

APPLICATION OF ISLAMIC INHERITANCE LAW IN THE PRACTICE OF LIFE OF THE EAST LOLOAN COMMUNITY OF JEMBRANA BALI

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ABSTRACT:

In general, inheritance law in Bali applies the principle or system of patrilineal kinship where a man has full rights in becoming an heir, while a woman has the right to enjoy the proceeds or property of the man, through her status as a wife or a child. Women in the view of Balinese customary inheritance law still have the opportunity to become heirs but must go through certain conditions that must be met. This study aims to explore further the application of Islamic inheritance law in East Loloan, Jembrana, Bali. This study uses an empirical approach. The research technique uses observational interviews and documentation. Data analysis using triangulation. The results showed that 96% of the population in East Loloan is Muslim. For this reason, the implementation of inheritance law in East Loloan uses Islamic law, also guided by the Compilation of Islamic Law (KHI). As long as there is an opportunity to be resolved by Islamic law, then the application of inheritance law uses Shari'a. In other words, Balinese customary inheritance law cannot be applied in East Loloan, considering that there is a concept of peace or takharuj in accordance with Article 174 of the KHI.

Keywords: Law; Heirs; Islam

ABSTRAK:

Secara umum hukum waris di Bali menerapkan prinsip atau sistem kekerabatan patrilineal dimana seorang laki-laki mempunyai hak penuh dalam menjadi ahli waris, sedangkan perempuan berhak untuk menikmati hasil atau harta dari laki-laki tersebut, melalui statusnya sebagai istri atau seorang anak. Perempuan dalam pandangan hukum waris adat Bali masih mendapat kesempatan menjadi ahli waris namun harus melalui berbagai syarat-syarat tertentu yang harus dipenuhi. Penelitian ini bertujuan untuk menggali lebih jauh penerapan hukum waris Islam di Loloan Timur Jembrana Bali. Penelitian ini menggunakan pendekatan empiris. Teknik penelitian menggunakan wawancara observasi dan dokumentasi. Analisis data menggunakan triangulasi. Hasil penelitian menunjukkan bahwa 96% penduduk di Loloan Timur beragama Islam. Untuk itu pelaksanaan hukum waris di Loloan Timur menggunakan syariat Islam, dengan berpedoman pula pada Kompilasi Hukum Islam (KHI). Selama masih terdapat peluang diselesaikan dengan hukum Islam, maka penerapan hukum waris menggunakan syariat. Dengan kata lain hukum waris adat Bali tidak dapat diberlakukan di Loloan Timur, mengingat terdapat konsep perdamaian atau takharuj sesuai dengan Pasal 174 KHI.

Kata kunci: Hukum; Waris; Islam

INTRODUCTION

People in the world are faced with familial and social situations. In the kinship system of indigenous peoples, descent is important in maintaining the lineage (clan / *clan*), both straight and deviant. Family and community are a series that synergize in everyone's life (Abdulrahman, 2023). With regard to personal rights and obligations, a person has the obligation to give a will related to the management of his property, especially when someone is still alive (Djawas et al., 2022b). In the case of inheritance there are several interrelated elements, namely: property (which is owned by the heir and then called inheritance); heir (owner of property); and heirs (beneficiaries) (Khadijah & Aswari, 2019). These three elements complement each other and must be present in every inheritance discussion.

The issue of inheritance is often the basis for the birth of various court decisions in various regions in Indonesia. The emergence of inheritance cases in court was motivated by a sense of injustice experienced by the complainants (Muzakir, 2022). One of the inheritance problems that is often encountered is the existence of Multilevel Inheritance, where an estate has fallen to several generations below, and administratively has not changed. This allows for disputes to occur at a later date. This Multilevel Inheritance problem has become a classic problem in Indonesia (Irawaty & Diyantari, 2017). One of the reasons is the reluctance of the community to take care of inheritance which results in a protracted problem, often even causing new problems (Khunmay & Abannokovya, 2022).

Islamic law considers the need for the principle of pleasure between parties in the distribution of inheritance, so that the value of justice can be achieved (Yusup, 2017). Each party in the case of personal inheritance has been bound by law as a form of obedience to God and the system that applies in his religion. Islamic law views inheritance as an object of law that must have a basis in Shari'a. This is the background of the existence of a legal basis through the Compilation of Islamic Law (KHI) (Herawati, 2019). It was further explained that KHI itself is not a form of law directly authorized by the Indonesian government, but as the *Ijtihad* of scholars, as one of the alternative judges in making decisions in court. Meanwhile, in the view of positive law in Indonesia, there is also a Civil Code (KUHPdt) which until now is still used as a guide in making decisions in court (Khalfi et al., 2019). The KUHPdt, which is a legacy of the Dutch Colonial, describes various guidelines for inheritance law, including the concept of peace for the parties.

Indonesia is full of various cultures, each of which has customary norms in viewing a phenomenon, one of which is in terms of inheritance. Each culture has its own laws, which have been passed on to the generations below and have been in place for a long time. Thus, it can be said that inheritance law can differ in each region in Indonesia (Anshori, 2022). One example in Bali is the existence of inheritance law that allows a person to be released from the list of heirs if he has left his faith (converted from Hinduism to another religion) (Djawas et al., 2022a). The potential release of someone from the list of heirs, although not fully implemented, is evidence of the unique characteristics of each existing culture.

The results of interviews and preliminary observations show that Islamic groups in the past had good relations with the rulers in Bali who were Hindus. This gave rise to the term "*Diving Life*" which means brother of Islam. Jembrana Regency, especially East Loloan village is one of the clear evidence of the existence of an ancient Islamic village in Bali, where the community until now consistently maintains harmony between religious communities. No wonder East Loloan has "privileges" from Jembrana Regency, one of which is in the establishment of mosques, which in historical records can be said to be difficult to obtain this establishment permit.

Bali itself is known as the "*Island of a Thousand Temples*" is the great heritage of the Majapahit kingdom whose majority population is Hindu. Customary law in Bali views men as having a higher position than women. This also applies in terms of inheritance (Triyono, 2019). Based on this description, this study aims to explore further the application of Islamic inheritance law in East Loloan Jembrana Bali. East Loloan is the subject of this study considering the unique characteristics of a Muslim-majority region located on the island of Bali which is known as the land of the Hindu Gods. East Loloan is often a research study in a religious focus, one of which is the East Loloan Mushaf as evidence of the spread of Islam in Bali which began from the ancient Islamic village.

METHOD RESEARCH

This research is a field research with a sociology of law approach. This approach allows a phenomenon to be seen from the perspective of applicable law and actually practiced in a regional area (Fauzi et al., 2022). Data collection in this study uses interview and observation methods as primary data, while secondary data uses documentation and literature review that focus on inheritance law variables and are relevant to strengthen

research. This research started from a literature study until the researcher's interest emerged in the application of Islamic inheritance law in the life practice of the East Loloan Community, Jembrana, Bali. Triangulation data analysis is used in collecting data; data reduction process; Serving; as well as drawing conclusions.

RESULTS AND DISCUSSION

Customary inheritance law is a number of regulations that regulate the process of passing property to their descendants in a generation (Sukarti & Rais, 2018). Customary inheritance law underlines a system that applies from generation to generation and is maintained by the people in a region. While Balinese customary inheritance law adheres to a patrilineal inheritance system, where the family is traced from the paternal line or Purusa. The descendants of the father are commonly referred to as *Tunggal Sanggah* or *Tunggal Dadia*.

Customary inheritance law in Indonesia is influenced by the principle of lineage, which plays a role in determining the determination of heirs and the share of property to be divided (Saujan et al., 2022). Each region has its own characteristics that make it the same or different from other regions. Customary inheritance law also sees marriage as determining heirs. Customary inheritance law in Indonesia in this view is generally divided into 3 (three) main principles, namely: matrilineal; patrilineal; and bilateral. Matrilineal prioritizes the female lineage, as is the case in the Minangkabau area. In contrast, patrilineal prioritizes male lines, as in the Bali region. While bilateral views the rights of women and men as happened in Java (Barlinti, 2013).

This matrilineal and patrilineal system is considered by some to be a form of discrimination and has clearly violated human rights principles, considering that men and women in the international legal order recognize the same position (Bachri, 2022). Others think that sociologically, customary inheritance law has been running for generations, has been carried out for generations by a community, so it is unfair if then tradition is immediately eliminated. This is because customary law is a reference for a community in living life, which must have witnessed the history of community development, from traditional to modern conditions to the present (Furqan & Ali, 2018).

Inheritance law is basically an order or rule in the ownership of an object that is passed from heir to heir. Thus inheritance law also regulates the continuation of the will of wealth to subsequent descendants (Khosyi'ah et al., 2017). This continuation indicates that

there is an inheritance process that runs from generation to generation in terms of ownership and use of property. For this reason, different customary inheritance laws in each region have different legal principles (Ismail et al., 2022). Inheritance law in Indonesia cannot be separated from the family system applied in a region (Nurhidayah & Mahsyar, 2020). For example, inheritance is not always given when the testator is dead, but can also be given through division according to the will of the testator while still alive. That's why in old Javanese society, sometimes a father had several houses and each house was named after the son of the inheritee later. This is a form of the testator's will while he is still alive.

Loloan is an area along the Ijo Gading River. It is named East Loloan because of its territorial position to the east of the river. Administratively, East Loloan is located in Jembrana Regency. East Loloan itself is known as a Muslim village with the highest Muslim population in Bali (Uyuni & Adnan, 2021). East Loloan is known as an ancient Islamic village in Bali. Historically, it can be described that the spread of Islam in East Loloan began when the Hindu King in Jembrana, I Gusti Ngurah Pancoran in 1620-1697 AD, opened cooperation and communication with outsiders, especially Muslims from outside Bali. Some other factors supporting the spread of Islam in Jembrana are the existence of a vision of the people of Jembrana and immigrants about disapproval of Dutch colonialism. The Muslim community, which at that time was dominated by the Bugis tribe, was an accomplished merchant and showed their skills in martial arts and possession of powerful war weapons in the form of firearms and warships looted from the Dutch. This newcomer's martial arts ability has markedly strengthened Jembrana's strength and defense sector.

The interview results showed that in Balinese culture that carries the patrilineal concept, a family that does not have a son can do child adoption or *Meras Pianak*. This process must obtain the consent of family relatives (*Dadia*), and must go through the *Meras* procession, which aims to break the adopted child's relationship with his biological father. This is useful considering that in the future, adopted children will get certain positions according to kinship and social status. In its development, in most cases, this appointment process is no longer raising children from outside parties, but is carried out by raising children from close family. This is done to respect the biological father so as not to feel distant from the child (given the disconnection), as well as to maintain the caste of the family that raised the child.

In addition, there is also a tradition called *Sentana Rajeg*, where a father adopts his daughter to be the heir and successor of the family. This is done because a family does not have a son. In some cases, this tradition is carried out by families who only have an only child and are female. This tradition goes through several stages, starting from registration to *Bandesa* which will forward information on the *Sentana Rajeg* procession to the general public and make a Pangeling-Eling Letter, which contains the aims and objectives of *Sentana Rajeg*. This letter is also written proof that the woman will carry out the *Nyeburin's* Marriage. This marriage requires the groom's party not to withdraw the bride from his family. In family conditions where there are few girls and no sons, the *sentana rajeg* procession is usually carried out by the firstborn. The existence of the *Sentana Rajeg* tradition shows that Bali basically does not fully carry the concept of pure patrilineal, but can change or be flexible, known as Patrilineal *Beralih-Alih* (Fatwa et al., 2022).

The word *waris* comes from Arabic, *al-mirats* which means the movement of an object of goods from one person to another. In addition, the word *mirats* also means heirlooms or relics which are then interpreted as treasures left by people who have died (Abubakar, 2019). The word law accompanying inheritance indicates the existence of a set of binding regulations, both traditionally societal and statel through positive law in a country (Eleanora & Sari, 2019). Meanwhile, the word Islam strengthens the regulatory bond in line with sharia and Islamic teachings (Ismail, 2020).

The population in East Loloan is predominantly Muslim. For this reason, the implementation of inheritance law in East Loloan uses Islamic law, also guided by the Compilation of Islamic Law (KHI). As long as there is an opportunity to be resolved by Islamic law, the application of inheritance law uses Islamic law. In other words, Balinese customary inheritance law is not enforced in East Loloan. One of them is the application of the concept of peace or *takharuj* in accordance with Article 174 of the KHI. It can also be explained that in Islamic law, as applied in inheritance law in East Loloan has pillars, namely: *Muwarits* (givers of inheritance); *Warits* (heirs); and *Mauruts* (inheritance). While the conditions of inheritance are: death of the testator; his life heir; the presence of a clear direction of inheritance; and there is no barrier in inheritance (Muzakir, 2022).

Meras Pianak and Sentana Rajeg activities are also not carried out in the East Loloan community. In addition, non-Muslim East Loloan residents can use Indonesian law as stated in the Civil Code (KUHPdt). The commitment and consistency of the people of East Loloan, Jembrana Regency, Bali shows that there is concrete evidence of the

existence of customary law and religious law (Islam) that apply hand in hand without having to bring each other down.

CONCLUSION

Bali is an area with a majority Hindu population, where inheritance law is applied with customary inheritance law. Meanwhile, the application of inheritance law in East Loloan, Jemwaran Regency, Bali uses Islamic sharia law, considering that the majority of the population is Muslim. This was enforced from the 16th century AD to the present, and is still respected by non-Muslim communities. Public awareness is needed in responding to various existing inheritance laws, which have different legal principles. Without awareness of customary inheritance law and religious inheritance law, there can be potential misunderstandings and disputes.

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