

Comparison of the Inheritance System in Customary Law, Western Civil Law, and Islamic Law in Indonesia

Suhardiman

Polda Sumatera Utara

Email: suhardiman7712@gmail.com

Article Info	Abstract
Article History Received : 2026-07-02 Revised: 2026-07-14 Published: 2026-07-30 Keywords: <i>Inheritance Law, Customary Law, Islamic Law, Western Civil Law, Legal Pluralism.</i>	Indonesia has a pluralistic inheritance law system because it is influenced by customary law, western civil law, and Islamic law. The differences in the characteristics of the three legal systems often cause differences in the determination of heirs, the distribution of inheritance, and the settlement of inheritance disputes. This study aims to analyze the comparison of inheritance systems in customary law, western civil law, and Islamic law and examine the implications of inheritance law pluralism on legal certainty in Indonesia. The research uses normative legal research methods with a legislative approach, a conceptual approach, and a comparative approach. Legal materials are obtained through literature studies consisting of laws and regulations, books, scientific journals, and literature related to inheritance law. All legal materials are analyzed qualitatively using descriptive-analytical methods. The results of the study show that the three inheritance law systems have the same goal, namely regulating the transfer of inheritance property to heirs, but differ in the legal basis, distribution system, and determination of heirs. Inheritance law pluralism provides flexibility for the community to apply a legal system that is in accordance with its legal conditions, but also has the potential to cause legal uncertainty if there is no clarity about the legal system used in dispute resolution. Therefore, understanding the characteristics of each legal system and the consistent application of the law are important factors in realizing legal certainty, justice, and usefulness in resolving inheritance cases in Indonesia.

I. INTRODUCTION

Inheritance law is one part of family law that regulates the transfer of rights and obligations over a person's property after death to his or her heirs. In Indonesia, the inheritance law system has a pluralistic characteristic because it is influenced by three legal systems that live and develop simultaneously, namely customary law, western civil law sourced from *Burgerlijk Wetboek* (BW), and Islamic inheritance law. The diversity of legal systems causes the regulation of heirs, inheritance, and the mechanism for the distribution of inheritance to differ between one legal system and another (Prodjodikoro, 1983).

Inheritance law pluralism in Indonesia provides space for the community to implement a legal system that is in accordance with the legal status and values adhered to. However, the existence of several legal systems also raises problems in practice, especially when there is a difference in understanding about the determination of heirs, inheritance, and inheritance dispute resolution. This condition

shows that the difference in the characteristics of each legal system is still a challenge in realizing legal certainty and a sense of justice for the community (Sudarsono, 1991).

Customary law recognizes the inheritance system that is influenced by the kinship system of the community, such as the patrilineal, matrilineal, and parental systems, so that the mechanism of distribution of inheritance is highly dependent on the customs that apply in each region. On the other hand, western civil inheritance law places blood relations and marital relations as the main basis for determining heirs and regulates in detail the class of heirs and the concept of *legitieme portie*. The Islamic inheritance law regulates the distribution of inheritance based on the provisions of the Qur'an, hadith, and the principle of *faraidh* with a share that has been expressly determined for each heir (Ash-Shiddieqy, 2015).

A lot of research on inheritance law has been conducted, both discussing customary inheritance law, western civil inheritance law, and Islamic inheritance law separately. However,

research comparing the three legal systems in a comprehensive study, particularly on the basis of inheritance, the system of inheritance distribution, and inheritance barrier factors, is still relatively limited. Therefore, this research has novelty by presenting a comparative analysis of the three inheritance law systems that apply in Indonesia so that it can provide a more complete picture of the similarities, differences, and implications for national inheritance practices.

Based on this background, this study aims to analyze the comparison of inheritance systems in customary law, western civil law, and Islamic law in Indonesia, as well as identify similarities, differences, and implications of the application of the three legal systems in realizing legal certainty and justice for the community.

II. RESEARCH METHODS

This research is a normative legal research using a statutory *approach*, a conceptual approach, and a comparative approach. The legislative approach is used to examine the provisions of inheritance law in the Civil Code, the Compilation of Islamic Law, as well as legal provisions related to inheritance in Indonesia. The conceptual approach is used to understand the theories of inheritance law that develop in doctrine, while the comparative approach is used to compare the characteristics of customary inheritance law, western civil law, and Islamic law (Marzuki, 2010).

Legal materials consist of primary legal materials in the form of laws and regulations, secondary legal materials in the form of books, scientific journals, and research results related to inheritance law, and tertiary legal materials in the form of legal dictionaries and encyclopedias. All legal materials were collected through *library research* and analyzed qualitatively using descriptive-analytical methods to gain an understanding of the similarities, differences, and implications of the application of the three inheritance law systems in Indonesia.

III. RESULTS AND DISCUSSION

A. Comparison of the Inheritance System in Customary Law, Western Civil Law, and Islamic Law

The inheritance law system in Indonesia reflects a pluralistic character because it is influenced by three coexisting legal systems, namely customary law, western civil law (*Burgerlijk Wetboek*), and Islamic law. Each system has a different philosophical basis, legal source, and inheritance distribution mechanism so that it gives birth to its own characteristics in determining heirs and the distribution of inheritance. This diversity is a consequence of the development of Indonesian legal history which recognizes the existence of various legal systems in people's lives (Prodjodikoro, 1983).

Customary inheritance law bases the distribution of inheritance on the kinship system that applies in society. Therefore, the mechanism of inheritance is not uniform because it is influenced by the patrilineal, matrilineal, or parental systems. In societies that adhere to the patrilineal system, the position of men tends to be more dominant as heirs, while in the matrilineal system, the position of women gets a more prominent position. The parental system provides a relatively balanced position to men and women in obtaining inheritance rights. These differences show that customary law focuses more on social and cultural values that develop in society than on universal provisions (Soepomo, 1982).

In contrast to customary law, western civil inheritance law sourced from *the Burgerlijk Wetboek* regulates the division of inheritance based on blood relations and marital relations. Heirs are grouped into several groups with a certain order of priority so that the distribution of inheritance is carried out based on the provisions that have been stipulated in the law. In addition, western civil inheritance law recognizes the concept of *legitieme portie*, which is an absolute share that must be given to certain heirs as a form of protection for family rights. These arrangements show that the civil inheritance system emphasizes legal certainty through written and systematic arrangements (Subekti, 2004).

Meanwhile, Islamic inheritance law regulates the distribution of inheritance based on the provisions of the Qur'an, hadith, and

fariath. The amount of each heir's share has been determined strictly so that the discretion in the distribution is relatively more limited compared to customary law and western civil law. The main purpose of the faraidh system is to realize justice in accordance with the provisions of sharia and provide certainty about the rights of each heir. Thus, Islamic inheritance law has a strong normative character because the distribution of inheritance is based on the provisions that have been established in Islamic law sources (Ash-Shiddieqy, 2015).

Although they have quite basic differences, the three legal systems have similarities, namely both regulate the mechanism for the transfer of rights to inherited property to the rightful heirs. The difference lies in the basis of determining heirs, the system of distribution of inheritance, and the legal sources that are the basis for its regulation. Customary law is oriented to customary values and kinship systems, western civil law is oriented to the provisions of legislation, while Islamic law is based on sharia principles. These differences show that the pluralism of inheritance law in Indonesia is a form of recognition of the diversity of legal systems that live in society.

Based on the results of the analysis, the existence of three inheritance law systems provides flexibility for the community to resolve inheritance issues in accordance with the legal system that applies to them. However, this pluralism also has the potential to cause differences in interpretation and disputes if there is no clear understanding of the legal system on which case resolution is based. Therefore, a comprehensive understanding of the characteristics of each legal system is needed so that its application is able to provide legal certainty while reflecting a sense of justice for the parties.

B. Implications of Inheritance Law Pluralism on Legal Certainty in Indonesia

Inheritance law pluralism in Indonesia is a consequence of the existence of various legal systems that live and develop in society, namely customary law, western civil law, and

Islamic law. The recognition of the three legal systems shows that national law provides space for the community to implement an inheritance system that is in accordance with the legal, religious, and customary background adhered to. On the one hand, pluralism reflects respect for the diversity of Indonesian society, but on the other hand, it also has the potential to cause problems in realizing legal certainty if there is a difference in understanding of the legal system that should be applied (Soepomo, 1982).

In practice, inheritance disputes often arise due to differences of opinion on the legal basis used in the distribution of inheritance. This difference can occur when the heirs have a desire to use a different legal system, for example, some want a division based on customary law, while others want the application of Islamic law or provisions in the Civil Code. Such conditions have the potential to cause legal uncertainty if there is no clarity about the legal system on which dispute resolution is based. Therefore, the determination of the applicable legal system is an important factor in ensuring certainty and justice for the parties (Prodjodikoro, 1983).

Each inheritance law system has its own advantages and characteristics. Customary law has the advantage of being able to adapt the distribution of inheritance to the social and cultural values of the local community. Western civil law provides certainty through systematic and written arrangements, while Islamic inheritance law offers a clearly defined division based on the provisions of the sharia. These differences in characteristics show that there is no one system that is completely better than another, but each has a function according to the subject of the law and the community environment in which it is applicable (Subekti, 2004).

From the perspective of legal certainty, the existence of inheritance law pluralism requires a good understanding from the public and law enforcement officials regarding the limits of the application of each legal system. Judges and legal practitioners are required to be able to identify the legal system that applies to the parties before determining the basis for

resolving the case. Thus, the resulting verdict not only has juridical legitimacy, but also reflects a sense of justice in accordance with the characteristics of the society concerned (Sudarsono, 1991).

Based on the results of the analysis, inheritance law pluralism is a wealth of the Indonesian legal system that must be seen as a form of recognition of the diversity of society. However, this pluralism needs to be balanced with the consistent application of the law so as not to create uncertainty in the settlement of inheritance disputes. Harmonization between customary law, western civil law, and Islamic law is important to ensure that every case settlement remains oriented towards legal certainty, justice, and benefits for all heirs.

IV. CONCLUSIONS AND SUGGESTIONS

A. Conclusion

Based on the results of the research, it can be concluded that the inheritance system in Indonesia adheres to legal pluralism which is reflected in the enactment of customary law, western civil law, and Islamic law side by side. The three legal systems have similarities in regulating the transfer of inheritance to heirs, but differ in the legal basis, determination of heirs, distribution mechanism, and principles that are the basis for their regulation. Customary law adjusts the division of inheritance to the kinship system and values that live in society, western civil law focuses on the provisions stipulated in *the Burgerlijk Wetboek*, while Islamic law bases the division of inheritance on the provisions of the Qur'an, hadith, and fariath.

The diversity of the inheritance legal system provides flexibility for the community in applying laws in accordance with the legal status and values adhered to. However, legal pluralism also has the potential to raise issues regarding legal certainty if there are differences of opinion about the legal system that applies in an inheritance dispute. Therefore, a comprehensive understanding of the characteristics of each legal system and consistent application of the law are important factors in realizing legal certainty, justice, and

benefits for the parties in resolving inheritance cases.

B. Suggestions

It is necessary to increase public understanding of the characteristics and scope of the application of each inheritance legal system so that the settlement of inheritance distribution can be carried out appropriately in accordance with the applicable legal provisions. In addition, law enforcement officials, especially judges, need to apply a comprehensive approach in determining the legal system that is the basis for dispute resolution so that the resulting verdicts are able to provide legal certainty while reflecting a sense of justice.

For academics, research on inheritance law in Indonesia needs to continue to be developed through studies that are not only normative, but also empirical to find out how the pluralism of inheritance law is applied in judicial and societal practices. Follow-up research is also expected to be able to provide recommendations on the harmonization of the inheritance law system in order to strengthen the development of national law.

REFERENCE LIST

- Ash-Shiddieqy, T. M. Hasbi. (2015). *Fiqh Mawaris*. Semarang: PT Pustaka Rizki Putra.
- Marzuki, Peter Mahmud. (2010). *Penelitian Hukum*. Jakarta: Kencana.
- Prodjodikoro, Wirjono. (1983). *Hukum Warisan di Indonesia*. Bandung: Sumur Bandung.
- Soekanto, Soerjono. (1986). *Pengantar Penelitian Hukum*. Jakarta: UI Press.
- Soepomo. (1982). *Bab-Bab tentang Hukum Adat*. Jakarta: Pradnya Paramita.
- Subekti. (2004). *Pokok-Pokok Hukum Perdata*. Jakarta: Intermasa.
- Sudarsono. (1991). *Hukum Waris dan Sistem Bilateral*. Jakarta: Rineka Cipta.

Kitab Undang-Undang Hukum Perdata (*Burgerlijk
Wetboek*).

Kompilasi Hukum Islam.