

Analysis of Patterns for Inheritance Dispute

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Analysis of Patterns for Inheritance Dispute Settlement in the Tradition of Sasak Community in Lombok

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Abstract

There are several ways conducted by Muslims in solving the problem of inheritance division in Lombok. This article aimed at looking at several patterns of inheritance dispute resolution in the Lombok people tradition (Sasak community. It is derived from qualitative field research³ by using both theoretical and empirical legal approaches. The data was obtained using observation, interview, and documentation techniques. Lombok people often postpone dividing the inheritance, which eventually causes problems. According to Lombok customary law, postponing inheritance is carried out due to several cultural factors, i.e.: the existence of the parent (either father or mother), the existence of the heirs, and the condition of the heirs. Apart from these factors, several consequences arise including loss of ownership rights, changes in inheritance portion, loss of inheritance rights, vulnerability to manipulation, and triggering family conflicts. The results indicate that: first, the inheritance land division is conducted in different ways such as grants, discussion, and faraid. Second, factors influencing the land dispute cases are greed³ and lack of information about the inheritance legal system. Third, revitalization is important because it is ruled out in Islamic teachings and is considered absolute for Islam society. This research concludes that the Islamic Inheritance legal system is the proper method to settle land disputes in the Sasak community.

Keywords: *Islamic inheritance, postponing inheritance, settlement of inheritance disputes.*

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Introduction

Inheritance in sharia jurisprudence is a very fundamental and crucial issue, it is fundamental because the al-Qur'an was written detail and specific, crucial because the issue of inheritance has a direct impact on family life. The detail of the verse about inheritance has given rise to interpretation (especially among salaf scholars) that inheritance in Islam is standardized and closes the space for "creativity" in the form of renewal.¹ This indicates that the application of inheritance law must refer to texts that are already valid.

At an empirical level, the application of inheritance is more pluralistic, which is a combination of Islamic law, positive law, and customary law.² Islamic law as a social institution has two functions; 1) As social control, second as new values and social change processes. If the first is Islamic law is placed as a *blue-print* for God which is apart from being a control, is also social engineering for the existence of a community; 2) Law is more of a historical product which within certain limits is placed as a justification for demands for social, cultural and political change.

Therefore, in this context, Islamic law is required to be accommodative to the problems of Ummah (Society) without losing its basic principles. Because if not, Islamic law will likely experience sterility in its function, or Abdurrahman Wahid's term, fossilization, for the benefit of people. So, if legal thinkers do not have the ability or courage to reformulate and anticipate any problems that arise in society and seek legal solutions, then Islamic law will lose its actuality. So then, as a realization, it is necessary to hold a renewal of Islamic law as manifested in the form of a Compilation of Islamic Laws or known as KHI. KHI following Presidential Instruction No.1 of 1991 as stated to the Minister of Religion to disseminate the

¹ Abdul Ghofur Anshori, *Filsafat Kewarisan Islam: Konsep Kewarisan Bilateral Hazairin* (Yogyakarta: UII Press, 2005), 15.

² Soerjono Soekanto, *Kedudukan Janda Menurut Hukum Waris Adat* (Jakarta : Ghalia Indonesia, 1966), 7.

Compilation of Islamic Law.³ Its purpose is to be used by government agencies and communities that need it.

Meanwhile, customary law on its position in the Indonesian national legal system is an unwritten law that applies as long as it does not obstruct the formation of the Indonesian socialist society and become the regulations of social life.⁴ Customary law is applied in combination to produce various legal styles. In one region, religious law may be more dominant, while in other regions customary law would be more dominant. However, each of these inheritance laws does not have to be perceived in one community law, because one inheritance law can occur in various laws of society.⁵

The kinship system factor that applies in a region affects the pattern of inheritance distribution, no wonder we can find different features in each region. This is in line with Hazairin's opinion, who said that "Customary inheritance law has its character in the minds of traditional people with the form of kinship and heredity, matrilineal, patrilineal, parental descendants still show the truth."⁶

In Lombok, West Nusa Tenggara, which is known as the island of a thousand mosques because of its strong Islamic heritage, we can find different styles of inheritance. Various kinds of inheritance problems are very dependent on traditional customs. In general, the distribution of inheritance in Lombok is not carried out immediately after the heir dies. However, it is done after many years even after the heirs had children. So that this has an impact on neglecting the ownership rights of the heirs many heirs have died, inheritance has not been

³ Marzuki Wahid and Rumadi, *Fiqh Madzhab Negara, Kritik Atas Hukum Islam di Indonesia* (Yogyakarta:LKIS, 2001), 165

⁴ Soerojo Wignjodipoero, *Pengantar dan Asas-Asas Hukum Adat* (Jakarta: PT.Gunung Agung,1995), 64-65.

⁵ Abdul Ghofur Anshori, *Filsafat Hukum Kewarisan Islam* (Yogyakarta: UII Press, 2005), 6.

⁶ Hilman Hadi Kusuma, *Hukum Waris Adat*, (Bandung: Citra Aditya, 2003), 23.

distributed. This study, known as a postponement in inheritance distribution.

The postponement of the distribution causes many consequences, both in terms of the composition of the portion received, even in the future there is a conflict on the part of the family that postpones the distribution of inheritance. The problem is that Allah established a law based on benefit, Al-Qur'an is very clearly stated about the importance of the implementation of inheritance. This is done because this inheritance is a *wasilah* that has the greatest influence in owning property and transferring it from one person to another.⁷

This study identified the pattern of settlement of inheritance delay disputes that occur in the community. With an Islamic, cultural and modern style, making the settlement of disputes over inheritance delays left to *Tuan Guru*⁸, traditional leaders, and the courts as parties who have so far been trusted to solve the problems. After the author traced similar research, it was found that many of the previous studies discussed about the law of delaying the distribution of inheritance. Like, Yunisa Sonya Ratnani's research discussed the Tradition of Delaying Inheritance Distribution in Kepuh kembeng Village, Peterongan Jombang, from the perspective of 'urf. Rahadyan Setiawan discussed the Implementation of Inheritance Distribution according to Islamic Law (Study at the Sleman Religious Court). However, from the many

⁷ Hasbi Ash Shiddiqy, *Fiqhul Mawaris*, (Jakarta: Bulan Bintang, 1973), 19.

⁸ Tuan Guru (TG) is a noble title addressed to someone who presumably have a capability in Islamic teachings. Meanwhile, TGH is an abbreviation of Tuan Guru Haji. It is an honorific title given to local ulema who have performed haji pilgrim to Mecca. In other regions around Indonesia, the meaning of Tuan Guru/Tuan Guru haji may be similar to Kiyai Haji. The detailed explanation of Tuan Guru can be read through several references: Jamaluddin, *Sejarah Sosial Islam di Lombok Tahun 1740-1935 (Studi Kasus terhadap Tuan Guru)*, (Jakarta: Balitbang dan Diklat, Puslitbang Lektur dan Khazanah Keagamaan Kementerian Agama RI, 2011); Fahrurrozi Dahlan, *Tuan Guru: Eksistensi dan Tantangan Peran dalam Transformasi Masyarakat*, (Mataram: Sanabil, 2018)

studies, there is no research that discussed about the dispute of postpone inheritance in Lombok societies.

Based on research by Afidah Wahyuni, the urgency of the Islamic inheritance system emphasizes the importance of studying Islamic Law, so that one avoids the sin of eating people's property that is not their right, Islamic law regarding inheritance is not fulfilled.⁹ Research by Wahidin, the context of the implementation of inheritance law in Bugis society occurred because of the assimilation process in the application of Islamic law and customary law.¹⁰ Wahyu Setiadi and Slamet Sumarto classifies of the inheritance system applied to the Sasak Community into three types, namely, customary inheritance law, Islamic inheritance law and civil inheritance law. The distribution of inheritance in the village of Sugihan and Semarang Regency uses customary inheritance law in the form of a Lintiran (Grant), namely after the heritor dies on the grounds that the implementation of customary inheritance law has been carried out for generations and is believed to reflect a sense of justice.¹¹ Some of the views of the academics above seem to have not touched on the revitalization of Islamic inheritance law in the settlement of inheritance land disputes in the Sasak Community.

This study used a qualitative approach to the design of field research and library research. In addition to qualitative, the researcher also used legal sociology research, namely data analysis is approached from a symptom from social aspects, interactions and networks of social relations all of which include the social dimension

⁹ Afifah Wahyuni, "Keadilan Waris Dalam Al-Qur'an", *MIZAN: Journal of Islamic Law* 3.1 (2019): 188.

¹⁰ Wahidin Fikri, etc. "Konsepsi Hukum Waris Islam dan Hukum Adat: Analisis Kontekstualisasi Dalam Masyarakat Bugis", *Al-Ahkam: Jurnal Ilmu Syari'ah dan Hukum* 2.2 (2017): 193.

¹¹ Wahyu Setiadi and Slamet Sumarto, "Pembagian Harta Warisan pada Masyarakat Muslim Desa Sugihan Kecamatan Tenggara Kabupaten Semarang. *Unnes Civic Education Journal*. 3. 2 (2014): 18.

of human behavior.¹² The data collection was obtained using observation, interview and documentation techniques. Data analysis method used in this study is qualitative of model Matthew Miles, Michael Huberman and Saldana with data reduction, data display, conclusion and verification.

The Postpone of inheritance in Islamic Review

The heir is a person who at the time of death or who is declared dead based on Muslim court decision, leaves an heir and inheritance.¹³ On the basis of *Ijbari*, the heir before death has no right to determine who will get the property he left behind, how much and how the transfer of rights, because everything has been determined with certainty in the al-Qur'an.

The status of heir, is stated in the Qur'an that they are parents and relatives, as Allah said:

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ
وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۗ نَصِيبًا مَّفْرُوضًا

“Both man or women have a right inheritance of their mother-father and relatives, either a little or a lot according to a predetermined share”

وَلِكُلِّ جَعَلْنَا مَوَالِي مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَالَّذِينَ عَقَدْتَ أَيْمَانُكُمْ
فَأَتَوْهُمْ نَصِيبُهُمْ إِنَّ اللَّهَ كَانَ عَلَى كُلِّ شَيْءٍ شَهِيدًا

“Meaning: and each of you are heirs of anything left by your parents and relatives. And those whom you make a covenant with you, so give their right, verily Allah is the witness of all things”

¹² Suharsimi Arikunto, *Prosedur Penelitian: Suatu Pendekatan Praktik* (Jakarta: Rineka Cipta, 1998), 236.

¹³ Chapter 171 letter a, *Kompilasi Hukum Islam*

The postpone in the distribution of inheritance that still occurs in the Lombok community has consequences that are inversely proportional to *maslahah*, the consequences that occur are more directed to *mafsadah* which can lead to neglect of rights and conflicts between families. The most basic concept of *maslahah* is formulated by the *fuqaha* "taking advantage and rejecting harm to maintain the goals of *shari'a*" while the main objectives of *syara'* or Islamic law - are known as *al-masalih al khamsah*, namely: 1) maintaining religion, 2) maintain the soul, 3) maintain the mind, 4) maintain offspring, and 5) maintain the property.¹⁴

To avoid the occurrence of *mafsadat* in the future, the distribution of inheritance must be carried out immediately when the testator dies, not delayed after the heir died. It is the same as arising a problem. Direct inheritance distribution is in accordance with one of the principles of inheritance distribution, namely the *ijbari* principle. The principle of *ijbari* means that the emphasis, meaning that Islamic principles in inheritance must be implemented immediately, is not only a matter of the distribution portion but also the implementation of inheritance as soon as possible or completed without postponing.

The distribution of inheritance is carried out immediately after completing the worldly affairs of the testator, such as debts and wills. After the three provisions have been completed. Then the heirs divide the inheritance according to the provisions that have been set. Regarding of *Ibn Hazm* said: Indeed, Allah *Subhanahu wa Ta'ala* requires to divide the inheritance that was left by a person to the family he left, while the non-treasury cannot be inherited. Such rights cannot be inherited except for things that are part of the property.

According to Imam Shafi'i inheritance can be done immediately after the heir death, Imam Shafi'i allows the

¹⁴ Abu Ishaq al-Syatibi, *Al-Muwāfaqāt fi Uṣū al-Syarī'ah* (Beirut: Dar al-Ma'rifah, 1973), 12.

postponement of the distribution of inheritance if the heir is not in place. Imam Syafi'ī in the book *al-Umm* explains that there is no inheritance before the person who inherits (the heir) die. If he dies, then the inheritance exists. Because living people are different from dead people. Regarding missing persons according to Imam Syafi'ī, his property should not be distributed before it is known with certainty that the *Mafqūd* will die.¹⁵

Based on Imam Syafii's statement, in the case of missing heirs, the suspension can be justified, lost is meant here is lost whose news and information are unknown. Meanwhile, what happened to AM who migrated to Sulawesi was not said to have disappeared because his whereabouts were still being detected and he was still communicating with his family.

The Effort to distribute inheritance directly is part of the efforts to apply inheritance in sharia principles, in addition to minimizing the space for conflict and oppression of inheritance ownership, in order to realize a just Islamic inheritance distribution system.

The case postponement of inheritance of Mr. IR died in 2019, leaving a wife with the initials B and 2 children, one boy with the initials K and one girl initials A, while the property left behind amounted to 500 million rupiah. When the inheritance division process, on the agreement of the boy's part or initials K is still suspended because he is still immature, while in the division of this inheritance part A or woman is given because she is married. As for the process of sharing inheritance in accordance with the principle of division of Islamic law, namely A gets the *Ashabah bil Ghair* part because it is with boys, while part of Mrs. B 1/8 because there are children. So, if the mass origin is 8, then share A is half of K shares, then if the relics amount to 500 million rupaih, A gets an inheritance share of Rp. 156.250.000, while part K is still suspended.¹⁶

¹⁵ Muhammad bin Idris Asy-Syafi'i, *Al-Umm* (Beirut: Dār al-Wafa, 2001), Chapter 3, 78.

¹⁶ Biroh (IR's Wife) Interviewed on 10 th August 2021

Mr. K died and left a wife Mrs. K and two sons, namely with the initials A and K. The amount of property left was 50 million rupiah. During the inheritance distribution process, based on an agreement for benefit, the son's share or initials A share is still suspended because he is still not an adult. While in this inheritance distribution the K share or the eldest son is given because he is married. As for the process of dividing inheritance in accordance with the principle of division of Islamic law, the Furud Muqaddarah is 1/8, namely the wife's share because she is with the child, while the son's share is ashabah. In this case, the origin of the problem is 8 while the number of share is 8, wife's share is 1 and the remainder is 7 shares for sons. In this case, initials K get a share of Rp. 21.875.000 while Mrs. K gets a share of Rp. 6.250.000, while the rest is still deferred for A living expenses.¹⁷

Review Of Postponing According To Indonesian Law

Inheritance is wealth and accumulation of join property after being used for the needs of the heir from illness to death, the cost of managing the body (*tahjiz*), paying debts and giving gifts to relatives. In the meaning of the chapter above, it can be distinguished from inheritance, either his property or his rights.¹⁸

Heir is a person who died and has a blood relationship or marital relationship with the heir, Muslim and is not prevented by law from becoming an heir.¹⁹ In terms of the definition of an heir, it can be explained that those who are entitled to be heirs are people who have blood or marital relations with the heir.

As for the issue of inheritance distribution, there are several important things can be noted, those are :

¹⁷ Katmi (K's Wife) Interviewed on 10 th June 2021

¹⁸ Chapter 171 letter b Compilation of Islamic Law (*Kompilasi Hukum Islam*)

¹⁹ Chapter 171 letter c b Compilation of Islamic Law (*Kompilasi Hukum Islam*)

First, the distribution of inheritance in a peaceful manner; This is stated in chapter 183 KHI stated: *The heirs make agreement peacefully in the distribution of inheritance after each of the are realizes their right.*

Regarding this method, there are some opinions said that the distribution of inheritance in a peaceful manner is a practice of ambiguity. On the one hand they want to settlement of inheritance with *syar'i*, but in reality they divided by *Hibah* based on peace, and sometimes it is done while the heir is still alive. Thus, Ahmad Rofiq stated that peace-based settlement methods cannot automatically be said to be ambiguous, because apart from peace (*al-ṣulh*) is a term of the Qur'an (QS. *An-nisa* ', 4: 128, *al-Anfal*, 8: 1, *al-Hujarat*, 49: 9, 10), it is also effective in reducing internal family conflicts due to the distribution of property (inheritance).²⁰ Because it is also stated by Umar Ibn al-Khattab advised the Muslims to do a peaceful way.

Second, the distribution of inheritance when the heir is still alive; This is stated Chapter 187 KHI states: "(1) When the heir leaves an inheritance, then by the heir during his life or by the heirs, can be appointed people as executors of inheritance distribution with the task of: (a) making list of inheritances, whether it is a movable or immovable assets which is legalized by the heirs, if necessary the price is valued in money, (b) calculating the total expenditure for the benefit of the heir in accordance with Chapter 175 paragraph (1) sub a, b, and c; (2) The rest of the expenditure can be distributed to the heirs. Further detailed in chapter 18.

According to Article 830 of the Civil Code (KUHPerdara), it's stated that inheritance only occurs or takes place in the presence of death. The death of a person, in this case the person who dies by leaving property, at that time the inheritance can be opened and

²⁰ Ahmad Rofiq, *Pembaharuan Hukum Islam di Indonesia* (Yogyakarta: Gama Media, 2001), 115.

distributed.²¹ The Civil Code (KUHPerdata) has regulated the rights of these heirs in Article 833, namely all heirs by themselves because the law obtains property rights over all goods and all receivables that die. If there arises a dispute about who is the heir and who is entitled to acquire property rights as above, the Judge ordered that all the relics of the deceased be put first in storage.

As for the case there is a rejection inheritance, then based on Article 1058 of the Civil Code, the heir is considered to have never been an heir so that if he dies before the heir, his position cannot be replaced by his surviving descendants. According to Article 1057 of the Civil Code, rejecting the inheritance must be done with a statement to the clerk of the District Court of the jurisdiction where the inheritance is located. However, according to Article 1062 of the Civil Code, the right of heirs to reject the inheritance has no time limit. Thus, the heir can at any time express his refusal to receive the inheritance.²²

Postponement of Inheritance in Lombok Society

In this study, the author used several theory, including: The first, Conflict Theory. Conflict means quarrels, disputes and contradictions. In this case, a conflict between two or more parties. Related to this study, the author will look at how the conflict that arises as a result of delay in the division of inheritance at Lombok Community. Second, the author uses the theory of Justice according to Aristoteles view.

Numerical equality equates every human being as a unit. This is what we now understand about equality and what we mean when we say all citizens are equal before the law. Proportional equality gives each person what is his right according to his ability, achievement, and others. The law must not be violated and the rule of law must be

²¹ Anisitus Amanat, *Membagi Warisan Berdasarkan Pasal-Pasal Hukum Perdata* (Jakarta: PT. Raja Grafindo Persada, 2003), 6.

²² Soetojo Prawirohamidjojo, *Hukum Waris Kodifikasi* (Airlangga, Surabaya University Press, 2000), 7.

followed. In Islamic inheritance law, the principle of justice contains the notion that there is a balance between the rights acquired and the inherited property with the obligations or burdens of life that must be borne or fulfilled among the heirs. Therefore, the meaning of justice in Islamic inheritance law is not measured by the level of equality between heirs, but is determined based on the small size of the burden or responsibility imposed on them, viewed from the generality of human circumstances or life. Third, the author uses the theory of *maqasid syariah*. The purpose of this law is one of the important factors in establishing through *ijtihad*. After understanding the definition, we will later see whether the division of inheritance in the island of Lombok has been in accordance with the purpose of Islamic law which has gone through an extraordinary process of *ijtihad*. The scholar of *usul fiqh* agree that every law contains benefits for the servants of God, both worldly and ukhrawi benefits.

In part of Lombok society, inheritance is a sensitive matter, so it is not executed immediately when the heir dies. This resulted in postponements in inheritance distribution, even for years and generations.

1. Cultural factors

In general, the people of Lombok are people who are thick with culture, traditions and customs. In the tradition of the people of Lombok, talking about inheritance is considerable if the situation is not urgent. One of the cases was Kopang District, Central Lombok. AR is an heir who died in 1979 leaving an inheritance in the form of agricultural land covering an area of 60 acres with 6 heirs. When AR passed away, the life of each heir was economically stable so that he did not feel the need to distribute the inheritance. Land tenure is temporarily controlled by the oldest heir.

Decades have passed, five of the six heirs have passed away, only one heir is elderly, control of the inheritance is in the son of the oldest heir, and distribution of agricultural produce is no longer carried

out while economic conditions turn difficult while each heir leaves children many of whom are married, some even have grandchildren (great-grandchildren of the heir).

Urged by the bad economic conditions, an initiative arose from one of the heirs' sons to talk about the inheritance of their grandfather which was supposed to be for their parents, he fought the discomfort in his heart to face his first cousin as an inheritance holder. As a result of the meeting, a family meeting was held by the son of the heir (grandchild of the heir) to discuss the distribution of inheritance. This deliberation went smoothly and each heir received his share in accordance with the provisions of the *farāidh*. Then, the distribution of inheritance could take place in 2020, which should have been done in 1979.²³

This postpone of inheritance seems to have become a system and is followed by other people. When viewed from this case, the distribution of inheritance can only be done if it is an urgent situation. According to the author, the distribution of inheritance should be carried out before the other heirs die, so that their rights can be fulfilled.

2. One of the parents is still alive

It has been a tradition in Lombok, the main reason for delaying inheritance is that one of the parents is still alive. In order to fill the needs of parents who are still alive, children usually take the initiative and agree that inheritance in the form of a house or residence is not sold so that they feel comfortable for living.

Usually in cases like this occurs in the object of the house inheritance. As one example in Selong District, East Lombok, ZA died in 2005 leaving four children who were economically stable, one of the inherited objects was a large second floor house in the middle with high economic value, if converted to rupiah it was estimated three billion.

²³ Junaidi (AR's grandson) Interviewed on 10 th Oktober 2020

After ZA's death, the house was occupied by SA (his wife) and his youngest child, who is a civil servant in Selong. Each of the heirs already owns a house and lives outside the selong, one lives in Jakarta as an established businessman, one lives in Mataram as a successful politician, the other lives in Tanjung as the wife of businessman. Seeing such conditions, they think that the distribution of inheritance is not too urgent to be done, considering that there are still parents and they make the house as a gathering place for holidays. And indeed the house is a reunion for families of long distant heirs who all have children.

So the existence of the mother is one of the factors in postponing the distribution of inheritance in Lombok society. As long as there is a mother, relationship between families is guaranteed to be harmonious and harmonious. Problems will usually arise when the mother is gone, the heirs are gone, while the children of the heirs who live in the house think that the house is their parents' house so they just share among their siblings, they don't know that the house is joint property of their parents and siblings who have not been divided.

In this case, according to the author, the delay in the distribution of inheritance is due to an initiative or agreement between all heirs on inheritance. The agreement is usually the result of deliberation for the benefit and harmony of the family, so that parents can still live properly and comfortably. Lombok, with its very strong Islamic doctrinal values, makes children obliged to lift and glorify their parents.

3. The presence of an heir

There are many postponements in the distribution of inheritance because the heirs are not present. Usually, many Lombok society migrate to Malaysia, Sulawesi, Kalimantan and Batam. When they migrated, their parents died and they were unable to return home

due to various factors. this condition does not allow the distribution of inheritance after the parents died.

One case occurred in central PrayaSubdistrict, AM had just been blessed with his first son when he left for Sulawesi to join the government program, transmigration. It was 1978. He brought his wife and children to settle in Sulawesi. Once when AM's parents died, he only got news from his brother through letters and was unable to return home because of his position far away in Sulawesi. So the distribution of inheritance cannot be done, temporarily the distribution of inheritance is postponed until AM can return.

However, there was no opportunity to return home for a long time until finally AM died in Sulawesi. So in 1998, AM's son had the opportunity to return to Lombok to meet his uncles, at that time the distribution of inheritance for AM, who received 10 acres, was finalized. AM's son finally settled in Lombok and managed the rice fields inherited from his grandfather.²⁴

4. Condition of the heir

The condition of the heirs who are still young is also the cause of the postponement in inheritance distribution in the Lombok community, cases like this are quite common. On average, if the heirs are not yet mature, distribution of inheritance is postponed until the heirs are adults, this is to protect the assets so that they can be managed it.

One of the cases occurred in West Sakra District. HS was just in second grade of elementary school when his father died, at that time around 1990. HS's parents left six heirs and all of them are married except for HS, the youngest child. All heirs have received their rights in the form of 26 acres each. Except for the HS which is still small, the inheritance rights are not immediately

²⁴ Mawardi (AM's son), Interviewed on 18 th Oktober 2020

granted. However, it is managed by his older brother while serving as HS school supplies. Over time, HS was able to complete his education to undergraduate level, which was paid for by the rice fields managed by his brother. In 2007, HS inheritance rights were granted.

The heirs, either collectively or individually, can request to the other heirs to distribute the inheritance. If any of the heirs disagree with the request, then the person can accuse through the Religious Court to distribute the inheritance.

Patterns of Dispute in solving the Postponing Inheritance in Lombok Community

Postponing inheritance has become a habit of Lombok people, some people agree with it and for some people arise negative impact on them. In general, there are three patterns of dispute resolution of inheritance postpone in the customs of the Lombok people, namely as follows:

1. Role of Religious Leaders

The role of religious figures, in this case are *tuan guru* or *ustadz*, are very significant in religious life in the community, one of them is the practice of inheritance distribution. The involvement of religious leaders can be a mediator for the distribution of inheritance in an area. This was what happened in Aikmel District, East Lombok. The Tuan Guru's involvement in the distribution of inheritance is a solution to community problems. In the tradition of inheritance distribution, the community always involves the *Tuan Guru* in distributing the inheritance, this is done in order to ensure that the implementation of the distribution is in accordance with the *farā'idh*.

The involvement of *Tuan Guru* in the distribution of inheritance has indeed minimized the occurrence of deadlocks regarding the distribution of inheritance. Before the involvement of *Tuan Guru*, there were many postponements in inheritance, even up to the second generation, so this could become a complicated

problem in the future, which ultimately needed to be involved by various parties to solve it. Learning from the problems that occurred, the community grows awareness to carry out the distribution of inheritance as soon as the heir dies.²⁵ So the absence of the role of *Tuan Guru* can cause conflict, especially related to sensitive inheritance disputes.

This condition also happened in Tanjung Subdistrict, North Lombok Regency. The position of the master teacher is very central in society, including in terms of the distribution of inheritance. Even though inheritance is an internal family affair, society always involves the master teacher in distributing inheritance.

According to TGH. Said, one of the religious leaders in Tanjung, there were many postponements in inheritance distribution among his community. The distribution of inheritance may not be carried out if there is no one to raise, prosecute or be prosecuted, which is usually done by the second or third generation. This becomes a conflict in society which impacts on family relationships. And here is the role of *Tuan Guru* to provide a peaceful nuance in people's lives.²⁶ Therefore, *Tuan Guru* is always present in every aspect of community life, including in the distribution of inheritance, to avoid *mafsadah* and create *maslahah*, minimize the chance of conflict arising from inheritance cases that often cause problems.

Entrusting the dispute resolution of inheritance postponing to *Tuan Guru* or religious leaders usually occurs in religious communities and is not far from the life of pesantren in Lombok. Most of these communities are scattered in East Lombok and North Lombok and some are from Central Lombok.

One of them is the inheritance dispute due to delays in the distribution of inheritance of female heirs. The second generation of the heir's descendants

²⁵ Taken from TGH.Marwan Hakim, Interviewed on 12 th August 2020

²⁶ Taken from TGH. Said, Interviewed on 9 th August 2020

demand the inheritance that is the right of his mother. Before the dispute went to court, TGH. Ihsan managed to mediate the dispute resolution by bringing all the families of the heirs, hamlet heads and village heads together. Inheritance disputes due to delays in the distribution of inheritance have also occurred in West Lombok. In the village of Gunung Sari, a woman who is the sole heir demands the inheritance rights of her father, who has been dead for a dozen years. This happened because when the heir died, his only young daughter and her widowed mother remarried. Finally, the inheritance of the land which is very wide and is in several places is controlled by the heir's brother. Once an adult, his father's inheritance has not been distributed until a dispute occurs. TGH Zulyadaen, a young leader in the region, mediates and mediates disputes. Understanding the problem and hearing the testimony of all parties and resolving internal family disputes so that no one feels wronged.

In the Montong Gamang village, Kopang sub-district, Central Lombok, for example, inheritance disputes occurred due to delays in the distribution of inheritance for many years. One of the heirs demands his inheritance rights to his brother who controls a piece of inherited land. TGH Ahmad Barizi, one of the leaders in the area, was involved in mediating the dispute. Mediation is done by collecting all the heirs and offering the distribution of inheritance according to the *farāidh* rules. The move has successfully resolved the dispute and all the family of heirs accept it happily. Another example of a dispute also occurred in West Praya sub-district, Central Lombok. Specially in Batujai Village, there was an inheritance dispute due to delays in the distribution. The delay is due to the fact that the oldest heir is economically the most established and controls a piece of inherited land. The other heirs then asked for TGH. Sudiawan Nasrudin is one of the leaders in the region to mediate and successfully resolve internal family disputes with the *faraid* settlement.

2. Role of Traditional Leader

In a small community in Lombok, community leaders, village officials and traditional customary leaders are the people who have the authority to solve various problems. Community leaders who are also traditional leaders are a forum that maintains that a habit will continue to be carried out and as a place to solve all problems that occur in the community. The habit of delaying inheritance is usually left to traditional leaders.

The postponement of inheritance is carried out by indigenous peoples with the approval of family members and with the involvement of community or customary leaders. When there is a dispute between families over the delayed inheritance, community or customary leaders will facilitate a meeting between the heirs and their extended family. By mediating between families for the distribution of the inheritance. If there is a dispute or no agreement is found in the distribution of the inheritance, then the community leader through the sub head village to resolves it, then if it cannot be resolved it will be resolved to the village.

Saharudin as a community leader in Taken Hamlet, Lekor Village, Janapria sub-district, emphasized that inheritance delays are a long-standing habit of the community and are carried out from generation to generation. The postponement of inheritance is the agreement of all the heirs and when it is time to share it, deliberation steps will be taken in accordance with the provisions of the distribution of inheritance according to Islam. In the event of a dispute over the distribution, the disputing parties will be mediated.²⁷

In general, dispute resolution that is submitted to traditional leaders or community leaders is carried out by people who still hold custom and still believe that

²⁷ Interviewed with Salahudin, Tradisional Leader Lekor Village, Janaprie District on 9 th Juny 2021

decisions made by community or traditional leaders will lead to mutual benefit and justice. Most of these people come from Central Lombok Regency, such as Martapaok, Pujut, Lajut Villages, and most of them are in the Regency.

TGH Jalaludin Assain as Customary Leader. Faraid's law is not widely known in Bayan Society. Faraid law is not widely known in Bayan society, but it's only known by a small part of people who have studied the book Tuhfahuzzainiah written by Maulana Shaykh. That ignorance caused most of Bayan people carries out inheritance matters in a varied⁵ customs. In this case, the inheritance is divided while the owner of the property is still alive, this is done so as not to become a dispute in the future. However, if there is still property that has not been distributed when the heir dies, then it is arranged by the family. In their family, Bayan community knows the term due lembah mame, selembah nine (male have two parts, but female has one).

Inheritance disputes due to delays in inheritance distribution are also common in the Lendang Batah Village, Mekar Damai Village, Praya district, Central Lombok. TGH M Danian Mahyudin is one of the figures there and is often a mediator in dispute resolution. He said that inheritance disputes due to delays were common. One of the factors causing the delay in the distribution of inheritance is due to the arrogance of one heir, so that all inheritances are controlled by themselves and results in disputes from other heirs. TGH Danian in resolving this kind of dispute by approaching all heirs and religious doctrines.

The Impact of Postponement Inheritance on Lombok Society

Postponements in inheritance distribution, which is common in Lombok society, have had several negative consequences for the heirs.

1. Loss of Ownership

A consequence of the postponement inheritance case in Lombok is the loss of ownership for heirs. Many cases of postponements in the distribution of inheritance have resulted in the loss of ownership rights for the heirs. The cases of inheritance IR and K described in the description above are examples of cases of postponements in inheritance distribution which have an impact on the loss of ownership because the heirs died first, even though the inheritance upon them was replaced by their children.

This condition is of course the opposite of the inheritance goal itself. The purpose of this inheritance is the heirs can be allowed to own the inheritance through a lawful manner and is justified by custom, religion and/or through state law.²⁸ Inheritance is a means of transferring property rights from inheritor to heir. In accordance with one of the meanings that inheritance is the transfer of ownership from a deceased person to his surviving heirs, whether in the form of assets, debts, or *syar'iyah* rights.²⁹ Any postponement in the distribution of inheritance for a long period of time can be loss of ownership rights over the object of inheritance due to several factors, one of them is that the heir died.

2. Changing the Inheritance Portion

Islam has stipulated the provisions of inheritance in detail. However, postponements in distribution that occur in the community can make the portion change based on the agreements reached by the heirs. One example occurred in Sakra District, East Lombok. KH is currently mediating to get his father's inheritance from his grandfather. Currently the inheritance is being

²⁸ Tamakarin, *Asas-Asas Hukum Waris Menurut Tiga Sistem Hukum* (Gioner 1987), 84.

²⁹ Muhammad Ali As-Shabudin, *Hukum Versi Waris*, Terj. Abdul Hamid Zahwan, (Solo: CV.Pustak Mantik, 1994), 31.

controlled by his brother in the form of rice fields covering an area of 35 acres that have not been divided. The rice fields are a legacy from his grandfather that has not been shared. Now all heirs (including his father KH) have passed away, only the children of the heirs.

According to KH, should receive 15 acres based on the number of his father's siblings. However, his cousin claimed less, because their parents had agreed that KH's parents had their share reduced because they exchanged it with mill rice. However, among the children of the heirs, no one knows the agreement and it is not a written agreement so it is difficult to prove it. However, the agreement was considered correct and KH was threatened that he would get less than it should have. This kind of chaos was caused by a postponement in inheritance distribution until the second generation did not know the root of the problem.

3. Vulnerable to Manipulation

Manipulations cases of inheritance can occur in postponement of distribution inheritance. As happened in HS case described above. HS inheritance was mortgaged for Rp. 70,000,000, the pawn was used by his brother to pay for HS schools from Elementary School to Bachelor's Degree. To get the inheritance rights, HS must prepare a fund of Rp. 70,000,000, whereas there are 26 acre rice field, the result is enough for HS school fees, especially HS was studying in public schools which does not require a lot of money. That is one of the consequences of postponement inheritance can open up opportunities for manipulation.

4. Family Conflict

Conflict inheritance exist when it does not find a middle way that embodies the justice side of the disputing parties. Regarding inheritance conflicts the postponement in inheritance as main trigger of family

complict. One of them happened in Tanjung Subdistrict, North Lombok Regency. Conflict occurred due to postponement of inheritance.

The conflict occurred because the owner of the inheritance did not distribute the inheritance that their parents should have done. However, until their parents die, the inheritance is only controlled by one family, while the other family does not get anything. This prompted the family to accuse. However, the case previously was mediated through the local *KUA* but stuck and finally reached the court.³⁰

Conclusion

Postponements in the distribution of inheritance still occur in Lombok society, some of the factors behind these are: 1) Cultural factors; in the Lombok tradition some people are still taboo or considerable talking about inheritance when a new inheritor dies. 2) The existence of an heirs; the heirs are located in a remote area so it is not possible to distribute the inheritance. 3) condition of the heirs; heirs are still not pubescent to receive inheritance, 4) the minimal role of religious leaders; society needs religious leaders to mediate the distribution of inheritance.

The settlement of disputes over delays in the inheritance of the Lombok people has different patterns according to the circumstances of the people. For people who are tied to the life of a boarding school, usually the dispute resolution will be left to the Tuan Guru figure who is in the hamlet, in addition to resolving the inheritance delay dispute, Tuan Guru is also party that minimize the habit of delaying inheritance with a lecture approach, so that people carry out inheritance according to with Islamic teachings (alqur'an and hadith).

Another feature of the settlement of inheritance delay disputes is Adat peoples, where the community

³⁰ Taken from Rohimah, Official Counselor of Islam (*Penyuluh Agama Islam*) in Religious Affairs Office (*Kantor Urusan Agama*), Tanjung, 12 th September 2020

entrusts traditional leaders or community leaders to settle them. By using the deliberation method, it is expected to get justice for the inheritance to be distributed. If there is still a dispute, the community leaders will take mediation steps.

The last feature in the settlement of inheritance disputes is the role of the court in resolving disputes. Decision-making to resolve the issue of postponement of inheritance in court usually occurs in the territory of modern society. For the majority of people who still hold the values of pesantren and adat, courts are the last resort when there is no justice for the decision.

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- Junaidi (AR's grandson) Interviewed on 10 th Oktober 2020
- Katmi (K's wife) Interviewed on 10 th June 2021
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