

ACCULTURATION OF THE APPLICATION OF INHERITANCE LAW IN THE SUNDANESE INDIGENOUS COMMUNITY OF WIWITAN

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ABSTRACT

Indigenous peoples are legal subjects recognized for their traditional rights and other rights by the 1945 Constitution and other laws and regulations. *Sunda Wiwitan* is understood as the original Sundanese religion or early Sundanese which is the naming of the belief system used by people of Sundanese descent who still confirm the spiritual teachings of the Sundanese ancestors. Humans are legal subjects, bearers of rights and obligations from the moment of birth and end when humans die. From the event of a person's death, there are legal consequences, namely how to resolve the rights and obligations of the person's death which is regulated by inheritance law. The purpose of this study was to determine and examine the acculturation of customary inheritance law and Islamic inheritance law in the *Sunda Wiwitan* community and to determine the form of application of Islamic inheritance law to the Sundanese community of *Wiwitan* in *Kasepuhan Ciptagelar* with *Kampung Urug*. This study uses an empirical juridical approach, which is to study the perspective of the Sundanese Community of *Wiwitan* regarding the application of inheritance law in the lives of indigenous peoples. Data obtained by using the interview method (in-depth interview), questionnaire, and observation of the community. The results show that the acculturation of the application of inheritance law to the *Sunda Wiwitan* community, *Kasepuhan Ciptagelar* and *Kampung Urug* regarding the application of Islamic inheritance law is that Islamic inheritance law is carried out by prioritizing deliberation and consensus in the family of the heirs of the Sundanese community of *Wiwitan*. followers of Islam. As for customary law, the *Sunda Wiwitan* community make it a norm and culture that is carried out in social life.

1. INTRODUCTION

Indonesian society consists of various ethnic groups that adhere to different religions and beliefs and have a variety of customs with various patterns of family system. Indigenous peoples are the subject of law recognized for traditional rights and other rights by the 1945 Constitution and other laws and regulations.

In the Plenary session on 7th November 2017, Constitutional Court (*Mahkamah Konstitusi*) issued a Decree No. 97/PUU-XIV/2016 which provides a great opportunity for adherents of the belief in Indonesia which allows emptying one's religious identity in Identity Card, or namely KTP, *Kartu Tanda Penduduk*. In the decision, the Court judged that the order of Law number 23 of 2006 *jo* Law number 24 of 2013 concerning about Population Administration, to vacate the column of Identity cards and documents of residents "religions that have not been recognized as religion or belief groups", contrary to the constitution. According to Yumarni (2019); Yumarni & Mulyadi (2009), the Court judge decides the word 'religion' in Article 61 paragraph (1) and Article 64 paragraph (1) of the Population Administration Law has no fixed legal force as long as it is not interpreted including 'belief'. The same applies to Article 61 paragraph (2) and Article 64 paragraph (5) which is judged by the Court to have no binding legal force. The ruling made the flow of trust recognized by the government. The meaning of the court's decision has guaranteed that believers have the same rights as adherents of the 'six religions' in Indonesia, with regard to the recording of their religious status in the identity card column.

Human beings as the subject of law, bearers of rights and obligations from the moment of birth and end at the time of human death. So that from the event of death of a person causes legal consequences, namely how the settlement of rights and obligations on the death of a person is governed by the law of inheritance. The existing inheritance law and applies in Indonesia to date is still not a legal unification, as a result until now the arrangement on the issue of inheritance is still no uniformity. This is due to the existence of a form of diversity in Indonesia that is influenced by the nature of family. With the diversity of customs and religions in Indonesia allows choice in the implementation of different inheritance laws, but they are still given the freedom to choose which inheritance legal system suits their needs.

According to Ekadjati (2014), *Sunda Wiwitan* is the naming of beliefs systems used by sundanese people who still confirm the spiritual teachings of the ancestors of procrastination. *Wiwitan* has the first meaning, origin, tree and teak. *Sunda Wiwitan* is known as the original Sundanese and early Sundanese religious teachings. Related to the issue of inheritance, especially in the law of inheritance in *Sunda Wiwitan* community in *kasepuhan Ciptagelar* and *Kampung Urug*. The distribution of wealth is no special arrangement, despite the existence of the book of 3 that governs *Sunda Wiwitan*. In this book there is no specific arrangement regarding the distribution of inheritance, in other words in *Sunda Wiwitan* there are no rules governing the division of inheritance in writing.

2. LITERATURE REVIEW

The law of inheritance is one part of the civil law as a whole and is the smallest part of the family law. Inheritance law is a set of rules that contain rules on the ordinances or process of transfer of property from heir to heir. Customary inheritance law in Indonesia is inseparable from the influence of the different kinship community arrangements. This is as stated by Hazairin (1990) that the customary inheritance law has its own pattern of the traditional community mind with a form of kinship whose kinship system is patrilineal, matrilineal and parental or bilateral, Hadikusuma (1993; 2003). This customary legal system is the source of unstatutory legal regulations that develop and are maintained with public legal awareness.

The perspective used in this study is to use the *Receptio in Complexu* theory introduced by Van den Berg and the theory of the legal system by Friedman (2009). According to (Ali, 1998), *Receptio in Complexu* theory states that for Muslims, it is full of Islamic law because he has converted to Islam even though in its implementation there are deviations. Where that law follows the religion that a person adheres to. If the person converts to Islam then it is Islamic law that applies to him.

The three elements of the legal system initiated by Friedman (2009) stated that there are three elements of the legal system that affect the enforcement and application of the law namely, "*legal structure, legal substance, and legal culture*". Structure component (legal structure) which is part of the legal system that moves in one mechanism, namely related to the institution authorized in the application and enforcement of the law in this case is the local indigenous institutions namely *Kasepuhan Ciptagelar* and *Kampung Urug*. Both substances (legal substance) consisting of norms, rules, and patterns of real human behavior that are in the system. The third Legal Culture (*legal culture*) is the attitude of human beings to the law and the legal system that they believe in accordance with their beliefs in this case is the value of trust in the teachings of *Sunda Wiwitan*.

These three components form a unified whole, and are interconnected, which is ultimately called the system. In its interpretation, the above theory is taken into consideration in influencing the form of application of Islamic inheritance in the Sundanese community of *Wiwitan* in *Kasepuhan Ciptagelar* and *Kampung Urug*. This is based on observations of the behavior patterns of the people who still maintain the ancestral habits that have been handed down from their ancestors in accordance with the cultural composition of their respective legal customs.

3. METHODS

3.1. Population and Samples

To find out how to implement inheritance distribution in indigenous peoples, the author conducted sampling in *Kasepuhan Ciptagelar Sukabumi* regency and *Kampung Urug Bogor* regency. The population in this case uses *the Yamane* formula :

| | |
|-------|---|
| $n =$ | $\frac{N}{N d^2 + 1}$ |
| $n =$ | $\frac{3.800}{3.800 (0,15)^2 + 1}$ |
| $n =$ | $\frac{3.800}{3.800 \times (0,0225) + 1}$ |
| $n =$ | $\frac{3.800}{86,5}$ |
| $n =$ | 43.93 |
| $n =$ | 44 |

The samples obtained based on the calculation above are as follows:

Table 1 Sampling data

| No | Questionnaire Distribution area | Population | Number of Respondents |
|--------------|------------------------------------|--------------|--------------------------|
| 1 | Kasepuhan | 609 | 10 |
| 2 | Kampung Urug Tonggoh | 1.510 | 17 |
| 3 | Kampung Urug Tengah | 542 | 6 |
| 4 | Kampung Urug Leubak | 1.748 | 21 |
| total | | 4.409 | 54 |

From the calculation result of Table 1, the determined precision is 15% so the number of sampel taken in this study were 54 respondents. The approach method used in this study is an empirical juridical method or non-doctrinal study, looking at the validity of a rule of law and legal norms derived from religion, which lives and develops in one group of indigenous peoples. The data required in this study consists of primary data and secondary data. Primary data is collected by observation methods, interviews. and questionnaires. Interviews were conducted directly to indigenous leaders, namely by 'Tokoh Adat' and sundanese community of Wiwitan. Seeking information about the implementation of the distribution of inheritance to indigenous people's adherents of the Sunda Wiwitan faith in *Kasepuhan Ciptagelar* and *Kampung Urug*.

Secondary data in the form of various relevant literature documents in accordance with the research, consisting of primary legal materials such as Pancasila, the Constitution of the Republic of Indonesia of 1945, the Civil Code, means as Kitab Undang-undang Hukum Perdata (KUHPER), Presidential Instruction number 1 of 1991 concerning about Compilation of Islamic Law and Customary Law applicable to indigenous peoples *Kasepuhan Ciptagelar* and *Kampung Urug*. Furthermore, secondary legal materials obtained literature books, explanations of the Law, Seminar Results, Symposiums, Panel Discussions, Journals, research results, articles, and other references related to research materials. And the latter is terttier legal material, which is material that provides instructions and explanations to primary legal materials and secondary legal materials, for example are dictionaries, encyclopedias and other sources.

In analyzing the data, this study uses qualitative analysis method which is analysis with descriptive decomposition and perspective. Each primary data in the form of research data, as well as other related party results data that have been scientifically tested are written in detail and then systematically compiled to be drawn conclusions after being selected to get the final conclusion. After the final conclusion is obtained, the data obtained from the research results are analyzed based on the legislation in accordance with this legal issue.

4. RESULTS AND DISCUSSION

4.1. Acculturation of Customary Inheritance Law and Islamic Inheritance Law in Sundanese community of *Wiwitan*

According to Soepomo (1986), customary inheritance law contains rules governing the process of passing and passing (transferring) property and intangible goods (*immaterelle goederen*) from a generation of people (*generatie*) to their descendants. That process has begun from the time the parents were alive. In the formulation of the Compilation of Islamic Law in Article 171 letter a gives the sense that, "The law of inheritance is the law that governs the transfer of ownership rights of inheritance (*tirkah*) heirs, determining who is entitled to be the heir and how much part of each". Islamic inheritance law is formulated as a legal provision set about the distribution of property owned by a person at the time of his death. Although there are different formulations and descriptions of the law of inheritance, it can be concluded that the law of inheritance is a set of rules that contain rules on the ordinances or process of transfer of property from heir to heir.

Basically, the customary inheritance law in Indonesia is still influenced by 3 (three) kinship or kinship systems. Where this customary legal system is the source of unwritten legal regulations that develop and are maintained with public legal awareness, of the three kinship legal systems are: 1) Patrilineal system, which draws the male or father lineage; 2) Matrilineal system, which attracts female or maternal lineage; 3) Parental or Bilateral system, which draws the lineage of father and mother.

Especially in sundanese community of *Wiwitan Kasepuhan Ciptagelar* and *Kampung Urug* who apply inheritance system based on parental or bilateral that attracts the lineage of father and mother. This kinship system draws a lineage either through the paternal line or the maternal line, so that in this kind of kinship there is in essence no difference between the paternal family or the mother's side. Devolution that occurs in the community *Kasepuhan Ciptagelar* and *Kampung Urug* is a similarity in the distribution of inheritance, so that children, or wives both get equal share. A sense of justice is the main consideration in the implementation of the division of inheritance. This is done to avoid conflicts or disputes between family members.

The perspective that can be used in analyzing this problem is the theory initiated by Van Den Berg, the theory of *Receptio in Complexu*. *Receptio in Complexu* theory states that, for Muslims, it is full of Islamic law because he has converted to Islam even though in its implementation there are deviations, (Ali, 1998). Where that law follows the religion that a person adheres to. If the person converts to Islam then it is Islamic law that applies to him.

According to Van Den Berg, Indonesian Muslims have conducted a reception of Islamic law in its entirety and as a unit called *receptio in complexu*.

In terms of the implementation of inheritance distribution in the sundanese community of *Wiwitan Kasepuhan Ciptagelar* and *Kampung Urug* do not know the acculturation between customary inheritance law and Islamic inheritance law. Both are recognized for their existence and enforceability by the government and local communities, but they have dominant differences despite some similarities. Because the legal system that applies and develops in society is customary law. So in its implementation the majority of inheritance distribution using customary inheritance laws and customs. This customary custom is different from what is regulated in Islamic law. Islamic law is carried out in accordance with its beliefs and imperatives.

For sundanese community of *Wiwitan* who are Muslims then for them apply mandatory Islamic inheritance law and so on with the community of *Kampung Urug* who are non-Muslims then for them can choose to organize the customary inheritance law or legal system embraced in their religion. So the findings of my research are in line with the opinion expressed by Van Den Berg with the theory *receptio in complexu*.

4.2. The Application of Islamic Inheritance Law in Sundanese Community of Wiwitan In Kasepuhan Ciptagelar and Kampung Urug

Legal pluralism in Indonesia has at least established a different system of inheritance law. In Sundanese community of *Wiwitan* in the implementation of inheritance there are usually two kinds of inheritance laws commonly used and applied, namely the division of inheritance law according to Islamic law and according to customary law.

The division of inheritance in indigenous peoples depends heavily on the kinship system embraced by the community. Basically in a parental or bilateral system that draws paternal and maternal lineages, there is no difference between the paternal family or the maternal side. In this case, the position of the sons and the females is not distinguished between the sons and the women, both of whom have the same rights as heirs.

Based on the results of interviews conducted with Mr. Enah as the Head of Village (*Kapala Dusun*) Kasepuhan Ciptagelar and Mr. Sukardi as the Head of Custom Urug Tonggoh Village, giving information that the form of application of Islamic inheritance law in sunda *Wiwitan* indigenous people is carried out separately. For the Sundanese community of *Wiwitan* in *Kasepuhan Ciptagelar* who are mostly adherents of the faith, they do not apply Islamic inheritance law in the division of their heirs. In terms of the practice of inheritance, indigenous people prefer to use indigenous inheritance that has existed for generations. According to sundanese indigenous people *Wiwitan Kasepuhan Ciptagelar* the division of Islamic inheritance can cause injustice, because it prioritizes the position of men over women namely two to one (2:1).

In contrast to the practice of applying inheritance to the sunda *Wiwitan* indigenous people in *Kampung Urug* who are majority Muslim, they are faced with 2 (two) options, namely, can choose the legal inheritance of Islamic inheritance or use the system of customs hereditary. This goes back to the personal choices of each indigenous people.

The three elements of the legal system initiated by Friedman (2009) stated that there are three elements of the legal system that affect the enforcement and application of the law, namely, "*legal structure, legal substance, and legal culture*". Structure component (*legal structure*) which is part of the legal system that moves in one mechanism, namely related to the institution authorized in the application and enforcement of the law in this case is the local indigenous institutions namely *Kasepuhan Ciptagelar* and *Kampung Urug*. Both Substansi (*legal substance*) consisting of norms, rules, and patterns of real human behavior that are in the system. The third, Legal Culture is the attitude of human beings to the law and the legal system that they believe in accordance with their beliefs in this case is the value of trust in the teachings of *Sunda Wiwitan*.

These three components form a whole, round, interconnected entity, which is eventually referred to as the system. From the description of the theory above can be concluded that the consideration in influencing the application of Islamic inheritance to the sundanese indigenous peoples of Wiwitan in *Kasepuhan Ciptagelar* and *Kampung Urug* is inclined to legal substance and legal culture. This is reflected in the pattern of behavior of the community that still maintains the ancestral habits that have been passed down from their ancestors in accordance with the cultural structure of their respective legal customs.

Related to the issue of settlement of inheritance law in sundanese community *Wiwitan Kasepuhan Ciptagelar* and *Kampung Urug* which attracts parental or bilateral family system, usually they will solve the problem by putting forward deliberations, namely *First*, with family consensus deliberations. *Secondly*, if in the settlement of deliberations and consensus in a familial manner can not be resolved or there is no agreed word, then the settlement is assisted by *sabah* from the large family. *Third*, if the dispute cannot be resolved by family deliberation or by *sabah*, then the settlement of the inheritance dispute can be taken to the customary institution, where the Chairman of *Adat* serves as the mediator in resolving the dispute.

5. CONCLUSIONS

Based on the findings in the study as described in the discussion, it is concluded several points which include: Acculturation of Customary Inheritance Law and Islamic Inheritance Law in *Sundanese community of Wiwitan*, *Receptio in Complexu* theory states that, for Muslims apply full Islamic law because it has embraced Islam even though in its implementation there are irregularities. Where that law follows the religion that a person adheres to. If the person converts to Islam then it is Islamic law that applies to him. In terms of the implementation of inheritance division in sundanese community of *Wiwitan Kasepuhan Ciptagelar* and *Kampung Urug* do not know the acculturation between customary inheritance law and Islamic inheritance law. Because the legal system that applies and develops in society is customary law. So in its implementation the majority of inheritance distribution using customary inheritance laws and customs. Islamic law is carried out in accordance with its beliefs and imperatives. For sundanese community of wiwitan who are Muslims then for them apply mandatory Islamic inheritance law and so on with non-Muslim, then for them can choose to organize the customary inheritance law or legal system embraced in their religion.

The application of Islamic Inheritance Law in sundanese community of *Wiwitan* in *Kasepuhan Ciptagelar* and *Kampung Urug* is carried out separately. In the implementation of the division of inheritance there are two kinds of inheritance laws that are commonly used and applied, namely the division of inheritance law according to Islamic law and according to customary law. According to the theory initiated by Friedman (2009) which states that there are three elements of the legal system that affect the enforcement and application of the law, namely, "*legal structure, legal substance, and legal culture*". These three components form a whole, round, interconnected entity, which is eventually referred to as the system. From the description of the theory above can be concluded that the consideration in influencing the application of Islamic inheritance to the sundanese community of *Wiwitan* in *Kasepuhan Ciptagelar* and *Kampung Urug* is inclined to *legal substance* and *legal culture*. This is reflected in the pattern of behavior of the community that still maintains the ancestral habits that have been passed down from their ancestors in accordance with the cultural structure of their respective legal customs.

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