

The Principle Of Inheritance Distribution In Javanese Civil And Customary Law

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ABSTRACT

The division of inheritance is an important process that has significant social, economic and cultural impacts. This research aims to conduct a comparative study between the division of inheritance in civil law and Javanese customary law. The focus of this research is to analyze the similarities, differences, and implications of the two legal systems in the context of inheritance division. This research uses a normative juridical research method. In this research, the author refers to the applicable legal aspects to analyze the division of inheritance in civil law and Javanese customary law. The results of this study reveal fundamental differences in the views and practices of inheritance distribution between formal civil law and Javanese customary law which tends to be more traditional and local. Differences include the administrative process, the types of assets that can be inherited, and the role of the family in the division process. This study has the potential to provide a deeper understanding of the interaction between civil law and customary law in the context of inheritance distribution in Java, and identify ways in which these two legal systems can co-exist or integrate more effectively

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Introduction

Inheritance is all the inheritance of the testator in the form of rights and obligations or all property left by a person who has died after deducting all his debts. The form of inheritance can be movable objects such as vehicles, gold, precious metals, and livestock or immovable objects such as land, houses, and farms. Inheritance itself is regulated in inheritance law, in general Inheritance law is a law that regulates things that happen to the property of someone who has died. In other words, it regulates the transfer of property left by a deceased person and the consequences for heirs (Nurmala & Koni, 2022).

Inheritance law in Indonesia is still pluralistic, because Indonesia does not yet have a national inheritance law that applies nationally. There is no specific law governing inheritance. There is no specific law regulating inheritance, so in Indonesia there are still three inheritance law systems, namely in the Civil Code, Islamic Law and Customary

Law (Kusmayanti & Krisnayanti, 2019). Inheritance law pluralism is an undeniable legal reality, various factors that cause inheritance law pluralism include historical, cultural, economic and political factors (Priyanti, 2019).

Customary law of inheritance is customary law that outlines the provisions of the system and principles of inheritance law, regarding inheritance property, heirs and heirs, as well as the way in which the inheritance is transferred control and ownership from heir to heir. Customary inheritance law is actually the law of passing on wealth from one generation to its descendants (Hadikusuma, 2003). Customary law of inheritance can be said to be one of the legal aspects in the scope of customary law issues including norms that determine both material and immaterial property, which from a certain person can be handed over to his descendants and which at the same time regulates the way, and process of transition from the property in question (Setiady, 2008).

Customary inheritance law in Indonesia is very diverse, seeing the many tribes that exist. The process of dividing tribal inheritance from one tribe to another tribe is certainly different and has its own characteristics and rules. In Javanese indigenous communities, for example, heirs divide inheritance by appointing heirs to inherit their property at the will of the heirs, sometimes distributed equally or not to the heirs and each heir has their own share determined by the heir. In fact, this method of distribution is often done before the heir dies to his heirs (Triyono, 2021).

The division of inheritance is an important legal aspect in people's lives, both in the context of Javanese customary law and civil law. These two legal systems have different approaches in this regard, reflecting different cultures, traditions, and values. While Javanese customary law tends to consider social norms and cultural values in the division of inheritance, civil law puts forward the principle of equality and legal certainty. However, the reality is that in everyday life, many families in Indonesia combine elements of these two systems in the division of their heritage. Keep in mind that in most cases the Javanese customary law system still applies in parallel with civil law in Indonesia. Therefore, the process of division of inheritance can be a combination of principles applied in both legal systems, depending on the context and preferences of the family concerned (Muzakir, 2022).

The results of this study are expected to provide a better view of how inheritance distribution takes place in Javanese society, as well as its legal consequences. In addition, this research can also be the basis for further thinking on harmonization between civil law and customary law in the context of inheritance

Research Methods

This research uses a normative juridical research method. Normative Juridical is an approach to legal research based on the analysis of applicable legal norms. This research was conducted by examining various legal sources such as laws, laws and regulations, court decisions, legal doctrines, customary law, and other legal literature. The analysis carried out includes the study of legal principles, legal rules, and legal doctrines and principles that apply in the matter under study. In this study, the author refers to the applicable legal aspects to analyze the division of inheritance in Javanese civil law and customary law. This research uses a normative juridical research method. Normative Juridical is an approach to legal research based on the analysis of applicable legal norms. This research was conducted by examining various legal sources such as laws, laws and regulations, court decisions, legal doctrines, customary law, and other legal literature. The analysis carried out includes the study of legal principles, legal rules, and legal doctrines

and principles that apply in the matter under study. In this study, the author refers to the applicable legal aspects to analyze the division of inheritance in Javanese civil law and customary law.

Results and Discussions

Implementation and Relevance of Javanese Civil Law and Customary Law in the Context of Inheritance in Various Aspects of Development

1. Social Development

The relationship between law and social change is very close, because the law always follows the social changes that exist in the legal society. Thus the formation of law is always influenced by social changes. Inheritance law in Indonesia consists of two types, namely civil inheritance law and customary inheritance law. Civil inheritance law is regulated in the Civil Code (KUHPerdata) and applies generally throughout Indonesia. Meanwhile, customary inheritance law is regulated by indigenous peoples and applies only in certain regions, such as Java.

In the context of inheritance, Javanese civil law and customary law have different relevance. Civil law regulates inheritance rights in general, while Javanese customary law regulates inheritance rights specifically in Javanese society (Sabiila, 2022). In its implementation, Javanese civil law and customary law often contradict each other. This is due to differences in views between the two laws in determining who is entitled to receive inheritance.

In Javanese customary inheritance law, all children get the right to inherit with equal distribution. However, there are also those who adhere to the principle of *sepikol* (*sepi kolong* (Central Java), meaning that sons get two parts and girls get one share, almost the same as the distribution of inheritance to children in Islamic Law.

Hukum waris adat memuat tiga unsur pokok, yaitu:

1. Regarding the subject of inheritance law, that is, who is the heir and who is the heir.
2. Regarding when an inheritance is transferred and how it is done in the transfer of the estate. As well as how the share of each heir.
3. Regarding the object of inheritance law itself, which is about what property is called inheritance property, and whether these properties can all be inherited.

The system in indigenous peoples of Indonesia can theoretically be divided into three types, namely the patrilineal system, the matrilineal system, and the parental or bilateral system. In Javanese society, the distribution of inheritance is usually done by an individual system, where each heir can control or own inheritance according to his or her own share.

In the Yogyakarta Palace itself, the Law of Inheritance follows the Islamic Law of Inheritance, with the distribution of inheritance carried out in a ratio of one to half for sons and daughters in the Yogyakarta Sultanate (Fatmasari, 2015). This division of inheritance has become a palace custom because the Yogyakarta Sultanate was built with the construction of thoughts and the basics of Islamic teachings so that Islamic teachings have become the customs of the Yogyakarta Sultanate from the beginning to the tenth sultan.

If there is a dispute in the issue of inheritance, the way to resolve it according to the customary inheritance law of the Yogyakarta palace is through deliberation by the heirs by holding a family meeting and presenting the head of the palace to provide an explanation of the division of inheritance according to Islamic inheritance law. Furthermore, the heirs carry out family *rembug* to conduct deliberation, which is in the

form of final negotiations in making decisions about solving problems that occur in the division of inheritance.

The inheritance law in Keraton Kasunanan Surakarta follows Javanese custom, with the distribution of inheritance carried out by *ninik mamak* from the heirs. First of all, high inheritance, low inheritance (sound property/livelihood property) must be separated from the property of the husband and wife, after that the division of this inheritance can be distributed to his heirs

If there is a dispute in the issue of inheritance, the way to resolve it according to the customary inheritance law of the Solo palace is through deliberation by the heirs by holding a family meeting and presenting the head of the palace to provide an explanation of the division of inheritance according to Javanese customary inheritance law. Furthermore, the heirs carry out family *rembug* to conduct deliberation, which is in the form of final negotiations in making decisions about solving problems that occur in the distribution of inheritance.

1. Economic Development

The relevance and implementation of Javanese civil law and customary law in the context of inheritance is also influenced by current economic developments. Civil inheritance law is a part of civil law that regulates the transfer of rights and obligations of a person after death. The implementation and relevance of civil inheritance law in terms of economic development is very important to create legal certainty in economic activity. In economic development, civil inheritance law plays a role in protecting the rights of heirs and providing legal certainty in the transfer of assets and liabilities.

In the context of current economic development, Javanese civil law and customary law have important relevance and implementation in the context of inheritance. Civil law is used to regulate relationships between individuals in protecting the interests of people who feel aggrieved. In Indonesia, civil law is regulated in the Civil Code (KUHPerdata) which is closely related to civil law in Europe (Edison et al., 2023). Meanwhile, Javanese customary law is used in the distribution of inheritance in Javanese society. In the division of inheritance, Javanese usually use an individual system, where each heir can control or own the inheritance according to their respective shares.

In addition, Javanese customary inheritance law also adheres to bilateral principles. The bilateral principle is one of the principles of customary law in force in Indonesia. According to Bushar Muhammad, bilateral principles are principles that regulate relations between two groups of people who have kinship relations, both on the father's and mother's sides. This principle emphasizes that kinship is not only limited to one party, but also takes into account the kinship relations of the other party. In bilateral kinship systems, the child also connects with his father's and mother's relatives bilaterally.

1. Cultural Development

The current culture influences the implementation and relevance of Javanese civil law and customary law in terms of inheritance. Customary law is the embodiment of the idea of culture consisting of cultural values, norms, laws, and rules that are interrelated with each other so as to form a system with clear and very strong sanctions¹. Javanese customary law is one of the customary laws in Indonesia.

Javanese customary law governs many matters, including the division of inheritance. Although there are differences between customary and customary law, the community still upholds all the rules in the customary law. However, in essence, customary law cannot be applied positively in all regions in Indonesia, because each

region has different customs. In general, customary law in Indonesia is customary law in the form of unwritten law (Basuni & Hanifah, 2021).

In the modern era like today, there are still many Javanese people who uphold and trust Javanese customary law for every activity carried out. Civil law is part of Indonesia's national legal system that governs relationships between individuals or legal entities in society.

The Principle of Inheritance Distribution in Javanese Civil and Customary Law

Inheritance refers to wealth owned by someone who has died, including both those that have been arranged for division and those that have not yet been divided (Poespasari, 2018). The following are the opinions of experts regarding customary inheritance law, namely:

1. Ter Haar explained that customary law of inheritance includes legal rules that are concerned with a very impressive and ongoing process of passing and passing material and immaterial wealth from one generation to the next (Ter Haar, 1999).
2. In the book Chapters on Customary Law, Soepomo explained, customary law of inheritance contains regulations that regulate the process of passing on and passing property and intangible goods (*immateriele goederen*) from a human generation to its descendants .
3. According to Soerojo Wignjodipoero, customary law of inheritance includes legal norms that determine both material and immaterial property of a person that can be handed over to his descendants and which at the same time regulates the time, method, and process of transition.
4. Wirjono Projodikoro argues that customary inheritance law regulates the position of a person's property after he dies, and the ways in which the property is transferred to others.

In Indonesia itself there are known to be three types of inheritance systems, including:

1. Sistem Pewarisan Individual

The individual inheritance system is a system in which each heir gets a share of the inheritance according to their portion. After the division of inheritance is completed, each heir has the right to master, own, or manage their share of the inheritance, and they can choose to use it, enjoy it, or sell it to the other party.

The system of individual inheritance is applied in communities with parental or bilateral kinship systems, where men and women are equal. Examples of the application of this system can be found in Batak indigenous peoples who follow *manjae customs* (similar to *mentas* and *menscatter* in Javanese culture), and also in indigenous communities strongly influenced by Islamic law such as Aceh, Lampung, and Kalimantan.

The main feature of this inheritance system is that the inheritance property is partitioned between the heirs, and the ownership will be divided according to the provisions of the Civil Code and Islamic Law. This system applies especially in the context of communities that carry out customary law traditions, such as Batak families with patrilineal kinship systems and Javanese families with parental or bilateral kinship systems.

The advantage of this individual inheritance system is that after the inheritance is distributed to each individual heir, they have absolute freedom in managing and owning their share of the inheritance according to their respective shares. Heirs also have the ability to sell their share of the inheritance to other parties according to the personal or

family needs they support. For families that have reached a certain level of development, where kinship ties have shrunk, and family members have spread to far-flung locations, especially if there are mixed marriages, this individual system has a significant impact.

Lacking the individual inheritance system, inheritance becomes divided and kinship relations are stretched. This can produce an urge to own possessions privately and increase selfishness. This system of individual inheritance is applied in indigenous cultures in Lampung, Java, Kalimantan, and Aceh.

1. Collective Inheritance System

The collective inheritance system refers to the process of transferring inheritance from heirs to heirs as a unit that is not separate in ownership. Therefore, heirs have the right to manage, utilize, or use the estate. The way in which the estate is used for the individual needs of each heir is arranged jointly through a process of deliberation and agreement involving all family members who have rights to the estate, with the guidance of their relatives.

In the collective inheritance system as found in Minangkabau society, property is managed jointly by all members of the clan. All members of the clan also became joint heirs. Therefore, when a person dies in a race, it does not cause a big problem. The property remained in the house of the people who were shared by all members of the people. In Minangkabau, this collective system applies especially to heritage land that is jointly managed under the leadership of *mamak* (head of inheritance), where family members only have the right of use.

A characteristic of this system of collective inheritance is that inheritance is passed down and managed by a group of heirs as an undivided whole, so they function like a family or relative legal entity. This type of heritage is called *harta pusaka* in Minangkabau and *harta menyanak* in Lampung.

The benefits of this system of collective inheritance are still evident when wealth is used to meet the needs of the extended family, both now and in the future. This system still encourages cooperation between family members under the guidance of the responsible head of the family. In this way, families can maintain, care for, and develop their wealth in a sustainable manner.

The downside of a collective inheritance system is that it can result in a mindset that is less pliable and less receptive to outside influence. Therefore, there is not always a reliable leader among family members, and their activities may have restrictions. As a result, loyalty to the family may decrease. This collective inheritance system applies in indigenous cultures in Minangkabau, Lampung, Minahasa, and Ambon (*tanah dati*).

1. Mayorate Inheritance System

The majority inheritance system, in essence, belongs to the category of collective inheritance systems. What distinguishes it is that this undivided property is transferred to the eldest child (according to the male majority or female majority system). This eldest child has the responsibility of being the leader of the household or the head of the family, replacing the role of parents (both father and mother) as the head of the family.

There are two types of majority systems according to differences from the hereditary system adopted, namely:

1. Majorat male, prevailing within the indigenous people of Lampung and Balinese society;
2. Majorat women, this applies in the indigenous community of Semendo South Sumatra.

A feature of the mayorate inheritance system is that the parents' estate (or the high inheritance of a relative's ancestors) remains intact and is not distributed among all heirs. Instead, these properties are managed by firstborn sons (in the male majorate) in Balinese and Lampung cultures, or managed by the firstborn girls (in the female majorate) in the Semendo matrilineal communities in South Sumatra and Lampung.

The advantages and disadvantages of this majorate inheritance system depend on the role of the eldest son who replaces the deceased parent to take care of the property and use it for the benefit of all family members. The eldest child must have full responsibility and the ability to maintain peace in the family until all heirs reach maturity and are able to run a household on their own. However, if the eldest child is irresponsible and cannot control himself in managing the parents' estate (known as a spender), then another family member can take over the management of the property.

The provisions of Article 832 of the Civil Code specify that, heirs are members of the legal and extramarital blood family and husbands and wives who live outside marriage and husbands and wives who live the longest. Then in Article 833 of the Civil Code it is said that all heirs by themselves because of the law acquire property rights to all goods, all rights and all receivables who died (Soesilo, 2007).

An heir may choose to reject an inheritance granted to him, in which case the denial process is calculated from the death of the testator, which is retroactive (in accordance with the provisions of Article 1047), and will then result in the forfeiture of the obligatory share of the inheritance (*Legitieme Portie*) that he should have received. By rejecting the inheritance, an heir effectively waives his responsibility as heir and will not receive a share of the estate. The division of the absolute part (*Legitieme Portie*) is as follows: according to Article 914 of the Civil Code: (1) If only one child, the absolute share is 1/2 (half) of the share he should receive, (2) If two children, the absolute share is 2/3 (two-thirds) of what should be inherited by each, (3) Three or more children, the absolute share of each child is 3/4 (three-quarters) of the supposed share Each of them received according to law (Kurniawan & Basri, 2020).

There are elements that must be met in inheritance law:

1. **Heir:** Refers to a deceased individual, both male and female, who has relinquished a portion of the estate, including rights and obligations, to be exercised during his or her lifetime. This can be done through a will (*testament*) or without a will;
2. **Heir:** The individual who takes over the position of the deceased person and is the person entitled to the estate;
 - a. **Inheritance:** All property, both rights and obligations of heirs in the context of inheritance law. Its value is measured in proportion to the value of money and is part of inheritance in the European inheritance law system or based on civil law derived from BW (*Burgerlijk Wetboek*).

The division of inheritance in Javanese customs and in civil law has significant differences. In Javanese custom, all children get the right to inherit with equal distribution. However, there are also those who adhere to the principle of sepikul segendongan (Central Java), where sons get two parts and girls get one share, almost the same as the distribution of inheritance to children in Islamic Law. The division of inheritance in civil law is based on the principle of proportionality, where each heir will get a share proportional to the amount of inheritance rights he has

Conclusion

The division of inheritance in Javanese customs and in civil law has significant differences. In Javanese custom, all children get the right to inherit with equal distribution. However, there are also those who adhere to the principle of *sepikul segendongan* (Central Java), where sons get two parts and girls get one share, almost the same as the distribution of inheritance to children in Islamic Law. The division of inheritance in civil law is based on the principle of proportionality, where each heir will get a share proportional to the amount of inheritance rights he has.

The relationship between law and social change is very close, because the law always follows the social changes that exist in the legal society. Thus the formation of law is always influenced by social changes. In the context of current economic development, Javanese civil law and customary law have important relevance and implementation in the context of inheritance. Civil law is used to regulate relationships between individuals in protecting the interests of people who feel aggrieved. In Indonesia, civil law is regulated in the Civil Code (KUHPercivil) which is closely related to civil law in Europe. Meanwhile, Javanese customary law is used in the distribution of inheritance in Javanese society. In the division of inheritance, Javanese usually use an individual system, where each heir can control or own the inheritance according to their respective shares.

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