

Kinship System and Its Influence on Islamic Inheritance Law in Indonesia

Ibnu Radwan Siddik Turnip¹⁾, Suria Ningsih²⁾, Nurhayati³⁾, & Risyad Fakar Lubis⁴⁾

¹⁾Universitas Islam Negeri Sumatera Utara, Medan, Indonesia, E-mail: ibnuradwan@uinsu.ac.id

²⁾Universitas Sumatera Utara, Medan, Indonesia, E-mail: surianingsih@usu.ac.id

³⁾Universitas Islam Negeri Sumatera Utara, Medan, Indonesia, E-mail: nurhayati@uinsu.ac.id

⁴⁾Universitas Islam Negeri Sumatera Utara, Medan, Indonesia, E-mail: risyardfakarlubis@uinsu.ac.id

Abstract. *Kinship system known to indigenous peoples in Indonesia is divided into three parts namely patrilineal, matrilineal and parental system. Each tribe in Indonesia has its own inheritance system that is influenced by the kinship system, while on the other hand the indigenous people have also embraced Islam which of course should follow the pattern of Islamic inheritance. This paper will try to examine whether this kinship system still affects the resolution of the issue of inheritance for those who are already Muslims and whether this kinship system also affects the provisions of Islamic inheritance in Indonesia. This research is qualitative research using legal anthropological approach. The results showed that this kinship system still has an effect on the completion of inheritance in indigenous Islamic peoples in Indonesia such as Karo, Minangkabau and Javanese Islamic communities. In the development of Islamic inheritance in Indonesia, efforts to make the bilateral inheritance system are seen in some of the articles on the Compilation of Islamic Law (KHI) supported by Islamic law reformers in Indonesia.*

Keywords: *Islamic; Inheritance; Law; System.*

1. INTRODUCTION

The kinship system is inseparable from human life. Besides being known as individual beings with different characteristics and characters of each person, humans are also social beings who are impossible to live alone. Man must need others such as mothers, fathers, families, relatives and others who become friends of his reaction. The relationship between a person and those closest to them will later form a system called the kinship system that can be different from one custom to another. Because however, wherever the human being lives, there must be a culture, local customs that can not be discarded, replaced and even separated by other communities. The culture

itself is likened by Clifford Geertz to the networks of meaning in which man relies on the webs of meaning.¹

In general, the kinship system that lives and develops in the culture of the Indonesian nation can be classified into three systems, namely; first, a patrilineal kinship system that draws a lineage from the paternal side. Second, the matrilineal kinship system that draws the lineage from the mother. Third, parental is a kinship system that draws the lineage of parents both from the female side and from the male side together and balanced. The differences in kinship systems have implications and influences on different cultural systems in each particular tribe or custom. The influence of this kinship system can be so clearly seen in the inheritance system in each tribe in Indonesia. For tribes that use patrilineal kinship systems such as Batak, the inheritance system tends to make men more entitled (superior) in controlling inheritance. For matrilineal kinship systems such as Minangkabau, the inheritance system tends to make the maternal lineage as the heir of inheritance. Meanwhile, for tribes that use parental kinship systems such as Javanese, the inheritance system will make the lineage of fathers and mothers as heirs in a balanced manner.

Islamic law is a universal law. Its universality lies in the arrangement of all aspects of human life that not only on the aspect of worship alone, but also regulate things related to social life (muamalah), including the arrangement of Islamic inheritance. For those who are Muslims, of course, will try to follow all the provisions of Islamic law is no exception with regard to the pattern of distribution of inheritance that is so clearly found in the description of verses of the Qur'an, Hadith and the opinion of the fiqh scholars. If we connect with the kinship system that developed in Indonesia, of course this will be an interesting issue to be studied. Each tribe has its own inheritance system that is influenced by the kinship system, while on the other hand the indigenous people have also embraced Islam which of course should follow the pattern of Islamic inheritance. The question is whether the kinship system also affects the pattern of Islamic inheritance that exists in these tribes in Indonesia? How exactly do the Islamic people in these tribes apply their inheritance, whether to follow the pattern of Islamic customs or law, or apply both? Does this kinship system also affect the provisions of Islamic inheritance in Indonesia? Presumably these questions will be tried to be studied in response through this simple research.

Research on the relationship of kinship systems and their influence on aspects of human life has been conducted by many circles both at the international and national levels. Rosina Nasir and A.K. Kalla tried to examine the relationship of the kinship system with the birth rate of children and the primacy of boys among the Indian Muslim community. The study was titled *Kinship System, Fertility and Son Preference among the Muslims: A Review*. The results showed that differences in the kinship system between the matrilineal and Southern parts of northern India caused differences in the priority of boys over girls by their parents. However, this condition does not exist among Indian Muslim parents even though the kinship system is similar to dravida's kinship system in terms of marriage and inheritance and is similar to the Indo-Aryan kinship system in northern India. The female population is less among Indian Hindus than Indian Muslims. Boys are preferred by Indian Hindus because boys are thought to contribute to improving family resources and surnames are enshrined

¹Clifford Geertz, (2016), *Tafsir Kebudayaan*, Terj. Francisco Budi Hardiman, Yogyakarta: Kanisius, p. 5

through a boy. The boys are also expected to carry out a death ceremony procession later. Meanwhile, Indian Muslims do not hate girls but also do not deny about the primacy of boys. The high birth rate of women among Indian Muslims is also influenced by the prohibition of abortion practices based on the Qur'an and the fertility rate of Muslim women is much higher than that of Hindu Indians.²

Anu Rammohan and Peter Robertson examine the influence of the kinship system in Indonesia on girls' education. The study was titled *Do Kinship Norms Influence Female Education? Evidence from Indonesia*. The results showed anthropologists have suggested that the patrilocal culture of exogamy and the patrilineal kinship system are related to poor education and health benefits for women. For the Indonesian context, researchers found that their findings were consistent with the study of anthropologists in which they found that there was a relationship between results that were distinguished by gender, kinship norms and ethnicity.³

Meanwhile, research on the relationship of kinship system with inheritance in the Indonesian context was written by Agung Basuki Prasetyo under the title *The Role of Kinship and the Effectiveness of Traditional Customary Law on Inheritance System in Berbah, Sleman Regency*. The results showed that the parental kinship system in Berbah community, Sleman, still affects the division of inheritance in muslim-majority communities. In the division of the heritage of society put forward the principle of togetherness, deliberation and benefits so that both male and female heirs have a balanced position.⁴

2. RESEARCH METHODS

This research is qualitative research with legal anthropological approach. In anthropological studies, law is an integral part of culture as a whole, therefore the law is examined as a product of social interaction influenced by other cultural elements such as politics, economics, ideology and religion.⁵ In Islamic law research, this anthropological approach is used to describe how the law is formed in a society. The goal is to see the phenomenon of Islamic law in society which is the result of a reciprocal relationship between Islamic legal norms and empirical reality. For the Indonesian context this anthropological approach is increasingly interesting because that Islamic law in Indonesia has a lot of acculturation with local culture.⁶ The data sources used are secondary data sources using primary and secondary legal materials. The primer legal material used is the provisions of the compilation of Islamic law,

²Rosina Nasir and A.K.Kalla, "Kinship System, Fertility and Son Preference among the Muslims: A Review" *The Anthropologist*, 2006, 8:4, p. 275-281, DOI: 10.1080/09720073.2006.11890976.

³Anu Rammohan dan Peter Robertson, "Do Kinship Norms Influence Female Education? Evidence from Indonesia," *Oxford Development Studies*, 40:3, p. 283-304, DOI: 10.1080/13600818.2012.711303

⁴Agung Basuki Prasetyo, "The Role of Kinship and the Effectiveness of Traditional Customary Law on Inheritance System in Berbah, Sleman Regency", *Medico-legal Update*, January-March 2021, Vol. 21, No. 1, p. 20-23.

⁵Hilman Hadikusuma, *Pengantar Antropologi Hukum*, (Bandung: PT Citra Aditya Bhakti, 2004), p. 1-8.

⁶Ali Sodikin, "Antropologi Hukum Sebagai Pendekatan Dalam Penelitian Hukum Islam", *Al-Manahij Jurnal Kajian Hukum Islam*, Vol. VII, No. 1, January 2013, p. 117.

while the secondary legal material is obtained from jurisprudence literature, the results of research by legal anthropologists both in the form of books and journal articles.

3. RESULT AND DISCUSSION

3.1 Overview of Customary Law, Kinship And Inheritance System in Indonesia

In general, customary law is defined by the rules of human habits in public life. Since man was sent down by God to the earth, then he started his life with a family, then society and then state. The occurrence of the law begins with the God-given person of reason and behavior. Continuous behavior by individuals gives rise to personal habits. If the personal habit is imitated by another person then it will also become the habit of that person. Gradually between one person and another person in the unity of the community also do the custom, then gradually the custom becomes the custom of the community.⁷

Indonesia is a country consisting of thousands of ethnic groups that inhabit the entire archipelago from Sabang to Merauke. Each tribe has a character and culture that sometimes has similarities and also differences both with regard to language, customs, personality, art, tendencies in religion and others. According to Van Vollen Hoven, there are at least 19 customary jurisdictions in Indonesia, where one area with outlines, patterns and properties of customary law is the same as the circle of law or rechtskring. Then, each circle of the law can still be divided into so-called legal strongholds (Rechtsgouw). Among the nineteen customary jurisdictions are Aceh, Tanah Gayo, Tanah Batak (Tapanuli), Nias, Minangkabau, Malaya, Bangka and Belitung, Kalimantan, Gorontalo, Tanah Toraja, South Sulawesi, Ternate Islands, Irian, Bali and Java.⁸

One of the most urgent aspects of the culture of these tribes is related to the kinship system they apply in their customary lives. Simply put, the kinship system is defined by a hereditary system embraced by a certain ethnic group based on the line of father, mother or both. The kinship system in customary law regulates how a person's personal position as a relative, the position of the child to the parent and vice versa the position of the child to relatives and vice versa and the issue of child guardianship. The customary law of kinship governs the relationship of relatives, based on blood relations (allied) marital relations and customary marriage.⁹

In the kinship system of indigenous peoples, lineage is important to continue the lineage (clan) either straight or sideways lineage. As in Balinese society where men will later continue the family temple to worship their ancestors. 19 customary jurisdictions as stated by Van Vollen Hoven have their own kinship system, but with the

⁷Helman Kasra, "Prospek 19 Wilayah Hukum Adat Dilihat dari Menguatnya Sistem Kekerabatan Parental Bilateral dalam Bidang Hukum Keluarga", in *Jurnal Hukum Doctrinal*, Vol. 1, No. 1 2016, p. 77.

⁸Helman Kasra, "Prospek 19 Wilayah Hukum Adat." p. 78.

⁹Hilman Hadikusuma, (2003), *Pengantar Ilmu Hukum Adat Indonesia*, Bandung: Mandar Maju, p. 201.

development of the times there is a shift in the use of the kinship system.¹⁰ In general, descendants have a legal relationship based on blood relations, among others between parents and their children. There are also legal consequences associated with the descendants who join forces with the singleness of their ancestors, but the consequences of the law are not all the same throughout the region.

Although the legal consequences associated with the singleness of the ancestors of the region are not the same, but in reality there is a common view of the issue of this lineage throughout the region, namely that the descendants are an essential and absolute element for a clan, tribe or relative who wants to keep their lineage from becoming extinct, so that there is a future generation. If in a clan, tribe or relatives are worried about facing the extinction of the clan, this tribe or relative in general adopts (adoption of children) to continue the lineage, as well as the adoption of children carried out by marriage or adoption of children for respect. As in Lampung society where the child of another person who is raised to be *tegak tegi* taken from a child who is still in a relative with his adoptive father.¹¹ Individuals as descendants (family members) have certain rights and obligations related to their position in the family concerned. For example, it is permissible to use a surname and may use and be entitled to family wealth, must help each other, can represent each other in doing legal acts with third parties and so on.¹²

In general, in the structure of indigenous peoples in Indonesia, there are three kinds of kinship systems, namely: First, patrilineal kinship system, second, matrilineal kinship system, and third, parental kinship system. Some scientists add another kinship system called the alternatend kinship system which is a kinship system based on the father and mother's lineage in turn. The change is done if the father and mother have an advantage between the two. This system usually applies to kaili, Pamons, Da' and Bare'e people.¹³ The following will be tried to explain the three kinship systems.

3.2 Patrilineal Kinship System

Etymologically, patrilineal comes from two words, namely pater (Latin) which means "father"¹⁴ and linea (Latin) which means line. So simply patrilineal kinship is defined by a kinship system that is the lineage of the father or from the male side.¹⁵ The son serves to continue the offspring of his parents while the daughter to be the child of

¹⁰Helman Kasra, *Prospek 19 Wilayah Hukum Adat*. p. 80

¹¹ Helman Kasra, *Prospek 19 Wilayah Hukum Adat*. p. 81

¹²Bushar Muhammad, (2006), *Pokok-Pokok Hukum Adat*, Jakarta, PT Pradnya Paramita, p. 4

¹³Zainuddin Ali, (2008), *Pelaksanaan Hukum Waris di Indonesia*, Jakarta: Sinar Grafika, p. 27-28.

¹⁴Dominikus Rato, *Hukum Perkawinan dan Waris Adat.Sistem Kekerabatan, Bentuk Perkawinan dan Pola Pewarisan Adat di Indonesia*, (Surabaya: Laksbang Yustitia, 2011), p. 22.

¹⁵Bambang Danu Nugroho, (2015), *Hukum Adat*, Bandung: Refika Aditama, p. 78

another family in the same kinship until his position produces another family offspring, while if he does not have a son then it is considered to be disjointed.¹⁶

When associated with inheritance, then the boy who is entitled to inherited property from his parents, for example, the people of Lampung, Batak, and Bali. In patrilineal kinship, the rights and positions of the husband shall be higher than the rights and positions of the wife. The duty of the wife in the family is to accompany and assist the husband in the household, continue the offspring and maintain good kinship relationship between the husband's family and the wife's family. In regard to the original property, marital property, and the property given are all in the control of the husband, which is utilized based on the deliberations of the husband and wife.¹⁷

This kinship system also contains provisions on its own legacy system. Customary patrilineal heritage law is a rejection of the form of society and the nature of patrilineal kinship. In patrilineal society as is the case in Batak Karo society, only boys become heirs, because girls outside the patrilineal class.¹⁸ This is influenced by several factors, including: 1) family tree based on men, girls are not considered to be able to continue the genealogy, 2) in the household of the wife is not the head of the family and children use the family name or surname of the father, and the wife is classified into the family or surname of the husband, 3) based on custom, the woman cannot represent her parents or father, because she was a member of her husband's family and 4) in Adat kalimbubu. male is considered a family member as a parent or mother. Usually the heirs in the Indigenous legal system patrilineal inheritance consists of sons, adopted children, fathers and mothers, next of kin and customary fellowships.¹⁹

3.3 Matrilineal Kinship System

Etymologically, matrilineal comes from two words, namely mater (Latin) which means mother²⁰ and linea (Latin) which means line. So simply matrilineal kinship is defined by the kinship system of the lineage of the female side. Female offspring function to continue the offspring of their families, while the male offspring only serve to give offspring to the female family. The man as the husband releases his indigenous people and enters the customs of his wife.²¹ But the release of matrilineal customs also depends on the marriage system implemented, not always releasing customs but can also be tied to their respective customs, for example Minangkabau and Semendo.

In matrilineal kinship, the rights and positions of the husband are inferior to the rights and positions of the wife, the husband is tasked with assisting the wife. If the wife is the oldest child in her family, then it has an additional duty to keep the inheritance not divided by her parents.²² This property is called a family heirloom, keeping the estate accompanied by the utilization and management by paying attention to the interests of

¹⁶Ellyne Dwi Poespasari, "Kedudukan Anak Luar Kawin dalam Pewarisan Ditinjau dari Sistem Hukum Kekerabatan Adat", dalam *Jurnal Perspektif*, Vol. XIX No. 3 2014, p. 212.

¹⁷Zainuddin Ali, *Pelaksanaan Hukum...* p. 25-26

¹⁸Djaja Sembiring Meliala, (1978), *Hukum Adat Karo dalam Rangka Pembentukan Hukum Nasional*, Bandung: Tarsito. p. 54

¹⁹Eman Suparman, (1985), *Inti Sari Hukum Waris Indonesia*, Bandung: Armico. p. 53-54

²⁰Dominikus Rato, *Hukum Perkawinan dan Waris....*, p. 22

²¹Zainuddin Ali, *Pelaksanaan Hukum Waris....*, p. 26

²²Zainuddin Ali, *Pelaksanaan Hukum Waris....*, p. 26

his brothers. But with regard to the possession of property, it is not the opposite of patrilineal which all property is controlled by the husband, but has its own pattern that in the event of divorce, the husband is still entitled to a portion of the property together and still control the original property and the property he has. If the husband dies, the property will be returned to his original family, while if the wife dies it will be passed on to his daughter. In this kinship system, the one who is entitled to inheritance is a daughter.

The inheritance legal system on the basis of kinship, has been in force since time immemorial, before the entry of religious teachings in Indonesia, such as Hinduism, Islam and Christianity, this system applies to the customary laws of Minangkabau, Enggano and Timor.²³ In Minangkabau indigenous peoples, the basis of inheritance is stated in the customary saying:

Birik-birik turun ke semah tibah disemah berilah makan

Harta ninik turun ke mamak dari mamak turun ke kemenakan.

Based on the adage of customs, which is the customary law, shows that ninik treasures descend to mamak and mamak down to nieces, meaning inheritance that is an inheritance of women (*ninik*, *mamak* and niece), and the understanding of ninik, mamak, and niece should not be understood by people, but must be understood as a group or generation.

3.4 Parental Kinship System

Etymologically, parental comes from the word *parens* (Latin) which means parent or parent, so by looking at the comparison of the previous kinship system, it is known that parental kinship is a kinship system attracting lineages from parents both from the female side and from the male side together and balanced, for example is the society in java and Aceh.²⁴

This kinship system gives each child a share of both boys and girls to obtain inheritance from their parents, but the amount of the part depends on their own customs. In marriage, the position of husband and wife is balanced. In parental kinship, there is no known honest payment and payment of *semenda*, in choosing a place of residence is freed to settle in a place of husband or wife even in a separate house separated from the influence of his parents and establish a new life. The form of marriage used parental kinship is free marriage, both are still tied to their original family.²⁵

In relation to marital property, property of origin, and property given by each husband and wife, but controlled jointly, so that the husband or wife have the right to do legal acts either together or individually either outside or in court. Like the previous two kinship systems, parental or bilateral kinship also has its own legal pattern of inheritance. Parental or bilateral inheritance law is to give equal rights between the

²³Komari, Komari, "Eksistensi Hukum Waris di Indonesia: Antara Adat dan Syariat", *Asy-Syariah*, Vol. 17 No. 2, August 2015, p. 162.

²⁴Bambang Danu Nugroho, *Hukum Adat....*, p. 79

²⁵Zainuddin Ali, *Pelaksanaan Hukum Waris....*, p. 27

male and female parties, both to husband and wife, as well as boys and girls including the family of the male and the family of the female party. This means that boys and girls are equally entitled to inheritance from both parents, even widowers and widows in their development also include inheriting each other.

Even the process of giving wealth to heirs, especially to children, both to boys and girls has generally begun before the parents or heirs are still alive. And the system of division of inheritance in this society is individual means that the inheritance can be distributed from the owner or heir to his heirs, and privately owned. The nature of the parental or bilateral heritage legal system is generally on the island of Java, including East Java, Central Java, West Java and the Special Capital Region of Jakarta.²⁶ This system can be seen in several aspects:

- a) In terms of gender, it can be divided into two groups, the first group of males and the second the group of women; and
- b) In terms of the relationship between the heir and the heir, there are also two groups of heirs because of the occurrence of marital ties, namely husband and wife.

The second group is a kinship group, because there are three blood relations: the group of descendants of the heir, such as the children of the heir, the grandson of the heir, the great-grandson of the heir and so on down. The original group of heirs, i.e. the parents of the heirs, such as the father and mother of the heir, the grandparents of the heir, the great-great-grandfather and great-great-granddaughter of the heir, and so on. And the third group is the sideways relationship of the heir, such as the heirs' brothers, both male and female, and the next to his grandchildren and uncles and aunts to his posterity, and the siwo or uwa of the male and female to his posterity.²⁷

3.5 Islamic Inheritance

Etymologically, the word inheritance is taken from the word *ورث - يرث - ارثا و ميراثا* which means a relic of the deceased. Inheritance is also defined by the transfer of something from one person to another or from one people to another.²⁸ In terms, the law of inheritance is defined as the law governing the distribution of inherited property left by the heirs, knowing the portion received from inheritance for each heir who is entitled to receive it.²⁹ Hasby As-Shiddiqi defines the law of inheritance with the knowledge by which it can be known who inherits, who cannot inherit, the share obtained by each heir and the way of return.³⁰ While in the Compilation of Islamic Law article 171 mentioned that the law of inheritance is the law governing the transfer of ownership rights of the heir, specifying who is entitled to be the heir and what part of each (Abdurrahman, 2007).³¹

²⁶Komari, *Eksistensi Hukum...*, p. 165.

²⁷ Komari, *Eksistensi Hukum...*, p. 165.

²⁸Munawwir Ahmad Warson, (1997), *Kamus Al Munawwir*, Surabaya: Pustaka Progressif, p. 1634 M Dhamrah Khair, (2011), *Hukum Kewarisan Islam menurut Ajaran Suni*, Bandar Lampung: Fakultas Syariah IAIN Raden Intan Lampung, p.11 and Muhammad Ali Ash-Shabuni, (1996), *Pembagian Waris Menurut Islam*, terj. Jakarta: Gema Insani Press, p. 33

²⁹Ahmad Rofiq, (2000), *Hukum Islam Di Indonesia*, Jakarta: PT Raja Grafindo Persada, Cet. IV, p. 355.

³⁰Muhammad Hasbi As-Shiddiqi, (2001), *Fiqih Mawaris*, Semarang: Pustaka Rizki Putra, p. 5.

³¹Abdurrahman, (2007), *Kompilasi Hukum Islam*, Jakarta: Akademika Pressindo, p.155

Islam is a complete religion, the provision of inheritance is so clearly stipulated in the Qur'an, Hadith and the opinions of scholars in the books of jurisprudence. There are several verses of the Qur'an that are evidenced by the obligation to complete the division of inheritance for Muslims and directly detail the parts of the heirs (*furud al-muqaddarah*). The verses in question can be seen in Q.S. al-Baqarah (2) verse (233), Q.S. al-Nisa' (4) verse (7), verse (11), paragraph (12), verse (33) verse (176) and Q.S. al-Anfal (8) verse (75). In some hadiths, the Prophet (s) also said a lot about the importance of the division of inheritance by Islamic law. One of the hadiths narrated by Muslims is that the Prophet PBUH said:

اقسمواآمال بين اهل الفرائض على كتاب الله فما تركت الفرائض فلا ولى رجل ذكر (رواه مسلم)

"Share the inheritance to the heir (*ashabul furudh*) according to the decree of the Book of Allah, while the rest to the family of the nearest man" (HR. Muslims).

The explanation of the provisions of Islamic inheritance is more detailed in the books of jurisprudence, where scholars do *ijtihad* against the good inheritance of the Qur'an and hadith and formulate it into the form of jurisprudence that they sometimes agree on one problem, but can also be different in other matters. Some of the important things in the study of Islamic inheritance are things related to the principles of Islamic inheritance, the causes of inheritance (*asbab al-irts*), the barrier of inheritance (*mawani' al-irts*), and the part of the heirs (*furud al-muqaddarah*). The following will be explained in a nutshell. There are at least five principles concerning Islamic inheritance law. The five principles are the principle of *ijbari*, bilateral, individual, balanced justice, and the consequences of death.³² The following will be tried to explain one by one. *First*, the principle of *ijbari*. The purpose of this principle is that the transfer of the property of a deceased person to his heir applies by itself according to the decree of God without being suspended to the will of his heir or heir. The principle of this *ijbari* can be seen from several aspects, namely: (1) from the aspect of the transfer of property will certainly occur with the death of a person, (2) from the aspect of the amount of property obtained, also has been determined the amount that will be received by each heir and (3) of those who receive inheritance (heirs) have been determined are those who have a relationship and marital ties with the heir.³³

Second, bilateral principles. The purpose of this principle is that a person receives rights or inheritance from both parties; male and female relatives. This principle of bilaterality, has two dimensions of mutual inheritance in the Qur'an surah al-Nisa' verses 7, 11, 12, and 176, namely (1) between the child and his parents, and (2) between the child if the heir has no children and parents. *Third*, individual principles. The purpose of this principle is that inheritance can be divided into heirs to be owned individually. Therefore, in its implementation, all inheritance is stated in a certain value which is then distributed to each heir who is entitled to receive it according to the level of their respective share. Therefore, if every heir is entitled to the share he gets without being bound to another heir, then he has the ability to receive rights and

³²Amir Syarifuddin, (1984), *Pelaksanaan Hukum Kewarisan Islam dalam Lingkungan Adat Minangkabau* Jakarta: Gunung Agung, p. 18 and Mohammad Daud Ali, (1998), *Hukum Islam Pengantar Ilmu Hukum dan Tata Hukum Islam di Indonesia*, Jakarta: Rajawali Press, p. 128-131.

³³Muhammad Daud Ali, *Hukum Islam*. p. 128

perform obligations (heirs of al-adā')³⁴. The principle of individuality of Islamic inheritance law is obtained from the analysis of the legal line of the Qur'an concerning the distribution of inheritance. For example, the legal line of sura al-Nisa verse 7 explains that boys receive inheritance from their parents or immediate family. Similarly, women are entitled to receive the inheritance of their parents and/or relatives either little or much.³⁵

Fourth, the principle of balanced justice. This principle means that there must always be a balance between the rights and obligations between the rights obtained by the heirs and the obligations that will be fulfilled. For example, the balance of the part of a boy with a girl with a pattern of 2:1 is balanced with the burden of responsibility that he will bear in the future. A man will be a head of the household who will provide for his wife and children, while no child shall be obliged to provide for his family in the future. Fifth, the principle of the consequences of one's death. This principle means that inheritance is solely as a result of one's death. This means that a person's property cannot be transferred and is said to be an inheritance as long as the person who owns the property is still alive. Thus all forms of transfer of one's living property to another person, either directly or later after death, do not fall into the category of inheritance in the perspective of Islamic law.

The number of things that cause a person to inherit is caused by; first, kinship (*nasab*). This relationship is determined by the blood relationship between the heir and his heir. A mother has a kinship with the child she was born with, and vice versa. For a father the kinship relationship with the child is determined by a legal marriage contract between his father and his mother. And whoever inherits from the right path will be known. Second, marital relations. Because of a legal marital relationship will cause the husband and wife to inherit each other if one of the two dies and leaves the property. Third, the relationship of al-wala' (Freeing slaves or slaves). The intention is that if a man has freed a slave, then he will get an inheritance from that slave whose bias gets 1/6. For the current context, there may be no inheritance division like this, but it is likely that a future date may occur.

With regard to things that prevent a person from obtaining inheritance, in Islamic inheritance literature explained, there are at least five criteria of people who are prevented from obtaining inheritance. First, slavery. A slave has no right to inherit even from his brother, because everything a slave has belongs to his master as well. Second, religious differences. There is a difference in religion between the heir and his heir, causing a person not to get inheritance. This is stated in the hadith of the Messenger of Allah from Usama ibn Zaid, narrated by Bukhari, Muslim, Abu Daud, At-Tirmizi and Ibn Majah who mentioned that a Muslim cannot accept the inheritance of non-Muslims, (Ali, 2007).³⁶ However, kinship relationships are still well implemented in the context of muamalah and other social relationships. Third, murder. If a person kills an heir, then according to the hadith of the Messenger, he will not get an inheritance from the person he killed. Fourth, different countries. Fifth, apostate. People who have left Islam will not receive inheritance from the heir who is still Muslim. Sixth,

³⁴ Muhammad Daud Ali, *Hukum Islam*. p. 129 and Amir Syarifuddin, (1990), *Pembaruan Pemikiran dalam Hukum Islam*, Padang: Angkasa Raya, p. 169.

³⁵Zainuddin Ali, *Pelaksanaan..* p. 56-57.

³⁶Zainuddin Ali, (2007), *Hukum Perdata Islam Di Indonesia*, Jakarta; Sinar Grafika, p.112.

persecuting the heir's weight. This is based on the provisions of the Compilation of Islamic Law (KHI) article 173 paragraph a. Seventh, defamatory. A person prevented from receiving inheritance if wrongly blamed has made a complaint that the heir has committed a crime threatened with a sentence of 5 years in prison or a heavier sentence. (chapter 173 verse b KHI). Regarding the heirs, it can be distinguished to the heirs of the group of men and women. As for the male heirs there are ten namely: 1) Son 2) Grandson of son 3) Father 4) Grandfather and continue to the top 5) Siblings 6) Brothers of fathers 7) Uncles 8) Sons 9) husbands 10) Male masters who free slaves. While the heirs of the women there are seven heirs namely: 1) Daughters 2) Daughters of sons 3) Mothers 4) Grandmothers 5) Sisters 6) Wives 7) Masters of women who free slaves.

3.6 The Influence of Kinship System in Heritage Division in Indonesian Muslim Community

In the description above it has been explained that the kinship system is very influential on the system of inheritance division in certain tribes based on the tendency to take lineage whether from the father, mother or both. In the following I will try to explain the influence of the patterned kinship system into the patrilineal, matrilineal and parental systems in the division of inheritance among the Islamic community that is still ongoing. Considering so many tribes, the author only chooses one tribe in each kinship system, namely the Karo (patrilineal), Minang (matrilineal) and Javanese (parental) tribes.

1. Heritage Division of Karo Muslim Community

The inheritance system of Karo indigenous people is based on the paternal lineage (patrilineal) where the right to inherit property is a son. Girls are not entitled to inheritance, only given part of their siblings based on "kekelengen", there is no provision of the portion of girls in Karo customary inheritance law. From a legal perspective, this customary provision is considered discriminatory against women's rights, because in fact, it turns out that wives and their circumstances. The role of these girls is actually seen since they were children until they became daughter (*beru*). The absence of girls as heirs is an inevitable problem.³⁷ In Karo Muslim community, there has been a kind of shift towards a better direction that is towards the application of some of the values of Islamic inheritance although not as a whole. This is supported by a study conducted by Azhari Akmal Tarigan on the implementation of inheritance law in the Karo Muslim community of North Sumatra.³⁸ In the study, there are at least three ways of sharing inheritance for girls that occur among Karo Muslim people. First, the daughter has no inheritance. Some Karo Muslim people still carry out customary law in its entirety. The results showed that the sister who did not get an inheritance share from her brother did not demand anything from the inheritance. This is understood as a form of awareness and obedience of the sister to the customary law because women who obey the customary law, are seen as good and civilized Karo

³⁷Sryani Br. Ginting, "Pembagian Warisan Menurut Hukum Adat Karo" Prosiding Konferensi Nasional Ke- 8 Asosiasi Program Pascasarjana Perguruan Tinggi Muhammadiyah (APPPTMA), Medan, 2018, p. 8.

³⁸Azhari Akmal Tarigan, "Pelaksanaan Hukum Waris di Masyarakat Karo Muslim Sumatera Utara", *Ahkam*: Vol. XIV, No. 2, July 2014, p. 199-212.

women. Second, the daughter gets a small inheritance. Another form of the implementation of inheritance law in Karo land is the emergence of public awareness Karo Muslim (brother) to give inheritance to his daughter or sister. Regardless of the name, whether the daughter as the heir and therefore get an inheritance or just a gift from the brother as a sign of affection and appreciation, Karo's woman has obtained an inheritance although in a very small amount. Third, girls are seen as equal to boys. It is still in the context of changes to Karo customary law. In the first and second form it is clear how the legal choices made by the Karo Muslim community in order to complete the distribution of his inheritance. There are still those who survive the customary law and the number is very small.³⁹

In addition to the receipt of inheritance through the above channels, there is a tendency from parents both men and especially mothers (wives) to give inheritance to their daughters through two ways, namely grants and wills. What is meant by grants is the property given while the parents are still alive. This process is easier because the girl still lives with her parents. The gift of wealth from parents is also done when the daughter holds a wedding. As for the will, it is usually given to the boy so that they pay attention to his sister.⁴⁰ The practice of giving inheritance to girls in Karo muslim society above gave rise to one thesis that Karo customary law actually moves closer to Islamic law. What Karo's woman received both through her brother's gift, a grant from her parents (made-up) and a will was intended so that Karo's daughter could enjoy the inheritance of her parents, although it is not exactly the same from what is in the provisions in Islamic inheritance law that gives a comparison of section 2:1 between a boy and a girl. In this context we can see that in practice this patrilineal Karo kinship system, on the one hand is still very influential but on the other hand began to be influenced by the Islamic inheritance system and moved dynamically towards a better direction.

2. Distribution of Minang People's Heritage

Minangkabau tribe is an example of a community that uses the kinship system of the mother line (matrilineal). Minangkabau is referred to as one of the largest matrilineal ethnicities in the world.⁴¹ However, the modern development of Minang society indicates that there has been a matrilineal cultural shift in some Minang people. Some anthropologists say that since the 1970s, there has been a social shift in the Minangkabau community in West Sumatra. The role of *mamak* as a source of social support was taken over by the biological father of her nephew.⁴² In his research, Niken Hartati and Kwartarini Wahyu Yuniarti, mentioned that minang matrilineal kinship system has faded and the role of *mamak* (mother's brother) has been replaced by father along with strengthening the practice of nuclear family. From about 298 Minang male respondents domiciled in West Sumatra and traditionally practicing matrilineal kinship system, the results of the study found that the attitude of social support by

³⁹Azhari Akmal Tarigan, "Pelaksanaan Hukum Waris, p. 205.

⁴⁰ Azhari Akmal Tarigan, "Pelaksanaan Hukum Waris, p. 210.

⁴¹Rosina Nasir and A.K.Kalla, "Kinship System. p. 285

⁴²T Kato, "Change and Continuity in the Minangkabau Matrilineal System", Indonesia, (1978), 25(April), p. 1-16 and Schrijvers, J., & Postel-coster, E., "Minangkabau Women: Change in a Matrilineal Society", Archipelago, Vol 13, 1978, p. 79-103.

mamak to her niece is still practiced by most respondents. However, the support is only incidental and does not last continuously.⁴³

In the context of the division of inheritance in Minangkabau custom, this matrilineal kinship system still has an effect both theoretically and also in practice for people who are already synonymous with Islam. Islamic relations with Minangkabau customs influence each other, especially with the quote that is commonly heard, namely "adat bersendikan syarak dan syarak bersendikan Kitabullah" which means that the custom is based on sharia and sharia based on the Book of Allah. This means that Minangkabau customary values are basically based on the provisions of Islamic law, while Islamic sharia must be based on the Book of Allah (Qur'an). However, in reality the provision of inheritance between Minangkabau customs and Islamic law still leaves the side of equality and difference.

There are many studies that have been made both in the form of books, international journals and national journals, with regard to the relationship of Minangkabau customary inheritance law with Islamic inheritance law. In this case, I will try to parse again with a compact and substantive exposure. The term inheritance in Minangkabau tradition is called *warih* which means people who deserve inheritance and original descendants based on mother line. This means that they are descendants who deserve or replace the title of *pusako* in Minangkabau custom. *Warih* in Minangkabau tradition is divided into two parts; *warih nasab* and *warih sabab*.⁴⁴ The inheritors are those who are entitled to inheritance due to the relationship of blood with the heir who is pulled from the maternal lineage. The inheritance of this *nasab* is divided into two; first, the heir of the *saluruah* (the whole family that relates to blood according to the mother line), second, the heir of the *kabuliah* (the original hemisphere). About the inheritance of *kabuliah*, there is an expression, "*Jauah nan buliah ditunjuakkan dakek nan buliah dikakokkan satitiak bapantang hilang, sabarih bapantang lupu, nan tak lapuak dek ujan nan tak lakang dek paneh*" (the far can be shown that close do not hold, speck do not be eliminated, in line do not forget. Do not weather the rain do not be soft because of the hot day).

Meanwhile, inheritance of *sabab* is the heir that occurs for some reason. This type of inheritance is divided into three parts; first, the inheritance relates to the custom of a person or a person who is entitled to inheritance due to customary relations. For example, in a nagari (village) where there is one people who live in the same tribe but have a different *sako* and then one of the rulers of the ruler is extinct, then his property can be passed on to the niece of another ruler. This happens because between the ruler and the other ruler there is a customary relationship. Second, *warih batali buek*. It is an inheritance obtained through a word of agreement made by one people. For example, by agreement, the property of one people will be passed on to a boy not to a nephew. This deal happens when a people is extinct. Third, *warih batali budi (ameh)*. It is an inheritance obtained because of the good mind of a person to the immigrants who are considered as children of nieces who can certainly be given the

⁴³Niken Hartati dan Kwartarini Wahyu Yuniarti, "Apakah Sistem Kekerabatan Matrilineal di Suku Minang Masih Membudaya? Analisis Tematik Pada Makna Pemberian Dukungan Sosial Mamak Kepada Kemenakan" *Jurnal Psikologi Sosial*, Vol. 18, No. 03, 2020, DOI: 10.7454/jps.2020.2020, p. 199-210

⁴⁴Mawardi Datuak Rajo Api, *Pokok Tentang Pengetahuan Adat Minangkabau*, Palembang, 1987, p. 56-58.

right to inheritance. This can happen for example there is a person who initially has nothing to do with the ruler, then the person begs to be a niece to be a niece, then the ruler by agreement in the tribe or his people accept it to be his people. After the ruler died and his niece became extinct, his treasure was passed on to this coming niece.

When compared to the reasons inherited in the perspective of Islamic law, then it looks different from the tradition of Minangkabau inheritance. The relationship of *nasab* by following the matrilineal principle (mother) as the heir is not known in Islamic law, meaning that both men and women have the same right to be heirs. Then because of inheriting due to the existence of customary relations (*warih batali adat*), the existence of agreements (*warih batali buek*) and because of the existence of a good mind (*warih batali budi*), there is nothing stipulated in the provisions of Islamic inheritance. The causes of Islamic inheritance are only because of *nasab* relationships, marriages and relationships of *wala'*. Theoretically, the customary inheritance law in Indonesia is divided into three systems, namely collective, mayorate, and individual inheritance. Minangkabau people adhere to the collective inheritance system and the individual inheritance system. What is meant by the collective inheritance system is a system of inheritance that wants the inheritance not divided into heirs with the aim that the ancestral property is maintained while the individual inheritance system can be owned individually. Under the collective inheritance system, heirs cannot personally own the estate, but it is permissible to use, work and enjoy the proceeds of its management.⁴⁵

Minangkabau people are known for two types of treasures (*harato*) namely high heirlooms and low heirlooms. What is meant by high inheritance is a treasure inherited through generations from one generation to the next. Because the treasure has been too long, the original owner can no longer be identified, but the source and origin can still be explained from the ancestors based on the maternal lineage. Because it is obtained by generations over a long period of time, it is called a high inheritance. This high inheritance is passed down from his father to the heirs, but it cannot be divided into heirs. This property is only used, cultivated, and enjoyed as a result. In this context, it can be understood that the inheritance of this high inheritance adheres to the collective inheritance system. The management of this high inheritance is in practice given to a man called *mamak* who is a man of the maternal lineage. This high inheritance is a symbol of family and memories for the ancestors who hinted that his ancestors were once established because of his wealth and vast. This treasure is actually very helpful in the life of a family that is lacking. The utilization of high heirlooms that are usually in the form of gadang houses, rice fields, fields and buildings will greatly help the family or niece in terms of the fulfillment of tuition and others.⁴⁶The second is a low inheritance. This treasure is usually obtained through generations but is still known to the original owner, usually in the span of a generation or two. This type of wealth is divided by the use of Islamic law (*faraidh*). So, for low inheritance adheres to the individual inheritance system.

Based on the above information, it can be understood that the influence of matrilineal kinship system on Minangkabau customs is still very influential in the application of inheritance division in the community, especially in the distribution of high heirlooms.

⁴⁵Eric, " Hubungan Antara Hukum Islam dan Hukum Adat Dalam Pembagian Warisan di Dalam Masyarakat Minangkabau", *Jurnal Muara Ilmu Sosial, Humaniora*, Vol. 3, No. 1, April 2019, p. 67.

⁴⁶Eric, " Hubungan Antara Hukum Islam. p. 67.

This is confirmed by the results of a meeting of *ninik mamak*, *imam-khotib*, clever and *mantidubalang* held in 1952 in Bukittinggi and Minangkabau Customary Law Seminar held in July 1968 in Padang that high heirlooms such as Gadang Houses, rice fields, land, buildings, and others that belonged to the ancestors using Minangkabau customary inheritance law. This means that the high inheritance can be inherited to the sons and daughters of the mother line, but for high inheritances should not be divided into individual heirs. The heirs can use, process, then after processing get the results then the results can be enjoyed.⁴⁷

3. Division of Javanese Islamic Community Heritage

The study of Javanese culture and its relevance to Islam has been widely conducted and remains up to date until now. This could be because the Javanese have the most population compared to other tribes in Indonesia which reaches 40% of the Population of Indonesia with 1,331 ethnic groups. A comprehensive study of Islamic relations and Javanese culture was conducted by Clifford Geertz (1960) with *The Religion of Java* and has been translated as *Agama Jawa, Abangan, Santri, Priyai Dalam Masyarakat Jawa*.⁴⁸ In his book, Geertz (1983) describes the syncretism between Javanese, Islamic, Hindu and Buddhist cultures that are perceived as Javanese religions. Through his research in Mojokerto area, he has mapped the concept of Javanese religion into 3 types: first, Abangan, presenting on the aspect of animism that in geertz perspective covers the elements of farmers. Second, Santri, represents an emphasis on aspects of Syncretism Islam and generally Geertz connects with the merchant element. Third, priyai, emphasizes the aspect of Hinduism classed by Geertz in bureaucratic elements. Islam Santri is a very strict representation of Javanese Muslims in carrying out temporary Islamic teachings. On the contrary, the second and last is the Muslim community that carries out Islamic teachings with its level and is often even "indifferent".

The spread of Islam starts from the coast that still has confidence in sacred things and makes the Mosque a strategic place for the development of Islamic communities. In addition to being the center of rituals, the Mosque is also the growth and development of Islamic culture.⁴⁹ In the end Islam became the most conquered religion in Java Island. The success factor of the spread of Islam is mainly due to the presence of Islam does not necessarily damage the javanese order, customs and culture, on the other hand Islam remains consistent in maintaining the orsinility of its teaching principles. Generally, the Islamic community of Abangan people are still affected by their old beliefs, the combination of Hindu and Buddhist cultural elements provides its own space as well as a differentiator for Mojokerto people from other communities.⁵⁰

Mapping the pattern of Javanese Islamic religion above will be seen the influence on the practice of Islamic inheritance in Javanese society. In general, in Javanese and Madura traditions, the heirs tend to maintain parental lineage or the parties of both

⁴⁷ Eric, " Hubungan Antara Hukum Islam. P. 69.

⁴⁸ Clifford Geertz, (1960) *The Religion of Java*, London: The University of Chicago Press, and Clifford Geertz, (1983), *Agama Jawa, Abangan, Santri, Priyai Dalam Masyarakat Jawa*, Jakarta: Pustaka Jaya,

⁴⁹ Nursyam, *Islam Pesisir*, (Yogyakarta: LKis, 2005), p. 73

⁵⁰ Clifford Geertz, *Agama Jawa*,..p. 309-310

parents (father and mother) together.⁵¹ In Javanese tradition, the first to be the heir is the son and daughter and his descendants (his grand children). If the heir has no children at all, nor has he had an adopted child from a relative's child or from another person's child, then the property will be inherited successively by the parent, father or mother of the heir. If there is no, then the siblings of the heirs or descendants who become heirs and if this is not there is also a grandparent heir. If the grandparents of the heirs also do not exist then it is given to uncles or aunts, both from the father line and from the maternal line of the heir. If to this degree there is no then it will be inherited by other family members.⁵² Simply put, the heirs in Javanese customary law can be grouped in Descendants of heirs, parents of heirs, the heirs or descendants and parents of his heirs and descendants.⁵³

With regard to the type of property inherited, IGN Sugangga states that according to the customary law of Central Java inheritance includes; 1) Goods of origin consisting of three types. First, heirlooms, which are objects inherited through generations from his ancestors in the form of kris, spears, books, and others. Second, luggage (*gawan*) is a property carried by each husband and wife before marriage. Third, gift items are personal possessions obtained during marriage such as land or rice fields obtained by husband and wife as part of inheritance and other gifts such as rings and necklaces obtained as wedding gifts. 2) Gono-gini property. It is property obtained by husband and wife with cooperation or mutual cooperation which is often also called mutual livelihood. Husband and wife have a common right to this property.⁵⁴

In practice, the influence of parental kinship system on the implementation of inheritance in Javanese Islamic society depends on the religious pattern of each community as described by Geertz above. According to Koentjaraningrat, ethnography experts often report that they have difficulty when describing the division of inheritance in Javanese customary perspective, although indigenous jurists have formulated normative provisions on Javanese inheritance customs neatly. For Islam Santri, usually use the provisions of Islamic inheritance (*faraidh*) in completing the division of inheritance, while others use Javanese customs that can use the way *sapikul sagèndhongan* or *dum dum kupat* or *sigar semangka*.⁵⁵

Simply put, the term *sapikul sagèndhongan* is defined by a carrying object and a sling. That is, the ratio of inheritance part comparison between men and women is for men got *sapikul* (2 parts) while for women got *sagèndhongan* (1 part). This illustration depicts when a man shouldering something usually uses two baskets, one in front and one in the back. While if a woman carries something usually only carry one basket that she put on her back or commonly called carried. This means that the share of boys is twice as large as that of girls, as is the case in Islam which is 2:1.⁵⁶ In the perspective

⁵¹Hilman Hadikusumo, (1991), *Hukum Waris Indonesia-Menurut Perundangan Hukum Adat, Hukum Agama Hindu, dan Islam*, Bandung: Citra Aditya Bakti. p.. 29

⁵²Hilman Hadikusumo, *Hukum Waris Indonesia*. p. 72.

⁵³Imam Sudiyat dan Agus Sudaryanto, "Studi Aspek Antologi Pembagian Waris Adat Jawa." *Jurnal Mimbar hukum*, Vol. 22, No. 3, 2010, p.541

⁵⁴IGN. Sugangga, "*Hukum Waris Adat Jawa Tengah*", Naskah Penyuluhan Hukum, Semarang: Fakultas Hukum UNDIP, 1993, p. 12.

⁵⁵Koentjaraningrat, (1994), *Kebudayaan Jawa*, Jakarta: Balai Pustaka, p. 161

⁵⁶Anggita Vela, "Pembagian Waris pada Masyarakat Jawa Ditinjau dari Hukum Islam dan Dampaknya", *Jurnal As-Salam*, 4(02), 2015, p. 79.

of Javanese society, men are considered to have more difficult duties and responsibilities compared to women where when it comes to marriage he must prepare things related to the proposal, give a dowry (*asok tukon*) and work to support his family in the future. While girls usually just wait for the proposal, given a dowry (*asok tukon*) and get an outward living from her husband later. The Javanese man is culturally expected to be able to carry out five A namely; *angayani* (providing for birth and mental support), *angomahi* (making a house as a shelter for wife's children), *angayomi* (being a protector and family mentor), *angayêmi* (keeping the family safe, peaceful, and free from distractions) and the latter is *angatmajani* (able to lower the seed of excellence).⁵⁷

The second way of division is called by means of *dum dum kupa*t or *sigar semangka* which is most widely applied to Javanese society in accordance with the parental kinship system. This way positions the boys and girls equally and equally. This is motivated by the idea that all children are the same, both will build families that require a lot of capital. This equally large part is intended as a household capital. With this system according to him it is considered fair because both wives and husbands both contribute or help build the economy for their own families.⁵⁸ A study on the kinship system and effectiveness of Javanese customary inheritance law in Berbah subdistrict, Sleman district concluded that most of the Islamic community there still uses inheritance division based on parental/bilateral kinship system, only a small percentage of families that share the inheritance of boys who get more from women with a pattern of 2:1 in accordance with the provisions of Islamic law.⁵⁹

Based on the explanation above, we can say that the kinship system that is patterned to the patrilineal, matrilineal and parental systems still has an influence on the settlement of inheritance faced by indigenous Muslims in Indonesia. However, the trend of shifting towards the division of inheritance based on Islamic law shows a positive thing as in Karo Muslim community. In Minang society, the matrilineal kinship system is still very influential in the distribution of high inheritance, while in the division of low inheritance has been in accordance with the division of Islamic law inheritance. In Javanese Islamic society, the influence of matrilineal kinship system is still very strong influence on the settlement of inheritance in Abangan society (borrowing the term Gerzt), but in Javanese Santri community, the matrilineal kinship system is no longer used because they have used Islamic inheritance law.

3.7 The Influence of Kinship System in Indonesian Islamic Inheritance Law

Speaking of Islamic inheritance law in Indonesia, it is inseparable from the inheritance provisions contained in the Compilation of Islamic Law (KHI) as a material legal source for judges in resolving disputes in the Religious Court, in addition to other legal sources. Based on Presidential Instruction No. 1 of 1991 to the Minister of Religious Affairs to disseminate KHI, the Minister of Religious Affairs in his decree No. 154 of 1991 dated July 22, 1991, in order to carry out the Presidential Instruction, asks all

⁵⁷ Suwardi Endraswara, (2006), *Falsafah Hidup Jawa*, Yogyakarta: Cakrawala, p. 53-54

⁵⁸ Agus Wantaka, dkk., "Pembagian Warisan Dalam Perspektif Hukum Islam dan Hukum Adat Jawa (Studi Komparasi)", *Prosiding al-Hidayah*, Vol. 01 No. 1, January 2019, p 24.

⁵⁹ Agung Basuki Prasetyo, "The Role of Kinship and the Effectiveness of Traditional Customary Law on Inheritance System in Berbah, Sleman Regency," *Medico-legal Update*, January-March 2021, Vol. 21, No. 1, p. 20-23

agencies of the Ministry of Religion, including the Religious Judiciary in it and other relevant government agencies, to disseminate the KHI in question.

The provisions of inheritance are stipulated in book II KHI in articles 171 to 193. In general, the provisions concerning the heirs, the portions obtained by the heirs, the causes and things that prevent inheritance according to what is explained in the books of jurisprudence. Boys and girls become heirs when their father or mother dies in a ratio of 2:1. This means that the kinship system in the indigenous peoples of Indonesia does not affect the provisions of the heirs in the KHI, although the KHI is called the Fiqh of Indonesia. KHI still gives inheritance to girls (non-patrilineal), makes men heirs with more parts than women (non-matrilineal) and does not make the male and female parts become equal (non-parental).

However, there are some inheritance provisions in KHI when traced is the result of acculturation with Indonesian culture. Among these provisions are as follows. *First*, about peace in the division of inheritance. In Article 183 KHI it is stated that the heirs can agree to make peace in the distribution of inheritance, after each realizes its share. This provision according to the author's frugality is something new in the context of the division of Islamic inheritance that was never previously known in classical jurisprudence. Based on this provision, the heirs may have deliberations and peace in the division of inheritance where after each heir knows their share and then they agree on a division that is not in accordance with the *furudul muqaddarah* in fiqh. With an agreement, a daughter may have an inheritance that is balanced with her brother with various considerations. The division of heritage by means of deliberation is found in many traditional traditions in Indonesia.

Second, the division of inheritance when the heir is still alive. In some people's customs and has become part of the customs known division of inheritance before the heir died. When someone was alive, he had divided all his wealth to his heirs, this was done on the grounds of avoiding internal family conflicts when he later passed away. In fact, such divisions are not known in the fiqh tradition, even considered some scholars contrary to the basic principles of Islamic inheritance that require the death of a person in the process of transfer of inheritance. However, in KHI the way of division of inheritance such as this is considered by some circles can be possible when it is associated with the provisions in article 187 paragraph (1) KHI which confirms that if the heir leaves the inheritance inheritance, then by the heir during his life or by the heirs can be appointed several people as executors of the division of inheritance with the task:

- a. record in a list of relics, either in the form of moving or immovable objects which are then authorized by the heirs concerned, if necessary assessed the price with money;
- b. calculate the amount of expenditure for the benefit of the heir in accordance with Article 175 paragraph (1) sub a, b, and c.

Third, the provision of shared property. In indigenous peoples in Indonesia is known for the existence of marital property in Javanese terms known as gono gini treasure as the author has explained above. Although initially the term gono-gini is derived from Javanese tradition, but with almost the same concept is also known some terms in other tribes, such as *hareuta siharekat* (in Aceh), *harta suarang* (Minangkabau), *guna*

kaya (Sunda Jawa Barat), *duwe gabro* (Bali) and *barang perpantangan* (Kalimantan).⁶⁰ The provisions of this joint property are also included in the KHI. In Article 1 letter f it is mentioned that what is meant by wealth in marriage is or *syirkah* is property obtained either individually or with husband and wife during the marriage tie is further called joint property, without question registered in the name of anyone. If a husband or wife dies, then those who are still alive are entitled to half of the joint property before being distributed into inheritance. This provision is contained in article 96 paragraph (1) which reads; in the event of divorce, half of the joint property becomes the right of a spouse who lives longer. The term common property in marriage is never found in the classic fiqh book, especially when it is associated with the way of division when one dies. This issue is considered to be part of the contemporary clerical *ijtihad*, especially in Indonesia.⁶¹

Fourth, the part of the daughter when with siblings. The provisions of the inheritance of siblings are stipulated in articles 181 and 182 of the KHI where it is stated that if a person dies without leaving the child and father, then the brother will get an inheritance from the mayit. The sound of this chapter is considered a form of legal renewal related to the brother section. In the view of the fiqh scholars, the child referred to in the Qur'an is a son, thus the siblings will get inheritance if the heir does not leave the child, namely the son. This means that boys can prevent siblings from inheriting, while girls can't get in the way. In the view of Indonesian scholars the fiqh provisions are considered still gender bias. Indeed, in the provisions of KHI it is mentioned that the brother's part is determined by the existence of the child, but KHI does not confirm whether the child in question is a boy or a girl. Some of the constituents of KHI explained that the word child referred to in articles 181 and 182 is both a boy and a girl. So, girls can also green your brother not to get inheritance. This means that KHI has made a new breakthrough that is different from fiqh.⁶² In practice in the Court of Religion, there are also some decisions that have applied this understanding, although it is still a debate among Islamic jurists and judges. Some judges still maintain a fiqh understanding, but others refer to existing jurisprudence. The judges in the Supreme Court themselves once made a cassation decision that stipulated that girls obstruct brothers and sisters. The judges argued that while the dead leave the child, both male and female, then the inheritance of the blood relationship with the dead person can be hindered, except for parents and married couples.⁶³

Noting the above phenomenon, there seems to be an effort to reform Islamic inheritance law in Indonesia which is influenced by the issue of gender equality and kinship system that tends towards parental or bilateral system. Equalization of the position of men and women is often sought to show that Indonesia gives attention to the legal position of women in Indonesia. There are a number of contemporary Islamic thinkers who support the discourse, such as Hazairin with his bilateral inheritance

⁶⁰Happy Susanto, (2008), *Pembagian Harta Gono Gini Saat Terjadi Perceraian*, Jakarta: Transmedia Pustaka, p. 10.

⁶¹H.A. Sukris Sarmadi, *Harta Bersama*, in Kemenag RI, (2012), *Hukum Kewarisan Islam Kontemporer di Indonesia*, Jakarta: Balai Litbang dan Diklat Kemenag RI, p. 176.

⁶²Euis Nurlaelawati, *Menuju Kesetaraan Dalam Aturan Kewarisan Islam Indonesia: Kedudukan Anak Perempuan vs Saudara Kandung*, in Kemenag RI. (2012), *Hukum Kewarisan Islam Kontemporer di Indonesia*. Jakarta: Balai Litbang dan Diklat Kemenag RI, p. 218.

⁶³Kemenag RI. *Hukum Kewarisan*. P. 223-224.

concept and Munawwir Sjadzali with the concept of equality of parts between boys and girls. In hazairin thought, it is asserted that basically the law of inheritance contained in the Qur'an refers to a bilateral inheritance system in which everyone connects himself with the hereditary rights of his mother and father.⁶⁴ Hazairin mentions that the inheritance system cannot be separated from the family form derived from the system of kinship which is influenced by the form of a marriage that is generally divided into three kinds of hereditary systems; patrilineal, matrilineal and parental or bilateral.⁶⁵ Looking at the three kinship systems, Hazairin finally argues that there are three normative theological foundations that state that the family system that the Qur'an wants is bilateral, including:

- a. If you pay attention to QS. -Nisa' verses 23 and 24, then there will be found permission to marry each other between the brothers cousins. This suggests that the Qur'an tends to be a bilateral family system.
- b. Qs. Al-Nisa verse 11 explains that all children, both male and female, are heirs to their parents. This is a bilateral system.
- c. QS. al-Nisa verses 12 and 176 make you an heir. Based on this basis, Hazairin concluded that the verses of the Qur'an direct the inheritance law based on the bilateral system.

Similar thought support also came from Munawwir Sjadzali, the former Minister of Religious Affairs of the Republic of Indonesia. Munawwir Sjadzali stressed the importance of re-actualization of Islamic teachings is no exception with regard to Islamic inheritance. The inheritance provision highlighted by him is the 2:1 comparison between the boys and girls in obtaining inheritance. This provision is actually based on Q.S. Al-Nisa verse 11 and the view of classical scholars. According to Munawwir, the formulation is not considered to provide justice for a society where women also have a dominant role. In reality in society, the heirs still ask for a judge's fatwa on the ruling on inheritance law in accordance with Islamic law that stipulates the share of boys and girls 2:1, but this is often not carried out by the Islamic community. They ignored the judge's fatwa, instead they applied a 1:1 division between boys and girls. This way is not only practiced by ordinary people, but also the leaders of organizations that master Islamic sciences.⁶⁶

Noting this phenomenon, Munawwir came up with the idea that the inheritance provisions were codified into equal divisions between men and women, provided that the girl had a role in the family. The verse of the Qur'an that determines the part of boys equal to the two parts of girls is based on the culture or tradition that existed at that time where the status of the boy is as *amir* (leader), protector and protector of women as stated in Q.S al-Nisa' verse 34. This is certainly different when it comes to the reality of modern society today, where women do things that arab women did not do in the past. The habits of modern society require women to be more advanced, independent and seek income or employment. According to Munawwir it is very relevant

⁶⁴Hazairin, (1982), *Hukum Kewarisan Bilateral; Menurut al-Qur'an*, Jakarta: Tintamas, p. 11

⁶⁵Rosidi Jamil, "Hukum Waris dan Wasiat (Sebuah Perbandingan Antara Pemikiran Hazairin dan Munawwir Sjadzali," *Al-Ahwal*, Vol. 10, No. 1, June 2017 M/1438 H, p. 104.

⁶⁶Munawwir Sjadzali, (1995), *Kontekstualisasi Ajaran Islam*, Jakarta: Paramadina, p. 88

if the inheritance of girls now who have a role is increased to be the same as the inheritance of boys. If in such circumstances the provisions of inheritance law are still 2: 1, considered as a form of injustice.⁶⁷

4. CONCLUSION

Based on the description above, the author will try to conclude to answer the problem formulation contained at the beginning of the writing. In general, the kinship system in Indonesia is divided into three systems, namely patrilineal, matrilineal and parental or bilateral systems. This kinship system has an influence on the pattern of division of inheritance in Islamic communities in Indonesia such as Karo, Minangkabau and Javanese. Some Karo Muslim community is still strong to hold on to the patrilineal kinship system so that all who deserve inheritance is only boys. However, in others, there is a tendency to give inheritance to girls through grants or wills. In this context we can see that in practice it is the Karo traditional kinship system that is patrilineal on the one hand is still very influential but on the other hand began to be influenced by the Islamic inheritance system and moved dynamically towards a better direction. In Minangkabau people who use matrilineal kinship system, it is still strong to uphold the principle that to inherit high heirloom property is the lineage of the mother line. However, against low inheritance, Minangkabau Islamic society applies Islamic inheritance law. Meanwhile, the Javanese parental kinship system, still very influential in Abangan society that makes men and women as heirs with a balanced acquisition. In Javanese Santri society, this parental kinship system had no effect on the division of inheritance, because they followed the Islamic inheritance system. In the development of Islamic inheritance in Indonesia, efforts to make the bilateral inheritance system are seen in some of the articles on the KHI supported by Islamic law reformers in Indonesia.

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⁶⁷Satria Effendi and M.Zein, (1995), *Munawir Sjadzali dan Reaktualisasi Hukum Islam di Indonesia*, Jakarta: Paramadina, p .293

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