

Comparative Study of Islamic Inheritance Law with Customary Inheritance Law in Kotaagung District Tanggamus District, Lampung Province

Alyafi'i¹, Khoirun Najah²

¹UIN Sunan Kalijaga Yogyakarta

Jl. Marsda Adisucipto No 1 Yogyakarta 55281, Indonesia. Tel. +62-274-540971, Fax. +62-274-519739

Corresponding author

¹alfialie10@gmail.com, ²Khoirunnajah703@gmail.com

Abstract: Inheritance law is the law governing inheritance. Islamic law only recognizes individual inheritance systems while customary law recognizes collective, individual and mayoral systems. The Kotaagung community adheres to a male mayoral system, in which the eldest son is the sole heir who gets all the inheritance from the heir. This is different from Islamic inheritance law, every time someone in an Islamic family dies, there is always the issue of dividing the inheritance. This type of research is field research, research conducted by going directly to the field. Methods of data collection using the method of observation, interviews and documentation. The results of the study obtained that the inheritance practices of the Kotaagung community in their distribution still apply the applicable customary law, namely the heir is the oldest son, but now some people have abandoned this due to the mixing of customs and culture, marriage, and the reluctance of some of their descendants to use the law. the custom. The similarities and differences are that they have pillars and the same distribution process, the distribution of assets under Islamic inheritance law is clear and detailed, while customary inheritance law uses a single heir, namely the oldest son, and settlement of customary inheritance law disputes uses the kinship and deliberation system while inheritance law Islam refers to the basis and source of Islamic inheritance.

Keywords: Islamic inheritance, customary inheritance, mayor, Kotaagung.

Introduction

Islamic inheritance law occupies a very important place and has been explained in detail in the verses of the Qur'an. This is because the issue of inheritance is experienced by every Muslim family. Inheritance law discusses the division of property that is not given definite provisions by the testator, so it is easy to cause disputes and problems in the division of inheritance. The issue of inheritance in Islam includes three things, namely who is entitled to receive, the amount of inheritance given, and how to distribute the inheritance. These three aspects are regulated in Islamic inheritance law.

Inheritance law is an implication of marriage law that determines and reflects the form of law that applies in that society. Allah swt has regulated

and stipulated the provisions regarding inheritance in His word Surah An-nisa' verse 11. These provisions become guidelines for Islamic families in dividing inheritance, inheritance law views the position of men and women as equal as heirs. The difference between the two lies in the portion or amount of inheritance received.

The Compilation of Islamic Law also determines this in Article 176 to Article 182. KHI determines that a sister gets half of a son's share and even the portion of widows and widowers in inheritance rights is also different. In a case of inheritance if the testator has children then a widow gets an inheritance of $\frac{1}{8}$ (one-eighth) and if the testator has no children then the widow gets $\frac{1}{4}$ (one-quarter). Furthermore, the share of inheritance for a widower gets $\frac{1}{4}$ (a quarter) if the testator has

children but if the testator does not have a child then the widower gets an inheritance of $\frac{1}{2}$ (half).

Islamic inheritance law also regulates the rights and obligations that must be followed and obeyed by every Muslim. The distribution of inheritance must be done fairly in order to avoid divisions between relatives in the Islamic family. Therefore, the presence of the Qur'an and Hadith which regulate in detail about inheritance ensures the welfare of Muslims. Islamic inheritance law serves to fulfill the needs of the owner of the property and establish brotherly relations among humans⁴. In practice, there are still many Muslim communities who divide inheritance property without using the provisions that have been outlined in detail according to the Qur'an. The practice of dividing inheritance that occurs in Muslim communities is still influenced by the provisions of the customs of their ancestors⁵. Customary law is a law that is not made by the government in the form of laws but its implementation and resolution in some problems are recognized by the government because there are still many cases and problems that can be resolved by customary law. Customary law is a norm formed or created in a community life that relates to human behavior. Customary law is formed through a filtering process in the customs of the community which is enforced after obtaining approval from members of the local community.

For example, customary inheritance law in Kotaagung Subdistrict, Tanggamus Regency, Lampung Province. The inheritance system in Kotaagung Sub-district is highly dependent on the customary inheritance system, and the people in Kotaagung Sub-district are more inclined to the system because it has been a habit for generations so that people still maintain the customary inheritance system rather than the Islamic inheritance system. The community of Kotaagung Subdistrict adheres to the male majorate system, where the eldest son (male descendant) is the sole heir of the testator.

The people of Kotaagung Sub-district have their own way of applying the law in relation to the inheritance system. The community of Kotaagung Subdistrict adheres to the male majorate system, where the eldest son (male descendant) is the sole heir of the testator.

Lampung customary inheritance law in Kotaagung District is very different from Islamic inheritance law. This difference can be seen in the inheritance which is the absolute right of the eldest son without any distribution to other heirs. The majorate system is often misinterpreted not only by people who do not understand it, but also by the heirs themselves. The eldest son is a substitute for the parents whose job it is to take care of the family members left behind by the testator. The majority of the people in Kotaagung Subdistrict are Muslim, but this does not stop them from maintaining this customary inheritance system that has been a custom for generations. Because what has been carried out and obeyed by the community becomes unwritten law. Based on the explanation above, the researcher is interested in examining how the practice of customary law of inheritance division in Kotaagung Subdistrict is compared with Islamic inheritance law.

Sekampung Udik District, East Lampung Regency ". In his thesis, he explained about the East Lampung community which adheres to the male majorate system and how the oldest adult son can be a substitute for parents who have died and is not an individual property owner. He is only the holder of a parental mandate who has the obligation to take care of other family members left behind, including the inheritance.

Ganira Octa Maria Amru, Iskandar Syah, Maskun, "The Division of Inheritance in Lampung Saibatin Community Who Do Not Have Male Children". This journal explains that the male majorate inheritance system allows adopting sons from relatives but may also be from outside relatives if there are none, adopting children in this case through marriage. The position of adopted children as a substitute for biological children has full responsibility to their customary parents who are responsible for all inheritance and relatives of customary people. Legal actions between husband and wife in the *semanda* marriage system are not balanced, although the husband appears to come out, but the wife's influence is greater than the husband. This will be seen in the wife's kinship because the husband's position is only as a successor to the offspring until he gets a son. Her position with regard to the inheritance does not

exist at all because the one who is fully entitled is the son resulting from the marriage. If the biological daughter marries "ngakuk ragah", then dies and has no sons or daughters, the status of the husband's children will be lost even though they have been appointed as customary children and are considered to have left the kinship of the wife's extended family.

As far as research is concerned, researchers have not found books that specifically discuss customary inheritance law in Kotaagung District, Tanggamus Regency, Lampung Province. Based on the literature review above, according to the researchers, there are several differences related to customary inheritance law in Kotaagung District, Tanggamus Regency, Lampung Province with previous research. Previous research only discussed customary inheritance law without comparing it with Islamic inheritance law. And how the differences and similarities between Islamic inheritance law and customary inheritance law in Kotaagung Subdistrict, and the focus of the research is the people of Kotaagung who experience the local customary law culture.

Materials and Methods

This type of research is field research, which is research conducted by going directly to the field (research area) to interview traditional leaders, traditional leaders, religious leaders, and heirs who understand the distribution of inheritance property. The place of this research is located in the Muslim community of Kotaagung Subdistrict, Tanggamus Regency, Lampung Province. This research is a qualitative descriptive-analysis, which explains the practice of the division of inheritance of the Kotaagung community, which maintains customs in its application.

Data collection techniques are carried out by observation, interview and documentation. As for the approach of this research, it uses a normative-sociological approach. The normative approach is intended to trace the reasons used in the implementation of the customary inheritance system based on applicable legal norms, while sociological to see the reality of the life of the

Kotaagung community in implementing the inheritance system.

Furthermore, for the Data Sources obtained in the form of Primary Data, namely the main data sourced from the words and actions of the people observed or interviewed. Data sources are recorded through notes or through recordings. This data was obtained by researchers through direct interviews with traditional leaders, religious leaders, village officials, and heirs in Muslim communities, Kotaagung District, Tanggamus Regency, Lampung Province. Meanwhile, secondary data is data sourced from all information related to the object of research in various forms, both in the form of books, journals, documentation of research results and so on. Then for data collection, namely interviews and documentation. Interview is a method of collecting data or information by means of direct question and answer with the source, in the case of this research a semi-structured interview is used using an interview guide (interview guide) so that extracting research data is easier to do so that it does not get out of the aspects that want to be explored. This interview is included in the in-depth interview category, aiming to obtain maximum information and data. And Documentation is the collection of data and materials in the form of documents. The data can be in the form of geographical location, the condition of the Kotaagung Sub-district community and its cultural conditions, as well as other matters related to the object of research.

The method of data analysis is by analyzing the problem in a qualitative-descriptive manner, namely describing the data obtained from the results of the interview. The types of methods are as follows: 1. Inductive method, analyzing data obtained from interviews about the division of inheritance property in Kotaagung Subdistrict and then generalizing a general conclusion. 2. Comparative method, comparing customary inheritance law with Islamic inheritance law, on the practice of dividing inheritance property in the community of Kotaagung Subdistrict.

Results and Discussion

Comparative analysis of Islamic inheritance law with customary inheritance law in Kotaagung sub-district, Inheritance law cannot be separated from the family system because inheritance law is part of family law. In the context of inheritance law in Indonesia, there are several differences regarding the practice of inheritance, among others, for Indonesians also applies Customary Law, which varies from region to region, for Muslims in various regions, there is a clear influence of Inheritance regulations and Islamic Religious Law. Indonesian customary law recognizes collective, individual, and majorate systems, while Islamic law only recognizes individual inheritance systems.

The community of Kotaagung Subdistrict adheres to the male majorate system, namely the eldest son (male descendant) who is the sole heir of the testator, who is entitled and gets all the inheritance from the testator. In practice, the inheritance can already be passed down to the heirs even though the testator is still alive with the obligation to take care of all his family members. This is different from Islamic inheritance law. Every time someone dies in an Islamic family, the issue of distributing the inheritance always arises. The issue of inheritance in Islam includes three things, namely who is entitled to receive the inheritance, the amount of inheritance given, and how to distribute the inheritance. These three aspects are regulated in Islamic inheritance law. Inheritance law is an implication of marriage law that determines and reflects the form of law that applies in that society. Islamic inheritance law applies the statement that, "the stronger and closer the kinship of the heir to the testator, the greater the priority for the heir to get a share".

The results of the author's observations in the field, trying to formulate from the positive and negative aspects, namely: The eldest son is made the sole heir in the practice of customary inheritance in the area is not merely that the eldest son must be respected, his needs met, given abundant property, and only for the sole pleasure of the heir, but as the author reveals above that the heir, namely the eldest son, has a heavy burden,

namely taking care of his parents, providing proper education to his younger siblings, meeting all the needs of his family. However, in practice, after the heir gets his rights, the heir often denies his obligations, neglects his family and even only wants to control his inheritance alone without taking care of his family.

Customary Law is unwritten rules that grow and develop and are maintained by the legal consciousness of the community, which is a habit ('urf) in everyday life that Based on the author's opinion, it can be concluded that the requirements of 'Urf as a method of *istinbat* law are: First, 'Urf must be 'urf *shahih* is the custom of the community that does not contradict the *nash* Second Generally accepted among the community whether general or specific *mapun lafzi* or 'amaly Third Does not bring harm and in line with the soul and healthy mind. Fourth Urf must already exist when an event occurs that is based on the 'urf. When viewed from the perspective of *fiqihyah* rules which explain that: "Custom can be established as law".

In the implementation of the division of inheritance, the Kotaagung community uses more customary law that has developed since long ago than Islamic inheritance law, because they use the majorate system. Customary law as a living law is conceptualized as a legal system formed and derived from the empirical experience of the community in the past, which is considered fair and appropriate and has gained legitimacy from the customary authorities so that it is binding or must be obeyed (normative in nature)¹⁶. Although the majority of the Kotaagung community adheres to Islam, in terms of inheritance distribution, the local community uses the customs that have prevailed since their ancestors, not using Islamic law.

Based on the above explanation, the author argues that with the requirements of 'urf, there are some deviations in the practice of customary inheritance in Kotaagung Subdistrict which relate to the heirs and the provisions of the distribution of inheritance property with the provisions contained in Islamic inheritance law, on the other hand, the practice of customary inheritance in Kotaagung has a noble purpose, with the aim that the practice of inheritance of the Kotaagung community wants to

uphold justice so that there is no conflict between families and maintain the continuity of family welfare properly. Similarities and differences between Islamic inheritance law and customary inheritance law in Kotaagung Sub-district Islamic inheritance law and customary inheritance law in Kotaagung sub-district have the same pillars, namely: heirs, heirs, and inheritance. The difference lies in the definition of heirs, namely according to the customary inheritance of the Kotaagung community, the heir can inherit his heir if he is an adult, even though the heir is still alive.

Conclusions

Inheritance law in Kotaagung Subdistrict uses the customary inheritance system, which has been a habit for generations in the community to maintain the customary inheritance system rather than the Islamic inheritance system. The practice of Lampung customary inheritance in Kotaagung Subdistrict is very different from the practice of Islamic inheritance law. These differences can be seen in when inheritance occurs, the process of dividing the inheritance, who is entitled to get the inheritance and uses a family system and deliberation. However, over time the practice of customary inheritance there has experienced the development of the law used, no longer fanatical about the customary inheritance law that has been applied due to the mixing of tribes and local customs.

The implementation of customary inheritance today, the people of Kotaagung Subdistrict mostly still use the local inheritance law that has been in effect before, but some people also choose to use Islamic inheritance law in resolving inheritance disputes that occur in their families even though the distribution process is not in accordance with its provisions. Similarities and differences between Islamic inheritance law and customary inheritance law in Kotaagung Subdistrict. The settlement of customary inheritance disputes in the Kotaagung community uses a family system and deliberation while Islamic law refers to the basis and source of Islamic inheritance, namely, the Qur'an and Hadith. Based on the above explanation, the author

argues that with the requirements of 'urf, there are some deviations in the practice of customary inheritance in Kotaagung Subdistrict relating to the heirs and the provisions of the distribution of inheritance property with the provisions contained in Islamic inheritance law, therefore the practice of customary inheritance in Kotaagung Subdistrict can be said to be 'urf fasid because it contradicts the Qur'an and Hadith as the main source, even though it meets the other requirements in 'urf. On the other hand, the practice of customary inheritance in Kotaagung has noble intentions, with the aim that the Kotaagung community wants to uphold justice so that there is no conflict between families and maintain the welfare of the family well.

References

Fikih/Usul Fkih/Hukum

- Abdul Ghofur Ansori, *Hukum Kewarisan Islam di Indonesia eksistensi dan adaptabilitas* (Yogyakarta: Gadjah Mada University Press, 2017), hlm. 53
- Afdol, *Penerapan Hukum Waris Islam Secara Adil* (Surabaya: Pusat Penerbit dan Percetakan Unair, 2010), hlm.1.
- Ahmad Azhar Basyir, *Hukum Waris Islam*, Edisi Revisi (Yogyakarta: UII Press, 2001), hlm 3.
- Asmah, *Hukum Adat Indonesia Suatu Pengantar*, (Makassar: Fahmis Pustaka, 2017), hlm. 20.
- Ellyne Dwi Poespasari, *op.cit.*, hlm. 1
- Eman Suparman, *Intisari Hukum Waris Indonesia*, (Bandung: Mandar Maju, 1991), hlm. 35
- Hazairin, *Hukum Kewarisan Bilateral Menurut Al-Qur'an dan Hadits*, cet. Ke-4 (Jakarta: Tinta Mas, 1982), hlm 11.
- H. Asjmuni A. Rahman, *Qa'idah-Qa'idah Fiqh (Qowa'idul Fiqhiyah)*, (Jakarta: Bulan Bintang, 1976), hlm.13.
- Muchit A. Karim, *Problematika Hukum Kewarisan Islam Kontemporer di Indonesia*, (Jakarta: Badan Litbang dan Diklat Kementerian Agama RI, 2012), hlm. 81.

JURNAL

- Ganira Octa Maria Amru, dkk, "Pembagian Harta Warisan Pada Masyarakat Lampung Saibatin Yang Tidak Mempunyai Anak Laki-laki," *PESAGI (Jurnal Pendidikan dan Penelitian Sejarah)*, Vol.2 NO.2.
- Iftah Umi Maslahah, "Tinjauan Hukum Islam Terhadap Pembagian Harta Waris Berdasarkan Hukum Adat Di Dusun Gedad, Desa Banyusoco, Kecamatan Playen, Kabupaten Gunung Kidul", *skripsi*, Fakultas Syari'ah dan Hukum, UIN Sunan Kalijaga, 2014),

M Sakban, "Tinjauan Hukum Islam Terhadap Sistem Kewarisan Adat Desa Gunung Sugih Besar, Kecamatan sekampung Udik, Kabupaten Lampung Timur," *Skripsi* Tidak diterbitkan, Fakultas Syari'ah UIN Sunan Kalijaga (2004).

Moh Zulfa P, "Praktek Kewarisan Adat Ngada Dalam Prespektif Hukum Islam (studi Kasus di Kecamatan Ngada Bawa, Kabupaten Ngada, Flores NTT)," *Skripsi* Tidak diterbitkan, Fakultas Syari'ah UIN Sunan Kalijaga (2005).

Lain-lain

Wawancara dengan Bunyana, kepala adat, Kusa, 18 April 2019.

Wawancara dengan Zuandi, pelaku ahli waris, Kalianda, 7 Januari 2019.

Wawancara dengan Bunyana, kepala adat, Kusa, 18 April 2019.