

## THE PROBLEM OF DISTRIBUTION OF INHERITANCE: A CASE STUDY ON THE MALAY COMMUNITY OF SAMBAS KALIMANTAN BARAT IN INDONESIA

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### ABSTRACT

*This study is about the provisions of the Qur'ān on inheritance that regulates the rights of the heirs with justice, especially towards women who did not have such right before the advent of Islam. Currently, the people of Malay Sambas distribute inheritance against the provisions of the Qur'ān which allots double shares to the male except in case of the parents. In the Sambas Malay community, men and women inherit equal shares contrary to the provisions in the Qur'ān as stated in the verse of al-Nisā' 4: 11, 12, and 176. This research is a field research with a phenomenological method by looking at gender equality and feminism in the distribution of inheritance among the Malay Sambas community. The focus of this research is guided by the Islamic law position on the Malay Sambas equal distribution system of inheritance between men and women. This research finds that the Malay Sambas system of inheritance is contrary to the Shariah because there is still equal distribution of inheritance to male and female beneficiaries.*

**Keywords:** *Islamic inheritance, inheritance problem, Malay Sambas inheritance, gender equality*

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## INTRODUCTION

Inheritance rights in Islam are a path to justice, or an opportunity to get a share of the assets or ownership left by a deceased person to his or her heirs, both male and female. If it is called a right, it means it can be retrieved. After the obligation of inheritance is carried out, and the pillars as well the requirements of inheritance are met, there is a right for an individual to obtain assets and ownership, which is called the inheritance rights. Unfortunately, people who do not have rights will not receive the inheritance. According to Muhammad Ihsan Maulana, the inheritance rights are divided into four parts:<sup>2</sup>

- a) **Legitimate Marriage:** Legitimate marriage is a marriage contract between men and women even though they have never had intimate and legal relationships according to the Shariah. Illegitimate marriages, or *fasids*, is *ḥarām* in Shariah, thus prohibit the doer from receiving the inheritance rights.
- b) ***Naṣab*:** *Naṣab* means blood relations, family or kinship. This is a precondition to get an inheritance. There must be blood connection; relationships such as adoption, in-laws, or milk kinship.
- c) **Freedom:** Freedom, means the status of an heir as a person who is not a slave. This is because one of the requirements to get an inheritance is the ability to own properties independently and freely without any control of masters. The status of a slave is a barrier to owning and managing property. Thus, if a slave gets inheritance, then his property belongs to his master just as he himself is the property of his master.
- d) **Religion:** An heir should belong to the same faith or belief with the deceased person. Muslims can inherit any from one another.

The explanations above show that the right to inheritance under Islamic law comes through legal marriage, blood relationship, freedom and religion. According to Syafaruddin, justice in inheritance is to first determine the true heirs and resolve any dispute regarding who should lawfully inherit.<sup>3</sup> All adult heirs should be consulted before determining the heirs of the deceased due to conflicts that could arise and the procedure will require attention in dividing the inheritance.

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<sup>2</sup> Muhammad Ihsan Mulana, *Pintar Fiqh Waris: Cerdas Membagi Waris untuk Dasar dan Umum* (Surabaya: Ziyah Tazka Mayaza, 2014), 30-31.

<sup>3</sup> Nurjanah Ismail, *Perempuan dalam Pasungan: Bias Laki-Laki dalam Penafsiran* (Jakarta: LKSI, 2016), 284.

The problem of inheritance in the Sambas Malay community is its contradiction and repugnance to the commands of Allah SWT as enshrined in the *Qur'ān* regarding inheritance:

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ فَإِنْ كُنَّ نِسَاءً  
فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ  
وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ فَإِنْ لَمْ يَكُنْ  
لَهُ وَلَدٌ وَوَرِثَتْهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ مِنْ  
بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ ؕ آبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ  
لَكُمْ نَفَعًا فَرِيضَةٌ مِنَ اللَّهِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا ﴿١١﴾

*“Allah (thus) directs you as regards your children’s (inheritance): to the male, a portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sisters) the mother has a sixth. (The distribution in all cases (‘s) after the payment of legacies and debts. Ye know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by Allah; and Allah is All-knowing, Al-wise.”*

(Surah al-Nisā’, 4: 11)

The above verse is the provision for the distribution of inheritance, which is applicable for all times. The *Qur'ān* has explained the inheritance law, with a fair distribution to each of the female and male heirs so as not to cause family disputes.<sup>4</sup> Considering the significance of the law of inheritance in Islamic teachings, any exegete of the *Qur'ān* on inheritance must be learned in the *hadīth* and opinions of Islamic scholars.

The problems of the case above is concerning the provisions of the problem of the heritage distribution among the Malay community of Sambas in West Kalimantan-Indonesia. This research is aimed in examining and solving the problem regarding the difference of male and female shares in inheritance between the Islamic law and the customary law of the Sambas Malay Community in West Kalimantan-Indonesia. The issue of inheritance is indeed significant enough to warrant this research. We understand that it is better to

<sup>4</sup> Teungku Muhammad Hasbi Ash Shiddieqy, *Hukum Mawaris* (Semarang: PT. Pustaka RizkiPutra, 2017), 6.

avoid inheritance disputes in the future as it might impact negatively onto our descendants.

## **METHODOLOGY**

This research is a field research with a phenomenological method. It looks at the equality of genders in the inheritance portions among the Malay community of Sambas in comparison with the double share to the male in Islamic law. The discussions in this study will explain in detail the said comparisons, the problems caused by the differences, followed by some suggestion for future researchers in determining the research developments regarding the Sambas Malay community.

Phenomenology is the study to find the meaning of life experience. This study uses a descriptive qualitative method, which illustrates how the system of inheritance distribution to heirs in the Malay community turns as a phenomenon in the family environment. The purpose of this phenomenological research is to look for or find meaning from the essence or fundamental to life experience.<sup>5</sup>

According to Richard L. Laningan, phenomenology as a method has three synergistic process stages, namely<sup>6</sup> (i) Description of Phenomenology, which explains about reminding us when we deal with the community that is conscious and experienced; (ii) Phenomenology reduction, which determines how from the descriptions are important and how that is not important. In the sense of reducing phenomenology, it aims to isolate objects from consciousness that enters the experience they have; and (iii) Phenomenology Interpretation, which focuses on more specific or important thinking in the reduction and description of conscious experiences that being investigated.

After knowing the research approach in phenomenology as mentioned above, the research aims to know the distribution of inheritance from the Malay in Sambas, West Kalimantan-Indonesia, with the respondents' numbering of five people, who have been involved in the division of inheritance in their family. Due to the different opinion among the Sambas Malay community on the division of inheritance between female and male, it raises the debate and must go through deliberations within the family.

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<sup>5</sup> M. Junaidi Ghoni, Fauzan Almansur, *Metode Penelitian Kualitatif* (Jogyakarta: Ar-Ruzz Media, 2014), 57.

<sup>6</sup> Alex Subur, *Filsafat Komunikasi: Tradisi dan Metodologi* (Jakarta: PT Remaja Rosda Karya, 2016), 5-6.

This has led the author wants to know the case in order to provide a good solution through this research, so that there are no differences of opinion in accordance with the theoretical basis set out in the *Qur'an*, *ḥadīth* and compilation of Islamic law (KHI) as a legal basis in Islam.

## UNDERSTANDING HERITAGE IN ISLAM

Inheritance law is the law governing the property of someone who has died, in other words regulating the transfer of the deceased assets to the heirs. An heir is a person who has the right to inherit property acquired by the deceased person.<sup>7</sup> Muslims must realize that the *Qur'an* not only gives guidance on the relationship between man and God, but it also regulates the relationship between humans and nature.<sup>8</sup>

According to M. Athoillah, the meaning of inheritance is the same as the meaning of inheritance, which covers everything left by someone after death, both in the form of property and rights that are material and non-material. Then, everything is abandoned by someone after death, in the view of the majority of fuqaha, is called inheritance, whether the person who died bears debt or not, and whether the debt is in the form of '*aniyah* debt (the treasure has a form in reality), or in the form of *shakṣiyyah* debt (laws relating to fostering family debt).<sup>9</sup>

Shariah stipulates that the provisions of inheritance are systematic, orderly and full of values of justice. In it, the rights of the male and female members of the household are determined in a manner that is justified in Islamic law as stated in the *Qur'an*, the word of Allah SWT, surah al-Nisā' [4], verses 11, 12 and 176:<sup>10</sup>

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ فَإِن كُنَّ نِسَاءً  
فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِن كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ  
وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُ وَلَدٌ فَإِن لَّمْ يَكُنْ

<sup>7</sup> Ahsin W. Al-Hafidz, *Kamus Ilmu Al-Quran* (Jakarta: Amzah, 2008), 11.

<sup>8</sup> Abdul Halim, *al-Quran Membangun Tradisi Kesalehan Hakiki* (Jakarta: Ciputat Pers, 2006), 3.

<sup>9</sup> M. Athoillah, *Fikih Waris: Metode Pembagian Waris Praktis* (Bandung: Yrama Widya, 2013), 2.

<sup>10</sup> Kamāl Mālik Abū bin Salim al-Sayyid, *Ṣaḥīḥ al-Fiqh al-Sunnah wa Adillatah wa Tawdīḥ Madhhāhib al-A'immaḥ: Kitāb al-Mawārith*, vol. 4 (Qāhirah: Maktabah at-Tawfiqiyah, t.t.).

لَهُ وَلَدٌ وَوَرِثَتَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ مِنْ  
بَعْدِ وَصِيَّتِهِ يُوصَى بِهَا أَوْ دَيْنٌ وَأَبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ  
لَكُمْ نَفَعًا فَرِيضَةٌ مِنَ اللَّهِ إِنْ اللَّهُ كَانَ عَلِيمًا حَكِيمًا ﴿١١﴾

“Allah (thus) directs you as regards your Children’s (Inheritance): to the male, a portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased Left brothers (or sisters) the mother has a sixth. (The distribution in all cases (‘s) after the payment of legacies and debts. Ye know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by Allah; and Allah is All-knowing, Al-wise.”

(Surah al-Nisā’, 4: 11)

وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدٌ فَإِنْ  
كَانَ لَهُنَّ وَلَدٌ فَلَكُمْ الرُّبْعُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّتِهِ  
يُوصِيَنَّ بِهَا أَوْ دَيْنٌ وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكَتُمْ إِنْ لَمْ يَكُنْ  
لَكُمْ وَلَدٌ فَإِنْ كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمُنُ مِمَّا تَرَكَتُمْ مِنْ  
بَعْدِ وَصِيَّتِهِ تُوَصَّوْنَ بِهَا أَوْ دَيْنٌ وَإِنْ كَانَ رَجُلٌ يُورِثُ  
كَأَلَّةً أَوْ امْرَأَةً وَهِيَ أَخٌ أَوْ أُخْتُ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ فَإِنْ  
كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ مِنْ بَعْدِ وَصِيَّتِهِ  
يُوصَى بِهَا أَوْ دَيْنٍ غَيْرَ مُضَارٍّ وَصِيَّتَهُ مِنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَلِيمٌ ﴿١٢﴾

“In what your wives leave, your share is a half, if they leave no child; but if they leave a child, ye get a fourth; after payment of legacies and debts. In what ye leave, their share is a fourth, if ye leave no child; but if ye leave a child, they get an eighth; after payment of legacies and debts. If the man or woman whose inheritance is in question, has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third; after payment of legacies and debts; so that no loss is caused (to any one). Thus is it ordained by Allah; and Allah is All-knowing, Most Forbearing.”

(Surah al-Nisā’, 4: 12)

يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ إِنَّ أُمَّرَأًا هَلَكَ لَيْسَ لَهُ وَلَدٌ  
وَلَهُ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ وَهُوَ يَرِثُهَا إِنْ لَمْ يَكُنْ لَهَا وَلَدٌ فَإِنْ كَانَتَا  
أُثْنَتَيْنِ فَلَهُمَا الثُّلَثَانِ مِمَّا تَرَكَ وَإِنْ كَانُوا إِخْوَةً رِجَالًا وَنِسَاءً فَلِلذَّكَرِ مِثْلُ  
حِظِّ الْأُنثِيَيْنِ يُبَيِّنُ اللَّهُ لَكُمْ أَنْ تَضِلُّوا وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ ﴿١٧٦﴾

“They ask you for a fatwa (Legal Ruling). Say: “Allah gave you a fatwa about a person dies and he has no children and has a sister, then the portion of his sister is one-half of the property he left behind and her brother takes all she dies if she has no children, but if there are two sisters, then for both of them is two-thirds of the property left by their deceased brother, and if they (the heirs consist of) brothers and sisters, then the male will have the share of two females. Allah explains (this law) to you, so that you will not go astray. And Allah is Knows everything.”

(Surah al-Nisā’, 4: 176)

The above verse shows that the *Qur’ān* is very clear, detailed and fair in the inheritance section for each heir. According to surah al-Nisā’ verses 11, 12 and 176, inheritance laws are easy to understand and clearly stipulate who has the right to be an heir, and explain the shares obtained by each heir.<sup>11</sup>

According to Zakiul Fuady Muhammad Daud and Raihanah Hj. Azahari on the fact of inheritance based on Islamic law, if other family members do not receive their share, it is appropriate for parties who become heirs to give a portion to those who have not received the inheritance. However, if there are heirs who are not intended to give a little part to the heirs who are not entitled to receive the inheritance, then *tashāwun al-qismah* cannot be given.<sup>12</sup>

The compilation of Islamic law (KHI) states that heirs are verified as Muslim from their identity card, recognition, practice or testimony, while for newborns or minors’ religion is following their father/mother or environment.<sup>13</sup>

<sup>11</sup> Syaikh Ahmad bin Musthafa al-Farran, *Tafsir Imam Syafi’i*, vol. 2, trans. Fedrian Hasmand (Jakarta: Almahira, 2006), 38.

<sup>12</sup> Zakiul Fuady Muhammad Daud & Raihanah Hj. Azahari, ‘Amalan Penghakiman Kes Wasiat Wajibah Kepada Waris Berbeza Agama: Kajian Kes Terpilih,’ *Jurnal Syariah*, vol. 26/2 (2018): 289.

<sup>13</sup> Mediya Rafeldi, *Kompilasi Hukum Islam dan Undang-Undang Perkawinan, Wakaf dan Penyelenggaraan Haji* (Jakarta: ALIKA, 2016), 44. See also Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan dan Kompilasi Hukum Islam. Cet 1 (Surabaya: Sinarsindo Utama, 2015), 388-389.

Thus it is inappropriate for someone to add an inheritance to groups or parties who not been mentioned by Allah in the *Qur'ān*.

In the compilation of Islamic law (KHI), it states that heirs could be whenever there is blood relations and marital relations, as set out in the *Qur'ān*, the verse 6 of surah al-Ahzab, as well as hijrah as regulated in the *Qur'ān*, in the verse 75 of surah al-Anfal.<sup>14</sup>

According to Muhammad Syaifudin Hakim, he quoted the book of *al-Mulakhkhas Fiqhī* which says;

*“Whoever fiddles with the inheritance as determined by the Shariah, so he bequeaths property to those who should not have the right to receive it or he prevents the division of part or all heirs to those who are entitled to receive them, or he likens men and women to the distribution of inheritance.”*<sup>15</sup>

From the explanation above, gender experts have concluded a fact that is based on sex, where there are 15 groups of heirs who are entitled to receive inheritance agreed upon *fuqaha* in Islam.<sup>16</sup> If the heirs of all male groups are present, only three groups will inherit from them namely, male child, grandfather, father. It is likewise with the group of female heirs; if the heirs mentioned above are all present, only five people will inherit from them, consisting of wife, daughter, grandchildren from mother, mother and sister.<sup>17</sup>

The heirs whose inheritance has been determined in the *Qur'ān*, with the division of 1/2, 1/4, 1/8, 2/3, 1/3 and 1/6 are stated as follows:<sup>18</sup>

<sup>14</sup> Riski Kasmaja & Sri Sudono Saliro, ‘Studi Komparatif Hak Waris Transgender Menurut Kitab Undang-Undang Hukum Perdata dan Hukum Islam,’ *Jurnal Mahkamah*, vol. 4/1 (2019).

<sup>15</sup> Muhammad Syaifudin Hakim, ‘Ancaman Terhadap Pembagian Waris Yang Menyelisihi Syariat,’ <https://muslim.or.id/46661-ancaman-terhadap-pembagian-waris-yang-menyelisihi-syariat.html>, accessed on 17 November 2019. p 335

<sup>16</sup> Abu Malik Kamal As Sayyid Salim, *Tuntunan Praktis Hukum Waris*, terj. Ade Ichwan Ali (Jakarta: Pustaka Ibnu Umar, 2010), 21.

<sup>17</sup> M. Abdul Mujieb, *Kamus Istilah Fiqih* (Jakarta: PT Pustaka Firdaus, 2010), 7. See also Mediya Rafeldi, *Kompilasi Hukum Islam dan Undang-Undang Perkawinan, Wakaf dan Penyelenggaraan Haji*, 44-45. See also Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan dan Kompilasi Hukum Islam, 388-389. See also Muhammad Ihsan Mulana, *Pintar Fiqh Waris: Cerdas Membagi Waris untuk Dasar dan Umum*, 39-49.

<sup>18</sup> Athoillah, *Fikih Waris Praktis* (Bandung: Yrama Widya, 2018), 98.



- a) Who gets half (1/2): i) The only daughter if she's alone (and no sons); ii) The son's daughter if no daughters exist and no son's son exist; iii) The only sister of a male deceased, and the only consanguine sister from the same father but different mother; iv) A husband who does not have children.
- b) Who gets a quarter (1/4): i) Husband, if the wife leaves a son or daughter or grandchild; ii) Wife, if the husband has no children and no grandchildren. If more than one wife, the share is divided equally.
- c) Who gets an eighth (1/8): The wife left by her husband to die by leaving her son, daughter and so on (declining).
- d) Which gets two thirds (2/3): i) Two or more daughters, if there are no boys; ii) Two of son's daughters, when there is no son's son(s) exist (the share is divided equally between them)
- e) Who gets a third (1/3): i) Mother, if there are no children or grandchildren (sons of sons), and neither are there two siblings; ii) Two or more siblings or half-siblings.
- f) Who gets one sixth (1/6):<sup>19</sup> i) Mother, if with child or with two or more siblings or more; ii) Father, if the body has a child or children of men; iii) A valid grandmother or mother/mother/father; iv) Granddaughter of a son (one or more) if he is with a daughter. If there are more than one daughter, granddaughter does not get inheritance; v) Grandfather, if with a child or grandson of a boy, and the father is not there; vi) One sister (one mother or more), if no full brother exists but female entitled descendant exist.

According to al-Qurṭubī, the word *furūd al-muqaddarah*<sup>20</sup> is part of inheritance which has been determined by Islamic law to the expert. To those who have the right as listed in the *Qur'ān*, specifically in surah al-Nisā', there are six parts of division, namely half (1/2), a quarter (1/4), one eighth (1/8), two thirds (2/3), one third (1/3), and one sixth (1/6).<sup>21</sup>

## THE PROBLEM OF DISTRIBUTION OF INHERITANCE IN THE SAMBA'S MALAY SOCIETY

Inheritance law is a law that regulates the transfer of ownership rights to heirs. On the other hand, inheritance law is a law that regulates those who inherit and

<sup>19</sup> Athoillah, *Fikih Waris Praktis*, 79.

<sup>20</sup> The part that can be obtained by the heirs that have provisions in the provisions of the *Qur'ān* and *ḥadīth*

<sup>21</sup> Imam al-Qurṭubī, *al-Jami' li Ahkam al-Quran*, vol. 5, terj. Faturrahman (Jakarta: Pustaka Azzam, 2008), 152.

who do not inherit. As discussed above, inheritance law is the transfer of rights from the deceased to his heirs, and it is usually in the form of inheritance such as land, money, houses, even other valuable assets.

Judging from the problem in the field, the writer wants to know about the problems of the Sambas Malay community in the distribution of inheritance, which according to the writer's notes, the distribution of inheritance is divided equally from the inheritance left by the deceased. The distribution of inheritance is in accordance with the word of God in al-Nisā' verses 11, 12 and 176, which explain how the division of inheritance is segregated between male and female heirs. With this, the researcher conducted an interview to find out the problems of the Malay people of Sambas in the distribution of inheritance.

According to Mr Khairani, who is among the Malay people of Sambas, he as the first respondent to the research stated that, the distribution of inheritance in his family after their parents died in is using the method of equal distribution because they do not understand the problems of such inheritance distribution.<sup>22</sup> In their families, they agreed to do equal distribution of inheritance between male and female heirs. The author concludes the scenario by using the guideline on the distribution of inheritance in surah al-Nisā' verse 11. Hence, it is proven the respondent as only knows the surface but does not understand about the actual meaning of distribution of inheritance which stated in the *Qur'ān*.

In addition, according to Mr Kholdi, who is the second respondent among the Malay people of Sambas, the distribution of inheritance in his family was carried out equally and evenly, because they do not know about Islamic law in the distribution of inheritance according to the *Qur'ān* because there are more female in the family than male. Based on Mr Kholdi interpretation, he said that if the property is divided into Islamic Shariah, female would get little from male, and there would be no justice in the distribution of inheritance.<sup>23</sup>

Then, according to the third respondent coming from Malay Sambas, Mr Mawardi said that there are many educated people in his village, including his family. However, his family does not practice the distribution of inheritance equally to heirs between male and female because there assume that there are factors of injustice in faraid and Islamic law, thus refuse to follow the guideline that has been determined in the *Qur'ān*.<sup>24</sup>

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<sup>22</sup> Hairani (Malay Community of Sambas), in interview with author on 6 October 2019.

<sup>23</sup> Kholdi (Malay Community of Sambas), in interview with author on 13 October 2019.

<sup>24</sup> Mawardi (Malay Community of Sambas), in interview with author on 20 October 2019.

Furthermore, according to Mr Jumadi as the fourth Malay Sambas respondent, the distribution of inheritance is equal to the heirs between male and female in his family due to the lack of understanding of inheritance law in Islam. Thus, the distribution of inheritance is divided equally to heirs between male and female for reasons of not understanding the division of inheritance that has been established in the *Qur'ān*. So far, the distribution of inheritance carried out in his family has become a habit, and is said to maintain the customs performed in their family environment.<sup>25</sup>

Looking at the opinions of the four respondents above, the authors conclude that the equal distribution of inheritance of heirs between male and female is determined as follows:

- a) The Malay people of Sambas do not understand the division of inheritance that has been determined and explained in the *Qur'ān* al-Nisā' verses 11, 12 and 176.
- b) There is a shift in culture and habits in the social fabric of the Malay community that highlights gender equality, so that there is no difference in heirs between male and female. This is because at this time, many women have worked and able to generate their own income in order to help the needs of the family assist the breadwinner or be the breadwinner of the family.
- c) Fear of disputes within the family so that the distribution of inheritance is carried out equally.

From the explanation above, in the distribution of inheritance in the Malay Sambas community, is still lacking of understanding, specifically on the division of inheritance in accordance with Islamic law that has been regulated in the *Qur'ān*. And it is hoped that there will be socialization about the distribution of inheritance by the local religious department to the people of Malay Sambas.

With the factors mentioned above, the equal distribution of inheritance in Sambas Malay community is not in line with the inheritance law that prescribed in Islamic religion. This problem is caused by the lack of socialization about the distribution of inheritance to the community, so that people do not understand how much the portion of the inheritance need to be distributed to the heirs left behind, thus unrealize the reason behind of such division that actually fulfils their right as heirs.

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<sup>25</sup> Jumadi (Malay Community of Sambas), in interview with author on 27 October 2019.

## **ANALYSIS OF THE DISTRIBUTION INHERITANCE TO THE SAMBAS MALAY COMMUNITY**

This study analyzes the equality between men and women in the distribution of inheritance in the Sambas Malay community, which is also a serious problem that occurs among Muslims. This scenario is factorized by the reasons and goals in their family while using the same method in the distribution of inheritance. It has been explained above that there are several reasons for the people of Malay Sambas in sharing inheritance within their family environment, so they choose to apply equal distribution to satisfy each other without following the guideline in surah al-Nisā' verse 11. In their families, the distribution of inheritance to the heirs uses the same method of division because the reasons are based on fears of a prolonged dispute between the heirs in the family after the death of the testator.

In the search for writers in the field, the authors conducted direct interviews with the Sambas Malay community, and they provided different or varied answers for each question. In the division of inheritance, the process must be in accordance with the guidance of inheritance law in Islam, as the formation of inheritance law in Islam is correct and full of wisdom, as stated by Mr. Herman as a religious figure, he is adampled with the verse in the *Qur'ān* (surah al-Nisā', verse 11), where male heirs get double the amount of female section.<sup>26</sup>

The Islamic division of inheritance is done fairly and wisely, especially in view of the laws that have been determined in Islam. The share of male is greater than female because they are the backbone of the family, who hold a lot of responsibility to earn and serve a living and so on. If we trace the history the division of inheritance before in the days of ignorance, female do not get their rights in inheritance, as on the contrary, female become objects of inheritance at that time.

Different from the opinion of Mr. Hairani, Mr. Kholdi and Mr. Mawardi tend to agree in the division of inheritance to male and female heirs. This is based on the habits of some Sambas Malay communities, so that the existing law on inheritance law in Islam cannot be used because *adat* (custom) law is more in line with the current division of inheritance in that particular community. For this reason, the practice of inheritance by the Sambas Malay community is felt to be incompatible with current developments, specifically when viewed from equality perspective between male and female.

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<sup>26</sup> Herman (Religious Figure of Sambas), in interview with author on 3 November 2019.

Actually, the purpose of Islamic law in the formation of inheritance law is to realize mutual support within the family in the continuity of the necessities of life and to create a good relationship in the family environment so that there is no debate between heirs. In Islamic jurisprudence, it also emphasizes that Muslims are allowed to follow customs or cultural habits, as long it is not conflicting with Islamic law. This is because, it consciously states that *adat* has played an important role in regulating social relations in society.

In legal science stated that customary law is actually an unwritten law, and it can be obeyed and felt in accordance with the awareness of the local community. Therefore, Islam allows customary law which is not contrary to Islamic law and does not conflict with a sense of justice for the community. Seeing the explanation above, there is a very basic difference between the concepts of inheritance in Islamic law. In the author's analysis, he focuses on a very significant difference that lies in the division of inheritance between heirs between male and female, where in each section for both heirs are generalized in the distribution of inheritance.

The practice of inheritance in the Sambas Malay community is inseparable from the classical culture that exists for many years. This is also due to the close relationship between social and cultural law in the local community. In the concept of Shariah juridical review, the principle is called as *al-'ādah al-muḥakkamah*. This situation occurs when the existence of *adat* has been the basis of law that manifests the interaction of Islamic law with the reality of being in the social community. In *uṣūl al-fiqh*, *adat* is a series that exists in a social community that has Islamic legal authority, which means that customary law can affect legal material, especially Islamic law about inheritance.

Thus, the authors convey differences in the distribution of inheritance because responsibility in male families requires more work than female, so that the precise adjustment and provision of such obligations and responsibilities is necessary for male to inherit greater than female. Therefore, male will receive the benefits that are not the same as female in obtaining inheritance, although nominally, it had a very much different. As stated by Rifyal Ka'bah, Islamic law cannot be segregated into one aspect by neglecting the others, as it must be seen as a system as a whole in order to determine the wisdom of each laws. This is also important in order to avoid problem if the law does not work according to its function.

So with this, from the results of the researchers' analysis in the field, it states why Allah SWT explains the inheritance law to Muslims. As with other laws, inheritance law is derived to provide regulation for humans and provide a sense of justice. Under this goal and wisdom of understanding, the science of inheritance in Islam are as follows:

- a) A fair distribution of inheritance is intended to protect the property so that security is created against the heir until he is entitled to receive the inheritance.
- b) It can help and reduce poverty in family life.
- c) It can avoid disputes between heirs left by the deceased heir.
- d) The transfer of the mandate or responsibility from the heir to his heirs, because the nature of the assets is the deposit from Allah SWT, which must be safeguarded and certainly accounted for later.
- e) There is a sense of justice between male and female heirs so that social welfare can be created to avoid inequality or social jealousy in the family.
- f) This division is arranged in a way to be applied to the family environment, so as to be able to create affection among fellow family members. And inheritance law can guarantee justice for the family and make the heirs happy in the family in accordance with Islamic legal guidance.

## **CONCLUSION**

After discussing and studying the points above, the author explains some of the problems found in the field, and concludes the detail as follows:

- a) The practice of the distribution of inheritance in the Sambas Malay community cannot be separated from the customs and traditions that exist in the local community, thus lead the contrast practice with Islamic law that are contained in the *Qur'ān al-Nisā'* [4] verses 11,12 and 176.
- b) Islamic law is a law that regulates the assets of the deceased heir, in other words regulates the transfer of assets from the heir given to the heirs to and so on.
- c) The religion of Islam explains that the *Qur'ān* establishes the problem of dividing the inheritance with justice, orderly and full of values of mutual benefit and reconciliation in the family. The right of ownership for each heir, both men and women must comply with the Islamic law and must be accepted by the heirs.
- d) Inheritance which has been arranged in Islam to be applied in a family environment is already fair and wise. This is because in the division of inheritance can cause affection among fellow heirs in his family.
- e) The provision of inheritance distribution in Islam can avoid disputes in the family between the heirs left by the testator.

- f) The distribution of inheritance in accordance with Islamic teachings can help reduce poverty in family life
- g) Seen from the social point of view of the Sambas Malay community, the practice of dividing the inheritance system equally to heirs between men and women is legal in accordance with the culture of the Sambas Malay community, because there are values that is *baiak* according to the Sambas Malay community which has become custom in the local community of the current social context. And it must be remembered that the regulated Islamic law related to inheritance must be obeyed because the law is directly came from the revelation of Allah SWT.

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