

Share of Inheritance in Muslim Community Mandailing Natal (Sociological studies of Islamic law in Mandailing Natal)

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I. INTRODUCTION

The inheritance of Islam as an Islamic law that has been ingrained among Muslims, the inheritance of Islam also known by other designations such as the deceased relics are called Tyrkah heirs, which means to give or determine who is entitled to become heirs and what their respective provisions are obtained.⁴ In addition, the law of inheritance that is considered as an integral part of the family law underwent various reforms in its implementation. In a variety of variations, the system of Islamic law can change according to its needs, the inheritance law of Islam in various Muslim countries varies the level and its weight in line with the challenges of change occurring in the values and structure of society.⁵ People as beings who always want to get along, interact and gather with other fellow human beings, in the sense of a creature who likes to live in society, in the smallest life with it begins with the family.⁶

The fact in society is often the inheritance disputes are generally concentrated on the division of Heritage Property. It is very natural to happen because humans in principle tend to master the treasures. The problem of inheritance could lead to disputation and division among heirs. The tendency of excessive human beings to be able to possess and control the treasures has caused human beings to be mired in the behavior of mistreats and seize the rights of others. ProblemaHarta inheritance can also lead to the disconnection between fellow heirs. The problem of inheritance could lead to disputation and division among heirs. The tendency of excessive human beings to be able to possess and control the treasures has caused human beings to be mired in the behavior of mistreats and seize the rights of others. ProblemaHarta inheritance can also lead to the disconnection between fellow heirs. Therefore, Islam confronts this reality by regulating the process of inheritance distribution of treasures firmly and carefully through a number of Qur'anic verses and Hadith.⁷

In addition to the inheritance system which is contained in the Book of Jurisprudence and KHI, the Indonesian people also conduct inheritance according to ethnic ethnicity. In the division of Batak ethnic heritage, gaining an inheritance is a boy, while girls get a part of her husband's parents or in other words the women gain inheritance by means of grants.⁸

The Mandailing tribe himself knew the patrilineal kinship. In the patrilineal system, Mandailing people know and use the clan. According to the customs of Mandailing, in the case of inheritance for boys is also not arbitrary, because the division of inheritance is a specificity that is the most small son or in the language of his Batak called Siapudan. And he gained a special inheritance. In the Mandailing community where girls do not have inheritance but the division of Iboto (biological brother) who does not exist in the rules of Islamic law. While in the overseas area (outside its hometown), inheritance division laws are sometimes more likely to

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⁴Kompilasi Hukum Islam, pasal 171 huruf a. Lihat Ahmad Rofiq, *Hukum Islam di Indonesia*, (Jakarta: RajaGrafindoPersada, 1995), p. 355

⁵KusniatiRofiah, *Pernbaharuan Hukum Waris di Indonesia*, *Dialogia*, Vol. 3, No. 1, Januari-Juni 2005, hlm. 42. LihaMhd. Syahnan, Syahnan, *Modernization of Islamic Law of Contract* (Jakarta: BadanLitbang&DiklatDepartemen Agama RI, 2009), hlm. 1-10; Mhd. Syahnan, *Hukum Islam dalamBingkaiTransdisipliner*. (Medan: Perdana Publishing, 2018) terutamabagianPendahuluan.

⁶C.S.T Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, (Jakarta: BalaiPustaka, 1984), p. 29.

⁷DepartemenPendidikandanKebudayaan RI, *Kamus Besar Bahasa Indonesia*, (Jakarta: BalaiPustaka, 1994), cet. 3 EdisiKedua, p. 1125.

⁸<http://rudini76ban.wordpress.com/2009/06/07/pembagian-warisan-dalam-adat-batak-toba>. Akses tanggal 2 Februari 2017.

occur. It is thus in fact that the division of customary inheritance is sometimes denied the law of inheritance according to Islam. The Community first made a division of inheritance according to customs, so that the shared property is finished divided into all heirs and no longer uses Islamic inheritance because the property has been depleted doled out.

II. THE NOTION OF INHERITANCE IN ISLAM

Beneficiary in Indonesian language which means the person who has the right to receive the inheritance of the deceased in the Indonesian language which means the person who is entitled to receive the inheritance of the deceased person,⁹ is a term derived from the Arabic word "wārītsā" which means inheriting treasures. Wārīs is a variety of rules about the transfer of someone who has died to his heirs. In other terms, wārīs is also called faraid which means that certain portions are divided according to the religion of Islam to all who have the right to receive it.¹⁰

The scholars of the Faraid experts give a different understanding, but in fact they still have the same meaning:

1) Muhammad al-Sarbiny interpreted the science of Faraid as follows:

The science of Fiqh relating to inheritance, knowledge of the way of counting that can complete the inheritance, and the knowledge of the mandatory parts of relics for each owner of the Birthright (heirs).

2) Hasbi Ash-Shiddieqy defines the following:

You who learn about who gets the heir and who does not get it, the rate received by each heir, and the way it divisible.¹¹

3) M. Muhyiddin Abdul Hamid defines the following:

Science that discusses the content (part) of a treasure for everyone who has the right to receive it (heir).

4) The Wahbahaz-Zuhailī defines inheritance with:

The inheritance according to language is the constant of a person after being left by someone after the death of the other with an approximation of the person who is still living against the treasures of the Mayite relic. While according to the jurisprudence: the property left by the deceased person who is in the form of the person who is still alive receives the rights previously owned by the person who died according to Syara'.¹²

III. BASIC INHERITANCE IN ISLAM

a. In Quran

1. Surah *an-Nisa'* (4)/7:

What it means: For men there is a right part of the inheritance of Ibu-bapa and relatives, and for women there is a right of part (also) of the inheritance of Ibu-bapa and his relatives, either little or many according to the appointed part. QS. An-Nisa/4:7)

Said bin Jubair and Qatadah said: The people of Mushrik give his property only to adult men and do not give the right of the wasris to women and children. So God lowered the verse. Meaning: Everything is the same according to God's Law and is the same in the law of Waris-mewarisi origin, although their part is different.¹³

It is narrated that the cause of this verse to descend is: 'Aus bin Samit al-Anshari died, he left a wife, UmmuKahlan and three daughters. Then two children of the Uncle 'Aus namely Suwaid and Arfathah did not give inheritance to his wife and three daughters 'Aus, in the view of the traditional ignorance children and women are not entitled to a treasure of inheritance. Then the wife of 'Aus complained to Rasulullah SAW. In Al-Fadhīh mosque which is inhabited by of Suffah in Medina. Rasulullah SAW met Suwaid and Arfathah. The two explain to Rasulullah SAW that his children could not ride horses, could not bear the burden, and could not also fight the enemy, and we are trying for him. So this verse is the one that cancels the ignorance.¹⁴

⁹Departemen Pendidikan dan Kebudayaan RI, *Kamus Besar Bahasa Indonesia*, (Jakarta: Balai Pustaka, 1994), cet. 3 Edisi Kedua, p. 1125.

¹⁰Beni Ahmad Saebani, *Fiqh Mawāris*, (Bandung: Pustaka Setia, 2009), p. 13

¹¹Suparman Usman dan Yusuf Somawinata, *Fiqh Mawaris (Hukum Kewarisan Islam)*, Jakarta: Gaya Media Pratama, Cet. 2, 2002, p. 14.

¹²Wahbah az-Zuhailī, *al-Fiqh al-Islām wa Adillatuh*, (Damsyīq: Dār al-Fikr, 1987), juz. VIII, p. 243.

¹³Ibnu Kasir al-Qurasyi ad-Dimasyqi, *Tafsir al-Qur'an al-'Azim*, Jilid I, (Dar al-Fikr, Beirut, tt), p.561.

¹⁴Ahmad Musthafa Al-Maraghi, *Tafsir Al-Maraghi*, Jilid IV, Musthafa Al-Babi Al-Halabi, Mesir, tt., hlm. 191-192. lihat pula : Abi 'Abdillah Muhammad bin Ahmad Al-Anshari al-Qurthubi, *Al-Jaami' al-Ahkaam al-Qur'an*, Jilid V-VI, Dar al-Kutub al-'ilmiyah, Beirut, tt, p. 31.

2. Surah *an-Nisa'* (4/11):

It means: Allah is to be the inheritance of your children. That is: Part of a boy is the same as the two daughters; And if the child were all women more than two, then for them were two thirds of the treasures left; If the daughter is one, Thus he obtained a half-treasure. And for two Ibu-bapa, for one-sixth of the treasures which were left, if the dead had children; If the person who dies does not have a child and he is inherited by Ibu-bapanya (only), then his mother gets a third; If the dead had several brothers, So her mother got one-sixth. (The divisions above) after the will of a testament which he made or (and) paid his debts. (About) Your parents and your children, you do not know who is closer to them (many) benefit you. This is a decree of God. Indeed, Allah knows again the wise.

Al-Bukhari has narrated from Jabir bin Abdillah He said: Rasulullah S.A. W and Abubakar were in Bani Salamah to be in the middle of me on foot, He finds me in an unconscious state, he asks for water for Wudoo 'and sprinkled it unto me, until I realized. I ask, what do you command me about the management of my treasure Yes Rasulullah? And the verse shall descend from you.¹⁵

This verse describes some provisions on the division of inheritance as follows:

- 1) Division of the comparison of the acquisition between a son and a daughter, 2:1.
- 2) Division of two or more daughters, they get two-thirds of the treasure.
- 3) Division of the Rights of girls, which is one-second of the property.
- 4) Set about the mother's division, each one-sixth of the property if the heir has children.
- 5) set about the size of the mother and father. If the heir has no children and siblings, then the mother is third part of the treasure.
- 6) set about the size of the mother when the heir inherited by her father, if the heir has no children, but has a brother then the mother part of a sixth of the property.
- 7) Governing the implementation of the distribution of estate of property referred to after being paid wills and heir debt.

b. Based on Hadith

The Hadith of the Prophet Muhammad that directly regulates about inheritance is as follows:

1. Hadith of Abdullah ibn ' Abbas:

It means: To tell us Moses ibn Isma'il has told us Wuhaib has told us ibn Thawus from his father from Ibn ' Abbas from the Prophet Allaah ' alaihi Wasallam said: "Give a portion of the Fara'idh (appointed inheritance) to the right, then the remaining part of the male heir closest to him."¹⁶

Give the prescribed parts to the right, which is intended here are the six divisions set by the Koran:

One-second, a quarter, one-eighth, two-thirds, a third and a sixth. As is meant by "the closest man" according to Ibn Baththal is ' Ashabah (a male heir entitled to obtain inheritance without a certain size) after AshhabulFurudh (heirs entitled based on the six divisions that have been appointed by the Qur'an). Thus the remainder of the property is given only to the closest order of the deceased to the dead and is not shared with the distant order of the word. If the order is the same, then they share a flat one.¹⁷

2. The Hadith Jabir bin Abdullah and Miswar bin Makhramah, said both:

Meaning: from Jabir bin Abdullah and Miswar bin Makhramah said both said Rasulullah saw: A baby is not entitled to receive inheritance unless he is born in a state of movement with screams. The movements are known from crying, screaming and sneezing.¹⁸

3. Hadith of the Prophet from Usamah bin Zaid according to the Muslim priest's history:

Meaning: Has told us Yahya bin Yahya and Abu Bakar bin Abu Syaibah and Ishaq bin Ibrahim, and this is Lafadz Yahya, Yahya said; Has preached to us, while the two say; Has told us ibn Uyainah from AzZuhri from Ali bin Husain from Amru ibn Uthman of Usamah bin Zaid, that the prophet of Allaah ' alaihi Wasallam said: "A Muslim must not inherit from the heathen and the heathen can not inherit from the Muslims."¹⁹

4. Hadith Narrated by Ibn Maajah and al-Daruquthni:

It means: Get the science of al-Faraaidh and and tell the same as others. Because of the fact that Faraaidh science is half the science, and the science of the Fara'id will be abandoned, as well as a science that will be forgotten first participants among my people ". (H. R. Ibn Maajah and Al-Daruquthni).²⁰

¹⁵ IbnuKasir al-Qurasyi ad-Dimasyqi, p. 574

¹⁶ SunanTirmidzi, *SunanTirmidzijilid*, (Beirut: Dar al-Fiqri: 2005), p.31

¹⁷ Muhammad bin Ismail Ash-Shan'ani, *Subulussalam*, Jilid III, (Kairo: Musthafa al-Babi al-Halabi, 1960), p.98.

¹⁸ IbnuMajah, *SunanIbnuMajah II*, Mustafa al-Baby, Kairo, tt, hlm. 919

¹⁹ Muhammad Fuadi Abdul Baqi, *Shohih Muslimjilid 6*, (Beirut: Dar Al-Kutub Al-Ilmiyah: 1995), p. 44

²⁰ Mushthafa Muhammad Imarah, *Nadhrh al-Nur*, Musththafa al-Babi al-HalabiwaAuladuh, Mesir, tt. p. 271.

5. Hadith narrated by al-Bukhari:

Meaning: Mrs. Mas'ud Ra. Explains the heirs; A daughter, a daughter of a boy and a sister. The Prophet SAW for the daughter of one-fifth, for the daughter of the sixth boy i.e. for suffice 2/3, and who lived to be given to your sister. (H.R. al-Bukhari).²¹

6. Hadith from Buraidah R. A from his father R. A:

It means: from Buraidah R. A of his father, R. A, that the Prophet gave to a sixth grandmother when the mother of the deceased was not there. (H.R. Abu Dawood and Al-Nasaa'i).²²

7. Hadith of the history of Abu Dawood, al-Tirmidhi and Ibn Maajah:

Meaning: from Al-Miqdam ibn Ma'diKarib said: Rasulullah S.A.W. said: "The maternal uncle (mother's brother) is the heir to the one who is not his heir". NARRATED by Ahmad and Al-Arba'ah, except At-Tirmidhi. This hadith is seen as Hasan by Abu Zar'ah and is regarded as saheeh according to Al-Hakim and Ibn Hibban.²³

The explanation of the hadith above is a very clear explanation for the sister when she has a daughter, daughter, and granddaughter of a son as heir, so the child is set to be the Ahobah of the property to be shared. It is agreed that if the sister is co-heirs with the daughter, the sister becomes ' Ashabah.²⁴

D. Elements of inheritance in Islam

Peroses the transfer of inheritance or property of one who passed away to the heirs he left in Islamic inheritance law acquainted with three main elements, namely: Al-Muwarrits, Al-Warits and Al-Mauruts.²⁵

1. Al-Muwarrits

Al-Muwarrits, that is, someone who has passed away and left the property or good right of al-Muwarrits died in essence or died legally. As a judge establishes the death of a man who Mafqud (the one who is lost). The decision makes Mafqud the person who is dead intrinsic.²⁶

With the record of the throne must truly have passed away. The death of the Muwaris, according to scholars divided into 3 kinds:

1) Dead Haqiqy (True death)

Dead Haqiqy (True death) is the death of the heir that is believed without the decision of the judge because it witnessed by many people with five senses and can be proved by clear and tangible evidence.

2) Death Hukmy (died according to judge or juridical)

The death of Hukmy (died under judge or juridical) is a death expressed on the basis of judges' decisions because of some considerations. Thus, with the ruling of the judge in a juridical statement is declared dead, although there is a possibility of a living muwaris.

3) Die Taqdiry (die according to alleged)

MatiTaqdiry (died alleged) is a death (Muwaris) based on a hard suspicion, suppose a suspected pregnant mother who was struck by her stomach or forced to drink poison. When his baby was born in death, it was with a hard suspicion of death resulting from a beating of his mother.

2. Al-Mauruts (Treasures inherited)

Al-Mauruts, is a relic, also called Miraats and Irts, which are treasures or rights left by Muwarrits (people who inherit),²⁷ Who will be able to apply after deducting the cost of care, debt, and Testaments. In a sense, the treasures that become the inheritance must be pure of the rights of others in them.

3. Al-Waarits

Al-Warits, who will inherit, has a waris-mewarisi relationship with the muwarrits, whether it is a kinship or marriage relationship. In the books of Fiqh It is stated that there are three things that cause a person to receive the inheritance of one who has passed away, namely: kinship, marital relationship, and bondage relationship (Alwala').²⁸

a. The relationship (al-Qarabah) or Nasab relationship

Relationship Waris-mewarisi due to the kinship includes:

1) The son and his descendants both male and female.

²¹ Al-Bukhri, p. 6.

²² Abu Dawud, *Sunan Abu Dawud*, Jilid II, (Beirut: Dar Al-Fikr, t.t), p.47.

²³ Abu Dawud, p. 48; Ibnu Majah, *Sunan Ibnu Majah*, Jilid II, (Kairo:Musthafa al-Babiy, t.t), p. 905.

²⁴ Ash-Shan'ani, p.99.

²⁵ Wahbah Az-Zuhaili, *Al-Fiqh al-Islami wa Adillatuhu*, Jilid X, (Damsiq-Suriah: Dar al-Fikr), 1997M-1418H, p.7703.

²⁶ SayidSabiq, *FiqhusSunnah*, Jilid IV, (Dar al-Fath li I'laami al-'Arabi, al-Qaahirah), 1418H-1998 M, p.386.

²⁷ WahbahAz-Zuhaili, p.7703.

²⁸ Said Bakri, *I'anatu at-Thalibin*, Jilid III, (Bairut: at-Turath al-'Arabi, t.t), hlm.234.

- 2) Father, father and mother, meaning mother, mother and mother of father.
- 3) Brothers and sisters.
- 4) Uncle and their children who are men.²⁹

b. Marital relationship (Al-Mushahaharrah)

The marriage relationship intended herein is a marriage with a legitimate contract, whether accompanied by an intimate relationship or not.³⁰ The bonds of marriage are one of the causes of the emergence of rights and obligations between the persons bound in them, which with the bond also has a waris-mewarisi relationship between the husband and wife who bind the self reciprocally. On that basis, the right of the husband and wife cannot be completely hijab by any heir. They can only have the nuqsan to reduce their part by their child or by another heir.³¹

The marriage to which the heir inherited requires two conditions:

First, aqad marriage is valid according to Syara', both husband and wife have gathered or not. Secondly, the bond of marriage between the husband is still intact or considered intact. A marriage is considered intact is when the marriage has been decided by the Raj'i Talaq, but the time of the Raj'i 'Iddah for a wife is not finished. The marriage is considered intact, because at the time of 'Iddah, the husband still has full rights to Ruju ' return to his former wife who still runs the 'iddah, both by word and by deed without the need for a new dowry, presenting two witnesses and guardians.³²

c. The Bondage relationship (Al-Wala')

Al-Wala' is a relationship of inheritance as a result of someone liberating the servant of the Sahaya, or through an agreement please help.³³ Wala' which can be attributed as a legal relative, also referred to as Wala'ulliqi, and or wala'unnikmah. This is because of the giving of pleasure to someone who has been freed from his status as a servant of Sahaya. The other sense of Al-Wala' is a relative derived from liberating, and is called Walaau Al 'Itaaq.³⁴ The cleric agrees, a man who deers his servant on behalf of himself, then his right of mercy is for him, and he reveals the servant if he does not leave the heir. And the man becomes 'Ashabah if there are heirs who do not finish the whole treasure.³⁵

E. Barriers to accepting inheritance

The scholars agreed that there were three things that prevented the inheritance of slavery, religious differences, and murder.

1. Slavery (AR-Riq)

Ar-Riq by language is al-'ubudiyah which means "devotion". According to the term is the legal inability found in one's self.³⁶ A slave is viewed as belonging to his master, he must be ta'at and subject to carry out the responsibilities that are caused to him.³⁷ The same slave position as the property. On the other hand, there is a general instruction from a Saheeh Nash that denies the faculties of a servants servant in all areas. Scholars argue that the determination of slavery is a matter of which the inheritance inherits based on the general instruction of a Sharih Nash that leads to the action of a Slave to act in all fields listed in the God's fi of Surah An-Nahl: 75. Following:

It means: God made a parable with a servant of servants who was possessed who could not act against him and one whom we give the good rezki from us, then he sent a portion of the Rezki secretly and openly, will they be as praises only to God, but most of them do not know.

²⁹ *Ibid.*

³⁰ WahbahAz-Zuhaili, p. 7704.

³¹ Dian KhairulUmam, *FiqihMawarisuntuk UIN, STAIN, dan PTAIS*, (Bandung, PustakaSetia, 2006), cet. III, p. 22.

³² WahbahAz-Zuhaili, hlm.7705.

³³ Ahmad Rofiq, p. 36.

³⁴ SayidSabiq, *FiqhusSunnah*, Jilid IV, (Dar al-Fath li I'laami al-'Arabi, al-Qaahirah), 1418H-1998 M, hlm.387.

³⁵ IbnuRusyd, *BidayatulMujtahidwaNihayat al-Muqtashid*, Jilid II, (Semarang: MaktabahwaMathba'ahThaha Putra, t.t), p.271.

³⁶ WahbahAz-Zuhaili, p. 7713.

³⁷ Abdul Aziz Dahlan, Jilid I, p.222.

2. Different religions

The difference between the muwarris and the Islamic heirs with other religions has become a barrier in inheritance based on the agreement of the Hanafi sect, the Maliki sect, the Syafi sect ' I, and the Hambali sect. A Muslim cannot inherit the treasures of a heathen and vice versa despite a kinship or marriage relationship.³⁸ In Hadith the prophet reads:

Meaning: From the Usamah ibn Zaid said: Rasulullah saw saying ' The Muslims do not inherit the treasures of the heathen and the people of Kafi R not inherit the treasures of the Islam.HR. Bukhari.

In addition, the Hadith of Abu Dawood:

Meaning: cannot inherit between two different religions.³⁹

3. Murder

The scholars of the clergy agreed to establish that the murder was principally a barrier to the murderer of the killing of the relics of the person he had slain. According to the Prophet's words that read:

It means: From' Amr bin Shu'aib from his father from his grandfather said he: said Rasulullah saw: There is no right for the murderer to inherit.⁴⁰

Some of these hadiths explained that the murder of the heir prevented the heir inherited the inheritance of the murdered estate. In conjunction with some of the hadith above, is the following fi Qhiyah rules:

Meaning: Whosoever wants to accelerate getting something prematurely then he is penalized to not be able to mneget it.⁴¹

IV. INHERITANCE IN MUSLIM MANDAILING NATAL

In the heritage Pemagian of Mandailing Natal, there are three problems that occur in the middle of society, namely:

1. Understanding the Muslim society Mandailing Natal against the division of the estate.

Explaining the implementation of inheritance division in Mandailing Natal Moslem community, first people should know matters relating to the issue of inheritance, which includes the following:

a. The treasures of inheritance, treasures of inheritance are the treasures left by al-Marhum, then all heirs of inheritance to be a treasure of both lands, rice fields and gardens, livestock, money and jewellery, unless the house does not become an inheritance, because the house belongs to the youngest son. While the other treasures are lower in value then it is not inserted into an heirloom that will be doled out like, clothes, furniture, tools, books and so on. The treasure is doled out to relatives as charity. Based on grouping of the heritage above, there are some differences in customs that are in the inheritance law of Mandailing Natal Society that does not conform to the law of Islamic inheritance, such as grouping heirloom treasures that will be distributed to heirs and who are not shared with heirs. While in the law of Islamic inheritance there is a provision that all the treasures of inheritance Left (Tirkah) must be doled out between the heirs of the right and there are customs or customs such as giving inheritance to certain people that they are not included in the heirs.

b. Heirs, in the distribution of indigenous assets in the district of Bukit Malintang the mother did not get the inheritance that was left by the father, only the boys and girls who got the treasures of inheritance. There is also a well-established heir to both men and women they do not want to receive the inheritance, because they do not need the inheritance and parts are given to other heirs who are more needy. As it is understood, that some Muslims lack understanding or lack of knowledge in living the laws that have been established in the teachings of Islam itself, so it is not uncommon in Muslim society that the implementation of a worship or deed is contrary to the rule of law that has been established in religion. As is the case in the Society Mandailing Natal which corresponds to the results of this research, that the implementation of the Division of inheritance that occurs in this area is still a lot contrary to the rules established in Islamic law.

c. How to divide the inheritance, there are two ways of division of inheritance that is carried out in Mandailing Natal namely, Islamic law and customary law. But the most widely used way in the people of Bukit Malintang is the customary law, as the division of the House is not included in the inheritance. Usually the house was given to the youngest boy and the mother was put on by the youngest son. The reason for using customary law is because the law is usually used from the first/hereditary and already inherent in the society. But there are still those who use Islamic law to divide the treasures of inheritance, usually Islamic law in use by people who have education especially religious education, the reason for using Islamic law because it is equally profitable

³⁸Wahbah al-Zuhaili, *al-Fiqh al-Islam waAdillatuhu*, juzx(Damsyk: Dar al-Fikr, 1997), p. 7719.

³⁹Abu DawudSulaiman al-Asy'as al-Sajistani, *SunanAbiDawud*, (Beirut: Dar al-Ma'rifah, t.th), p. 117.

⁴⁰AbiBakar bin Husein bin Ali Al-Baihaki, *SunanulQubra*.juz 6, (Beirut: Dar al-Fikr, t.th), p. 220.

⁴¹H.A. Dzajuli, *Kaidah-KaidahFikih: Kaidah-KaidahHukumIslamdalamMenyelesaikanMasalah-Masalah yang Praktis*,(Jakarta: Kencana, 2006), p. 106.

and no one is harmed. Many are already out of the concept of Islamic teachings that are caused by indigenous and weak religious sciences especially about the law of Faraidh.

This is as explained by Muhammad Adanan Matondang that the distribution of inheritance in the community of Bukit Malintang Sub-district is generally done in the House of heirs after a will resolved and after being paid the heir debt if there is. In the implementation of this distribution of inheritance accompanied by religious leaders (scholars) according to the community in this area division of inheritance that is the presence of religious figures aimed at the suggestion if there is an unwanted opposition in the division of the property. However, the presence of religious figures in the implementation of the distribution of inheritance in Bukit Malintang Sub-district can not change the way of implementing the division in the community, this is not the implementation of the distribution of inheritance in this area in accordance with Islamic law, but the implementation of the Division of inheritance in this area implemented generally based on customary law in this area is still much contrary to the rule of Islamic law, such as the absence of definite provisions about the number of parts of girls in inheriting.

According to the explanation of Mr. M. Kholid Nasution, as a religious figure in this area that the implementation of the distribution of inheritance in this area is still difficult to apply the division according to the manner governed in the law of Islamic Citizenship because the society is still obedient to the customary law that applies. Because the community in implementing the distribution of the inheritance of the property is still example to the people who do the division of its inheritance, so according to him to change the implementation of the law of inheritance in the middle of this society is very difficult, and this is because it is because the knowledge of society in terms of Islamic inheritance law is very minimal.

From the father's explanation above we can purify that the implementation of the Division of inheritance in the community of Bukit Malintang subdistrict is far from the rules established in the law of Islamic inheritance, while the philosophical we see that the community is in order to do the distribution of heritage of the law of Islam, we can see that during the implementation of the inheritance of the estate, the heirs invited the religious leaders to attend.

2. The pattern of the division of the inheritance of the family in Mandailing Natal Muslim community.

In literature the implementation of the inheritance law in Indonesia is through the implementation of Islamic law in total because it is given that Indonesia's moyoritas are Muslim. But in reality Indonesia carries out different divisions of inheritance. Despite this, the pattern of an implementation is influenced by local customs, because it is due to several things:

First: Although basically Islam has set up a detailed legal basis of inheritance in the Qur'an, if there is a possibility of definition of understanding has been explained by the prophet. Nevertheless, in terms of practical implementation there is a problem that is clearly not contained in the Qur'an and has not been explained by the Prophet, so that the law becomes open.

Second: that the science of law, including Islamic law, where the law of the inheritance is in it, is classified as social science and not an Eksakta science. Therefore, the law of inheritance in place of the possibility of differences of opinion among the jurists themselves, especially regarding the verses that allow the interpretation of more than one.⁴²

However, the presence of religious figures in the implementation of the distribution of inheritance in Bukit Malintang Sub-district can not change the way of implementing the division in the community, this is not the implementation of the distribution of inheritance in this area in accordance with Islamic law, but the implementation of the Division of inheritance in this area implemented generally based on customary law in this area is still much contrary to the rule of Islamic law, such as the absence of definite provisions about the number of parts of girls in inheriting. According to the explanation of Mr. Kholid Nasution, as a religious figure in this area that the implementation of the distribution of inheritance in this area is still difficult to apply the division according to the manner governed in the law of Islamic Citizenship because the society is still obedient to the customary law in force. Because the community in implementing the distribution of the inheritance of the property is still example to the people who do the division of its inheritance, so according to him to change the implementation of the law of inheritance in the middle of this society is very difficult, and this is because it is because the knowledge of society in terms of Islamic inheritance law is very minimal.

Researchers also interviewed Mandailing community in Siabu Sub-district, Mr. Burhan Nasutian explained that the way of implementation here more to implement the Division of inheritance individually by families rather than implementing the Islamic way. It is also in the community of Bukit Malintang District still far from the rules established in the law of Islamic inheritance, while we are philosophical to see that the community is in order to do the distribution of the inheritance of Islamic law, this can be seen that at the time of

⁴² M. Idris Ramulyo, *Perbandingan Pelaksanaan Hukum Kewarisan Menurut KUH Perdata Dan Islam*, (Jakarta: Sinar Grafika, 1994), p. 6.

implementation of the inheritance of the estate, the heirs invite the religious leaders to attend. The primary and first heirs of the Mandailing society, such as other Batak people, are only true to boys (although property has been presented to girls should not be ignored).

In inheritance in the indigenous Mandailing tribe that the inheritance of which is used to cover 3 (three) which are precedence in Mandailing customs, namely:

1. Use customary law as the first spear in determining heir.
2. Using Islamic law, because in the Mandailing tribe have embraced Islam, then they use Islamic law in inheritance.
3. Use conventional law/national law, because if customary law and Islamic law do not want to be used then they use national law.

3. Constraints in the division of inheritance in the Muslim community Mandailing Natal.

The obstacle in the customary inheritance of Mandailing is that the child does not inherit the sari of one of his parents, whose instinctive remains in his relatives, while the children do not enter it. And another obstacle to the child inside is done one to inherit from both parents, is the form of marriage that resulted that the child who marries is freed from the Panguyuban living kinship. An example of a daughter with a marriage came out of her father's relatives, so that she could not prosecute the right to no-wills.

In general, the barriers to implementation of inheritance division in Mandailing Natal people look a few things:

1. The influence of religious beliefs, knowledge of religious people will be able to influence the religious implementation of one. As in the Mandailing Natal community Soal Heritage, Example expressed by citizens of Panyabungan Nurdin Nasutian that a strong religious person can more easily accept the law itself especially about the inheritance that he thinks treasures or inheritance is not everything in this life.
2. The marriage factor, obstacles in the implementation of inheritance division in Mandailing Natal community is also due to the marriage factor as explained the citizens of Siabu Marwan Pulungansubdistrict because marriage involves the family so that the family can be not seonable with husband wife.
3. Lack of adherence to religious figures in inheritance matters, barriers in the implementation of inheritance also due to lack of socialization by religious figures on the importance of Islamic inheritance law. As spoken by one of the residents of Panyabungansubdistrict that Ustadz's network is to digest the inheritance in the midst of society that we often hear only other legal issues such as prayer, fasting, zakat and family.
4. Absence of sanctions in the implementation of inheritance division, as described by citizens of Sorik Valley District MERAPI problem obstacles in implementing the absence of sanctions from the family, public figures, the adat let alone from the government so that the legal impression is up because it's a family problem.
5. The influence of the need for property, barriers to implementation of inheritance is also influenced by each person desperately need treasures so that the family is very ambitious about the treasure itself. As is explained by one of the teachers of Pesantren law of inheritance inherited economic problems, divisions are not enough or impressed least feel unfair and Bahkabmen for many can treasures inheritance even there is also a do not want to share it with his brother.

V. CONCLUSION

Based on the described exposure relating to the inheritance of the Muslim society Mandailing Natal can be concluded, as follows:

1. The Division of inheritance, there are two ways of understanding the public

The distribution of inheritance in Mandailing Natal, Islamic law and customary law. But the most widely used way in the community of Bukit Malintang is legally customary, such as house divisions are not included in the inheritance. Usually the house was given to the youngest boy and the mother was put on by the youngest son. The reason for using customary law is because the law is usually used from the first/hereditary and already inherent in the society. But there are still those who use Islamic law to divide the treasures of inheritance, usually Islamic law in use by people who have education especially religious education, the reason for using Islamic law because it is equally profitable and no one is harmed. But there are still those who use Islamic law to divide the treasures of inheritance, usually Islamic law in use by people who have education especially religious education, the reason for using Islamic law because it is equally profitable and no one is harmed.

2. Polapembagian harta waris secara kekeluargaan pada masyarakat muslim Mandailing Natal.

In literature the implementation of the inheritance law in Indonesia is through the implementation of Islamic laws, but in reality Indonesia carries out different divisions of inheritance. Despite this, the pattern of an implementation is influenced by local customs, because it is due to several things:

First: Although basically Islam has set up a detailed legal basis of inheritance in the Qur'an, if there is a possibility of definition of understanding has been explained by the prophet. Nevertheless, in terms of practical

implementation there is a problem that is clearly not contained in the Qur'an and has not been explained by the Prophet, so that the law becomes open.

Second: that the science of law, including Islamic law, where the law of the inheritance is in it, is classified as social science and not an Eksakta science. Therefore, the law of inheritance in place of the possibility of differences of opinion among the jurists themselves, especially about the verses that allow the interpretation of more than one.

3. Constraints in the division of inheritance in the Muslim community Mandailing Natal

In general, the barriers to implementation of inheritance division in Mandailing Natal people look a few things:

1. The influence of religious belief, knowledge of religious people will be able to influence on the religious implementation of one..
2. The marriage factor, Hamabtan in the implementation of inheritance division in Mandailing Natal community also caused the marriage factor.
3. Lack of adherence to religious figures in inheritance matters, barriers in the implementation of inheritance also due to lack of socialization by religious figures on the importance of Islamic inheritance law.
4. Absence of sanctions in the implementation of inheritance distribution of both the traditional and pemerintah constitutional.
5. The influence of the need for property, barriers to implementation of inheritance is also influenced by each person desperately need treasures so that the family is very ambitious about the treasure itself.

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