

d._2019._818-5872-1-PB.pdf
by

Submission date: 19-May-2021 09:32AM (UTC+0800)

Submission ID: 1589189712

File name: d._2019._818-5872-1-PB.pdf (567.77K)

Word count: 4092

Character count: 21545



Inheritance of Community Property in Melayu Siak Community

Lani Regina Yulanda, Yaswirman, Zefrizal Nurdin

Faculty of Law, University of Andalas Padang, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v6i3.818>

Abstract

The existence of legal events in the form of death results inheritance regulated by certain inheritance laws. In Indonesia, there is still inheritance legal pluralism, including civil inheritance law, Islamic inheritance law and customary inheritance law. In Melayu Siak community, where Islamic law and customary law are their living laws, there are differences in those two laws regarding the inheritance which then raises the question of which law will apply. This study utilizes a qualitative descriptive method with an empirical juridical legal research approach. Research data are collected through field studies by conducting interviews with the respondents to obtain primary data and literature studies to obtain secondary data. The focus of this research is to find out and analyze inheritance over the community property in Melayu Siak community. The results of the study show that 1) there is a relationship between the kinship system and the existence of the community property. 2) the inheritance in Melayu Siak community is based on the Islamic inheritance law and its implementation is carried out based on the results of the deliberation.

Keywords: Inheritance Law; Community Property; Melayu; Siak

Introduction

Death is a legal event that causes the transfer of property or inheritance. Amir Syarifuddin mentions that inheritance comes from Arabic word *al miirats* which means the transfer of something from someone to another person or from a people to other people, commonly called the heirs.¹ Inheritance is given by a deceased person or the testator to a person who is still alive or the heir. It is done with certain legal provisions called the Inheritance Law.

Eman Suparman affirms that in Indonesia there are various inheritance legal systems and ethnic pluralism. In practice, there are three legal systems governing inheritance law. This is in accordance with the classification of citizens determined by Article 163 of *Indische Staatsregeling*. The three legal systems are the Dutch Inheritance Law (hereinafter referred to as *Burgerlijk Wetboek*), Islamic

¹ See Amir Syarifuddin, *Islamic Heritage Law*, Jakarta, Prenada Media, 2004, page 16

Inheritance Law, and Customary Law of Inheritance.² The Dutch Inheritance Law (*Burgerlijk Wetboek*) is for Chinese and European descendants, Islamic Inheritance Law applies to Indonesians (both native and descendants) who are Muslim and the Customary Law of inheritance is intended for native Indonesians which are tribes that live in the territory of Indonesia.

The inheritance law is a part of family law, property law, and the law of things. It is part of family law, plays a very important role, determines and reflects the family system that applies in that community.³ Marriage is one of the causes of inheritance because in a marriage there is a union of property between husband and wife. For this reason, based on the opinions of other legal experts, there are three types of properties in a marriage:

- a. The husband's personal property is the husband's separate property, that is the asset brought before marriage and asset obtained as gifts or inheritance.
- b. The wife's personal property is the wife's separate property, that is the asset brought before marriage and asset obtained as gifts or inheritance.
- c. The community property of husband and wife is the property that is obtained either individually or together during the marriage without questioning on whose behalf.⁴

In general, there are two types of properties in a marriage. The first one is the separate property of each spouse obtained from inheritance, gifts or other earnings before marriage, owned by a husband or wife. The second one is the community property that is shared between husband and wife. It is also mentioned in Law No.1 of 1974 concerning Marriage regarding the community property:

Article 35

(1) Property acquired during marriage becomes the community property.⁵

It can be interpreted that the community property is the property that is available and has been obtained since the day of marriage until the marriage ends. Thus, the community property is a property whose ownership is held by husband and wife together. In general, the community property are the properties used to finance household needs and survival, whether in the form of money or immovable property such as houses and land or movable objects such as vehicles. Therefore, if a marriage ends because of divorce or death, there will be a distribution of the properties acquired during the marriage which is called the community property.

The existence of pluralism of inheritance law in Indonesia is because there are various types of population and are influenced by the flow of beliefs and cultures that live in the middle of community. Long before the law from the government or religious law applied in Indonesia, there were customary laws that lived in the community. There are various kinds of customary law in Indonesian society, so each region applies inheritance laws in different ways.

Hilman points out that one of the examples is Javanese society. Javanese customary law adheres to the term *sepikul segendongan*, meaning boys receive twice the share of the female children.⁶ The principle of *sepikul-segendong* is still mostly carried out by the community, especially Java (East Java).

² See Eman Suparman, *Inheritance Law in Indonesia in the Indigenous Perspective of Burgerlijk Wetboek*, Bandung: PT. Refika Aditama, 2005, page 30

³ M. Idris Ramulyo, *Comparison of the Implementation of Islamic Inheritance Law with Inheritance according to the Civil Code (Burgerlijk Wetboek)*, Sinar Grafika 2000, page 2

⁴ Arto Mukti, *Practice of Civil Cases at the Religious Court*, Yogyakarta; Pustaka Pelajar, 1998, page 70

⁵ Law No. 1 of 1974 concerning Marriage

⁶ Hadikusuma, Hilman, Prof., S.H., *Customary Law of Inheritance*, PT Citra Aditnya Bakti; Bandung, 1993, page 104-105

This principle implies that between men and women receive the same inheritance rights, but each part is different. Men who are considered to have greater roles and responsibilities receive more shares (*sepikul*) than women (*segendong*).

With variations in the inheritance legal system as mentioned above, Indonesian citizens are given the right to choose which inheritance legal system they use to resolve inheritance disputes, whether based on generally accepted religious law (Islam) or customary law that has lived in the community. Property ownership and inheritance system in a family is certainly influenced by the kinship system adopted, whether patrilineal, matrilineal or parental. According to Zikri Darussamin, the Melayu Siak indigenous people who become the object of the study are generally a community with a parental kinship system in which the lineage drawn from the father and mother's side. It means that the inheritance is done equally; women and men have the same portion.⁷

Based on the history of the Siak kingdom, there was an interaction between Islamic law and customary law in the Melayu Siak community which created the Islamization of customary law. This is revealed from the saying "Adat bersendi syarak, syarak bersendi kitabullah, syarak mengata adat memakai, ya kata syarak benar kata adat, adat tumbuh dari syarak, syarak tumbuh dari kitabullah". Tenas Effendi explains that:

Cultural values and social norms of the Malay people must refer to the teachings of Islam and are prohibited from debating or violating. Therefore, all cultural values that are considered not harmonious and in accordance with the teachings of Islam must be straightened and adapted to the teachings of Islam. This reference causes Islam to be inseparable from customs and norms in the lives of Malays.⁸

Zikri Darussamin emphasizes that, in general, the inheritance law of the Melayu Siak community is not much different from Islamic inheritance law, including anyone who has the right to be an heir, the cause of inheritance, the loss of inheritance rights and property to be inherited. It is because basically the Melayu Siak community has customs that rely on Islamic law, as the saying goes "Adat bersendi syarak, syarak bersendi kitabullah".⁹

However, in terms of inheritance law, there is a difference between the customary inheritance law of the Melayu Siak Community and Islamic inheritance law. The Melayu Siak traditional inheritance law divides the community properties equally in which male and female portions are the same because the kinship system of the Melayu Siak community is parental (drawn from the father and also the mother). Whereas, in Islamic inheritance law, the kinship or *nasab* system is withdrawn from the paternal (patrilineal) which determines the portion of men is twice the portion of women.

In this case, the difference raises a problem related to inheritance law that will apply to the Melayu Siak community which still adheres to its customs based on Islamic law, but on the specificity of traditional inheritance law has differences with Islamic law. Amir Syarifuddin says that, with the death, inheritance has been the right of the heirs.¹⁰ Moreover, Mukhtar Yahya and Fatchurrahman mentions that material rights and rights related to material are a person's right. Thus, the arrangement and implementation are given to each individual.¹¹

⁷ See Zikri Darussamin, *Heritage System of Siak Malay*, Pekanbaru, UR Press, 2003, page 110

⁸ Tenas Effendi, *Teachings of Malay: Cultural Basics of Riau Malay*, Pekanbaru, Riau Arts Council, 1994, page 25

⁹ See Zikri Darussamin, *Heritage System of Siak Malay*, Pekanbaru, UR Press, 2003, page 110

¹⁰ See Amir Syarifuddin, *Implementation of Islamic Inheritance Law in the Minangkabau Customary Environment*, Jakarta, Gunung Agung, 1984, page 317

¹¹ See Mukhtar Yahya dan Fatchurrahman, *Basics of Fostering Islamic Fiqh Law*, Bandung, Al-Ma'arif, 1983, page 367

Therefore, which inheritance law applied by the Melayu Siak community becomes the choice of the community itself. For this reason, the author is interested in further researching the inheritance of community property in Melayu Siak community with the research title **Inheritance of Community Property in Melayu Siak Community**.

Research Methods

The method used in this study is empirical juridical. It is a legal research method that functions to be able to see the law in the real sense and examine how the law works in a particular community.¹² To conduct this study, the researcher completes the materials needed in making and completing this study by examining primary data, secondary data, and tertiary data.¹³ This study uses data collection methods by:

1. having interview with respondents who become the subject of inheritance over the community property in the Melayu Siak community.
2. having library research by collecting legal materials related to research material such as legal books in the form of written texts and soft-copy editions, such as e-books, articles in journals, papers, government publications, and others which can be obtained from the internet that is accessed online and reading, reviewing and recording reviews of library materials related to the object under study.
- 3.

The data analysis method used in this study is descriptive qualitative. The qualitative approach in this study is a procedure that produces descriptive data; what is stated by the respondent in writing and real behavior. This research examines and studies the intact research object.¹⁴

Research Results and Discussions

Inheritance of Community Property in Melayu Siak Community

For Melayu Siak community, according to Zikri Darussamin, the community property is the property collected during the marriage, either from the business of the husband or wife or from a joint venture without distinguishing significantly who the most dominant person is in obtaining it. The husband is in charge of earning a living, while the wife handles household matters, but the husband's income will be shared. They do not problematize whether or not the wife is working.¹⁵

Based on the results of an interview with Muhammad Yatim, if a husband or wife dies and inherits occurs, according to the custom of Melayu Siak community, the properties left by the testator will be issued in advance for funeral expenses, paying debts left by the late (if any) and carrying out his will (if any). After that, inheritance which constitutes marriage property is divided in two, some is given to the wife or husband who is still alive and the other part is distributed to the *nasabiah* heirs such as children or parents. Moreover, Muhammad Yatim states that there are few Melayu Siak people who directly carried out the distribution of inheritance from one of the newly deceased husband or wife. The distribution of

¹² Sri Mamudji et al., *Research Methods and Legal Writing*, Publishing Agency at the Faculty of Law, Indonesia University, Jakarta, 2005), page 4-5

¹³ Adi Rianto, *Social and Legal Research Methodology*, Granit, Jakarta, 2004, page 31

¹⁴ Soerjono Soekanto, *Introduction to Legal Research*, UI Press, Jakarta, 2006, page 32

¹⁵ Interview with Mr. H. Muhammad Yatim at the Office of the Village Head of Kampung Dalam, Siak, on April 15, 2019

inheritance will usually be carried out when both parents have passed away where the children as the heirs will conduct deliberations to carry out the distribution of inheritance.¹⁶

According to Zikri Darussamin, Melayu Siak community does not distinguish gender in the distribution of inheritance in which the male and female parts are the same. It is related to the kinship system that exists in Melayu Siak community, parental, where the lineage is drawn from the father and the mother. Men and women are equal. Furthermore, there is a tendency that females benefit more in terms of inheritance distribution. It can be seen in the distribution of certain inheritance, such as houses, cooking utensils and home furnishings which are directly distributed to the females without going through the proper distribution process.¹⁷

From the results of research, the researcher took 3 cases as purposive samples which will be presented with descriptive descriptions as follows:

1. Rady Suheri, Sazly Rais and Mumi Siswati are biological children and legal heirs of the late Abdul Murad and late Syamsiah based on a declaration of heirship made in Kampung Rempak village on November 21, 2018. Based on the results of the interview, the inheritance process was carried out by deliberation without knowing the distribution of property according to Islamic inheritance law. In the meeting, the inheritance is a piece of land in Kampung Rempak Village, letter of measure dated 08/04/2016 no 535/kp.Rempak/2016 with an area of 718 m², and it was agreed that the land be given to Murni Siswati who was the youngest daughter who was considered more in need than the other heirs.¹⁸
2. Based on the Declaration of Heirship dated November 13, 2018 issued by the village head of Kampung Rempak, Amiruddin, Anidar, Aida, Adham, Alfian were legitimate biological children as the heirs of the late Alwi and late Asiah, and one grandson, Aditya Abdul Hafizh who was the substitute heir of his father, the deceased Al-Azhar who was the biological child of the late Alwi and the late Asiah. Based on the statement, the process of inheritance is carried out by deliberation and the distribution is based on the Islamic inheritance and other agreements.¹⁹
3. Based on the results of interviews with M. Idris who is the son of Mr. M. Yatim who is the heir of the late Yahya and the late Siti, there was information that the distribution of inheritance in his father's family was carried out by deliberation based on Islamic inheritance law. The inheritance left was in the form of land, that is based on the results of the deliberation it was agreed that the rights to land were divided equally to each of the existing heirs, namely the biological children of the late Yahya and the late Siti. If someone has died, the heirs are represented by their children (grandchildren) as substitute heirs.²⁰

From some of the cases above, it can be seen that in general Melayu Siak community still holds Islamic law as a guideline for life. The implementation is based on the results of deliberations to get the best collective agreement for the heirs, whether the inheritance is divided equally or given more to certain heirs who are more in need. In some cases, it can be concluded that the inheritance will generally be carried out when both parents have passed away. It is because if only one parent dies, the other living parent is still considered to be able to take care of the inheritance, some of which belongs to the living parent that is part of his marriage property. In addition, there are substitute heirs in Melayu Siak

¹⁶ Interview with Mr. H. Muhammad Yatim at the Office of the Village Head of Kampung Dalam, Siak, on April 15, 2019

¹⁷ See Zikri Darussamin, *Heritage System of Siak Malay*, Pekanbaru, UR Press, 2003, page 115

¹⁸ Interview with Mr. Sazly Rais at the Village Office of Kampung Rempak, Siak, on April 15, 2019

¹⁹ Interview with Mr. Zuhrihan Nur Falah S.STP, Head of Village of Kampung Rempak at the Village Office of Kampung Rempak, Siak, on April 15 2019

²⁰ Interview with Mr. M. Idris at the Village Office of Kampung Dalam, Siak, on April 15, 2019

community, in which a grandchild can replace the position of his father or mother for inheritance rights from his grandparents.

Integration of Melayu Siak Indigenous Inheritance Law with Islamic Inheritance Law

Customs for Melayu Siak community are not only a provision of life that has been accustomed to, but also involve their relationship with Islam which is used as the basis of their traditional philosophy. According to Melayu Siak community, the obedience to the custom is a manifestation of obedience to their religion, Islam. It means that custom which is a source of value for the Melayu Siak community is a habit that has been perceived by Islam. This custom is then maintained and becomes a source of value for Melayu Siak community until this day.

The Malay community in Siak Regency adheres to customary norms and traditions strictly, while at the same time they also recognize their complementarity with Islamic principles. Here, it is clearly shown that the position of custom and tradition is under Islam. Therefore, Islam has a very strong influence on Melayu Siak customs, and Islamic influence is also found in several aspects such as the inheritance system.

The inheritance system in the Melayu Siak community is much influenced by Islamic inheritance law. In terms of the kinship system, there are differences between the patrilineal Islamic kinship system and parental kinship system of Melayu Siak community. However, in terms of the heirs, inheritance, inheritance barrier factors and the process, there are similarities because Islamic inheritance law is the basis of inheritance law of Melayu Siak community.

From the description of the results of the research above, the inheritance process of Melayu Siak community prioritizes deliberation and there are no specific parts for males or females or other heirs. In practice, the heirs will generally first know their respective parts based on the division according to Islamic inheritance law and after that they will have a discussion for the distribution where the intended agreement is for mutual welfare and not for personal interests. Therefore, if one of the heirs who is based on the results of the deliberation are more in need of the inheritance, then the inheritance may be given to them. It is a custom of Melayu Siak community, specifically *Rumah Besar*/ The Main House (the term for parents' houses) along with all household furniture, that the house will be given directly to the youngest daughters since they are considered in charge of caring for the elderly in their old age.

Thus, the integration of the laws of Melayu Siak traditional inheritance with Islamic inheritance law is very close. *Faraidh* is used as the basis for the distribution of inheritance and remains firmly held even though its implementation is based on the results of deliberation which is an agreement of the heirs. This process is called *Faraidh Islah*. If there is a conflict and the community does not get an agreement in the deliberation, then the distribution will be returned to *Faraidh*'s law.

Conclusion

The inheritance of the Melayu Siak community over the community properties prioritizes deliberation. In its traditional inheritance law, there are no certain parts for males or females or other heirs. In practice, generally the heirs will first know their respective parts based on the division according to the Islamic inheritance law (*Faraidh*). After that, it will be discussed for the distribution based on *islah*, where the intended agreement is for shared welfare and not for the personal interests.

Suggestion

Based on the results of the study, the researcher suggests that Melayu Siak community has more awareness to register the transfer of ownership rights over land due to inheritance to the local National Land Agency office. It is done in order to avoid any conflicts arise regarding the ownership of rights to the inherited land. Moreover, if one generation has passed and the heir has passed away, there will be two inheritance disputes which complicate the arrangement of the transfer of rights.

References

Books

- Adi Rianto, *Social and Legal Research Methodology*, Granit, Jakarta, 2004, page 31.
- Amir Syarifuddin, *Implementation of Islamic Inheritance Law in the Minangkabau Customary Environment*, Jakarta, Gunung Agung, 1984, page 317.
- Amir Syarifuddin, *Islamic Heritage Law*, Jakarta, Prenada Media, 2004, page 16.
- Arto Mukti, *Practice of Civil Cases at the Religious Court*, Yogyakarta; Pustaka Pelajar, 1998, page 70.
- Eman Suparman, *Inheritance Law in Indonesia in the Indigenous Perspective of Burgerlijk Wetboek*, Bandung: PT. Refika Aditama, 2005, page 30.
- Hadikusuma, Hilman, Prof., S.H., *Customary Law of Inheritance*, PT Citra Aditnya Bakti; Bandung, 1993, page 104-105.
- M. Idris Ramulyo, *Comparison of the Implementation of Islamic Inheritance Law with Inheritance according to the Civil Code (Burgerlijk Wetboek)*, Sinar Grafika 2000, page 2.
- Mukhtar Yahya dan Fatchurrahman, *Basics of Fostering Islamic Fiqh Law*, Bandung, Al-Ma'arif, 1983, page 367.
- See Zikri Darussamin, *Heritage System of Siak Malay*, Pekanbaru, UR Press, 2003, page 110.
- Soerjono Soekanto, *Introduction to Legal Research*, UI Press, Jakarta, 2006, page 32.
- Sri Mamudji et al., *Research Methods and Legal Writing*, Publishing Agency at the Faculty of Law, Indonesia University, Jakarta, 2005), page 4-5.
- Tenas Effendi, *Teachings of Malay: Cultural Basics of Riau Malay*, Pekanbaru, Riau Arts Council, 1994, page 25.
- Zikri Darussamin, *Heritage System of Siak Malay*, Pekanbaru, UR Press, 2003, page 110.

Legislation

Law No. 1 of 1974 concerning Marriage.

Interview

Interview with Mr. H. Muhammad Yatim at the Office of the Village Head of Kampung Dalam, Siak, on April 15, 2019.

Interview with Mr. H. Muhammad Yatim at the Office of the Village Head of Kampung Dalam, Siak, on April 15, 2019.

See Zikri Darussamin, *Heritage System of Siak Malay*, Pekanbaru, UR Press, 2003, page 115.

Interview with Mr. Sazly Rais at the Village Office of Kampung Rempak, Siak, on April 15, 2019.

Interview with Mr. Zuhrihan Nur Falah S.STP, Head of Village of Kampung Rempak at the Village Office of Kampung Rempak, Siak, on April 15 2019.

Interview with Mr. M. Idris at the Village Office of Kampung Dalam, Siak, on April 15, 2019.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal. This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).

ORIGINALITY REPORT

11%

SIMILARITY INDEX

11%

INTERNET SOURCES

0%

PUBLICATIONS

4%

STUDENT PAPERS

MATCH ALL SOURCES (ONLY SELECTED SOURCE PRINTED)

9%

★ doaj.org

Internet Source

Exclude quotes On

Exclude bibliography On

Exclude matches < 3%