

# The Paradigm of the Gorontalo Muslim Community towards the Implementation of the Distribution of Inheritance with the Islamic Inheritance Method

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## ABSTRACT

The purpose of this research is to analyze the nature contained in the distribution of inheritance which is regulated according to the Islamic system. This study uses primary data through interviews with the Ministry of Religion, Religious Courts, Regional Governments, Offices of Religious Affairs, and Village Governments in three sample areas, namely Bone Bolango Regency, Gorontalo Regency and North Gorontalo Regency. The results of this study indicate that (1), In essence, the division of inheritance in Islamic law is to ensure that every heir gets a balanced share with rights and obligations, is justice, certainty, the highest benefit that comes from Allah SWT and its implementation is submission, servitude, on religious beliefs.

**KEYWORDS:** Community Paradigm; Distribution; Inheritance

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## I. INTRODUCTION

The distribution of inheritance in society is often based on which one is more beneficial to the dominant party. Dominate means the party who has great influence in the family of the heir, either because of the level of education, has wealth, occupation, position, is fluent in issuing opinions or who controls most of the estate of the heir. The choice of law will always be open because inheritance is considered an individual right that can be suspended or not. This choice of law will also determine the resulting legal product.

According to several previous studies, the practice of inheritance distribution in the Muslim community of Gorontalo is still dominated by customary systems or habits such as family consultations. Even though they already have their line of law regarding inheritance, the Muslim community still provides legal options for other inheritance sharing models. Another fact that should also be noted is that the results of the distribution of inheritance by methods other than Islamic inheritance for Muslims are not final and binding because they are still vulnerable to disputes, as released by the Supreme Court of the Republic of Indonesia in its annual report that inheritance cases occupy the top 5 positions in Indonesia. cases resolved in the judiciary.

The collaboration between Islamic law and customary law in Gorontalo is reflected in *Adati hulala'a to Syara'a, Syara'a hulala'a to Quru'ani* (Adat with Syara, Syara with Al Qur'an). This proverb emphasizes that the life of the people of Gorontalo is full of customs, which are customs that are based on law, and laws that come from the holy book (Al Qur'an).

Islamic values framed by traditional nuances are still strongly visible in the life of the Muslim community in Gorontalo such as in the implementation of marriage, aqiqah, government (when welcoming and releasing leaders), commemorating major Islamic holidays such as the commemoration of Isra Mi'raj, Maulid. prophet, death, building a house, starting a business, occupying a new house, including joint ownership of property (budel), usually in the form of a house.

The characteristics of the Gorontalo people who lived in groups in a large house (*Bele Da'a*), made Budel's assets jointly owned for generations. This way of life makes property ownership controlled by certain group leaders, coupled with the influence of receipt theory so that it increasingly legalizes the existence of customary law.

Along with the development of people's lives that have changed from traditional to modern, group life has eliminated group life to separate themselves. This pattern of separation is not necessarily followed by joint ownership of objects/objects. As a result, many objects are *obscurant*, neglected and full of conflict.

The prevalence of the Muslim community in Gorontalo who considers wealth does not need to be divided as long as there are still close family members living is quite high. This means that the Gorontalo Muslim community does not necessarily share the inheritance when a family member dies.

Religion in Gorontalo is heterogeneous, with the majority of the population being Muslim (Muslim), this can be seen from statistical data released by the Central Statistics Agency in 2020 as many as 1,170,793 Muslims from 1,171,681 people, or 97 people, 38% of the total Muslim population in Gorontalo.

Along with the rapid development of technology, it has influenced and changed the mindset, attitudes, and behaviour of humans. Society is increasingly open to access in all things, especially now, the world seems to be without boundaries. This also gradually affects the paradigm of the Muslim community towards their religious law.

The Indonesian constitutional system recognizes the separation of powers, executive, legislative and judicial. The birth of a religious court is a form of fulfilling the interests of enforcing religious law for the Muslim community. The position of the religious judiciary is strengthened by the 1945 Constitution articles 24, 25 and 29 and the Law on Judicial Power Number 14 of 1970 which has been amended several times, most recently by Law Number 48 of 2009, this was followed by the establishment of a Law Law Number 7 of 1989 concerning the Religious Courts which has been amended twice, namely with Law Number 3 of 2006 as amended by Law Number 50 of 2009. This shows that the constitution provides room for Islamic law to apply formally juridically.

The authority of the religious courts has developed quite significantly, for example, previously in Law Number 7 of 1989 article 50, for property rights or other civil disputes, the general court decided first, after the second amendment to Law Number 3 of 2006 article This is added, if the property rights dispute occurs in Muslim people, it must be decided by the religious court, it means that there is no longer a choice of law for Muslims (Muslims) to be subject to Islamic law.<sup>1</sup>

This change is very important for the existence of inheritance law because after being eliminated during the Dutch colonial period, Islamic inheritance law became a law that no longer had legal force. Islamic inheritance law is excluded from the litigation process, so it is powerless and begins to be ignored. With the re-enactment of this article, there is hope to restore the existence of Islamic inheritance law, unfortunately, this application is not well known by the wider community.<sup>2</sup>

The results of research from 5 Religious Courts at the City and District levels in Gorontalo Province, the case for determining heirs occupies the second position after divorce cases, as for inheritance disputes are very minimal. Every year a maximum of 3 cases are submitted, and even then two of them are withdrawn by the plaintiff. Many inheritance disputes in the community drag on without any resolution.

Settlement of inheritance cases in the Religious Courts also requires a relatively long time, because it depends on the fulfilment of the administration of the parties, such as genealogies of heirs, evidence of property ownership, and so on.<sup>3</sup>

Another vertical religious institution besides the Religious Courts is the Ministry of Religion. The Ministry of Religion is tasked with assisting the President in the field of fostering religions in Indonesia, including guiding the public on the provisions of their religion. In certain civil fields, the authority of the Ministry of Religion is delegated to religious institutions at the sub-district level, namely the Office of Religious Affairs.<sup>4</sup>

The Muslim community of Gorontalo tends to ask for the determination of heirs rather than asking to determine the parts of the heirs. This application is also usually only made by parties who have an interest in managing state administration, for example, to withdraw TASPEN funds, heirs' savings in banks, and others. One example, as reported from the official website of the Limboto Religious Court, which is legally domiciled in Gorontalo Regency, in 2020, inheritance claims (cases *contentious*) amounted to 3 (three) cases, while requests for determination of heirs (cases *volunteer*) amounted to 13 cases.<sup>5</sup>

Decisions as legal products in the Religious Courts adhere to the principle *ultra petitem partium* (the prohibition of stipulating something that is not demanded). Concerning the application for determination of heirs, the judge is prohibited from deciding beyond the *petitem* requested by the parties. But another empirical

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<sup>1</sup> Muaidi, M. (2017). Penyelesaian Sengketa dalam Hukum Ekonomi Syari'ah. *TAFALQUH: Jurnal Hukum Ekonomi Syariah Dan Ahwal Syahsiyah*, 2(2), 1-23.

<sup>2</sup> Zaelani, Z. (2019). Hukum Islam Di Indonesia Pada Masa Penjajahan Belanda: Kebijakan Pemerintahan Kolonial, Teori Receptie in Complexu, Teori Receptie Dan Teori Teceptio a Contrario Atau Teori Receptio Exit. *Komunike*, 11(1), 128-163.

<sup>3</sup> Hutagalung, M. P. (1983). Faktor-faktor yang Mempengaruhi Mengapa Banyak Orang Menyelesaikan Masalah Kewarisan Melalui Pengadilan Agama. *Jurnal Hukum & Pembangunan*, 13(5), 409-416.

<sup>4</sup> Rahmatullah, R. (2016). Kewenangan Pengadilan Agama Dalam Menyelesaikan Sengketa Perkara. *Jurisprudentie: Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum*, 3(1), 126-133.

<sup>5</sup> Pongoliu, H. (2019). Pembagian Harta Waris dalam Tradisi Masyarakat Muslim di Gorontalo. *Al-Manahij: Jurnal Kajian Hukum Islam*, 13(2), 187-202.

fact, in some of their decisions, judges of religious courts can act *ex officio*, can decide something that is not requested by the party, for example in a divorce case, the judge can charge mut'ah, iddah, negligent expenses to the parties. Even though Defendant was not requested by Plaintiff, the burden was stated in the decision.<sup>6</sup>

This situation, if observed, is not impossible to apply to the case of the application for the determination of heirs. The judge's decision, in addition to determining who becomes the heir, can also determine the parts as the basis for the distribution of heirs, so that even though it is not completely resolved in court, at least the heirs have a hold that has permanent legal force based on court decisions.

The current method used by the Religious Courts, specifically in the case of determining the heirs, does not include the parts of the heirs, only determines who the heirs are, then the distribution is fully submitted based on the will of the parties. The parties are free to determine what method is used in dividing the inheritance. Thus, this decision negates the certainty of the parts that have been determined for the heirs. This concept is not much different from the determination of heirs decided by the general court.

The distribution of inheritance among heirs is mostly done through kinship (consensus), generally, it is divided equally for all heirs, the same in the sense that they are given a share but the value is different. For example, 1 hectare of land and one house are shared by three brothers, 2 boys and 1 girl. The men's share is hectare each, and the women's share in the house. The value of each can be different, for example, there may be a part of fertile land, some may get a less fertile part. Likewise women, always get a part of the house that is not necessarily the same value as the others.<sup>7</sup>

In certain cases, this division is based on a gift while the testator is still alive. Heirs during life have determined their share of each child. This method is considered the most effective and efficient, to minimize disputes between the descendants of the heirs. Another problem that will arise in this method is the assumption that the share has belonged to the child even though the parents are still alive.<sup>8</sup>

The tendency of family division also often excludes the mother (widow) as one of the heirs. If it is the wife who dies first, the wife is not considered an heir (right to inherit property). Assets acquired during the marriage are considered as the husband's property, and until the husband remarries the property is not divided among his heirs, and vice versa. This situation can lead to the mixing of assets which often causes division in the family.

The combination of adat and Islamic law is integrated in the implementation of the life of the Muslim community of Gorontalo in the *customary of syara', syara' based on the book of Allah*, but this nuance does not occur in the distribution of inheritance. Therefore, to see how far the level of understanding of the Muslim community in Gorontalo towards Islamic inheritance law and the wishes of the community in the application of inheritance distribution, as well as the roles and functions of related parties in internalizing Islamic inheritance law, the author raised a dissertation with the title *Paradigm of the Gorontalo Muslim Community Against Application of Inheritance Distribution with Islamic Inheritance Method (A Study on Receptive Theories)*.

## II. RESEARCH METHODS

The type of research used in this research is empirical juridical. Empirical juridical research is legal research regarding the enforcement or implementation of normative legal provisions in action in every particular legal event that occurs in society or other words another, namely research conducted on the actual situation or real conditions that occur in the community to know and find the facts and data needed after the required data is collected then leads to problem identification which ultimately leads to problem-solving. carried out in the jurisdiction of Gorontalo Province. The location of the study was determined by method *random*. Considerations using this method because all regions have the same characteristics as the majority of the population are Muslim, and already have a Religious Court, Ministry of Religion in each of these areas. From the random results obtained the results of 3 (three) areas became the focus of research, namely North Gorontalo Regency, Gorontalo Regency and Bone Bolango Regency. Each of the selected districts has a Level I Religious Court, namely the Kwandang Court located in North Gorontalo Regency, the Limboto Religious Court located in Gorontalo Regency and the Suwawa Religious Court located in Bone Bolango Regency. Because it has the same characteristics, the research location is relevant to this study.

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<sup>6</sup> Hartini, M. (2009). Pengecualian terhadap Penerapan Asas Ultra Petitem Partium dalam Beracara di Pengadilan Agama. *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*, 21(2), 381-393.

<sup>7</sup> Utama, S. M. (2016). Kedudukan Ahli Waris Pengganti dan Prinsip Keadilan dalam Hukum Waris Islam. *Jurnal Wawasan Yuridika*, 34(1), 68-86.

<sup>8</sup> Astutik, S. (2019). KARAKTERISTIK PEMBAGIAN WARIS ADAT JAWA. *Jurnal Aktual Justice*, 4(2), 147-155.

### III. DISCUSSION

#### The Nature of Inheritance in the Islamic Legal System

The word nature (*Haqiqat*) is a noun derived from Arabic, namely from the word "*Al-Haqq*", which means truth. If it is connected with the science of nature, it means that science is used to find the truth. In Indonesian, the main word is the word "hak" which means property (possession), truth, or what exists, while etymologically essence means the essence of something, the peak or source of everything. The big Indonesian dictionary defines essence as the essence or basis, the actual (true) reality.

Some experts formulate the definition as follows:

1. Ash-Shaykh Abu Bakr Al-Ma'ruf said:

"The essence is (the mood) of a Saalik (Shufi) when he reaches a goal so that he can witness (signs of) divinity with the eyes of his heart";

2. Imam Al-Qasyairiy said

"The essence is witnessing something that has been determined, predestined, hidden (secret) and which has been revealed (by Allah to His servants).

Understanding the nature or truth of a thing, there are at least 3 (three) theories of truth, namely theory the truth of coherence, the correspondence theory of truth, and the pragmatic theory of truth, the following review:

1. coherence theory of truth (*coherence theory of truth*)

the theory of coherence or consistency truth is the truth of the theory based on the criteria of coherence or consistency. A statement called properly when following the network a comprehensive set of logically related statements. According to this theory, the truth is not formed on the relationship between the decision and something else, namely facts and reality, but on the relationship between the decisions themselves.

According to Jujun S. Suriasumantri, truth is the conformity between one statement with other statements previously known, accepted and recognized as true. A proposition is true if the proposition is related (coherent) with other true propositions or the statement is coherent or consistent with previous statements that are considered true. Thus, a decision is considered correct if it gets to witness (justification) by other previous decisions that are known, accepted and acknowledged to be true. Because of its nature, this theory recognizes levels of truth. Here the degree of coherence is a measure of the degree of truth, for example, all humans need water, Ahmad is a human being, so Ahmad needs water.

Observing the concept of the coherent theory above, if it is related to the concept of inheritance, it must also fulfil the provisions in this theory. The test will be seen to what extent the measure for the degree of truth. Is the human relationship with this inheritance coherent. More specifically the provisions of Islamic law for its adherents. The following table presents

**Table 1**  
Coherence Test of Islamic Inheritance Law

Major	Premises	Minor Premises	Conclusion
All humans will die and leave a legacy	Ahmad is a human		Ahmad will die and leave a legacy
All Muslims are subject to the provisions of Islamic inheritance law	Ahmad is Muslim		Ahmad is Muslim and submits to the provisions of Islamic inheritance law

A proposition tends to be true if it is *coherent* with other true propositions, or if the meaning contained by the proposition is *coherent* with our experience. Bakhtiar, as quoted from Aholiab Watholi, provides standardization of the certainty of truth by having at least four meanings, in which one belief cannot be doubted, so it is called knowledge. *First*, the psychological understanding. *Second*, understanding that is logical. *Third*, equate certainty with uncorrectable beliefs. *Fourth*, the notion of certainty is used in general conversation, where it is interpreted as certainty based on a reason that cannot be doubted.

2. Theory of Truth Correspondence (*Correspondence Theory of Truth*)

theory of truth correspondence (*Correspondence Theory of Truth*), which is sometimes referred to by *accordance theory of truth*, is the theory that holds that the statements are true if it corresponds to the facts or statements that exist in nature or object to which the statement is intended. Truth or true condition is if there is *correspondence* between the meaning intended by a statement or opinion and the object to which the statement or opinion is addressed. Truth or a condition is said to be true if there is a match between the meaning intended by an opinion and the facts. A proposition is true if there is a fact that agrees and states what it is.

This correspondence theory is generally embraced by followers of realism. Among the pioneers of this theory were Plato, Aristotle, Moore, and Ramsey. This theory was developed by Bertrand Russell (1972-1970). This theory is often associated with empirical theories of knowledge. The correspondence theory of truth is the earliest theory of truth, so it can be classified as a traditional theory of truth because Aristotle from the beginning (before the modern age) required the truth of knowledge to be following the reality or reality he knew.

The correspondence theory concludes that there are two realities in front of humans, statements and reality. According to this theory, truth is the correspondence between statements about something and the reality of something itself. For example, Makassar is the capital city of South Sulawesi Province. This statement is called true if in fact, Makassar is the capital of the province of South Sulawesi. The truth lies in the statement and the fact.

The significance of this theory is especially if it is applied to the world of science to achieve a truth that can be accepted by everyone. A scientist will always try to examine the truth attached to something in earnest so that what he sees is happening. For example, mountains can walk. To prove the truth of this statement, it must be investigated with other sciences, namely the science of mountains (geology), it turns out that mountains have legs (earth plates) that can move, causing earthquakes and tsunamis. Thus a question is not only believed to be true but must be doubted first to be investigated, to get an essential truth.

The truth of this correspondence if it is related to Islamic law can also be tested by expressing doubt. For example, whether Islamic law regulates in detail the distribution of inheritance, then is tested by researching the Qur'an as a source of written law from Islam. To research it through the science of *Ulumul Quran*, the science of *Usul Fiqh*, Science of *Tafsir*. It turns out that many verses of the Koran explain inheritance. Like An Nisa, al Baqarah.

**Table 2**  
Correspondence Test of Islamic Inheritance Law

Questions	ResearchThe	results of
whether Islamic law regulates in detail the distribution of inheritance?	The science of ulumul quran, science of Usul Fiqh, Science of Tafsir, Ulumul of Hadith, etc.	Found verses about inheritance in QS Al-Nisa´ (4): 11, 12, 33, 176, QS. Al-Ahzab (33):4

3. Pragmatic truth Pragmatism

comes from the Greek *pragmatic*, meaning that is done, done, deed, action, the name for the philosophy developed by William James in the United States. A pragmatic theory of truth is a theory that holds that the meaning of ideas is limited by reference to scientific, personal or social consequences. Whether or not a proposition or theory is true depends on whether or not the proposition or theory is useful for humans for their lives. The truth of a statement must be functional in practical life.

*Pragmatism* is a philosophical school that was born in the United States at the end of the 19th century, which emphasizes the importance of reason (ratio) as a means of problem-solving (*problem-solving*) in human life, both theoretical and practical problems. Prominent *pragmatism* early was Charles Sander Pierce, also known as semiotic character, William James (1842-1910) and John Dewey (1859-1952).

Proverbs states, according to pragmatic theory, the truth of a statement is measured by the criterion of whether the statement is functional in human practical life. In a sense, a statement is true, if the statement or the consequences of that statement have practical uses for human life. A theory, hypothesis or idea is true if it leads to satisfactory results, if it applies in practice, if it has practical value, for example, the theory of pragmatism in the world of education at UMI Makassar, the principle of *practicality* in getting a job has affected the number of new students. in each department. The Faculty of Law is the favourite because according to the public perception, graduating from the Law Department can become an advocate and proficient in law. Another example, regarding the question of the existence of the One God. In the Qur'an surah al-Baqarah 163-164, Allah SWT explains about His One being and provides practical explanations for these questions.

Considering the theory of pragmatism with previous theories of truth, pragmatism is true to assert the practical character of truth, knowledge, and human cognitive capacity, but this does not mean that this theory is the best of all theories.

Pragmatism criteria are also used by scientists in determining scientific truth from the perspective of time. Historically, scientific statements that are now considered true may no longer be so. Faced with a problem like this then scientists are pragmatic as long as the statement is functional and have utility then the statement is deemed true, assuming that statement is no longer so, due to the development of science itself that generates

new statements, the claim was abandoned, and so on Test truth pragmatic Islamic inheritance law can be seen from the benefits obtained in a long time. When viewed from the provisions of Islamic inheritance law, all human conditions, whether husband, wife, child, mother, father, brother, grandfather, stepchild, adopted child, apostate, family, neighbour, murderer (heir) have been answered. This state will forever exist in humans until the apocalypse. Furthermore, for the parts of the heirs, there is a balance of rights and obligations. So it can be said that Islamic inheritance law meets the criteria of pragmatic truth.

#### **IV. CONCLUSION**

In essence, the division of inheritance in Islamic law is to ensure that each heir gets a balanced share with rights and obligations, is justice, certainty, the highest benefit that comes from Allah SWT and its implementation is submission. , servitude, on religious beliefs.

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