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Legal Harmonization in the Distribution of Inheritance in the Dayak Ngaju Community in Central Kalimantan, Indonesia

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Abstract: The study aims to seek customary law in the Dayak Ngaju community to become a solution to settlement of inheritance law. Customary law in the Indonesian legal system is one of the doors to the eclecticism of inheritance law which can be developed as part of the construction of national inheritance law, so that there is a process of harmonization and integration of the inheritance law. This research is empirical juridical research using statutory and legal pluralism approaches. The legal pluralism approach aims to examine the harmonization and integration of various legal systems applied in society. The data analyzed came from scientific documents and in-depth interviews with traditional leaders. The results of the research show that there is competition for norms, encounters or conflicts between various legal systems. Some of the reasons that can be put forward are. First, customary law as a sub-system of the customs of the Dayak Ngaju community is an unwritten law that has long existed and has become part of the legal awareness of the Dayak community itself, both in personal, family, group and community life in every activity. Second, the Dayak Ngaju customary inheritance legal system is not a system that stands alone. If the inheritance law system changes, the change will disrupt social cohesion that has been built for a long time. Efforts towards the unification and condification of inheritance laws that apply nationally should be started, in addition to avoiding family conflicts, providing legal certainty, as well as reforming things that are considered unfair in the inheritance law system. It is also a part of legal pluralism which recognizes and provides space for the development of various laws that live in society.

Keywords: Harmonization, Islamic law, customary law, positive law, inheritance of the Dayak Ngaju, legal pluralism

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Abstrak: *Kajian bertujuan untuk mengupayakan hukum adat pada masyarakat Dayak Ngaju dapat menjadi solusi penyelesaian hukum waris. Hukum adat dalam sistem hukum Indonesia sebagai salah satu pintu eklektisisme hukum waris yang dapat dikembangkan sebagai bagian dari konstruksi hukum waris nasional, sehingga ada proses harmonisasi dan integrasi hukum waris tersebut. Penelitian ini merupakan penelitian yuridis empiris dengan menggunakan pendekatan perundang-undangan dan pluralisme hukum. Pendekatan pluralisme hukum bertujuan untuk meleleah harmonisasi dan integrasi berbagai sistem hukum yang diaplikasikan dalam masyarakat. Data yang dianalisis berasal dari dokumen ilmiah dan wawancara mendalam terhadap tokoh adat. Hasil penelitian menunjukkan bahwa terjadi kompetisi norma, perjumpaan atau konflik di antara berbagai sistem hukum. Beberapa alasan yang dapat diajukan adalah. Pertama, hukum adat sebagai sub sistem dari adat istiadat masyarakat Dayak Ngaju merupakan hukum tidak tertulis yang telah lama hidup dan menjadi bagian dari kesadaran hukum masyarakat Dayak itu sendiri, baik dalam kehidupan pribadi, keluarga, kelompok maupun masyarakat pada setiap aktivitasnya. Kedua, sistem hukum waris adat Dayak Ngaju bukanlah sebuah sistem yang berdiri sendiri. Jika sistem hukum waris berubah maka perubahan itu akan mengganggu kohesi sosial yang telah terbangun sejak lama. Upaya ke arah unifikasi dan kondifikasi hukum waris yang berlaku secara nasional seharusnya dimulai, di samping menghindari konflik keluarga, memberikan kepastian hukum, sekaligus merupakan pembaruan terhadap hal-hal yang dianggap tidak adil dalam sistem hukum waris. Hal tersebut juga merupakan sebuah bagian dari pluralism hukum yang mengakui dan memberikan ruang bagi perkembangan berbagai hukum yang hidup dalam masyarakat.*

Kata Kunci: *Harmonisasi, hukum Islam, hukum adat, hukum positif, warisan Dayak Ngaju, pluralisme hukum.*

Introduction

Customary inheritance law in Indonesia comprises various and specific patterns that define the values of traditional Indonesian society, which are based on a collective and communal culture originating from the nation's concrete way of thinking.¹ The institution of inheritance law is an integral part of community life, particularly in indigenous communities, due to its direct implications for the longevity of the social system at the level of family, relatives, and society as a

¹ Mark Cammack, "Islamic Inheritance in Indonesia: The Influence of Hazairin's Theory of Bilateral Inheritance," *Studia Islamika* 10, No. 1 (2003). Siah Khosyiah and Ayi Yunus Rusyana, "Inheritance Settlement of Descendants of Children and Siblings in Islamic Law with Local Wisdom in Indonesia," *Cogent Social Science* 8, No. 1 (2022). M. Iqbal, "The System of Inheritance Law in Minangkabau: A Social History Study," *Indonesian Journal of Education, Social Sciences and Research (IJESSR)* 1, no. 2 (2020), p. 87.

whole.² Due to its significance, nearly all indigenous peoples have an inheritance system that differs from one another.³ Inheritance law that applies among Indonesians is still pluralistic, which in Indonesian national law originates from three legal systems: Islam, customary law, and Western law.⁴

Customary inheritance law is one of the fundamental elements of customary law for the development of national inheritance law. One method of identifying the elements of customary inheritance law is through conducting field research. The purpose is to identify the similarities between Indonesia's various systems and principles of customary inheritance law, which can be used as common ground and similarities with national legal awareness.

Regarding customary law, Article 18 B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that "the state shall acknowledge and respects the customary law communities along with their traditional rights to the extent they still alive and are in accordance with the development of the society and the principle of the Unitary State of the Republic of Indonesia, which are regulated by laws". According to the history of law, the customary law system in Indonesian society is the oldest legal system. This legal system, along with the belief system of society and religion, has played a crucial role in maintaining social order.⁵⁶

The growth and development of customary law among indigenous peoples have provided an overview of the order of community life values that are accepted by the community for regulating their lives. This understanding has made researchers of customary law realize that the essence of life is deeply embedded in customary law. It contains the crystallization of various beliefs and ideologies of the community, which can only be understood by looking casuistically at these indigenous peoples.⁷

Customary inheritance law in Indonesia regulates inheritance in accordance with customs. According to Teer Haar, customary inheritance laws govern the transmission and distribution of tangible and intangible assets from

² Soerjono Soekanto and Soleman B. Taneko, *Hukum Adat Indonesia* (Jakarta: Rajawali Press, 1986).

³ Hilman Hadikusuma, *Hukum Waris Adat* (Bandung: Alumni, 2003).

⁴ Khairuddin Hasballah, et. al., "Patah Titi and Substitute Heirs: A Study of Legal Pluralism on the Inheritance System in Aceh Community," *Ahkam: Jurnal Ilmu Syariah* 21, no. 2 (2021): 299–324. Mursyid Djawas, et.al., "The Construction of Islamic Inheritance Law: A Comparative Study of the Islamic Jurisprudence and the Comparative of Islamic Law," *Juris (Jurnal Ilmiah Syari'ah)* 22, No. 2 (2022).

⁵ Ahmadi Hasan, *Adat Badamai, Interaksi Hukum Islam Dan Hukum Adat Pada Masyarakat Banjar* (Banjar: Antasari Press, 2009).

⁶ Ahmadi Hasan, *Adat Badamai, ...*, p. 68.

⁷ Gusti Muzainah, *Asas Kemanfaatan Tentang Kedudukan Perempuan Dalam Hukum Waris Adat Masyarakat Banjar* (Yogyakarta: Pustaka Akademika, 2016).

generation to generation. Additionally, customary inheritance law regulates the distribution of intangible property and goods (*immaterial goederen*), which are forwarded and passed from their descendants to the next.⁸

The customary law system is undoubtedly rooted in the mindset of the Indonesian people, which differs from the mindset that dominates the Western legal system. In order to understand the customary law system, one must delve deeply into the basics of the mind that lives in Indonesian society.⁹ The growth and development of customary law among indigenous peoples have provided an overview of the customary values in people's lives, which they believe to be true.

Legal pluralism is an undeniable reality faced by Indonesian society, including the Dayak Ngaju in Central Kalimantan, who adhere to customary, religious, and positive laws. This aspect of legal pluralism has been studied in the field of legal anthropology. Even though local laws, customary law, and religion are acknowledged in this situation, the authority of state law is undeniable. State law has the power to enforce because it applies against a small group of people based on orders (implicitly) issued by authorities (or on the mandate of the fundamental rule-*grundnorm*). Generally, due to this weak legal pluralism, a parallel legal system is typically created in which state legal control is so powerful that it even overrides customary and religious laws.¹⁰

The legal approach to inheritance settlement in the Dayak Ngaju community in Palangka Raya, Central Kalimantan, has been conceptually regulated in inheritance law as Compilation of Indonesian Civil Code (*KUHPerd*) Part V concerning inheritance law. According to Hilman Hadikusuma, *KUHPerd* or *Burgelik Wetboek (BW)* does not contain a specific article that explains inheritance law. However, according to Article 830 of the *KUHPerd (BW)*, inheritance only occurs due to death. Thus, the understanding of Western inheritance law according to the *KUHPerd (BW)* is that without someone dying and leaving behind wealth, there is no inheritance problem, so there must be someone who dies, primarily by natural death (*natuurlijke dood*).¹¹

⁸ Eman Suparman, *Hukum Waris Indonesia Dalam Perspektif Islam, Adat Dan BW* (Bandung: Refika Aditama, 2005).

⁹ Soepomo, *Bab-Bab Tentang Hukum Adat* (Jakarta: Pradyana Paramita, 2000).

¹⁰ According to this theory, even if customary law and religious law are to be applied, everything must adhere to the "command" of state law. When a state adopts "customs applicable" to a specific community as a "law" that supersedes state law in that community, it must (through the designated state agency) determine which customary law will be recognized. See Griffiths, *Memahami Pluralisme Hukum*. p. 77.

¹¹ Anita dan M. Rendy Aridhayandi Kamilah, "Kajian Terhadap Penyelesaian Sengketa Pembagian Harta Warisan Atas Tanah Akibat Tidak Dilaksanakannya Wasiat Oleh Ahli Waris Dihubungkan Dengan Buku II Kitab Undang-Undang Hukum Perdata Tentang Benda (Van Zaken)," *Wawaasan Hukum* 32, no. 1 (2015), p. 24–25.

Positive law or state law is now one of the legal systems regulating inheritance issues. In general, throughout the world, there is a principle that inheritance right applies only after the inheritor dies. There also applies to positive law in Indonesia which is regulated in the *KUHPerdt*. Article 830 of the *KUHPerdt* states that “inheritance occurs only due to death”.¹²

In addition to the Western inheritance law contained in the Civil Code, the Qur’an and Hadith constitute the Islamic law governing the division of inheritance. The application of Islamic inheritance law depends on one’s faith; therefore, faith is a significant factor. Consequently, customary inheritance laws are multidimensional, depending on the context in which the inheritance issue is present. As is well-known in Indonesia, ethnic variables influence the enactment of various customary laws, which will naturally have their own patterns in inheritance matters.¹³

National law regulates justice for all parties. Therefore, justice in the perspective of national law is justice that unifies or harmonizes general justice among some individual justices. In this instance, justice primarily balances the individual rights of the community and the common obligations within the legal community group.

Since the colonial period, the conflict between Islamic law and customary law has led to the development of intersection theories that were once applicable in Indonesia, such as the theory of *receptie incomplexu*, *receptie*, *receptioexit*, and *receptio a contrario*. Those theoretical studies emphasize how difficult it is for Muslims to avoid the overlap between Islamic law and custom in the area of inheritance. This is due to the fact that Islamic teachings do not forbid Muslims from accommodating customs so long as they do not contradict the primary sources of Islamic law, namely the Quran and Hadiths.

The collaboration between these legal systems has resulted in the belief that customary law has legal consequences (*seinsollen*) and is different from mere habit; a traditional custom is a repeated activity in the same form. However, this form of law can be found in every country, including developed countries, and Islamic countries, or in Islamic law is known as “*al-’urf*” or “*al-’adah*”.¹⁴

The presence of Islam in Indonesia is inseparable from the traditions and culture of the Indonesian people. Therefore, religion and culture are two factors

¹² Subekti dan Raden Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata*, (Jakarta: Pradnya Paramita, 1986).

¹³ Subekti dan Raden Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata*, (Jakarta: Pradnya Paramita, 1986).

¹⁴ Komari, “Eksistensi Hukum Waris Di Indonesia: Antara Adat Dan Syariat,” *Asy-Syariah* 17, No. 2 (2015), p. 157–58.

that influence and interact with one another.¹⁵ Religion, from the standpoint of the social sciences, is a value system containing a number of conceptions regarding the construction of reality. The indigenous members of the Dayak Ngaju tribe settle their inheritances according to customary inheritance law; therefore, Islamic law is a law that accommodates customary law. As long as customary law does not contradict Islamic law, it is frequently accepted as valid law.¹⁶

According to Friedman, the ideal step to harmonize the legal system is by adjusting the elements of the legal order that apply within the framework of the national legal system. This includes three components: legal substance, legal structure, including its institutions, and legal culture.¹⁷ In this context, the emphasis on legal culture lies in the living law, while legal culture emphasizes the human attitude towards law and the legal system, values, and beliefs.

This research is empirical juridical research using statutory analysis approach and legal pluralism.¹⁸ The data analyzed came from scientific documents and in-depth interviews with traditional leaders. The three legal systems that affect the customary inheritance of the Ngaju Dayak, namely national law, customary law and Islamic law, cause the dynamics between harmonization and clash. Therefore, this study uses a pluralism approach to examine the harmonization and integration of the three legal systems so that customary law can become part of the construction of national law in Indonesia.

The Legal System in the *Dayak* Indigenous Peoples of Central Kalimantan

Aspects of *adat* or customary law include customs as a guarantee of life, source of peace and security, all of which are connected to marriage and inheritance.¹⁹ As is the case with indigenous *Dayak* community, each organized community in Palangka Raya, Central Kalimantan, has its own customary legal

¹⁵ Tradition, custom, and culture alternately show the same meaning: hereditary customs (from their ancestors) are still carried out in society. Ministry of National Education, Indonesian Standard Dictionary, Third Edition (Jakarta: Balai Pustaka, 2005) p. 53.

¹⁶ Habiburrahman, *Rekonstruksi Hukum Kewarisan Islam Di Indonesia* (Jakarta: Prenada Media Group, 2011).

¹⁷ Lawrence M Freidman, *Hukum Negara Sebuah Pengantar, Translated by Wishnu Basuki* (Jakarta: Tatanusa, 1998).

¹⁸ Salim and Erlies Septiana Nurbayani, *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi* (Jakarta: Rajawali Pres, 2017), p. 95-98. Arskal Salim, *Contemporary Islamic Law in Indonesia Sharia and Legal Pluralism* (UK: Edingburgh University Press, 2015).

¹⁹ Lawrence M Freidman, *Hukum Negara Sebuah Pengantar, Translated by Wishnu Basuki* (Jakarta: Tatanusa, 1998).

system consisting legal regulation, sanctions,²⁰ legal procedures, and implementation.²¹

Similarly, the *Dayak* indigenous group or specific community group has its own laws. Each *Dayak* tribe or certain community groups have their own laws derived from customs that apply in the community influenced by cultural influences from the teachings of religion or beliefs they hold. Indigenous peoples are regarded as possessing collective rights regarding their customs, the preservation and development of their culture, traditional institutions, and their own customs.

In the Dayak Ngaju community, a balance is always maintained in a harmonious atmosphere between the elements, the relationship between humans and each other, the relationship between humans and their natural environment (flora, fauna, and other creatures), and the balance between human relations and ancestral spirits, the *sangiang* gods.

Adat desires the relationship pattern to be balanced and harmonious in order to achieve the common goal of peace, harmony, and well-being both physically and spiritually (*ruhui rahayu, tuntung tulus*), all-harmonious, all-balanced, and sustainable is part of the aspirations of the Dayak people; a concept of thinking which is a reflection of the philosophy of “*belum bahadat*”. Additionally, in the law context, a harmonious environment in people’s lives can be characterized by order, fairness, safety, and peace; this is the purpose of the law.²²

The customary law norms of the Dayak Ngaju also govern customary sanctions, such as customary sanctions *jipen* or a singer who plays a significant role in the life of the *Dayak* community.²³ The customary sanctions, *jipen*, are one of the features of customary law that serves to restore the undisturbed. In general, the sanction law is frequently equated with the term “prohibition” or “action.”

Concerning the customary inheritance law of the Dayak Ngaju, it shows that there is also customary law in written form or in other words, recorded from the living law carried out by the community and customary functionaries (*Damang* and *Mantir adat*). Therefore, it is categorized as “written customary law” (*beschrevenrecht*) rather than “unwritten law” (*ongeschreven recht*), which

²⁰ Surya Sukti et al., “The Manyanggar Tradition and Harmony of The Bakumpai Dayak Community in Central Kalimantan,” *El-Mashlahah* 12, no. 1 (2022), p. 1-13.

²¹ J. Mallincrodt, *Het Adatrecht van Boerneo, (Leden, Peter J. Bruns) The Leiden Tegacy Concepts of Law in Indonesia* (Jakarta: Pradnya Paramita, 1999).

²² E. Utrecht, *Pengantar Dalam Hukum Indonesia* (Jakarta: Sinar Harapan, 1983).

²³ Surya Sukti, et.al., “Pernikahan Adat Dayak Ngaju Perspektif Hukum Islam (Studi Di Kabupaten Gunung Mas Kalimantan Tengah),” *El-Mashlahah* 10, no. 2 (2020), p. 65–75.

is typically opposed to “written law: (*geschreven recht*).²⁴ Similarly, the source of customary law is written law based on the outcomes of the great peace meeting in *Tumbang Anoi* in 1894, namely “96 articles of *Dayak* customary law,” which is its implementation refers to Central Kalimantan Province Provincial Regulation No. 16 of 2008.

To avoid the occurrence of overlapping conflict resolution through the mechanism of an customary system classified as Alternative Dispute Resolution (ADR) with formal mechanisms (e.g., courts), the typology of the conflict and its conflict actors should be clearly mapped.

In the legal customary inheritance settlement system, there are several general principles, including:²⁵

1. The first principle that if inheritance cannot be done in descending order, then this inheritance can be done upward or sideways. This means that the heirs are, first of all, sons or daughters and their descendants. If there are no children or descendants in descending order, the inheritance is distributed to the father, the grandmother, and so on upwards. If neither of these circumstances holds, then the inheritors are the testator’s brothers and their descendants, that is, the blood family along the line to the side in the sense that the closest family excludes the distant family.
2. The second principle is that someone’s inheritance is not always distributed directly to his heirs, but rather is a unit whose distribution is deferred. Occasionally, it is not distributed, however, because the property is not fixed and requires a unity that cannot be permanently divided.
3. The third principle is that customary law recognizes the principle of place replacement (*plaats vervulling*). This means that a child is the heir to their father; thus, the child’s place can be taken by the children of those who died first (grandchildren of the first deceased), and the portion received by the grandson is the same as that which his father will receive as part of his inheritance. Additionally, in customary inheritance law, adoption is a recognized institution where adoptees have the same rights and status as their biological children.

According to Farina and Pratiwi, the inheritance system in Dayak Ngaju customary law is oriented on two parental sides; the father and the mother. This confirms that the Dayak Ngaju adheres to a bilateral system in their kinship system. Nevertheless, there are other inheritance systems, such as the *mayorat* inheritance system, which cannot be divided but is diverted/controlled by one

²⁴ Abdurrahman, “Penyelesaian Sengketa Lingkungan Hidup Menurut Hukum Adat Dayak, Disertasi” (Universitas Indonesia, 2002).

²⁵ Hazairin, *Bab-Bab Tentang Hukum Adat* (Jakarta: Pradnya Paramita, 1975).

heir. Regarding the heirs, if the heir requests, all of the inheritance is distributed to the first child (both first sons and first daughters).²⁶

The recognition of religious and customary law in constructing the legal system and its implementation indeed cannot be separated from the appreciation of local wisdom in the development of law.²⁷ Customary arrangements and customary laws refer to the systems and guiding principles of social arrangement found in a variety of institutional contexts throughout the lives of people.²⁸

Studies and implementation of Dayak Ngaju customary inheritance in Palangka Raya plainly demonstrate the existence of a kinship system and customs in their environment. The consideration that as long as customary law does not have a negative impact on society's security, welfare, and harmony means that the customary inheritance of the Dayak Ngaju can guarantee harmonization with the family interaction and combination of other laws outside of customary law.

Legal Acculturation in Dayak Ngaju Traditional Inheritance

If the imposed laws are inconsistent with the way of life and values of the Indonesian people, they may be rejected or at the very least ignored. In contrast, laws that are consistent with the community's shared values and way of life will be more respected and adhered to.²⁹ By contrast, legal material that conflicts with the community's values and way of life will be less respected; they are only complied with because of the sanctions and for being coercive, not because of their dignity.³⁰

One of the acculturated legal aspects is inheritance law. It is a multifaceted matter and it demonstrates a range of legal complexities ranging from customary law, civil law, and religious sources; because inheritance is one of the primary sources of assets, land, and property ownership.³¹

During the acculturation process, including the acculturation of inheritance law, several factors must be taken into account. First, the condition

²⁶ Putri Fransiska Purnama Pratiwi Farina, "Pembagian Harta Warisan Bagi Anak Angkat Berdasarkan Hukum Adat Dayak Ngaju Di Kedamaian Jekan Raya Kota Palangka Raya," *Belom Bahadat* 9, No. 2 (2019), p. 6-7.

²⁷ Abdul Manan, *Aspek-Aspek Pengubah Hukum* (Jakarta: Prenada Media Group, 2005).

²⁸ M.Yasir Nasution, "Hukum Islam Dan Signifikansinya Dalam Kehidupan Masyarakat Modern," *Hukum Islam* III, no. 1 (2004). p. 2.

²⁹ Dinda Bestari and Eka Kurnia Sari, "Bridal Bath Prohibition as a Local Wisdom Among Lampung Communities on Islamic Law Perspective," *El-Mashlahah* 12, No. 1 (2022), p. 37-51.

³⁰ Nasution, "Hukum Islam Dan Signifikansinya Dalam Kehidupan Masyarakat Modern."

³¹ Christine Richter and Jaap Zevenbergen Zaid, Abubakari, "Plural Inheritance Laws, Practices and Emergent Types of Property-Implications for Updating the Land Register," *Sustainability* 11, no. 21 (2019), p. 68.

of the recipient community before the commencement of the acculturation process. Second, the acculturation agents (individuals from foreign cultures who introduce elements of a foreign culture). Third, the entry channels by which foreign cultural elements influence infiltrate the recipient culture. Fourth, the aspects of the receiving community that were influenced by the foreign culture, or the parts of their culture that have been acculturated. Fifth, the responses of those who are exposed to foreign cultural elements.

Legal acculturation is a form of legal social action, where legal awareness acts as an instrument of social change. A law stipulating that widows and children, regardless of their classification, can become the heirs has a direct influence on social changes, since it's main purpose is to change the citizen's social behavior and relationships. Steps taken in social engineering are systematic, starting from problem identification to solution, namely:

1. Recognize the problems faced as well as possible, including identifying the people who could be the target of these law violations.
2. Understand the values that exist in the society. This is important for social engineering in a society with multiple life sectors, such as traditional, modern, and planning. At this stage, values from which sectors are selected.
3. Make hypotheses and choose ones that are feasible to implement.
4. Follow the course of it's enforcement and evaluate the effects.³²

The concept and keys of acculturation are transformation and adaptation. A more traditional understanding implies that a cultural group moves from tradition- oriented state through a transitional stage and continues to a stage where a person reaches the acculturation stage. According to this idea, cultural change moves away from one's culture and ends in the complete internalization of another culture's way of life in a linear manner.

The model of legal acculturation that occurs in the indigenous Dayak community in Palangkaraya is an adjustment in which the process of adapting one culture to another occurs without forming a new one. This adjustment process emerges through the language used to communicate and the prevailing culture. The system of cultural values, religious beliefs, and customs has not changed. The language of communication used by the *Dayak* tribe is the Dayak Ngaju language which is the mother tongue of the *Dayak* tribe who live in Palangkaraya. The harmonious social relations between the Dayak Ngaju tribes are built through the sense of togetherness and cooperation that arises from an attitude of tolerance and sympathy for one another. This happens because each ethnic group appreciates each other through a sense of togetherness and shared fate.

³² Satjipto Raharjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2000).

In the customary inheritance law of the Dayak Ngaju, there is no normative standard, only empirical or factual facts.³³ Of course, it is explored through facts in the community and interviews with competent people, such as *Damang*, traditional *Mantir*, and traditional Dayak figures in Palangkaraya City. When the facts are explored, there are indeed procedures for distributing the assets.

The procedures are as follows; *First*, the law used is similar to the positive law. The positive law does not discriminate between gender and religion, as long as it has hereditary and kinship relationships based on the *Bumi Putra* group (the indigenous people of Indonesia). *Second*, everyone who belongs to that family gets an inheritance on condition that they do not distinguish gender and religion. While this aspect is similar to positive law, the procedure still depends on the heirs and the percentage of the total assets. The division is determined by the amount of the assets. Since one of the requirements for inheritance division is the existence of economically valuable objects; objects with no economic value cannot be divided. This means that it just depends on the amount of the object and who is entitled to receive the inheritance. Therefore, the inheritance of Dayak Ngaju does not distinguish between religion and gender, each heir gets the amount of property divided through consensus.

The explanation above shows the fact that Islamic inheritance law, custom, and positive law have acculturated. Therefore, this study focuses on the extent to which acculturation occurs. Since tolerating acculturation is about acceptance, acculturation of inheritance law in the Dayak Ngaju community may occur Dayak Ngaju toward positive law or toward Islamic law.

The concept of acculturation is derived from interviews or facts. This shows that intended acculturation is how the law develops socially according to the perspective of the Dayak Ngaju community. Then the acculturation was defined as the ability of the Dayak Ngaju people to accept and apply inheritance rules as in positive law and universal values in Islamic inheritance.

In the indigenous Dayak Ngaju community, there is acculturation of both positive and Islamic law. The positive law eliminates gender and religious differences so it is more compatible with them because family members believe in different religions. This procedure did not follow *faraidh* or acculturation of *faraidh*, but the acculturation of *hibah* (gifts), in which the basis for this is consensus or agreement. So a proper question to ask is whether any original law of customary inheritance of the Dayak Ngaju exists. Based on this research, it is known that there is an original law of inheritance for the Dayak Ngaju, but it is only applied to the Dayak Ngaju community. In fact, there is no book or

³³ Interview with ARN, Dayak Ngaju traditional figure in Central Kalimantan, January 16, 2022.

reference mentioning the *Dayak* customary law of inheritance follows a religious approach, and similarly no source of civil code (in the positive law) is found to underlie such law. The customary law emerges in society; it is established from acculturation.

Therefore, in absolute definition, the Dayak Ngaju inheritance custom is acculturated to positive law; that is, it does not differentiate gender and religion, and all parts of the inheritance are divided equally. However, the distribution is based on a compromise or an agreement. So, the real economic conditions of each heir may become the basis of distribution. This, in Islamic law, is called the *hibah*, where assets are handed over by those who are still alive.

In the legal construction,³⁴ Allah states that the law is for the living from the dead. In Islamic law, if the bequeather is still alive, the inheritance can be completed through *hibah*. This means that the Dayak Ngaju customary laws combine positive law and Islamic law. The procedure follows positive law, but in terms of distribution, they follow the second-level Islamic law, namely *hibah*. Additionally, in terms of qualifications, customary law can follow Islamic and positive law, which seems to be uniting both laws, where the heirs are not discriminated but the pattern of distribution follows *hibah* or consensus and uniting the subject of the heirs.

Presentatively, the original religion of the Dayak Ngaju community is not Islam nor Christianity but Kaharingan. This means that if their original religion is Kaharingan, it is not possible to use *faraidh*, and they use a consensus, similar to the customary law. Therefore, in acculturation, the customary inheritance of the Dayak Ngaju refers to positive law, it does not differentiate between gender and religion, and all parts are divided equally. The basis of the distribution is compromise or agreement. In actual compromise, the real economic conditions of each heir matters. In Islamic law, it is called the door of *hibah*, where properties are handed over by those still alive. Thus, the second effect is actually acculturation. As found in this research, the grants/*hibah* in the Dayak Ngaju custom turns out to be not from the bequeather (as per Islam rules), but the grants were agreements from the heirs because there was no *faraidh* law. Then, the basis is the social succession or the economic status of each heir, which later leads to agreements and consensus. In brief, the foundation of the Dayak Ngaju customary inheritance is an agreement with a positive legal basis and a consensus-based procedure for its distribution.

In such condition, it cannot be called as acculturation if only positive law is included without Islamic law, because the consensus was born from new theories, such as the compromise theory and the theory of *islah*. The point is that

³⁴ Sarwiji Suwandi, *Semantik Pengantar Kajian Makna* (Yogyakarta: Media Perkasa, 2008).

there is no authoritative source regarding the customary inheritance of the Dayak Ngaju in inheritance distribution, but they do exist in practice.

This study provides an exploration of Dayak Ngaju inheritance law and produces different views on the construction of acculturation of inheritance law in Dayak Ngaju indigenous people. Very few articles offer a blend of inheritance law that adopts a multidimensional perspective. The two-way perspective views acculturation as a process in which elements from both their own culture and the donor's culture are maintained and internalized, so it could build harmonization in the structure of the Dayak Ngaju community.

Harmonization of the Legal System in The Customary Dayak Ngaju

The study and implementation of the settlement of the Dayak Ngaju customary inheritance in Palangka Raya are the kinship system and customs in their environment, considering as long as customary law does not have a negative impact. So that it could make the society safe, peaceful, and prosperous, or in other words, the customary inheritance of Dayak Ngaju can guarantee harmonization in the family with the interaction and combination with other laws outside of customary law.

For the Dayak Ngaju tribe, the principle of peace in resolving cases of customary inheritance is the principle of harmony and properness. The principle of harmony is a principle that contains a view and social manner in an environment to achieve a safe, peaceful, and prosperous atmosphere. Such an atmosphere is called harmony, which becomes new in social life. Appropriateness is a principle that emphasizes how something should be, such as acting and behaving in accordance to ethics and manner. That applies as etiquette and it is often referred to as the principle of eligibility.

The pattern of relations must be balanced and aligned with what is established by the custom so that a common goal can be achieved: peace, harmony, and physical and spiritual well-being (*ruhui rahayu, tuntung tulus*). All-harmonious, all-balanced and sustainable is part of the Dayak people's vision, a way of thinking which reflects the philosophy of "*belom bahadat*." In the legal context, it is to create a harmonious atmosphere in social life that is orderly, justice, secure and peaceful.³⁵

The value of religiosity in the social life of the Dayak Ngaju people is contained in beliefs in the existence of supernatural and sacred things; this is portrayed by various forms of ritual ceremonies related to traditional activities and religious activities. Furthermore, communal values prioritize the common interest in social life in the Dayak Ngaju community.

³⁵ Utrech, *Pengantar Dalam Hukum Indonesia*.

The philosophy of the Dayak tribe reflects *Huma Betang* as a mechanism for settlement of inheritance (leading to harmony) consisting of: first, *Hatamuei lingu nalatai, hapangaja karendem malempang*, which means deliberating to unite opinions. Second, *Hapungkal lingu nalatai, habangkalan karendem malempang*, which means agreeing to achieve consensus so that it becomes the vision and mission of basic matters. Third, *Hariak lingu nalatai haringkai karendem malempang*, which means together in communicating the result of vision, mission, and agreements from the deliberations with full responsibility. The three mechanisms above are summarized into the principle of *hapungkal lingu nalatai hapangjan* which means to unite in solving problems by consensus.³⁶

The scope of inheritance or the process and distribution of inheritance is determined by how the inheritance system in society is influenced by the heredity system. The inheritance system in Dayak Ngaju customary law, according to Farina and Pratiwi, is oriented on two sides, namely, father and mother (parental). This confirms that the kinship system adopted by the Dayak Ngaju community adheres to the bilateral system. However, in practice, there is also another different inheritance system such as the *mayorat* inheritance system, which cannot be distributed but transferred/controlled by one heir. Regarding the heirs, all inheritance is given to the first child, (first son or daughter) if the bequeather has been “ordered” so.³⁷

The articulation to achieve such goal is to always consider the local needs of indigenous people in formulating religious laws, without changing the core religious laws. Meanwhile, the substantive teachings of Islam are presented within the framework to provide constructive control over local distortions that may arise.³⁸

The terms legal harmonization that the researchers used in this paper is viewed as a rule of life that determines how humans should behave and act in society. So that their common interests are protected, in addition to the ideals of peace in interpersonal life, a state of peace related to the physical and psychological dimensions that produces a balance between being orderly and being peaceful.

³⁶ Chris dan Endang Danial Ar Apandie, “Huma Betang: Identitas Moral Kultural Suku Dayak Ngaju Kalimantan Tengah,” *Journal of Moral and Civic Education* 3, no. 2 (2019), p. 83.

³⁷ Putri Fransiska Purnama Pratiwi Farina, “Pembagian Harta Warisan Bagi Anak Angkat Berdasarkan Hukum Adat Dayak Ngaju Di Kedatangan Jekan Raya Kota Palangka Raya” 9, no. 2 (2019), p. 1–17.

³⁸ Sudikno Mertokusumo, *Penemuan Hukum (Sebuah Pengantar)* (Yogyakarta: Liberty, 2006).

The studies above will generate theories that can be used in formulating foundations, concepts, systems, values and facts, as well as the phenomenon of inheritance of Dayak Ngaju custom, also institutional and unifying roles of Dayak Ngaju custom so that legal acculturation can lead to *maslahat mursalah* (public benefits or interests) for every heir. Another reason for the importance of this study is related to pursuing local wisdom and customary law in Indonesia's legal system, which can pave the way to the eclecticism of Dayak Ngaju customary inheritance law in an effort to settle inheritance cases harmoniously. Legal and cultural acculturation competence is often the criteria signaling a combination of laws in a region. Therefore, acculturation in inheritance law is socially applied and valid among the Dayak Ngaju indigenous people.

The value of togetherness implies that humans depend on their society, and humans must prioritize the interests of society over their personal interests. This can be realized through cooperation and helping each other in fulfilling the interests of social life in harmony, according to the principles of *hatamuei lingu nalatai hapangkaja karende malempang* (explore each other's thoughts and feelings and visiting each other) and the principle of *penyang hinje simpei paturung humba tamburak* (uphold cooperation and the value of unity between one another).³⁹ This principle forms the attitude of citizens in achieving harmony and peace.

In this paper, harmonization with rational logic, when combined with the relationship between acculturation and harmonization resulting from the Dayak Ngaju customary inheritance. The concept of acculturation and harmonization should not be contradictory. The concept of acculturation is a concept of legal anthropology or legal pluralism, while the concept of harmonization is included in legal studies. Therefore, a careful examination is carried out when combining them, because harmonization is related to the law, while acculturation is related to human beings who perform culture, in a certain legal framework.

The concept of harmonization between the customary law and the Islamic law system may mean that (1) the distribution method in Islam can be used in the customary law system, or vice versa, (2) the Islamic law system which differentiates men and women, but the distribution is still resolved using mediation or peace (as per the customary law rules). So, it must be interpreted as harmonization. There is the harmonization of customary law into the values of implementing Islamic law (*faraidh* with its distribution) followed by mediation for obtaining social justice.

In the Islamic law system, the first thing that needs to be concerned is God's justice and then social justice. God's justice applies through Islamic *faraidh*

³⁹ Interview with NBN, Dayak Ngaju traditional figure in Central Kalimantan, January 16, 2022.

law. On the other hand, the social justice system applies through matters relating to social interests, which are customary law. The law is fundamental, meaning a justice system that does not differentiate between men and women; there is no difference in the calculation of asset shares is the same as the portrait which dominates.

Then it will be known that God's justice affects social justice. Whereas social justice exists after God's justice. Therefore, God's justice can be said to be imperative/compulsory law, so this is a finding in harmonization because it is found that there are imperative elements in both customary law and Islamic law, and it is not recommended to remove imperative Islamic law but resolve it in a social concept, namely mediation.

Referring to the acculturation of law with the harmonization of the Dayak Ngaju customary inheritance law system, it can be said that harmony in the Dayak Ngaju community shows that imperative law is not set aside, where imperative law dominates the division of inheritance of the Dayak Ngaju who are Muslim, followed by customary law. The Dayak community accepted such progress, after the essence of this imperative law is carried out and applied, and the application procedure tolerates customary law. Therefore, after the application of the imperative, then the facultative is applied so that legal harmonization is formed. However, the essence of facultative law does not rule out imperative law. This is where acceptance emerges and creates harmonization.

What is meant by harmony in this article is not about combining the three laws, but harmony means that the law can be accepted. A case sample in the Dayak Ngaju tribe, there's a family consisting of Muslim and Christian, they no longer see differences in terms of religion and gender, but this inheritance is shared and accepted by the heirs, which shows harmony.⁴⁰ Then harmony is not seen from the concept but it is seen in practice. In Islam, the inheritance distribution is *faraidh*, but in the Dayak Ngaju custom, by the way of consensus or agreement with social justice considerations based on the *tombang anui* agreement, which has been preserved for generations by the Dayak Ngaju people.

In terms of *ijtihad*, *fiqh* is closely related to the interactions and facts of life in the surrounding community. Scholars as formulators adapt between explicit and implied texts in the propositions with the contextual ones in society. As a result, the birth of a variety of jurisprudence as a form of scholarly thought. In this case, observe and consider local wisdom that is related to the social life issue and local customs. This is in line with the *fiqh* rules set by the scholars, namely:

⁴⁰Interview with MBK, Dayak Ngaju traditional figure in Central Kalimantan, January 17, 2022.

العادة محكمة

Meaning: “The customs or traditions become a consideration in establishing a law.”⁴¹

In addition to the principle above, there are also rules that are used as a legal basis.

أئما تعتبر العادة إذا اطردت أو غلبت

Meaning: “Only customs that are entrenched or dominate can be used as the basis for a law.”⁴²

There are several requirements so that customs can be used as a legal basis in decision-making, including:

1. It is not against the Shari’ah
2. It does not cause harm and eliminates the benefit.
3. It has been common among Muslims.
4. Not applicable in *mahdhah* worship.
5. ‘*Urf* is already popular in the community when it will be determined.
6. It does not contradict what is obvious.⁴³

Variety of fiqh as the result of scholar’s thoughts. It is sometimes attributed to the name of a scholar who has the thought. Such as the fiqh of Imam Abu Hanifah (d. 150H), the fiqh of Imam Malik bin Anas (d. 179H), the fiqh of Muhammad bin Idris al-Syafi’i (d. 204H), and the fiqh of Imam Ahmad bin Hanbal (241H). Sometimes it is also attributed to the place of emergence, such as Iraqi fiqh, Medina fiqh, Syam fiqh, and Maghrib fiqh. As well as expertise in fiqh *ahl al-ra’yi* and fiqh *ahl alhadîts*.

Traditional hereditary and kinship systems still exist in societies and are still firmly maintained. According to Hazairin, customary inheritance law has its own style from the mindset of traditional society in the form of kinship with a patrilineal, matrilineal, and bilateral or parental system of descent.

Every legal product that has disadvantages cannot be expected to realize the legal expected. The purpose of the law to be realized is oriented towards the values of justice, benefit, and legal certainty in all aspects of life in society. The purpose of law can only be realized through implementation, application, and law enforcement. The purpose of the law mentioned is oriented towards equal rights, obligations, and equality before the law, and non-discriminatory. Nowadays, a disagreement over the status of Islamic law and customary law has been reduced

⁴¹ Moh Mufid, *Kaidah Fikih Ekonomi & Keuangan Kontemporer; Pendekatan Tematis Dan Praktis* (Jakarta: Kencana, 2019).

⁴² Moh Mufid, *Kaidah Fikih Ekonomi & Keuangan Kontemporer; Pendekatan Tematis Dan Praktis* (Jakarta: Kencana, 2019).

⁴³ Dar Nela Putri, “Konsep Urf Sebagai Sumber Hukum Dalam Islam,” *El-Mashlahah* 10, no. 2 (2020), p. 14–25.

and declared as the applicable law alongside Western civil law (*Burgerlijk Wetboek*). The implementation of Islamic law is not based on reception in complex theory, not even through the receptie theory.

Basically, every regulation in this country was formed based on customary law. This is because customary law is a law that lives in society. If there is a question of whether all of these issues must be accommodated in positive law, the answer is not all of them. Only the issues that are not compatible with the current condition are considered to be accommodated. This is also in accordance with the rules of *fiqh* explained by the scholars, namely:

الحكم يطّبع الى المصلحة الراجحة

Meaning: “Basically, the law follows the bigger benefit /*rajih*”⁴⁴

In addition to the rules above, there is another narrative that is very popular among *ushul fiqh* scholars, related to the harmonization of Islamic and customary inheritance law, namely:

المحافظة على القديم الصّالح والأخذ بالجديد الأصّح

Meaning: “Maintain the old conditions that are beneficial and take new ones that are more beneficial.”⁴⁵

Based on these rules, the implementation of Islamic inheritance and Dayak Ngaju customary inheritance runs harmoniously. In other words, it combines the legal system in Indonesia, namely Islamic inheritance law, customary law that lives and grows in the Dayak Ngaju indigenous people. This kind of legal harmonization is referred to as legal pluralism which is recognized for its existence in Indonesia.⁴⁶ This kind of legal pluralism recognizes the existence of customs and traditions in every different society in general while still taking into account the multiple or strong benefits. This is done to maintain tolerance in adat and uphold harmony among other heirs so that conflicts or disputes do not occur.

Conclusion

The concept of and harmonization should not be contradicting. Acculturation is the concept of anthropology, while harmonization belongs to

⁴⁴ Djazuli A, *Kaidah-Kaidah Fikih: Kaidah-Kaidah Hukum Islam Dalam Menyelesaikan Masalah Yang Praktis* (Jakarta: Kencana, 2010).

⁴⁵ Djazuli A, *Kaidah-Kaidah Fikih: Kaidah-Kaidah Hukum Islam Dalam Menyelesaikan Masalah Yang Praktis* (Jakarta: Kencana, 2010).

⁴⁶ Arskal Salim, “Dynamic Legal Pluralism in Indonesia: Contested Legal Orders in Comtemporary Aceh,” *The Journal of Legal Pluralism and Unofficial Law* 42, (2010).

legal studies. Therefore, a careful examination should be carried out when combining the two, because harmonization is a matter of law, while acculturation is a matter of human beings, who perform culture in a certain legal framework. Based on the concept of *Dayak* inheritance above, inheritance is regarded as a multilateral type due to the adaptability of the customary law, which develops through accepting progressive laws from the Islamic and positive law. It is therefore called multilateral because it implements several legal systems namely Islam, customary and positive law. Further, the harmony in this inheritance system is not seen from the concept but seen in the practice. In Islamic law, the inheritance distribution is *faraidh*, but the Dayak Ngaju custom distributes by the way of consensus or agreement with social justice considerations based on the toimbang anui agreement, which has been preserved for generations by the Dayak Ngaju people.

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