

## Contestation of Customary Law and Islamic Law in Inheritance Distribution: A Sociology of Islamic Law Perspective

Arbanur Rasyid,<sup>1</sup> Rayendriani Fahmei Lubis,<sup>2</sup> Idris Saleh<sup>3</sup>

<sup>1</sup>Department of Law, Faculty of Sharia and Law, Universitas Islam Negeri Syekh Ali Hasan Ahmad Addary Padangsidimpuan, Padangsidimpuan – Indonesia; <sup>2</sup>Department of English Education, Faculty of Tarbiyah and Teacher Training, Universitas Islam Negeri Syekh Ali Hasan Ahmad Addary Padangsidimpuan, Padangsidimpuan – Indonesia; <sup>3</sup>Department of Islamic Economics, Faculty of Islamic Economics and Business, Universitas Islam Negeri Syekh Ali Hasan Ahmad Addary Padangsidimpuan, Padangsidimpuan – Indonesia

\*Corresponding author. Email: rasyidarbanur@gmail.com

### Abstract

In the Mandailing Natal community in North Sumatra, Indonesia, predominantly Muslim, inheritance distribution often deviates from Islamic law due to the influence of local customs. The kinship system of *na tolu* plays a significant role, causing a delay in inheritance distribution until both parents have passed and all heirs are either of legal age or married. This practice aims to preserve family harmony but highlights a tension between Mandailing customary law and Islamic law, complicating the pursuit of justice in inheritance matters. This study explores the interaction between Mandailing custom and Islamic law in inheritance distribution, examining how the two legal frameworks influence one another. The research adopts a qualitative, juridical approach and reveals that customary norms, especially *Dalihan Na Tolu*, tend to outweigh Islamic law. Traditional leaders and religious scholars are key mediators, facilitating compromise and adaptation in inheritance distribution. The study suggests that enhancing Islamic law education and fostering collaboration between traditional leaders and scholars could help harmonize local customs with Islamic principles, ensuring a fairer inheritance process.

**Keywords:** custom; inheritance; sharia; sociology of Islamic law

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Dalam masyarakat Mandailing Natal, di Sumatera Utara, Indonesia, yang mayoritas beragama Islam, pembagian warisan sering kali menyimpang dari hukum Islam karena pengaruh adat istiadat setempat. Sistem kekerabatan *na tolu* memainkan peran penting, menyebabkan penundaan pembagian warisan hingga kedua orang tua meninggal dunia, dan semua ahli waris sudah cukup umur atau sudah menikah. Praktik ini bertujuan untuk menjaga keharmonisan keluarga, namun menyoroti ketegangan antara hukum adat Mandailing dan hukum Islam, sehingga mempersulit pencarian keadilan dalam masalah warisan. Penelitian ini berusaha untuk mengeksplorasi interaksi antara adat Mandailing dan hukum Islam dalam pembagian warisan, meneliti bagaimana kedua kerangka hukum tersebut saling mempengaruhi satu sama lain. Penelitian ini menggunakan pendekatan yuridis kualitatif dan mengungkapkan bahwa norma-norma adat, terutama *Dalihan Na Tolu*, cenderung lebih kuat daripada hukum Islam dalam praktiknya. Para pemimpin adat dan ulama merupakan mediator utama yang memfasilitasi kompromi dan adaptasi dalam pembagian warisan. Studi ini menunjukkan bahwa meningkatkan pendidikan Syariah dan membina kolaborasi antara tokoh adat dan ulama dapat membantu menyelaraskan adat istiadat setempat dengan prinsip-prinsip Islam, sehingga memastikan proses pewarisan yang lebih adil.

**Kata Kunci:** adat; warisan; syari'ah; sosiologi hukum Islam

## Introduction

The law of inheritance is often termed as *farā'id*.<sup>1</sup> This science regulates the process of transferring a deceased person's property (heir), both in material and immaterial form.<sup>2</sup> In this transition process, the public is expected to pay attention to regulations on *farā'id* in accordance with Islamic law and applicable laws and regulations in Indonesia. Article 174 Letter e of the Compilation of Islamic Law (KHI) states, inheritance is as follows: "Inheritance includes inherited property plus part of the *gono-gini* (joint) property that remains after being used for the needs of the deceased person (heir), from illness to death, funeral expenses, payment of debts, and gifts (property) to relatives."

Islamic inheritance provisions, especially classical Islamic inheritance rules, originate from the basic structure that has been established in Islamic legal products, namely the Qur'an, Hadith, and Ijtihad of Ulama, which have been explained and systematized by the imams of the madhhab through various methods and interpretations.<sup>3</sup> The form of inheritance or inheritance inherited by the heirs is several assets and all rights after deducting the payment of the heir's debts and other payments resulting from the heir's death.<sup>4</sup>

Dividing inheritance in accordance with regulations, a person must fulfill the provisions of harmony in the inheritance system, including: The existence of heirs, heirs, and inheritance. It means the heritage can be distributed to the heirs immediately after one of the parents (heirs) dies. However, in reality, in the Mandailing Natal community, the distribution of inheritance has not been carried

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<sup>1</sup> Purnama Hidayah Harahap, "Transformasi Pelaksanaan Pembagian Harta Waris Masyarakat Purba Baru dalam Perspektif Sosiologi Hukum Islam," *Diversi: Jurnal Hukum* 10, no. 1 (2024): 213, <https://doi.org/10.32503/diversi.v10i1.5150>.

<sup>2</sup> Agustin Hanapi, Sarina Aini, and Cut Endang Puspa Sari, "Bridging Fiqh and Positive Law: A New Paradigm for Child Legality and the Best Interest of the Child in Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 23, no. 2 (2024): 293–308, <https://doi.org/10.31958/juris.v23i2.10712>.

<sup>3</sup> Syahrul Mubarak Subeitani, "Ketentuan Waris dan Problematikanya pada Masyarakat Muslim Indonesia," *al-Mujtahid: Journal of Islamic Family Law* 1, no. 2 (2021): 115, <https://doi.org/10.30984/jifl.v1i2.1780>.

<sup>4</sup> Muhamad Faisal Tambi, "Studi Komparasi Pembagian Warisan menurut Hukum Islam dan Hukum Adat," *Lex Privatum* 6, no. 9 (2018): 44–51, <https://ejournal.unsrata.ac.id/index.php/lexprivatum/article/view/25824>.

out even though both parents (heirs) have passed away.<sup>5</sup> One of the fundamental reasons is the existence of heirs who are unmarried or immature.<sup>6</sup> According to Article 184 of the Compilation of Islamic Law (KHI), “Heirs who are immature or unable to carry out their rights and obligations, their share will be represented or appointed by the guardian in accordance with the judge’s decision on the recommendation of family members.”

On that basis, it can be understood that the Mandailing Natal community distributes the inheritance after the two heirs have died and all heirs have been married and have grown up. Muhammad Ridwan wrote in his interview with Mr. Nasution, “The people of Mandailing Natal have practiced custom like this for a long time. If one of the heirs is still immature or unmarried, and only one dies, then the distribution of the inheritance will be suspended (family agreement).”<sup>7</sup>

The same as what Ridwan reported about Padangsidempuan in an interview with Mr. Lubis that in Mandailing Natal since the 1993s, some of the Mandailing Natal people have implemented the distribution of inheritance according to custom (*Dalihan Na Tolu*), one of the goals is to maintain household harmony.<sup>8</sup> Because distributing the inheritance before the two heirs died, it turned out that it was considered a taboo and vulnerable act called an act of disobedience to the parents (heirs). Therefore, the heirs are obliged to wait until the two heirs die, so that the property can be distributed immediately.

The Islamic inheritance system recognizes what is called the *ijbārī* principle (automatic switching),<sup>9</sup> which requires every Muslim to apply this principle in

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<sup>5</sup> Sheila Fakhria, Moh Sholeh Afyuddin, and Muhammad Nazir Alias, “The Indigenous Idea of Gender Equality: Husband-Wife Relationship in the Manuscript of Adābul Mu’āsarah,” *JURIS (Jurnal Ilmiah Syariah)* 22, no. 2 (2023): 317–28, <https://doi.org/10.31958/juris.v22i2.9475>.

<sup>6</sup> Achmad Yani, *Faraidh dan Mawaris: Bunga Rampai Hukum Waris Islam* (Jakarta: Kencana, 2016), 35.

<sup>7</sup> Muhammad Ridwan, “Penundaan Pembagian Warisan: Tradisi Menjaga Keharmonisan Keluarga Ditinjau dari Sosiologi Hukum Islam Muhammad Artho’ Mudzhar,” *EL-Qanuniy: Jurnal Ilmu-Ilmu Kesyarahan dan Pranata Sosial* 10, no. 1 (2024): 74, <https://doi.org/10.24952/el-qanuniy.v10i1.10954>.

<sup>8</sup> Ridwan.

<sup>9</sup> Elfia et al., “Patterns for Settlement of Puna Inheritance Disputes In the Community of Nagari Salareh Aia from the Perspective of Islamic Law,” *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 17, no. 2 (2022): 480–505, <https://doi.org/10.19105/al-lhkam.v17i2.6246>.

dividing inheritance, especially to get civil rights if something happens that has the potential to wrongdoing (take the rights of others) in the distribution of inheritance. Interestingly, most of the Mandailing Natal people are Muslims, but the practice of inheritance distribution is often not in accordance with Islamic law, but uses a kinship system (*Dalihan Na Tolu*).<sup>10</sup> Islam has regulated the mechanism and procedure for the distribution of inheritance in detail, but this is ignored because it prioritizes the benefits between families.<sup>11</sup>

Therefore, if explored in depth, this phenomenon shows the existence of certain values that are maintained by the Mandailing Natal community. The majority of them postpone the distribution of inheritance within the family, because various views influence them. The community will divide the inheritance if both parents have died, all heirs are married and adults.<sup>12</sup> If this has not been fulfilled, then the property left by the heirs will not be distributed. The uniqueness of the Mandailing people is their tendency to use the principle of kinship (*Dalihan Na Tolu*) in the distribution of inheritance, not based on Islamic law, which has determined the provisions or the level of each heir's share.<sup>13</sup>

To find out the position of this research, it is necessary to present several previous studies relevant to this topic. First, a study by Fitrohutul et al.<sup>14</sup> shows that the phenomenon of delaying the distribution of inheritance often occurs in Jogopaten Village. However, this delay does not appear to be a significant problem in the structure of a Muslim-majority society. The main factors that cause this

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<sup>10</sup> Arifah Millati Agustina and Nor Ismah, "Challenging Traditional Islamic Authority: Indonesian Female Ulama and the Fatwa against Forced Marriages," *Journal of Islamic Law* 5, no. 1 (2024): 125–46, <https://doi.org/10.24260/jil.v5i1.2319>.

<sup>11</sup> Tambi, "Studi Komparasi Pembagian Warisan menurut Hukum Islam dan Hukum Adat"

<sup>12</sup> Muljan Muljan et al., "Preventing Child Marriage in Bone District, South Sulawesi: Perspective of Islamic Family Law," *el-USrah: Jurnal Hukum Keluarga* 7, no. 1 (2024): 110–27, <https://doi.org/10.22373/ujhk.v7i1.22482>.

<sup>13</sup> Januddin Muhammad Yusuf, Nawir Yuslem, and Dhiauddin Tanjung, "The Inclusion of Ulema in the Application of Islam Nusantara Law for the Aceh Community," *al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 23, no. 2 (2023): 186–97, <https://doi.org/10.30631/alrisalah.v23i2.1428>.

<sup>14</sup> Fitrohutul Khasanah, Muhajir Muhajir, and Akhmad Muhaini, "Analisis Hukum Waris terhadap Penundaan Pembagian Harta Warisan di Desa Jogopaten," *Jurnal Justitia: Jurnal Ilmu Hukum dan Humaniora* 9, no. 5 (2022): 2757–65, <https://jurnal.um-tapsel.ac.id/index.php/Justitia/article/view/7601>.

delay are the existence of parents (heirs) who are still alive, the responsibility to finance the education of the heirs' children, and the condition of the heirs who are still in mourning. In conclusion, the practice of postponing the distribution of inheritance is not justified because there is no sharia reason to support this according to Islamic law.

Research conducted by Jakfar et al. shows that several factors influence the delay in the distribution of inheritance in Jantho City District.<sup>15</sup> This delay is due to an agreement among the heirs, the existence of immature heirs, and the view that distributing inheritance when one of the heirs is still alive is considered taboo. Although Islam does not advocate a delay in the distribution of inheritance, such a delay may be accepted for some reason or the consent of other heirs. However, delays that last for a long time can cause problems later on.

Research conducted by Asnawi Abdullah<sup>16</sup> shows that factors that cause the delay in the distribution of inheritance include the presence of children of heirs who are still young or unmarried, as well as the incompleteness of their education. In addition, there is an assumption that hastening the distribution of inheritance is considered taboo and can be considered a greedy act. The impact of the delay in the distribution of inheritance includes the wrongdoing of the rights of the heirs, the potential for the act of eating the property in vain, and the possibility of disputes between the heirs and other family members.

Based on the research described above, this study has similarities with the previous research, which examines the distribution of inheritance in general. The three studies used an approach that was according to Islamic law. However, this study has a significant difference, namely focusing on the contestation between customary and Islamic law in the distribution of inheritance based on the sociological perspective of Islamic law in the Mandailing community. Therefore, this research is considered important to carry out because it can make a new

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<sup>15</sup> Tarmizi M Jakfar, Gamal Achyar, and Dinda Farina Rizqy, "Dampak Penundaan Pembagian Harta Warisan di Kecamatan Kota Jantho Kabupaten Aceh Besar," *el-Hadhanah: Indonesian Journal of Family Law and Islamic Law* 2, no. 2 (2022): 110–28, <https://doi.org/10.22373/hadhanah.v2i2.1835>.

<sup>16</sup> Asnawi Abdullah, "Penundaan Pembagian Harta Warisan dan Dampaknya," *Jeulame: Jurnal Hukum Keluarga Islam* 2, no. 1 (2023): 1–20, <https://journal.iainlhokseumawe.ac.id/index.php/jeulame/article/view/1812>.

contribution to answering contemporary problems related to the friction between custom and Islamic law in implementing *farāid*.

This study offers a new approach by highlighting how the Mandailing Natal community transformed their inheritance-sharing practices from customary traditions to Islamic law. This research provides insight into the dynamics of these changes and how the integration or conflict between customary norms and Islamic law affects the process of inheritance distribution. The novelty lies in an in-depth exploration of how customary norms and Islamic law interact in the practice of inheritance sharing at the local level. This study identifies and analyzes how the Mandailing people maintain customary elements while adapting to Islamic law principles and their impact on social and legal structures.

Based on the problems raised, no study has specifically examined customary and Islamic law contestation in the distribution of inheritance from the sociological perspective of Islamic law in the Mandailing society. Therefore, it is important to conduct scientific-based research to examine the phenomena in the field related to the practice of applying inheritance distribution. In addition, this study also considers sociological why people tend to rely on customary law, while Islamic law and Indonesia's positive law are still set aside.

The type of research used in this study is juridical law research with a qualitative approach (*field research*).<sup>17</sup> The primary data source in this study comes from the Mandailing Natal community, which implements the distribution of inheritance according to existing (*Dalihan Na Tolu*) opinions as well as the opinions of local community leaders.<sup>18</sup> Secondary data sources include legal literature, scientific journals, and other relevant documents supporting this study.<sup>19</sup> The data collection technique includes observation, where systematic observation and recording are carried out related to the transformation of inheritance distribution in the Mandailing Natal community from the perspective of the sociology of Islamic

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<sup>17</sup> Agung Hidayat, "Critical Review Buku 'Penelitian Hukum' Peter Mahmud Marzuki Penelitian Hukum Ad Quem tentang Norma," *Yustisia Merdeka: Jurnal Ilmiah Hukum* 7, no. 2 (2021): 117-25, <https://doi.org/10.33319/yume.v7i2.109>.

<sup>18</sup> Devi Rahayu Djulaeka, *Buku Ajar Metode Penelitian Hukum* (Surabaya: Scopindo Media Pustaka, 2019), 16.

<sup>19</sup> Abdul Hakim, "Maxims Legal Fiqh and Its Application during the COVID-19 Pandemic," *Nusantara: Journal of Law Studies* 1, no. 1 (2022): 1-8.

law.<sup>20</sup> Data analysis is carried out in a descriptive-qualitative technique, which is an effort to collect, compile, and analyze data based on findings in the field.<sup>21</sup>

## Contextualization of Islamic Inheritance Law in Mandailing

In the Arabic dictionary, “inheritance” refers to an inheritance or inheritance left by someone who has died. Inheritance law is expressly defined in Article 171 Letter a of the Compilation of Islamic Law, which stipulates regulations regarding the transfer of ownership rights over *tirkah* (inheritance) from heirs to heirs.<sup>22</sup> In addition, inheritance law regulates various subjects entitled to be heirs and determines the amount of shares received by each heir. Ideally, the discussion of inheritance has a strong legal foundation, especially for Muslims, where the main sources are the Qur’an and Hadith. The concept of justice in the inheritance law is not based on the equal division among beneficiaries but rather on the assignment of their obligations or duties.<sup>23</sup>

According to Hazairin, there are three types of inheritance systems—first, the individual inheritance system. Second, the majority inheritance system, and the third collective inheritance system.<sup>24</sup> The inheritance system based on the Qur’an is an individual inheritance system, where after the heir dies, his inheritance can be divided among the heirs, both male and female, with different rights according to the provisions.<sup>25</sup> In Islamic inheritance law, various principles are applied,

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<sup>20</sup> Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum Normatif dan Empiris*, 2nd ed. (Depok: Prenadamedia Group, 2018), 18.

<sup>21</sup> Syafruddin Syam et al., “Reevaluating the Legal Status of Monosodium Glutamate Consumption: The Indonesian Ulema Council’s Fatwas and Maqāṣid al-Sharī’ah,” *al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 2 (2024): 289–302, <https://doi.org/10.24090/mnh.v18i2.11121>.

<sup>22</sup> M. Anwar Nawawi et al., “Harmonization of Islam and Human Rights: Judges’ Legal Arguments in Rejecting Child Marriage Dispensation in Sukadana, Indonesia,” *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 22, no. 1 (2022): 117–34, <https://doi.org/10.18326/ijthad.v22i1.117-134>.

<sup>23</sup> Miftahul Huda and Tri Wahyu Hidayati, “The Concept of Muḥammad Shaḥrūr on Gender Parity in Inheritance Legislation,” *el-Ussrah: Jurnal Hukum Keluarga* 6, no. 2 (2023): 262–80, <https://doi.org/10.22373/ujhk.v6i2.18121>.

<sup>24</sup> Fadil Fadil, Zidna Mazidah, and Zaenul Mahmudi, “Fulfillment of Women’s Rights after Divorce: Dynamics and Transformation in the Legal Journey,” *De Jure: Jurnal Hukum dan Syar’iah* 16, no. 1 (2024): 1–20, <https://doi.org/10.18860/j-fsh.v16i1.25713>.

<sup>25</sup> Mohamad Abdun Nasir, “Negotiating Muslim Interfaith Marriage in Indonesia: Integration and Conflict in Islamic Law,” *Mazahib* 21, no. 2 (2022): 155–86, <https://doi.org/10.21093/mj.v21i2.5436>.

including the principle of *ijbārī*, the principle of individuality, the principle of bilateral, the principle of the consequences of death, and the principle of balance.<sup>26</sup> In addition to these principles, some pillars must be fulfilled in implementing Islamic inheritance law.<sup>27</sup> This pillar is essential for the completeness of the application of a thing, similar to the pillar in prayer. Where the perfection of prayer is achieved when each pillar is carried out, and if one of the pillars is not fulfilled, then the prayer is considered incomplete (valid).<sup>28</sup>

It also applies to the matter of inheritance, where several pillars must be fulfilled in the inheritance system. The inheritance process is considered invalid if these pillars are not fulfilled. These pillars include heirs, inheritance, and heirs.<sup>29</sup> In the inheritance system, according to Islamic law, inheritance includes all the inheritance of the heir, or in other words, the property left by someone who has passed away. It includes inherited property which is added to a share of the joint property.<sup>30</sup> Therefore, inheritance must be free from all worldly obligations (such as the cost of the heir's health care until death, as well as funeral expenses) and religious obligations (such as *zakāt*, *waqf*, or donations), before it can be distributed to the heirs, both male and female, under the provisions of Islamic law. Inheritance can only be distributed to heirs after the heir dies, provided that the heir is Muslim at the time of death, has living heirs, and leaves an inheritance. A person still alive cannot, of course be considered an heir, although the distribution of inheritance to heirs is often prepared before death.<sup>31</sup>

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<sup>26</sup> Yuli Andriansyah, "The Current Rise of Artificial Intelligence and Religious Studies: Some Reflections based on ChatGPT," *Millah: Journal of Religious Studies* 22, no. 1 (2022): xi–xx, <https://journal.uui.ac.id/Millah/article/view/29004>.

<sup>27</sup> Maya Ruhtiani et al., "Legal Protection of Architectural Works as Copyright: An Epistemological and Islamic Law Perspective," *el-Mashlahah* 14, no. 1 (2024): 43–70, <https://doi.org/10.23971/el-mashlahah.v14i1.7645>.

<sup>28</sup> Yusmita Yusmita, "Keadilan Gender dalam Sistem Kewarisan Bilateral Hazairin," *al-Khair: Journal Management, Education, and Law* 3, no. 1 (2023): 155, <https://doi.org/10.29300/kh.v3i1.10939>.

<sup>29</sup> Ibnu Elmi Acmad Slamet Pelu et al., "Sex Recession Phenomenon from the Perspective Maqashid Sharia Based on Objectives Marriage Law in Indonesia," *al-Istinbath: Jurnal Hukum Islam* 7, no. 1 (2022): 39–54, <https://doi.org/10.29240/jhi.v7i1.4204>.

<sup>30</sup> Fitriyadi et al., "Redefining Legal Frameworks: Progressive Methods in Ascertaining Children'S Lineage From Fasid Marriages in Religious Court," *Syariah: Jurnal Hukum dan Pemikiran* 24, no. 1 (2024): 148–71, <https://jurnal.uin-antasari.ac.id/index.php/syariah/article/view/12894>.

<sup>31</sup> M. Syaikhul Arif, "Mengenal Sistem Hukum Waris Adat," *Siyasah: Jurnal Hukum Tata Negara* 5, no. 1 (2022): 22–30, <https://ejournal.an-nadwah.ac.id/index.php/Siyasah/article/view/420>.



However, the portion of a boy is equivalent to two parts of a girl (Mandailing custom). If the heirs leave only daughters, then if the number is more than two, they are entitled to  $\frac{2}{3}$  of the inheritance left behind, while if there is only one daughter, then they are entitled to  $\frac{1}{2}$  of the inheritance. Both parents (father and mother) get  $\frac{1}{6}$  of the inheritance if the heir has a child. If the heir has no children and is only inherited by both parents, then the mother is entitled to  $\frac{1}{3}$ . However, if the heir has several siblings, the mother's share is reduced to  $\frac{1}{6}$ . This distribution is carried out after the implementation of the heir's will and after the debts are paid off.<sup>32</sup>

In Mandailing Natal society, gender is not a debate in the context of the number of inheritance shares. They prioritize harmony in the family, even though Islamic law has regulated the share of each heir. However, the majority of people tend to divide inheritance based on the Mandailing Natal custom (*Dalihan Na Tolu*). In addition, the inheritance distribution mechanism in Mandailing tends to be carried out evenly, without distinguishing between heirs and one another.

### **Inheritance Distribution Based on Mandailing Custom (*Dalihan Na Tolu*)**

The Mandailing ethnic group adheres to a patrilineal kinship system, in which the bloodline is drawn from the paternal side and can only be passed on through sons. Thus, a daughter can only inherit the lineage from her father without being able to pass it on to her children.<sup>33</sup> This has an impact on the kinship system and affects the inheritance distribution aspect in the Mandailing society. In the Mandailing tradition, the youngest son among his siblings has the right to inherit all or most of the heritage (*tirkah*). Inherited assets commonly inherited include houses, gardens, money, etc. The distribution of inheritance in the Mandailing community is generally carried out after both parents (heirs) have died.<sup>34</sup> If only

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<sup>32</sup> Subeitan, "Ketentuan Waris dan Problematikanya pada Masyarakat Muslim Indoensia."

<sup>33</sup> Irfan Abubakar and Idris Hemay, "Pesantren Resilience: The Path to Prevent Radicalism and Violent Extremism," *Studia Islamika* 27, no. 2 (2020): 397–404, <https://doi.org/10.36712/sdiv.27i2.16766>.

<sup>34</sup> Pauzi M., Darul Hipni, and Anwar M. Radiamoda, "The Importance of the Ijtihad Jama'i Method in Contemporary Fiqh Formulations," *al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 23, no. 1 (2023): 13–20, <https://doi.org/10.30631/alrisalah.v23i1.1322>.

one of them dies, the inheritance will not be distributed because it is considered inappropriate or disobedient. In addition, the Mandailing inheritance system also includes clan (tribe) inheritance, which allows adopted children to use their adoptive father's surname, according to the surname embraced by their adoptive parents.<sup>35</sup>

The basic reason is that the Mandailing customary inheritance system does not recognize the concept of heirs in a broad sense as regulated in Islamic law. In general, in Mandailing custom, those considered heirs are children in the lineage with a special emphasis on boys. More precisely, the real heirs are recognized only from the male class. Therefore, the determination of the amount of inheritance for male heirs is considered not very important. On the other hand, if all the heirs are girls, this also does not cause new problems in the customary inheritance system.<sup>36</sup>

The prevailing custom in the Mandailing indigenous people is to recognize sons, women, and their descendants as the main heirs. If the heir does not have children, grandchildren, or adopted children, the inheritance will be handed over sequentially to the heir's parents, both father and mother. If the heir's parents are gone, the inheritance will be passed on to their siblings or descendants. If there are no siblings or descendants, the property will be inherited to the heir's grandparents. If grandparents are also absent, the property will be given to the aunt or uncle of the heir's parents. If no eligible heirs are found at this stage, the inheritance will be transferred to another family member.<sup>37</sup>

Inheritance refers to transferring or distributing property from heirs to heirs. This process can occur while the heirs are still alive and after death. Initially, inheritance began with the gift of property by the heirs as long as they were alive. If the remaining property has not been transferred, the distribution will be carried

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<sup>35</sup> Noviard Noviard and Syafwan Rozi, "Penerapan Nilai Toleransi Antar Budaya dalam Pelaksanaan Hukum Kewarisan Islam pada Masyarakat Perbatasan di Rao Pasaman Sumatera Barat," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 17, no. 1 (2017): 85-112, <https://doi.org/10.18326/ijtihad.v17i1.85-112>.

<sup>36</sup> Wartono Wartono and Supriyono Supriyono, "The Contributions of Indonesian Islam: In the Context of Socio-cultural Identity," *International Journal Ihya' Ulum al-Din* 22, no. 2 (2020): 131-61, <https://doi.org/10.21580/ihya.22.2.5660>.

<sup>37</sup> Yogius Pungu Parluhutan Nainggolan, "Kedudukan Anak Perempuan dalam Pewarisan Hukum Adat Batak Toba (Studi Putusan Mahkamah Agung Nomor. 942 K/Pdt/2012)," [Undergraduate Thesis] (Universitas Lampung, 2017), 32-33.

out after the heir dies. In the Mandailing Natal society, the distribution of inheritance is generally dominated by two inheritance systems that take place both while the heir is alive and after the heir dies.<sup>38</sup>

As long as the heir is alive, the inheritance transfer can be carried out through several methods, although the basic principle remains consistent. First, through transfer or forwarding, the heir transfers his property to his children to prepare them to continue their life or build a household. Second, through appointment, the heirs determine how to manage and utilize their inheritance, while the ownership rights remain with the heirs. Third, through a will or message, which is often applied when the heir is seriously ill or travels long distances at risk of not returning. If the heir recovers or returns, the will can be annulled.<sup>39</sup>

After the heir dies, the process of transferring inheritance is usually carried out through the family method in the Mandailing Natal community. However, community leaders will be invited to complete the process if the familial division is unsuccessful. Currently, the Mandailing indigenous community leaders who play a role in this matter are Mr. Siregar, Nasution, and Lubis. They are responsible for resolving the issue of inheritance division if the family method fails. In the division of inheritance carried out by community leaders, the male share is generally twice as large as the female share (based on the principle of *farā'id*). If this method still does not provide a sense of security and justice, then the inheritance will be divided equally by community leaders.<sup>40</sup>

Interestingly, the Mandailing custom often ignores the pattern of distribution of inheritance according to Islamic law, but still pay attention to the type or form of property (*tirkah*) left by the heirs. The coronation of heirlooms in Mandailing custom generally includes assets such as fields, rice fields, houses, cars, ponds, and the like. The process of transferring this inheritance involves determining who will be the heirs and what they will inherit.

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<sup>38</sup> Nainggolan, 32–33.

<sup>39</sup> Azizah Maulina Erzad and Suciati Suciati, "The Existence of Kudus Islamic Local Culture to Prevent Radicalism in Globalization Era," *QJIS (Qudus International Journal of Islamic Studies)* 6, no. 1 (2018): 39–56, <https://doi.org/10.21043/qjis.v1i1.3460>.

<sup>40</sup> Lyudmita Karolina M. Bakara et al., "Perkawinan Campur Antara Etnis Batak-Dayak di Kalimantan Barat," *Etnoreflika: Jurnal Sosial dan Budaya* 9, no. 2 (2020): 103–18, <https://doi.org/10.33772/etnoreflika.v9i2.828>.

It was revealed that the Mandailing Natal community shows diversity in the practice of inheritance distribution. The process of distributing the inheritance usually involves all family members, accompanied by members of the clan (*kahanggi*) from the husband's family. In the meeting, the *kahanggi* will ask the heirs who is entitled to receive the inheritance, as well as determine the desired method of transfer and distribution of the property, such as determining the share of each heir (the A, the B, and the C).<sup>41</sup>

The Mandailing people generally distribute inheritance after both parents (heirs) pass away. If only one of them dies, the distribution of the inheritance is usually suspended. This tradition has been held by the people of Padangsidimpuan for a long time, from the 1960s until now, so heritage (*tirkah*) is often left undistributed to heirs according to their respective portions based on Islamic law. According to Mrs. Matondang as reported by Ridwan, "the implementation of the distribution of inheritance is very dependent on the will of a mother."<sup>42</sup> The mother is usually neutral and sees the benefits or needs if the inheritance must be distributed immediately. If the distribution of inheritance is deemed necessary, the mother should ideally ask for the help of officials from the Office of Religious Affairs (KUA) to give directions. If no agreement is reached, the process can be continued to the Religious Court. The position of the official is only to explain the provisions for the distribution of inheritance according to Islamic law, not to determine the number of heirs' shares. As to Mr. Siregar, as informed by Ridwan, in Mandailing Natal, the eldest heir often gets a larger share, even though when the heir is alive, the eldest heir does not fully care for the heir. It often led to disputes among other heirs, who then took the case to the Religious Court to determine the heirs' share.<sup>43</sup>

It can be seen that there is friction between customs and national laws that apply to the people of Indonesia, especially in Mandailing Natal. Most people tend to postpone the distribution of inheritance until both heirs die, and suspend the distribution if only one of the heirs dies, although the principle of *ijbārī* in Islamic law

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<sup>41</sup> Ridwan, "Penundaan Pembagian Warisan: Tradisi Menjaga Keharmonisan Keluarga Ditinjau dari Sosiologi Hukum Islam Muhammad Artho' Mudzhar."

<sup>42</sup> Ridwan.

<sup>43</sup> Ridwan.

requires the automatic distribution of inheritance to the rightful. More interestingly, the distribution of heritage (*tirkah*) is often carried out based on customary law, not the applicable positive law.<sup>44</sup> Customary law is a cultural product that contains substance about cultural values as human creation, will and feeling.<sup>45</sup> Customary law is an unwritten law that lives in a particular customary society. It, which is unwritten, makes customary law dynamic, so it is easy to adapt to the development of the times.<sup>46</sup> Customary inheritance law is traditional, religious, communal, concrete and visual, open and simple, can change and adapt, is not codified but is passed down orally, and is based on deliberation and consensus.<sup>47</sup>

Based on the explanation of the distribution of inheritance among the Mandailing Natal people, it can be concluded that the Mandailing customary inheritance system is in harmony and does not contradict Islamic inheritance law. When the family line does not reach an agreement, community leaders play a role in completing the distribution of inheritance. In this case, the parties can choose one of the two available methods: first, following the provision that the male heir receives two parts of the inheritance and the woman one part, in accordance with the principles of Islamic law, or second, choosing an equal division among all heirs.<sup>48</sup>

### **Distribution of Inheritance in Mandailing: Contestation of Customary Law and Islamic Law in Sociology of Islamic Law Perspective**

Mandailing comes from “Mandalay”, a major city in the Burmese region (Myanmar), especially in Northern Burma, known as the center of culture and

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<sup>44</sup> Maulida Zahra Kamila, Nurohman, and Usep Saepullah, “The Role of Legal Aid Post (Pos Bantuan Hukum) in Serving Uncapable Communities in the Bandung Religious Court,” *Khazanah Hukum* 4, no. 3 (2022): 243–52, <https://journal.uinsgd.ac.id/index.php/kh/article/view/18851>.

<sup>45</sup> Arif, “Mengenal Sistem Hukum Waris Adat.”

<sup>46</sup> Noviardi and Rozi, “Penerapan Nilai Toleransi antar Budaya dalam Pelaksanaan Hukum Kewarisan Islam pada Masyarakat Perbatasan di Rao Pasaman Sumatera Barat”

<sup>47</sup> Ida Nurjana Tamba et al., “Akibat Hukum Pembagian Harta Warisan dalam Masyarakat Adat Karo menurut Hukum Adat dan KUHPerdata: Studi Komparatif,” *Journal on Education* 6, no. 4 (2024): 20314–22, <https://jonedu.org/index.php/joe/article/view/6096>.

<sup>48</sup> Fadhila Triza Nandri and Roland Febriansah, “Waris Adat Masyarakat Batak: Persoalan Pembagian Hak Waris Anak Perempuan dalam Keluarga,” *Kultura: Jurnal Ilmu Hukum, Sosial, dan Humaniora* 1, no. 5 (2023): 106–19, <https://jurnal.kolibri.org/index.php/kultura/article/view/509>.

government. In this context, the term “lost” refers to the period when Malay influence began to creep into the region, causing the disappearance of the natives (mothers) who may have migrated elsewhere. The people of the Malay tribe later referred to this area as the “lost mandala,” which eventually evolved into the word “Mandailing.”<sup>49</sup>

Mandailing is an area that stretches inland along the Pantai Barat.<sup>50</sup> The Mandailing region has different geographical boundaries between those determined by indigenous peoples and those regulated by the government. According to indigenous people, Mandailing is located in Mandailing Natal Regency, in the middle of Sumatra Island, along the Sumatra highway, about 40 km south of Padangsidempuan and about 150 km north of Bukit Tinggi. The boundaries of this customary territory include the north bordering Angkola, the west with the coast, the south with Minangkabau, and the east with Padanglawas. Meanwhile, the boundaries of the area according to government provisions are regulated in Law of the Republic of Indonesia No. 12 of 1998, which stipulates that Mandailing Natal Regency borders to the north with West Padangsidempuan District, Siais District, Batang Angkola District, Sosopan District, Barumon District, and Sosa District. To the east and south, this region borders West Sumatra Province, while to the west, it borders the Indian Ocean.<sup>51</sup>

Mandailing Natal Regency has an area of about 662,070 hectares or 6,620.70 square kilometers<sup>52</sup> with a population of 403,894 people. Penyabungan District recorded the highest number of residents, namely 77,417 people, followed by Siabu District with 47,273 people, and Natal District with 27,307 people. Most of

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<sup>49</sup> Moh Muhibbin and Abdul Wahid, *Hukum Kewarisan Islam: Sebagai Pembaruan Hukum Positif di Indonesia* (Jakarta: Sinar Grafika, 2019), 39–42.

<sup>50</sup> Zulham Siregar, “Sejarah Suku Mandailing di Kecamatan Bandar Kabupaten Simalungun,” *Jurnal Berbasis Sosial* 1, no. 1 (2020): 10–16, <https://jurnal.stkipalmaksum.ac.id/index.php/jbs/article/view/61>.

<sup>51</sup> Erwin Siregar, “Sejarah dan Motif Budaya Mandailing Natal,” *Jurnal Education and Development* 6, no. 3 (2018): 38–44, <https://journal.ipts.ac.id/index.php/ED/article/view/732>.

<sup>52</sup> BPS Kabupaten Mandailing Natal, “Luas Daerah dan Jumlah Pulau menurut Kecamatan di Kabupaten Mandailing Natal, 2023,” [mandailingnataalkab.bps.go.id](https://mandailingnataalkab.bps.go.id), 2024, <https://mandailingnataalkab.bps.go.id/id/statistics-table/3/VUZwV01tSlpPVIpsWIRKbmMxcFhhSGhEVjFoUFFUMDkjMw==/luas-daerah-dan-jumlah-pulau-menurut-kecamatan-di-kabupaten-mandailing-natal--2023.html?year=2023>.

Mandailing's population relies on agriculture for their livelihoods, predominately in rice fields and plantations. Common crops include rubber, coffee, cinnamon, and cloves. Islam, the majority religion, greatly influences the religious life of the Mandailing people. The influence of Islam is strong in determining the norms and rules that are applied in society, considering the geographical position of Mandailing, which borders the Minangkabau region in the southern part of West Sumatra Province, which is also known for its strong understanding and application of Islamic values in the life of its people.<sup>53</sup>

The Mandailing region is divided into two main parts, Mandailing Godang and Mandailing Julu, each with different ethnic characteristics. Mandailing Godang, located in the northern part of Penyabungan, covers the area from Sihepeng to Maga in the south, as well as the Batang Natal to Muarasoma and Muara Parlampungan areas in the west, which the Nasution Clan dominates. Meanwhile, Mandailing Julu is north of Kotanopan, covering the area from Laru and Tambangan to Pakantan and Hutana Godang in the south, with the dominance of the Lubis Clan.<sup>54</sup>

The kinship system in indigenous peoples generally includes patrilineal, matrilineal, and parental-bilateral.<sup>55</sup> The diversity of inheritance laws mentioned above is not merely a normative and legal political phenomenon but rather due to sociological, cultural, belief, and other factors.<sup>56</sup> However, in the context of the Mandailing indigenous people, especially when the head of the family has passed away, there is a different tendency.<sup>57</sup> Although patrilineal is a common concept, in the implementation of inheritance, the Mandailing people are more likely to use a parental-bilateral system, where the heirs are determined by two lines of descent, namely the mother's line and the father's line, without prioritizing any line of

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<sup>53</sup> Siregar, "Sejarah Suku Mandailing di Kecamatan Bandar Kabupaten Simalungun."

<sup>54</sup> Deka Maita Sandi, Nila Rahmi, and Hari Effendi, "Perkembangan Destinasi Wisata Sampuraga Desa Sirambas Kecamatan Panyabungan Barat Kabupaten Mandailing Natal (2014-2020)," *Jurnal Tarombo* 4, no. 1 (2022): 30-34, <https://jurnal.ipts.ac.id/index.php/tarombo/article/view/4227>.

<sup>55</sup> Nia Kurniati Hasibuan, "Implementasi Hukum Waris pada Masyarakat Adat Mandailing Perantauan (Studi pada Pardomuan Muslim Sumatera Utara Kota Palangka Raya)," *Tahkim (Jurnal Peradaban dan Hukum Islam)* 3, no. 2 (2020): 115-30, <https://doi.org/10.29313/tahkim.v3i2.6562>.

<sup>56</sup> Irwanto Irwanto, Mohamad Rafi'ie, and Syaiful Bahri, "Penerapan Hukum Islam dalam Pembagian Harta Waris di Desa Wonokerto Kecamatan Wonosalam Kabupaten Jombang," *Justicia Journal* 13, no. 1 (2024): 83, <https://doi.org/10.32492/jj.v13i1.13108>.

<sup>57</sup> Muhammad, Hipni, and Radiamoda, "The Importance of the Ijtihad Jama'i Method in Contemporary Fiqh Formulations."

descent.<sup>58</sup> In this system, all children are considered to have equal rights in obtaining inheritance, reflecting the influence of the Islamic concept of inheritance law.<sup>59</sup> Therefore, the patrilineal understanding is not fully applied in the indigenous people of Mandailing Natal, and the transfer of wealth can occur both while the heir is alive and after the heir dies.<sup>60</sup>

Customary law is one of the laws that exist in Indonesia, where this law follows the standards of life of a particular community and has its own characteristics and regional characteristics.<sup>61</sup> In customary law, inheritance can take place even before the heir dies through the mechanism of grants and wills. However, the transfer of property ownership that occurs after the owner's death can only be categorized as inheritance.<sup>62</sup> The distribution of inheritance must follow the guidelines that have been set customarily. Before the inheritance becomes the right of the heirs, certain obligations related to the property must be fulfilled, such as the repayment of the inheritance's unresolved debts, the execution of the will that may be abandoned, and various other rights related to the inheritance.<sup>63</sup> This stage is carried out sequentially, starting from the expense of organizing the body, paying off the heirs' debts, to fulfilling the testator's rights.<sup>64</sup>

Several important stages are applied in the practice of inheritance law for the Mandailing indigenous people. First, the family completes obligations related to the inheritance, such as debt repayment and fulfillment of other rights.

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<sup>58</sup> Yusmita, "Keadilan Gender dalam Sistem Kewarisan Bilateral Hazairin."

<sup>59</sup> Basar Dikuraisyin et al., "Reconstruction of Marriage Law: Judges' Progressive Reasoning based on Maqāṣid in Addressing Divergent Interpretations in Indonesian Courts," *al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 2 (2024): 219–36, <https://doi.org/10.24090/mnh.v18i2.9436>.

<sup>60</sup> Hasibuan, "Implementasi Hukum Waris pada Masyarakat Adat Mandailing Perantauan (Studi pada Pandomuan Muslim Sumatera Utara Kota Palangka Raya)."

<sup>61</sup> Nandrini and Febriansah, "Waris Adat Masyarakat Batak: Persoalan Pembagian Hak Waris Anak Perempuan dalam Keluarga."

<sup>62</sup> Nur Insani et al., "Empowering Muslim Women: Bridging Islamic Law and Human Rights with Islamic Economics," *De Jure: Jurnal Hukum dan Syar'iah* 16, no. 1 (2024): 88–117, <https://doi.org/10.18860/j-fsh.v16i1.26159>.

<sup>63</sup> Sadiani Sadiani et al., "Progressive Islamic Law and Miskin Tradition of Dayak Ngaju in Central Kalimantan," *el-Mashlahah* 13, no. 2 (2023): 225–44, <https://doi.org/10.23971/el-mashlahah.v13i2.7624>.

<sup>64</sup> Irwanto, Rafi'ie, and Bahri, "Penerapan Hukum Islam dalam Pembagian Harta Waris di Desa Wonokerto Kecamatan Wonosalam Kabupaten Jombang."



Furthermore, the distribution of inheritance is carried out based on Islamic teachings, where it is determined who the heirs are entitled to receive their respective shares and amounts. This process involves communicating with all parties with the rights, explaining the distribution details, and providing a share of the inheritance according to the terms.<sup>65</sup> After the division is made, the sisters hand over the inheritance management to the eldest son of all the girls, aiming to ensure the use of the property for the common good.<sup>66</sup> In this case, girls get the same rights and opportunities in obtaining inheritance, in contrast to patrilineal customary law, which often overrides women's rights except through grants or wills.<sup>67</sup> Thus, assets such as heritage houses and several boarding houses can be used together by all children, both boys and girls, to support the survival of the family. Although inheritance management is entrusted to boys, the division and implementation are still based on the provisions of Islamic law.

In the division of inheritance according to Mandailing custom, which does not recognize absolute division, Islamic law provides clear guidelines regarding the number of inheritance shares.<sup>68</sup> In practice, the division is carried out first in accordance with Islamic law, and then, the property that cannot be physically divided is used together according to the needs of each heir. Property, in the context of customary law, can be majority or collective. For example, in the Mandailing indigenous people, the house inherited by the parents and several inherited boarding houses are shared by all heirs, with the proceeds of renting the boarding house being used collectively without absolute division.<sup>69</sup>

Based on this, the Mandailing customary inheritance law is implemented by taking into account the provisions of Islamic law and then handed over to each heir

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<sup>65</sup> Zainal Muttaqin Dahlil et al., "Delegitimization of Religious Motives in Poligamy in Banjar Society," *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 1 (2024): 119–35, <https://jurnal.uin-antasari.ac.id/index.php/syariah/article/view/12392>.

<sup>66</sup> Tateki Yoga Tursilarini et al., "Examining Child Victims of Incest in Indonesia: Between the Legal System and Family Dysfunction," *JURIS (Jurnal Ilmiah Syariah)* 23, no. 1 (2024): 129–42, <https://doi.org/10.31958/juris.v23i1.12341>.

<sup>67</sup> Muhammad, Hipni, and Radiamoda, "The Importance of the Ijtihad Jama'i Method in Contemporary Fiqh Formulations."

<sup>68</sup> Huda and Hidayati, "The Concept of Muḥammad Shahrūr on Gender Parity in Inheritance Legislation."

<sup>69</sup> Miftakhul Kharima, "Faktor Tidak Dilaksanakannya Pembagian Waris berdasarkan Hukum Islam (Studi Kasus di Desa Sribasuki, Kecamatan Batanghari Kabupaten Lampung Timur)," [Undergraduate Thesis] (Institut Agama Islam Negeri Metro, Lampung, 2022), 89.

to manage the inheritance. Despite this, trust is still given to the eldest son to manage the property for the whole family's benefit. The inherited house and boarding house are considered assets that cannot be divided equally, but all heirs can share the proceeds from the house, and the proceeds of the boarding house rent are used to meet the needs of all family members.

The discussion of inheritance in the Mandailing indigenous community is carried out after the funeral arrangements are completed and the visiting families have returned to their respective residences, usually about a month after the body is buried. In this way, the process of dividing the inheritance is not carried out in a hurry but rather takes into account enough time for the family to adapt to the conditions after being left behind by the deceased. The stance taken by the Mandailing indigenous people reflects a deep understanding of the integration between custom and Islam in their lives. They are very open to accepting Islamic legal authority, especially when implementing inheritance law. It is in line with the theory put forward by Gibb, which states that when a person has known and practiced the teachings of Islam, even though they have previously followed the understanding of custom, they tend to consider the rules of Islam to be the highest guidelines that must be followed completely.<sup>70</sup>

In addition, there has been a significant change in the attitude of the community, which was previously thick with customs and is now influenced by Islamic teachings.<sup>71</sup> Sociologically, this change shows that Islamic law is accepted based on the level of piety of the Mandailing indigenous people, who are willing to abandon their previous understanding of the customs of their ancestors. This phenomenon is in line with the theory of cultural evolution, which states that societies have experienced cultural progress from the primitive stage to more advanced development thanks to the influence of Islamic teachings.<sup>72</sup>

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<sup>70</sup> Jekson Saragih et al., "Pembagian Warisan bagi Anak Perempuan menurut Hukum Adat Masyarakat Mandailing dan Perdata Islam," *Journal on Education* 6, no. 4 (2024): 20571-79, <https://doi.org/10.31004/joe.v6i4.6119>.

<sup>71</sup> Ampuan Situmeang, Ninne Zahara Silviani, and David Tan, "The Solving Indonesian Intellectual Property Rights Transfer Issue," *al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 23, no. 1 (2023): 59-74, <https://doi.org/10.30631/alrisalah.v23i1.1341>.

<sup>72</sup> Dikko Ammar et al., "Pelaksanaan Pemberian Marga dalam Sistem Perkawinan Etnik Mandailing (Studi di Lembaga Adat Budaya Mandailing Medan)," *Jurnal PKM Hablum Minannas* 2, no. 1 (2023): 68-79, <https://doi.org/10.47652/jhm.v2i1.363>.

The contestation between Mandailing custom and Islamic law in the distribution of inheritance highlights profound differences in practices and norms. The Mandailing Natal custom often favors local customs that take into account factors such as the marital status of the heirs and the order of descent, while Islamic law offers more structured and universal rules regarding inheritance rights. The Mandailing Natal community shows resilience in maintaining customary practices, even though they sometimes contradict Islamic law. Delays in the distribution of inheritance are often based on local traditions, such as waiting for the age of maturity of the heirs or maintaining family harmony, although Islamic law advocates an immediate and equitable distribution. There are efforts to adapt and transform Islamic law in the context of Mandailing Natal custom, which involves modifying customary elements to align with Islamic law principles, although these changes cannot always be done quickly. The harmonization between customary and Islamic law shows complex dynamics in integrating different legal norms.<sup>73</sup>

Although Islamic law has been regulated in the Qur'an and Hadith, the complex problems of mankind often cannot be fully answered with these verses alone. Therefore, to fill the legal vacuum, scholars have used their intellect to produce products of Islamic legal thought that are relevant today. This legal product reflects the consensus and courage of the scholars in dealing with every problem that arises in society. In the process, efforts to materialize Islamic law through *ijtihad* ulama continue to develop in accordance with the conditions of the times, covering various aspects such as family law, marriage, and inheritance.<sup>74</sup>

According to Atho', the reconstruction of Islamic law can be done through the empowerment of *fiqh*. In understanding the concept of *fiqh*, it is important to distinguish between *al-dīn* (Islamic religion) and *al-'afkar al-dīniyyah* (Islamic religious thought). Many mistakenly think that *fiqh* is synonymous with *al-dīn* as

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<sup>73</sup> Devi Isriah, "Praktik Pembagian Waris Menunggu Kedua Orang Tua Meninggal Dunia dalam Tradisi Masyarakat Mandailing Perspektif Hukum Islam," [Undergraduate Thesis] (Fakultas Syariah dan Hukum UIN Syarif Hidayatullah, Jakarta, 2024), 43.

<sup>74</sup> Shafira Amelia, "Pergeseran Hak Waris Anak Perempuan dalam Masyarakat Adat Batak Muslim Simalungun (Studi di Ikatan Keluarga Islam Simalungun Siantar)," [Undergraduate Thesis] (Universitas Muhammadiyah Sumatera Utara, Medan, 2019), 57-67.

well as the Qur'an and Hadith. In fact, *fiqh* is the result of *ijtihad*, which is the hard work of scientists to provide legal certainty to issues that are not found textually in the Qur'an and Hadith. *Fiqh*, as a product of human thought, can change along with the development of certain times, situations, and conditions.<sup>75</sup> According to Atho', the sociological approach to Islamic law involves five important aspects: first, the influence of religion on social change; second, the impact of social change on the understanding of religious dogma; third, the level of religious experience of the community; fourth, the social system of Muslim society, both urban and rural, and interreligious relations; and fifth, community movements that can strengthen or weaken religious life.<sup>76</sup>

The implementation of Islamic law in the distribution of inheritance shows three main approaches: Faraid, agreement, and customary law combined with Islamic principles. In Mandailing Natal, although the community nominally follows the principle of *farā'id*, the practice often reflects the profound influence of customary law. Formally, the division of property follows the rules of *farā'id*, with girls getting their rights. However, in practice, even though girls are not neglected, the portion of wealth received is still much smaller compared to boys.<sup>77</sup> This illustrates the tension between formal adherence to Islamic law and the implementation that remains affected by local custom.

Ideally, in the *farā'id* system, girls are supposed to receive half of the share received by boys. However, prevailing practices often reflect mindsets and behaviors that are still influenced by the patrilineal system, even though *farā'id* adopts bilateral principles. In some cases, the distribution of inheritance claimed as the implementation of *farā'id* is still influenced by custom. For example, the cost of *horja* required for a boy's marriage is often considered before the inheritance is divided. In addition, customary provisions that require *boru* children to show respect for their *mora* can also be an obstacle to the actual implementation of *farā'id*. As an illustration, in a trial involving traditional leaders and religious

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<sup>75</sup> Zulhamdi Zulhamdi, "Pembaharuan Hukum Islam di Indonesia dan Tokoh-tokohnya," *Jurnal Ilmiah Islam Futura* 19, no. 2 (2019): 239, <https://doi.org/10.22373/jiif.v19i2.4414>.

<sup>76</sup> Lia Noviana, *Rekonstruksi Hukum Keluarga di Negara Muslim Modern: Kajian Feminist Legal Theory di Tunisia dan Indonesia* (Yogyakarta: Q Media, 2021), 36.

<sup>77</sup> Saragih et al., "Pembagian Warisan bagi Anak Perempuan menurut Hukum Adat Masyarakat Mandailing dan Perdata Islam."

leaders, a religious teacher representing her mother (daughter) did not dare to demand the distribution according to the provisions of the *farā'id*. Although girls were supposed to receive one-third of the inheritance and boys two-thirds, the final decision set one-eighth for girls and seven-eighths for boys. The reluctance towards *mora* causes injustice in distribution, which has the potential to result in significant material losses.

Another interesting case shows how strong the influence of customary law is in the distribution of inheritance. An heir who died leaves heirs in the form of a wife, a daughter, and three brothers. According to the terms of the *farā'id*, the daughter was supposed to get half of the property, the wife received one eighth, and the rest was divided among the three brothers. However, in practice, since there were no sons, the three heir brothers acted arbitrarily against the rights that the wife and daughter were supposed to receive. Although customary still plays an important role in this region, Islamic law has exerted a significant influence and has begun to shift customary practices, although not entirely ideal. On the other hand, there are still members of the community who are committed to complying with Islamic inheritance law consistently.

In the Mandailing region, although the community generally adheres to the principle of *farā'id* in the distribution of inheritance, limited knowledge often results in its implementation not being completely accurate. Although the heirs are aware of the importance of running *farā'id*, misinformation is still frequent. For example, a religious leader might explain that the division of inheritance should be done by giving two parts to men and one part to women, regardless of the amount of each. Such explanations are potentially misleading and unfair, especially if there are far more boys than girls, as in the case of five boys and one girl.

Interestingly, in Mandailing, traditional figures such as Hatobangon show good mastery of the principle of *farā'id*. In Padangsidempuan, as a more moderate urban area, the community applies various approaches in the distribution of inheritance, and the division according to traditional custom has begun to be rarely applied. In general, it can be concluded that a shift from customary inheritance to the application of Islamic law has occurred, with the main factor driving this change being the influence of Islamic law. Religious leaders played a key role in providing an understanding of Islamic law, while an increasingly

educated society also contributed to this shift. Interestingly, traditional leaders have also significantly contributed to overseeing the implementation of *farā'id* (Islamic inheritance law). One thing worth noting is that people who have not fully complied with the *farā'id* provisions often feel they are violating Islamic law. It shows an opportunity to increase public awareness about the importance of implementing Islamic law. Faraid, with his *ijbārī* principle, emphasizes that the transfer of property rights from heirs to heirs occurs automatically and is coercive once a person dies.

However, it should be noted that as stated by Prof. Amir, Islamic inheritance law tends to be regulatory rather than coercive. Therefore, if the distribution of inheritance in the family has been carried out regularly, then the division is considered to have fulfilled the provisions of Islamic law. This opinion is also in line with the Compilation of Islamic Law (KHI) Article 183, which provides an alternative settlement through deliberation. The official law of the state that is Islamic, both in the form of material laws such as KHI, as well as formal laws such as Law No. 7 of 1989 and strengthened by Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts, has also strengthened the application of Islamic law in the field of inheritance. This last law even removes the right of option in the settlement of inheritance disputes, and adheres to the principle of Islamic personality, which means that inheritance between fellow Muslims must be settled according to Islamic law. The public's desire to apply Islamic law in inheritance disputes can be seen from the number of cases received, examined, and decided by the country's official law, which ultimately aims to provide legal certainty and justice.

However, there is an assumption that the presence of official state law actually triggers conflicts among the heirs. This assumption seems to have a basis if we consider the increase in the number of inheritance cases after the birth of Law No. 3 of 2006. For example, a male heir accused his sister, demanding the settlement of inheritance disputes through the courts, of being arrogant and having strong support, thus ignoring her brother's position as a party to *mora*. In addition, there are several people, especially girls, who choose to remain silent when their brothers control all their parents' inheritance. They feel that family ties and brothers' position as *mora* parties, who play an important role in various customary ceremonies, are more valuable than legally demanding their rights. Furthermore, kindness must align with the principles of Islamic law, although

sometimes there is a gap with human goals. Because, a person's benefit is not always based on the principle of Islamic law, but it can be driven by lust alone. This is similar to the practice during the Jahiliyah period, where women were not given the right to inherit, although it may be considered in accordance with customary custom, but it is not in line with Islamic law principles and is considered not to contain *maṣlaḥah*.

It can be understood that a case is declared to contain *maṣlaḥah* if the case can protect human nature, provide benefits, and does not contradict the will of the Islamic law. Fiqh scholars divide *maṣlaḥah* based on its quality, importance, and value of benefits into three types. One of them is *maṣlaḥah al-darūriyyah*, which is *maṣlaḥah* related to the basic needs of humans in this world and the hereafter. It includes five aspects of benefit, known as *al-maṣāliḥ al-khams*: safeguarding religion (*hiḥẓ al-dīn*), safeguarding the soul (*hiḥẓ al-naḥs*), safeguarding intellect (*hiḥẓ al-'aql*), safeguarding offspring (*hiḥẓ al-nasl*), and safeguarding property (*hiḥẓ al-māl*).

Basically, living in society is a form of survival for humans, where their survival is highly dependent on social interaction. It is undeniable that by nature, humans are creatures that are inseparable from the structure of society. The existence of a developed social institution reflects the close relationship between morality and the structure of society. In less developed or primitive societies, a person's actions are often reflected in how he embodies outward values in his interactions with others. Custom, which reflect the custom that prevail in society, serve as the spirit in social interaction. The Muslim community of Mandailing Natal, for example, tends to adhere to traditions that already exist, as a form of respect for the deeds of their ancestors. In the implementation of inheritance, they often prefer to follow custom such as the custom of *Dalihan Na Tolu*, even though there are more universal provisions of Islamic law. This shows that the Mandailing Natal people have integrated the values of togetherness in realizing the custom inherited by their ancestors, with the belief that these custom are in line with the moral norms and custom of the local community. Especially in terms of the distribution of inheritance, custom still play an important role in the decision-making process. In the tradition of inheritance distribution, the Mandailing Natal community emphasizes togetherness to maintain and apply the values of local wisdom that already exist. They are still bound by an order that assumes that all come from the same lineage. This confidence makes them adhere to customary norms without first considering

whether the rules reflect justice objectively. Their main priority is to maintain the value of togetherness in maintaining the existence of customary law.

## Conclusion

The study reveals efforts to integrate Mandailing custom with Islamic law in inheritance distribution. While Islamic law provides clear and structured principles, Mandailing custom significantly influence the process by considering factors like age, marital status, and descent order. These differences often lead to delays or modifications in inheritance distribution, creating tension and confusion between the two systems. Despite these challenges, the Mandailing community strives to harmonize customary practices with Islamic legal requirements.

This study recommends encouraging the Mandailing Natal community to align inheritance distribution with *farā'id* principles, balancing custom and Islamic law. Mechanisms for mediation or supervision involving experts in both legal systems are crucial to resolving disputes fairly. Additionally, government policies should support the integration of customary and Islamic laws while prioritizing justice and family welfare. Strengthened law enforcement is also needed to ensure consistent and fair application of Islamic inheritance laws in the region.(a)

## Author Contribution Statement

**Arbanur Rasyid:** Conceptualization; Data Curation; Formal Analysis; Methodology; Resources; Validation; Writing Original Draft.

**Rayendriani Fahmei Lubis:** Conceptualization; Data Curation; Formal Analysis; Methodology; Resources; Validation; Writing, Review & Editing.

**Idris Saleh:** Formal Analysis; Investigation; Project Administration; Resources; Validation; Writing, Review & Editing.

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