

The Legal System of Inheritance of Indigenous Bugis-Bone: Islamic Law Perspective

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Abstract: The subject matter of the research is described in several sub-issues: How is the application of the customary legal system of bone Bugis according to Islamic law, How are the differences and similarities between Islamic inheritance law and customary law of Bone adat inheritance. The purpose of this research is to find out how the application of the legal system of customary Bugis Bone according to Islamic law, To know how the difference and equality between Islamic inheritance law and customary law of Bugis Bone. This research uses a qualitative approach, by using observation method, interview and documentation, using data processing technic that is: Data reduction, data display, data verification. The findings of the study revealed that the system of inheritance distribution according to the variety of customary law of Bugis bone: Division of inheritance based on discussion and agreement among their family, division of inheritance based on discussion and consensus by involving the third party, and partly using system division of inheritance based on Islamic Law. Basically, between Islamic law and the Bugis customs' law on inheritance has no different distinction.

Keywords: islamic law, Bugis

1. Introduction

The Bugis Bone people in the historical trajectory do not recognize the absolutism of kings. Because, in addition to the King as ruler, there is also called the Council of Traditional Stake that serves to lift, assess and dismiss the king, as well as his advisor. While in religious contexts, Bugis has long ago embraced monotheism, which in "Lontara" is termed the *dewata sewwae*. Since the legendary figure of Sawerigading, allegedly by Zainal Abidin's contemporaries to the Prophet Muhammad, it seems that since then Bugis society has embraced the universal and elastic basic values, and is perceived as living, living social norms.

Therefore, the synchronization between tradition (Bugis-Makassar) and religion (Islam) is more easily intertwined because the context of values between them has an essential equation, so that the term appears, such as *fattuppuiriade'e*, *fasanreirisarea'e*, or in other words "custom of sharia". Perhaps this fact, Mattulada as a Buginese culture concludes that, the influence of syara '(Islamic Shariah) is so strong to customary rules, then Bugis-Makassar society can be called as Islamic society. Of course, from the facts mentioned above, was not well-considered by the Dutch colonialists, for the Dutch government advisors trying to prevent further integration of customary law into Islamic law with the enactment of article 134 paragraph 2 IS, the basis of the entry into force of "theory Receptions, which also called by "demonic theory." In addition, Van Vollen Hoven as senior Dutch advisor proposes a system of leadership aimed at preserving the status quo of customary law, in which he embraces the laws of religion. Because otherwise, Van Vollen Hoven sees that in time Islamic law will replace the customary law position. In addition, Christian SnouckHurgronje suggested that the activities of religious judges were under scrutiny by the Dutch government.



Nevertheless, the efforts of the Dutch colonialists above have little influence in the Bugis society, especially the Bugis bone community. In other words, the process of integration between customary law and Islamic law continues, such as the influence of Islamic law in the customary law of Bugis Bone. Based on the description above, then the authors are interested to examine the system of customary inheritance in Bugis Bone tradition. The study of Bone culture inheritance has been widely applied, among others: Asni Zubair research on the integration of Islamic law and customary law in Bone Bugis inheritance of the year 2016; the results showed that the integration in the form of legitimacy can be seen from the case of the division of inheritance community continue to provide part of the property to the son of the heir who had died earlier than the heir known as substitute heirs. Integration of Islamic law and customary law apply to the division of the community estate Bugis Bone in District Palakkanamely because: (1) Between Islamic law and customary law have interacted for a long time, complementary in addressing the legal needs of the community, (2) Islamic law and customary law used as a reference and a major cornerstone in the division of the community estate, (3) Islamic law and customary law into the legal awareness of the public to follow both of these rules. (4) Between Islamic law and customary law have a common vision and goal to bring peace to people's lives.

2. Method

This research method descriptive qualitative research. That is research which gives description about field incident in systematic and factual and explains various relation from all data obtained. Descriptive research is a method in researching group status, an object, condition or thinking in groups on events that occur in the present. The data required in this study are basically primary and secondary data. Primary data is data sourced from interviews of religious figures, community leaders and books of jurisprudence which contains a lot of everything berkitan inheritance. While secondary data sourced from books and other written materials related to inheritance, data collection methods done by using the method of observation, interview and documentation, using data analysis technique that is: using data reduction, data display, and data verification

3. Findings and Discussion

3.1. *The legal system of inheritance of customary tradition in Bugis bone.*

The question of inheritance often causes disputes or disputes as it directly concerns one's possessions. In Indonesia, the reference to civil law is still varied. It is said that because until now still apply customary law, western law, and Islamic law. Of the three legal systems, Islamic law and customary law have their own position. Based on the results of interviews from religious leaders and community leaders, the system of inheritance division according to variety customary law Bugis bone namely distribution of inheritance based on deliberation and consensus among their family, distribution of inheritance based on consideration and consensus by involving the village head or community leaders and the local sub-district. The inheritance relief is partly applied under Islamic law.

3.2. *The Perspective of Islamic Law against the Division System of Traditional Bugis Bone Customary Law.*

Legal Principles of Inheritance in Islamic Law. Hazairin suggests that "the system of Islamic inheritance is a bilateral individual system". The term is then in the KHI (*Kompilasi Hukum Islam*) or 'Compilation of Islamic Law' standardized as one of the principles of Islamic inheritance law of the homeland. The following are principles in the Islamic heritage system, such as: Bilateral / parental principle, which does not distinguish men and women from the aspect of inheritance, so as not to know arham. This principle is based on Article 174 KHI and Article 185 KHI, The principle of direct heirs and surrogate heirs. The direct heir (*eigen hoofde*) is the heir referred to in Article 174 KHI. Substitute heirs (*plaatsvervulling*) are the heirs outlined in Article 185 KHI, The principle of *Ijbari*. It is when a person dies, his relatives (on the blood relation and marriage) directly become heirs, because there is no right for the relative to reject as an heir or think first whether to reject or accept as an heir.

This principle is different from BW, which still gives the choice to the heirs to accept or reject, The principle of the individual, in which the inheritance may be distributed to the heirs according to their respective sections, except in the case of inheritance of land less than 2 hectares (Article 189 KHI) and in the case of initiation between the heirs to form business.

The principle of equal justice, in which the ratio of the male and female parts is 2: 1, except in certain circumstances. The difference between men's and women's part is due to men's obligations and women's obligations in different households. Provision 2: 1 can be disregarded, as long as the heirs agree to share equally, once they know the actual part of each, The principle of inheritance due to death, meaning the transition of material and immaterial rights from a person to his relatives inherited inheritance valid after the person dies, The principle of blood relationships that is the relationship of blood due to legitimate marriage, marriage subhat, and the recognition of children. The principle of the will, the adopted child and the adoptive father in reciprocity can make a will about their property. If there is no testament, then the adoptive father or adopted child shall be duly obliged by the Court, subject to a maximum of 1/3 of the inheritance (Article 209 KHI), Egalitarian Principle, meaning relatives because the blood relation that embraces a religion other than Islam will be mandatory for a maximum of one third, and should not exceed the part of the heirs who are equal with it, Limited Retroactive Principles. KHI is not retroactive, in the sense that if the estate has been subdivided into real terms (not just divisions on paper) before the KHI is enacted, the blood relative family of the surrogate heir can not file an inheritance suit. If the inheritance has not been subdivided into real terms, then on the case of inheritance whose heirs died before the birth of KHI, by itself KHI may be retroactive.

3.2.1 Grouping of Heirs by Compilation of Islamic Law

The heir is the person or persons who are entitled to a share of the estate. In his book, Eman Suparman describes, the outline of the class of heirs in Islam can be distinguished in 3 (three) groups, namely (1) heirs according to the Qur'an or that have been determined in the Qur'an called *dzul faraa'idh*. (2) heirs drew from the father line, called *ashobah*. (3) the heirs according to the mother line, called *dzul arhaam*.

As for Ahmad Rofiq dividing it into two groups. There are heirs of the nasheyyah, and there are Sababiyah heirs. But sourced from the formulation of the existing articles, KHI classifies the heirs in terms of division in three groups. (1) Group of heirs *dzawil furudh* (determined part). The details are as follows. (a) Fathers can be 1/6 part if the heir has children, get an ashobah if the heir does not have offspring. (b) Mother can be one-sixth if the heirs have children or have two or more siblings (siblings, half-siblings, one thousand), can be 1/3 if heir no child or heir leave one brother (siblings, half-sons, same mother). (c) The widower can be 1/2 if the heir is no child, and can be 1/4 if there is a child. (d) Widows can 1/4 if there are children, and 1/8 if no children. (e) Girls get 1/2 portions if alone, if two / more girls, a share of 2/3 if there is no male offspring of the boys. (f) A brother or sister (siblings, half-sons and daughters) can be 1/6 of a part, if two or more, the part 1/3, if brother (siblings, half-siblings, Seibu) inherits with the heir (jurisprudence). (g) A sister, siblings, a thousand) can be 1/2, two sisters (half-siblings, half-sons) can be 2/3 parts, if the sister inherits not with the father and there is no brother or son of a brother. (2) Unauthorized heirs. The details are as follows. (a) The boys and their descendants. (b) Girls and their descendants when inherited with boys. (c) Brothers and sisters if the heirs have no children and father. (d) Grandfather and grandmother. (e) Uncle and aunt either from the side of the father or the mother and his descendants. (3) Group of heirs who can part as a surrogate heir. The details are as follows. (a) The offspring of the child inherits the part he replaced. (b) The descendants of a brother/sister (siblings, half-sisters, Seibu), inherit the part they replace. (c) Father's grandparents inherited part of the father, each sharing the same. (d) The maternal grandparents inherited part of the mother, each sharing the same. (e) Uncle and paternal aunts and their descendants inherited part of the father if there were no father's grandparents. (f) Uncle and aunts from mother's side and their offspring inherited part of mother if no maternal grandparents.

Based on the principles and principles of inheritance provisions mentioned above, the degree of the beneficiary group has the following levels. (1) The first-degree group, ie husband/wife, child and descendant, father and mother. (2) The second-degree group, ie husband/wife, child and/or his descendant, grandparents from father or mother side. (3) Third-degree groups of husband/wife, brother (siblings, half-siblings, same-mother) and/or his descendants, grandparents of the father's and mother's side. (4) Fourth degree group ie husband/wife, uncle/aunt and/or descendants. The perspective of Islamic law on the legal system of customary adat Bugis bone can be said that basically, between Islamic law and Bugis customary law about this inheritance has no prominent difference. Although there are differences, that does not mean contrary to Islamic law; it still needs to be seen further development. What is important in Islamic law is how far its values are applied, not the extent to which they use Islamic symbols.

3.2.2 *Elements of the Equation*

The strong influence of Islamic law in customary law in the Land of Bugis Bone can be found in the theory and practice of the implementation of the law of agriculture in various places in the land of Bugis Bone, of which has been recognized and the basis of the administration of the District Court and the Supreme Court. The elements of the equation include.

(1) Community system of Bugis Bone community.

In fact, the law of inheritance does not stand alone but relates to the order and system of kinship of society itself. Meanwhile, the familial system is directly related to the marriage system. The familial system in Bugis society is a bilateral kinship system, which draws the line up through the father and mother. Thus, the familial system of Bugis Bone society is different from the system of kemasyaraktan in various places, such as in Ambon, Alas, Bali, Batak, Gayo Land, Irian, and Lampung patrilineal system, which is a family system that only draws the lineage up through Just father. It is different in Minangkabau that draws the lineage upwards through the mother (matrilineal). This is where the most basic equality between Islamic inheritance law and customary law of inheritance in Bugis lands, both of which have bilateral societal conceptions, while their marriage law in principle has also been in accordance with Islamic law.

(2) Treasure (Maurus)

Conceptions of Islamic law and customary law of inheritance in Bugis land, basically there is not much difference. Both groups of law equally make the treasure as one of the pillars of inheritance. Before being distributed to each of the eligible, first buried burial fees, debt payments, wills payments (if any) and in Islamic law plus the expenditure of zakat when nishab and haul it has enough. So, according to Soepomo spontaneity of heritage division after heir died, not in accordance with the spirit of customary law. What seems to differ from Islamic law is this: (a) In Bugis customary law is known three types of undivided treasures and are not inherited by the heirs in absolute terms, namely the so-called arajang (the treasure used or handled by the ruling king as the cost of his family's life). This treasure will fall into the hands of the king who succeeded him, not his heirs. (b) There is also a classification of unknown property in Islamic law, i.e. classification in terms of types and usefulness of the property, such as houses, jewellery, destined to the heirs of women; While the form of rice fields, ponds, fields, livestock, earmarked for heirs of women.

(3) The heir (muwarris)

As a prerequisite in obtaining the estate, the testator must be declared dead. This provision is apparently not only applicable in Islamic law and customary law, but it is also affirmed in the Civil Code that "Inheritance is only by death". In practice, however, it is often found in Bugis Bone community members to distribute property when parents are still alive, in an attempt to prevent family conflicts in the future, but these divisions and grants will be effective after the parents have passed away. Such divisions are usually not all existing treasures distributed, but there is left for the cost as well as life and later for burial fees and so forth.

(4) *Heirs*

The influence of Islamic law in the matter of this heir can be seen in the following. (a) If in Islamic law there is known by the magic of things that prevent a person in accepting treasures, such as a family far removed by a closer family, then in the customary law of Bugis is known by the term polo aleteng, which means the same as above. Thus, in Bugis customary law, as in Islamic law, it does not recognize the replacement of the heirs as it applies elsewhere, such as in Java and Bali. (b) In Islamic law, the portion of division differentiated between men and women. The male gets one part, and the woman gets all the parts, as Allah says, “*Allah has prescribed for you concerning your sons, that of a man equal to the share of two daughters.*” (*Q.S.al-Nisa: 11*).

So it is the same as in the customary law of Bugis customs that term it by majjung-mallemp ±, that is to uphold for women and bear for men. (a) Unlawful boys (boys born outside marriage) both groups of law above reproach him firmly and stipulate that part of the child is only entitled to get from the side of his mother, not from his father. (b) About the adopted child, the two law groups did not recognize him as an heir. Allah says Translation “*And He does not make your adopted son a natural child*” (*Q.S.al-Ahsab: 4*). (1) Under the Bugis customary law, the Supreme Court confirmed that the widow's section is $\frac{1}{4}$ if no children and $\frac{1}{8}$ if they have children, while the widower gets $\frac{1}{2}$ if they have no children and $\frac{1}{4}$ if they have children. This is clearly the same as Islamic law. (2) In Bugis customary law, not justifying the testament causes the other child not to get an inheritance, this is in line with Islamic law which determines the number of wills should not be more than $\frac{1}{3}$ of the total amount of property. (3) The amount of grant is not calculated at the time of the division of the inheritance, but some time before. Similarly, grants in a state of pain (hard) are limited. Such a thing is in line with Islamic law.

The provisions concerning inheritance in Bugis societies unknown to Islamic law are elements of siri '. Siri 'as part of the Bugis philosophy, may prevent a person from receiving the inheritance. For example, a family member who defames his family, such as silariang (elopment) may be considered "turned off," not inherited, and even his children are not considered to have a nasab relationship with his grandmother.

4. Conclusion

Basically, between Islamic law and Bugis customary law about this inheritance has no significant difference. Although there are differences, that does not mean contrary to Islamic law; it still needs to be seen further development. What is important in Islamic law is how far its values are applied, not the extent to which they use Islamic symbols. In the perspective of Bugis society, it seems that Islam can flourish more alongside Bugis customs perception than on the shifts experienced by the Bugis custom. Therefore, between Islam and Bugis custom there has never been any conceptual tension between the two as with other local customs in Indonesia, it is because both have the same ideal frame. The law of inheritance has a direct bearing on the structure and system of the surrounding community, so to re-actualize the Islamic inheritance law in society, an integrated approach is required, especially the building of the system and the structure of society in which it will manifest itself. That way, Islamic inheritance law is no longer seen as it is, but how it should be.

5. References

- [1] Abidin Z 1983 *Persepsi orang Bugis, Makasar tentang hukum, negara dan dunia luar*. Alumni.
- [2] Sumardi M 1982 *Penelitian agama: masalah dan pemikiran*. Penerbit Sinar Harapan.
- [3] Van Vollenhoven C, Holleman JF, Sonius HWJ 2013 *Van Vollenhoven on Indonesian Adat Law*. Springer.
- [4] Hurgronje CS 1913 *De Islam in Nederlandsch-Indie*. Hollandia-drukkerij.

- [5] Zubair A, Integrasi Hukum Islam Dan Hukum Adat Dalam Pewarisan Masyarakat Bugis Bone.
- [6] Biernacki P, Waldorf D 1981 Snowball sampling: Problems and techniques of chain referral sampling. *Sociol. Methods Res.* 10 (2) 141–163.
- [7] Hazairin HKBM al 1990 *Qur'an dan Hadits*, cet. 7. Jakarta, Tintamas
- [8] Suparman E, Gunarsa A 2005 *Hukum waris Indonesia: dalam perspektif Islam, adat, dan BW*. PT Refika Aditama.
- [9] Rofiq A 1993 *Fiqh Mawaris*. PT Raja Grafindo Persadi.
- [10] Soepomo R 1986 *Bab-Bab Tentang Hukum Adat Waris*. Fakultas Hukum Universitas Jember, Jember.