THE MAQASHID SHARIA CONSTRUCTION ON INHERITANCE IN DAYAK NGAJU CUSTOMS WITHIN THE TUMBANG ANOI AGREEMENT

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ABSTRACT
The customary inheritance settlement of Dayak Ngaju determines the distribution of heirs based on consensus referring to their compliance with the common law in the Tumbang Anoi 1894 agreement. The Dayak Ngaju Muslim community, in the settlement of inheritance disputes, still pays attention to Islamic law, but they do not ignore traditional inheritance. The research aimed to analyze the maqashid sharia construction on inheritance in Dayak Ngaju customs within the Tumbang Anoi agreement. This research was normative legal research with a historical approach. The data was in the form of primary, secondary, and tertiary legal materials. The research showed that the construction of maqashid sharia follows the mental construction, the philosophy of the distribution inheritance procedures of the Dayak Ngaju customs in the Tumbang Anoi agreement, which emphasizes the principle of peace. This agreement adopts a philosophy carried out by the diversity of its people, which highly values peace. Generally, the spirit of peace in this context also means that there is no complexity in the distribution of inheritance. The attraction of the Tumbang Anoi agreement is that people who gather in the Dayak community are one of the hundreds of Dayak community groups.

Keywords: Tumbang Anoi Agreement; Dayak Ngaju; Inheritance; Maqashid Sharia;

ABSTRAK

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sejalan dengan konstruksi mental, filosofi tata cara pembagian waris adat Dayak Ngaju dalam perjanjian Tumbang Anoi yang menekankan asas perdamaian. Perjanjian ini mengambil sebuah filosofi yang dilakukan oleh keragaman masyarakatnya, yang sangat menunjung perdamaian. Semangat perdamaian secara umum dalam konteks ini dimaknai juga tidak ada kompleks dalam pembagian kewarisan. Hal yang menjadi daya tarik perjanjian Tumbang Anoi, yakni adanya masyarakat yang berhimpun dalam masyarakat Dayak salah satu dari sekian ratus kelompok masyarakat Dayak disana.

**Kata Kunci:** Perjanjian Tumbang Anoi; Dayak Ngaju; Waris; Maqashid Syariah

**Introduction**

Inheritance law institutions are crucial elements in people's lives, especially in indigenous communities, because it has direct implications for the sustainability of the social system, among the level of family, relatives, and society in general. Inheritance common law in Indonesia consists of unique and specific patterns that describe the values of traditional Indonesian society based on the collective and communal culture of the concrete thoughts of the Indonesian people. Almost all indigenous communities have their inheritance systems, which differ from one another, including the inheritance of the Dayak Ngaju tribe in Central Kalimantan Province.

The Dayak Ngaju community is an agricultural society that respects and upholds the noble values of their ancestors, which still apply, for example, social, religious, and communal values to achieve a harmonious life. In 1894, the Dayak communities from all Kalimantan made a joint agreement, called the Tumbang Anoi agreement.

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1Van Vollenhoven has drawn up the area of common law. An area, where the outlines of the style and nature of common law are unified and uniform, is called by van Vollenhoven a rechtskring (legal circle). Each legal circle can be further divided into legal enforcement. Soerjono Soekanto and Soleman B. Taneko, *Hukum Adat Indonesia* (Jakarta: Rajawali Press, 1986).


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One of the rules is inheritance law. This inheritance law prioritizes the principles of peace\(^7\) in the settlement of customary inheritance cases, namely the principles of harmony, justice, and harmony. The background caused by the family system is quite strong in characterizing the families of the Dayak Ngaju tribe, even though sometimes family members have different religions. But, family relationships are always tied as long as they live in this world, with the term children always be children, and parents always be parents.\(^8\) This inheritance settlement is especially for Muslim communities by still paying attention to Islamic law but not ignoring inheritance common law. It is interesting and important to study the inheritance settlement of Dayak Ngaju in the Tumbang Anoi agreement and its suitability with the maqashid sharia construction.

Numerous studies have been conducted to examine the common law in Indonesia, such as Moh Fadli,\(^9\) Ali Akhbar Abaib Mas Rabbani Lubis,\(^10\) Supardi Mursalin,\(^11\) Ramlin,\(^12\) and Rosdalina Bukido.\(^13\) But, research discussing Dayak Ngaju customs is quite rare, including Abdul Helim,\(^14\) Sri Wahyuni,\(^15\) Marina Rona,\(^16\) and Cahya

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\(^15\)A Helim and S Ahmad, “Bapalas as Alternative Dispute Resolution of Fighting on Muslim Dayak Community in Muara Teweh, Central Kalimantan,” *Samarah* 6, no. 1 (2022): 331–45, [https://doi.org/10.22373/sjhk.v6i1.12379](https://doi.org/10.22373/sjhk.v6i1.12379).

Wulandari. Research discussing the inheritance customs of Dayak Ngaju is rare. It only found research conducted by Syaikhu, especially regarding inheritance law in the Tumbang Anoi agreement. The research aimed to analyze the maqashid sharia construction on inheritance in Dayak Ngaju customs within the Tumbang Anoi agreement in Central Kalimantan.

Method

The research was normative legal research with a historical approach. The data was secondary data, which is divided into three legal materials. Primary legal materials consist of the Tumbang Anoi customs agreement. Secondary legal materials include journals, research findings, and books related to the topic discussed. And, Tertiary legal materials include encyclopedias and dictionaries. The collected data was then analyzed using maqashid sharia theory by comparing it to previous research.

Findings and Discussion

The Inheritance of Dayak Ngaju in the Tombang Anoi Agreement

Tumbang Anoi is a historical place for the Dayak people in Kalimantan. Tumbang Anoi became the venue for a grand meeting of the entire Dayak indigenous community to end the mengayau (headhunting) tradition in 1894. Today, after more than a century, this agreement has become the reference for peace for the Dayak community in Kalimantan, including the Dayak Ngaju community of Central Kalimantan.


20Tumbang Anoi is the name of a village in the North Kahayan Hulu Region, Level I Regional Province of Central Kalimantan. It is the first time in history, both before and after. The Tumbang Anoi Agreement resulted from a large peace meeting to pioneer the vibration of the spirit of unity and total renewal covering the political, social, cultural, economic, and security fields, as well as proving that all Kalimantan Dayak people “do not sleep” in the struggle against colonialism. Attended by Dutch Officials, Indigenous Leaders, and delegates from 400 Tribes/Language Styles throughout Kalimantan, including the Dayak Region of North Kalimantan, covering thousands of people gathered under one roof.
Kalimantan. This historic meeting resulted in a phenomenal agreement, namely eliminating the possibility of war between tribes and, at the same time, erasing records in the Dayak tribal customary order system. Moreover, they are also trying to form an order, which is manifested in an agreement to standardize the general rules of common law.

This peace meeting was held from 1 January 1894 to 30 March 1894 at Huma Betang (Long House) Damang Batu in Tumbang Anoi. The number of participants and tribal heads present at that time was 152 Dayak tribes that were invited with some Dutch colonial officials from the Borneo region to discuss peace efforts. Also, a historic decision was made. First, to stop hostilities between Dayak sub-tribes, commonly called 3H, namely Hakayou (headhunting), Hapunu (killing each other), and Hatetek (cutting off each other's heads) in Kalimantan (Borneo at that time). Second, ending the jipen (servant or slave) system and giving freedom to them from all their bonding to Tempu (their master) as a life, like other free members of society. Third, replace the human form of jipen with items that can be valued such as balanga (expensive jars or tajau), halamaung, lalang (weeds), land or gardens or plantation. Fourth, standardize and apply general common law, such as those who kill other people must pay sahiring (customary sanctions) according to the provisions that apply to those human opponents. Fifth, decided to every person who kills another tribe must pay sahiring under the decision of the traditional court, chaired by Damang Batu. All of the fines must be paid directly at that time by the guilty party. Sixth, organizing and implementing customs specifically in each region, following the habits and order of life that are believed good.

An overview of the 1894 Tumbang Anoi peace agreement is a very historic event for the development of the Dayak indigenous people of Central Kalimantan in particular and Kalimantan in general. This meeting in the currents and jungles of history is not only a unique customary court trial to resolve almost 300 cases over two months in a marathon but also contains high human values, namely brotherhood and awareness of legal order, which have been manifested in behavior.

22Raya.
The Tumbang Anoi peace agreement in 1894 gave birth to agreements, including the Dayak customs of Central Kalimantan, which consists of 96 articles. The Dayak Tumbang Anoi 1894 customs was agreed upon at the MADN/DAD meeting in April 2014 as the reference for all Dayak customs and is abbreviated as HADAT 1894 because it was written and recorded based on the results of the formulation and agreement of all representatives of the Dayak Tribe from all over the Borneo Island. The Dayak customs of Tumbang Anoi 1894 (HADAT 1894), does not mean eliminating the existence of other Dayak customs, both written and unwritten, but instead becomes a legal force and provides a guarantee and secure for all Dayak customs to be perfected, completed, or combined with articles or paragraphs in other customs, and enforced consistently. The existence of Dayak customs of Tumbang Anoi 1894 (HADAT 1894) and its derivatives must receive recognition from the state and government since the state’s law and positive’s law originate from the existence of customs.

The existence of Dayak customs, which was regulated half a century before Indonesia’s independence, is a valuable historical fact that the Dayak Ngaju tribe prioritizes customs, rules, and regulations for social life. Violations of the customs and rules of social life that are formulated into customs are truly used as commanders in conflict resolution and peace processes related to the rights, obligations, and responsibilities of the Dayak indigenous community.

The Dayak customs of Tumbang Anoi 1894 (HADAT 1894) in general contains an introduction, procedures for implementing dispute resolution and/or customary solutions, and Dayak customs following the results of the Tumbang Anoi agreement. Aiming to facilitate understanding and interrelationships between articles, MADN grouped the 96 articles of Dayak common law into three main groups. First, implementation of customs or hadat (hadat in marriage and household and hasapa customary procedures). Second, disputes over land. Third, the relationship with criminal acts whether committed with violence or non-violence (fights, fraud, theft, conspiracy, false witnesses and ignorance/firmness, and against signs of customary prohibitions). Based on these three classifications, the next section will go into more detail about the situation of problems, cases and disputes that occur in the Dayak community.

23Sabran Ahmad, *Interview* (Palangka Raya, 2020)

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The expression “belum bahadat” stands out for every Dayak tribe. This expression is a positive key to traditional personality values which are the original heritage of the region, a legacy passed down from generation to generation, which encompasses life and humanity in the physical, mental, and spiritual sense. The philosophy of belom bahadat is the identity of the Dayak people. If the person involved in the dispute no longer wants to adhere to the philosophy of belum bahadat, then he should have a very heavy customary sanction in the form of expulsion from the village where he and his family live.

The customs of the Dayak Ngaju community may be found on Dayak customary institutions in Central Kalimantan. The existence of Dayak Traditional Institutions has been recognized as stated in Central Kalimantan Provincial Regulation Number 16 of 2018 on Dayak Traditional Institutions in Central Kalimantan. Article 1, number 15 states, that Dayak customs is a set of values and norms, rules, and social beliefs that grow and develop along with the growth and development of the Dayak traditional community, as well as other values or norms that are still lived by and maintained by the community, manifested in various behavioral value patterns in the social life of the local community. Furthermore, Article 1 number 18 states that Dayak Customary Institutions are social organizations, whether deliberately formed or which have naturally grown and developed along with the history of the Dayak traditional community and their customary legal territory, and have the right and authority to regulate, manage and resolve various life problems about Dayak customs, habit, and common law.

The Dayak Ngaju community, in their position as Dayak people are subject to custom, as Muslims are subject to Islamic law, and as citizens are also required to submit to state law. This fact can be referred to as three legal systems. They are customary law, Islamic law, and positive law. The three legal systems may compete with each other to become a legal system accepted by society.

24Based on the Tumbang Anoi meeting, violations of Dayak Common law concerning violations of the Belum Bahadat procedures can be grouped into 2 (two) subgroups, first, violations of hadat in marriage and household; second, is regarding Hasapa and other traditional procedures. Dewan Adat Dayak Kabupaten Pulang Pisau, Hadat 1894, 96 Pasal Hukum Adat Dan Praktinya, 2016.
The problem statements of the research were the issue of Dayak customs inheritance and the essence and value of justice of inheritance itself, among from philological, sociological, and anthropological studies. According to Wahbah al-Zuhailly's opinion, inheritance is everything consisting of inheritance or ownership rights left by someone who dies to their heirs as determined by the Sharia. In further ontology, the essence of inheritance is the final gift of the deceased to the heirs.

The study will raise theories in formulating the basis, concepts, systems, values, facts, and the phenomenon of inheritance customs of Dayak Ngaju, as well as the institutional role and the unity of Dayak Ngaju customs so that the value of justice can bring benefits to every heir. The significant reason for the study is related to seeking local wisdom and customs in the legal system in Indonesia. The cultural values contained in the *huma betang* philosophy also indicate the order and the prohibited referring to the common legal system of the Dayak tribe.

The study and implementation of the resolution of inheritance of the Dayak Ngaju tribe is visible with the family system and customs that exist in the environment, with the consideration that as long as the customary law does not have a negative impact so that the dream of community is safe, peaceful and prosperous, or in other words, the Dayak Ngaju inheritance can be guarantee harmonization within the family with interaction and integration of other laws outside customs.

The Dayak people view *huma betang* as an important means of living their social life, especially the Dayak tribe in Central Kalimantan. For this reason, it needs to identify the benefits of the existence and implementation of *huma betang* so it becomes a reflection in the life of the nation and state. The values of civic civility that are implemented in the existence of *huma betang* are noble values that should be maintained and inherited for future character development from a socio-cultural aspect. In essence, these values do not immediately appear in the Dayak Ngaju people, especially the people and people around *betang*. However, these values grow in the lifestyle, customs, and cultural systems held by the Dayak people themselves. The

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philosophy of *huma betang* is the meaning of culture which is an organized system of norms and values and becomes a guide for society.\(^{28}\)

The principles of peace for the Dayak Ngaju tribe in resolving the inheritance cases are the principles of peace, justice, and harmony.\(^{29}\) The principle of peace contains a view and attitude toward living together in an environment with others to achieve a safe, peaceful, and prosperous atmosphere of living together. Such an atmosphere is called harmony or peace, which becomes new in social life. A principle that emphasizes to attention to how one should act, conduct, and behave in a way that prioritizes ethics and shame. This applies to propriety often also called the principle of appropriateness. In a case, the good judgment determined by legal officers has various degrees according to the case. The principle of harmony is a principle related to people's behavioral patterns which prioritize balance and harmony between the outer world and the inner world so that it can achieve harmony in people's lives.

In resolving inheritance cases in the Dayak Ngaju, the system is guided by consensus deliberation between the heirs, involving the Damang or Mantir custom leaders.\(^{30}\) In terms of resolving customary inheritance disputes, the authority or village customary Mantir must not arbitrarily make decisions according to their wishes but rather take peace after a deliberation is held, which is attended by the heirs, village traditional elders, and village officials. So, the principle for the village custom Mantir is to act as a mediator by carrying out two-way communication until an agreement between the two parties to solve the disputed issue. The two parties were immediately brought together, so the situation did not need to be resolved through formal channels but was simply peaceful. If the case cannot be developed at the village or sub-village level, then the case is brought to the appeal level, namely to the Damang to be going further by the Damang traditional head. Village customary mantir is a specific traditional position or title for someone who understands customs and common law.

The Dayak people's philosophy of life is a reflection of *huma betang* as a mechanism for resolving inheritance towards harmony. This consists of three things. First, *hatamuei lingu nalatai, hapangaja karendem malempang*, means deliberation to


\(^{29}\)Kardinal Tarung, *Interview* (Palangka Raya, 2021)

\(^{30}\)Sabran Ahmad, *Interview* (Palangka Raya, 2020)
unite thoughts. Second, *hapungkal lingu nalatai, habangkalan karendem malempang*, means agreeing to achieve unity so it becomes the vision and mission of the basic things. Third, *hariak lingu nalatai haringkai karendem malempang*, means jointly disseminating the vision, mission, and agreements resulting from deliberations with a full sense of responsibility. The three mechanisms are summarized into the principle of *hapungkal lingu nalatai hapangjan* which means unity in resolving problems by consensus.31

The findings of the research show the fact that there is a meeting point of Dayak Ngaju inheritance among Islamic law, common law, and positive law. Moreover, the Ngaju Dayak traditional heritage is pluralistic in its legal nature, namely Islamic law, custom, and positive law. And, it stands on two feet, namely Islamic and positive law. Dayak Ngaju inheritance law emphasizes that this custom has no normative standards, only empirical or factual facts.

In the construction of Islamic law,32 the logic of Islamic inheritance is that Allah includes laws for the living from the dead. In Islamic law, giving something while are alive, it is called a gift or grant (*hibah*). This means that Dayak Ngaju customs combines positive law and Islamic law.33 The procedure is positive law, but in terms of distribution, Islamic law is at the second level, namely grants. In terms of qualifications, common law can take Islamic and positive law, such as uniting the calculations and uniting the subject of inheritance, but the distribution uses a grant or consensus pattern. Based on these findings, it may be indeed free from the provisions of the Sharia, but these are the good values that the Dayak Ngaju indigenous community has adopted with the spirit of *islah* and *maslahah mursalah*. In short, there is wisdom in thinking in the context of *usul fiqh*.

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32Construction can be defined as the arrangement (model, layout) of a building (bridge, house, etc.). In reality, the word construction is a concept that is quite difficult to understand and agree on. The word construction has various interpretations, cannot be defined singularly, and really depends on the context. Suwandi and Sarwiji, *Semantik Pengantar Kajian Makna* (Yogyakarta: Media Perkasa, 2008).
33Syaiakhu et al., “Legal Harmonization in the Distribution of Inheritance in the Dayak Ngaju Community in Central Kalimantan, Indonesia.”

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Dayak Inheritance Law in the Tombang Anoi Agreement

The inheritance system in the Ngaju Dayak community refers to the Dayak customs of the Tumbang Anoi 1894 agreement, which explains the provisions of Dayak common law that are to be adhered to and are detailed in several articles. The contents of the agreement contain 96 articles of Dayak common law. And, there are only 2 articles of the rules for distribution inheritance according to Dayak customs. First, it found in Article 89: Singer Takian Pulau Bua Helu/Kaleka (Case for usurping inherited fruit gardens). In the explanation, it stated that, for example, A has an fruits garden planted several generations ago, in line with the history of descendants, generally, everyone has inheritance rights to the fruit harvest. Usually, the person who cares or who is closest to him knows the genealogy of his heirs best. But, there is a possibility that he may try to plant new trees around him to deceive or embezzle the inheritance of many people's gardens. It is often for party B to join in to straighten out the truth with party C, to bring different information and ambitions so that a complicated case occurs. Such cases place great demands on the capabilities of traditional Mantir and stakeholders. Careful commission results and extensive testimony are required. The nature and ambitions as well as the background of the litigant, as well as local public opinion, are used as material, insight, and references for advisors and traditional leaders to consider and decide.

Second, it found in Article 91, containing: Takian Bahu Inheritance Case (Case of difference in distribution of inherited land). It was explained that the distribution of inheritance from a husband and wife is usually called joint property of husband and wife with equal rights. In general, if they officially divorce at the will of both of them, unless there are children (divided equally to all children). In general, if parents divide their assets, both the assets inside and outside the house, it is used for tiwah ceremony (two

34Tumbang Anoi is the name of a village in the North Kahayan Hulu Region, Level I Regional Province of Central Kalimantan. It is the first time in history, both before and after. The Tumbang Anoi Agreement resulted from a large peace meeting to pioneer the vibration of the spirit of unity and total renewal covering the political, social, cultural, economic, and security fields, as well as proving that all Kalimantan Dayak people "do not sleep" in the struggle against colonialism. Attended by Dutch Officials, Indigenous Leaders, and delegates from 400 Tribes/Language Styles throughout Kalimantan, including the Dayak Region of North Kalimantan, covering thousands of people gathered under one roof.


36Soehin.
men/wives). A *tiwah* ceremony is a traditional event of the Dayak tribe which is carried out to deliver the bones of deceased people to the *Sandung*. *Sandung* is a place or a small house that is made specifically for those who have died. The *tiwah* ceremony for the Dayak tribe is very sacred. At this *tiwah*, before the bones of the deceased are delivered and placed in their place (*sandung*), there are lots of ritual events, dances, the sound of gongs, and other entertainment. This *tiwah* ceremony requires high funds, so the heirs are obliged to separate the inheritance before distributing it to carry out the traditional ceremony.

They must also consider the old age reserves and death/burial expenses. Inheritance assets must also be prepared for the old age needs of the property owner and reserves for caring for the body of the deceased. Apart from that, his assets are arranged to be distributed equally to all children. After the assets have been set for the main needs, they can be distributed among the heirs equally. These are the general guidelines for inheritance customs for the Dayak Ngaju community in the Tumbang Anoi Agreement. The implementation guidelines study the history of the disputed inheritance, which child is the last owner of the property, the inventory list of the entire property, the funeral, the burial and service of the bones of the deceased, the list of entitled heirs, and who receives it.

The inheritance system, in Dayak Ngaju common law, is the transfer of the property of the parents, both father and mother, to the heir. Therefore, in this system, the inheritance of the Dayak Ngaju community refers to the results of the Tumbang Anoi 1894 Agreement and interviews with traditional stakeholders, using a bilateral principle.

**The Inheritance of the Dayak Ngaju in Central Kalimantan**

The Dayak Ngaju tribe is one of the indigenous tribes in Central Kalimantan. The Dayak tribe is a general term for more than 200 ethnic sub-groups living in rivers and hills, located mainly in central and southern parts of Kalimantan, and each has its dialect, customs, laws, territory, and culture. However, its characteristics are different, and is easy to identify the common distinguishing characteristics. Dayak people refer to the indigenous people on the island of Kalimantan and are the majority tribe there. The

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Dayak tribe is included in the Austronesian group of peoples. And, the Dayak language is categorized as part of the Austronesian languages in Asia.\textsuperscript{38}

Some Dayak Ngaju tribes live in the more densely populated towns of Kuala Kapuas on the Kapuas River, Sampit on the Mentaya River, and Palangka Raya on the Kahayan River, or towns such as Kasongan and Tumbang Samba. Most of them live in relatively isolated villages, with only a few hundred people inhabiting a single settlement. In previous years, the Dayak Ngaju tribal villages were characterized by communal houses, called rumah betang (huma betang/long house). Long houses occupied by dozens of families. Currently, the heritage of betang house can still be found in Tumbang Korik Village. There are only three remaining betang houses and they have been modified by the Central Kalimantan Tourism Office to become a museum and guesthouse for tourists.

There is a variety of local wisdom in the Dayak Ngaju tribal community in Central Kalimantan, which adapts to its functions, such as environmental management, sustainable development, medicine, life philosophy, disaster mitigation and common law. Local wisdom that functions as environmental management and environmental conservation owned by the Dayak Ngaju in Central Kalimantan is, such as tajahan, kaleka, palawan and patahu.\textsuperscript{39}

Moreover, a cultural identity that is reflected in local wisdom, according to Apandie, first, as a reflection of tolerant social life. Second, as the origin of the growing sense of unity and togetherness among the Dayak tribes community after the Tumbang Anoi peace agreement. Third, as a replica of the communal system adopted by the Dayak people. Fourth, contains a cosmological pattern that reflects the balance of values. Fifth, as a reflection of democratic and egalitarian life. Sixth, the concept of Dayak leadership was born through the pattern of life. Seventh, represents the collective principle. Eighth, as an ideal model of a pluralist society system.\textsuperscript{40}

\textsuperscript{38} Florus and Paulus, \textit{Kebudayaan Dayak: Aktualisasi Dan Transformasi} (Jakarta: Gramedia, 1994).


\textsuperscript{40} Apandie and Ar, “Huma Betang: Identitas Moral Kultural Suku Dayak Ngaju Kalimantan Tengah.”

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Inheritance law in the Ngaju Dayak community is an important part. Inheritance according to Ngaju Dayak Ngaju is a distribution of inheritance from a person who dies or is distributed before death. From the family system, the Dayak Ngaju tribe uses a bilateral or parental kinship system, which is a kinship system based on hereditary ties through the father and mother who draw their lineage through the father and mother upwards. The use of a bilateral or parental kinship system influences the inheritance system used by the Dayak Ngaju tribe in Central Kalimantan, namely the individual-mayorat inheritance system, which means the inheritance can be distributed among the heirs.  

The Maqashid Sharia Construction on Inheritance in Dayak Ngaju Customs within the Tumbang Anoi Agreement

Justice is interpreted as a harmonious combination of law and morality. The presence of Islam and its laws does not aim to destroy individual freedom but control freedom for the sake of harmony and peace in society, which consists of individuals themselves. Islamic law has a role in reconciling personal with collective interests, not the other way around. Individuals have the right to develop their rights, with the requirement that they do not disturb the interests of others. Apart from that, Islamic law also regulates individual obligations so the process of actualizing rights does not damage human (individual) obligations within it.  

The position of heirs in Dayak inheritance common law does not recognize methods of distribution by calculation but determines considerations of the objects and needs of the heirs. The common law of inheritance regulates the procedures for people who leave property or give their property (heirs), inherited property (inheritance), and inheritance (heirs), as well as the transfer and succession of inherited property from heirs to heirs. Common inheritance law is one of the legal aspects within the scope of common law issues that include norms that determine assets, including material and immaterial, which from a particular person can be handed over to their descendants and also regulate the method and process of distributing the assets. The Dayak Ngaju


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distribution of inheritance requires heirs to share based on mutual agreement and compliance with customs.

The inheritance system in the Dayak Ngaju indigenous community has its own rules with a regulated distribution concept. The inheritance system in Dayak customs is the transfer of the property of the parents, both father and mother, to the child's heir. In this system, Dayak inheritance is based on Dayak customs as a result of the Tumbang Anoi 1894 Agreement. Dayak Ngaju inheritance law has no privileges for heirs who care for the inheritance until they die or do not get more shares than others, everything is divided and distributed equally. Unless there is an agreement from the other heirs to provide a better inheritance to the heirs.

In general, the inheritance distribution system in Dayak customs is the same. The distribution procedure is distributed equally 1:1, regardless of gender and religion. But, the eldest male child has the rule to regulate the distribution of inheritance. Islamic law does not rule out the possibility of getting an equal distribution as well. In Islamic law, the inheritance refers to QS. An-Nisa verses 11, 12, and 176 that the distribution between men and women is 2:1. This distribution is fair since seen historically or asbab nuzul (from the verse it is revealed) that the man is the head of the household who must provide or support the family, then the share of man is more than women. From the beneficial aspect, the distribution of inheritance in Islam is known as islah, 43 but with the condition that all heirs must know their share in the inheritance. When they agree to be distributed equally, then it is permissible.

The value of justice and moral norms are benchmarks for determining whether human attitudes and actions are right or wrong, seen from the good and bad aspects of humans. In customs (cultural system), there lives a system of norms and morality that must be maintained and guarded. In Dayak customs inheritance, the principles that are always maintained are the principle of harmony, an attitude that always maintains family peace, the principle of obedience, an attitude that always obeys the provisions of Dayak Ngaju customs in actions and behavior, and the principle of harmony, namely the attitude of prioritizing balance and suitability of the parts community to all heirs.

Based on the previous description, it is understood that the settlement of Dayak Ngaju inheritance is in the kinship and customary patterns that exist in their environment, with the consideration that if the customs does not have a negative impact, the dream of community to safe, peaceful, and prosperous, or in other words, inheritance of Dayak Ngaju law can guarantee justice in the family by interacting and combining other laws outside the customs. The articulation to achieve this ideal is to always consider the local needs of indigenous communities in formulating religious laws, without changing the core religious laws. Meanwhile, the substantive teachings of Islam are presented within a framework to provide constructive control. Also, it is against local traditions that practice a hegemonic, unfair life, then localism launches its criticism. Dayak Ngaju culture and customs lead to a concept of life, namely openness, and togetherness in obeying Dayak customs. This is highly respected in every activity of life, both in the family and society. However, all of this applies only to the Ngaju Dayak tribe.

Recognition of religious law and customs in legal development and its implementation is always related to respect for local wisdom. Customary arrangements and customs refer to patterns of social structuring found in various institutional settings and in many locations in community life. In Palangka Raya, there is a special media as a case resolution institution that can support social control in the area. These institutions are traditional institutions commonly used by Dayak people to prevent open conflicts that become known to the public. In general, it is conducted with the principles of peace, propriety, and harmony, where decisions are taken by deliberation and consensus.

Settlement of cases based on local wisdom, as a living law, will remain alive as long as there is a legal culture along with the customs of the community. This is the cause of case resolution based on local wisdom to be open to all events or actions that may occur. The measure is a sense of justice according to the community's legal awareness, following the developments in place, time, and circumstances (village, kala, patra) because it is based on local wisdom which refers to customs.

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44 Abdul Manan, Aspek-Aspek Pengubah Hukum (Jakarta: Prenamedia Group, 2018).

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Embracing the value of togetherness means that humans depend on their community and must prioritize the interests of society over their interests. This is manifested through the activities of cooperation, mutual help, and cooperation in fulfilling the interests of harmonious living together under the principle of hatamuei lingu nalatai hapangkaja karende malempang (wandering one's thoughts and feelings and visiting each other) and the principle of penyang hinje simpei paturung humba tamburak (upholding high cooperation and the value of unity between one another). This principle determines the attitude of society to achieve harmony and peace, including the matters of inheritance. There is the harmonization of customs into the values of applying Islamic law (inheritance and its distribution) followed by mediation to achieve social justice.

The value of justice is when the law can be accepted (acceptance theory).\textsuperscript{46} For example, one person is Muslim and another person is Christian - this is the reality in the Dayak Ngaju tribe- they no longer see differences in religion and gender, but the inheritance is distributed and received by the heirs. This shows justice. So, justice is not merely seen in concept but seen in practice. In Islam, the method of distribution uses faraid, but in Dayak Ngaju uses a consensus/agreement with considerations of social justice referring to the tombang anui agreement which has been maintained and practiced for generations by the Dayak Ngaju community.

Islamic fiqh (jurisprudence) was born in close connection with the interactions and facts of life in the surrounding community. Ulama as formulators adapt the written and implied texts in the propositions to the context existing in society. Thus, it produces various types of fiqh as a form of ulama thought. In this case, it pays attention to and considers the local wisdom, which is related to the life problems who have their customs. It is in line and harmony with the rules of fiqh, established by the ulama, namely: "custom or tradition is taken into consideration in determining a law."\textsuperscript{47}

\textsuperscript{46}According to Hurlock, self-acceptance is a level of an individual's ability and desire to live with all his or her characteristics. Individuals who can accept themselves are defined as individuals who have no problems with themselves, who do not have burdened feelings about themselves so that individuals have more opportunities to adapt to the environment. Good self-acceptance will be able to accept natural characteristics and not criticize things that cannot be changed. E Hurlock, Adolescent Development (Internal Student Edition, 1979).

\textsuperscript{47}Moh Mufid, Kaidah Fikih Ekonomi & Keuangan Kontemporer; Pendekatan Tematis Dan Praktis (Jakarta: Kencana, 2019).
Maqashid Sharia are the basic elements that must be fulfilled and protected by law.\textsuperscript{48} From the mukallaf side, maqashid sharia is intended to realize benefits in this world and the hereafter simultaneously.\textsuperscript{49} The maslahat standard is realized through three basic needs, namely primary needs (daruriyyah), secondary needs (hajiyiyah) and tertiary needs (tahsiniyyah). Then, the scholars divided necessity or inevitabilities. into 5 (five), namely hifż al-dīn (preservation of religion), hifż al-nafs (preservation of life), hifż al-mal (preservation of property), hifż al-‘aql (preservation of reason) and hifż al-nasl (preservation of descendants). Some scholars add hifż al-‘ird (preservation of honor)\textsuperscript{50} to fulfill the five maqashid sharia into six primary goals or inevitabilities.\textsuperscript{51}

Fulfilling these needs is maqashid sharia. Al-Syatibi wrote that the determining factor of maslahah is al-syar‘i (Allah) who makes the laws. However, the value of the maslahah is not final. There is room for dialogue for mukallaf at the level of legal implementation since different spaces and times. The mukallaf will is the benefit (the same as the desire of al-syar‘i), as long as the benefit intended by mukallaf is subject to and obedient to the objectives of the law.

The substance of maqashid sharia is beneficial. The benefits of God’s taklif can be manifested in two forms. First, the essential form, namely direct benefits in the sense of causality. Second, the form of majazi, namely a form that brings prosperity. The objectives of sharia in the frame of the objective of mukallaf is the benefit as its substance, can be realized if the five main elements is realized and maintained. The five main elements are maintaining religion, soul, offspring, reason, and wealth. Realizing and maintaining these five basic elements, Al-Syatibi in al-Muwafaqat fi Usul al-Syari‘ah divides them into three levels. First, daruriyat (primary) needs, namely all things of the basis of the existence of human life must exist for their benefit. In short, the five essential aspects of joints are religion, soul, reason, offspring, and wealth. If these joints are not well maintained, human life will be chaotic. benefits will not be realized, either in this world or in the afterlife.

\begin{thebibliography}{9}
\bibitem{51} Kharoufa, \textit{Philosophy of Islamic Shariah and Its Contribution to the Science of Contemporary Law} (Islamic Research and Training Institute, 2000).
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Second, *hajiyyat* (secondary) needs, namely everything that humans need to eliminate difficulties and reject all obstacles. This means, the absence of the *hajiyyat* aspect does not threaten the existence of human life or being damaged, but only causes difficulties and obstacles. Third, the need for *tahsiniyat*, namely actions or characteristics that are principally related to *al-mukarim al-akhlâq*, as well as the maintenance of main actions in the areas of worship, custom, and muamalah. This means if this aspect is not realized, human life will not be threatened with chaos. If the *daruriyyat* aspect is not realized, it will also not bring trouble, such as not fulfilling the *hajiyyat* aspect.

**Conclusion**

Dayak customs in the Tumbang Anoi 1894 Agreement is written customs as a progressive legal development. Through this agreement, it is hoped that there will be a unification of Dayak customs in Kalimantan as a law legitimization that live in society which have been practiced continuously. The inheritance of Dayak customs in the Tumbang Anoi Agreement is part of the development of Dayak customs in Central Kalimantan, especially the spirit of peace or *islah*. The construction of maqashid sharia follow the mental construction and philosophy of the procedures for distributing inheritance of the Dayak Ngaju customs in the Tumbang Anoi agreement which emphasizes the principle of peace. This agreement adopts a philosophy carried out by the diversity of its people, which highly values peace.

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