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## Divide Agreement Inheritance in Gayo Community

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### Abstract

In the distribution of inheritance, the share of each heir was clearly determined in Islamic Sharia with a ratio of male to female heirs of 2:1. However, in practice, in Gayo communities, the distribution of inheritance is done based on the agreement of the heirs by not following the literal provisions in the Qur'an. The results of the study found that the distribution of inheritance based on the agreement of the heirs in the Gayo community is carried out after explaining and determining the size of the rights of the heirs in accordance with the Islamic Sharia. The division of inheritance by agreement of the heirs is justified by Syara". Among the factors that affect the distribution of inheritance based on the agreement of the heirs in the Gayo community are adat and reusam, because the kinship ties in the Gayo community are very strong, heiresses who take care of the decedent and take care of him in old age and in times of illness. , women also work like men in providing household needs, some of the heirs are already economically established, and one of the heirs' parents is still alive.

**Keywords:** inheritance, Gayo community

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### Introduction

Among the rules regarding interpersonal relationships that Allah has established is inheritance, which is property and property left after one's death. Property left by someone who has died requires an arrangement about who is entitled to receive it, how much and how to get it. Inheritance is the transfer of inheritance from the deceased (testator) to the still living (heirs) related to the property left behind, the persons who are entitled to receive it, the share of each heir, as well as the method of distribution of the inheritance.

The Qur'an clearly detailed the size of each heir's share in accordance with certain conditions. Example: a daughter herself will inherit one-half and if there are two or more daughters, they will claim two-thirds. The mother gets one-third if the heir does not leave the child, if the heir leaves the child, the mother gets one-sixth of the inheritance. A husband gets half of his deceased wife's inheritance if he has no children, if he has children he gets one quarter of the inheritance. Similarly, the wife gets a quarter of the property if her deceased husband has no children, if the wife has children, she gets an eighth share.

Regarding the provisions on the size of the heirs' share of inheritance, which have been detailed in the Qur'an, the jurists have ittifaq (agreed) that there is no need to understand otherwise than what is meant by the Qur'an. This means that the verses about inheritance in verses 11, 12 and 176 of Surah an-Nisa' are qat'i (pure). The law of inheritance is prescribed by the Qur'an in order to have affection, to give benefits to relatives, to prevent family differences that may cause disputes between them. In the Qur'an Surah al-Nisa' verse 11 Allah says: Meaning: Allah prescribes for you (the division of inheritance for) your children. So: the share of a son is equal to the share of two daughters.

The above verse means that the share of men is double that of women, because men's duties are heavier than women's, such as the duty to pay dowry and provide for a living [1]. While women are not given duties and responsibilities in law, they get something from their father only if they are not married and they get something from their husband if they are married.

The question is whether the provision of large and small inheritance, which Allah has clearly described in the Qur'an, should not be shifted according to the wishes of the heirs who are entitled to receive tirkah from the heirs, or whether the provision is the maximum limit that each heir will receive from the decedent's estate.

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

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It is explained from Abu Yusuf that Amru bin Dinar from Ibn Abbas: "One of the wives (widows) of Abdurrahman bin Auf said that you will make peace (make) in the division of eighty-three thousand dirhams by leaving the stipulation of inheritance" [3]. This incident became an alternative to the division of inheritance by not following the detailed provisions contained in the Qur'an, the science of fiqh is known as takharuj. Islamic inheritance law described that the purpose of distribution of inheritance is to benefit the life of the heirs. It is mentioned in the 4th verse of the Qur'an, Sura an-Nisa: It means: "Men have the right to share in the inheritance of their parents and their families, and women have the right to share in the inheritance of their parents and relatives, whether small or large according to a predetermined share".

Mathematical calculations are not applied when dividing inheritance on the basis of customary law. In customary law, considerations are based on the form of the object, which becomes the needs of the heirs. Thus, even if common law recognizes the principle of equality, it does not rule out that there are often differences in the share of income from inheritance [4]. The difference in the size of each heir's share should occur because indigenous peoples are also bound by their religion and beliefs, one of which is the Gayo community, which is the focus of this research.

Customary inheritance law has different systems and principles of law [5], e.g. when dividing inheritance in many areas, they do not use the provisions already contained in Islamic inheritance law, instead they use the provisions of their respective customs. When solving problems related to inheritance, they often use the method of negotiation or agreement of the heirs. The way in which the heirs agree is a shortcut to dividing the inheritance if they mutually wish it and agree to the share that has been jointly determined. In the study of faraida, it is called takharuj tasaluh [6]. Tasaluh in the division of inheritance is one of the efforts to preserve the public interest, more specifically the provisions on the harmony of kinship in the family.

Gays are those who inhabit the central area of Aceh province. Throughout history, they have been known to be very close and fanatical to Islam, as in other regions of Aceh. This is evidenced by the statement in the Acehnese proverb "humok ngon adat lage zat ngon sifeut" (the relationship between Sharia and custom is like the relationship between a substance (object) and its nature, which is inherent and cannot be separated. ), as a way of life or a philosophical basis in the form of "customs", the implementation structure of which is summarized in "Adat bak Poe teumeureuhom, humok bak Syiah Kuala, Kanun bak Putroe Phang, Reusam bak Lakseumana".

Based on this, the Gayo community should refer to the provisions laid down in the Qur'an and al-Hadith when carrying out the division of inheritance. However, in practice, it has been found that some Gays divide the inheritance not based on the provisions in the Qur'an and Hadith, but the distribution is made based on the agreement of the heirs.

This study will answer the questions "what law governs the distribution of inheritance based on the agreement of heirs and what factors influence the distribution of inheritance based on the agreement of heirs in the Gayo community? In order to obtain an answer to the above questions, the methodology used by the author in this research is a qualitative method with an empirical legal approach.

Principles of agreement between heirs in the division of inheritance

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

The division of the inheritance by agreement between the heirs can be governed by strong kinship relationships, taking into account the differences in the economic conditions of some heirs, so it is hoped that the inheritance can further help their living conditions. Another reason may be the consideration of the heirs that one or more of them is more involved in the care of the testator during his lifetime, the care of the sick, etc. So it is logical that they will get more shares if the heirs agree on the principle and know their respective rights. In Compilation of Islamic Law (Kompilasi Hukum Islam- KHI) it became clear that the heirs can agree on reconciliation in the division of the inheritance after each has realized his share. This formulation may allow for the distribution of the inheritance with a mathematically equal share (1:1) among all heirs in repose, as a deviation from Article 176 of the KHI, which regulates the provision of sons and daughters (2:1); and between a biological brother and a biological sister - half-brother and half-sister as a deviation from Article 182 KHI.

In response, one must be wise to the heirs so that they all get their respective shares, but still think about the circumstances of other relatives who will get a smaller share, while the burden of life is heavier. So through this inheritance contract, a relative can give part of his inheritance to his female relatives. This can also allow the inheritance to be divided equally for all heirs. It is possible that an heir agreement can be used as an alternative settlement model.

The division of the inheritance according to Acehnese customary law is fundamentally up to the heir's agreement. This means that the estate is managed in accordance with principles that provide peace of mind to all parties entitled to the property. In this view, the division of property is done based on the principles of harmony and decency. If there is an irreconcilable dispute about the division between the persons entitled to the inheritance, the management is resolved using more definitive principles in the division of property. Management is carried out by following the principles contained in fiqh law while maintaining the principle of deliberation.

Scholars of fiqh emphasized the possibility of using the principle of kinship in solving inheritance problems. The method of settlement of the inheritance, which is carried out in a family manner based on the agreement of the heirs, is a wise solution to deal with differences in the economic conditions of heirs who, in theory, can get a large share, can

only pass their share to other heirs, who normally receive a smaller share, but need to be helped economically [7]. To effectuate such a distribution, it is necessary to consider each heir on the basis of honesty in looking at the condition of each heir. The difference in the proportions of the heirs is a force to create balance and bind closer ties between them.

Technically, agreement or consensus in fiqh terminology is called "urf" or adapt. One cannot say "urf" unless it brings benefits or good to society. Umar ibn Khattab advised that for Muslims, he can choose a way of consensus between the parties having affairs, except for the consensus that aims to legalize something haram and prohibit something halal [8].

The intersection of the text with reality has its meaning, because the text is not born in an empty space. On the other hand, it will always appear as the context of reality continues to evolve. Of course, the text in this case has a broad meaning in terms of verses that are integrated into the context of human experience. This is in accordance with the following rules:

Implementation of inheritance division in Gayo community

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

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

When the Gayo people want to do the distribution of the inheritance to the heirs, they always ask the religious leader (tengku or ulama) to help with the distribution of the inheritance. They see Teungku as a person who has the knowledge and ability to settle and distribute the inheritance. An interview with the chairman of the Aceh Adat Council (Majelis Adat Aceh - MAA), Bener Meriah, reveals that division based on the agreement of heirs often takes place in the Gayo community. This is done because of the power of the family system to maintain the integrity of the family relationship and solely for the benefit of the heirs [14]. He further stated that based on his knowledge of inheritance distribution in the Gayo community, the family of heirs often divide the inheritance as a family by not following the provisions of Islamic law. The process of dividing the inheritance involves explaining to all heirs the provisions of inheritance in Islam, where a son's share is equal to two of a daughter's, even if the property has not been passed on to each heir. After all the heirs know their rights, the inheritance will be divided according to the agreement of the heirs.

The inheritance sharing system in the Gayo community

The results of the study show that the inheritance distribution

system in the Gayo community, especially in Pondok Baru Bener Meriah, can be broadly divided into two categories. First, all the heirs who are entitled to the inheritance are invited or summoned to sit together in a meeting, usually in one of the heirs' houses or in the residence of the testator. Usually this meeting starts with a feast with all the heirs. This moment is also used as a reunion between the heirs, because sometimes some of the heirs have moved far away from their hometown, so they haven't seen each other for a long time. Some live far from where their parents live because they are married or work out of the area. In addition, the heirs call a teungku or someone who is an expert in faraid to divide their inheritance. There are two conditions:

Implementation of inheritance division by agreement of heirs in Gayo community

In general, the gayo community resolves the division of inheritance through deliberation. The effort of reasoning is done in order to preserve the harmony that has been cultivated and the honor of the family. The division of inheritance through deliberation makes it possible not to observe the Faraidi provisions, which are quite strict. Therefore, it is possible for men to share the same share of inheritance as women.

The inheritance is always divided by agreement between the heirs and the family among the co-heirs who are entitled to receive it. Close relatives or distant relatives who act as mediators are usually involved in the division of the inheritance by agreement of the heirs. If they have relatives were not able to complete the distribution of the inheritance, then consultative efforts are made by Teugku Meunasah, Teungku Imuem, Reje and village elders who are believed to be the authors. The division of inheritance between religious leaders and community leaders is not absolute based on faraidh provisions. Therefore, the distribution of the inheritance is highly dependent on the agreement of the heirs. In the division of inheritance by agreement of the heirs in the Gayo community, the daughter's share is sometimes equal to the son's share. Equal distribution of sons and daughters is not against Islamic law if it is based on the agreement of the heirs and consideration. Gays believe that the division of inheritance according to the agreement of the heirs is justified by Islamic law and therefore consider it an implementation of Islamic teachings [16].

If the distribution of the inheritance through the agreement of the heirs is not possible, then the distribution based on the provisions of the faraidh is carried out by the Teugku Imuem in the presence of the Reja and the invited leaders of the community. Inheritance is usually distributed directly in front of the community representatives by physically sorting the property to be divided and showing and calculating the heirs who are entitled to receive it [17]. Before dividing the Teugku inheritance, Imuem first examined the provisions on permanent and temporary obstacles (preferential heirs). If there are no obstacles attached to the heirs, then the Tengku Imuem stipulates that the heirs who have the right to have priority are dzawil furudh because they are the heirs whose share has been determined in the Qur'an and Hadith. If the division of Teungku Imue's inheritance above still does not satisfy the heirs, the matter will usually be referred to the gampong customary court. If not completed at the village level, it will be referred to the Syar'iyah court. The settlement through the Syar'iyah court is actually not very different from what Tengku Imue did in the gampong, because the law applied is Islamic inheritance law. The

division of inheritance through the Syar'iyah court often weakens family relationships because the court's decision has coercive power in its implementation. Thus, for the Gayo community, the distribution of inheritance through the courts is only a last resort if no agreement on the heir can be reached. They are ashamed of their neighbors and relatives because they are considered unable to get along in the family.

If we look at the principle of individual inheritance, the heir can act on his rights according to his wish, whether he wants to give up his rights in whole or in part, whether he donates or donates some of his rights. to other heirs or to whomsoever he may desire. As long as the action taken is not prohibited by syara', then it is justified. Therefore, the authors argue that there is flexibility in the use of the rights owned by the heir when dividing the inheritance.

Based on the results of the research and interviews with several respondents and informants on the implementation of inheritance division, it was found that inheritance division in the Gayo community is basically governed by what has been established in the Qur'an and Hadith. After all the heirs who are entitled to the property of the inheritance know the rights of their respective shares, then the heirs sincerely and voluntarily jointly agree to the division of the inheritance by agreement of the heirs. However, it has also been found that there are some heirs who claim their rights in full in accordance with the provisions of Islamic inheritance, then they are given their rights in full. While other heirs who have agreed to a discretionary distribution or to divide the amount equally are still practiced as well.

The division of inheritance in Gayo society by the agreement of the heirs based on sincerity, especially the male heirs who have more rights than the female heirs with regard to the welfare of the heirs and the preservation of the integrity of the family. This is justified by the Shariah as long as no heirs are harmed.

#### **Implementation of inheritance division by agreement of heirs in Gayo community**

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The division of inheritance in Gayo society by the agreement of the heirs based on sincerity, especially the male heirs who have more rights than the female heirs with regard to the welfare of the heirs and the preservation of the integrity of the family. This is justified by the Shariah as long as no heirs are harmed.

#### **Conclusion**

Based on the above description, it can be concluded that the practice of dividing the inheritance by agreement of the heirs is not against the law, on the contrary, it justifies the division of the inheritance by agreement of the heirs carried out in the

Gayo company on the basis of voluntariness and sincerity. The distribution of inheritance in the Gayo community based on the agreement of the heirs allows syara 's, that there are no heirs who are harmed, and the implementation is based on the sincerity and voluntariness of the male heirs.

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

Before the inheritance is divided by the agreement of the heirs in the Gayo community, all the property of the heir, which is inherited property, is recorded. When the data collection is complete, a certain amount of inheritance is taken to pay for the funeral, to pay any debts, to execute the will if you leave a will, and to pay for other expenses such as the feast at Tahlilan. If there is still any property left, then all the heirs are told to what extent their respective rights are in accordance with the provisions of Islamic inheritance. Once the heirs know what their shares are, they agree to divide the inheritance by agreement of the heirs.

In the distribution of the inheritance, Teungku's heirs will invite Imuem gampong and Sarah Opak. If there is a dispute between the heirs, the distribution will be made and at the request of the heirs, the customary institution of the gampong will take over. If not completed, it is referred to the Syar'iyah court.

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