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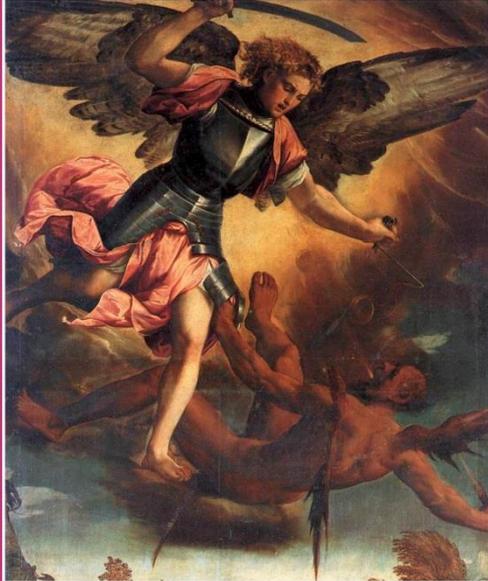
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# **Dialectics Islamic Inheritance Law and Law of Indigenous Heritage**

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## **Abstract**

**Paksi Pak Skala Brak Indigenous Lampung is a community that previously adhered to the teachings of Hinduism, and then converted to the teachings of Islam, even the whole is Muslim, but on the other hand, has customary law. So it is interesting to study the dialectics of Islamic inheritance law and Skala Brak Lampung customary inheritance law. The purpose of this study is: To elaborate on the dialectics of Islamic inheritance law and customary inheritance law in the Skala Brak Indigenous Lampung. The results of this study indicate the Skala Brak Lampung indigenous people are quite strong in implementing the provisions of customary law, including customary inheritance law. But on the other hand, there was a shift for the indigenous people of Lampung are already highly educated and a good Islamic outlook, especially the ones who do not live anymore in Skala Brak or studying outside of Lampung. For those who are, doing the distribution of inheritance in accordance with the provisions of Islamic inheritance even if it does not follow the provisions of Islamic inheritance in full, giving part of the inheritance for girls? This happens due to the strengthening of understanding and practice of Islamic teachings, as a form of dialectic Islamic inheritance law and customary inheritance law of Lampung.**

**Keywords: Dialectics, Islamic Inheritance Law, Lampung Traditional Inheritance Law, Coastal Lampung, Majorate Inheritance System**

## **Dialéctica Ley de Herencia Islámica y Ley del Patrimonio Indígena**

### Resumen

Paksi Pak Skala Brak Indígena Lampung es una comunidad que anteriormente se adhirió a las enseñanzas del hinduismo, y luego se convirtió a las enseñanzas del Islam, incluso el todo es musulmán, pero por otro lado, tiene derecho consuetudinario. Por lo tanto, es interesante estudiar la dialéctica de la ley de herencia islámica y la ley de herencia tradicional de Skala Brak Lampung. El propósito de este estudio es: Elaborar sobre la dialéctica de la ley de herencia islámica y la ley de herencia consuetudinaria en el Lampung indígena Skala Brak.

Los resultados de este estudio indican que los pueblos indígenas Skala Brak Lampung son bastante fuertes en la implementación de las disposiciones del derecho consuetudinario, incluida la ley de herencia consuetudinaria. Pero, por otro lado, hubo un cambio para los pueblos indígenas de Lampung que ya tienen una alta educación y una buena perspectiva islámica, especialmente aquellos que ya no viven en Skala Brak o estudian fuera de Lampung. Para aquellos que lo hacen, ¿hacen la distribución de la herencia de acuerdo con las disposiciones de la herencia islámica, incluso si no sigue las disposiciones de la herencia islámica en su totalidad, dando parte de la herencia para las niñas? Esto ocurre debido al fortalecimiento de la comprensión y la práctica de las enseñanzas islámicas, como una forma de ley de herencia islámica dialéctica y ley de herencia consuetudinaria de Lampung.

Palabras clave: Dialéctica, Ley de herencia islámica, Ley de herencia tradicional de Lampung, Lampung costero, Sistema de herencia Majorate A. Preliminary

In Indonesia, until now there has not been a unity (unification) of inheritance law. In the sense that there is not yet one inheritance law that is applied as a whole for Indonesian people. For native Indonesian citizens, in principle, the Customary Law applies. Which in this case is certainly a difference between one region and another. For native Indonesian citizens who are Muslim, besides being influenced by customary inheritance law, it is also heavily influenced by Islamic inheritance<sup>1</sup>. In this case, Muslims in Indonesia should prioritize the Islamic inheritance law compared to the

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<sup>1</sup> Rahman, Ilmu Waris, t.t., 27.

customary inheritance law<sup>2</sup>. However, some indigenous peoples, including Lampung indigenous people, are very strong in their commitment and implementation of customary provisions. The indigenous people of Lampung use a customary inheritance system compared to Islamic inheritance law. Violation of customary provisions is taboo and a disgrace to the perpetrators of the perpetrators' families.

One of the indigenous peoples who have a patrilineal kinship system is the Lampung traditional community. The Lampung customary community can be grouped into 2 (two), namely the Lampung Saibatin indigenous community and the Lampung Pepadun indigenous community<sup>3</sup>. One of the Lampung indigenous people of the Sai Batin group is the Paksi Pak Skala Brak indigenous people in West Lampung. Sekala Beghak (usually written Skala Brak), is the area that until now can be seen civilization heritage. This area is arguably an area that has "lived" since prehistoric times. Menhir Meniscus stones and scattered in a number of points in West Lampung, as evidence of a sign of historical life. As a political entity, the Kingdom of Scale Brak has ended. However, as a cultural unity (cultural-based) hereditary existence is inherited through a long history that is strongly drawn and reads its meaning until now

The customary life-based of the Skala Brak tradition is also still maintained and developed. Especially, the Skala Brak after being influenced by the "Empat Umpu" spreaders of Islam and the birth of the Sai Batin indigenous community. Customs and traditions continue to be referred to in the daily lives of the supporting communities and can be one source of inspiration and motivation for the development of national cultural values. The indigenous people of Paksi Pak, are from the former kingdom of Skala Brak which has been heavily influenced by West Sumatra. The Pak Paksi are: Paksi Buay Belunguh (Kenali), 2. Paksi Buay Pernong (Batu Brak), 3. Paksi Buay Bejalan Di Way (Kembahang), 4. Paksi Buay Nyerupa (Sukau). It is interesting to study and research in relation to the implementation of Islamic inheritance law in the Pak Pajak Brak indigenous peoples. Where the Paksi Pak Skala Brak traditional community is a community that previously adhered to the teachings of Hinduism, then later converted to the

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<sup>1</sup> Kusnadi Kusnadi, "Pembagian Harta Waris Adat Lampung Sai Batin Kabupaten Pesisir Barat Perspektif Hukum Islam," *Ijtimaiyya: Jurnal Pengembangan Masyarakat Islam* 10, no. 2 (8 Maret 2018): 217-40, <https://doi.org/10.24042/ijpmi.v10i2.2362>.

<sup>2</sup> "[http://id.wikipedia.org/wiki/Ulun\\_Lampung](http://id.wikipedia.org/wiki/Ulun_Lampung),"

teachings of Islam. In fact, all of them were Muslim. Likewise, as an indigenous people who have a civilization, it is based on the available evidence. Based on the explanation in the background of the problem, then the problem can be formulated as follows: How are the dialectics of Islamic inheritance law and customary inheritance law in the indigenous people of Lampung on the Skala Brak. The purpose of this research to elaborate on the dialectics of Islamic inheritance law and customary inheritance law in the adat community of Lampung on the Brak Scale. The benefit of this research is in order to provide understanding to Muslims, in addition to trying to maintain customary values or norms, so as to prioritize the provisions of Islamic teachings (God's law) when differences or conflicts occur between the two.

This article argues that there is a dialectic of Islamic inheritance law and Lampung customary inheritance law. This happens, considering that as a Lampung traditional community, there is a demand to implement the provisions or customary law, including inheritance law. But on the other hand, Muslims have demands to implement Islamic teachings, including Islamic inheritance law. For the Lampung traditional community which incidentally all adheres to the religion of Islam, the occurrence of tug of war will be these two demands.

To begin the discussion, this article discusses Islamic inheritance law, Lampung traditional inheritance law. The final section outlines the dialectics of Islamic inheritance law and Lampung Scale customary inheritance law.

## B. Research Methods

This research is a qualitative descriptive. In the study of Islamic sciences, research on inheritance law is included in the field of Islamic law research and social institutions. Data sources in this study, are divided into two, namely primary sources and secondary sources. Primary data in this study are information or facts directly from the informant. Information in this study is the Lampung Scale traditional community. Braking data from the Lampung Scale traditional community is done by purposive sampling. In this case, the informants are those who have insight about inheritance law and its implementation.

Collecting data in this study through w Interview. In this study a guided free interview is used, that is, the interviewer only carries guidelines which

are an outline of the things that will be asked <sup>4</sup>. Questions can be developed in accordance with the flow of the conversation.

In this study, the analysis was carried out descriptively qualitative with inductive thinking methods. The analysis process is carried out by making a formula for the implications of the results of the study by means of interpretation. This interpretation is carried out by interpreting the implementation of Islamic inheritance law in the midst of a society that adopts a patrilineal kinship system and a male major inheritance system. Likewise, elaborating dialectics of Islamic inheritance law and Lampung traditional inheritance law for the Lampung Scale indigenous people.

### C. Islamic Inheritance Law

Islamic inheritance law is explained in the Koran in detail and in full, compared to other provisions - including the provisions of prayer, fasting and so on. Islamic inheritance law is defined as *fiqh* which is related to the distribution of inheritance, knowledge of how to count and parts received by heirs.<sup>5</sup> The ownership rights of the deceased person are transferred to their heirs <sup>6</sup>. The provisions of Islamic inheritance law require the distribution of inheritance as fairly as possible <sup>7</sup>.

For Muslims to implement the shari'a regulations that have been determined the sharia text is a must, as long as the regulation is not appointed by the other texts that show its non-obligation <sup>8</sup>. Even though Muhammad Abu Zahrah stated that inheritance rights are human rights. As a right, a person may take away his rights or not take his rights <sup>9</sup>. In this case, we can refer to the Qur'an and al-Hadith texts related to it, namely: Surat an-Nisa verses 13 and 14: (These laws) are the provisions of Allah. Whoever obeys Allah and His Messenger, Allah will put it in heaven that flows in the rivers, while they are eternal in it; And that is a great victory. And whoever disobeys Allah and His Messenger and violates His provisions,

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<sup>4</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: UI Press, 1986), 230–31.

<sup>5</sup> Muhammad al-Syarbini al-Khatib, *Mughni al-Muhtaj*, Juz 3 (Kairo, t.t.), 3.

<sup>6</sup> Muhammad Ali ash-Shabuni, *Pembagian Waris menurut Islam*, Penerjemah, AM. Basalamah (Jakarta: Gema Insani Press, 1996), 33.

<sup>7</sup> Fikri & Wahidin Fikri & Wahidin, "KONSEPSI HUKUM WARIS ISLAM DAN HUKUM WARIS ADAT (Analisis Kontekstualisasi dalam Masyarakat Bugis)," *Al-Ahkam: Jurnal Ilmu Syari'ah dan Hukum* 2, no. 2 (8 Januari 2017): 195, <https://doi.org/10.22515/al-ahkam.v2i2.500>.

<sup>8</sup> Fatchur Rahman, *Ilmu Waris*, 34.

<sup>9</sup> Muhammad Abū Zahrah, *Ushūl al-Fiqh (Al-Qahirah: Dar al-Fikr al-arabi, t.t.)*, 279.

surely Allah put it in the fires of hell while he is eternal in it; and for him a humiliating torment. Hadith Rasulullah SAW: Divide the wealth (inheritance) between the heirs according to the book of Allah (al-Quran). (Reported by Muslim and Abu Dawud).

Paying attention to the text of al-Quran and al-Hadith, it is implied that the obligation (obligation) to divide inheritance according to the provisions of al-Quran and al-Hadith. Likewise, based on the principles of Islamic inheritance, especially the *ijbari* principle, the obligation to divide the inheritance according to the provisions, the recipient of the inheritance (heirs) and the amount (portion) received<sup>10</sup>. Overall principles of Islamic inheritance is *Ijbari* Principles, Principle Bilateral, Principles of Individual, Principle of Justice Balanced, the principle of inheritance solely as a result of death<sup>11</sup>.

The division of inheritance in Islam is divided into 2 groups, namely heirs of *ashabul furudl* and heirs of *ashabah*. Most of the heirs of *ashabul furudl* are women, except for fathers, grandfathers. *Ashabul furudl* has already been determined, namely:  $\frac{1}{2}$ ,  $\frac{1}{3}$ ,  $\frac{1}{3}$ ,  $\frac{1}{8}$ ,  $\frac{2}{3}$ .<sup>12</sup> While the heirs of the heirs are the recipients of the remaining portion of the inheritance after deducting the portion of the *ashabul furudl*. The heirs of the heirs are fully male, except *ashabah bil ghair* and *ashabah maal ghair*. The heirs of *ashabah bi nafsihi* are sons, line grandchildren, fathers, grandfathers, siblings, half brothers, half brothers, half brothers, sons of half brothers, siblings, half-brother. Heir *ashabah bil ghair*, namely daughters when together with boys, grandchildren's male line when with male grandchildren, siblings when with siblings, sister is the father when together with the brother of the same age. While heirs of the *ashabah maal ghair* that is, sisters or siblings when together with a daughter or grandson of the male line<sup>13</sup>. Islam has recognized the existence of women, including inheritance. Where before (the period of ignorance) women did not inherit, even inherited. The position of women since the time of *Jahiliyyah* has always been marginalized<sup>14</sup>.

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<sup>10</sup> Suhairi, "Perdamaian dalam Pembagian Harta Warisan (Kritik Atas Konsep Qath'i dalam Hukum Kewarisan Islam)," *al-manahij Jurnal Kajian Hukum Islam* VI, no. 1 (Januari 2012): 158, <https://doi.org/10.24090/mnh.v6i1.595>.

<sup>11</sup> M. Idris Ramulyo, *Perbandingan Hukum Kewarisan Islam*, t.t., 118.

<sup>12</sup> Dian Khairul Umam, *Fiqh Mawaris* (Bandung: Pustaka Setia, 1999), 98.

<sup>13</sup> Moh. Muhibbin dan Abdul Wahid, *Hukum Kewarisan Islam, Cetakan Pertama* (Jakarta: Sinar Grafika, 2009), 66.

<sup>14</sup> Beni Ahmad Saebani, *Fiqh Mawaris, Cet, Ke 1* (Bandung: CV. Pustaka Setia, 2009), 47.

#### D. Lampung Traditional Inheritance Law

The customary law inheritance system is divided into 3 systems, namely:

- a. Collective inheritance system;
- b. Individual inheritance system;
- c. Major inheritance system (male major, female major).

For the indigenous Lampung community, including Lampung Pesisir, the population uses a male major's inheritance system. The major inheritance system is almost the same as the collective inheritance system, only the continuation and transfer of the authority over undivided property is delegated to the eldest son who served as the head of the household or head of the family replacing the position of the father or mother as the head of the family <sup>15</sup>.

Transfer of ownership rights over all assets to the oldest son, for the Pesisir Lampung Indigenous people, his intention was as a successor to the responsibility of parents who died, to be responsible for the inheritance and the lives of his younger siblings, so that they could stand alone. In Lampung, the people who lead, manage, and manage the inheritance are Punyimbang children, the eldest son of the oldest wife <sup>16</sup>.

The inheritance which is controlled by the eldest son is a hereditary treasure that should not be divided up. However, the assets acquired by their parents are distributed to the boys <sup>17</sup>. While girls do not get a share of the inheritance. Such division is due to the indigenous people of Lampung including the patrilineal system <sup>18</sup>.

#### E. The Relationship between Customary Law and Islamic Law

The relationship between customary law and Islamic law in the sense of contact between the two legal systems has long taken place in Indonesia. Relationships are familiar with society. This familiarity is reflected in various sayings and expressions in several regions, for example, expressions in the Acehese language which read: *Hukum Ngon Adat Hantom Cre, Lagee Zat Ngon Sipeut*. This means that Islamic law and customary law

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<sup>15</sup> Hilman Hadikusuma, *Pengantar Ilmu Hukum Adat Indonesia*, (Bandung: Mandar Maju, 1992), 126.

<sup>16</sup> Hilman Hadikusuma, 126.

<sup>17</sup> atiansya Febra, Rachmad Budiono, Dan Chusen Bisri, "Sistem Perwarisan Masyarakat Adat Saibatin Dalam Keluarga Yang Tidak Mempunyai Anak Laki-Laki (Studi di Kota Bandar Lampung)," t.t., 10-11.

<sup>18</sup> Komari Komari, "Eksistensi Hukum Waris Di Indonesia: Antara Adat Dan Syariat," *Asy-Syariah* 18, no. 1 (31 Agustus 2015): 121, <https://doi.org/10.15575/as.v18i1.656>.

cannot be separated because it is so closely related, such as the relationship of matter to the nature of things<sup>19</sup>. Likewise in Minangkabau which is reflected in the proverb: *adat dan syara' sanda menyanda, syara' mengato adat memakai*. According to Hamka, the meaning of this proverb is the relationship (customary law) with Islamic law (*syara'*) very closely, supporting each other, because it is actually called *adat* which really is *syara'* itself<sup>20</sup>. In the Muslim community of South Sulawesi, the close relationship between customary law and Islamic law can be seen in a phrase which reads: *Adat hula-hulaa to syaraa, syaraa hula-hulaa to adati*. That is, customary contains *syara* and *syara* contains customary<sup>21</sup>. MB Hoeker in his book *Customary Law in Modern Indonesia*, as quoted by Daud Ali, emphasized the close relationship between *adat* and Islam in Java. This may be due to the principles of harmony and syncretism that grow and develop in Javanese society, especially in rural areas<sup>22</sup>.

In contrast to the above description, in law books written by Western/Dutch writers and those who are of the same opinion, the relationship between customary law and Islamic law in Indonesia, especially in Minangkabau, is always described as two conflicting elements. However, reality shows that this is not the case. The agreement between *ninik mamak* and *alim ulama* in Bukit Marapalam in the Paderi War in the 19th century had given birth to a solid formula regarding the relationship between customary law and Islamic law. The formula reads among other things (Indonesianized): *indigenous contains Personality, Personality contains Book of Allah (the Quran)*. This formulation was strengthened by the meeting of four types (*Ninik Mamak, Imam-Khatib, Cerdik-Pandai, Manti-Dubalang*) Alam Minangkabau which was held in Bukittinggi in 1952 and was confirmed by the conclusion of the Minangkabau Traditional Law Seminar held in Padang in July 1968. In the meetings and seminars it was emphasized that the distribution of Minangkabau heritage, for (1) high inheritance treasures obtained down and down from ancestors according to maternal lines were carried out according to custom, and (2) livelihood assets, called *low heir-*

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<sup>19</sup> Mohammad Daud Ali, *Hukum Islam, Pengantar Ilmu Hukum dan tata Hukum Islam di Indonesia*, Cetakan ke-17 (Jakarta: Rajawali Press, 2012), 223.

<sup>20</sup> Hamka, "Hubungan Timbal Balik antara Adat dan Syara' di dalam Kebudayaan Minangkabau," t.t., 10.

<sup>21</sup> Abdul Gani Abdullah, "Badan Hukum Syara' Kesultanan Bima 1947-1957" (Disertasi, IAIN Syarif Hidayatullah, 1987), 89.

<sup>22</sup> Mohammad Daud Ali, *Hukum Islam, Pengantar Ilmu Hukum dan tata Hukum Islam di Indonesia*, 223.

looms, were inherited according to syara (Islamic law)<sup>23</sup>. It should be noted that after Indonesian independence, especially in the Minangkabau realm, a doctrine that has said that “Islamic law is the improvement of customary law”. Therefore, if there is a dispute between the two, what is used as a perfect measure is Islamic law<sup>24</sup>.

Likewise, what happened to the people of Aceh, the same developments occurred, namely: matters of marriage, property including inheritance is desired to be regulated according to the provisions of Islamic law. Even in the community in this area has also developed a legal line that says that adat or customary law can only apply and be implemented in the community if it is not contrary to Islamic law. This is the opposite of the receptio theory (reception) which says Islamic law is not law if it has not been accepted by adat law. This is in line with the theory of *receptio a contrario*, meaning that customary law only applies if it does not conflict with Islamic law<sup>25</sup>.

In addition, it can also be said that the loosening of traditional ties, changes in values and patterns of community organization in rural areas, especially due to the replacement of large families with small families, has strengthened the position of Islamic law in Indonesian society. This is also supported by religious awareness that is increasingly growing through increasingly developing education<sup>26</sup>.

#### F. The Dialectics of Islamic Inheritance Law and Customary Inheritance Law Paksi Pak Skala Brak

Skala Brak Indigenous peoples Lampung adhere to the male major's inheritance system. In the sense that the eldest son has the right to inherit the assets of his parents. All the assets are controlled by the eldest child with the responsibility of taking care of his younger siblings until marriage<sup>27</sup>. Karzi also emphasized that the inheritance was controlled by the eldest son with the duties and responsibilities of taking care of his younger siblings<sup>28</sup>. Meanwhile, Fauzi emphasized that if the oldest son was married, the tran-

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<sup>23</sup> Mohammad Daud Ali, 225–26.

<sup>24</sup> M. Nasrun, *Dasar Falsafah Adat Mingkabau*, 1971, 23.

<sup>25</sup> Sayuti Thalib, *Hukum Kekeluargaan Indonesia* (Jakarta: UI Press, 1974), 49.

<sup>26</sup> Mohammad Daud Ali, *Hukum Islam, Pengantar Ilmu Hukum dan tata Hukum Islam di Indonesia*, 228–29.

<sup>27</sup> Seem Cangu, Interview, 21 Oktober 2018, t.t.

<sup>28</sup> Udo Z. Karzi (Buay Nyerupa), Interview, 22 Oktober 2018., t.t.

sition to Punyimbang (leader) would automatically occur in the family. So that in traditional meetings, it is the social community of the eldest son that becomes the balance of his family. This happened even though his father was still alive. Even if the eldest son asks for input/opinions from his father as far as advice/input, the decision remains with the eldest son who is married. Most parents whose sons are married, so the balance has changed in the family, so their parents usually make a house in the garden/fields. This was done because the task of balance had shifted to the eldest son who was married, and at the same time trained so that the oldest son could carry out the task of balance independently without the intervention of his father <sup>29</sup>.

In connection with the transfer of balance in the family, it is not limited to inheritance, but in 3 (three) things: Inheritance rights, Customary position, Punyimbang (leaders) in the family. By switching these 3 (three) things, control of assets (inheritance rights)) by the eldest son has the duty and responsibility of taking care of his younger siblings until marriage. According to Adri, the task of the eldest son was inherently very heavy. So it is only natural that the assets left by parents are given power to the eldest son to manage them <sup>30</sup>.

If all the siblings are married, the assets are categorized as two: Harta Tuha, Harta Pencarian. Harta Tuha is a family's hereditary treasure that cannot be divided, but is controlled by the eldest son. Like the Gedung Dalam (in Buay Pernong). obedience to this matter is very strongly held by them. So far, according to Seem Cangu, there has never been a rejection from the brothers of the oldest sons <sup>31</sup>. Likewise, according to Ibn Hajar, the provision of Harta Tuha controlled by the eldest son is the customary provision <sup>32</sup>. Although controlled by the eldest son, according to Fauzi is not in the sense of mastering fully. Mastery is not full because the oldest son is not allowed to sell or transfer to another party. The control over the property of God is to continue the balance of their families. Even if forced to be sold, it must be discussed and agreed upon by his younger brothers and sisters <sup>33</sup>.

Acquisition/search assets which may be distributed. According to Fauzi,

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<sup>29</sup> Fauzai Fatah, Interview, 21 Oktober 2018, t.t.

<sup>30</sup> Hadri Abunawar, Interview, 22 Oktober 2018, t.t.

<sup>31</sup> Seem Cangu, Interview, 21 Oktober 2018.

<sup>32</sup> Ibnu Hajar, Interview, 22 Oktober 2018, t.t.

<sup>33</sup> Fauzai Fatah, Interview, 21 Oktober 2018.

acquisition/search assets are distributed to boys in stages. What is meant by tiered, the first (oldest) boys get more wealth than the second boys. The second son receives fewer shares than the first and more than the third son, and so on. While the daughter according to customary inheritance law does not receive the inheritance portion<sup>34</sup>.

But according to Ibn Hajar, lately the distribution of inheritance (acquisition / acquisition) has done a lot of peace. In a sense, property is not only distributed to boys, but girls also get a share<sup>35</sup>. Even according to Seem Canggü and Adri, for families who already have high education and have good Islamic commitment, the inheritance is distributed according to Islamic inheritance provisions. Especially for the Skala Brak indigenous people who have not settled in Skala Brak<sup>36</sup>, the tendency is to divide inheritance in accordance with Islamic provisions.

Lampung indigenous people as a whole are Muslim<sup>37</sup>. As Muslims, of course to trying to obey the teachings of Islam, including the implementation of Islamic inheritance law. But on the other hand, the indigenous Lampung people have quite strong customs. Violating the provisions of customary law tends to be something that is despicable. Related to this, there is a tug of war between commitments to run Islamic law with customary law.

For the indigenous peoples who still live in the Skala Brak almost as a whole still apply the distribution of inheritance in accordance with the provisions of customary inheritance law<sup>38</sup>. Fauzi stated expressly, that girls in Lampung traditional inheritance law are not war experts<sup>39</sup>. The heirs of the Lampung traditional community are boys. Inheritance is only distributed to boys, while girls are not entitled to inheritance.

However, according to Adri, there are a small number of indigenous people who still live in Skala Brak who enforce the distribution of inheritance by the provisions of Islamic inheritance. A small portion of these indigenous people is those who already have a better insight by attending higher education. Even though their parents do not have a higher education, if

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34 Fauzai Fatah.

35 Ibnu Hajar, Interview, 22 Oktober 2018.

36 "Masyarakat adat Lampung Skala Brak yang tinggal dan menetap di luar Skala Brak (Lampung Barat), semisal di Metro, Bandar Lampung, Jakarta dan sebagainya." t.t.

37 "Kalaupun saat ini ada yang beragama selain Islam dikarenakan menikah dengan laki-laki atau perempuan non muslim." t.t.

38 "Interview dengan Fauzi, Seem Canggü, Ibnu Hajar, Hadri," t.t.

39 Fauzai Fatah, Interview, 21 Oktober 2018.

their children are well educated and have a better understanding of Islam, it will encourage and propose that the distribution of inheritance in their families be carried out according to Islamic inheritance provisions<sup>40</sup>.

Likewise, Karzi emphasized that in the distribution of inheritance, besides referring to customary provisions, there was also the influence of Islam. But in this case, according to him divided by deliberation, boys are more than girls although not fully in accordance with the provisions of the part of boys 2 to 1 part of girls. The division among boys is different between one and the other according to a position in terms of the oldest male part more than the second son and so on. In terms of the distribution of inheritance according to him is influenced by understanding, level of education, comparison/experience with other indigenous peoples or relationships<sup>41</sup>. Based on these data, there is a shift in the implementation of the distribution of inheritance for indigenous peoples who have higher education and have better Islamic insight. The shift is from following the provisions of customary inheritance shifting/switching to the provisions of Islamic inheritance. This condition is in accordance with the theory which states that the loosening of traditional ties, changes in values and patterns of community organization in rural areas, especially due to the replacement of large families with small families, has strengthened the position of Islamic law in Indonesian society<sup>42</sup>. This is supported also by the increasingly growing religious awareness through education is increasingly berkembang. Bagi Lampung indigenous peoples who have had the insight and better education, then the tendency nnya stronger commitment and implement the teachings of Islam.

## G. Conclusion

Based on the discussion in this study, the following conclusions can be formulated: Provisions for the customary inheritance of the Brak Scale community adhere to the male major system. The possession of property goes to the eldest son, with the responsibility of taking care of his younger

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<sup>40</sup> Fauzi Adri. Seem Cangu, Ibnu Hajar, Interview, t.t.

<sup>41</sup> Udo Z. Karzi (Buay Nyerupa), Interview, 22 Oktober 2018.

<sup>42</sup> Mohammad Daud Ali, Hukum Islam, Pengantar Ilmu Hukum dan tata Hukum Islam di Indonesia, 228-29.

siblings until marriage. If all of his younger siblings are married, the inheritance is divided in two: god's treasure and search treasure. Gods cannot be distributed, may not be sold, controlled/managed by the eldest son. Whereas the search treasure was distributed by tiered boys, the older part was more than the younger ones. A daughter according to adat rules does not receive a share of the inheritance. However, there has been a shift for the indigenous people of Lampung on the Brak Scale who have been highly educated and have good Islamic insight, especially those who no longer live in Skala Brak. Where they do the distribution of inheritance in accordance with the provisions of Islamic inheritance.

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