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The Distribution of Inheritance in the Customary Law Community Before the Death of the Muwaris Reviewed from Islamic Law

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Abstract

Introduction: *The process of inheritance is to act as an alternative to the attitude of property ownership between the deceased and the person who leaves it, while according to the term it is something without which there will be no law, for example thaharah (purification) is a valid condition for prayer, if it is not cleaned before prayer, the prayer is undoubtedly invalid, however, doing thaharah, does not mean when you want to pray.*

Purposes of the Research: *To find out and explain the factors behind the inheritance distribution system before the deceased in Gunung Village, South Buton Regency and to know and explain the views of Islamic law regarding inheritance distributed before the deceased died.*

Methods of the Research: *The research method used in this writing is normative legal research. As for answering the problems in this study, the author uses three problem approaches, namely the statute approach, the case approach, and the conceptual approach. The procedure for collecting legal materials carried out by the author is to search and collect laws and regulations related to the legal issues faced. Laws and regulations in this case include both legislation and regulations. The analysis of legal materials uses a qualitative method, which is a study related to legal norms contained in international laws and regulations and legal norms in society.*

Findings of the Research: *The results of this study show that the Distribution of Inheritance According to Islamic Law, which refers to Article 171 of the Compilation of Islamic Law, there are several provisions that have been stipulated in regulating inheritance. The view of Islamic law regarding inheritance distributed before the heir dies is that in Islamic law there is no division of inheritance before the heir dies, if this happens then in Islamic law it is called Hibah.*

Keywords: Inheritance; Customary Law; Islamic Law.

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INTRODUCTION

Islam is a perfect religion, which regulates various aspects of life and life, both related to everything related to Allah SWT, and to fellow humans, through the verses and hadiths of the Prophet PBUH and has explained in detail the various rules in question, one of which is the issue related to inheritance.[1] Every creature will experience death. No one knows when he dies because the time of death is what God keeps secret.[2] Death cannot be sought or avoided. Therefore, everyone should be prepared in the event of death.[3]

Islamic Shari'a establishes the rules of inheritance law in a very orderly and fair form, where the right to property ownership for every human being, both male and female is

[1] Wahidah, *Al Mafqud Kajian Tentang Kewarisan Orang Hilang*, Banjarmasin: Antasari Pres, 2018, p. 1
[2] Barzah Latupono, dkk., Penyuluhan Hukum Tentang Keabsahan Perkawinan Pada Masyarakat di Kecamatan TNS Kabupaten Maluku Tengah, *AIWADTHU:Jurnal Pengabdian Hukum*, 1 no 1 (2021): p. 47.
[3] Otje Salman dan Mustofa Haffas, *Hukum Waris Islam*, Bandung: Refika Aditama, 2015, p.1.

legally established, Islamic Law also establishes the right to transfer property from a person after death to his heirs, from all his parents and faants, without discrimination between men and women, big or small is regulated by a rule, namely fiqh inheriting.[4]

Islam regulates the provisions for the distribution of inheritance in detail so that there are no disputes between other heirs after the death of the person whose property is inherited. Islam wants to uphold the principles of equality and justice as one of the pillars of community development.[5] Islam sees the distribution of inheritance to those who are entitled to inheritance to realize love and affection between families to survive and help each other in the lives of fellow families. Therefore, Allah gives His true and just provisions in the Qur'an that can be beneficial to the family.[6]

Inheritance law is a regulation that regulates the transfer of the inheritance of a deceased person and the consequences for his or her heirs. In principle, only rights and obligations in the field of property/property law can be inherited.[7] Inheritance law or inheritance law can be interpreted as a science that talks about the transfer of property from a deceased person to a living person. Either in relation to the abandoned property or the person entitled to the inheritance. The share of each heir, as well as the method of settling the distribution of inheritance.[8]

The law of studying the distribution of inheritance according to Islamic inheritance law is very important so that mistakes do not occur and in its implementation can be done by fulfilling the sense of justice. So a person can avoid the sin of not eating other people's property that does not belong to him. This has been explained by the Prophet PBUH, in his speech which means, "Study the Qur'an and teach to people, and learn faraidh and teach to people, because indeed I am a person who will die, and knowledge will be raised, and there may be two people who will disagree, but they will not meet one who will preach it." (HR. Ahmad Turmudzi and An Nasa‟I").

The law of studying *the science of faraidh* (inheritance) according to Islamic law is very important, especially for Islamic law enforcers who have become absolute. Article 171 of the Compilation of Islamic Law, there are several provisions that have been stipulated in regulating inheritance, namely:[9] a) Inheritance law is a law that regulates the transfer of inheritance ownership rights and determines who has the right and how much each part has; b) Heir is a person who, at the time of death, leaves an heir and inheritance; c) Heir is a person who, at the time of death, has a blood relationship or marriage with a Muslim heir and is not prevented by law from becoming an heir; d) Inheritance is property left by the heir in the form of property that belongs to him; e) Inheritance is a congenital property plus part of the common property after being used for the purposes of the heir during illness until death, the cost of taking care of the body, paying debts and giving to relatives; f) A will is a gift of an object from the heir to another person or institution that takes effect after the heir's death; g) Grant is the voluntary and unremunerated gift of goods from a person to another living person; h) Baitul Maal is a religious heritage hall.

[4] J. Satrio, *Hukum Waris*, Bandung: Alumni, 2014, p. 8
[5] Suparman Usman dan Yusuf Somawinata, *Fiqh Mawaris*, Jakarta: Gaya Media Pratama, 2017, p. 4
[6] Ismail Muhammad Syah dkk, *Filsafat Hukum Islam*, Jakarta: Bumi Aksara, 2016, p. 235.
[7] Effendi Perangin, *Hukum Waris*, Jakarta: Raja Grafindo Persada, 2018, p. 3
[8] Suparman Usman dan Yusuf Somawinata, *Op. Cit*, p. 1
[9] Dilami Islam Com, *Pembagian Warisan Menurut Hukum Islam*, https://dalamislam.com/hukum-islam/pembagian-warisan-menurut-hukum-islam.

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The word *mawarits* is the plural form of the word "*Al-Irtsu*" meaning the property left behind by the deceased, according to the term is the science of the division of inheritance after someone dies.[10] The process of inheritance is to act as an alternative to the attitude of property ownership between the deceased and the person who leaves it, whereas according to the term it is something without existence that there will be no law, for example *thaharah* (purification) is a valid condition for prayer, if it is not cleaned before prayer, surely the prayer is invalid, however, doing thaharah, does not mean when you want to pray alone. Regarding the issue of inheritance, the conditions are something inherent in each of the pillars, and if there are no of these conditions, it means that there is no division of the inheritance, however, even if the conditions of inheritance are met, it is not necessarily that the inheritance can be directly distributed, an example of this case is that the presence of the surviving heirs is one of the pillars to inherit the property of the deceased, But if the conditions for the life of the heirs are not met, it can be ascertained that the division of the inheritance cannot occur either.[11]

Actually, the interpretation of inheritance after the death of the heir is correct if the case is discussed from the point of view of Islamic inheritance law or inheritance law in civil law. But from the point of view of customary law, actually before the heir dies, there may be an act of transfer of the property or a transfer to the heir. If you look closely, the distribution of inheritance to the Buton Cia-Cia tribe is often carried out before the heirs die, and the Buton people include it as inheritance. While in Islamic Law, inheritance is inheritance property that is issued in parts and the rest is only called inheritance divided when the heir has passed away to his heirs.

Based on the above background description, the author raises this as a legal research material with the title "The Distribution of Inheritance in Customary Law Communities Before the Death of the Inheritance Reviewed from Islamic Law". The purpose of writing this research is to find out and explain the factors behind the inheritance distribution system before the inheritance dies in Gunung Village, South Buton Regency and to find out and explain the view of Islamic law regarding inheritance distributed before the deceased dies.

LITERATURE REVIEW

A. An Overview of Heritage

The general understanding of inheritance law is a law that regulates what must happen to the property of a deceased person, in other words it regulates the transfer of property left by a deceased person and the consequences for the heirs, in inheritance law a principle applies, that only rights and obligations in the field of property law can be inherited. When a person dies, then immediately all his rights and obligations pass to his heirs. Inheritance in principle is the steps of passing on and passing on inheritance, both tangible and intangible, from an heir to his heirs. However, in reality the process and steps of such transfers vary, in this case both in terms of grants, gifts and wills. Or other problems.

The definition of inheritance law varies greatly from one to another, so to study more deeply the meaning of inheritance law from various experts in their fields as sources, namely: a) Gregor Van Der Burght: Inheritance law is a set of rules, which govern the legal consequences of property upon death, the transfer of property left behind by the deceased

[10] Moh. Saifulloh, *Fikih Islam Lengkap*, Surabaya: Terbit Terang, 2015, p. 433
[11] Wahidah, *Op Cit*, p. 25

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person and the legal consequences that this transfer causes for the beneficiaries both in the relationship and the balance between they are with each other, as well as with third parties.[12] b) Supomo: The inheritance law contains regulations that regulate the process of passing on and passing on goods and intangible goods from one generation to their descendants. c) R Wirjono Prodjodikoro: Said that inheritance law is a matter of whether and how various rights and obligations regarding a person's wealth when they die will be transferred to the living person. Inheritance law can be formulated as one of the legal regulations that regulate the transfer of inheritance from the heir due to death to the heir.[13] d) Ali Afandi: The Law of Inheritance is a law that regulates the wealth left by a person who dies and the consequences for his heirs.[14] e) R. Santoso Pudjosubroto: An inheritance dispute arises when someone dies, then there is property left behind, and then there are people who are entitled to receive the inheritance, then again there is no agreement on the distribution of the inheritance.

From several definitions of the Law of Inheritance, inheritance law is a set of laws that regulate the transfer or transfer of property left from the heir to the heir due to death either having a relationship between them or other parties, in this case there is a special provision in Article 2 of the Civil Code, namely the child in the womb of a woman is considered as having been born if the interests of the child require it, and if the baby conceived dies at birth it is considered to have never existed.

The principles that must be considered in inheritance law, there are several. This principle is none other than to provide legality for inheritance that belongs to the heirs. The principles of inheritance law are as follows: a) Principle of Death: This principle is regulated based on Article 830 of the Civil Code; "Inheritance only takes place due to death", guided by the provisions of the article above, it means that there will be no inheritance process from heirs to heirs if the heir has not died. The principle of death is known and applies in Islamic inheritance law, and law. According to Muhammad Daud Ali, in inheritance law based on Islamic law, there are also provisions, inheritance exists if someone dies, or as Suhrawardi and Komis Simanjuntak expressed, Islamic inheritance law views that the transfer of property is solely due to death. The explanation above, it can be said that a person's property cannot be transferred as an inheritance if the owner of the property is still alive. The principle of death according to the Civil Code of Inheritance and Islamic law are not consistently applied, in the law of inheritance according to the Civil Code, grants or grants of heirs during his lifetime will be taken into account, at the time of the division of heirs and the separation of inheritances. b) Basics of Blood Relations and Marital Relations: This principle is contained in Article 832 paragraph (1) and Article 852 a of the Civil Code. The principle of regional relations is one of the essential principles in every system of Inheritance Law, because the factors of blood relations and marital relations determine a person's closeness to the heirs, and determine whether or not a person has the right to be an heir, in blood relations and marital relations apply in all three current inheritance law systems, even in the history of the journey. The marriage factor has never been recognized as the cause of inheritance, both in customary law and in inheritance law according to the Civil Code. c) Bilateral Principle: This principle means that a person does not only inherit from the father's line, but also inherits from the mother's line, as well as from brothers and sisters. This

[12] Mr. Gregor van der Burght, *Hukum Waris*. Bandung: Citra Aditya Bakti, 2014, p. 17.
[13] R. Wirjono Prodjodikoro, *Hukum Warisan Di Indonesia*, Bandung: Sumur Bandung, 2019, p. 129.
[14] Ali Afandi, *Hukum Waris*, Jakarta: Rineka Cipta, 2014, p. 29.

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principle gives equal rights and positions between boys and girls in terms of inheritance, even with this bilateral principle stipulating that husband and wife also inherit each other. The Bilateral principle is the same as the individual principle, in addition to applying in the Inheritance Law according to the Civil Code, it also applies in the Inheritance Law according to Islamic Law, and Customary Law, namely in societies that adhere to the parental kinship system.[15] d) Individual Principle: As the name implies, this principle determines the appearance of heirs to inherit as individuals (individuals) who are not a group of heirs and not a tribal or family group. This principle contains the understanding that inheritance can be divided among each heir to be owned individually, so that in the execution of all inheritance is expressed in value and each heir is entitled according to the extent of his share without having to be tied to other heirs.

The consequence of this provision is that the inheritance that has been distributed or transferred to the heirs individually becomes his property. Therefore, this principle is in line with the provisions in Article 584 of the Civil Code that one of the ways to obtain property rights is through heirs. The individual principle is also very popular in the Islamic inheritance legal system and the customary inheritance law system. The individual principle in Islamic inheritance law means, "Each individual heir is entitled to the share he gets without being bound to the heirs of the other heirs". However, in customary inheritance law, in addition to the individual inheritance system, there is also a collective system, and the majority of the three types of inheritance systems are more common in society, especially in parental indigenous communities which are spread almost throughout Indonesia.[16] e) The Principle of All Rights and Obligations of the Heir Turns to the Heirs: The rights and obligations of the heirs referred to in this principle are rights and obligations in the field of property, in the Law of Inheritance according to the Civil Code, this principle is closely related to the right *of saisine*, while the right *of saisine* itself comes from the French law which reads, "that for the deceased hold on to the living", Guided by this legal principle, it means that if a person dies, all his assets, both assets and passives will be transferred to his heirs.

Based on the above principles, according to Wirjono Prodjodikoro. "It is appropriate for BW to know three types of attitudes of the heirs towards inheritance, and can choose one of the three attitudes, namely: 1) Accepting it entirely according to the essence mentioned in the Civil Code (rights and obligations); 2) Accept conditionally, namely, the debts; 3) Refusing to accept inheritance.

The heirs in the provisions of the law who have received an inheritance are only obliged to bear the burden (debts and obligations) of the heirs in proportion to those received from the inheritance, in Article 1100 of the Civil Code it is emphasized that, "The heirs who have received an inheritance are obliged in terms of the payment of debts, wills grants and other burdens, to bear a share that is proportionate to what each of them receives from the inheritance". Then with the obligation to make payments carried individually, it will be adjusted to the large number of its share while still not reducing the rights of the receivables, including the receivables. mortgage on all inherited assets as long as they have not been divided. (Article 1101 of the Civil Code). There are three important events in human life, namely birth, marriage and death, of these three events, which are vulnerable to the occurrence of problems are death events, because they are not only related to heirs and

[15] Abdul Manan, *Hukum Perdata Islam di Indonesia*, Jakarta: Kencana, 2016, p. 208.
[16] *Ibid*

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property but also legal relationships made during their lifetime, which will raise the question of how they proceed and what are the legal consequences.

These legal relationships do not disappear immediately with the death of a person, because generally what he leaves behind is not only people or goods but can also be in the form of interests related to other members of society that need maintenance and settlement, because if maintenance and settlement are not carried out, it will cause an imbalance in the society.

A person's death is related to the issue of inheritance law which is part of family law. Inheritance law is closely related to the issue of property left by the deceased heir, which is named as inheritance. Inheritance in community life is a sensitive thing and often becomes a problem in the family. Therefore, careful arrangements are needed and meet the elements of legal certainty that function as written evidence explaining the position of the heirs of the deceased person and leave the inheritance (heirs), known as the inheritance certificate.

Regarding inheritance certificates, until now there are no regulations that specifically regulate inheritance certificates, in the context of civil law, including inheritance law, letter evidence will be important and most important compared to other evidence. Referring to the provisions of Article 1866 and Article 1867 of the Civil Code, proof in writing is carried out in writing, either authentic or underhand. The inheritance certificate must be issued by an official authorized to make the inheritance certificate. Notaries as public officials who are authorized to make authentic deeds as stated in Article 15 Paragraph (1) of Law Number 2 of 2014 concerning the position of notary, must go through various stages or processes in carrying out the obligation to issue a certificate of inheritance. But the Certificate of Inheritance does not have perfect evidentiary power, even though it is made by a notary, because it does not qualify as a deed.

Then the Deed of Testimony as Heir if it turns out that the content is not correct, then it is the responsibility of the parties who appear before the notary with all the legal consequences, and there is no need to involve the Notary, and if it is to be corrected, then the Deed of Testimony as Heir that was previously revoked by those who made it and then a new deed is made according to the actual facts desired by the parties. Meanwhile, if the contents of the Inheritance Certificate are not correct, then it is impossible for the notary to revoke or cancel the Inheritance Certificate that he has made himself.

B. Heritage in Islamic Law

In Indonesia, there are 3 (three) inheritance systems, namely customary inheritance law, civil inheritance law, and Islamic inheritance law. All three have several differences regarding the elements of inheritance, one of which is regarding the heirs. Inheritance based on law is a form of inheritance where blood relations are a determining factor in the inheritance relationship between heirs and heirs. The family members of the heir are divided into 4 groups. If the family members belonging to the first group are still alive, then they are jointly entitled to inherit all the inheritance, while the other family members do not get any share. If there are no family members from the first group, then the people who belong to the second group appear as heirs. Furthermore, if there are no families from the second group, then the people from the third group will come forward. The same applies to family members of the fourth group.[17]

[17] Subekti, *Pokok-Pokok Hukum Perdata*, Jakarta: Intermasa, p. 98.

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Below will be explained further about the categories of heirs, namely: Group I: Those who are first called by the Law as heirs are the children and their descendants along with the husband or wife of the heir. Children inherit for an equal share and the husband or wife who lives the longest inherits the share with the child. Article 852 of the Civil Code explains that children or all their descendants, whether born from another marriage, inherit from both parents, grandparents or all their subsequent blood relatives in a straight upward line, with no distinction between men or women and no difference based on first birth. They inherit head by head, if with the deceased they are related to the family in the first degree and each has rights for themselves and they inherit stake by stake, if all of them or just part of them act as a substitute.

Article 852 a paragraph 1 stipulates that the share of the husband/wife who lives the longest, then the inheritance is as large as the size of a child. If there is a second marriage and so on and there are children/descendants from the first marriage, then the husband/wife's share is equal to the smallest part of a child/descendant from the first marriage. The widow/widower should not be more than 1/4 of the inheritance.[18] Apabila si pewaris tidak ada meninggalkan keturunan dari suami/istri, maka undang-undang memanggil golongan keluarga sedarah dari golongan berikutnya untuk mewaris, yatu golongan kedua, dengan demikian golongan terdahulu menutup golongan yang berikutnya.

Group II: Parents, siblings and descendants of relatives. The acquisition of inheritance from the second group is regulated by law in Article 859 of the Civil Code. If a person dies without leaving a husband/wife or descendants, then according to the Civil Code, those who are called as heirs are his parents, siblings and descendants of relatives. If only the parents exist, then each of them inherits half, if there are siblings, then the parents and siblings will inherit for the same share, but with the understanding, that the parents will not receive less than 1/4 of the inheritance. So for parents, it is the same whether there are three or six siblings from the heir besides him.

If the heir leaves only one brother and two parents, then in principle each of them gets 1/3 share; And if one parent and one brother are left behind, then each one will inherit one-half. However, if the heir has more than two siblings and the heir's parents are still alive, the heir's parents get 1/4 of the share while the rest is divided equally for each of his siblings. If the heir dies without leaving his parents, then his siblings inherit the entire inheritance.

Group III: The heirs of the 3rd group are the families in a straight line up after the father and mother. If the heir does not leave a husband/wife, descendants, siblings and descendants of the brother, then the inheritance before being divided, is divided first (*kloving*). Half of the inheritance was given to the relatives on the father's side, and the other half to the mother's side. Each part is divided into a stand-alone heritage. Divisions (*cloving*) in the Civil Code only occur when there are no more heirs from the second group, including the descendants of the brothers and sisters of the heirs. As explained earlier, each part that is divided through the *kloving* is a stand-alone legacy. So it brings the possibility that in one lineage, those who receive inheritance are heirs in the fourth group, while in other lineages who receive inheritance are heirs in the third group.

Group IV: This group consists of blood families in a lateral line that goes further up to the 6th (sixth) degree. If the deceased person does not leave any descendants, wife or

[18] Effendi Perangin, Hukum Waris, Jakarta: Raja Grafindo Persada, 2013, p. 31.

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husband, siblings, parents, grandmothers and grandfathers, then according to the provisions of Article 853 and Article 858 paragraph 2 of the Civil Code, the inheritance falls to the nearest heirs on each line. If there are several people of the same degree, then the inheritance is divided based on the same share.[19]

If in one line there is no blood family in the degree that allows inheritance, then all blood families in the other line receive the entire inheritance (Article 861 of the Civil Code). Apart from the four classifications of heirs mentioned above, those who can become heirs are out-of-wedlock children who have been recognized as valid by the heir, and the amount of the share obtained from the out-of-wedlock child depends on which group he or she is also an heir.

Articles 862 to 873 of the Civil Code regulate inheritance in the event of children out of wedlock. Article 863 of the Civil Code reads: if the deceased leaves behind a legitimate descendant or a husband or wife, then the children out of wedlock inherit 1/3 of the share they must get, if they say they are legitimate children, if the deceased leaves no descendants, husband or wife but leaves brothers and sisters or their descendants inherit 1/2 of the inheritance and if the heir only dies relatives in a further degree then the share of the children outside the marriage which is recognized is 3/4 of the share.

So in article 863 of the Civil Code, the right to inherit an out-of-wedlock child is limited to 1/2 (half) of the inheritance, if he inherits with the heir's parents, brothers and sisters or their descendants (group II). If the out-of-wedlock child inherits the same as groups III and IV, he is entitled to 3/4 of the inheritance. So, if the child out of wedlock does not also exist, then all inheritance falls to the State (Article 832 paragraph 2 and Article 873 paragraph 1 of the Criminal Code).

C. Elements of Heritage

The process of inheritance must be fulfilled in three elements according to Customary Law, namely:[20] a) The existence of an heir; b) Existence of inheritance: a) Existence of heirs. The definition of heirs in the Customary Heirs Law according to Hilman Hadikusuma A person who has an inheritance as long as he is still alive or has died, whose inheritance property (will) be continued to be his dominion or possession in a state of undivided or undivided property.[21]

The position of an heir can be father, mother, uncle, grandfather and grandmother. The person is called an heir because when he lives or dies, he has an inheritance, where the inheritance will be transferred or passed on to his heirs. Meanwhile, the heir, according to Cokorde Istri Putra Astiti et al, is "A person when he dies leaves an inheritance or inheritance that will be transferred or passed on to his heirs,[22] while according to I Ketut Artadi said that the heir is, "The person who will leave the inheritance in the future.[23] In the Balinese indigenous people, generally those who are seen as heirs are men who have died. So the issue of inheritance exists in one family if the father dies, while if the mother dies, the issue of inheritance does not arise because as long as the father is alive, the power over the family property is in his hands. This is in accordance with the patrilineal family structure

[19] Effendi, *Op,Cit*, p. 33.
[20] Soeripto, *Beberapa Bab Tentang Hukum Adat Waris*, Fakultas Hukum Universitas Negeri Jember, (UNEJ), 2015, p. 54
[21] Hilman Hadikusuma, *Hukum Waris Indonesia Menurut Perundang-Undangan*, Jakarta: Gramedia Group, 2016, p. 9-10
[22] *Ibid*
[23] *Ibid*

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which is generally embraced by the Balinese indigenous people, inheritance or also called heritage property according to Hilman Hadikusuma "All property in the form of rights and obligations that transfer control or ownership after the heir passes away to the heir".

The Law of Inheritance according to Islamic law as one of the parts of family law (*Al ahwalus Syahsiyah*) is very important to learn so that in the implementation of the distribution of inheritance there are no mistakes and can be carried out as fairly as possible, because by studying Islamic inheritance law, for Muslims, they will be able to fulfill the rights related to inheritance after it has been left by the muwarris (heirs) and conveyed to the heirs who entitled to receive it. So a person can avoid the sin, namely not eating the property of people who are not his right, because of the non-fulfillment of Islamic law regarding inheritance. This was further affirmed by the Prophet PBUH, which means: "Study the Qur'an and teach to people, and learn faraidh and teach to people, because indeed I am a person who will die, and knowledge will be raised, and there may be two people who will disagree, but they will not meet someone who will preach it. Ahmad Turmudzi and An Nasa"I". Based on the hadith, the science of inheritance according to Islam is very important, especially for Islamic law enforcers it is absolute, so that it can meet the expectations expressed in the hadith of the Prophet above.

Article 171 of the Compilation of Islamic Law, there are several provisions regarding this inheritance, namely: a) Inheritance law is a law that regulates the transfer of the right to own the heir's inheritance, determining who is entitled to be the heir and how much of each; b) An heir is a person who, at the time of death based on the decision of the Islamic Court, leaves behind the heirs and their inheritances; c) Heir is a person who at the time of death has a blood relationship or marital relationship with the heir, is a Muslim and is not prevented by law from becoming an heir; d) Inheritance is property left by the heir, either in the form of property that belongs to him or his rights; e) Inheritance is inherited property plus part of the joint property after being used for the purposes of the heir during illness until death, funeral expenses, debt payments and gifts for relatives; f) A will is the gift of an object from the heir to other people or institutions that will take effect after the heir's death; g) Grant is the voluntary and unrewarding gift of an object from a person to another person who is still alive to possess; h) Baitul Maal is a religious treasure hall.

The obligations of the heirs to the heirs according to the provisions of Article 175 of the KHI are: a) Taking care of and completing until the funeral of the body is completed. Settling both debts in the form of medical treatment, care including heirs' obligations and collecting receivables; b) Completing the heir's will; c) To divide the inheritance among the entitled heirs. The heirs either jointly or individually can submit a request to the heirs who do not agree to the request, then the person concerned can file a lawsuit through the Religious Court for the distribution of inheritance (Article 188 Compilation of Islamic Law).

If the heir does not leave any heirs at all, or the heirs are not known or not, then the property is handed over to Baitul Maal for the benefit of Islam and the general welfare (Article 191 of the Compilation of Islamic Law). For the heirs who are the wives of one person, each wife is entitled to a share of the dagi gono-gini from the household with her husband while the entire share of the heirs is the property of her heirs (Article 190 of the Compilation of Islamic Law).

The widower gets half of the share, if the heir does not leave the child, and if the heir leaves the child, then the widower gets a quarter (Article 179 of the Compilation of Islamic

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Law). The widow gets a quarter, if the heir does not leave any children, and if the heir leaves the child, then the widow gets a quarter (Article 180 of the Compilation of Islamic Law). The issue of inheritance among Muslims in Indonesia is clearly regulated in Article 49 of Law Number 7 of 1989, that the Religious Court has the authority to examine, decide and settle inheritance cases both at the first level between Muslims in the fields of: a) Marriage; b) Inheritance, wills and grants made under Islamic law; c) Waqf and alms.

According to Islamic law, inheritance is given to both women's families (daughters, granddaughters, mothers and grandmothers on the woman's side, sisters, fathers, or mothers). The heirs are 25 people, consisting of 15 people from the male side and 10 from the female side. The heirs on the male side are: a) Son (al ibn); b) Grandsons, i.e. sons and so on (ibn al-Ibn); c) Mr. (al ab); d) Datuk, namely the father of the father (al jad); e) Brother and Brother (al akh as syqiq); f) Brothers and fathers (al akh liab); g) Brother and sister (al akh lium); h) Nephew of a thousand and a half (ibnul akh as syaqiq); i) Nephew of the same father (ibnul akh liab); j) Uncle and Uncle and Brother; (k) Uncle (Al Ammu Liab); l) A cousin of a half-brother (Ibnul Ammy as Syaqiq). brother-in-law (Ibnul Ammy Liab); m) Husband (az zauj); n) A man who frees is a person who frees a slave if the slave has no heirs.

While the heirs of the female side are: a) Daughter (al bint); b) Granddaughter (bintul ibn); c) Mother (al um); d) Grandmother, namely her mother's mother (al jaddatun); e) Grandmother from the father's side (al jaddah minal ab); f) Sister of the mother and father (al ukhtus syaqiq); g) Sister of the father (al ukhtu liab); h) Half-sister (al ukhtu lium); i) Wife (az zaujah); j) Liberating women (al mu‟tiqah). While the share of each heir is the wife gets 1/4 share if the deceased heir does not leave any children or grandchildren, and gets 1/8 share if the heir has children or grandchildren, and the wife has never been hijab from the heirs. As for the basis of the law on the part of the wife, the word of Allah in Surah An Nisa‟verse 12, which means: "Wives get a quarter of the property that you leave behind, if you have no children, and if you have children, then the wives get an eighth of the property that you leave after the fulfillment of the will or after paying your debts". The husband gets 1/2 share if the heir has no children and gets 1/4 share if the heir has children, according to the word of Allah surah an Nisa‟ verse 12, which means: "And for you (husbands) one half of the property left by your wives, if you have no children, and if there are children, then you get a quarter of the property left after the will is fulfilled and after the debts are paid".

The daughter's share is: 1) A child of the heir gets 1/2 share, if the heir has a son; 2) Two or more children of the heir, get 2/3 of the share, if the heir has no sons; 3) A daughter or more, if she is with a son, then the division is two to one (boys get two parts and girls get one share), this is based on the words of Allah in Surah A Nisa‟ Verse 11 which means: "If your son, that is, the share of a boy is equal to the share of two daughters". The part of a boy is: 1) If there is only one son, then he takes all the inheritance as an ashabah, if there is no heir dzawil furudz, but if there is an heir dzawil furudz then he only gets the ashabah (leftover) after it is distributed to the heirs of the dzwil furudz (ashabah bin nafsih); 2) If there are two or more sons, and there are no heirs, as well as the other heirs of the dzwil furudz, then he divides the inheritance equally, but if there are daughters, then it is divided by two to one (ashabah bil ghair), based on Surah Anisa‟ verses 11 and 12. The mother in receiving the inheritance/part of the inheritance is as follows: 1) The mother gets one-sixth, if the heir leaves the child; 2) The mother gets a third share, if the heir has no children, and among the heirs, if there is a mother, the one who is hijab is the grandmother of the mother's side, namely the mother of the mother and so on. Grandmother on the father's side is the

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mother of the father and so on. This is based on Surah An Nisa‟ verse 11 which means: "And for two parents, for him one-sixth of the property left behind, if the heir has children".

The father's share is: 1) If the heir has a son or grandson of a son, then the father gets 1/6 of the inheritance and the rest goes to the son; 2) If the heir only leaves the father, then the father takes all the inheritance by way of ashabah. If the heir leaves the mother and father, then the mother gets 1/3 and the father takes 2/3 of the share. While the grandmother's share is: 1) If an heir leaves only one grandmother, and does not leave the mother, then the grandmother gets 1/6 share; 2) If an heir leaves more than one grandmother and does not leave the mother, then the grandmother gets 1/6 divided equally among the grandmothers.

According to Islamic inheritance law, those who do not have the right to inherit are: 1) Murderers of inheritance, based on hadiths narrated by At-tirmidhi, Ibn Majah, Abu Daud and An-Nasa-I; 2) Apostates, i.e. those who leave Islam, based on the hadith narrated by Abu Bardah; 3) A person who is of a different religion from the heir, i.e. a person who does not adhere to Islam or is a disbeliever; 4) Adulterous children, i.e. children born out of marriage, based on hadith narrated by At Tirmidhi. It should be noted that if the heir leaves the mother, then all grandmothers are hindered, both grandmothers on the mother's side and grandmothers on the father's side (mahjub hirman), and if all the heirs exist, then only children (both men and women), fathers, mothers, and widows or widowers while other heirs are prevented (mahjub) (Article 174 Paragraph (2) of the Compilation of Islamic Law).

METHODS OF THE RESEARCH

The type of research used in this writing is a type of normative legal research. As for answering the problems in this study, the author uses three problem approaches, namely the statute *approach*, the *case approach,* and the *conceptual approach*. The procedure for collecting legal materials carried out by the author is to search and collect laws and regulations related to the legal issues faced. Laws and regulations in this case include both legislation and *regulations*. The analysis of legal materials uses a qualitative method, which is a study related to legal norms contained in international laws and regulations and legal norms in society.[24]

RESULTS AND DISCUSSION

A. Islamic Law's View on the Distribution of Inheritance After the Death of the Heir

The similarity is that when it is connected between the inheritance law system according to Islam and the inheritance system according to the Civil Code, both according to the Civil Code and according to Islamic inheritance law both adhere to the individual inheritance system, meaning that since the opening of inheritance (death of the heir) inheritance can be divided between the heirs. Each heir has the right to claim the share of the inheritance to which he is entitled. So the inheritance system adopted by the Civil Code is a bilateral individual inheritance system (Subekti, 1953: 69), while the difference lies in the time the heir dies, then the property must be deducted first expenses, including whether the property has been issued zakat, then reduced to pay debts or take care of the body first, after it is cleaned, then divided to the heirs, while according to the Civil Code it does not recognize this, The next difference lies in the size and small share received by the respective heirs, which according to the provisions of the Civil Code all parts of the heirs are the same, does

[24] Peter Mahmud Marzuki, *Penelitian Hukum,* Jakarta: Kencana, 2013, p. 56.https://doi.org/340.072.

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not distinguish whether the children, or siblings, or mothers and others, are all equal, while according to Islamic law the shares are differentiated between one heir and another. The similarities are due to the fact that the universal patterns and needs of society are the same, while the differences are due to the way of thinking of western people is abstract, analytical and systematic, and their outlook on life is individualistic and materialistic, while Islamic law is based on a logical, real and concrete way of thinking, and the view of life in Islamic law is based on the family system and is spiritual (magical).

Important Note: That the distribution of inheritance for those who are Muslim (Muslim) uses the provisions of Compilation of Islamic Law/Inheritance according to Islamic law and if there is a dispute then the settlement can be through the Religious Court, while for those who are non-Muslims the provisions of inheritance are based on the Civil Code then if there is a dispute the legal remedy must go to the District Court. So it is very wrong if we are Muslims but the distribution of inheritance wants to use the provisions in the Civil Code, because the distribution of inheritance according to the Civil Code applies to those who are non-Muslims in Indonesia.

Inheritance is a term according to the Indonesian language which contains the meaning of heritage, heirlooms, wills.[25] Among the faradhiyun, the term tirkah is also known as inheritance. The meaning according to the term among Malikiyah, Shafi'iyah and Hanabilah says that tirkah is all that the deceased leaves behind either in the form of property or other rights other than property. Furthermore, from the above descriptions, an understanding can be taken that inheritance is property that has been left by the deceased which will be distributed to all heirs who are entitled to receive it after his death, provided that after the expenses of the deceased's needs are incurred with everything related to the property with other people, such as wills or debts.

There are three reasons why the person has the right to inherit property, namely: a) Marriage: Marriage is a valid marriage according to Islamic law, with the existence of a marriage bond is a bond that can bring a man and a woman together with a household, as long as the marriage is still intact is seen as one of the causes of inheritance, whether after both have sex or not. Because if there has been a marriage contract, then there will be an inheritance between them, if one of them dies; b) Kinship: Kinship is the nasab relationship between the person who inherits and the person who inherits by birth, or who is related by blood to the heirs and the deceased. Therefore, all relatives who are caused by blood relations, either as origins like father or grandfather or as furu‟ like children or grandchildren and by sideways like brothers, all of them can inherit, due to the relationship of nasab with the deceased; c) Wala‟: Wala‟ (freeing slaves) is also one of the causes of mutual inheritance. Wala‟ in wala‟ul "ataqah or ushubah sababiyah is "ushubah which is not due to the relationship of nasab, but due to the existence of the cause of freeing slaves.

There are three kinds of reasons for obtaining inheritance rights that have been agreed upon by scholars. Besides that, there is one more thing that is used by the Shafi'iyah and Malikiyah Ulama as a reason to obtain each other's inheritance rights, namely for Islamic reasons, from the explanation above it can be understood that there are 4 (four) reasons for inheritance, namely: a) Due to qarobah (blood relationship); b) Due to marriage; c) Because of wala‟ (freeing slaves); d) Because of Islam (religion).

Forms of Transfer of Rights Other than Inheritance. The transfer of property rights in the

[25] *Ibid*

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Muslim community that inhabits Indonesia, including Donggala regency, is not only in the form of inheritance (customary law *of sossora inheritance*), but also known in the form of *pompodekei* (will) and *pembere*. Regarding wills and grants in relation to the inheritance customary law that applies in the Muslim community in Donggala.[26] The Muslim community who inhabit Donggala Regency knows the grant in the applicable customary law called *pembere*. A grant is the gift of something from one person to another while he or she is still alive. Grants related to inheritance are the granting of a certain amount of property that can be the basic capital in building a household that a person gives to a person who is entitled to become an heir when the grantor dies. Such a gift is commonly called the beginning of inheritance in customary law.

In addition, grants given to people who do not have kinship or marital relations with the grantor, and grants given to people who have kinship or marriage relations with the grantor but cannot be used as working capital, are not called hibanh related to inheritance, but are only called ordinary grants (hibah).

In all customary law environments in Indonesia, it is recognized that the process of inheriting an heir's property can begin to be carried out as long as the heir is still alive. Although in general the distribution of inheritance is carried out after the heir dies, it is not uncommon for the distribution of inheritance to be carried out long before the heir dies. The handover of inheritance before the owner of the property dies, is called a grant.

A grant is a gift made by a person to another party that is made while still alive and the implementation of its distribution is usually carried out while the grantor is still alive. Usually these gifts are never reproached by relatives who do not receive the gift, because basically a person who owns wealth has the right and freedom to give his property to anyone. In Islamic law, the amount of a person's property that can be donated is not limited to one-third of the clean inheritance.[27]

Grants to an heir or to those who are deemed entitled to receive a share of the inheritance's estate, are carried out with the purpose of: 1) Preventing disputes between the heirs, or between the heirs and other persons who feel entitled to the distribution of the inheritance's estate; 2) A declaration of affection to the grantee; 3) As a provision for children in the future. Donations can occur in various ways, namely: a) Oral, in front of those who are interested and witnessed by village officials, but in some areas, verbal donations are made in front of interested parties and neighbors only without the knowledge of village officials; b) Written: 1) Notary Deed; 2) Deed under hand; 3) In front of the Village Head.

The grantor or heir can grant his inheritance to whomever he wants, either to the heirs or to other people who are not heirs, in the event that the grant falls to the heirs there are various provisions: a) The grant received by the heirs will be taken into account at the time of the distribution of inheritance. (one of which applies in the Cianjur area); b) Grants will not be taken into account at the time of the distribution of inheritance. If the heir gives his property to *a non-heir,* then the grant is limited as long as it does not harm the rights of the heirs. In the Ciamis area, the grant is determined by the amount of wealth if the heir does not have children.

[26] Zainuddin Ali, *Pelaksanaan Hukum Waris di Indonesia*, Jakarta: Sinar Grafika, 2013, p. 21.
[27] Eman Suparman, *Hukum Waris Indonesia Dalam Perspektif Islam, Adat, &BW*, Bandung: Refika Aditama, 2017, p. 81-82.

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The following are some jurisprudence related to grant matters, including: a) Grant and sale of property by the heir; b) Calculation of grants in the distribution of inheritance. (PT. Bandung); c) Method of donation; d) Valid hibah conditions; e) Grants are allowed as long as they do not constitute a revocation of the inheritance rights of other heirs. (PN. Ciamis and PT. Bandung); f) Valid grant proof letter; g) Gift of original goods in the event that the giver does not have children; h) Absolute hibah to the crippled children; i) Hibah to the grandchildren; j) Hibah to non-heirs. Items that you don't already have; k) Cancellation of grants; l) The right to do as he pleases, over the goods of wealth, if he does not have descendants.

The granting of grants mentioned above, can be distinguished from the giving of a certain number of goods by a father or mother to several of his children, and the giving of all wealth by a father or mother to all people who are entitled to become heirs when he dies. Forms of grants related to inheritance, for example, the gift of a father or mother to his child in the form of a piece of land, livestock, house, and others for basic capital in the household. The second grant means that a person during his life distributes all his wealth to the person who is entitled to be his heir if he dies. The two forms of grants above, as previously described as the beginning of inheritance. Similarly, if the heirs have received a certain share through grants, such as houses, livestock, gardens and so on. The gift has been calculated as the distribution of inheritance so that if the father or mother dies, the distribution of inheritance is no longer carried out because the arrangement of the property is in accordance with the will of the heir when he is still alive. In addition, if at the time of the death of the parents there is still a residual property that has been donated and there are still heirs who still lack their share or have not received a grant, then in the distribution of inheritance the share will be balanced among the heirs.

The Law of Distributing Inheritance Before Death: People often ask about the law of distributing inheritance before death. Among the reasons they put forward is that if it is distributed after death, the heirs will have a dispute, which will result in the severance of the bond of friendship between them, even not a few of them ending in murder. The question is whether that reason can justify the Action? How does the Islamic Shari'ah view this issue? How does it relate to Islamic laws related to the division of inheritance?

Gift Property, Will and Inheritance: before explaining the above problem, it is necessary to first distinguish between three types of property: 1) Gift Property (Hibah) is property that is given by a person freely during his lifetime. (Ibn Qudamah, al-Mughni, Beirut, Daar al-Kitab al-Arabi, : 6/246); 2) Inheritance according to the definition of the faroidh scholars is property left behind by the deceased. (Sholeh Fauzan, at Tahqiqat al Mardhiyah fi al Mabahits al Fardhiyah, Riyadh, Maktabah al Ma‟arif, p. 24) So property whose owner is still alive is not inheritance, so the law is different from the law of inheritance. A Will is a property that a person bequeaths before death and a person is only entitled to receive it after the person who made the will dies.

The three terms above, each have its own laws, and on the basis of these differences, we can classify the problems that society is facing as follows: First Problem: If a father distributes his property before he dies, it must be detailed first: First: If the distribution of the property is carried out in a state of health wal afiyat, it means that it is not in a state of illness that causes death, then the distribution or gift is called Hibah (gift property), not the distribution of inheritance. The law is permissible. (Ibn Rushdi, Bidayat al-Mujtahid wa

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Nihayah al-Maqasid, Beirut, Dar al-Kutub al-Ilmiyah, 2/327). Second: As for if the distribution is carried out in a state of serious illness that is likely to result in death, then the scholars differ in responding to it: The majority of scholars are of the opinion that it does not belong to the category of grants, but as a will, so they must pay attention to the following provisions: He should not make a will to the heirs, such as: children, wives, relatives, because they have received allotments from the inheritance, as stated in the hadith: "there is no will for the heirs" (HR Ahmad and Ashabu as-Sunan). 1) But it is permissible to make a will to a relative in need, so in this case he gets two benefits, first: as a help for the needy, second: as a means of friendship; 2) He can make a will to another person who is not a relative and family as long as it brings maslahat; 3) The will must not be more than one-third of the total property he owns; 4) This will takes effect when the testator has died.

There are some scholars who state the ability of a person to distribute his property to his children or heirs in a state of illness, and it is still called a grant, not a will. So if he takes this opinion, then he must pay attention to the following provisions: 1) This gift is binding, meaning that the property distributed immediately becomes the right of his children or his heirs, without waiting for the death of his parents; 2) He should share only some of his wealth, not all of it. As for his remaining property, he was left alone until he died and the law of inheritance applied to him. All heirs must know their respective allotments of inheritance according to the provisions of shari'ah, after which it is permissible for them to divide the property given by the parents according to mutual agreement (without any element of coercion or peewuh). Second Problem: If a father distributes his wealth to his children in good health, as explained above, then it is permissible for him to divide all his wealth. Does the division have to be equal between one child and another, or between males and females, or should it be differentiated from one to the other?

The scholars differ on this issue, the majority of scholars state that all children should be equal, should not be differentiated from one another. While the scholars of hanabilah (followers of Imam Ahmad) state that the division should be adjusted to the division of inheritance that has been determined in the Qur'an and hadith, but the more appropriate opinion is to be detailed first, which is as follows: First: if there is no element that distinguishes them, such as all children are still young, it should be equalized, so that justice may be done. The evidence is as follows: 1) The hadith of Nu-man bin Bashir who came to the Prophet Muhammad (peace and blessings of Allaah be upon him) saying: "O Messenger of Allah, I gave this to my son. Then the Messenger of Allah asked: "Do you give all your children like that"? No, O Messenger of Allah": replied Nu‟man. " Then revoke the gift"! Said the Prophet. (HR Bukhari and Muslim) Fear Allah and do justice among your children" (HR Bukhari and Muslim); 2) Treat your children the same, if it is allowed to distinguish of course you will pay more attention to women. "(HR Said bin Mansur, narrated by Ibn Hajar) (DR. Wahbah Az-Zuhaili, al Fiqh al-Islami, Damascus, Dar al Fikr, 1989, 3rd Edition, Juz : 5, p : 34-35).

Second: if there is something that requires to be distinguished because there is an element of benefit, then it is permissible to distinguish between one child and another, such as a child who is married and has dependents of his wife and children, while he is a person who needs help, then this child can be given more allotments. Moreover, the other children are still small and do not have many needs. The evidence is what Abu Bakr as-Siddiq did to his daughter Aisha ra, when he gave her more wealth (20 wisq) than his other children.

Some scholars state that if a father gives one of his children a considerable amount of money, such as helping him pay his marriage dowry, or paying his tuition fees, then he should also give to his other children in the same amount, but, if some of his children suffer from disabilities such as blindness, or paralyzed legs, so that they cannot work optimally, then it is permissible for parents to distribute inheritance is a transfer or transfer of parental property to their children, whether they are boys or women, in the implementation of the transfer or transfer of the inheritance is carried out or given after the heir dies as stipulated in the sharia‟and Islam. In the Lampung community in Pampanggan Village, Gedong Tataan uses a patrilineal system, where the inheritance system that attracts the lineage of the eldest male ancestor is entitled to inheritance as the successor of their descendants, as well as people who use the inheritance distribution system before the heir dies. Departing from the above problems, the formulation of the problem in this study is; What factors are the background for the distribution of inheritance before the heir dies, and what is the view of Islamic law regarding the property distributed before the heirs die.

This research aims to add to the scientific treasures in the field of Islamic law, especially inheritance in the view of Islamic law regarding the property that is distributed before the heirs die in the Pampangan community, in this study the author uses a type of Field Research with the nature of qualitative descriptive research, namely collecting existing facts, by researching the object directly at the location to be researched. Meanwhile, the data sources are obtained from primary data sources and secondary data sources.

The findings obtained that the distribution of inheritance carried out by the people of Pampangan Village who gave inheritance only to the eldest son was a mistake that had been determined by the Qur'an, because in the nash al-Qur'an it had given a stipulation for the distribution of property and when the hata would be given. Some people in Pampangan Village also distribute inheritance before the heir dies is not an Islamic inheritance law, because in Islamic inheritance law the main requirement of inheritance law is if the heir has died, because the Islamic inheritance law itself does not allow the distribution of inheritance while the heir is still alive. If such a thing happens, it is not the inheritance that is distributed but the will or grant from a father to his child.

B. Islamic Legal Views On Inheritance Distributed Before Heirs Die

Many people often ask about the law of distributing inheritance before death. Among the reasons they put forward is that if it is distributed after death, the heirs will have a dispute, which will result in the severance of the bond of friendship between them, even not a few of them ending in murder. The question is whether that reason can justify such actions.

Gift Property, Will and Inheritance: there are three types of property, namely: 1) Gift Property (Hibah) is property given by a person freely during his lifetime. (Ibn Qudamah, al-Mughni, Beirut, Daar al-Kitab al-Arabi, : 6/246); 2) Inheritance according to the definition of the faroidh scholars is property left behind by the deceased. (Sholeh Fauzan, at Tahqiqat al Mardhiyah fi al Mabahits al Fardhiyah, Riyadh, Maktabah al Ma‟arif, p. 24) So property whose owner is still alive is not inheritance, so the law is different from the law of inheritance; 3) Will property is property that a person bequeaths before death and a person is only entitled to receive it after the person who made the will dies.[28] The three terms above, each have its own laws, and on the basis of these differences, we can classify the problems that society is facing as follows: If a father distributes his property before he dies, it must be

[28] Abu Bakar Al Husaini, *Kifayah al Akhyar,* Beirut: Dar al Kutub al Ilmiyah, 2020, p. 454.

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detailed first: First: If the distribution of property is carried out in a state of health wal afiyat, it means that it is not in a state of illness that causes death, then the distribution or gift is called Hibah (gift property), not the distribution of inheritance. The law is permissible.[29] Second: As for if the distribution is carried out in a state of serious illness that is likely to result in death, then the scholars differ in responding to it: The majority of scholars are of the opinion that it does not belong to the category of grants, but as a will, so they must pay attention to the following provisions: a) He should not make a will to the heirs, such as: children, wives, relatives, because they have received allotments from the inheritance, as stated in the hadith: "there is no will for the heirs" (HR Ahmad and Ashabu as-Sunan). But it is permissible to make a will to a relative in need, so in this case he gets two benefits, first: as a help for those in need, second: as a means of friendship; b) He can make a will to another person who is not a relative and family as long as it brings maslahat; c) The will must not be more than one-third of all the property owned by him; d) This will takes effect when the testator has died.

There are some scholars who state the ability of a person to distribute his property to his children or heirs in a state of illness, and it is still called a grant, not a will. So if he takes this opinion, then he must pay attention to the following provisions: a) This gift is binding, meaning that the property distributed immediately becomes the right of his children or his heirs, without waiting for the death of his parents; b) He should share only some of his wealth, not all of it; c) As for his remaining property, it is left until he dies and the law of inheritance applies to him; d) All heirs must know their respective allotments of inheritance according to the provisions of shari'ah, after which it is permissible for them to divide the property given by their parents according to mutual agreement (without any element of coercion or pewuh).

If a father distributes his wealth to his children in a healthy manner, as explained above, then it is permissible for him to divide all his wealth. Whether the division should be equal to one child and another, or between males and females, or should they be differentiated from one to the other. The scholars differ on this issue, the majority of scholars state that all children should be equal, should not be differentiated from one another. (Ibn Juzai, al Qawanin al Fiqhiyah, Cairo, Daar al hadith, 2005, p: 295) Meanwhile, the scholars of hanabilah (followers of Imam Ahmad) state that the division should be adjusted to the division of inheritance that has been determined in the Qur'an and hadith, but the more appropriate opinion is to be detailed first, which is as follows: 1) If there is no distinguishing element between them, such as all children are still young, it should be equalized, so that justice can be done. The evidence is some of the following hadiths: The hadith of Nu'man bin Bashir who came to the Prophet Muhammad (peace and blessings of Allaah be upon him) said: "O Messenger of Allah, I gave this to my son. Then the Messenger of Allah asked: "Do you give all your children like that"? "No, O Messenger of Allah": replied Nu‟man. "Then revoke the gift," said the Prophet. (HR Bukhari and Muslim): a) Fear Allah and do justice among your children" (HR Bukhari and Muslim); b) Treat your children equally, if it is allowed to discriminate, of course you will pay more attention to women. "(HR Said bin Mansur, narrated by Ibn Hajar).[30] 2) If there is something that requires to be distinguished because there is an element of benefit, then it is permissible to distinguish between one child and another, such as one child is married and has dependents of his wife and children, while

[29] Ibnu Rusydi, *Bidayat al Mujtahid wa Nihayah al Maqasid,* Beirut: Dar al Kutub alIlmiyah, 2019, p. 327.
[30] Wahbah Az-Zuhaili, *al Fiqh al-Islami*, Damaskus: Dar al Fikr, 2021, p. 34-35.

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he is a person who needs help, then this child may be given more allotments. Moreover, the other children are still small and do not have many needs. The evidence is what Abu Bakr as-Siddiq did to his daughter Aisha ra, when he gave her more wealth (20 wisq) than his other children.

Some scholars state that if a father gives one of his children a large amount of money, such as helping him pay his wedding dowry, or paying his tuition fees, then he should also give to his other children in the same amount. However, if some of the children suffer from disabilities such as blindness, or paralysis of their legs, so that they cannot work optimally, then it is permissible for the parents to give them more than their other children.

CONCLUSION

Distribution of Inheritance According to Islamic Law, if referring to Article 171 of the Compilation of Islamic Law, there are several provisions that have been stipulated in regulating inheritance. The view of Islamic law regarding inheritance distributed before the heir dies is that in Islamic law there is no recognition of the distribution of inheritance before the heir dies, if this happens then in Islamic law it is called Hibah. In the distribution of inheritance in Muslim society, reference should be made to KHI. The Muslim community must be able to distinguish between inheritance and grants, in this case legal counseling must be given in the people of Buton Cia-Cia.

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