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Agreement of the heirs in the distribution of inheritance in the Gayo Community

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Abstract

In the distribution of inheritance, the share of each heir has been clearly determined in the Islamic Shari'a with a ratio of 2:1 between male and female heirs. However, in practice, in Gayo communities, the distribution of inheritance is carried out by agreement of the heirs by not following the literal provisions in the Qur'an. The results of the study found that the distribution of inheritance by agreement of the heirs in the Gayo community is carried out after an explanation and determination of the size of the heirs' rights in accordance with Islamic Shari'a. The division

of inheritance by agreement of the heirs is justified by Syara'. Factors that influence the distribution of inheritance by agreement of heirs in the Gayo community include *adat* and *reusam* as kinship ties in the Gayo community are very strong, the female heirs who look after and care for the testator in their old age and when they are sick, women also work like men in meeting household needs, some of the heirs are already economically established and one of the parents of the heirs is still alive.

Keywords: Agreement of heirs, inheritance, Gayo community

Introduction

Among the rules regarding human relations that Allah has established is regarding inheritance which are property and possessions left after someone's death. Assets left by someone who has died requires arrangements regarding who is entitled to receive it, how much and how to get it. Inheritance is the transfer of inheritance from someone who dies (testator) to those who are still alive (heirs) related to property left behind, the people who are entitled to receive, the share of each heir, as well as the method of distribution of the inheritance.

The Qur'an has clearly stated in detail the size of the share of each heir in accordance with certain conditions. The example a daughter alone obtains an inheritance of one-half and if there are two or more daughters they will require two-thirds. A mother gets a third when the heir does not leave a child, if the heir leaves a child the mother gets an inheritance of one-sixth. The husband gets half of the inheritance from his deceased wife, if he has no children, if he has children he gets one-fourth of the inheritance. Similarly, the wife gets a quarter of the property if her deceased husband has no children, if the wife has children, she will get one-eighth of the share.

Regarding the provisions of the size of the inheritance portion of the heirs that have been stipulated in the Qur'an in detail, the jurists have *ittifaq* (agreed) that there is no need for understanding other than what is meant by the Qur'an. This means that the verses about inheritance in Surah an-Nisa' verses 11, 12, and 176 are *qat'i* (clear). Inheritance law is prescribed by the Qur'an with the aim of having an attachment of affection, providing benefits to relatives so as to avoid family gaps that can cause disputes between them. In the Qur'an Surah al-Nisa' verse 11 Allah says: Meaning: *Allah prescribes for you about (the division of inheritance for) your children. That is: the share of a son is equal to the share of two daughters.*

The verse above means that the share of men is twice that of women on the grounds that men's obligations are heavier than women's, such as the obligation to pay dowry and provide a living^[1]. Whereas women in law are not given obligations and responsibilities, they only get something from their father if they are not married and get something from their husband if they are married.

It is a question of whether the provisions of the large and small inheritance that Allah has clearly detailed in the Qur'an should not be shifted, according to the wishes of the heirs who are entitled to receive *tirkah* from the heirs or the provision is the maximum limit obtained by each heir from the property of testator.

Referring to the question above, in the *fiqh* literature, a concept was found in the distribution of inheritance that was once carried out by the wife of a friend of the Prophet Muhammad, which was the family of Abdurrahman bin 'Auf', which occurred during the Caliph Usman bin Affan. One of his wives was invited to make peace by the people of Islam heirs to the property amounting to eighty-three thousand dirhams by removing them from the division of inheritance^[2].

From Abu Yusuf, it is explained that Amru bin Dinar from Ibn Abbas: "That one of the wives (widows) of Abdurrahman bin Auf said make peace (conclude) in the distribution of eighty-three thousand dirhams, by leaving the inheritance provisions" ^[3]. This incident became an alternative to the distribution of inheritance, by not following the detailed provisions as contained in the Qur'an, the science of *fiqh* is known as *takharuj*. Islamic inheritance law described that the purpose of inheritance distribution is for the benefit of the heirs' lives. It is mentioned in the Qur'an Surah an-Nisa 'verse 4: It means: "For men there is a right to share in the inheritance of their parents and their families and for women there is a right from the inheritance of their parents and relatives, whether little or much according to a predetermined portion".

The division of inheritance based on customary law does not apply mathematical calculations. In customary law, consideration is based on the form of the object that becomes the needs of the heirs. So even though customary law recognizes the principle of equality, it does not rule out the possibility that differences in the share of inheritance income often occur ^[4]. The difference in the size of the share of each heir should occur, because indigenous peoples are also bound by their religion and beliefs, one of which is the Gayo community which is the focus of this research.

Customary inheritance law has different systems and principles of law ^[5], such as in the division of inheritance property in many areas do not use the provisions already contained in Islamic inheritance law, instead they use the provisions of their respective customs. They often use the method of deliberation or agreement of the heirs in resolving problems related to inheritance. The way the heirs agree is a shortcut to divide the inheritance if each other is willing and agrees with the part that has been determined together. In the study of *faraid* this is called *takharuj tasaluh* ^[6]. *Tasaluh* in the division of inheritance is one of the efforts in order to maintain the public interest, more specifically the provisions of the harmony of kinship in a family.

The Gayo people are those who inhabit the central region of Aceh Province. Throughout history they have been known to be very close and fanatical to Islam, as is the case with other Aceh regions. This is evidenced from the statement in the Acehese proverb, "*hukom ngon adat lage zat ngon sifeut*" (the relationship between shari'a and custom is like the relationship between a substance (object) and its nature, which is inherent and cannot be separated), as a way of life or philosophical foundation in the form of "customs" whose implementation structure is summed up in "*Adat bak Poe teumeureuhom, hukom bak Syiah Kuala, Kanun bak Putroe Phang, Reusam bak Lakseumana*".

Based on that, in the implementation of the distribution of inheritance, the Gayo community should refer to the provisions set by the Qur'an and al-Hadith. However, in practice, it is found that some Gayo people divide inheritance not based on the provisions in the Qur'an and Hadith, but the distribution is carried out by agreement of the heirs.

This study will answer the questions "what is the law implementing inheritance distribution based on the agreement of the heirs and what factors influence the inheritance distribution based on the agreement of heirs in the Gayo community?". To get the answer to the questions above, the methodology that the writer used in this research is a qualitative method with an empirical juridical approach.

Principles of Agreement of the Heirs in the Distribution of Inheritance

The division of inheritance with the principle of agreement of heirs is actually based on the belief of the scholars of jurisprudence that the issue of inheritance is the right of the individual, where the rightful owner may or may not use his/her rights, or use his/her rights in a certain way as long as it does not harm others according to standard rules in force. As quoted by Prof. Satria, Abu Zahrah, a scholar of ushul fiqh asserted the possibility of division of inheritance by agreement of the heirs. However, the most important requirement that must be met is the agreement and willingness of the heirs. Furthermore, the heir can also drop his/her right not to obtain the right of heir and give it to another heir. On the other hand, if the heirs, or among the heirs do not agree or do not want the inheritance to be divided by agreement of the heirs, then the distribution system is done according to the rules of *faraid* that have been explained by the Qur'an and *Sunnah*.

The distribution of inheritance by means of an agreement between the heirs, may be driven by strong kinship relations, taking into account the differences in the economic conditions of some heirs so that it is hoped that the inheritance can further help their living conditions. Another reason may be due to the consideration of the heirs that one or more of them are more involved in taking care the testator during his/her lifetime, caring for he/she is sick and so on. Thus, it is logical that they get more shares as long as the heirs agree on the principle and have known their respective rights. In the Compilation of Islamic Law (*Kompilasi Hukum Islam - KHI*) it is revealed that the heirs can agree to make peace in the division of inheritance after each realizes his/her share. This formulation can allow the division of inheritance with a mathematically equal portion (1: 1) among all heirs in peace, as a deviation from Article 176 KHI which governs the provisions of sons and daughters (2: 1); and between biological brother and biological sister- half-brother and half-sister as a deviation from Article 182 KHI.

In responding to this, it is necessary to be wise for the heirs so that all can receive their respective shares but they are still thinking about the circumstances of other relatives who get a smaller share while the burden of life is heavier. So, through this heir agreement, a relative may give a portion of his/her inheritance to his/her female relatives. This can also allow the distribution of inheritance equally for all heirs. It is possible that agreement of the heirs can be used as an alternative settlement model.

The division of inheritance according to Aceh's customary law is basically by heir agreement. This means that the inheritance is managed in accordance with principles that provide a sense of peace to all parties entitled to the property. In this view, the division of assets is carried out based on the principles of harmony and propriety. If there is an irreconcilable dispute over the distribution between the parties entitled to the inheritance, the management shall be resolved by using more definite principles in dividing the property. The management is carried out by following the principles contained in *fiqh* law while still using the principle of deliberation.

The *fiqh* scholars emphasized the possibility of using the principle of kinship in solving inheritance problems. The way to settle the division of inheritance which is carried out in a familial manner, which is based on the agreement of the heirs,

is a wise solution to address the differences in the economic conditions of the heirs who theoretically can get a large share, can just hand over their share to other heirs who normally get a smaller portion, but economically needs to be helped^[7]. For the implementation of such a division, it is necessary to consider each heir based on sincerity in seeing the condition of each heir. The difference in the conditions of the heirs is a force to create balance and bind closer ties between them.

Technically, agreement or consensus in *fiqh* terminology is called "*urf*" or adapt. It cannot be said "*urf*" if it does not bring benefits or goodness to society. Umar ibn Khattab advised that for Muslims that among the parties who have affairs can choose the way of consensus, except consensus that aims to legalize something *haram* and forbid something *halal*^[8].

The intersection of the text with reality has its own meaning, because the text is not born in an empty space. On the other hand, it always appears as the context of reality continues to develop. Of course, the text in this case has a broad meaning regarding verse dictums that are integrated with the context of human experience. This is in accordance with the following rules:

تغيير الأحكام بتغيير الأزمنة والأمكنة^[9]

In addition to being influenced by place and time, law is also influenced by customs or '*urf*' that exist in certain areas, in accordance with the rules, namely:

العادة شرعية محكمة^[10]

Indeed, something that has become a human custom and something that they are used to living, then it has become part of their needs and is also in accordance with their benefit, therefore, as long as it does not conflict with *syara'*, it must be considered^[11].

Studies in *ushul fiqh* state that the main purpose and content of Islamic Shariah is *Maslahah* itself. Even scholars, such as Imam Al-Ghazali, As-Syathibi and others have formulated the purpose of Islamic Sharia. The purpose of Islamic law is to create and maintain benefits and reject destruction. *Maslahah* in general can be defined as goodness and well-being. Imam Al-Ghazali in his book *al-Mustashfa*, said that^[12]:

"The maslahah is to take care of the purpose or meaning of syara', and the meaning of syara' from the creation is five things. That is, should preserve over them (in terms of) their religion, self (soul), thought, children and property. So, every thing that contains protection against the five things, then it is maslahah, while all things that come out of the five things, then it is mafsadah, and rejects benefits."

The issue of inheritance distribution according to the agreement of the heirs, if positioned in *fiqh*, can be compared with the *istislahiyah* method^[13] which has the value of *maqāsyid al-syari'ah*. *Maqāshid* tries to maintain one's benefit, here lies the relevance between the distribution of inheritance by agreement of the heirs and *maqāshid*. When humans are faced with urgent problems and in difficulty, then *maqāshid syar'iyah* provides an alternative to get out of the difficulties, so that their rights are protected from damage. The success of *taklīf syari'ah* will be obtained by maintaining its principles, and anticipating all possibilities that can hinder it.

Implementation of the Distribution of Inheritance in the Gayo Community

All aspects of life of Gayo people cannot be separated from the influence of Islamic teachings. The influence of Islam in the lives of the Gayo people is very big that there is almost no difference between the customs that live in Gayo and Islamic teachings, such as the saying of the *hadith maja "hukom ngen adat lagee zat ngen sifeut"*. This expression has a very broad meaning of unification of customs and Islamic teachings in the daily life of the Gayo people.

The inheritance distribution is one of the teachings of Islam that has become a practice among Gayo community when dividing the inheritance property to the heirs. In general, the Gayo people do not have sufficient understanding of Islamic inheritance law and they can be divided into two groups. First, the general public who do not know about inheritance law, especially in the distribution of the inheritance. Second, the educated people. This group knows very little about the inheritance and how to share it, and they are not necessarily able to implement the division of inheritance, so it can be said that on average the Gayo people do not master the knowledge on inheritance and the ability to share it. Only a few people or very few of the Gayo community are able to understand in depth about it including how to settle and distribute the property.

When they want to carry out the distribution of inheritance to the heirs, people of Gayo always ask for help from the religious leaders (*tengku* or *ulama*) to distribute the inheritance. They consider the *teungku* to be a person who has the knowledge and ability to settle and distribute inheritance.

The interview with the Chairman of Aceh Adat Council (*Majelis Adat Aceh - MAA*) Bener Meriah reveals that division by agreement of the heirs often takes place in Gayo community. This occurs due to the strength of the family system to maintain the integrity of the family relationship, and solely for the benefit of the heirs^[14]. He further said that based on his knowledge of the division of inheritance in the Gayo community, often the family of the heirs divides the inheritance as a family by not following the provisions of Islamic law. The process of division of inheritance involves explanation to all heirs about the provisions of inheritance in Islam where the share of the son is equal to the two share of the daughter, even if the property has not been handed over to each heir. After all the heirs know their rights, then the division of inheritance is carried out in accordance with the agreement of the heirs.

Inheritance Sharing System in Gayo Community

The results of the study show that inheritance distribution system in the Gayo community particularly in Pondok Baru Bener Meriah can generally be categorized into two. First, all heirs who are entitled to receive an inheritance are invited or summoned to sit together in an assembly, usually the meeting is at one of the heirs' houses or in testator's residence. Usually, this meeting begins with a feast with all the heirs. This moment is also used as a gathering between the heirs, because sometimes some of the heirs have migrated far from their hometown so they have not seen each other for a long time. Some live far from the residence of their parents because they are married or work outside the area. Furthermore, the heirs call a *teungku* or someone who is

expert in the *faraid* to divide their inheritance. There are two conditions take place:

- a. The *Teungku* or the invited person explains in detail the rights of the heirs and how much of the share received by each heir. The determination of this right is carried out after obtaining clear information from the heirs how much *tirkah* as the inheritance left by the testator. In this case, the *Tengku* or the person who is invited only acts as the one who inform the family members rules on the inheritance distribution. The implementation and mechanism of distribution is returned to the heirs.
- b. *Teungku imuem* or the person invited is asked to explain the position of the heirs and the share of each heir to the *tirkah* left by the testator to get clarity on the property left include movable or immovable property, the company's venture capital, provided that the rights of the heirs have been clarified and separated. Also *tirkah* property either with the heirs or not with the heirs, as long as it can be proven legally. After the explanation by *teungku*, he was asked to share the inheritance among the heirs. In this case, in addition to explaining the rules about *faraidh*, he was also asked for his services to distribute the inheritance of the heirs.

Second, if there is a dispute in the division of inheritance between the heirs, then the division is taken over by the *gampong* customary institution ^[15]. This takeover is only implemented after the heirs transfer or hand over the problem to *reje* or *imum gampong*. The settlement of this dispute is highly dependent on who settles it, therefore there are two ways: first, by Islamic inheritance law, where *reje* invites people who are experts in the study of *faraidh* to handle and resolve it in accordance with what has been stipulated in the Qur'an and the Hadith. Second, if the division of the inheritance in the *gampong* custom is not completed, then the *gampong* returns the matter to the heirs for further litigation or resolving it through legal mechanism, namely the Syar'iyah Court.

In dividing their inheritance, the Gayo people will usually involve and invite *reje*, *teungku imum gampong*, *tuha peut* as well as figures in the village (*sarah opak*) to be present in the process of dividing the inheritance. The presence of people who are invited by the heirs is to witness the process of dividing the inheritance and at the same time be witnesses. This is to make sure that the inheritance distribution process is open and witnessed by *gampong* figures, and to avoid lawsuits in the future. Some families also invite their relatives to participate in witnessing the distribution of the inheritance.

Implementation of Inheritance Distribution by Agreement of Heirs in the Gayo Community

In general, the Gayo community resolves the distribution of inheritance through deliberation. Deliberation efforts are carried out in order to maintain the harmony that has been fostered and the honor of the family. The division of inheritance through deliberation makes it possible not to follow the *faraid* stipulations which are quite strict. Therefore, it is possible for men to have the same share as women in obtaining inheritance.

The division of inheritance is always done by agreement of the heirs and the family between the fellow heirs who are entitled to receive it. The division of inheritance by agreement of the heirs usually involves close relatives or distant relatives who act as mediators. If the relatives have

not been able to complete the division of inheritance, then the deliberative efforts are made by *Teungku Meunasah*, *Teungku Imuem*, *Reje*, and the village elders who are considered to have authority. The division of inheritance done by religious leaders and community leaders is not absolute based on the provisions of *faraidh*. Therefore, the division of inheritance is highly dependent on the agreement of the heirs.

The distribution of inheritance by agreement of the heirs in the Gayo community sometimes makes the daughter's share equal to the son's share. The equal distribution of sons and daughters does not conflict with Islamic law if it is based on the agreement of the heirs and deliberation. The Gayo people believe that the distribution of inheritance according to the agreement of the heirs is justified by Islamic law and therefore they consider it an implementation of Islamic teachings ^[16].

If the distribution of inheritance through the heirs' agreement is not possible, then the distribution based on the provisions of *faraidh* is carried out by *Teungku Imuem* in the presence of *Reje* and invited community leaders. Inheritance is usually distributed directly in front of community leaders by sorting and showing the assets to be distributed physically and calculated to the heirs who are entitled to receive it ^[17]. Before distributing the inheritance, *Teungku Imuem* first examined the provisions of permanent and temporal obstacles (priority heirs). If there are no obstacles attached to the heirs, then *Tengku Imuem* stipulates that the heirs who are entitled to take precedence are *dzawil furudh*, because they are heirs whose share has been determined in the Qur'an and Hadith.

If the distribution of inheritance by *Teungku Imuem* above still does not satisfy the heirs, then usually this matter will be submitted to the *gampong* customary court. If it is not completed at the village level, it will be forwarded to the Syar'iyah Court. The settlement through the Syar'iyah Court is actually not much different from what was done by *Tengku Imuem* in the *gampong*, because the law applied is Islamic inheritance law. The division of inheritance through the Syar'iyah Court often makes family relations tenuous, because the court's decision has coercive power in its implementation. Therefore, for the Gayo community, inheritance distribution through the court is the last alternative if it is not possible to reach an heir agreement. They feel ashamed of their neighbors and relatives, because they are considered unable to get along in a family.

If viewed in terms of the principle of individual inheritance, an heir can act on his/her rights according to his/her wishes, whether he wants to relinquish his rights in whole or in part, whether he/she presents or donates to one of the other heirs or to whomever he/she wishes. As long as the action taken is not prohibited by the *syara* ', then it is justified. Therefore, the authors argue that in the division of inheritance, there is flexibility in the use of rights owned by an heir.

Based on the results of research and interviews with several respondents and informants on the implementation of inheritance distribution, it was found that the division of inheritance in the Gayo community is basically guided by what has been determined in the Qur'an and Hadith. After all the heirs who are entitled to the inheritance property know the rights of their respective shares, then the heirs sincerely and voluntarily together agree to divide the inheritance by agreement of the heirs. However, it was also found that there are some heirs who ask for their rights in full in accordance with the provisions of Islamic inheritance, then to those concerned are given their rights in full. While other heirs who

agreed to be divided by deliberation or share the amount equally is still practiced too.

The division of inheritance in Gayo society by agreement of heirs based on sincerity, especially male heirs who have more rights than female heirs with consideration for the welfare of the heirs and maintaining the integrity of the family. This is justified by *sharia* 'as long as no heirs are harmed.

Factors Contributing in the Distribution of Inheritance Based on the Agreement of the Heirs in the Gayo Community

It has become a necessity that between one family and another family has kinship ties. Besides, it is also bound by agreements and regulations made in a family, even though the rules in a family are not written but essentially bind all family members. From generation to generation the rules that have been made are usually held and implemented by each family member which results in its effect on every action taken by each family member, including the inheritance left by the testator in a family. Therefore, in the distribution of inheritance, the Gayo people adhere to the provisions that have been regulated in Islam, while some others share it with the agreement of the heirs.

Result of the research shows that the distribution of inheritance in the Gayo community by agreement of the heirs is based on several factors as follows:

First, the influence of Gayo customs and culture, where kinship ties are very strong, It has become a habit in the Gayo people, that daughters have a greater role in the management and care of their parents in their old age compared to the sons. The Boys prefer to migrate to study or to work when they grow up that they do not have time to live with and care for their parents. This can be seen in the Gayo community, most of the parents in their old age are more comfortable living with their daughters, rather than living with their sons.

Based on the above fact, in the division of inheritance, the man who by the Islamic law legally inherits a larger share than woman (2: 1), voluntarily relinquishes part of his right to be given to his sister. In fact, sometimes the rights received by women are greater than those obtained by men, in addition there are also heirs who sincerely give up all rights to be given to one of his sisters, this usually happens to heirs whose lives are economically established.

Second, at present, there are many women who also work like men in fulfilling household needs, even buying household items. So that the rights and obligations of husband and wife are carried out together in meeting the needs of their lives and their families. The combined assets of husband and wife called *hareuta seuharkat* or joint property.

Therefore, when the husband or wife dies, before the property is distributed to other heirs other than husband and wife, the *hareuta seuharkat* is first separated, the amount of which is in accordance with the prevailing custom in the place where they live such as 50:50 or 70:30. Excess property after being taken for *hareuta seuharkat* is what becomes inheritance (*tirkah*).

Third, some of the heirs are already living an economically sustainable life, so that in the division of the inheritance property, more emphasis is placed on the heirs who are struggling economically.

Fourth, because one of the parents of the heirs is still alive, it seems unethical and disrespectful and even feel embarrassed when discussing inheritance distribution. Finally, the inheritance is held and managed by one of the parents of the

surviving heirs, and it is used for the benefit of all heirs, especially those who are still very young and the family members pursuing an education.

Conclusion

Based on the above description, it can be concluded that the practice to divide inheritance by agreement of heirs is not against the law, instead justify the division of inheritance by agreement of heirs done in Gayo society on the basis of voluntary and sincerity. The division of inheritance in the Gayo community by agreement of the heirs is allowed by *syara* 'with the provision that there are no heirs who are harmed and the implementation is done on the basis of sincerity and voluntariness of the male heirs.

The distribution of inheritance in the Gayo community by agreement of the heirs is motivated by several factors including strong kinship ties in the Gayo community, the influence of Gayo customs and culture, the habits of female heirs who look after and care for the testators in their old age and when they are sick, the presence of women who also work like men in meeting household needs. Furthermore, some heirs are economically well-established, or one of the parents of the heirs is still alive.

Before the division of inheritance by agreement of the heirs in the Gayo community taking place, all the heir's estate that is inherited property are listed. When the data collection is completed then some amount of inheritance is taken to pay funeral arrangements, to pay debts if any, to execute a will if leaving a will, and to pay other costs such as for the the feast at *tahlilan*. If there is still property left, then all the heirs are told how much their respective rights are in accordance with the provisions of the Islamic inheritance. Once the heirs have known how their shares, they agree to divide the inheritance by agreement of the heirs.

In the distribution of inheritance, the heirs will invite *Teungku Imuem gampong* and *Sarah Opak*. If there is a dispute between the heirs, then the distribution is carried out and taken over by the *gampong* customary institution at the request of the heirs. If it is not completed then it is transferred to the Syar'iyah Court.

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