

Similarities and Differences: Inheritance Distribution in Balinese Customary Law Perspective of Islamic Law

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Abstract

In the context of plurality of laws in Indonesia, Islamic inheritance law and Balinese customary inheritance law show fundamental differences but also interesting meeting points to study. Balinese customary laws rooted in traditional values and patrilineal kinship systems tend to place men as the primary heirs. Meanwhile, Islamic inheritance law which is sourced from the Qur'an and Hadith emphasizes the principles of justice, balance, and legal certainty that give rights to all legal heirs, including women. In a society that continues to undergo social change, the interaction between these two legal systems creates complex dynamics, especially in terms of the implementation of inheritance distribution. This article aims to identify and analyze the similarities and differences between Balinese customary inheritance law and Islamic inheritance law, both in terms of basic principles, inheritance structure, and practice in the field. The research method used is a qualitative approach with a literature study, which includes analysis of primary and secondary legal sources. The results of the study show that although there are significant differences in terms of the hereditary system and the position of women as heirs, they have similarities in upholding family values and social responsibility. I hope that the results of this writing can contribute to the development of national inheritance laws that are responsive to cultural diversity and religious norms in Indonesia, as well as encourage the creation of a harmonious, fair, and contextual legal system for multicultural societies.

Keywords: *Inheritance Law, Islamic Law, Balinese Customary Law*

INTRODUCTION

Indonesia is a country rich in cultural, ethnic, and religious diversity, so its legal system is not singular but pluralistic. In this case, the inheritance law system in Indonesia reflects this plurality through the existence of three main systems: Islamic inheritance law, customary inheritance law, and Western civil inheritance law. One of the customary inheritance laws that still exists strongly is the Balinese customary law, which continues to live and develop in the midst of Balinese society that upholds traditional values and local spirituality.¹

Balinese customary inheritance law is known to be oriented towards the patrilineal system, where lineage and inheritance rights are passed down through the male line. Sons, especially eldest sons, are considered the successors to family responsibilities and are generally the sole legal heirs.² On the other hand, Islamic inheritance law, which is sourced from the Qur'an and Hadith, applies the principles of justice, balance, and legal certainty in the distribution of inheritance. This system gives inheritance rights to men and women with a division that has been explicitly established in the Qur'an (QS. An-Nisa: 7, 11, and 12).³

¹ I Ketut Ardhana, *Hukum Adat Bali: Perspektif Historis dan Sosiologis*, (Denpasar: Udayana University Press, 2010), p.77.

² Komang Agus Adi Sucipta, "Peran Anak Laki-Laki dalam Sistem Pewarisan Adat Bali," *Jurnal Hukum Adat Nusantara*, Vol. 4 No. 2, 2019.

³ Ahmad Azhar Basyir, *Hukum Waris Islam*, (Yogyakarta: UII Press, 2008), p.93.



These fundamental differences create interesting dynamics in the lives of Indonesia's multicultural society. In the field, people who are in the space of interaction between customary law and Islamic law often face normative dilemmas in determining which legal system is used when distributing inheritance. Therefore, the study of the similarities and differences between these two legal systems is important, both theoretically and practically, in order to encourage the harmonization of national inheritance law that is adaptive to the social and cultural realities of society.⁴

METODE

This study uses a juridical-normative approach with a descriptive qualitative method. This approach was chosen because the main focus of the research is to analyze the applicable legal norms, both in Islamic law and Balinese customary law, especially related to the inheritance distribution system. The data sources used in this study consist of primary data and secondary data. Primary data is obtained from official legal documents such as the Compilation of Islamic Law, especially in Book II on Inheritance Law, especially Articles 171 to 214 which regulate the principles, heirs, shares, and system of distribution of inheritance according to Islamic law in Indonesia.⁵ Meanwhile, secondary data was obtained from scientific literature such as law books, journal articles, and the results of previous research that discussed Islamic inheritance law and Balinese customary law. Data analysis was carried out comparatively, namely comparing the norms and practices of inheritance distribution between Islamic law based on Compilation of Islamic Law and Balinese customary law based on customary principles that apply in Balinese society.

RESULT

Based on the results of a study on the practice of inheritance in Balinese society, it was found that Balinese customary law originated from the patrilineal kinship system, where lineages, rights, and responsibilities are inherited through the male side, especially to the eldest son. In this system, men are not only considered as the successors of the lineage, but also as the bearers of the social and spiritual responsibilities of the family.

The main heirs in Balinese customary law are those who carry out customary obligations, such as maintaining family temples, carrying out traditional ceremonies, and maintaining family honor. Thus, the principle used is "the right to follow obligations," meaning that only those who carry out customary roles are entitled to inheritance.

In practice, the distribution of inheritance is often carried out orally through family deliberations, rather than in the form of written documents. If there are no sons, the inheritance can fall to the brother on the father's side. Women in Balinese traditional traditions generally do not get inheritance, because they are considered to have become part of their husband's family after marriage.

Islamic inheritance law has a standard and normative inheritance system, sourced from the Qur'an, Hadith, and *ijma'* ulama. Surah An-Nisa verses 7, 11, and 12 contain provisions regarding who is entitled to inherit and the proportion that must be received by each heir.

In contrast to Balinese customs, Islamic law adheres to a bilateral system, which is a relationship of descent recognized from both parent lines. The right of inheritance is given to both men and women, with fair quantitative provisions according to the Shari'a. Girls still get a share, even if they amount to half of the share of boys, based on different economic burdens according to Islam.

The Compilation of Islamic Law regulates these provisions explicitly in Book II Articles 171–214. In it there are arrangements regarding surrogate heirs, heirs whose whereabouts are unknown, as well as various inheritance cases that are typical in the community.

Although Balinese traditional inheritance law and Islamic inheritance law have different backgrounds, namely customary traditions and religious teachings, they share a number of important similarities in terms of social values and basic principles. One of the fundamental similarities lies in the

⁴ R. Darsono Supaat, *Hukum Waris Islam dan Hukum Waris Adat*, (Yogyakarta: Pustaka Pelajar, 2012), p.41.

⁵ Compilation of Islamic Law, Book II on Inheritance Law, Articles 171–214, Decree of the Minister of Religion Number 154 of 1991.

emphasis on the importance of responsibility towards the family. In Balinese customary law, inheritance is given to those who are able and willing to carry out customary obligations, such as maintaining family places of worship (*pura*), caring for the elderly, and carrying out religious rituals. This is also reflected in Islamic inheritance law, where the granting of inheritance is not just the division of property, but is a recognition of the relationship of the *nasab* and the moral and social responsibilities possessed by the heirs.

In addition, both in Balinese customary law and in Islamic law, close kinship is the main basis in determining who is entitled to inheritance. Nuclear family members are a top priority in both systems. Another similarity can be seen in the aspect of practice in society, where both provide space for deliberative or familial implementation. Islamic inheritance law, which is normative in its text, in practice still considers the social and cultural values of the local community, similar to Balinese customary law which relies heavily on family agreements. These similarities show that despite differing in legal forms and sources, both systems uphold the values of family harmony and social sustainability.

In addition to the similarities, there are a number of significant differences between Balinese customary inheritance law and Islamic inheritance law, especially in terms of kinship systems, basic principles, and inheritance distribution mechanisms. The most striking difference lies in the system of lineage adhered to. Balinese customary law adheres to a patrilineal system, where lineage and inheritance rights are only through the male line. Therefore, in practice, sons, especially the eldest sons, hold the central role as the main heirs, while daughters generally do not get an inheritance because they are considered to have become part of their husband's family after marriage. In contrast, Islamic inheritance law adheres to a bilateral system that recognizes the relationship of the parents, so that both boys and girls are entitled to receive inheritance, albeit in different amounts according to sharia provisions.

In addition, differences are also seen in the source and legal form. Balinese customary law is based on norms that live in society and is passed down from generation to generation without written codification. On the contrary, Islamic inheritance law is sourced from the Qur'an, Hadith, and is strengthened by the Compilation of Islamic Law which has been officially codified in Indonesia. In its implementation, Balinese customary law tends to be resolved informally through family deliberations or decisions of traditional leaders, while Islamic law can be implemented through religious courts or based on family agreements that still refer to sharia rules. Another fundamental difference lies in the basic principle of inheritance: Balinese customary law prioritizes the principle of "the right to follow customary obligations," while Islamic law emphasizes inheritance rights as normative provisions that must be carried out according to the provisions outlined by the sharia.

DISCUSSION

Balinese customary law is a system of unwritten law that lives and develops in Balinese society, which is based on cultural values, ancestral traditions, and Hindu religious teachings. In the context of inheritance, Balinese customary law adheres to the patrilineal kinship system, which is a system that passes down family lineages, rights, and responsibilities through the maleside.⁶ Therefore, in the division of inheritance, sons especially the eldest are considered the primary heirs and even the only heirs in the family.⁷

The main concept in Balinese customary inheritance law is not solely based on the right to property, but rather on the social and religious obligations inherent in the family successors. Sons not only inherit property, but also bear the responsibility of carrying out the family's religious rituals, including death ceremonies, guarding the family temple, and continuing the family name. Therefore, the right of inheritance follows duty, meaning that only those who carry out customary obligations are

⁶ I Gede A.B. Wiranata, *Hukum Adat Indonesia: Perkembangan dari Masa ke Masa*, (Bandung: Citra Aditya Bakti, 2005), p.145.

⁷ I Ketut Ardhana, *Hukum Adat Bali: Perspektif Historis dan Sosiologis*, (Denpasar: Udayana University Press, 2010), p.77.

eligible to receive inheritance.⁸ On the other hand, a daughter is considered to be “transferred” to her husband’s family after marriage and therefore no longer has customary responsibilities towards her family of origin.

In addition, in practice, the distribution of inheritance is not always done in writing or formally. In many cases, inheritance is given orally and consensually, based on family deliberation or the decision of the head of the family. In conditions where there are no sons, inheritance can be transferred to a paternal brother or male relative who is still in the line, demonstrating the rigidity of the patrilineal lineage system in Balinese customs.⁹

However, in the development of modern Balinese society, there is beginning to be an adjustment to the values of gender equality. Some families are now starting to pass on a share of the inheritance to girls, especially in the context of small families or families that are more open to the influence of national law and the principle of equality in Indonesia’s positive law. However, in general, traditional Balinese customary norms still remain dominant, especially in rural areas that still uphold the customary law system.¹⁰

Inheritance law in Islam is part of the family law system that has been regulated in detail in the Qur’an, Hadith, and *ijma’* ulama. The provisions on the distribution of inheritance are clearly stated in Surah An-Nisa verses 7, 11, and 12, which govern who is entitled to inherit and how much share they must receive. This system is known as the *furudh* system, which is a division that has been definitively determined by Islamic law.

In contrast to customary systems which are often based on family agreements or social structures, Islamic inheritance law is normative and strict, with the aim of ensuring justice, legal certainty, and protection of the rights of heirs, both men and women. In Islam, girls still get a smaller share of the inheritance than boys, which is half of the share of boys. This is not a form of discrimination, but part of the different structure of economic responsibilities between men and women in the family according to Islam.¹¹

The Compilation of Islamic Law as a form of codification of Islamic law in Indonesia also clearly regulates inheritance law in Book II Articles 171 to 214. In the Compilation of Islamic Law it is emphasized that all children, both boys and girls, have the same rights as heirs if they are qualified as heirs according to Islamic law.¹² In addition, Compilation of Islamic Law also regulates surrogate heirs, the distribution of inheritance to heirs whose whereabouts are unknown, and various special conditions that often

In Indonesia, the application of Islamic inheritance law applies to Muslims, both through religious courts and familial channels. However, in practice, it is not uncommon for Islamic societies to combine sharia provisions with social or local customary considerations, thus creating variations in their implementation. This shows that although Islamic inheritance law has a strict structure, flexibility in social approaches remains a factor in its implementation on the ground.

Although Balinese traditional inheritance law and Islamic inheritance law come from different sources, namely local traditions and religious teachings, both have a number of common values and basic principles that are important to pay attention to, especially in the context of Indonesian people’s lives that uphold family values.

One of the main similarities is that both emphasize the importance of responsibility towards the family. In Balinese customary law, heirs are those who are willing and able to carry out customary obligations, including caring for their parents and carrying out family religious ceremonies. In Islamic

⁸ Komang Agus Adi Sucipta, “Peran Anak Laki-Laki dalam Sistem Pewarisan Adat Bali,” *Jurnal Hukum Adat Nusantara*, Vol. 4 No. 2, 2019.

⁹ I Wayan Titib, *Teologi dan Filosofi Hukum Hindu dalam Konteks Adat Bali*, (Denpasar: Pustaka Bali Post, 2012), p.109.

¹⁰ Ni Luh Putu Sri Haryani, “Dinamika Peran Perempuan dalam Waris Adat Bali,” *Jurnal Masyarakat dan Budaya*, Vol. 22 No. 1, 2020.

¹¹ Ahmad Azhar Basyir, *Hukum Waris Islam*, (Yogyakarta: UII Press, 2008), p.31–35.

¹² Compilation of Islamic Law, Book II on Inheritance Law, Articles 171–214, Decree of the Minister of Religion Number 154 of 1991.

law, the principle of responsibility is also reflected in the division of inheritance, where the division of property does not only mean the division of material, but is also a form of recognition of the relationship between the nasab and the social obligations inherent in the heirs.¹³

In addition, both in Islamic law and Balinese customary law, the closeness of family relations is the main basis in determining who has the right to inherit. Both prioritize nuclear family members as the primary heirs, although the methods and mechanisms are different.

Another similarity lies in flexibility in practice in society. Despite having written rules (in Islam through the Qur'an and Compilation of Islamic Law), Islamic inheritance law in practice is often adapted to social conditions, similar to Balinese customary law which also relies heavily on family deliberation and mutual consensus. This shows that both legal systems provide space for a familial approach and consensus in the implementation of inheritance.¹⁴

With these similarities, it can be concluded that although the two differ in formal structure and legal basis, both Islamic inheritance law and Balinese customary law share the same spirit, which is to maintain family sustainability and create social harmony.

In addition to having some similarities in basic principles, Balinese customary inheritance law and Islamic inheritance law also have significant differences, both in terms of philosophy, kinship system, and inheritance distribution mechanism.

The most striking difference lies in the lineage system used. Balinese customary law adheres to a patrilineal system, which is inherited only through male lineages. Therefore, the sons, especially the eldest, became the center of responsibility and inheritance of the family property. Daughters generally do not receive inheritance because they are considered to be part of their husband's family after marriage. In contrast, Islamic law adheres to a bilateral system, which recognizes the relationship of the parents of both parents, both from the father and the mother.¹⁵

In terms of legal basis, Balinese customary law is derived from local customs and values that are inherited from generation to generation and maintained by indigenous communities. Meanwhile, Islamic law is sourced from the Qur'an and Hadith, and is strengthened by the Compilation of Islamic Law as a positive reference in Indonesia. This makes Islamic law more structured and written, while customary law is more flexible and depends on the interpretation and agreement of the local indigenous people.

In addition, in practice of implementation, Islamic law is usually implemented through the mechanism of religious courts or by referring to regulations that apply nationally. Meanwhile, Balinese customary law is more often implemented through family deliberations or decisions from traditional leaders (kelihan), which are informal but still socially and culturally binding.

CONCLUSION

In the practice of inheritance, Islamic inheritance law and Balinese customary law show fundamental differences but also have a common point in social and family values. Balinese customary law is based on the patrilineal system and emphasizes more on customary obligations and the role of men as the successors of the family line. Meanwhile, Islamic law is normative, giving rights to all legal heirs, both male and female, with a division that has been clearly defined in the Qur'an and Hadith.

Although they differ in their legal structure and basis, they both place the family at the core of the inheritance system. Both also emphasized the importance of social responsibility towards other family members, as well as upholding the principle of harmony in society.

¹³ Ahmad Azhar Basyir, *Hukum Waris Islam*, (Yogyakarta: UII Press, 2008), p.56.

¹⁴ I Ketut Ardhana, *Hukum Adat Bali: Perspektif Historis dan Sosiologis*, (Denpasar: Udayana University Press, 2010), p.85.

¹⁵ R. Darsono Supaat, *Hukum Waris Islam dan Hukum Waris Adat*, (Yogyakarta: Pustaka Pelajar, 2012), p.41.

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