



**JURNAL
POROS HUKUM
PADJADJARAN**

P-ISSN: 2715-7202
E-ISSN: 2715-9418

Volume 6, Number 1, November
2024

Submission:
30 May 2024

Accepted:
29 November 2024

Published:
30 November 2024

DOI:
<https://doi.org/10.23920/jphp.v6i1.1711>

Link Publication:
<https://jurnal.fh.unpad.ac.id/index.php/jphp/issue/archive>

Publisher:
Magister of Laws
Universitas Padjadjaran

The Practice of Parental Inheritance Distribution in West Java in Relation to Islamic Law

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ABSTRACT

In general, the parental indigenous people in West Java, especially the Banceuy Traditional Village, the majority of the population is Muslim, but in practice the distribution of inheritance still uses customary law. The purpose of this study is to obtain an overview of the practice of inheritance distribution of the Banceuy Traditional Village community in terms of Islamic law and to obtain a response to the obstacles that occur in the practice of inheritance distribution from the indigenous community. This research method uses a juridicalnormative approach study method. Specifications This study is descriptive-analytical. The research stage is literature and field studies. The data analysis method in this study is a qualitative juridical analysis method, because the data obtained through field research and literature research are arranged systematically. Based on the results of research by Banceuy Traditional Village in the practice of dividing inheritance using customary law, so that it has several differences in its inheritance law system with the Islamic legal system and dispute resolution in the inheritance law of indigenous peoples when related to the application of customary law and Islamic law, namely the principle of consensus deliberation and the principle of justice in accordance with customary law and Islamic law.

Keywords: waris; customary law; Islamic law.

INTRODUCTION

Humans are both individual beings and social creatures, which means that by nature, they cannot live alone. Humans always live alongside other people in various situations and forms of communication. As social beings, humans continuously interact with others with other in daily life, to fulfil their physical and spiritual needs.¹ humans relationships are always connected to legal events and the legal consequences of every action taken. There are three significant events in human life: birth, marriage, and death. Death is a legal event that leads to the administration and continuation of the rights and obligations of the deceased.²

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¹ Kusmayanti, Hazar et. al (2019). "Keabsahan Perkawinan Kuli Kawin di Desa Pamanukan Kabupaten Subang dihubungkan dengan Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan dan Hukum Islam". *Jurnal Fakultas Hukum Malikussaleh*, 7(2),2.

² Suparman, Eman (2005). *Hukum Waris Indonesia dalam Perpektif Islam, Adat, dan BW*. Bandung: Refika Aditama. p.1.

The legal rules that govern and protect an individual's interests after death are regulated by inheritance law.

Inheritance law is the set of rules that governs the wealth left behind by a person after their death, including the transfer of that wealth and the consequences of the transfer for the heirs, both each other and to third parties.³ Important elements in inheritance law include: The testator (Pewaris), refers to the person who has passed away and left behind assets or obligations; The heirs (Ahli waris), are the individuals entitled to receive the inheritance from the testator inheritance property (Harta warisan), which includes all the wealth of the testator after deducting any debts.⁴

Inheritance law is an important part of civil law. Inheritance activities are inseparable from the social life of society. The diversity of legal systems governing inheritance in Indonesia is due to the social backgrounds and history of the country. The cultural diversity of its society. During the colonial period, the pattern of legal pluralism in Indonesia was largely dominated by the roles of customary law and religious law.⁵ After independence, Indonesia was still unable to establish a single codification of inheritance law applicable to its citizens. This was due to the continued classification of the population as regulated in Article 131 and Article 163 of the *Indische Staatsregeling Staatsblad 1917 Number 129*, and *Staatsblad 1924 Number 557* regarding submission to European law, all of which were declared invalid following the enactment of Law Number 62 of 1958 on the Citizenship of the Republic of Indonesia. As a result, the *Burgerlijk Wetboek* (Civil Code) applied to: Europeans and those equated with Europeans; Chinese Foreign Nationals; Other Foreign Nationals from the East and Indonesians who subjected themselves to European law.⁶

Provisions regarding the classification of residents and applicable laws, as regulated in Article 131 in conjunction with Article 163 of the *Indische Staatsregeling*, also influence the implementation of different inheritance law systems. Currently, Indonesia has various inheritance law systems still in effect. Indonesian inheritance law is pluralistic, and there is no specific law that comprehensively regulates inheritance. Therefore, three inheritance law systems are applied: the Civil Code (*KUHPerdata*), Islamic law, and customary law.⁷

³ Pitlo, A (1994). *Hukum Waris Menurut Kitab Undang-Undang Hukum Belanda Terjemahan M. Isa Arief*. Jakarta: PT. Interface. p. 1.

⁴ Moechthar, Oemar. (2019). *Perkembangan Hukum Waris*. Jakarta: PT. Prenadamedia Group. p. 14

⁵ Ernik, et.al (2023). Hukum Waris Islam dan Pluralisme Hukum. *Maddika: Journal of Islamic Family Law*, 4 (1), p. 44.

⁶ Moechthar, Oemar. *Op.Cit.* p. 9

⁷ Kusmayanti, Hazar et. al (2019). "Hak dan Kedudukan Cucu sebagai Ahli Waris Pengganti dalam Sistem Pembagian Waris ditinjau dari Hukum Waris Islam dan Kompilasi Hukum Islam". *Jurnal Ilmiah Islam Futura*, 19(1), p. 70.

Western civil inheritance law applies to communities subject to Western civil law as regulated in the Civil Code (*Kitab Undang-Undang Hukum Perdata* or KUHPerdata), also known as the *Burgerlijk Wetboek* (BW). The inheritance law within the Civil Code is outlined in Book II, Chapter XII, Articles 830–1130 of the Civil Code, encompassing a total of 300 articles governing inheritance law.⁸ Additionally, Islamic inheritance law applies to the Muslim community in Indonesia. In Arabic, this law is known as *Ilmu Faraidh*, meaning "the science of distribution," which explains how the wealth of a deceased person is divided among their heirs. Islamic inheritance law is directly sourced from the Qur'an, Hadith, and Ijtihad. However, in its application, there are varying interpretations depending on the methods used within different teachings of inheritance law.⁹

Customary inheritance law applies to indigenous communities in Indonesia, and its regulation is heavily influenced by the kinship system practised within these communities. These kinship systems consist of patrilineal, matrilineal, and parental systems. These systems affect the determination of heirs and the distribution of inherited assets, whether material or immaterial.¹⁰ These three types of inheritance laws remain existent and practised within society. However, the most dominant systems in the distribution of inheritance in Indonesia are Islamic law and customary law. Each of these inheritance law systems has fundamental differences in terms of the definition of inheritance, principles of inheritance, inheritance systems, the order of heirs, and the inheritance assets.

The Indigenous community of West Java adheres to a parental kinship system, which is a system of kinship where lineage is traced through both the father's and the mother's lines¹¹The inheritance system in a parental kinship system is characterized by the equal rights of both sons and daughters to inherit property or assets from their parents. One example is found in Kampung Adat Banceuy, a traditional village in West Java that adheres to the parental kinship system. Kampung Adat Banceuy strictly upholds its traditions, believing them to be a duty. However, their adherence to these traditions does not equate to associating anything with God as the Creator. Fundamentally, Kampung Adat Banceuy follows Islam based on the *Ahlu Sunnah wal Jamaah*.

For its indigenous community, norms in life are governed by two principles: religious norms and customary norms. The author intends to examine the practice of

⁸ Satrio, J. (1992). *Hukum Waris*. Bandung: Penerbit Alumi. p. 1.

⁹ Arief, Saifuddin. (2008). *Praktik Pembagian Harta Peninggalan Berdasarkan Hukum Waris Islam*. Jakarta: Darunnajah Publishing. p. 30.

¹⁰ Soekanto, Soerjono. (2003). *Hukum Adat Indonesia*. Jakarta: PT. Raja Grafindo Persada. p. 260.

¹¹ Muhammad, Bushar. (2006). *Pokok-Pokok Hukum Adat*. Jakarta: PT. Pradya Paramita. pp. 3-5.

inheritance distribution in *Kampung Adat Banceuy*, where inheritance distribution is carried out according to customary law,¹² Therefore, the author intends to further investigate the procedures for inheritance distribution in *Kampung Adat Banceuy*. After understanding the inheritance distribution practices of the indigenous community mentioned above, the author intends to link these practices to Islamic law. This is because the majority of the population adheres to Islam, yet inheritance distribution is conducted according to customary law. The author also seeks to identify solutions for overcoming obstacles encountered during the implementation of inheritance distribution in this Indigenous community to address these issues effectively. The research questions formulated for this study are: How is the practice of customary inheritance distribution carried out in *Kampung Adat Banceuy*? And what measures are taken to address the obstacles encountered in the practice of inheritance distribution in *Kampung Adat Banceuy*?

RESEARCH METHOD

The method used to conclude the collected research findings employs a qualitative juridical analysis approach. This approach involves systematically organizing data obtained from both field research and library research. The juridical aspect is based on existing laws and regulations as positive laws. This research is qualitative in nature and intended to analyze data by focusing on identifying principles and information relevant to the core issues. The goal is to determine their connections and draw objective conclusions.

DISCUSSION

Overview of Kampung Adat Banceuy

Subang Regency is an administrative area in West Java Province, with its capital being Subang. Geographically, this regency is bordered by the Java Sea to the north, Indramayu Regency to the east, Sumedang Regency to the southeast, Bandung Regency to the south, and Purwakarta and Karawang Regencies to the west. One of the traditional villages in Subang Regency is Kampung Adat Banceuy. Administratively, Kampung Adat Banceuy is part of Sanca Village, Ciater Subdistrict, Subang Regency, West Java. Kampung Banceuy is divided into two community units (*RW*), *RW 05* and *RW 06*, which consist of seven neighbourhood units (*RT*): *RT 13A*, *RT 13B*, *RT 14*, *RT 15*, *RT 16*, *RT 17*, and *RT 18*. In 2017, *Kampung Banceuy* had a population of 886 people with 273 households, which has since grown to 300 households. The majority of *Kampung Adat*

¹² Interview with Mr. Odang as a Resident of Banceuy Village, on Wednesday, November 8, 2023, at 11:11 AM.

Banceuy's residents rely on farming as their primary livelihood, with a small portion working as cattle farmers. The crops cultivated include rice, cucumbers, tomatoes, peanuts, and various vegetables.

Geographical Boundaries of *Kampung Adat Banceuy Kampung Adat Banceuy* is geographically bounded as follows: North: Bordered by Tegalmalaka rice fields in Ciwirangga Hamlet, Sanca Village, Ciater Subdistrict. East: Bordered by the Cipunagara River in Pasanggrahan Village, Kasomalang Subdistrict. South: Bordered by the Cipadaringan irrigation channel and Cibitung Village, Ciater Subdistrict. West: Bordered by the Citamiyang irrigation channel in Pangkalan Hamlet, Sanca Village, Ciater Subdistrict.

Historical Background of *Kampung Adat Banceuy* was historically known as *Kampung Negla*, located northeast of its current location. In *Kampung Negla*, seven families resided: the families of *Eyang Ito*, *Aki Leutik*, *Eyang Malim*, *Aki Alman*, *Eyang Ono*, *Aki Uti*, and *Aki Arsiam*. The name "*Kampung Negla*" originated from its location on a high and open plain (*neunggang jeung lega*). Around the 1800s, *Kampung Negla* was struck by a tornado that destroyed the residents' homes, including those of the seven families, and caused significant damage to livestock and crops. After the disaster subsided, the seven figures of *Kampung Negla* gathered to deliberate (*ngabanceuy*) on ways to prevent future natural disasters. Based on their mutual agreement, they decided to summon a shaman or spiritual healer. The trusted shaman at that time was *Eyang Suhab* from *Kampung Ciupih*, *Pasanggrahan* Village, *Kasomalang* Subdistrict. To ward off disasters, they performed a ritual involving sacrifices (*numbal*).

Based on the Javanese calendar or *Wuku* system, a new name was agreed upon to replace *Kampung Negla*: *Kampung Banceuy*. The name "*Negla*" was believed to bring misfortune to the village and its residents, so the name change was expected to bring a better life and blessings to the community. The word "*Banceuy*" means deliberation or consultation, and the village leaders hoped that the village would become a place for gathering and exchanging ideas, both at that time and in the future. This event of the name change is commemorated at the end of each year according to the Hijri calendar, and it is known as "*Ruwatan Bumi*," which is more commonly referred to as "*Ngaruwat Bumi*" by the people of *Kampung Adat Banceuy*.¹³

The majority of the residents of *Kampung Adat Banceuy* practice Islam, and they are obligated to uphold the traditions and customs passed down by their ancestors. The traditions commonly practised by the people of *Kampung Adat Banceuy* are not intended

¹³ Interview with Mr. Odang a Community Leader of *Banceuy* Traditional Village, on Tuesday, February 6, 2024, at 11:15 AM.

as acts of shirk (polytheism), but rather as a form of respect and honour for their ancestors.¹⁴

Inheritance Distribution in *Kampung Adat Banceuy*

The inheritance system in *Kampung Adat Banceuy* follows an individual parental system, where heirs inherit individually. In this community, the status of male and female heirs is considered equal. This is due to the kinship system practised, which is a parental or bilateral system, tracing descent from both the father and the mother. As a result, both men and women are seen as having equal roles, and there is no distinction in their status as heirs. According to the customary leaders and community figures in *Kampung Adat Banceuy*, inheritance law is defined as a regulation concerning the transfer of a person's property, whether they are still alive or deceased, to their relatives or descendants.

The practice of inheritance distribution in *Kampung Adat Banceuy* can occur while the heir is still alive, with the term "*mempeung hirup keneh ulah nepikeun engke jadi pipaseaeun, ieu bagian aing, ieu bagean maneh ngan sesakeun jang nyawa ragad aing,*" which means that inheritance is divided while the heir is still alive to avoid potential future problems. This way, the inheritance is equally distributed, but the heir sets aside some of the wealth for "*ngulasara ngawaragad,*" which refers to expenses related to death. In *Kampung Adat Banceuy*, there are costs associated with death ceremonies, such as a community event for prayers (*hajat sekampung*), reciting *tahlil* for a week, and continuing prayers at 40 days, 50 days, 100 days, 1000 days, and even up to 3 years to honour and remember the deceased.¹⁵

The distribution of inheritance often leads to disputes among heirs, especially when the distribution is perceived as uneven, which can deviate from the primary goal of inheritance distribution. Any action that violates the norms or principles prevailing in society will inevitably lead to conflicts or disputes.¹⁶ In *Kampung Adat Banceuy*, the basis for inheritance distribution is mutual deliberation among the heirs to reach an agreement regarding their parents' estate. The implementation of customary inheritance law is carried out based on the consensus of the heirs after the deceased's passing, covering both movable and immovable property. The heirs gather to discuss the

¹⁴ Nurhabibah. (2023). Kehidupan Sosial Budaya Kampung Adat Banceuy dalam Perspektif Agama Tahun 2000-2001. *Jurnal Priangan*, 2(1), p. 46.

¹⁵ Interview with Mr. Odang a Community Leader of Banceuy Traditional Village, on Tuesday, February 6, 2024, at 11:50 AMWIB.

¹⁶ Aptina, I Putu Angga et. al (2020). Pembagian Hak Atas Tanah Waris dalam Hukum Adat Bali. *Jurnal Interpretasi Hukum*, 1 (2), p. 86.

inheritance, and if any disputes arise, they are resolved through family deliberation (*musyawarah mufakat*) in a peaceful

The Practice of Inheritance Law Implemented by the Parental Indigenous Community in West Java Viewed from Customary Law and Islamic Law

Indonesia is home to a rich diversity of ethnic groups, customs, social cultures, and races. This diversity is a reflection of a long process of cultural interactions and the adaptation of communities to their natural environments and social changes. The life of Indonesian society is deeply intertwined with elements of tradition, one of which is the field of inheritance. Indigenous communities in Indonesia firmly uphold the traditions passed down by their ancestors, including in the practice of inheritance distribution.

Inheritance law is a part of civil law and family law. Until now, Indonesia does not have a national inheritance law due to the lack of uniformity in the regulation of inheritance matters. This diversity arises from the existence of multiple legal systems in Indonesia, such as customary law, Islamic law, and civil law, each governing inheritance in different ways, leading to variations in the application of inheritance rules across the country.¹⁷ This is influenced by various challenges, such as cultural, religious, and sociological complications. The diversity of customs and traditions in Indonesian society, as well as differing interpretations of religious teachings, creates complexities in creating a unified national inheritance law. Additionally, the socio-economic factors and local practices further complicate the harmonization of inheritance regulations across different regions and communities in Indonesia.¹⁸ Inheritance law is closely related to human life, and its existence is crucial in the process of inheritance distribution. Inheritance law establishes a legal order in society regarding the transfer of wealth left behind by someone who has passed away and its impact on the heirs. One of the legal systems used in inheritance distribution is customary law. Customary law in society is always present and evolves in accordance with the culture and social values that are upheld. Customary law emphasizes equality and togetherness in the inheritance process, ensuring that the distribution is done fairly and in a way that respects the community's traditions and values.¹⁹ Customary inheritance law encompasses the system and principles of customary inheritance law in general in Indonesia, and it regulates matters such as the estate of the deceased, the heir, the transfer or distribution

¹⁷ Suparman, Eman. *Op.Cit.* p. 5

¹⁸ Kusumaatmadja, Mochtar. (1975). *Pembinaan Hukum Dalam Rangka Pembangunan Nasional*. Bandung: Bina Cipta. p. 12

¹⁹ Erdiansyah. (2021). Sistem Kewarisan Menurut Hukum Adat Masyarakat Suku Talang Mamak. *Jurnal Ilmu Hukum*, 10 (2), p. 307.

of inheritance, and the method of resolving disputes. Customary law provides a framework for how wealth is passed down, ensuring that it aligns with the values and traditions of the community. It also outlines the rights and responsibilities of heirs and the procedures to be followed in distributing the estate, often emphasizing harmony, consensus, and respect for family and community norms.

Islamic inheritance law is also a part of family law (*al-Ahwalus Syakhsiyah*). Islamic inheritance law is primarily regulated in the Quran, which clearly and specifically addresses the heirs, the shares for each heir, and the method of its distribution. Understanding this knowledge is crucial so that the inheritance can be distributed correctly and fairly. By studying Islamic inheritance law, Muslims can fulfil the rights related to inheritance after the deceased has passed away, ensuring that the wealth is properly passed on to the rightful heirs. This framework ensures justice, fairness, and adherence to the religious principles governing inheritance in Islam.

Indonesia, with a predominantly Muslim population and a diverse range of ethnic groups with varying customs, each has its own distinctive characteristics in the practice of inheritance distribution. The author intends to further examine and analyze the practice of inheritance distribution in the parental indigenous community, specifically in Kampung Adat Banceuy, and its connection with Islamic law. This study will explore how the customary practices in Kampung Adat Banceuy align with or differ from the principles outlined in Islamic inheritance law, while also considering the cultural and social dynamics that influence inheritance practices in this particular community.

The practice of inheritance distribution in *Kampung Adat Banceuy*, where the majority of the indigenous community adheres to Islam, emphasizes the importance of preserving ancestral traditions and customs. In Kampung Adat Banceuy, inheritance is distributed using customary law, and this distribution is done both before and after the deceased passes away. This practice differs from Islamic inheritance law, where the distribution occurs only after the death of the heir, as outlined in the requirements for inheritance in Islamic law.

Additionally, this concept is reinforced by Article 171 letter B of the Compilation of Islamic Law (KHI), which defines the heir as someone who, upon passing away or being declared deceased by court determination, leaves behind heirs and an estate. This provision highlights the difference between the customary practice in Kampung Adat Banceuy and the Islamic legal framework for inheritance, with the former allowing for distribution before death in certain circumstances and the latter requiring the death of the heir to trigger inheritance distribution.

In *Kampung Adat Banceuy*, the practice of inheritance distribution is carried out through the method of *hibah* (gift) to the heirs. This distribution occurs while the heir is

still alive to prevent any potential issues or conflicts. By distributing the inheritance equally during the lifetime of the heir, the assets are already shared, ensuring fairness. However, the heir also sets aside a portion of the inheritance for "*ngulasara ngawaragad*", which refers to the funds allocated for funeral expenses upon the death of the heir. This practice is designed to cover the costs associated with death, such as funeral rituals, prayers, and other related ceremonies that are important within the community. This approach demonstrates the community's respect for both the living and the deceased, while also considering the practical needs surrounding death within the cultural context.²⁰ In *Kampung Adat Banceuy*, there are costs associated with death-related events.

From an Islamic perspective, distributing wealth while the heir is still alive to the heirs can be considered a form of *hibah* (gift) given by parents to their children. *Hibah*, according to customary law, refers to the act of distributing assets during the lifetime of the owner and giving them to family members. This is emphasized by Teer Haar, who stated that *hibah* is carried out while the giver of the gift is still alive. In Islamic law, *hibah* is permissible as long as it is given voluntarily and without coercion, and it is often used to distribute wealth during the lifetime of the giver, ensuring fairness among the heirs. The act of giving *hibah* can help avoid disputes in the future by clearly defining the distribution of assets while the giver is still able to make decisions. However, it is important to note that the specific rules surrounding inheritance in Islamic law, which typically occur after the death of the heir, are distinct from the practice of *hibah* during a person's lifetime.²¹ In *Kampung Adat Banceuy*, the practice of distributing wealth through *hibah* (gifts) aims to prevent potential conflicts among children in the future. However, from an Islamic perspective, this practice is not in line with Islamic inheritance principles because the distribution of inheritance should occur after the death of the heir. Until the death of the heir, the relationship with the assets has not been severed, and the assets are still considered part of the deceased's estate.

In *Kampung Adat Banceuy*, the inheritance is divided equally between men and women, with a 1:1 ratio. This means that both male and female heirs receive an equal share of the inheritance. However, in Islamic inheritance law, the division follows a 2:1 ratio, where male heirs receive twice the share of female heirs. This difference is based on the concept of *nafkah* (maintenance or financial support) in Islam, where men have the responsibility to provide for the financial needs of women, especially when they are married. According to Muhammad Ali Al-Sabouni, in Islamic law, the distinction in the

²⁰ Interview with Mr. Odang a Community Leader of Banceuy Traditional Village, on Tuesday, February 6, 2024, at 11:50 AM.

²¹ Haar, Ter. (2001). *Asas-Asas Dan Susunan Hukum Adat (Beginselen En Stelsel Van Het Adatrecht)*, diterjemahkan oleh K.Ng. Soebakti Poesponoto. Jakarta: Pradnya Paramitha. p. 10

inheritance shares between men and women is because men are obligated to support their wives, daughters, and other female family members financially, whereas women are not obligated to provide financial support to anyone. Therefore, the larger share given to men compensates for this additional financial responsibility. This division ensures that the financial obligations of men are taken into account in the inheritance system, while women, who do not have this responsibility, receive a smaller share. However, this does not imply that women are in any way disadvantaged, as Islamic law also provides other protections and rights for women, ensuring their economic security in different ways.²² In Islamic law, the division of inheritance does not support the idea that women should receive a larger share than men. This principle is grounded in the Qur'an, specifically in *Surah An-Nisa*, verse 11, which states:

"Allah commands you regarding your children: for the male, what is equal to the share of two females. If there are (only) daughters, two or more, then for them is two-thirds of what he left. And if there is only one, then for her is half. And for his parents, for each of them is one-sixth of what he left if he has a child. But if he has no child and his parents inherit from him, then his mother is one-third. And if he has brothers (or sisters), for his mother is one-sixth. After any bequest, he may have made or debt. Your parents or your children, you know not which of them is more beneficial to you. (These shares are) an obligation (imposed) by Allah. Indeed, Allah is ever Knowing and Wise."

Your explanation highlights the important distinctions between the inheritance shares for male and female heirs in Islam, where the male heir typically receives twice the share of a female heir due to the financial responsibilities that men bear. This is rooted in the financial duties that men have, such as providing for their own living, their wives, children, and other dependents, whereas women in Islam are not obligated to provide financial support for others.

Regarding the relationship between customary law (*hukum adat*) and Islamic law (*hukum Islam*) in the *Kampung Adat Banceuy*, you raise a significant issue that the two systems can often overlap or conflict, leading to potential confusion within the community. As you correctly point out, if not thoroughly understood, these overlapping legal frameworks can create tensions, especially when decisions need to be made about whether to follow adat law or Islamic law. The concept of 'Urf (customary practice) in Islamic jurisprudence plays an essential role in this context. 'Urf refers to the customs or practices that are accepted by the community, and it is considered a valid source of

²² Ali Al-Sabouni, Muhammad. (2005). *Hukum Kewarisan*. Jakarta: Printer, Publisher dan Distributor. p. 17

Islamic law as long as it does not contradict the core principles of the religion. 'Urf has the potential to be harmonized with Islamic law as long as it serves the common good and does not conflict with the fundamental teachings of the Qur'an or the Hadith.

In the case of *Kampung Adat Banceuy*, it appears that the community has adopted certain traditions and customs around inheritance (*hukum adat*) while also maintaining their Islamic faith. The challenge arises in balancing these two legal systems – how to respect and preserve traditional practices (like the equal distribution of inheritance between men and women) while ensuring that they align with the principles of Islamic inheritance law, which prescribes specific shares for male and female heirs. Thus, understanding 'Urf is crucial in such cases, as it can provide a framework for reconciling Islamic law and adat law. The community can continue to honour both systems by fostering a mutual understanding of the values and principles each legal system represents. At the same time, addressing the potential conflicts requires careful consideration of both legal traditions, ensuring that the community's practices are respectful of Islamic teachings while maintaining respect for local cultural traditions.²³ You are correct in stating that 'Urf or adat (customary law) plays a crucial role in the development of Islamic jurisprudence, especially to the concept of *Al-Adatu Mukakamah*, which means that customs (adat) can be considered valid within the context of Islamic law, provided they do not contradict the core principles of Islam. This approach reflects a more flexible understanding of Islamic law that allows for local customs and traditions to be integrated as long as they serve the common good and do not oppose the essential teachings of the Qur'an or Hadith.²⁴ The Receptie theory was introduced by the Dutch government with the concept of *Het Indische Adatrecht* or Indonesian Customary Law. This concept was first proposed by Cornelis van Vollenhoven (1874-1933), and later developed by a Dutch East Indies government advisor, Christian Snouck Hurgronje (1857-1936). According to this theory, for the indigenous people, customary law is the fundamental principle. In other words, the law that applies to Muslims is customary law. Islamic law can be applied if it has been absorbed or accepted by customary law, meaning that customary law determines the existence of Islamic law.²⁵ Article 134 of the *Indische Staatsregeling* (IS) states that "For the indigenous people if their law requires it, Islamic law shall be applied as long as it has been accepted by the customary law community." This article is often referred to as the reception theory.²⁶ The application of

²³ Basiq Djalil, A. (2010). *Ilmu Ushul Fiqh (satu dan dua)*, Jakarta: Kencana Prenada Media Group. p. 80

²⁴ Ali, Zainuddin. (2006). *Hukum Islam: Pengantar Ilmu Hukum Islam di Indonesia*. Jakarta: Sinar Grafika. p. 81.

²⁵ Thalib, Sajuti. (1985). *Receptio A Contrario Hubungan Hukum Islam dan Hukum Adat*. Jakarta: Bima Aksara. pp. 17-18.

²⁶ Sjadzali, Munawir. (1994). *Landasan Pemikiran Politik Hukum Islam dalam Rangka Menentukan Peradilan Agama di Indonesia, dalam Djazuli, Beberapa Aspek Pengembangan Hukum Islam di Indonesia, dalam Hukum Islam di Indonesia Pemikiran dan Praktek*, Bandung: Remaja Rosdakarya. pp. 43-44.

these theories can be related to the inheritance practices of the *Banceuy* Indigenous Community, which leans more towards the reception theory. This is because in their inheritance practices, the indigenous community prioritizes customary inheritance law over Islamic law, believing that the customary law system emphasizes justice more than Islamic law. The reception theory suggests that Islamic law will only be applicable if the norms of Islamic law have been accepted by the community as part of customary law. In other words, for Muslims, the prevailing law is customary law. According to Hazairin, the reception theory is no longer relevant or applicable in contemporary times. Furthermore, this theory contradicts Article 29, Paragraph 1 of the 1945 Constitution, which states that "The state is based on the belief in the One and Only God." This indicates that Indonesia forms its national law based on religious law, whereas the reception theory emphasizes customary law and contradicts the teachings of the Qur'an and Hadith.²⁷ However, the reception theory is still applied in the *Banceuy* Indigenous Community today.

Islamic law provides room for customary law as long as it does not contradict the principles of Islam.²⁸

The translation of the Hadith is:

"Indeed, what is considered good by the Muslims, then it will also be considered good in the sight of Allah." (Hadith Riwayat Ahmad)

The emergence of these theories illustrates a situation where customary law (*hukum adat*) and Islamic law (*hukum Islam*) often have significant similarities, making them difficult to separate, as they seem to have become integrated. Even in the context of customary inheritance, there are instances where the principles of Islamic inheritance law and customary law align.

Kampung Adat Banceuy has several differences in its inheritance system compared to Islamic inheritance law. These differences include the understanding of inherited property, the method of inheritance distribution, and the share of inheritance for sons and daughters. *Kampung Adat Banceuy* prioritizes customary inheritance law over Islamic inheritance law, even though the majority of its population is Muslim. This is because the community adheres to its ancestral teachings (*karuhun/leluhur*), which have been passed down through generations. The community believes that altering these customary rules would lead to undesirable consequences, and most people feel that the customary inheritance law is perceived as fairer.

²⁷ Ansori, Isa. (2021). Menggagas Fikih Tahkim di Indonesia. *Adzkiya: Jurnal Hukum dan Ekonomi Syariah*. 9 (1), p. 49

²⁸ Al-Zuhaili, Wahbah. (1986). *Ushul Fiqh Al-Islami*. Damaskus: Darul Fikr. p. 828

When distributing inheritance, it does not always go smoothly due to various obstacles that arise, causing the affected community to resolve inheritance disputes. In *Kampung Adat Banceuy*, one of the obstacles in inheritance distribution is social jealousy between siblings, as some feel the distribution is unfair. However, in *Kampung Adat Banceuy*, such disagreements are typically seen as differences in opinion and do not escalate into major issues. If it were to become a significant problem, it would become a topic of discussion in the community. Therefore, the issue is first addressed within the family. If the matter worsens and no solution has been reached through customary practices, the matter is then brought to the village government. However, inheritance problems in *Kampung Adat Banceuy* are rarely resolved by the village government.

The author will examine solutions to the obstacles that occur in the inheritance distribution practices of the three adat villages based on the principle of *musyawarah mufakat* in customary law. According to Zainuddin Ali, the principle of *musyawarah mufakat* means that the heirs collectively decide on the distribution of inheritance through a deliberation led by the oldest or most respected heir. If an agreement is reached in the distribution of inheritance, it is a result of a sincere consensus expressed with good and honest words from the hearts of each heir. This principle plays a crucial role in resolving disputes and ensuring that the distribution process remains fair and based on mutual respect and understanding.²⁹ This principle is the most important because it contains a mechanism for resolution through deliberation. The application of this principle has also been practised by the community in *Kampung Adat Banceuy*, where the indigenous people apply the *musyawarah mufakat* principle in the distribution of inheritance. This approach fosters a cooperative and harmonious decision-making process, where all heirs participate in reaching a consensus, ensuring fairness and maintaining family unity in the distribution of assets.

The principle of inheritance distribution through deliberation (*musyawarah*) according to customary law is closely related to Islamic teachings, which are based on belief in God. In the context of inheritance distribution in Islam, the aspect of justice is emphasized, and if a matter cannot be resolved using Islamic law, a solution may be sought through customary law, which stresses values such as family unity, harmony, togetherness, and deliberation, all of which are also part of the principles of problem resolution in Islamic law. Deliberation is considered an essential element of the inheritance distribution principle in Islam to achieve specific goals. The values of Islamic law are inseparable from the principles it upholds and the objectives of Islamic law itself.

²⁹ Ali, Zainuddin, *Op. Cit*, p. 130.

The distribution of inheritance through reconciliation is also addressed in the Qur'an, specifically in *Surah Al-Hujurat*, verse 9, which says:

"And if two factions among the believers fight, then make peace between them. But if one of them oppresses the other, then fight against the one that oppresses until it returns to the command of Allah. And if it returns, then make peace between them with justice and act justly. Indeed, Allah loves those who act justly."

Based on the verse, when linked to inheritance law, if there is an inheritance dispute, it should be resolved immediately, and it is preferable to choose a peaceful resolution through familial reconciliation. If the heirs reach an agreement, the share for each heir may change according to the consensus made with full awareness and willingness, which is known as *tashaluh* or reconciliation. This approach emphasizes the importance of mutual understanding and fairness in resolving conflicts, aligning with both Islamic principles and customary law. *Tashaluh* refers to the distribution of inheritance based on the principle of reconciliation, where an heir voluntarily waives part of their inheritance to be given to another heir, after knowing the portion to be given. The goal is to end the conflict among the heirs and reach a peaceful resolution. This practice is rooted in mutual respect and the desire to maintain harmony within the family, ensuring that the distribution is carried out fairly and without dispute.³⁰

The provisions in Islamic inheritance law are regulations set by Allah SWT that must be followed. After the heirs receive their respective portions of the inheritance, they have the right to manage it, and if they wish to give a portion of their share to another heir, such as giving part of the inheritance to a female heir to make her share equal to that of a male heir, this is permitted the principle of *tashaluh*. This principle allows for voluntary adjustments in the distribution of inheritance in a spirit of reconciliation and fairness, aiming to resolve conflicts and maintain family harmony.

Article 183 of the Compilation of Islamic Law (KHI) regulates the settlement of inheritance disputes, which reads³¹:

"If a dispute or conflict arises regarding the division of inheritance, it may be resolved through deliberation to reach a consensus, taking into account the applicable law."

It is permitted and valid if each heir voluntarily divides the inheritance through a familial or peaceful approach, in accordance with a mutual agreement between the

³⁰ Yani, Achmad. (2016). *Faraidh dan Mawaris Bunga Rampai Hukum Waris Islam*. Jakarta: Prenadamedia. p. 110.

³¹ Permadi, Tyara Maharani et. al (2021). Penyelesaian Sengketa Waris dalam Masyarakat Adat Kampung Naga berdasarkan Hukum Islam dan Hukum Adat. *Jurnal Kertha Semaya*, 9 (1), p. 1827

parties involved. This method aligns with the principles of reconciliation and harmony, ensuring that all parties consent and accept the arrangement in good faith.

Secondly, besides the principle of *musyawarah mufakat* (deliberation and consensus), the author will connect the principle of justice in customary law, which is applied by the indigenous community in the aforementioned village. The principle of justice in customary inheritance law refers to the idea that within a family, it is crucial to emphasize a system of justice, which will encourage the creation of harmony within the family and reduce the likelihood of family relationships breaking down. By ensuring that each heir is treated fairly, the system promotes unity and minimizes conflicts.³² This principle serves as the fundamental basis in the customary inheritance distribution process because, essentially, the distribution of inheritance within a family is adjusted to the principle of justice, which is based on the respective shares of each heir. In *Kampung Adat Banceuy*, the 1:1 inheritance division between males and females is applied to ensure fairness, harmony, and family unity. According to Islamic law, when viewed from the perspective of the principle of balanced justice, which refers to the balance between rights and obligations, as well as between what is received and what is needed, or the balance between burdens and responsibilities among equally positioned heirs, the implementation of inheritance distribution according to Islam will reflect this sense of justice.³³

Based on this principle, *Kampung Adat Banceuy* is in line with the principle of balanced justice, because the size of the inheritance distribution aligns with the customs and regulations of the respective communities. Justice in inheritance law is closely related to the balance between rights and obligations, as well as between what is received and what is needed. Essentially, gender does not determine inheritance rights in Islam. Both men and women have equal rights to receive a strong share of the inheritance. This principle is clearly emphasized in *Surah An-Nisa'* (4:7), which affirms the equality of men and women in inheritance rights. *Surah An-Nisa'* (4:11-12, 4:176)³⁴ further elaborates on the equality in inheritance rights between men and women, between fathers and mothers (4:11), husbands and wives (4:12), as well as between male and female siblings (4:12, 4:176).

The concept of justice in Islamic inheritance law can adopt the concept of distributive justice (*justicia distributiva*), which means that justice in inheritance law grants each individual based on their contribution or the rights they possess. This

³² Ali, Zainuddin, *Op. Cit*, p. 130.

³³ Soleman, Wasikoh et. al (2022). *Fiqh Mawaris dan Hukum Adat Waris Indonesia. Al-Mujtahid: Journal of Islamic Family Law*, 2 (2), p. 96.

³⁴ Harahap, Amhar Maulana et.al (2022). *Penerapan Kewarisan Islam: Sejarah Hukum dan Asas-Asasnya. El-Ahli: Jurnal Hukum Keluarga Islam*, 3 (2), p. 188.

concept emphasizes fairness in the distribution of inheritance, ensuring that each heir receives what is due to them based on their role, needs, and rights as stipulated by Islamic law. In this context, the distribution is not necessarily equal, but it is equitable, taking into account the responsibilities and needs of each heir.³⁵ Rights are granted according to the duties that have been performed. The same principle applies to the distribution of inheritance between men and women. Men receive a larger share of the inheritance because they have more obligations and responsibilities. The difference in justice in inheritance distribution between customary law and Islamic law is due to the differing perspectives on justice and the legal foundations that shape these two inheritance systems. In Islamic inheritance law, the larger share for men is rooted in their financial responsibility to provide for family members, while in customary law, the division may be based on a more egalitarian view, emphasizing equality without necessarily considering the duties and responsibilities each heir holds.

CONCLUSION

The practice of inheritance distribution in the customary law system in West Java, particularly in *Kampung Adat Banceuy*, as viewed through Islamic law, shows several differences. In *Kampung Adat Banceuy*, inheritance is distributed according to customary law both before and after the passing of the deceased, with an equal and fair 1:1 division. However, *Kampung Adat Banceuy* faces similar challenges in inheritance distribution, such as social jealousy and disagreements among heirs. To resolve conflicts and overcome these barriers, the community emphasizes *musyawarah mufakat* (deliberation and consensus). When applying the principles of customary law and Islamic law, such as *musyawarah mufakat* and justice, it is evident that the practice of inheritance distribution aligns with these principles. To prevent conflicts and disagreements regarding inheritance, the solution is to conduct a *musyawarah mufakat* among the heirs, mediated by the customary leader in accordance with the local customary rules, ensuring peace and justice.

Heirs, when conducting *musyawarah*, should ensure that decisions are made fairly without neglecting the rights of any heir so that the outcomes are accepted with sincerity. Furthermore, the community in *Kampung Adat Banceuy* should be educated on litigation-based dispute resolution methods. If conflicts arise in the future that cannot be resolved within the community, litigation should be pursued as a legal avenue for settlement

³⁵ Soeroro, R. (1993). *Pengantar Ilmu Hukum*. Jakarta: Sinar Grafika. pp. 63-64

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