



The Existence of Inheritance in Indonesia against Customary Inheritance Law and Islamic Inheritance Law

Agnes Listya Adeline¹, Mella Ismelina Farma Rahayu¹

¹ Universitas Tarumanagara, Jakarta, Indonesia
adelineadhwa@yahoo.co.id

Abstract. In this study, the author describes the implementation of heritage law in Indonesia as 3 (three) legal frameworks that are heavily influenced by it, namely civil heritage law, Islamic heritage law and cultural heritage law. During the colonial period, the colonial government of the Dutch East Indies began to impose Western laws on Europeans and foreigners. Since the beginning of the arrival of Islamic law in Indonesia, it has been controlling the implementation of inheritance laws linked to Indonesian Muslim customs and traditions. For the citizens, a combination of traditional and Islamic law is applied. Inheritance Law in Islam describes the principles of inheritance law based on Islamic law. Currently, the practice of inheritance law in Indonesia is a combination of traditional and Islamic inheritance law. The type of research used is a qualitative research method. It can be seen that under the traditional law of inheritance, a group of people has a strong influence on the kind of friendship of the community itself, and every cultural law of inheritance affects the existence of the family system. Currently, according to Islamic inheritance, it has been determined in the Quran, Prophetic Hadiths and the collection of Islamic Laws regarding Islamic inheritance law.

Keywords: Codification, Cultural Heritage Law, Islamic Heritage Law.

1. Introduction

In their lives the law still requires people to have better living conditions than before. Because the truth is faced and the work of the law becomes important in achieving peace and tranquility in people's lives. There is one thing that cannot be separated from human life, and that is law. Whenever people live together, there must be rules that are respected. No matter how many people or how many people live there, there are still laws that exist. People's souls and minds often think about things that can make their lives more prosperous and peaceful. Therefore, even in ancient societies, humans can create laws based on their instincts to build a peaceful life.

Anwarul Yaqin, says that "law is a system of laws that governs the morals in a given country. A thing is legal if it is established or known as such by law. it is binding and must be done, even if it is a bad law. A law is a set of rules that dictates the rules of conduct in a given country. Something is legal if it is allowed to be established and recognized as such in the legal system. It is associated with this practice, although it may be a bad rule. The Unitary State of the Republic of Indonesia

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is a law based on Pancasila and the Constitution of the Republic of Indonesia of 1945, Aims to realize a fair, orderly, clean and progressive life for the nation, State and society.[1]

The law of inheritance in Indonesia could be gracious as an entirety and could be a small portion of family law. The law of legacy is closely related to the scope of human life since each human being will unquestionably involvement a legitimate occasion, specifically passing. So that it'll cause legitimate results from the occasion of a person's passing, counting the issue of how to proceed with the rights and commitments of an individual who kicks the bucket, and how to resolve the rights and commitments of an individual who passes on due to the passing of an individual controlled in legacy law.

It is impossible to avoid the change of any concept of traditional inheritance law and Islamic inheritance law from the moral, spiritual, and spiritual perspective or nature of the Indonesian people, as shown by the following:

- a. Related to the nature and psychological atmosphere of the Indonesian people, related to the ideas that exist in each faith, and the direction of each concept of religious life, as described in the first principle, "God Almighty"; and
- b. It is connected with the consciousness of the law and the legal thought of the Indonesian people based on the principles of religious law related to the implementation of religion and culture.

Amid the Dutch East Indies Government, legitimate pluralism (lawful differing qualities) took place with the sanctioning of Article 163 IS (Indische Staatsregering) on the classification of the populace and Article 131 IS on the appropriate law, and Article 131 IS on pertinent law. Amid the Dutch colonial period, the populace of Indonesia was separated into 3 populace bunches. The three populace bunches have relationship between customary inheritance law and Islamic inheritance law are among others:[2]

The advancement in each thought of standar customary inheritance law and Islamic inheritance law cannot be maintained a strategic distance from the ethical beliefs, internal, and mental air or nature of the Indonesian individuals as proven by the taking after:

- a. The Nature and mental air of the Indonesian Individuals related to the mental state of mind, that exists in each confidence with the direction of each concept of life in religion as depicted within the begin with the rule "God All Powerfull"; and
- b. Related to Indonesian people's lawful mindfulness and lawful beliefs based on devout law's values related to the usage of religion and traditions.

Customary Law is a non-statutory legal system created by Scnouck Hugronje during the Dutch East Indies colonial period in Indonesia as a customary law and a small part of it is Islamic law. Customary law in Indonesia was discovered by Van Vollenhoven, during the legal politics of the Dutch East Indies colonial period in carrying out the benevolence of the Indonesian devire et impera nation. Even in the

life of the Indonesian people, especially for citizens created for Muslims in the values that regulate the order of life to identify at least the pros and cons in government and the prohibitions that exist in religion and uphold the laws and jurisprudence of Islamic law that have been absorbed as part of positive law.

In Indonesia, legacy is still law full pluralism (assorted). Within the domain of the Unitary State of the Republic of Indonesia, sorts of legacy law frameworks apply, to be specific. Western legacy law contained in *Burgelijk Wetboek (BW)*, Islamic Legacy and standard legacy law. In customary legacy law there's lawful pluralism since in reality standard legacy law is still impacted by 3 (three) connection or family frameworks that exist in Indonesia society, to be specific:

- a. Patrilineal Framework, which draws the male or fatherly line of planguage found in communities in Gayo Too Bad, Batak, Bali, and Irian Jaya;
- b. Matrilineal Framework, which draws the ancestry of ladies or mom found in Minangkabau society; and
- c. Parental or Respective Framework, which draws on the fatherly and Maternal heredities found within the communities of Java, East Sumatra, and Lombok.

Inheritance law has its meaning, namely one of the laws that discuss the stage of changing inheritance property and the rights and obligations of people who have died by being passed on to their descendants. Inheritance or inheritance according to inheritance law is some assets and all rights of the deceased in a clean state. While Islamic Law is a set of rules or sacred laws regulated in the Qur'an, and Hadith, and contains universal legal norms, both vertically and horizontally. Inheritance law in Islam outlines the principles of Islamic law, the only supreme source of which is related to the Qur'an and as a complement in elaborating it is the Sunnah of the Apostle and the results of *ijtihad*, or the efforts of leading Islamic jurists.

If the heir applies Islamic law, then in solving the problem of Islamic inheritance law, it can be known that the applicable inheritance law is Faraid law. Faraid according to linguistic terms is destiny or qadar based on the provisions and shara parts that are qadar or determined by the heirs. Inheritance inherited by the heirs is a number of assets and all rights after deducting the payment of the debts of the testator and other payments caused by the death of the testator Islam.

In this article, the author needs to briefly explain the contradictions in the application of inheritance law in Indonesia between customary law and Islamic law. Reactualization in Islamic teachings is defined as an effort that is encouraged in an objective assessment of the existing state of religion and is considered by Muslims to be unsatisfactory.

The most principle difference between customary inheritance law and Islamic inheritance law are shown in the table below.

No.	Customary Inheritance Law	Islamic Inheritance Law
1	The estate may be indivisible or the division may be postponed for a considerable period or only partially divided.	Each heir can demand the distribution of the inheritance at any time.
2	Allowing the embraced child the correct to	Does not recognize the arrangement of

	support from the bequest of the assenting guardians.	giving to received children
3	Standard legacy law is known as the progression framework	Does not recognize successors to inheritance
4	The division is a joint action, proceeding in harmony in a cordial atmosphere with due regard to the special circumstances of each heir.	According to Islamic inheritance law, the heirs get parts of the inheritance that have been determined.
5	Under customary inheritance law, especially in Java, a daughter in the absence of a son can block the right to inherit from her grandparents, parents, and siblings.	Islamic inheritance law only guarantees daughters a fixed share of what the parents inherit.
6	The inheritance does not constitute a single-unit of the inheritance. Still, rather an obligation that considers the nature, type, origin, and legal status of the goods included in the inheritance.	The Islamic law of inheritance is a unified inheritance law.

Indonesian society adheres to a variety of different religions and beliefs and also has a form and kinship with different descent systems. This descent system has been in place since ancient times before the entry of Hinduism, Islam, Christianity, and Kanghucu. Different kinship or descent systems seem to be very influential in the inheritance system in customary inheritance law.

In the field of common law, common law experts have conducted common law studies to create variations and try to identify areas of customary law. This has been the case since the introduction of Islam until the enactment of Islamic inheritance law in the independence era.

Based on the background that has been explained, the problem is formulated, namely what is the difference between customary inheritance law and Islamic inheritance law and how is the position of Islamic Law in the implementation of inheritance in Indonesia.

This research shows that the enforcement of inheritance law in Indonesia is coloured by a combination of customary law and Islamic law. This is clearly an ambivalent attitude of the Muslim community, which on the other hand wants to apply Islamic inheritance law based on the principles of Islamic inheritance law but on the other hand still follows customary law.

2. Problems

- a. What is the difference between customary inheritance law and Islamic inheritance law?
- b. How is the position of Islamic law and in the implementation of inheritance in Indonesia?

3. Method

The research method that the author uses in this journal is normative legal research. Normative legal research is a process to find a rule of law, legal principles, or legal doctrines to answer the legal problems at hand. Normative juridical research method is legal research conducted by examining library materials or secondary data only.

4. Discussion

4.1. The Difference between Customary Inheritance Law and Islamic Inheritance Law

Inheritance law in customary law is often defined as all the regulations governing the transfer and succession of inheritance or inheritance from one generation to the next, in terms of material and immaterial objects. And to say something, inheritance cannot take place in the event of death. This means that customary inheritance law covers issues and actions regarding the transfer of property while someone is still alive.[3]

Customary inheritance law is a law that contains provisions on the system and principles of inheritance, inherited property, heirs, heirs, and how inherited property is transferred control and ownership from heir to heir. According to Soerojo Wignjodipoero, customary inheritance law includes legal norms that determine the material and immaterial assets of a person that can be passed on to his descendants, and also regulates the time, method, and process of passing on.[4]

Customary law in Indonesian society, can be found in 4 (four) principles of customary inheritance law. This is described as follows:

a. The Principle of Divinity and Self-Control

This means having awareness for the heirs that sustenance in the form of human wealth that can be controlled and owned is a gift and the pleasure of Allah SWT for the existence of wealth. To gain the pleasure of Allah S.W.T, if someone dies and leaves behind inheritance, the heirs are aware of and use His law to divide their inheritance, so that there are no disputes and fighting over each other's assets because disputes between the heirs burden the journey of the heir's soul to face Allah S.W.T. So dividing or not dividing inherited assets is not the goal, but what is more important is maintaining harmony between the heirs and all their descendants.

b. Principles of Justice

Namely carrying a child within the family which can be emphasized on the justice system, this will encourage the creation of harmony in the family which will reduce the chances of damage to the family relationship.

c. Principles of Harmony and Kinship

Namely, the heirs maintain peaceful and peaceful kinship relations, both in enjoying and utilizing undivided inherited assets and in completing the distribution of divided inherited assets.

d. Principles of Deliberation and Consensus

That is, the heirs can maintain peaceful and peaceful kinship relations, both to enjoy and utilize undivided inherited assets and to solve problems in the distribution of divided inherited assets.

The Nature of Customary Inheritance Law in Customary inheritance law has a distinctive style from traditional Indonesian thought. Therefore, customary inheritance law is based on principles that arise from the communal and concrete schools of thought of the Indonesian people.

- a. The heir is a person or subject who has inherited property, inherited property, or inherited property that is continued by its control or ownership in an undivided or divided state.

There are three elements in customary inheritance law, namely:

- 1) The heir is a person or subject who has inherited property, inherited property, or inherited property that will be continued by its control or ownership in an undivided or divided state.
- 2) Heirs are people who are entitled to receive a share in the inheritance property and are close family members of the testator. This is inseparable from the influence of the kinship structure that exists in indigenous peoples.
- 3) Inherited property is a property that will be passed on by the testator to be controlled or owned by the heirs based on the kinship and inheritance system that applies in the indigenous community concerned.

There is a comparison between customary law and Islamic inheritance law, and the main differences are found, among others, that customary inheritance law is very close to the family characteristics of the legal community concerned and its influence on the property left behind and in this community. Other than that, customary inheritance law is also influenced not only by social changes, for example, due to the strengthening of the family relationship "SOMAH" and the weakening of CLAN and KERABAT ties but also by similar foreign legal regulations which religious judges always apply "in concreto", although the influence is very small.

In Indonesia, there are three types of inheritance systems in the customary law, which are as follows:[5]

- 1) The characteristic is that the estate can be divided among the heirs, as is the case in Bilateral Societies (Java, Batak, Sulawesi, and others).

- 2) **Collective Inheritance System** The characteristic is that the property is inherited by a group of heirs who together form a kind of legal entity, where the property as Harta Pusaka cannot be divided among the heirs and can only be distributed to them (only have the right to use) as in the Matrilineal Society (Minangkabau).
- 3) **Majorate Inheritance System** Another feature of majorate inheritance is that the estate is inherited in its entirety or most of it (the sum of the main assets of a family) by a single child, as in Bali, where there is a majorate right of the eldest son, and in Tanah Samendo (South Sumatra/Lampung), where there is a majorate right of the eldest daughter. These three systems of inheritance do not each directly point to a particular form of society in which the system of inheritance applies because a system can also be found in various forms of society or in a form of society where more than one system of inheritance can be found.

In contrast to other inheritance systems, customary inheritance law has its characteristics, namely not recognizing the existence of a specified division. Everything is returned to the principles of consensus, feasibility, appropriateness, and the needs of each heir. That consensus is the basis for the law of customary inheritance division.

b. Classes of Heirs in Customary Inheritance Law

Given that Indonesian society has many different cultures and customs, various customary inheritance laws are used by Indonesian society. Broadly speaking, customary law can be grouped into three groups based on the kinship system, which are as follows:

- 1) **Patrilineal system**, which is a line drawn from the father's side. The position of male heirs is more prominent than female heirs. This kinship system is used in the customary inheritance laws of Lampung, Nias, and East Nusa Tenggara.
- 2) **Matrilineal system**, which is a line drawn from the mother's side. The position of the female heir is more prominent than the male. In the matrilineal inheritance system, apart from being related to the kinship system, it is also always related to the legal form of marriage. The matrilineal inheritance system is used in the inheritance law of the Minangkabau region.
- 3) **Parental or Bilateral System**, namely the line drawn from both sides of the mother and father. The position of male and female heirs is the same. This kinship system is used in the customary inheritance laws of East Java, West Java and Jakarta, which can be seen from several aspects, namely:
 - a) In terms of gender, it can be divided into two groups, the first is the male group and the second is the female group.
 - b) In terms of the relationship between the testator and the heirs, namely the group of heirs due to marital ties are husband and wife, as well as

kinship due to blood relations, including the group of descendants of the testator such as children, grandchildren of the testator, great-grandchildren of the testator, and so on down. The group originating from the testator, namely the parents of the testator, such as the father and mother of the testator, the grandfather and grandmother of the testator, as well as the testator's brothers and sisters both male and female onwards to their children and grandchildren, the testator's uwak to their children and grandchildren.

c. Islamic Inheritance Law

Islamic inheritance law is an important expression of Islamic family law. It is half of the knowledge possessed by human beings as affirmed by Prophet Muhammad SAW. The study and research of Islamic inheritance law means the study and research of half of the knowledge possessed by human beings who have been and are living amid Muslim societies from the early days of Islam to the medieval times, modern and contemporary times, and in the future.[6]

In Islam, law is seen as part of the teachings of religion, and legal norms are derived from religion. Muslims believe that Islamic law is based on divine revelation. Islamic law is based on divine revelation. Hence, it is called Sharia, which means the path that God has outlined for mankind, outlined by God for human beings. Islamic Sharia preserves and safeguards moral values. To this end, there are many provisions in the Shariah to preserve and protect each moral value moral values.

Legal Basis of Inheritance in Islamic law determines the rules of inheritance in a very organized and fair form, in which the right of ownership of property is determined for every human being, both men and women in a legal way. And establish the right to transfer ownership of a person after death to his heirs, and all relatives of his lineage, without discriminating between men and women of size.

Sources of Islamic law that can be used as a legal basis for determining and resolving legal issues are:

- a. Al-Qur'an, which means reading. The meaning of the Qur'an is the word of Allah SWT and also as a miracle related to Rasullah revealed by the angel Gabriel. When the Qur'an was revealed about thirteen and a half centuries ago, it was revealed for all human beings around the world forever. The Qur'an was revealed to provide solutions for Muslims to get out of the condition of problems by looking at a better life calmly, guiding them to the right path.
- b. As-Sunnah. If there is no legal basis in the Qur'an or if there is no legal basis, it will be applied on the basis of sunnah and if as sunnah. The first source is "Nagliy" and the second is "Aqily". In the hadith of Ahmad An Nasay and Ad Darktuni facing the Prophet Muhammad S.A.W who said "Learn the Qur'an and educate the Muslims to learn the science of faith and educate the people". Because I will pass away while knowledge must be spread".
- c. Ijma and Ijtihad of the Scholars

Ijma and Ijtihad of the companions, scholars of the mazhab, and famous mujtahids who have played no small role in contributing solutions to problems in living people's lives that have not been explained by nash or sharia or trusted scholars.

Heritage Pillars, the relationship with the pillars of inheritance can be found in three things, as follows:

- a. The heir (al-muwarriḥ) is the person who inherits and who dies. Either leaving the world essentially or because of the judge's decision, someone is declared dead based on the cause.
- b. The heir (al-warith) is the person who will inherit who has a relationship with al-muwarriḥ, whether the relationship is due to kinship or lineage or through marriage.
- c. Inheritance assets (al-mauruḥ) are assets left by the heir or the deceased which will be inherited or transferred after deducting maintenance costs, debt payments, zakat and after being used to carry out the will. Assets or rights transferred to the heirs of the person inheriting.

Principles of Inheritance Law, the principle of inheritance is the granting of property rights to heirs by transferring ownership of the property to the recipient by paying attention to the amount of inherited property and the time of transfer. These principles include the following:

a. Ijbari principle

Azas Ijbari is the voluntary transfer of property from the deceased to the deceased to the heirs, if it violates the law of inheritance then there will be lawsuits against the heirs, the heirs cannot refuse to transfer the heirs when the deceased leaves the property will automatically be transferred to the heirs.

b. Bilateral Principle

In the bilateral principle a person who is entitled to inheritance from male relatives and female relatives.

c. Principle due to death

Islamic inheritance law assets can only be transferred after death, in other words, a person cannot be transferred unless he dies. If the heir is still alive then the property cannot be used as inheritance but is called a will. named by the will.

d. Individual Principle

Individual principle is that each heir is entitled to receive separately the part he receives individually without being bound by other heirs. Therefore, the part received personally by the heir is entitled to receive the entire property.

e. The Principle of Balanced Justice

The aim is to balance rights and obligations as well as honesty and practicality. Gender is not a guarantee of inheritance.

Characteristics of Islamic Inheritance Law in Islamic inheritance law has several characteristics, namely: Islamic law is universal, meaning that it applies to all Muslims throughout the world, very fair, very wise and dignified, Islamic law is the creation of Allah SWT, in accordance with the state of society.

4.2 The Position of Islamic Law and In the Implementation of Inheritance in Indonesia

The word "Muslim" in this case certainly confirms that other than Muslims, heirs cannot be heirs to a Muslim heir. Islam cannot be the heir to a Muslim heir. That way is very clearly stated the importance of religion in the division of inheritance. But however, there are still many Muslims who are apathetic about using the provisions of Islamic inheritance in the distribution of inheritance.

Legacy law is the law of exchanging possession right of legacy to beneficiaries. Beginning from deciding who are entitled to gotten to be beneficiaries, how much each portion is within the execution of the legacy. In addition, Islam also regulates the rights that must be fulfilled before the distribution of inheritance before the distribution of inheritance.

This means that the law originates from the religion that applies in Indonesia which can be implemented independently by its adherents according to the beliefs of the adherents of their respective religions, such as in the field of worship. Every citizen has rights that must be recognized by the state and must be respected and protected. (protected), and facilitated (facilitated), and fulfilled (fulfilled), by the State. [7]

The Compilation of Islamic Law was established in its implementation through the Compilation of Islamic Law or KHI in 1991. The Position of Islamic Inheritance Law in Indonesia - Islamic inheritance law in Indonesia refers to the provisions in the Compilation of Islamic Law (KHI), starting from article 171, it regulates the meaning of heirs, inheritance and heirs. The Compilation of Islamic Law is considered as evidence of the great work of Indonesian Muslims. The existence of a Compilation of Islamic Law reflects a high level of integration between Islamic, Indonesian and modern visions. Substantially, the formulation of the Compilation of Islamic Law is carried out referring to applicable laws and regulations.[8]

In the hadith of the Prophet narrated by Ibn Majah and Addaraquthni, the law of inheritance is an important provision in such an important position of Islamic inheritance law, namely "*Study faraidh and teach it to many people, because I am a human being who one day when I die, there will be no knowledge will be lost. Almost 2 (two) people who dispute in inheritance and give the problems that will be encountered and tell the settlement*".

The legal basis for Islamic inheritance is regulated in the Al-Quran, Surah An Nisaa, verse 7, which reads: "*For men there is a right to share in the inheritance of their mother and father and their relatives, and for women there is also a right to*

share in the property inherited from their mother and father and their relatives, whether small or large. many according to the parts that have been determined”.

At least with the Compilation of Islamic Law (KHI), currently in Indonesia will no longer find pluralism of Religious court decisions because the book used as a reference for Religious Court Judges is the same. In addition, fiqh which has not been positive, has been transformed into a positive law that applies and binds all Indonesian Muslims. Applicable and binding on all Indonesian Muslims. Related to the existence of KHI until now remains a guideline for Judges in Religious Courts in answering Islamic Law issues answering the problems of Islamic Law.

Based on the compilation of Islamic law explains about three types of heirs:
[10]

- a. The first type of heir from a male descendant of the father, son or relatives who have a male gender or grandfather and from a female descendant of the mother female descendants of the mother's children or relatives who have the sex of women and grandmothers.
- b. The second type of heir is the marital relationship of a widower, widower wife or grandmother widower, widow wife, or husband.
- c. The third type of heir is the existence of a kinship relationship by the testator but does not have a blood relationship, and by marital relations which consists of nephews from sisters, grandchildren from sister, nephew of a brother, aunt of a sister in law or a brother in law. aunt of a sister or a mother, uncle of a sister or a mother, sister, aunt of a sister-in-law or sister-in-mother, uncle of a sister-in-law or sister-in-mother.

In Islamic law Yusif Musa quoted by Amir Syarifuddin in his book *Introducing the Implementation of Islamic Inheritance Law in the Minangkabau Customary Environment* this immaterial wealth divides the law into several forms, namely:[11]

- a. Property rights that do not have a physical form but are considered property rights, because of their strong relationship with property rights, such as the right to pass on public roads or irrigation;
- b. Material rights concerning the person of the heir, such as the right to revoke the gift to others;
- c. Immaterial rights, but related to the person of the testator, such as the right of khimar (choice between continuing or canceling the contract);
- d. Non-physical personal rights, such as the right of the mother to breastfeed the child.

5. Conclusion

After examining the description of the problems mentioned above, it can be concluded that in the implementation of the Law of Inheritance in Indonesia, Islamic

Law becomes and is given a guarantee in the subjection of the law. In the Implementation of Inheritance, the submission of Law to Religious Law in this case Islamic Law becomes the main foundation and is enshrined in the Compilation of Islamic Law which is attributed to the main source, namely The Compilation of Islamic Law is attributed to the main sources, Qur'an and As-Sunnah (Hadith). This guideline immediately and applies by basing every action is an act of worship, and because it is worth worship, it will be attached to sin and reward. Based on based on this sin or reward, the Implementation of Inheritance must refer to Islamic Law derived from the Quran and derived from the Quran and the Sunnah. The two implementations of inheritance law are difficult to separate in social life and it is considered that there is no conflict between traditional inheritance law and Islamic inheritance law in the application of inheritance law.

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