesia show that the share of boys is greater than that of Daughter, which, when compared, becomes 2:1.

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⁶⁴ Widodo Ramadhana and Sahala S. O. R. Lumbantoruan, "HARTA WARIS PADA PASANGAN YANG TIDAK MEMILIKI KETURUNAN MENURUT HUKUM ADAT BATAK TOBA," *Mizan: Jurnal Ilmu Hukum* 11, no. 1 (June 15, 2022): 52–56.

⁶⁵ Septia Alamanda and Akmal Akmal, "Penerapan Hukum Waris Islam Dalam Pembagian Harta Warisan Di Nagari Ujung Gading," *Journal of Civic Education* 4, no. 4 (December 30, 2021): 307–311.

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