

# COMPARATIVE ANALYSIS OF ISLAMIC INHERITANCE LAW ON INHERITANCE RIGHTS IN ACEH, REPUBLIC OF INDONESIA AND PATTANI, SOUTH THAILAND

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## Abstract

This study aims to determine the inheritance law systems in Aceh (Indonesia) and Pattani (Thailand), two regions with strong historical, cultural, and Islamic backgrounds. Aceh implements Islamic inheritance law integrated into the national legal system through the Sharia Court, while the Muslim community of Pattani practices Islamic inheritance law in a limited manner within the context of Thailand's secular national law. This study employed qualitative methods with a juridical-normative and sociological approach, through literature review, analysis of legislation, and an examination of social practices. The results show that although both regions adhere to the principles of Islamic inheritance law, there are significant differences in their application and formal legal force. In Aceh, Islamic inheritance law has strong legal legitimacy and is recognized by the state, while in Pattani, its application is more cultural and depends on the agreement of families and religious leaders. This research is expected to contribute to the comparative study of Islamic law and an understanding of the dynamics of the application of Islamic inheritance law in Muslim-majority and minority regions.

**Keywords:** *Comparison Law, Islamic Inheritance, Aceh, Pattani*

## INTRODUCTION

Indonesia is a predominantly Muslim country. Islamic law is understood as a body of law derived from the teachings of Islamic law, specifically the Quran and Hadith, which regulate human life to achieve happiness in this world and the hereafter. Islamic law encompasses the legal relationship between humans, or between humans and objects, and also between humans and God. Islam is a perfect religion, governing all aspects of life, both physical and spiritual. Islam also deeply understands the human situation and condition, therefore, no aspect of human life in this world is overlooked by Islamic teachings. As social beings, humans need friends to interact and achieve their desires. In Islam, this is also known as mu'amalah (which regulates social life). One form of human relationship is marriage. Islamic law, as a unified legal system, also regulates marriage. The marriage system determines the family system, which in turn determines the inheritance system. With marriage, a form of family emerges. The definition of family in Islam determines its status within the inheritance system. Inheritance is a set of rules governing the transfer of property rights from a deceased person to their heirs. In other words, inheritance is also known as fara'idh, meaning a specific portion divided according to Islamic law among all those entitled to receive it. From this description, what is known as inheritance arises. Speaking of inheritance, it involves three elements, namely:

1. There is an heir or person who controls or owns inherited property and who will transfer it.
2. The existence of muwaris or heirs, namely people who receive the transfer or continuation or distribution of the inheritance, which consists of heirs and non-heirs.
3. The existence of inheritance or inheritance or wealth of the heir which is called inheritance.

According to Islamic law in the letter An-Nisa 12, which determines the wife's share into 2 types, namely:

- a. One-eighth (1/8) of the inheritance if the deceased (the testator) leaves children who are entitled to inherit. This includes children (grandchildren) and so on down the male line. Children or grandchildren are obtained either from the deceased wife or from the previous wife.
- b. One quarter (1/4) of the inheritance if there are no children or wives as mentioned above.

The legal source used as a basis for inheritance matters is the Qur'an, namely Surah An-Nisa verse 33:

Meaning: *For each (male and female) We have appointed heirs for what was left by their parents and close relatives. Those to whom you have sworn allegiance, give them that share. Indeed, Allah is the Witness of all things.*

Inheritance law is a crucial component of civil law as a whole, and also a smaller component of family law. Inheritance law is closely related to human life, as every individual will inevitably face the inevitable legal event of death. This event not only carries emotional impact but also gives rise to legal implications in the form of rights and obligations that must be fulfilled by those who remain alive. Inheritance law is precisely defined as the legal regulations governing the transfer of assets from the testator to the heirs. In this context, what is transferred is the testator's wealth (vermogen), namely all rights and obligations held by the testator that have economic value. This wealth can be in the form of assets, such as property, money, or certain rights, as well as obligations in the form of debts or liabilities that must be settled by the heirs.

However, theoretically, many Indonesian people, even though they are Muslim, are still influenced by their respective customary laws which are still alive and developing in everyday life, so that there is a mixture of Islamic law and customary law in resolving inheritance issues. According to traditional customary law in Aceh, all inherited assets are distributed according to Islamic law accompanied by customary law, not according to law alone or according to custom alone. Apart from regulating family relationships, marriage law also regulates the issue of a person's property after death in the family, which is called inheritance law or in Arabic, faraid science. Faraid science is a science that regulates the distribution of inheritance left by a person after death. In domestic matters related to family and inheritance, some Southern Thai Muslims manage their wealth during their lifetime. This is especially true when someone begins to feel ill, or when their son separates and starts a new family. Parents have given them wealth and funds to create a new family for their children, but some families are dysfunctional or have died. Before making arrangements and planning for the children's estates, upon their death, their property becomes an implicit inheritance.

So how to resolve a problem that arises due to differences of opinion or disputes regarding inheritance, whether inheritance in the form of tangible or intangible assets, but in the form of rights and obligations, position, honor, traditional titles, titles and so on. The Islamic Religious Council of Pattani province is a private institution that has been founded by a group of religious scholars whose main purpose of being established is to serve the Pattani Muslim community and take care of ahwal al syaksyah matters, namely regarding marriage matters and the distribution of inheritance for the Pattani community. In the role of the Pattani provincial Religious Council in distributing inheritance assets to the Pattani residents for the share of inheritance according to Islamic sharia law and solving problems between fellow heirs. In the practice of distributing inheritance in the Islamic Religious Council, Imam Syafii's jurisprudence is used.

## LITERATURE REVIEW

1. How does Islamic inheritance law compare regarding inheritance rights in Aceh, Republic of Indonesia and Pattani, South Thailand?
2. How are inheritance rights implemented in Aceh, Republic of Indonesia and Pattani, South Thailand?

## METHOD

The research method used in this study is normative legal research. Normative or doctrinal legal research is legal research that utilizes secondary data sources. Normative legal research is also known as library research or document study because it primarily utilizes secondary data found in libraries. In normative research, secondary data as sources/information materials can include primary, secondary, and tertiary legal materials.

The implementation of normative legal research is broadly aimed at:

- a. Research on legal principles
- b. Research on legal systematics
- c. Research on legal synchronization
- d. Research on legal history
- e. Research on comparative law.

## **RESULTS AND DISCUSSION**

### **Comparison of Islamic inheritance law regarding inheritance rights in Aceh, Republic of Indonesia and Pattani, South Thailand**

According to traditional customary law in Aceh, all inheritance is distributed according to Islamic law accompanied by Custom, not according to law alone or according to custom alone. Basically, all children, both boys and girls have the same rights to the inheritance of their mother and father, meaning that equal rights contain the right to be treated equally regardless of whether they are male or female for the inheritance of their mother and father, namely by distributing or equalizing the inheritance rights of boys and girls based on the agreement of the heirs, mutual willingness or mutual acceptance of the share (*tameu jeut-jeut*). Inheritance disputes in Acehese society were initially caused by the failure to implement the rights and obligations of heirs in the distribution of inheritance. In this case, the distribution of inheritance was not carried out in accordance with applicable provisions, even though there were provisions for the distribution of inheritance, both according to customary law, civil law and Islamic law. The provisions for the distribution of inheritance had a positive aim to save the people from reprehensible acts, namely taking and consuming other people's property illegally or not in accordance with the provisions. Islamic law requires that the distribution of inheritance to heirs be carried out according to the provisions with the amount of each heir's share.

Inheritance disputes, including those under customary law, arise due to the failure to fulfill the rights of some of the heirs. The heirs are a group of people/relatives who are related to the deceased and are entitled to inherit or receive the assets left behind by the testator. Meanwhile, Article 171 letter (c) of the Compilation of Islamic Law explains that what is meant by heirs is a person who at the time of death has a blood relationship or marital relationship with the testator, is Muslim and is not prevented by law from becoming an heir. Based on the author's research, it was found that in an inheritance distribution process, what is done first is the determination of the heirs who are entitled to receive the inheritance. The determination of the heirs who are entitled to the searched assets contains a majority statement where the children and wives are the people who are most entitled to the assets of the testator and if there are no such heirs, then other heirs who have the closest blood relationship with the testator will be determined. Settlement of the inheritance distribution of the testator's inheritance, the family left behind usually invites the *tuha peut gampong* along with *teungku imeum meunasah* and religious scholars who are considered to know more about how to distribute inheritance according to *faraid* law or according to Islamic law. *Teungku imeum meunasah* and religious scholars referred to in their daily lives are village elders who are role models and understand *faraid*. In fact, after the testator dies and leaves heirs, the inheritance must be immediately distributed to the heirs who are legally entitled to receive the inheritance. This distribution is carried out after fulfilling the rights and obligations related to the testator, such as fulfilling *fardhu kifayah* (obligatory duties) and paying debts, if any. This is a custom in Acehese customary law communities for the distribution of inheritance.

Acehese customary law communities, who practice Islamic law in their daily lives, consistently prioritize deliberation in resolving inheritance disputes. This also applies to disputes over inheritance distribution, particularly when inheritance is transferred from one heir to another. In resolving inheritance issues at the village level, Acehese customary law communities typically choose to involve customary institutions at the village level, such as the village head, the village head (*imeum meunasah*), and other village officials. In other words, disputes over inheritance distribution at the village level are resolved through deliberation involving village officials. If deliberation fails, the dispute is brought to the village customary court and handled by the village customary court. The settlement of inheritance disputes in Acehese society by village officials has always been resolved through deliberation, long before the issuance of Aceh Qanun Number 9 of 2008 concerning the Development of Customary Life and Customs, where in Chapter VI Article 13 (1) it is stated that there are 18 (eighteen) disputes or disagreements that occur in society resolved at the village level, one of which is a dispute between families regarding *faraidh* (inheritance). With the issuance of this qanun, the position of village officials is further strengthened through customary courts in handling and resolving inheritance disputes that occur in the community.

Resolving inheritance disputes between heirs through the village customary court is a last resort if previous attempts to resolve the dispute and various offers of resolution, both through deliberation and traditional mediation involving village-level customary officials, have failed. Before inheritance distribution takes place, villagers typically first arrange for death certificates and the determination of heirs. They then simultaneously express their intention to carry out the inheritance distribution peacefully, hoping to avoid disputes between the heirs. Furthermore, village officials recommend that the distribution be resolved through deliberation involving the village customary institution. However, these efforts may prove unsuccessful, requiring the inheritance

distribution to be resolved through the Sharia Court. Furthermore, in terms of settling inheritance distribution at the village level, efforts will continue to be made through deliberation between the parties and involving village officials through peaceful means, negotiation, and mediation. Efforts to resolve disputes through negotiation and mediation involving the village head and village officials are one of the efforts to resolve inheritance disputes. This is done as an alternative dispute resolution, especially mediation, settlement with this approach shows a tendency that it has gained a place in the community. The resolution of inheritance distribution disputes, including through deliberation with village customary institutions such as the village head, but also involves a Notary, PPAT, Land Office or Sharia Court as the party that determines the heirs.

The solution that often occurs in the community of Kamiyor Village, Muang Patani District, South Thailand, is deliberation. Settlement of disputes through deliberation and consensus is the earliest route taken by the disputing parties before finally entering the legal route or religious court or Regional Islamic Religious Council. With this route, it is hoped that the disputing parties can resolve the problem in an amicable manner (deliberation) so that they arrive at peace (*muafakat*). There are various approaches to resolving inheritance disputes in the Malay customary law of Southern Patani, Thailand, both legal and non-legal. Juridical dispute resolution involves a third party, while non-judicial dispute resolution does not.

Furthermore, Sudiarto and Zaeni Asyhadie classify disputes into:

1. Juridical solutions can be divided into two, namely:
  - a. Settlement through court.
  - b. Settlements that do not go through court can take the form of arbitration, mediation and consolidation.
2. Non-juridical solutions consist of several forms:
  - a. Negotiation
  - b. Unilateral settlement
  - c. Violent solution.

From the opinion above, it can be concluded that the resolution of disputes that is juridical in nature basically leads to goodness and resolves it according to what is desired, while non-juridical dispute resolution is actually more detrimental to the disputing parties.

### 3. Solution methods and patterns

There are several methods and patterns of customary inheritance law settlement that apply in the Muang Patani Selatan District community in Thailand, including:

- a. Personal resolution, namely resolution carried out personally by community leaders such as mosque imams based on the trust of the parties without involving other components.
- b. Settlement through the family, namely settlement carried out by approaching the family of the disputing parties who usually have a close relationship.
- c. Settlement through an institution, namely the Islamic Religious Council which has absolute authority in all fields.

## **Implementation of Inheritance Rights in Aceh, Republic of Indonesia and Pattani, Thailand**

Acehnese society has a customary practice whereby married girls, aged approximately 2 to 3 years, live with their parents, as per the matrilineal system. Married boys are required to live with their spouse or their in-laws, a practice that is particularly prevalent in Greater Aceh and the Pidie region. Initially, this custom of granting was widely recognized by the Acehnese people, but it has faded over time, leading many to abandon the tradition. *Hibah* is an Arabic word that etymologically means to distribute or give. According to the Indonesian Dictionary (KBBI), a grant is defined as a voluntary gift by transferring rights to something to another person. For a son living with his wife, all household expenses come from his wife's parents. This means that the husband is not obligated to provide for the household. When a child or two are born, a "*peumengkleh*" (gift) occurs, separating the daughter's family from the in-laws. Through this ceremony, custom recognizes the existence of two families within the household: the parents and their children, and the daughter and her husband and children. During the *peumengkleh* ceremony, the family receives assets as capital for the household they are about to start from the parents of the woman's partner. In Acehnese, this asset is called "*peunulang*." *Peunulang* is a custom in which parents grant immovable property such as a house or land to their married daughters. This tradition arose to balance the fact that inheritances tend to be given more to male heirs. Although these *peunulang* assets can be considered part of the inheritance, legally, they are not counted as part of the parents' inheritance and do not reduce the daughter's inheritance rights. *Peunulang* assets are similar to the term conditional gift known to the Acehnese people. According to prevailing custom, the use of a married daughter's assets is for the benefit of her

family members. The transfer of ownership of the conditional gift assets from the wife's parents to her daughter occurs from the time the peumengkleh ceremony is held. The property given becomes the daughter's full property, while the husband has no right to transfer ownership, only the right to manage and enjoy the proceeds together with his wife and children. In Acehese social structure, there are two types of property ownership: "property of the deceased" and "property of the deceased." Property of the deceased belongs to the individual. It can be the husband or wife, but if repairs are needed, the costs are taken from joint assets. Meanwhile, peumukleh assets are gifts from parents to married daughters, as preparation for living independently. This gift usually occurs after the child has their own children, and is carried out in a khanduri ceremony attended by the village head (Keuchik) and village head (Teungku Gampong). The assets can include a house, land, gold, and household equipment, adjusted to the in-laws' means. Therefore, inheritance distribution according to Acehese tradition is based on the goal of creating harmony. This means that the management of inherited assets is structured according to values that ensure harmony for all parties entitled to the assets. The distribution of assets, from this perspective, is carried out by considering the principles of harmony and fairness. If a disagreement arises between the parties entitled to the inheritance that cannot be resolved, the resolution will refer to clearer principles for asset distribution. The approach taken in its management follows the principles of Islamic jurisprudence while still prioritizing the principle of peace.

According to the views expressed, giving hareuta peunulang in the context of Islamic law is not explicitly recognized, but is similar to the principle of gifts. While giving property to daughters is not prohibited, it is limited to a maximum of 1/3 of the property because the rights of other heirs still exist. The practice of giving hareuta peunulang to daughters and sons in Aceh is a hereditary tradition that aims to avoid injustice among heirs in the future. In this case, a father tends to consider wisely the assets and the number of children so that the distribution of inheritance will not cause injustice. Although hareuta peunulang can be counted as part of the inheritance, it is not a direct part of the parents' inheritance, and does not eliminate the inheritance rights of daughters. This means that hareuta peunulang is considered the daughter's personal property that remains under her exclusive ownership. Hareuta peunulang is not permitted to be distributed to other heirs. It should be noted that it is unlikely for other heirs to question the giving of hareuta peunulang because it could be seen as disrespectful to the decision made by the deceased parent.

The use of peace efforts before escalating to settlement with civil law aims to avoid divisions or bad relations between parties. Considering that in civil settlement efforts, there will be a loser and a winner. Peace efforts undertaken not only protect the bonds between siblings but also ensure the survival of the parties so that the problem does not drag on. In its efforts to resolve using civil channels, the Sharia Court through peace efforts is obliged to go through various stages of civil case examination, in an orderly and regular manner. There are several articles that regulate the general principles in the process of examining the case, namely Article 65 of Law Number 7 of 1989 in conjunction with Article 39 of Law Number 1 of 1974. Article 130 HIR or Article 154 R.Bg. The application of the principle of peace in court is based on the provisions of these articles. After a peace decision is made, it will be stated in a peace deed. In this deed, the results of the peace between the parties involved in the dispute are contained in the court decision in the form of a peace decision. Resolving civil disputes through peace efforts aims not only to avoid potential future tensions between the disputing parties, given that court decisions often involve winners and losers, especially if they are still family members. Furthermore, this effort also aims to avoid protracted legal proceedings.

Inheritance disputes in Kamiyor village typically involve unfair or difficult divisions, such as inheritances inherited from multiple heirs. However, these inheritances are not resolved or processed, leading to them being passed down to the next generation. As recounted by an official at the Patani Provincial Islamic Religious Council, The solution that often occurs in the community of Kamiyor Village, Muang Patani District, South Thailand, is deliberation. Settlement of disputes through deliberation and consensus is the earliest route taken by the disputing parties before finally entering the legal route or religious court or Regional Islamic Religious Council. With this route, it is hoped that the disputing parties can resolve the problem in an amicable manner (deliberation) so that they arrive at peace (muafakat).

There are various approaches to resolving inheritance disputes in the Malay customary law of Southern Patani, Thailand, both legal and non-legal. Juridical dispute resolution involves a third party, while non-judicial dispute resolution does not. Inheritance disputes often arise some time after the testator dies and most of the parents have passed away. Nowadays, inheritance disputes occur not only in parental societies but also in patrilineal and matrilineal societies. This is because members of indigenous communities are increasingly influenced by a materialistic mindset, as a result of modern progress and the emergence of many life's needs. Therefore, feelings of shame, kinship, and mutual assistance have increasingly waned. When an inheritance

dispute arises, all members of the deceased's family usually gather or are gathered by a respected heir at the testator's home. The meeting can be led by the eldest son or an uncle (father's or mother's brother) according to the kinship structure, or by a spokesperson appointed and agreed upon by the family members present. During the family deliberation, the meeting leader presents the disputed issues, preceded by advice on the importance of harmony and peace in family life. Shame and self-respect were always brought up first, as was shame for the neighbors' families. It was difficult for the departed souls to dispute over their inheritance if those they left behind were involved. Various proverbs were used, and various holy verses were presented, encouraging all participants to think honestly, calmly, and with tolerance.

## CONCLUSION

1. Islamic inheritance law in Aceh and Pattani is both sourced from the Qur'an, Hadith, and Islamic jurisprudence, so the basic principles are relatively the same, especially regarding the Determination of heirs and the Distribution of inheritance portions (such as 2:1 between men and women). The order of heirs and inheritance barriers, the main difference lies in state recognition, the legal system, and its application in practice. Aceh (Indonesia). Islamic inheritance law has a strong and formal legal standing. Aceh has special autonomy, and the application of Islamic law (including inheritance) is recognized by the state and implemented through the Sharia Court. Pattani (Southern Thailand). Islamic inheritance law is not fully state law. Its application is limited and local, especially for Muslim communities, and often falls under Thailand's civil law system. Islamic inheritance disputes are formally resolved through the Sharia Court with binding legal force, Pattani: Islamic inheritance settlement is often carried out through religious figures, traditional institutions, or qadhi, and does not always have the formal legal force equivalent to state courts.
2. The application of inheritance rights in Aceh and Pattani is both based on Islamic law because the majority of the population is Muslim. However, its application shows significant differences due to differences in legal systems and state policies. In Aceh, the application of Islamic inheritance rights takes place formally and institutionally. The state provides strong legal recognition through Aceh's special autonomy, so that the distribution of Islamic inheritance is implemented and resolved officially through the Sharia Court. This provides legal certainty, uniformity of decisions, and clearer protection of heirs' rights, although in practice there is still the influence of custom and family deliberation. Meanwhile, in Pattani, Southern Thailand, the application of Islamic inheritance rights is informal and cultural. Islamic inheritance law is implemented primarily through religious leaders, qadhi, or traditional institutions, without full support from the Thai national legal system. As a result, the implementation of inheritance rights often depends on family agreements and local customs, resulting in a lower level of legal certainty compared to Aceh. The final conclusion, the difference in the application of inheritance rights in Aceh and Pattani lies not in Islamic teachings, but in state recognition and support. Aceh demonstrates a model of Islamic inheritance law implementation integrated with the national legal system, while Pattani reflects a community-based and local-traditional implementation. These differences highlight the significant influence of political factors and national legal systems on the implementation of Islamic inheritance rights in Muslim communities.

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