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### RECOGNITION OF TRADITIONAL INHERITANCE LAW IN INDONESIA: A CASE STUDY OF SEDULUR SIKEP TRADITIONAL SOCIETY

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#### **ABSTRACT**

The system of traditional inheritance law in Indonesia often comes into conflict especially with the inheritance law system in the Burgerlijk Wetboek and the Islamic law system, which in many cases often has problems between those three law systems. This study aims to determine and analyze the pluralism of inheritance law in Indonesia and the recognition model of law for traditional inheritance law and the inheritance law system in the sedulur sikep traditional community. This research uses a qualitative method with a normative juridical approach and descriptive-analytical research specification. The results show that the pluralism of inheritance law in Indonesia and the recognition model for traditional inheritance law, that there is an inheritance law system, namely the civil law inheritance system or Burgerlijk Wetboek, the Islamic inheritance law system, and the traditional inheritance law system. Recognition of the traditional inheritance law system based on Pancasila and Article 18B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia. The inheritance law system in the Sedulur Sikep traditional community, that the inheritance is divided into each asset that has been divided into individual property rights, and each individual can receive it properly without jealousy.

#### **INTRODUCTION**

Indonesia has 16,056 (sixteen thousand and fifty-six) named islands that have been reported to the United Nations (UN) through the XI session of The United Nation Conference on the Standardization of Geographical Names in New York

with 1,331 (one thousand three hundred and thirty-one) the kinds of tribes and cultures as well, and more than 1,100 (one thousand one hundred) languages it owns, makes Indonesia is one of the most unique and attractive countries in the world. This diversity can be maintained thanks to the creation of a single state motto, *Bhineka Tunggal Ika*, which means that although it is different, it is also one (Nurwadjadi, Hartini, & Rosalina, 2018). The cultural diversity that exists in Indonesian society is brought into the law of kinship, with the mapping of 19 traditional law (*adatrecht*) in Indonesia by Cornelis Van Vollenhoven based on their religions, each region with its distinctive characteristics. The pluralism of law in this traditional law is interesting, with the culture possessed in each area than in one area with another area will be found indigenous peoples who have different customs both in kinship system, forms and marriage system, and its inheritance system (Benda-Beckmann & Benda-Beckmann, 2011).

In Indonesia, inheritance law is still pluralistic, because there are various types of inheritance law systems, namely the Western inheritance law listed in the *Burgerlijk Wetboek*, Islamic law, and traditional inheritance law (Judiasih & Fakhriah, 2018). In traditional inheritance law, it is also still pluralistic, because in reality traditional law is still influenced by three kinship system that exists in Indonesian traditional society, namely: the patrilineal system, which attracts the lineage of men or father that exist in the communities of Tanah Gayo, Alas, Batak, Bali, Irian Jaya, and Timor; matrilineal system, which attracts the lineage of female or maternal that exist in Minangkabau society; and the parental system or bilateral, which attracts lineage of father and mother that exist in Java, Madura, East Sumatra, Aceh, Riau, South Sumatra, Kalimantan, Ternate, and Lombok.

The system of traditional inheritance law in Indonesia often comes into conflict, especially with the inheritance law system in the *Burgerlijk Wetboek* and the Islamic legal system, which in many cases often has problems between those three law systems. The occurrence of these problems is due to several factors, including the fact that many groups still prioritize traditional law, there is also a group that defense the *Burgerlijk Wetboek* law, one of the group is the Sedulur Sikep traditional society in Baturejo Village, Sukolilo District, Pati Regency.

Sedulur Sikep traditional society in Baturejo Village, Sukolilo District, Pati Regency are followers of Samin Surosentiko. Samin Surosentiko's real name was Raden Kohar, later called Samin because it's more close to the local people. Around 1890 Samin Surosentiko spread his teachings, his followers were the people of his village with the practice of '*tapabratha*' obtained the revelation from the book of '*Kalimosodo*' that contains: *Serat Punjer Kawitan*, related to the genealogical teachings of the king of Java, the dukes of the eastern region and the Javanese people. *Serat Pikukuh Kasejaten*, teachings about marriage procedures and laws practiced by the samin traditional society. *Serat Uri-Uri Pambudi*, contains teachings on the main behaviors, namely *angger-angger pratikel* (behavioral law), *angger-angger pangucap* (speech law), and *angger-angger lakonomo* (the law that must be done). *Serat Jati Sawit*, a book that discusses the glory of life after death (the glory of life in the hereafter). *Serat Lampahing Urip*, a book containing a *primbon* related to birth, marriage, looking for good days for all activities of life. The teachings of Kalimosodo

above, it has been taught for generations in the traditional society of Sedulur Sikep in Baturejo Village, Sukolilo District, Pati Regency, for that reason researchers want to study its influence on the inheritance of traditional law in the Sedulur Sikep traditional society.

Therefore, the focus of this research is to know and analyze the pluralism of inheritance law in Indonesia and the model of recognition of traditional inheritance law and to know and analyze the system of inheritance law in the Sedulur Sikep traditional society.

## RESEARCH METHOD

This research uses qualitative methods with a normative juridical approach and descriptive-analytical research specification. Primary data is obtained are from various laws and regulations related to traditional society. Secondary data is obtained are from derived from books and journals related to the problems of the research. The data collection technique is a literature study (Natalis, 2020). Based on the focus of this research, data analysis can be carried out normatively-qualitatively. Normative studies are analyzing of existed and compared laws and regulations related to traditional society, then look at the philosophical aspects, which is Pancasila and the 1945 constitution, while the qualitative method is analyzing the existed principles of law, are they related to one another.

## RESULTS AND DISCUSSION

### *Pluralism of Inheritance Law in Indonesia and the Model of Recognition of Traditional Inheritance Law*

Inheritance law in Indonesia is a civil law as a whole and it's also a small part of kinship law. The law of inheritance is closely related to the scope of human life because every human being will experience a legal event from the event of someone's death, including the problem of how the rights and obligations of someone who dies. How is the settlement of rights as a result of a person's death is regulated by inheritance law (Aslah, 2017)

In Indonesia, inheritance law is still pluralistic because there are three systems of inheritance law, namely the traditional inheritance system, the Islamic inheritance system, and the civil inheritance system or Burgerlijk Wetboek. If the heir applies Islamic law, then resolve it with the Islamic law, it is known the applicable law is Faraid law. Faraid according to the term Bahasa is destiny/qadar/provisions that are determined who the individual that will be an heir is. Inheritance property according to Islamic law, some property and all rights from the deceased one to the heirs are some property and all rights and it's after deducted with the payment of the deceased one's debts and other payments caused by the individual's death (Barlinti, 2013).

If the heir applies the Civil Law or Burgerlijk Wetboek, then in the inheritance law there are two important elements, namely the individual element and the social element. The individual element that in principle is an owner of an object and has as much freedom as the individual to do anything about the object he

owns including his willingness. The social element is that the act performed by the owner of the property as described in the individual elements can result in a loss to the heirs so that the law provides restrictions on the freedom of the individual's death for the benefit of the heirs.

The restriction in civil inheritance is called '*legitieme portie*' which means a certain part / absolute of a certain heir, since the absolute part is closely related to the division/grant given by someone's death, then *legitieme portie* is regulated in the section of inheritance or testament (Barlinti, 2013).

If someone who dies applies the traditional inheritance law, then the traditional inheritance law's view on the law of the heirs is very much determined by the union of the traditional inheritance law itself. Some of these traditional law federations include first genealogical federations based on descent and territorial federations based on territorial law federations. In a genealogical union of laws, the members feel bound to each other because they are descended from the same ancestors so that between them there is a family relationship. Then the unity of territorial law, the members feel bound to each other because they are located in the same area (Poespasari, 2018).

A territorial alliance is called a village or *gampong* in Aceh and parts of the Malay-Sumatra region, while a territorial and genealogy-influenced legal alliance that exists in several areas such as Mentawai called '*Uma*', on Nias it is called '*Euri*', in Minangkabau it is called '*Nagari*', and in Batak it is called '*Kuria/Huta*'. This genealogical alliance is divided into three types of kinship or kinship arrangement, namely patrilineal based on male or father lineages, matrilineal based on female or maternal lineage, and parental based on two-sided lineage, it is not differentiating between men and women or mother and father.

In the patrilineal kinship system, women have no blood relationship that connects them to the family. A woman who marries a man goes with her husband and her children will be the family or relatives of her father. This kind of system is found in Nias, Gayo, Batak, and parts of Lampung, Bengkulu, Maluku, and Timor. In the matrilineal kinship system, married women remain and belong to their own family, while their children are descended from their mother. The largest matrilineal system in Indonesia is located in the Minangkabau region of West Sumatra. Parental or bilateral kinship system can be seen from blood ties from two sides, which are the lineage of father and mother. Both male and female offspring are equally important for this kinship system. The parental or bilateral system in Indonesia can be found in Java and Kalimantan.

From the various kinship systems above, it can be drawn several principles as the basis for the application of traditional inheritance law in Indonesia. These principles consist of: The Principle of Divinity and Self-Control, that there is an awareness of the heirs, that sustenance in the form of wealth is controlled and owned by God so that in its distribution there is no conflict and fighting over an inheritance. The principle of equality and mutual rights, each heir has the same position and the right to inherit. The principle of harmony and kinship, the heirs

maintaining a peaceful kinship relationship. The principle of Deliberation and Consensus that the heirs share their inheritance through deliberations led by an heir who is considered an elder. The principle of justice, that in the family can be emphasized in the justice system, this will encourage the creation of harmony from the family which will minimize the chances of conflict that breaks the good relationship of the family.

Recognition of traditional inheritance law in Indonesia starts from the basic norm, namely Pancasila. The fifth precept of Pancasila states that there is social justice for all Indonesian people (Sulistiowati, Ismail, Paripurna, & Sulastriyono, 2016), this justice includes the problem of treating the minority of traditional society to enforce their laws amidst state legal power, in this case, traditional inheritance law. In normative juridical terms, recognition of traditional inheritance law in Indonesia can be found in various laws and regulations. Even during the reign of the Dutch East-Indies, there was a clear separation between the existence of a traditional law community alliance with the recognition of traditional law and traditional court. After the independence, the existence of traditional society recognized in the Explanation of the 1945 Constitution, then in the 2nd amendment to the 1945 Constitution of the Republic of Indonesia, the recognition of the existence of traditional society law is further emphasized in Article 18B paragraph (2), that the State recognizes and respects traditional society and their customary rights, as long as they are still alive and following community development and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law (Maskawati, Hamid, & Habiba, 2018).

In the international scope, the existence of traditional society is recognized in the International Covenant on Civil and Political Rights, and it has been ratified by the government with Law Number 12 of 2005 concerning Ratification of Covenant on Civil and Political Rights, Article 27, that in countries where there are minority groups based on ethnicity, religion, or language, people who are members of these minority groups cannot be denied their rights, in the common community, the members of their group have rights to enjoy their own culture, to practice their religion, or to use their language (Ortega Velázquez, 2017).

### *Inheritance Law System in the Sedulur Sikep Traditional Society*

Adam's religion has not received recognition as a religion from the government. However, in terms of the validity of a marriage, it is written in Article 2 of Law Number 1 of 1974 as follows: (1) Marriage is legal if it is carried out according to the law of each religion and belief. (2) Every marriage is recorded according to the prevailing laws and regulations (Hedi, Anshori, & Harun, 2017). Regarding what is stipulated in Article 2 paragraph 1, the marriage carried out by Sedulur Sikep is already valid because it is based on the religion/belief, but the problem is that what the Sedulur Sikep community believes has not been legalized as a religion from the government. As a juridical consequence, the child in the Sedulur Sikep family does not have a birth certificate. However, this is not an obstacle for the Sedulur Sikep community in terms of the education of their children, because the Sedulur Sikep community does not enroll their children in formal education. This community has its way of educating their

children, which is through non-formal education that only focuses on natural or traditional education taught by the elders of Sedulur Sikep. Education is emphasized on the survival and sustainability of life. Moral education, manners/courtesy, but the behavior of the Sedulur Sikep community itself does not like the existence of attachments such as in the formal education system, this is motivated by the rebellious nature of the Sedulur Sikep community. From the result of the research can be found that because of the non-formal education many people in Sedulur Sikep community cannot read and write.

Unlike the Sedulur Sikep community in Kudus, who had the intention and were allowed to record their marriage, they came to the Department of Population and Civil Registration to record their marriage, this is the first time in the history of the Sedulur Sikep community to record their marriage. The local government also has a big role in this problem, because the Adam religion adhered to by the Sedulur Sikep community has been recognized as a belief that can be written in the religion column on their Identification Card.

The Sedulur Sikep community can only marry fellow members or followers of the Samin teachings, but if the marriage is forced to be carried out with a community outside Sedulur Sikep, then the prospective wife/husband must enter the Sedulur Sikep community this is the sanction that applied, the sanctions applied these can vary from one traditional society to another one. This marriage system is known as the eleutherogamy system which is commonly adopted in the communities that draw parental lineages, but it seems that the Sedulur Sikep traditional society is more emphasized than the endogamy system, which usually exists in the Toraja tribe. The application of this endogamy system is incompatible with the nature of the parental kinship arrangement.

In the case of inheritance, the Sedulur Sikep community uses traditional wisdom, namely the distribution of inheritance between family members, the inheritance will be divided equally between women and men, this community thought that one day they will continue and maintain and pass on these assets. The term used in the distribution of inheritance of the Sedulur Sikep community is '*dum-dum kupa*'. Although Javanese society (parental kinship) recognizes the inheritance system of '*sepikul segendongan*', it means that men get two things and women get one thing, which deviated from the nature of society that adhered to the lineage of parental kinship. However, the people of Sedulur Sikep do not apply this system, a sense of justice is highly respected in terms of the distribution of their inheritance, the position of adopted children is very concerned, therefore adopted children also inherit from their adoptive parents in addition to inheriting from their biological parents (if the existence is known).

One of the systems of inheritance known in traditional law is the individual system, in addition to the collective inheritance system, the majority inheritance system. The individual inheritance system rules that the inherited property is divided and each property can be used, processed, enjoy, and even can be able to transact, especially after the heir dies. Inheritance in the Sedulur Sikep traditional society uses an individual inheritance system, this system is applied

a lot by the Sedulur Sikep community, this is because each child can receive properly without jealousy, inheritance can be managed and utilized well.

In the implementation of inheritance distribution, disputes between family members rarely occur, if any, they are resolved by deliberation. The scarcity of disputes that always follows in the distribution of inheritance generally is because the Sedulur Sikep traditional society uphold the teachings of the values and attitude to the reality and also the character building is carried out in everyday life, namely: *Ojo drengki* (don't be materialistic) people who are not grateful usually always believe that they are poor so they never giving also value something materialistically with profit and loss, *ojo srei* (don't be jealous) envy is the attitude that has the desire to gain wealth and the Sedulur Sikep community is immaterial, the material thing is needed just for sustaining life; *ojo panesten* (don't get angry easily), for Sedulur Sikep emotion, is a fire that can break a brotherhood, breaking a brotherhood means denying his nature that humans are brothers; *ojo dahwen* (don't easily judge people negatively), judging something for other people without any evidence and analyze the result is certainly wrong. Sedulur Sikep community does not easily judge things negatively because they believe in the real thing; and *ojo kemeren* (don't want something that doesn't belong to him/her), this is an act of stealing or cheating.

## CONCLUSION

Pluralism of inheritance law in Indonesia and the recognition model of traditional inheritance law, in Indonesia there are three systems of inheritance law, namely civil inheritance law or Burgerlijk Wetboek, Islamic inheritance law, and traditional inheritance law. Traditional inheritance law itself has different features depending on the traditional society's kinship belief whether to patrilineal, matrilineal, or parental/bilateral inheritance system. The recognition model for traditional inheritance law in Indonesia is based on the 5th Principle of Pancasila which is later elaborated juridically normatively in Article 18B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, that the government declares and respect the unity of traditional society's law and the traditional rights, as long as they are still alive and following the development of the society and the principles of the Unitary State of the Republic of Indonesia, which is regulated by law.

System of inheritance law in the Sedulur Sikep traditional society stated that in the case of inheritance, Sedulur Sikep community using traditional wisdom, namely the distribution of inheritance between family members, the inheritance will be divided equally between woman and men, this community thought that in the future they are the ones who later will carry on, maintain and pass on the property. The term used in the distribution of inheritance in the Sedulur Sikep community is "*dum-dum kupat*". Inheritance property is divided into individual property rights, the assets or property can be used, processed, enjoyed the result, even can be transacted, especially after the person dies and the distribution of the inheritance of each child can receive it properly without jealousy and inheritance can be managed and utilized well.

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