



Basemah Customary Marriage “Kule Berete” on Women’s Inheritance Rights in an Islamic Legal Perspective

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Abstract

The Besemah community prioritizes the position of boys over girls. Sons are the successors of their father's descendants drawn from one original father, while daughters are prepared to become other people's children who will strengthen their descendants. The eldest son in the Besemah community must remain and reside in his father's house and be responsible for the lives of younger brothers and sisters, especially those who are not yet married so that the Besemah community applies the KULE BERETE marriage system. KULE BERETE marriage is a marriage system that draws a lineage from the father, which results in the wife following her husband. In this marriage system, the husband has absolute rights over wealth, and the first son takes precedence. Besemah custom, in terms of inheritance, still uses customary law to guide the estate distribution between sons and daughters. In the Besemah indigenous community, the population uses the male-majority inheritance system. Majorat inheritance system is one in which the inheritance of parents or ancestral heritage remains intact, not divided among the heirs, but controlled entirely by the eldest son (majorat male). It causes women's loss of position and inheritance rights to receive an inheritance, contrary to Islamic Law.

Keywords: *Besemah Customary Marriage, Islamic Law, Women’s Inheritance Rights*

Introduction

South Sumatra Province is one part of Indonesia with its customs and culture. The traditions in the province of South Sumatra have their unique style in each region. Besemah custom is one of them that has its characteristics, be it customs, language, arts, and the marriage system.

Residents in Indonesia live in rural areas that strictly adhere to traditional traditions. These customs are inherited from generation to generation from their ancestors. They are the basic foundation in fostering relationships between community members or community groups (Sugihen, 2007). The habits of this community developed into customs that live from generation to generation into a law. This law is known as customary law, which is the guideline and rule of society in life towards a just and peaceful society (Saebani, 2007).

Customary law is part of Indonesian law, a form of legal culture applied from generation to generation. Customary law is one of the patterns in regulating people's lives, so it has

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sanctions in its application. Applying this customary law is based on the attitudes and characteristics of people who live in certain areas, giving rise to a sense of need for the rule of law that can create a sense of comfort and justice (Pide, 2015). Customary law in Indonesia deals with family law, individuals, inheritance, marriage, land, debts, and complaints (Bewa, 2009). Customary law in Indonesia is influenced by the kinship or lineage of a marriage system. Kinship binds several people with certain rights and obligations, such as inheritance rights, inheritance, symbols, and positions. All social activities and procedures must be carried out together. This principle provides boundaries in kinship relationships, thus determining who is in the kinship system and outside the kinship system (Nurhayati et al., 2016). Traditional family law includes customary marriage and inheritance laws which are the guidelines for Indonesian society. Customary inheritance law is used as the basis by the community in the distribution of inheritance. Lineage and the community's marriage system strongly influence how much inheritance someone receives (Osa et al., 2020).

Besemah custom has 3 (three) marriage systems, namely (Olah, 2009):

- 1) The *Kule Berete* marriage system is a marriage system that draws the lineage from the father, which results in the wife following her husband (*anak lanang ditunakkah anak betine belaki*), in this marriage system, the husband has absolute rights over wealth and the first son takes precedence;
- 2) The *ambik anak* marriage system is a marriage system that draws the lineage from the mother, which results in the husband following the wife. In this marriage system, the first wife or daughter is prioritized who has absolute rights over the assets of the parents, and;
- 3) The *same endean (juray sesame)* marriage system is a marriage system that draws the lineage upward through the father and mother line continues upwards so that a man and a woman are found as their ancestors. Under this system, women and men have no different positions, including children's inheritance. In essence, children are born as successors to male and female lineages.

The Besemah community prioritizes the position of boys over girls. Sons are the successors of their father's descendants drawn from one original father, while daughters are prepared to become other people's children who will strengthen their descendants. The eldest son in the Besemah community must remain and reside in his father's house and be responsible for the lives of younger brothers and sisters, especially those who are not yet married, so the Besemah community applies the *Kule Berete* marriage system (Charlie, 2011).

The distribution of inheritance in the besemah custom focuses more on boys only. It shows the type of inheritance according to the customary law of besemah, and boys get types of assets in the form of land and other assets while girls get nothing. This division of inheritance is alive and well because it embodies the community's legal habits and feelings. It does not contradict the values in the teachings of Islam, which have strictly regulated the inheritance law, as if there is a shift in religious values with the existence of cultural customs. Therefore, it is fascinating to conduct research related to the existing problems to obtain a firm conclusion to answer the existing problems.

Literature Review

Basemah Customary Marriage Law

South Sumatra, as one of the provinces in Indonesia, of course has its own culture. The culture in South Sumatra has its own characteristics in each region. One of them is the Besemah area which is located in Pagar Alam. The culture in the Besemah Region has its own characteristics from other regions, whether in terms of customs, language, regional arts, marriage systems, and so on (Nurhayati et al., 2016).

Marriage is a legal bond to build a household so that it becomes a happy, prosperous family. However, in positive law regulations that explain marriage. According to Law number 1 of 1974 concerning Marriage Law, marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the belief in the Almighty God.

The Besemah community implements three marriage systems, namely: (1) the *Kule Berete* marriage system is a marriage system that draws the lineage from the father, which results in the wife following the husband (a male child is a male child), in this marriage system the husband has absolute rights to wealth and children. Men come first; (2) the *Ambik Anak* marriage system is a marriage system that draws the lineage from the mother, which results in the husband following the wife. In this marriage system, the first wife or daughter takes priority. She has absolute rights to the parents' assets, and (3) the *Same Endean* marriage system (*juray sesame*) is a marriage system that draws the lineage upward through the father's and mother's lines, continuing upwards until one finds a man and a woman as ancestors. In this system, the positions of men and women are not differentiated, including in inheritance, and children are born as successors to the bloodlines of both parties.

Basemah Inheritance Law

Indonesia applies three types of inheritance laws: customary law, Islamic inheritance law, and Western inheritance law (Israfil & Salat, 2020). The Indonesian nation, which adheres to various kinds and beliefs, has forms of kinship with different hereditary systems. These different hereditary systems influence the inheritance system in that society. Customary inheritance law in Indonesia is strongly influenced by the principles of lineage that apply in the society concerned. In customary inheritance law, there are several systems, namely, individual inheritance system, collective inheritance system, and majoritarian inheritance system. For the Basemah indigenous community, the population uses a male-majority inheritance system. The major inheritance system is a system in which the assets inherited from parents or ancestors remain intact and are not divided among the heirs but are controlled entirely by the eldest son (male major) (Zuhraeni, 2018)

Islamic Inheritance Law

Islamic inheritance law is part of the governing muamalah legal code distribution of inheritance left by the heir, which the experts will own proportional inheritance based on the Al-Quran and the Hadith of the Prophet, which prioritizes the principles of Islamic inheritance, including the following (Basyir, 2001).

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1. Inheritance is a legal provision. Those who inherit cannot hinder the heirs of their rights to inherited assets, and heirs are entitled to inherited assets without the need for a statement of voluntary acceptance of the judge's decision. But it doesn't matter that the heirs are burdened with paying off the deceased's debts (the heir).
2. Inheritance is limited within the family environment, by marriage, or by a legal lineage/descendant relationship. Closer related families with the corpse (the heir) taking precedence over the more distant, stronger one, his relationship with the deceased (heir) takes precedence over the weaker one. For example, fathers take precedence over grandfathers, and siblings take precedence over half-brothers.
3. Islamic inheritance law tends to distribute inherited assets to as many people as possible perhaps heirs by distributing certain shares to several heirs. For example, if the heirs consist of a father, mother, husband or wife, and children, they everyone has the right to inheritance.
4. Islamic inheritance law does not differentiate between children's rights to inherited property. Children who are big, small, and newly born all have the right to inherit someone's inheritance. However, differences in the size of the parts are held in line with differences in the small burden of obligations that must be fulfilled in the family. For example, sons who bear the burden of supporting the family have greater rights than girls who are not burdened with the burden of family support.
5. Islamic inheritance law differentiates between the size of certain portions of the heirs. It is adjusted accordingly to their needs in daily life, besides looking far and near relationship with the deceased (heir). Certain portions of the property are $\frac{2}{3}$, $\frac{1}{2}$, $\frac{1}{3}$, $\frac{1}{4}$, $\frac{1}{6}$, $\frac{1}{8}$. These provisions include things that are *ta'abbudi* in nature, which is mandatorily implemented because it has become a provision of the Koran in An Nisaa' verse 13 provisions for heirs that are *ta'abbudi* in nature are the characteristics of the law Islamic inheritance.

Research method

The research method used in this study uses a normative juridical method. Normative juridical research is a legal research library by researching library materials or secondary data, (Sunggono, 2003) namely research, in which all data comes from written materials such as books, manuscripts, journals, and documents related to this topic. Research results can be received using the deductive method, a methodology in which general conclusions are derived and the truth has been proven, finally leading to a specific conclusion (Sedarmayanti & Hidayat, 2002). The object of analysis in the method approach using a qualitative approach is a mechanism in research that analyzes legal norms contained in legislation (Soekanto & Mamudji, 2003).

Result and Discussion

1. The Islamic Law's View on the Distribution of Besemah Indigenous Inheritance based on the *Kule Berete* Marriage System

The Besemah indigenous people in the Kule marriage system have sons not only as successors to their parents but also have the following positions (Nurhayati et al., 2016):

1. Successor to the leader of his parents;
2. As a leader who has absolute rights over the wealth, inheritance, and heirlooms of his parents' relatives;
3. An elder of kinship and a traditional juray (position or leader) is responsible for caring for their relatives, descendants, and younger siblings.

Therefore, daughters do not inherit from their parent's inheritance. It is based on the marriage carried out, namely *Anak Betine Belaki* (daughter living with her husband at her mother-in-law's house). Although, given the possibility that they will be given goods to support their husbands after marriage, they may leave the family before they leave to join their husbands. But the gift is not an inheritance but is just an ordinary gift, such as Household utensils, including cupboards, divans complete with mattresses and pillows, tables and chairs, and kitchen utensils.

The Besemah indigenous people draw a patrilineal lineage so that those who get the right to receive an inheritance are boys. In contrast, girls do not get an inheritance because the woman is the successor of the male side (husband) when a marriage occurs. It is different from boys who are considered more entitled to receive an inheritance because they must be fully responsible for the lives and livelihoods of their children and wives (Nugraheni, 2021).

Therefore, in Besemah customary inheritance, when viewed from the side of Islamic inheritance, some things are contrary to Islamic law, namely eliminating the position of daughters as *nasabiyah* heirs in the distribution of inheritance rights, namely when the marriage sits, *Anak Lanang Ditunakkah* (sons after marriage replace the position of her parents) and *Anak Betine Belaki* (daughter living with her husband at her mother-in-law's house). In other words, there is a prominent comparison between Islamic inheritance law and Besemah customary inheritance law on the position of daughters as heirs.

Islamic law, in detail, has regulated the procedures for the distribution of inheritance to heirs based on justice, adapted to every family and community interest based on Islamic religious law (Zuhraeni, 2017). With the existence of Islamic inheritance law that expressly gives a share to children, women, and men, each of whom gets a share according to the provisions that have been regulated.

Among the wisdom, it is determined that the distribution of male inheritance is twice as much as that of female inheritance because men, besides providing for themselves, also provide a living for their wives, children, and families. Compared to women, who only provide for

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themselves and are married, all their needs are met and guaranteed by their husbands. (Muhammad Amin Suma, 2013).

The thing that is highly highlighted in the distribution of inheritance according to Islamic law is the principle of justice regarding the comparison of rights received by men being twice as large as women's rights. The principle of justice is one of the principles found in the Qur'an in addition to the absolute and individual principles (Kamaruddin, 2013). According to Islamic law, the principle of justice is contained in the distribution of inheritance regarding the balance between rights and obligations obtained by the heirs based on the burden of life that must be carried out (Zahari, 2003). Therefore, justice in Islamic inheritance law is not measured based on the value of the amount obtained by each heir but based on the weight and lightness of the burden or responsibility that the heirs must carry out. It is based on human conditions and generality.

Conditions in the field of applying Islamic inheritance law are incompatible with those applied by the Besemah community. The systematics is very clear in the distribution of Islamic inheritance regarding the heirs entitled to receive an inheritance, including their share. Meanwhile, in the Besemah community, inheritance is only for boys through the *Kule Berete* marriage system.

To be able to understand better the similarities and differences between Islamic inheritance law and Besemah community inheritance law, as follows:

a. The Equation of Islamic Inheritance Law and the Inheritance Law of the Besemah community.

- 1) In the concept of understanding, it has the same meaning, namely the rule of law that regulates the mechanism for the distribution of the inheritance of a person who has died to be distributed to relatives who are entitled to receive it;
- 2) Regarding the pillars of inheritance having the same concept, there must be an heir, heir, and property left behind. (Muhammad Muhibbin, Abdul Wahid, 2011).
- 3) For heirs from the closest family relatives;
- 4) In inheritance, it has the meaning of everything left by the heir in the form of money, property, and other things that are inherited to his heirs;
- 5) For the inheritance distributed, the costs incurred by the testator must be reduced, such as medical treatment and care if sick, funeral costs, and debts if the testator has unpaid debts.

b. The Difference between Islamic Inheritance Law and Besemah Community Inheritance Law.

Table 1. The Difference between Islamic Inheritance Law with Basemah Community Inheritance Law.

No	Besemah Community Inheritance Law	Islamic Inheritance Law
1	The inheritance system is collective and the majority	There is no such system
2	only sons have the right to inherit	The heirs are clear according to the Qur'an Surah An Nisa verses (11-12) and (176). sons and girls have the right to inherit
3	The amount of the inheritance obtained is needs to be clarified.	The size of the inheritance share obtained is very clear
4	Dispute resolution is carried out by customary deliberation	Dispute resolution is carried out by referring to the Qur'an and Hadith

In fact, the Besemah community currently has implemented the *same endean* marriage system rather than the *Kule Berete* and *ambik anak* marriage system. The *same endean* marriage system is a marriage system that draws the lineage upward through the father and mother line and continues upwards so that a man and a woman are found as their ancestors. The *same endean* marriage system requires freedom between husband and wife who are married, such as the withdrawal of lineage, the custom of settling after marriage, and the right to inheritance, and there is no attachment between either of the families, both from the husband's and wife's families (Olah, 2009).

2. Gender Justice Views on the Distribution of Besemah Indigenous Inheritance Based on the *Kule Berete* Marriage System

In the distribution of inheritance in the Besemah community, primarily through the *Kule Berete* marriage system, inheritance is only given to men, while women do not give inheritance. Girls get a gift when they get married, and even this gift depends on the economic condition of the woman's family.

Gender in Islamic law is adjusted to the role that should be because gender is an understanding of sex, which is human nature as a creature created by Allah and is regulated based on His provisions. Therefore, men and women can act according to their nature without being limited by the rules made by humans (Syaikhu, 2019).

If we look at gender justice in the distribution of inheritance, it is far from fair. Where the women do not get any inheritance, it should be between men, and women are entitled to receive inheritance even though the amount received is different. Gender equality means that everyone has the same opportunity, participation, involvement, and opportunity regardless of their background in carrying out all activities (Dzuhayatin, 2007).

A fundamental concept in understanding the relationship between men and women must distinguish between sex (gender) and the concept of gender. It is necessary to understand and

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analyze the problems of social injustice experienced by women. This issue is closely related to gender differences and gender inequalities that occur in society regarding gender. Understanding the concept of gender is very necessary to be able to understand gender analysis. (Fakih, 1997).

Gender inequality experienced by women in the Besemah community is caused by several factors, such as: (Muawanah & Hidayah, 2006).

1. Patrilineal ideology and patrilineal culture. The position of men is higher than women;
2. The influence of legal structure and legal culture;
3. There is a cultural interpretation.

The concept of equality of position and rights of women with men as heirs is also in line with legal values and a sense of justice that lives in society. However, Mochtar Kusumaatmadja stated that one of the national legal development principles, "unity where possible, diversity if circumstances require, but above all certainty," then there are still opportunities for community members to deviate from the customary patriarchal rules concerning equality between men and women, as long as it is done by mutual agreement. Of course, it can only be done if the community has adopted an open cultural system where the people's thinking is no longer traditional (Pattiruhu, 2020). Here is an important role in the operation of the law as proposed by Roscoe Pound, which relates to the purpose in terms of the legal function, namely "law as a tool of social engineering," i.e., the law must be able to engineer society to become more advanced or modern. In his book *Task of Law*, the law's purpose is to create order to achieve justice and law as a tool for community renewal (Atmadja, 2013).

The author says that men's comparison with women is twice as extensive in a composition that significantly follows the concepts of justice and equality, which incorporate accessibility, participation, control, opportunity, and benefits in developing justice. The application of Islamic inheritance law has not fully facilitated gender justice and equality due to gender differences and gaps between men and women in indigenous peoples, especially in the Basemah custom, which is based on the *Kule Berete* marriage system. In theory, the legal distribution of Islamic inheritance can realize injustice and gender equality. Only its application in social life has yet to be fulfilled.

Islam, in principle, recognizes equality between men and women. It can be noted that Islam provides rights and responsibilities according to their respective conditions. The difference arises due to the nature of the origin and function.

Conclusion

The results showed that the Besemah community carried out inheritance based on *Kule Berete*, *ambik anak*, and *same endean (juray sesame)* marriage system. In the *Kule Berete* marriage system, the inheritance of the Besemah community is included in the majorat inheritance system, prioritizing the eldest son as the successor of the lineage (*sambung juray*)

so that the eldest son has inheritance rights eliminating inheritance rights for girls. Because managing the family assets and caring for the welfare of his younger and married siblings are his responsibilities. It is contradicts Islamic law because women are nasabiyah and have the right to inherit. Islam, in principle, recognizes equality between men and women. It can be noted that Islam provides rights and responsibilities according to their respective conditions. The difference arises due to the nature of the origin and function.

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