

Comparison of Concepts of Islamic and Traditional Instructions in Indonesia

Mursid¹, Moh. Muhibbin², Suratman³

^{1,2,3} Faculty of Law, Universitas Islam Malang, Indonesia
muhammadmursyidrh@gmail.com

Abstract

Inheritance law is closely related to the scope of human life, because all humans in particular will definitely experience death. There are various conceptions of inheritance used in Indonesia, including the conception of Islamic inheritance and the conception of customary inheritance. This study aims to compare the conception of Islamic and customary inheritance and their application in Indonesia. The type of research used is normative juridical with the Statute Approach and Conceptual Approach and the sources of legal materials used are primary, secondary, and tertiary laws. Next, collect legal materials for descriptive analysis. Based on the research that has been done, it is found that the comparison of the conception of Islamic and customary inheritance has similarities and differences in principle. The similarities between the conceptions of Islamic and customary inheritance, one of which explains the transfer of property, but the difference is that in Islamic inheritance the heir must die but in customary inheritance it is not required to die. The application of Islamic inheritance in Indonesia consists of a pluralism of teachings, for example the ahlu sunnah wal jamaa'h inheritance system (Shafi'i, Hanafi, Hambali and Maliki schools) and the most dominant is the Shafi'i school of thought. For the application of customary inheritance in Indonesia, it is influenced by the principle of lineage which is influenced by the form of ethnicity in the customary law environment.

Keywords

comparison; conception of inheritance; islamic law; customary law.



I. Introduction

In people's lives there are often legal problems related to inheritance, namely, the distribution of inheritance which is often unable to satisfy several parties, causing disputes, divisions and disputes in a family. In Islamic law, the science of inheritance is known as *fiqh Mawaris* (science of *faraidh*).

The concept of Islamic inheritance has been regulated in such a way by Islamic law. The rules spread in the Qur'an, Hadith, classic books of the Salaf scholars were then used as the basis for the formation of the Compilation of Islamic Law. *Furudlul muqoddaroh* (determined part) or in terms of the Civil Code Legitime Portie is given to heirs who are not included in *dzawil arham* and there are no other heirs that prevent it. However, in Indonesia there are some customs that have their own inheritance distribution system, known as customary inheritance law.

Customary inheritance law is customary law that contains provisions regarding the system and principles of inheritance law, regarding inheritance, heirs and heirs, as well as how the inheritance is transferred from the heir to the heirs. Customary inheritance law is actually the law of passing on assets from one generation to their descendants. Customary

inheritance law is not fully accepted by Islamic Shari'a to be used as applicable legal provisions, because on the one hand there are those that conflict with Islamic teachings and on the other hand there are those that do not conflict with Islamic teachings. Communication is the process of delivering messages by someone to other people to tell, change attitudes, opinions or behavior either directly orally or indirectly through the media. In this communication requires a reciprocal relationship between the delivery of messages and recipients namely communicators and communicants (Hasbullah, et al: 2018).

Communities based on their respective beliefs can freely carry out inheritance laws according to what they make as guidelines. In this case, the Muslim community will implement the inheritance provisions in the faraid that in general the male heirs get a double share regardless of whether the property is divided or not and movable or immovable property. All inheritance will be converted in cash and then will be divided according to their respective provisions. In addition, the Indonesian people can also carry out inheritance in accordance with the prevailing customs in their respective regions. Therefore, from the description above, the writer is interested in conducting a more thorough analysis in the form of research with the title: "Comparison of Conceptions of Inheritance in Islam and Customary Law in Indonesia".

II. Research Method

The research method used in this study is a statutory approach which is carried out by means of all laws and regulations that are related to the law being handled. In addition, it also uses a conceptual approach by providing an analytical point of view of problem solving, where this approach is conceptual so that it gives birth to an understanding of law and legal principles that are relevant to the problems at hand.

The sources of legal materials used in this research are primary, secondary, and tertiary legal materials. Primary legal materials are legal materials that have authority (authoritative). In this study, the primary legal material refers to the classic books by the previous ulama', which of course can be accounted for and the law. Meanwhile, secondary legal materials are all publications on law which are unofficial documents. These publications consist of books that discuss legal issues, or books by professors of Legal Studies and research reports.

The tertiary legal materials are legal materials that provide instructions and explanations for primary and secondary legal materials. The tertiary legal material in this study uses a dictionary as complementary material. The collection of legal materials in this research is a document study with a descriptive analysis of legal materials.

III. Result and Discussion

3.1 Comparison of Islamic and Customary Inheritance Concepts

To find out the comparison of the conceptions of Islamic and customary inheritance, the following describes the conception of Islamic inheritance and the conception of customary inheritance first.

a. Concept of Islamic Inheritance

1. Understanding and Basis of Islamic Inheritance Law

Inheritance law in Islam is known as faraidh, where the definition of inheritance law is the law that regulates the transfer of the rights of property owners, namely heirs to heirs,

determines who is entitled to become heirs and determines how much of each heir. The legal basis for Islamic keawrisan is the Qur'an, Al-Hadith, and Ijtihad of the scholars'.

2. Inheritance According to Islamic Inheritance

According to the KHI Article 171 letter e of the Compilation of Islamic Law, inheritance is inherited property plus part of the joint property after being used for the purposes of the testator during illness until death, the cost of managing the corpse (tajhiz), payment of debts and gifts to relatives. Inheritance according to most Islamic jurists is all property left by a person who dies, either in the form of movable or fixed objects, including otters/loaned money and also goods that have something to do with the rights of others, for example goods that are pawned as collateral for the debt while the heir is still alive.

3. Heirs According to Islamic Law

In the perspective of Islamic law, heirs are divided into three groups, namely:

- Ashabul Furudh, namely the group of heirs whose share of rights has been determined in the Qur'an, As-Sunnah and Ijma', namely 2/3, 1/2, 1/3, 1/4, 1/6, or 1/8.
- Ashabah, namely the group of heirs whose share of rights is not certain, but gets ushubah (leftovers) from ashabul furudh or gets all of them if there is no Ashabul furudh.
- Dzawal arham is a group of relatives who do not belong to the first and second groups. This group only inherits if there are no relatives who are included in the Ashabul Furudh and Ashabah groups.

4. Distribution of Inheritance According to Islamic Law

According to Muhammad Daud Ali in the inheritance of Islamic law there are 5 (five) principles used in the distribution of inheritance, including the following:

- The principle of Ijbari, namely the transfer of property of someone who has died to those who are still alive, applies automatically which in the sense of Islamic law takes place in an ijbari way.
- Bilateral principle, i.e. a person receives inheritance from both sides of relatives, namely both male line relatives and female line relatives.
- The individual principle is the inheritance left by the deceased, divided individually or personally directly to each individual.
- The principle of balanced justice is that both men and women have the right to appear as heirs, inheriting the inheritance left by the heir.
- The principle of inheritance solely due to death is the transfer of one's inheritance to another person with the name of inheritance valid after the death of the testator. This means that the transfer of inheritance takes effect after the death of a person (heir).

b. Conception of Traditional Inheritance

1. Definition and Legal Basis of Customary Inheritance

According to Ter Haar, customary inheritance law is the legal rules that govern how from century to century the transmission and transfer of tangible and intangible assets from generation to generation applies. Hilman Hadikusuma argues that customary inheritance law is customary law that contains provisions regarding the system and principles of inheritance law, regarding inheritance, heirs, and inheritance as well as how the inheritance is transferred to control and ownership from the heir to the heir. Based on this description, it can be concluded that customary inheritance law is the regulations governing the process of transferring assets, both tangible and intangible, from the heirs to the heirs. The provisions of customary inheritance law are contained in jurisprudence.

2. Inheritance According to Customary Inheritance

Inherited assets according to customary inheritance are not only of economic value, but also include non-economic ones, namely those that contain customary honor values and are religious in nature. so that if an heir dies, it is not only the tangible inheritance that will be passed on or transferred to the heirs but also intangible objects. To find out how the origin, position of inheritance can be divided or cannot be divided, including what rights and obligations occur in passing the heir to the heirs, the inheritance is divided into four, namely, original property, livelihood property, gift property, and rights. - the rights and obligations that are inherited.

3. Heirs According to Ada's Inheritance

Heirs according to customary inheritance law are divided into three family systems, namely as follows:

- **Parental Kinship System**

In the parental arrangement, a child only inherits through marriage, either directly by his own marriage, or indirectly by the marriage of his biological relatives, except for marriage between his own mother and father.

- **Patrilineal Kinship System.**

In the patrilineal kinship system, children connect themselves to their father's relatives based on the male lineage unilaterally. In the composition of this society, namely based on the lineage of the father (male), descendants from the father (male) are considered to have a higher position and their rights will also get more

- **Matrilineal Kinship System**

According to Bushar Muhammad, in a society whose structure is matrilineal, descent according to the mother's line is seen as very important, giving rise to much closer and pervasive familial relationships among the citizens who are descended according to the mother's line, which things cause consequences (for example, in inheritance issues).) which is far more numerous and more important than descendants according to the father's line

4. Distribution of Inheritance According to Customary Inheritance

According to Soerojo Wignjodipoero's opinion, there are three inheritance systems in customary law in Indonesia, namely:

- Individual inheritance system, characterized by inheritance can be divided among the heirs.
- Collective inheritance system, in which the inheritance is inherited by a group of heirs who together constitute a kind of legal field in which the property, which is called an inheritance, may not be divided among the heirs and may only be distributed by the user to those who use it. them (only have the right to use it.
- The majority inheritance system, where the inheritance is inherited in whole or in part only by children,

c. Comparison of Islamic and Customary Inheritance Concepts

The comparison between Islamic inheritance and customary inheritance has similarities and differences in principles, which include the following:

1. Similarities of Islamic Inheritance Conception and Customary Inheritance Conception.
 1. In Islamic inheritance and customary inheritance, both explain the transfer of property
 2. Both use bilateral principles
 3. Both use individual principles
 4. In the transfer of property, children and descendants as the main heirs

5. Both explain about the inheritance
2. Differences in Conception of Islamic Inheritance and Conception of Customary Inheritance.
 1. In Islamic inheritance, inheritance can be transferred to the heirs if the testator has died, while in traditional inheritance the inheritance can be transferred to the heirs if the heir has died or is still alive.
 2. Islamic inheritance uses bilateral and individual principles, while customary inheritance uses bilateral, individual, collective and majority principles.
 3. In Islamic inheritance the distribution of inheritance is based on Islamic law based on the Qur'an, Al-Hadith, and ulama' ijtihad, while in customary inheritance the distribution of inheritance is according to consensus and varies depending on the form of the inheritance, the needs of the heirs and their respective regions. -each.
 4. In Islamic inheritance, guaranteeing daughters to get a definite share of the inheritance of their parents, while in customary inheritance, daughters, especially in Java, if there are no sons, can claim the right to share in the inheritance of their grandparents and siblings. his parents brother.
 5. In Islamic inheritance, each heir can demand the distribution of the inheritance at any time, while in customary inheritance law, inheritance can be indivisible or the implementation of the distribution is delayed for a long time or only partially divided.

3.2 Application of Islamic and Customary Inheritance in Indonesia

In Indonesia today, there are various inheritance systems for Indonesian citizens, including Islamic and customary inheritance. Inheritance law in Indonesia is a civil law as a whole and is a small part of family law. The Islamic inheritance system that applies in Indonesia consists of a pluralism of teachings, for example the ahlu sunnah wal jamaa'h inheritance system. The most dominant inheritance law system adopted by the Indonesian people is the teachings of the Ahlus Sunnah wal Jamaa'h (Shafi'i, Hanafi, Hambali and Maliki schools). However, the most dominant among the four schools of thought is the Shafi'i school, in addition to the Hazairin teachings which have been influential since 1950 in Indonesia. This is an ijtihad to outline inheritance law in the Qur'an bilaterally.

Actually, in Indonesia, there have been legal products related to legal issues with the emergence of the Islamic Law Compilation (KHI) as a written law that is enforced as a special guide for Muslims in solving all legal problems, including the renewal of Indonesian Islamic inheritance law.

The customary inheritance in Indonesia is influenced by the principle of lineage that passes to the community concerned or is influenced by the ethnic form in its customary law environment. In customary inheritance in Indonesia, there are matrilineal, patrilineal, and bilateral or parental inheritance systems, which can be described as follows:

- a. Matrilineal system, which is an inheritance system that draws a lineage that always connects itself to its mother, and so on upwards to the mother's mother to a woman who is considered her clan, where her mother's clan comes from and their descendants, they all consider one mother's clan, for example in Minangkabau, Enggano, and Timor.
- b. Patrilineal system, which is an inheritance system that draws lineage and only connects itself to the father, upwards to his father, this is found in a pure patrilineal system such as in Batak land, or in an alternating patrilineal system, where everyone connects himself to his father or to his mother depending on the form of marriage of his parents, for example in Lampung and Rejang.

- c. Bilateral or parental system, where everyone connects himself in terms of descent, both to his mother and to his child.

Customary inheritance law in Indonesia is inseparable from the influence of the different composition of the kinship community. This is as stated by Hazairin that customary inheritance law has its own style from the traditional mindset of the community with the form of kinship that is patrilineal, matrilineal, and parental or bilateral kinship systems, although the same form of kinship does not necessarily apply the same inheritance system.

The inheritance system in customary law in Indonesia is divided into three, namely:

- a) Individual Inheritance System

Individual Inheritance is an inheritance system in which each heir gets a share to control and/or own inheritance according to their respective share. This inheritance system applies to people who adhere to parental or bilateral kinship, as adopted by the Javanese community or to the Batak community who applies the manjae custom (Javanese terms: mentas and mencar) or to communities whose customs are strongly influenced by Islamic law, such as: Aceh, Lampung, and Kalimantan.

- b) Collective Inheritance System

Collective inheritance system is an inheritance system in which the ownership of the inheritance is transferred from the heir to the heirs as a unit that is not divided into ownership and control. Therefore, the heirs have the right to seek to use or obtain the proceeds from the inheritance. How to use their inheritance for the interests and needs of each heir is jointly regulated on the basis of deliberation and consensus by all members of the relatives who are entitled to the inheritance under the guidance of their relatives. In this collective inheritance system, there are, for example, in Minangkabau, Tanah Dati in Ambon, Minahasa, Lampung

- c) Majority Inheritance System

The majorat inheritance system is actually a collective inheritance system, it's just that the transfer and control of the undivided property is delegated to the eldest child (from the male majority system or the female majority system) who serves as the head of the household or the head of the family in place of the other person. parents (father or mother) as the head of the family. This majority system is divided into two due to differences in the hereditary system adopted, namely:

- a. The majority are male, as is the case in the indigenous communities of Lampung and Bali
- b. The majority of women, as is the case in the Semendo indigenous community, South Sumatra.

Therefore, the inheritance law that applies in Indonesia is still pluralistic, that is, various inheritance law systems in Indonesia apply together, in the same time and region.

IV. Conclusion

1. Comparison of the conceptions of Islamic and customary inheritance have similarities and differences in principle, where the similarities between the conception of Islamic inheritance and the conception of customary inheritance are both explaining the transfer of property, both using the bilateral principle and the individual principle. In the transfer of property, children and descendants are the main heirs, and they also discuss inheritance. The difference between the conception of Islamic inheritance and the conception of customary inheritance is that in Islamic inheritance the inheritance can be transferred to the heirs if the heir has died, while in customary inheritance the

inheritance can be transferred to the heirs if the heir has died or is still alive, in Islamic inheritance using the bilateral principle. and individual, whereas in customary inheritance the principles of bilateral, individual, collective, and majority use,

2. The application of Islamic inheritance in Indonesia consists of a pluralism of teachings, for example the Ahlus Sunnah wal Jamaa'h inheritance system. The most dominant inheritance law system adopted by the Indonesian people is the teachings of the Ahlus Sunnah wal Jamaa'h (Shafi'i, Hanafi, Hambali and Maliki schools). However, the most dominant is the Shafi'i school, in addition to the Hazairin teachings which have been influential since 1950 in Indonesia. The customary inheritance in Indonesia is influenced by the principle of lineage that passes to the community concerned or is influenced by the ethnic form in its customary law environment. In customary inheritance in Indonesia, there are matrilineal, patrilineal, and bilateral or parental inheritance systems, while the inheritance system in customary law in Indonesia is divided into three namely individual, parental and majorate.

References

- Ali, M. Mahrus, et.al, (2012), "Tafsir Konstitusional Pelanggaran Pemilukada yang Bersifat Sistematis, Terstruktur dan Masif", Jurnal Konstitusi, Volume 9, Nomor 1, Maret, h. 189-230.
- Dixon, Rosalind, (2011), "Partial Constitutional Amendments", The Journal of Constitutional Law, Volume 13, Issue 3, March, h. 643-685.
- Haar, T., (1990), Asas-Asas dan Susunan Hukum Adat, Terjemahan R. Ng Surbakti Presponoto, Let. N. Voricin Vahveve, Bandung.
- Hadikusuma, Hilman., (2003), Hukum Waris Adat, Bandung: PT. Citra Aditnya Bakti.
- Hadikusuma, Hilmanm (1990), Hukum Waris Adat, Bandung: Cipta Aditya Bhakti
- Hasbullah, Hatta, M., and Arifin, Z. (2018). Communication Pattern of Wilayatul Hisbah, Lhokseumawe City in Implementing Amar Makruf Nahi Mungkar. Budapest International Research and Critics Institute Journal, Vol. 1, No. 4, 194-205.
- Hazairin, Hukum Kewarisan Bilateral menurut Al-Qur'an dan Hadist, 1983, Cet. Kelima, Jakarta:Tintamas.
- Kusumaatmadja, M., (1976), Hukum, Masyarakat dan Pembinaan Hukum Nasional, Bandung:Binacipta.
- Maruki, P. M., (2008), Penelitian Hukum, Jakarta; Kencana Prenada Media Group.
- Muhibbin, M. dan Wahid, A., (2017), Hukum Kewarisan Islam Sebagai Pembaruan Hukum Positif di Indonesia (Edisi Revisi), Jakarta: Sinar Grafika.
- Muhibbussabry, (2020), Fikih Mawaris, Medan: CV. Pusedikra Mitra Jaya.
- Poespasari, E. D., (2018), Pemahaman Seputar Hukum waris Adat di Indonesia, Jakarta, Prenadamedia Group.
- Rachman, F., Ilmu Waris, (1975), Bandung : PT Al-Ma'arif.
- Ramulyo, I., 2004, Perbandingan Kewarisan Islam dengan Kewarisan Kitab Undang-Undang Hukum Perdata, Edisi revisi, Jakarta, Sinar Grafika.
- Soerojo Wignyodipoero, Pengantar dan Asas-asas Hukum Adat, (1990), Jakarta, Haji Mas Agung.
- Van Dijk, R, (2006), Pengantar Hukum Adat Indonesia, Terjemahan A. Soehardi, Mandar Maju, Bandung.
- Zuhdi, M., (1993), Study Islam, Jilid III , Jakarta: Raja Grafindo.