

The Practice of Sharing Inheritance in the Pusake Tradition in Central Lombok

Abdullah*, Hijrah**

* Faculty Of Sharia, UIN Mataram

** Program Studi Hukum Keluarga Islam, STIS Darul Falah Pagutan Mataram

Abstract- Inheritance law in Indonesia, which is pluralistic, has given rise to diversity which affects the implementation of inheritance practices, such as the matrilinear system, which greatly benefits women, and the patrilinear system, which benefits men. Even women tend to get nothing. This study aims to determine the inheritance distribution system in the pusake tradition in Central Lombok, which is studied from the perspective of Islamic law and customary law. A qualitative approach with the methods of observation, interviews, and documentation is used to examine the heritage traditions in the community. The results of the study indicate that the Pusake tradition is intended as a step towards restoring women's rights in Central Lombok. The Pusake tradition is a system of division of property based on lineage, in the sense of a father's property for sons and a mother's property for daughters. The pattern of distribution of Pusake based on lineage is carried out before the heir dies, which is divided equally by deliberation. As a tradition, this system still leaves a potential for conflict, so an integration effort between Islamic law and customary law is needed on two things, namely the source of property and the amount of property received.

Index Terms- Inheritance, Pusake, Legal Integration

INTRODUCTION

Inheritance law in Islam is one part of family law (ahwal al-syakhsyiah) (Maula, 2014:3); (Tingga, 2019:1), This law is very important to learn so that in the implementation of inheritance distribution there are no errors in both procedures and processes, so that it is carried out with fair and wise principles (Abdullah, 2019:12) according to the guidance of Islamic law, such as in QS. An-Naml:16 and An-Nisa:7-12 (Haerani, 2019:2). Studying Islamic inheritance law for a Muslim is an obligation (Saefudin Masykuri, 2016: 8) to be able to fulfill the rights related to the inheritance left by the testator and will be conveyed to the heirs who have the right to receive it according to the level of their respective share. -each.

Islamic Shari'ah has outlined the rules regarding inheritance in a very regular, detailed, and very clear formulation and is full of values and principles of justice (Wahib, 2014:29). One example is the existence of the Fiqh of Mawaris, which contains the fairest rules (Tarmizi, 2020). This indicates that this knowledge is very important for society (Abdullah, 2019: 2).

One of the regularities of Islamic inheritance law is to accommodate property rights for everyone, both men and women, in a legal way. Islamic law has also regulated the transfer of ownership rights of a person who dies to his heirs, without distinguishing between men and women, large or small (Muhammad Ali Ash-Shabuni, 2013: 31).

Inheritance law in Indonesia to date is pluralistic (Pongoliu, Hamid, 2018); (Utami, 2016:197), meaning that there is more than one legal system that regulates inheritance issues. In Indonesia, there are three inheritance law systems, namely customary inheritance (applicable to indigenous groups), Islamic inheritance law (applicable to all Indonesian citizens who are Muslim), and Western inheritance law (applicable to European citizens and Chinese descendants based on the Civil Code). Therefore, in the implementation of the inheritance distribution that occurs in Indonesia, each region will have differences from each other according to the culture and culture of each region and the kinship system adopted (Nasution, 2018:23).

This pluralistic inheritance law system causes diversity in the process of inheritance distribution and the amount of inheritance received by heirs in various regions of Indonesia. In its implementation, it is often adjusted to the customs and habits, and cultural values of the local community. This is because several groups of Indonesian people to this day still hold and maintain the noble values of their ancestors who inherited them, including in the legal system, one of which is in the distribution of inheritance.

Its implementation in society is then seen in the practice of dividing inheritance according to the kinship system adopted by these community groups. In the *matrilinear* kinship system, for example, kinship lines are drawn based on the female gender, so women in inheritance distribution will be more dominant and tend to benefit from things like this, one of which occurs in Minangkabau society (Eric, 2019:69). In a *patrilinear* kinship system that draws kinship lines based on male sex, then the male will benefit more in the distribution

of inheritance, as happened in Lombok (Syahri, 2020:71). Some are submitted according to the wishes of the eldest son, such as the Palais Naheun tradition in Oelet Village, East Nusa Tenggara (Delfianurdina, 2017: xviii). For this reason, arbitrary interpretations of customary law can be minimized by the development of society, civilization, and the presence of the government (Nalle, 2017).

The people of Lombok, especially Central Lombok, in some cases, can find cases of inheritance distribution in a way that is detrimental to women, such as women as heirs who are only given inheritance in the form of households, crockery, livestock, or even only the harvest that follows the will of the male heirs. Practices like this are very detrimental to the parties who have the inheritance, because the division of inheritance is only with a different acquisition number (Initial Observation April 6, 2018).

Based on initial observations, this customary basis shows the view that if a woman marries, she will follow her husband, so it is feared that her husband's inheritance will be controlled or even spent by her husband. That's why the daughter, in practice, only expects the harvest or gifts from her brother. Even then, the amount of the gift in full is based on the discretion of his brother without the need for an agreement between the two of them (Initial Observation April 6, 2018).

The practice of division as described above is still alive and well among the people of Central Lombok. This is due to the people who justify and consider it an ancestral practice that continues to be preserved and, even in some groups, is considered the best and can minimize conflicts that arise. It happens between families. One example occurred in Ungga Village, Praya Barat Daya District, Central Lombok. The distribution of assets with this system is even supported by community leaders and local traditional leaders. Among the inheritance distribution traditions that apply to the Sasak community is the Pusake system, namely the transfer of parental property to children based on gender. Girls will get wealth from their mothers, while boys will get wealth from their fathers. This is a unique thing because there are no provisions that specifically regulate this matter in the Compilation of Islamic Law and Islamic Inheritance Law (*faraidh*). The implementation of the distribution of parental property in the Sasak community with the Pusake system is completely different from the distribution based on inheritance (*faraidh*) (Initial Observation 10 March 2018).

The Pusake system is considered fairer because it allows women to get the same or even more than men. Later, this Pusake property is expected to be a lifetime guarantee for the woman to continue her life in the future in the event of a separation from her husband (Early Observation, 12 March 2018). Besides that, this is also considered an effort to maintain the existence of women who, so far, often have no room to defend their

rights in terms of the implementation of the distribution of assets. In addition, this is also a form of protection for women's rights, which, in practice, the Lombok people often do not get their rights fairly in the process of dividing their parents' assets, as the researchers described in the explanation above (Syahri, 2020).

The courage to innovate in reforming inheritance law, tradition is very unique and deserves to be investigated considering the reality that the practice is completely unknown in the national inheritance distribution system, both in Islamic law and in the Compilation of Islamic Law. It becomes interesting then to bring this concept together with the inheritance division system in the KHI and Islamic Law so that there is no clash between the two, so that the law will live in the community without clashing with the law. society itself.

This study examines how the Pusake distribution system works in Central Lombok, how Islamic law views the Pusake system, and how to integrate the Pusake system with Islamic inheritance to form a just distribution of inheritance. The results of the research can be used as material for analysis and consideration in determining policies related to the issue of inheritance distribution so that the inheritance distribution process no longer causes problems today and leaves problems in the future.

IDENTIFY, RESEARCH AND COLLECT IDEA

This study uses a qualitative research approach with the methods of observation, interviews, and documentation. In the observation method, the observation used in this study uses non-participant observation procedures, where the researcher observes the behavior of the people who are the object of research in a natural state, but the researcher does not participate in the activities carried out by the object being observed. Furthermore, the

authors use unstructured interviews. Because the researcher did not use standard interview guidelines that had been systematically arranged to collect data. The researcher only outlined the main problem, so that in the interview process, the researcher asked questions freely and finally about the documentation method. With this documentation technique, researchers can obtain information other than from sources, such as written sources or from existing documents.

STUDIES AND FINDINGS

1. Implementation of Pusake Distribution in Central Lombok Community

1.1. Forms and Patterns of Distributing Pusake to the Community of Central Lombok

The term Pusake in the community of Central Lombok Regency is a traditional heritage and ancestral culture in the form of legal provisions. So, in its implementation, it is more dominantly supported by community leaders and traditional leaders. They believe this is an ancestral heritage that must be preserved (WW. Hulaifi Hamid, 2018, 11 10).

In its implementation, Pusake is carried out with a pattern of giving assets to children or offspring based on gender, so that boys and girls get a clear share of the share from each other. The difference in the amount of the share of property that is obtained by a child in Pusake itself is caused by the source of the assets he obtains, because in the process of Pusake, a son will obtain property from his father. On the other hand, a daughter will obtain property from her mother.

As revealed by one of the informants interviewed by the researcher, what is meant by Pusake is "the procedure for dividing the assets of parents between their offspring (children) with the pattern that sons receive assets from their fathers and daughters receive assets from their mothers." (WW. Nurudin Ahmad, 2018, 16 10).

When there is more than one son, then they will divide the property equally according to the agreement between them. Vice versa, if there are two or more daughters, the assets given by their mother will be divided equally according to the agreement between them.

This is explained in the results of the researcher's interview with one of the informants who revealed: "if in the distribution of Pusake there are two or more boys and girls, the assets they receive are divided equally among them, which is carried out by a family deliberation process" (WW. Saiful Bahri, 2018, 18 10).

If there is a child who is not yet an adult, while Pusake is distributed, the share of the property is temporarily managed by the eldest sibling. However, the child is still entitled to enjoy the results, which are usually used for school fees and other needs. The assets managed by the eldest brother can be taken at a later date if the child is deemed and deemed to have been able to take responsibility for his property. This is intended to avoid negligence in its management. If such a case occurs, usually this agreement will be witnessed by all family members as witnesses, so that later in the future, if there is a conflict regarding the status of the property temporarily managed by this relative, the family members who are present as witnesses can provide information to explain who is right and entitled to the property.

This is reinforced by the results of an interview with one of the informants that "the case that often occurs is the existence of an heir who is not yet an adult, so in a case like this, usually the child's rights are temporarily given to his adult brother to be managed until later. When the child is an adult, they return. When a case like this occurs, it will usually be witnessed by the family and prominent figures as witnesses" (WW. Lukman Hadi, 2018, 14 10).

The status of assets that are objects in the Pusake process must be clear, namely assets that are truly under the control and property rights of each party. In the sense that it can be included in the assets passed down through the Pusake process, it does not include joint assets, which are assets obtained during the marriage bond of husband and wife. So the property in question is specifically for the innate property of each party, of course, provided that the property is an asset that is justified according to Islamic law.

This was revealed in the researcher's interview with one of the informants, who stated that "the assets shared in Pusake are limited to innate assets, namely, assets brought by each party before the marriage. So that the joint property obtained after the marriage remains an inheritance" (WW. Samsuri Jaelani Fu'ad, 2018, 15 10).

1.2. Time for the Distribution of Pusake to the Community of Central Lombok

The implementation of Pusake itself is carried out when the parents or the owner of the property are still alive, so that the share of each party who will receive the property is entirely the decision and authority of the parents. Nevertheless, parents are certainly required to be fair to their children by considering all forms of benefit and mafsadat that will result from the division of the property.

The position of parents as the party who give love to their children, of course, wants that from this process there will be no conflict between their descendants or children in the future, so this pusake is carried out with great care and wisdom. So, the division of property that is carried out when the parents are still alive is one of the aims to prevent conflicts that may occur between their children and grandchildren in the future due to fighting over property. If the distribution is done while they are still alive, even though there are problems and disputes between their children, they are still the parents who immediately solve the problem.

As stated by one of the informants who provided information about the timing of the pusake distribution, namely, "the pusake itself is carried out when the parents (the property owners) are still alive. Perhaps this is also a differentiator compared to inheritance.

Why do it while still alive? This is so that their children know with certainty their rights and do not interfere with the rights of their siblings, who may be a source of conflict between them "(Ww. Zainal Hadi, 2018, 10 10).

1.3. The Parties and the Amount of Each Party's Share in the Distribution of Pusake to the Central Lombok Community

In the distribution of inheritance carried out by the people of the Praya Barat Daya Subdistrict, it is very clear that the distinction made between children is based on sex, because the distribution is carried out in a straight line system based on gender, so basically, girls have absolutely no rights to the property left by their fathers. And vice versa, the son has no right to what his mother left him.

With this practice of division of property, the amount of inheritance received by children from marriage is not absolutely determined by the total amount of property owned by their parents, but again based on the amount of property owned by whom they inherit, if in a marriage. If the husband has more dominant property, the son will get more property. And vice versa, when the mother who owns the property is more dominant, the daughter will benefit greatly.

The explanation above is as expressed in the researcher's interview with one of the informants who said, "the amount received by the recipient of the assets in this pusake depends. There is no definite standard for the amount of property received. Depending on the amount of property owned, both their father and mother " (WW. Saiful Bahri, 2018, 13 10).

In the event that the number of children who inherit assets is more than one, they will be divided equally based on an agreement between them which is determined based on the decision of family deliberation, as a decision-making system that is considered to be able to provide a sense of justice in the family and prevent potential conflicts that may occur in the future because of the amount of inheritance received by each party.

1.4. Parties Involved in the Process of Distributing Pusake to the Community of Central Lombok

A simple description of the parties involved in Pusake in the Central Lombok community consists of two parties, namely those who are directly involved and those who are not directly involved. The parties directly involved are those who are an important part of the Pusake process itself, so that their existence is a condition for the validity of the Pusake process itself. They consist of parents and children. While the parties who are not directly involved are those who, although they have a significant role in this process, are not a requirement for legitimacy, these parties consist of family and *krame*.

The above is an explanation of the results of the researcher's interview with the informant who revealed that "in the process (the distribution of pusake) there are parties who are directly and indirectly involved. But in principle, it remains that this pusake wants peace between families by prioritizing the values of kinship deliberation " (WW. Zainal Hadi, 2018, 10 10).

Parents as parties who are directly involved in this pusake. Both father and mother act as parties who own the assets that will be given to their children. Even though in practice, the mother's property is given to the daughter and vice versa, the father's property is given to the son. Still, agreement and deliberation between the two are important so that in the future there will be no conflict and mutual claims between their children and their descendants.

While children, as part of the parties directly involved in this pusake, will later receive property from their parents, both father, and mother. Even though it is clear that the share of each of them is that the son gets a share of the wealth from the father and the daughter gets a share of the property from the mother, awareness and enthusiasm must be built between them that this pusake is only a process that should not be a source of conflict between siblings in the future. The possibility of conflict that will occur in the future regarding the distribution of assets is a very vulnerable matter. This has become a general awareness of the community. Moreover, the implementation of Pusake is different from the implementation of inheritance in general, namely the son gets twice the share of the daughter, while in Pusake itself, it is very possible that the assets received by the daughter are more than the son, depending on the mother's property, or their father.

The explanation above is expressed by an informant who said, "Even though it is clear that there are parts (male and female) in Pusake, still Pusake is only a process. More than that, the spirit of kinship must remain between them. So, in their journey, they still have to help each other and help each other to lighten the burden of each other "(WW. Samsuri Jaelani Fu'ad, 2018, 15 10).

Furthermore, the parties involved indirectly are the family. The presence of the family is important in this pusake because, after all the process, part of the property received by the parties who will receive this share will be known by the family. So, in the future, if there is a conflict that occurs between the parties directly involved above, the family can act as a mediator and bring peace to the conflict. As stated, "the family of both the wife and husband are expected to be able to witness the Pusake process as well, so that they will also be witnesses to this process. So that later, if there is a problem, they can also provide a statement " (WW. Zainal Hadi, 2018, 10 10).

No less important is the role of *krame* in this Pusake case. *Krame* itself is specifically divided into two, namely *krame hut* and *krame dese*, which the people of Central Lombok entrust as parents or leaders in society. So, all problems that occur, whether they are problems or conflicts, then the *krame* is presented as a mediator who finds a solution as well as a peacemaker between the conflicting parties. The difference between the two lies in the jurisdictional area of mediating conflicts in society. *Krame huts* only decide cases in the hamlet area, while *krame dese* solves problems at the village level. Conflicts and problems that occur in the new community will be brought to *krame dese* if they have previously gone through the process in *krame hut* and it turns out that they can not find common ground, then they are brought to *krame dese*.

The explanation was explained by the informant who revealed that "*krame*, as an institution that contains religious leaders, community leaders, and traditional leaders, acts as a mediator in the Pusake process, so when *krame* is involved, the community will think twice about making various kinds of things or denying the results. This is due to the position of *krame* in society, which is still believed to be able to bring justice to every problem in society "(WW. Hulaifi Hamid, 2018, 11 10).

1.5. The Values of Women's Protection in Distributing Pusake to the Community of Central Lombok

The purpose of giving pusake during life is to oblige the heirs to distribute property in a proper manner according to the inheritance assumption and also to prevent disputes (WW. Abdullah, 2018, 10 10). One form of giving during this lifetime is the gift of land or fields from inheritance. Usually, it is given to boys as an asset to work on and as a place to earn a living, while girls are given everything that is in the household. The gift of this kind of property is usually a sign of affection from parents to their children, or as an initial capital given to the child when he wants to get married or to fulfill his household needs. The process of giving property items by parents to their children in Central Lombok society is often done when the parents (heirs) are still alive.

In terms of the distribution of Pusake in Central Lombok society, in general, they have the value of protection for women, namely: Central Lombok society is identical with patrilineal culture, namely drawing lineage based on the father's line (male) (Syahdan, 2016:130). So, the position of men will always be more dominant than women in every aspect of life. For example, when it comes to going to school, boys tend to pay more attention to education, while girls can stay at home and don't need to go to high school because people think school for girls will end up being the same as staying in the kitchen (Rahminawati, 2001, p. 278). This also happens in the distribution of property in the family. Men tend to be more dominant because they are considered to have a greater responsibility towards the family and are considered more capable of managing it, while women do not need to be given wealth because later they will leave the family and become dependent on their husbands if they have married. So, in the distribution of assets in the Central Lombok community, boys are prioritized to get large and valuable assets such as houses, land, and other valuable assets, while women are only given livestock or household furniture (Baihaqi, 2019:22).

Departing from this fact, the researcher sees that the distribution of Pusake itself provides certainty to a daughter that she also has the right to have the same rights as her brother. So, in living life in the future, girls will be more secure and have a handle.

2. Implementation of Pusake Distribution to the people of Central Lombok in the Perspective of Islamic Law

In essence, Islam practices the distribution of inheritance fairly, both in terms of calculating numbers and the rights of the heirs (Murdan, 2013:ii). In practice, there are several fundamental differences that distinguish the concept of inheritance in Islamic law and Pusake in the people of Central Lombok. Some of these things include: (1) implementation time: in Islamic law, inheritance can only be done if the heir has died, while in Pusake it is not necessary to wait for the parents to die first. The property can be divided or given to children as heirs. (2) recipients: in Islamic inheritance, the recipients of inheritance are those who have blood, marriage, and wala relations with the heir, while in Pusake, property is only given to direct descendants or children of the heir. (3) the amount or amount received: in Islamic inheritance law, it has been determined how much of the share of the property is received by each heir according to his position, while in Pusake there is no definite standard for the amount of property received but its implementation is based on gender, namely boys-men inherit from their fathers, while daughters inherit from their mothers.

3. Integration of Islamic law and customary law (Pusake) in building a just inheritance.

The Pusake system is intended as a solution to maintain women's rights in the distribution of inheritance, but seeing the fundamental difference in the amount given, this system still leaves the potential for conflict in the distribution of inheritance (Budi, 2020:78-117). For example, if the mother of a daughter does not have property, then automatically the daughter will not get anything. Of course, this leaves a lot of injustice and discrimination against women.

Moving on from the assumptions above, integrating the Pusake system with Islamic law that has proven its fairness is an absolute necessity that can not be negotiated anymore in order to realize an equitable distribution of assets and ensure the protection of women in obtaining their rights.

Legal integration is possible on the first few points. On the source of property. If in the Pusake system, the father's property is for sons and the mother's property is for daughters. In this case, it needs to be integrated with Islamic law, which makes the mother's property for both sons and daughters, meaning that in the father's property there is a daughter's share as well as in the mother's property there is a son's share. This is, once again, to avoid social jealousy between each child. For example, if the mother has a lot of assets and the father does not have any assets, it is clear that the son who does not get the property will feel disappointed with the system, so it has the potential to cause conflict and vice versa. Second, the amount or amount of property received. If the Pusake distribution system does not determine the amount received by boys and girls, then to realize justice, the amount of acceptance determined in accordance with Islamic inheritance law (2:1) must be done to realize justice. and avoiding jealousy if the woman feels that her income is too low. By integrating these two legal systems, the greatest goal of realizing benefits in the distribution of inheritance can be realized fairly.

CONCLUSION

The inheritance distribution system with the Pusake system is a distribution system based on lineage which is carried out before the heir dies. In this system, the son gets the wealth from the property owned by his father, while the daughter gets the property from the property owned by the mother. This system was born as an effort to restore and maintain women's rights that were taken away by men through an inheritance system that concentrated property only on sons. However, these noble ideals still leave the potential for conflict, so that there is a need for integration between Islamic law and customary law (Pusake) to realize these noble ideals. With the integration of Islamic law and customary law in these two cases, it is possible to build an inheritance law based on justice so as to create peace between boys and girls.

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AUTHORS

First Author – Abdullah, Master of Islamic Law, UIN Mataram, Email: gibranabdallah@uinmataram.ac.id

Second Author – Hijrah, Master of Islamic Law, STIS Darul Falah Pagutan Mataram, email address: hijrahfinanda@gmail.com