



# LAW IN A PLURALISTIC SOCIETY: A STUDY ON THE IMPLEMENTATION OF INHERITANCE LAW UNIFICATION IN INDONESIA

1. IDRIS RIFANDI, Student ID No. 20201007
2. NOVI, Student ID No. 20201024
3. MAMAN SUPARMAN, Lecturer Registration No. 89-6486-0023  
profgayuslumbuunstih@gmail.com

## ABSTRACT

The existence of legal systems in a pluralistic society does not necessarily have to be uniform; in certain cases, it is constitutionally permissible for them to be "unified" within the context of "diversity." For example, the Marriage Law, the Law on Religious Courts, the Waqf Law, and so forth. The research issue under consideration, serving as the focal point of discussion, revolves around *determining which legal norms can influence the heterogeneity of inheritance law in a pluralistic society in Indonesia*. This research employs a qualitative approach with a descriptive research design. The analytical data analysis used in this research is descriptive analytics. The conclusion drawn from this research is that Indonesian society is pluralistic, as evidenced by various socio-cultural and religious backgrounds. The pluralism inherent in Indonesian society significantly influences the application of law. Therefore, legislative institutions, in formulating necessary laws, need to consider social changes within the societal framework. In a pluralistic society, the laws to be applied do not always have to be uniform; instead, in certain legal aspects, they can also be pluralistic. Norms influencing legal pluralism in a pluralistic society include customs and religious norms. Consequently, the effective implementation of unified inheritance laws as stated in the Compilation of Islamic Law has not yet been achieved, as in pluralistic societies, the higher the level of diversity, the more challenging it becomes to unify legal principles.


**Keywords:** *pluralistic society, unified inheritance law.*

## INTRODUCTION

Indonesia, currently celebrating its seventy-fifth anniversary, has seen significant achievements in both physical and non-physical development, in an effort to catch up with far more advanced countries. Examples include developments in the industrial sector, human resources, and so on. This is aimed at preparing the Indonesian society to face the era of globalization and compete in all fields with societies of other countries.

With the ongoing globalization process, it is possible that there will be increasingly complex changes in the social culture of Indonesian society. Rapid social interactions are a logical consequence of transformation and highly sophisticated information in community life. The sophistication of technology will rapidly change human culture. This condition will influence the 'order' of social interactions in community life.

In such conditions, the role and function of law as a regulator of behavior in societal life is highly essential. The existence of law within this context serves as a general regulation, where the rights and obligations of an individual or a group are defined and



limited.<sup>1</sup> Therefore, law is an ideal tool that can solve all emerging issues in an 'accommodative' manner.

To implement ideal legal rules, three factors are identified: juridical, philosophical, and sociological factors. Juridically, a law is in effect if it is formed through specific procedures by certain bodies, for example, according to the 1945 Constitution, laws are made by the government and the DPR (People's Representative Council). Philosophically, a law is in effect if it aligns with the aspirations of society, such as a just and prosperous community. In a sociological sense, a law is in effect if its enforcement can be implemented.<sup>2</sup> The underlying idea of these three factors is an understanding that law, as a system, reflects and concretizes the values that are prevalent in society at a given time. In other words, to realize the social values aspired to by society, norms (laws) are needed as the tools.<sup>3</sup>

The necessary tools for regulating the order or disruptions in social interactions, according to Abdul Gani Abdullah, are not limited to law, but also require the inclusion of religion. Regularity and order in the process of social interaction cannot be separated from the involvement of law, while the morality level of the law depends on the religious values inherent in it. Law and religion must work cumulatively together to guide social interactions in a way that can prevent negative impacts on humanity.<sup>4</sup>

In concrete efforts to establish a legal institution that meets these two criteria, the legislative body, whether willingly or not, must present Islamic law as a legal system capable of accommodating the requirements of a norm for Muslim communities, and non-Islamic law for followers of other religions. Because law and religion, in an integrated manner, can guide humans as social actors in society with both vertical and horizontal tendencies (*hablum-minallah wa-hablum-minannas*). In religion, maintaining good and harmonious relations among people is not only a command that is implemented interpersonally (*worldly*), but also has a dimension towards God (*otherworldly*). Therefore, human violations of the law are not only accountable between individuals (*human rights*), but may also entail accountability towards God (*divine rights*), and can occur in both respects.

In relation to Islamic law as the implementation of legal norms governing its followers, there are aspects that require government intervention and others that do not. In the context of Islamic law that requires intervention, for example, the Law of Mu'amalah, because this type of law is closely related to human rights (rights between individuals). Therefore, Islamic law related to the field of mu'amalah essentially obliges the government to provide for the Muslim community, as a realization of pluralism in a state based on the concept of Divinity (religion). Thus, such laws do not necessarily have to be unified. For example, Islamic inheritance law still lacks a clear and unified system to this day. This is due to the 'political interest' of certain groups who do not wish to have legal certainty in Islamic inheritance, arguing for the unification of national inheritance law.

The existence of a legal system in a pluralistic society does not necessarily have to be unified. In certain cases that are constitutionally juridically permissible, it can also be 'unified' within 'diversity'. Examples include: the Marriage Law, the Religious Courts Law, the Waqf Law, and others.

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<sup>1</sup> Sudarsono, *Introduction to the Science of Law*, (Jakarta: Rineka Cipta, 2019), p.145.

<sup>2</sup> Soerjono Soekanto, *Fundamentals of Legal Sociology*, (Jakarta: Rajawali Press, 2014), p.151.

<sup>3</sup> *Ibid.*, p.14-15.

<sup>4</sup> Abdul Gani Abdullah, *Introduction to the Compilation of Islamic Law in Indonesian Legal System*, (Jakarta: Gema Insani Press, 2014), p.13.



## PROBLEMS

Based on the discussions above, and to facilitate the study of law in a pluralistic society, the author examines Islamic inheritance law. There are three reasons why the author presents the title as mentioned above, which are:

1. In matters of inheritance, it represents one part of family law where there are two legal systems in tension: religious law (law originating from God) and human law.
2. In inheritance matters, there are many interests, both individual and group-based, which are easily influenced by worldly characteristics. Therefore, up to now in Indonesia, social and societal pluralism has supported the dual nature of inheritance law.
3. The emergence of a compromising nature in Law No. 50/2009 concerning the Second Amendment to Law No. 7 of 1989 on Religious Courts as a result of national legislative efforts to implement religiously-informed (Islamic) inheritance law, indicates the presence of 'political interest' in the enactment of this law and demonstrates an inability to understand law as a tool for achieving order and justice.

Based on the above reasons, the paper proposes that the more diverse the groups within a society are, the more difficult it becomes to unify the laws applicable to that society. From this paper, the author proposes an issue for further discussion, which is: *what legal norms can influence the heterogeneity of inheritance law in a pluralistic society in Indonesia?*

## RESEARCH METHODOLOGY

This research employs a qualitative approach with descriptive research type. Data analysis in this study utilizes descriptive analytics. The process is carried out from the collection of data, so that when in the field, the researcher begins the data analysis process which continues until the research concludes. This means that aspects related to the legal system within society and its specific scope, particularly inheritance law, are analyzed in depth .

## ANALYSIS

### Pluralistic Society

Essentially, humans have the innate nature to live with others in a society, as declared by Allah in the Qur'an, which means, "O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you" (Qur'an 49:13). Based on this principle, humans inherently establish extensive relationships with others, aiming to unite with others and their surroundings.

Society is not merely a collection of individuals, but it is also composed of various groupings and institutions. The interests of the members of society are not the same. However, shared interests lead to the formation of groups among them.<sup>5</sup> Such human actions result in the emergence of social groups. These relationships involve reciprocal interactions that influence each other, stemming from an awareness of mutual assistance.<sup>6</sup>

A society can be categorized as pluralistic if it has the basic characteristics of a pluralistic society. The characteristics are:

<sup>5</sup> Satjipto Rahardjo, *Law and Society*, 10<sup>th</sup> ed., (Bandung: Angkasa, 1986), p.95.

<sup>6</sup> Soerjono Soekanto, *Op. Cit.*, p.97.



1. The society is segmented into groups, usually each having subcultures distinctive from one another;
2. The society has a social structure that is comprised of complementary institutions;
3. The society exhibits a lack of development of consensus among members regarding fundamental values;
4. Conflicts are frequently experienced among different groups;
5. Social integration relatively grows out of coercion and mutual dependency in the economic field, along with the presence of political domination by one group over another.<sup>7</sup>

If analyzed from the viewpoints of Soerjono Soekanto and Mustafah Abdullah, then in a pluralistic society, the numerous groupings will lead to such high levels of differences due to different value systems. Such a condition presents an obstacle to the effort of codifying law in an integral manner.

The diversity of Indonesian society has been consciously acknowledged by the nation's founding figures and pioneers. This condition is explicitly symbolized in the national emblem, Garuda Pancasila, with the motto *Bhinneka Tunggal Ika*. This motto recognizes the heterogeneity of the Indonesian nation, including aspects such as archipelago, religion, ethnic groups, customs, and more, all of which are assets to the country rather than sources of conflict.

### Legal System in a Pluralistic Society

The diversity of a society correlates with the applicable legal system. This fact is evident in the reality that the law in Indonesia, since the Dutch colonial era, especially private law, was divided according to population groups and legal categories, as stated in Articles 161 and 163 of the *Indische Staatsregeling* (The Netherlands Indies State Law) as follows:

1. For the European group and those equated with it, the Civil Code, Commercial Law, and other codifications applicable in the Netherlands apply.
2. For the indigenous Indonesian group, their customary law apply.
3. For the Eastern Foreigners group, their customary law apply, except for the Chinese ethnic group, for whom, after 1917, the regulations applicable to the European group apply.<sup>8</sup>


In more specific legal regulations, particularly regarding inheritance law, there were also classifications, namely:

1. The Western (European) inheritance law system, outlined in the *Burgerlijk Wetboek*, applies to Europeans and those equated with Europeans, Eastern Foreigners of Chinese descent, other Eastern Foreigners, and Indonesians in relation to Europeans.
2. The customary inheritance system is applied to Indonesians who are still closely connected to their respective customary law communities.
3. The Islamic law system, which is currently in effect with Presidential Instruction No. 1/1991 regarding the Compilation of Islamic Law, applies to Muslim individuals.<sup>9</sup>

<sup>7</sup> Soerjono Soekanto and Mustafah Abdullah, *"Sociology of Law in Society"*, (Jakarta: Rajawali, 1987), p.85.

<sup>8</sup> Sudiman Kartodiprojo, *"Introduction to Legal Systems in Indonesia"*, (Badung: Ghalia Indonesia, 1984), p.46.

<sup>9</sup> M. Idris Ramulyo, *"Case Study on the Comparison of Inheritance and Compilation of Islamic Law and Western Civil Inheritance Law,"* Paper presented at the Seminar for Islamic Law Faculty Lecturers at National Public/Private Universities, First Batch, organized by the Faculty of Law, University of Indonesia, in Jakarta, dated July 10-14, 1995, pp.1-9.



Prof. Daud Ali offers a different opinion. He believes that in Indonesia, there three are not just three types of pluralistic laws, but four. He further divides the Western law applicable in Indonesia into two categories: the Continental Western law, officially introduced in the 19<sup>th</sup> century, and the Anglo-Saxon Western law, which was introduced in Indonesia in the second half of the 20<sup>th</sup> century. Therefore, the four legal systems are: Customary Law, Islamic Law, Western (Continental) Law, and Anglo-Saxon Western Law.<sup>10</sup>

Based on the above analysis, it is clear that in a pluralistic society, it is not easy to unify the applicable legal systems, even though this desire originally stemmed from the subjective intentions of the Dutch East Indies government. As a colonial power, they aimed to divide their colonial subjects using a ‘*conflict strategy*’ policy. However, upon closer examination, the plurality in the legal field essentially reflects the demands of the society influenced by culture (customs), habits, and religion. This mirrors the diverse nature of our society.

Legal experts agree that customary practices can be a source of law formation. Even in the principles of Islamic law formation, customary practices are recognized by mujtahids as a source for the development of Islamic law, a concept known in jurisprudence as ‘*al-’adatu muhakkamah*’. Consequently, it can be concluded that in the application of law, customary practices do not pose a problem.

### Legal Pluralism in Inheritance

In the field of inheritance law in Indonesia, there is still a state of pluralism and no single legal unification has been established. This relates to the philosophical and sociological foundations of each subject of inheritance law. Why would people adhere to Western inheritance law, customary inheritance law, and Islamic inheritance law? For instance, if this question is posed to the subjects of each legal system, the answers will inevitably vary, based on their philosophical views and beliefs.

The pluralistic nature of inheritance law does not signify a failure of the legislative body as the trustee of the people. Rather, it represents a natural condition, as not all laws must be unified considering that the philosophy of Pancasila embodies the values of ‘Unity in Diversity’. The characteristic of the three inheritance law systems, embodying ‘Unity in Diversity’ within the law, is a natural aspect. This is also recognized by the sovereign state institutions, as affirmed:

*“That unification is carried out in certain areas that can indeed be unified. Not everything must or needs to be unified. In a diverse society embodying ‘Unity in Diversity’, there must still be room for a variety of laws to coexist under one national legal system. For matters that cannot be unified, the national law acts as a system with subsystems of various laws such as customary law, Islamic law, and Continental Western law. In the context of these legal subsystems, which apply to specific population groups, a great spirit and tolerance are much needed.”*<sup>11</sup>

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<sup>10</sup> Moh. Daud Ali, “*Selected Topics in Islamic Law*,” Paper presented at the Seminar for Islamic Law Faculty Lecturers at National Public/Private Universities, First Batch, organized by the Faculty of Law, University of Indonesia, in Jakarta, dated July 10-14, 1995, pp.13-14.

<sup>11</sup> Yusril Ihza Mahendra, “*State Sovereignty and Religious Judiciary in the Framework of Pancasila State*,” Zuffran Sabrie ed., (Jakarta: Pustaka Antara, 1992), p.42.



From the above opinion, it is evident that the law does not always have to be unified, but can be pluralistic when it relates to the organic legal system. For example, customary laws, religious laws, and so on.

From the above discussion, a broader question arises: why can't the three inheritance law systems be unified? The answer to this question is that the implementation of these three systems in Indonesia has points of contention that are very much in conflict with one another. This includes their sources of law and the sanctions imposed by each system, which are clearly different, as the laws being compared are closely related to religion.

From the perspective of its sources, Islamic law originates from the original lawmaker (Allah, i.e. God), which includes the *Al-Qur'an*, *Assunah*, and *Ra'yu* through the process of *Ijtihad*. Meanwhile, customary law in certain areas (specific customs) is derived from the *syara'* (*wahyu*) of Allah, for example, 'Custom is based on *syara'*, and *syara'* is based on the Book of Allah (*Kitabullah*)' and so on".<sup>12</sup> Similarly, for instance, in Western law, Anderson argues that Western law is secular and that Continental Western law originates from Roman sources, which are human creations designed for the benefit of humans. These laws can be changed at any time if humans desire, just as they were originally formulated.<sup>13</sup> This aligns with the opinion of H.A.R. Gibb, who asserts that Islamic law is the will and decree of Allah and the tradition of the Prophet. Unlike Roman law and modern law in general, Islamic law is not a gradual cultural creation by humans; it is a religious ordinance.<sup>14</sup>

In Islamic law, the dimension of punishment is not viewed from just one perspective, but also possesses a transcendental value, namely the value of '*ubudiyah*' (man's relationship with Allah) and '*hablum-minannas*' (men's relationship with other people). Both the consequences and the rewards of actions are believed to be accounted for in the afterlife.

Since Islamic law is derived from Allah and His Messenger, it is absolute in nature and fundamentally cannot be altered by anyone based on personal desires. As Islamic law originates from Allah and His Messenger, the responsibility for its sanctions will be directly accountable to Him when humans return to His presence.

In Islamic law, the authority to impose sanctions is always linked to the religious status and beliefs of the law offender. H.A.R. Gibb describes this as the theory of authority acceptance, stating that if a Muslim has embraced Islam as their religion, then they have also accepted the authority of Islamic law over themselves.<sup>15</sup> Within Islamic law, as a component of the Islamic religion, it is essential to connect with faith and ethics. In the Islamic legal system, faith, law, and ethics or morality are inseparable. They must be linked to various characteristics and key terms in Islamic law, particularly with Sharia and Fiqh. These laws govern the entire structure of human relationships, including those with God, oneself, other people, objects in society, and the surrounding environment.<sup>16</sup>

Thus, sanctions in Islamic law are always related to faith (*aqidah*). For example, Surah 5:44 of the Qur'an states, '*Whoever does not judge by what Allah has revealed, such are*

<sup>12</sup> Sajuti Talib, "*Receptio A. Contrario: The Relationship between Customary Law and Islamic Law*," (Jakarta: Bina Aksara, 1985), p. 61.

<sup>13</sup> J.N.D. Anderson, "*Islamic Law in the Modern World*," translated by Mahnun Husein, revised edition, 1st printing, (Yogyakarta: Tiara Wacana Yogya, 1994), p. 2.

<sup>14</sup> H.A.R. Gibb, in Ihtijanto, S.A., "*Development of the Theory of the Application of Islamic Law in Indonesia*," in *Islamic Law in Indonesia: Development and Formation*, (Bandung: Remaja Rosdakarya, 1991), p. 116.

<sup>15</sup> H.A.R. Gibb, in Ihtijanto, S.A. *Ibid.*, p. 105.

<sup>16</sup> Mohammad Daud Ali, *Op. Cit.*, p. 13.

*the disbelievers.*' Surah 5:45 says, 'Whoever does not judge by what Allah has revealed, such are the wrongdoers.' Surah 5:47 states, 'Whoever does not judge by what Allah has revealed, such are the transgressors,' and so on.

### Positive Law of the Islamic Inheritance System

In the field of inheritance law, nearly all countries that implement Islamic law in matters of inheritance do not have a unified inheritance law, even though the sources of law are the same, namely the Quran and the Sunnah. For instance, in Southeast Asia alone, there are many differences in its application, and similarly, in the Middle East, a unified law is not implemented, as explained by J.N.D. Anderson in his book 'Islamic Law in the Modern World', Chapter 4. Such situations are influenced by the Fiqh (jurisprudence) or madhhab (school of thought) of the fuqaha (Islamic jurists).

For example, in Southeast Asia, there are approximately 21 types of Fiqh books used as references in deciding cases related to Islamic law. Similarly, in Indonesia, according to the circular of the Head of the Bureau of Religious Courts No. B/1/735 dated February 18, 1958, there are 13 types of Fiqh books that form the basis for decision-making in the Religious Courts.<sup>17</sup> In such condition, it is therefore reasonable that in Islamic law, especially the family law among Islamic countries, there is still varied application of these laws.

In Indonesia, there is now a unification of law concerning Islamic law, especially family law (marriage, inheritance, and endowment), as stipulated in Presidential Instruction No. 1/1991 on the Compilation of Islamic Law. This unification of law indirectly arises from the requirements related to Law No. 50/2009 on Religious Courts, as affirmed in Article 49. If we look at its effectiveness, it seems that this source of law has not been maximized, because this Presidential Instruction still has a dual nature and lacks certainty. This can be seen in the inheritance law system that has been in effect from the colonial intervention until now. Although Muslims today have an Islamic inheritance law compiled in the Compilation of Islamic Law (Presidential Instruction No. 1/1991), this collection of laws is not binding on Muslims in a coercive manner.

Western law, customary law, and Islamic law are the three legal systems. Each of these systems has very striking differences. For example, in the distribution of inheritance shares between men and women in Islamic law, it is 2:1, but in Western (European) and customary law systems, the shares of men and women are not differentiated. Due to the differences and uncertainties in the competency of the Religious Courts to resolve disputes in Islamic inheritance, the Islamic inheritance law (Compilation of Islamic Law) as a result of the 'collective ijtihad' of Indonesian scholars, which represents the 'Indonesian madzhab of inheritance fiqh', is not being adhered to. However, within the Compilation of Islamic Law, there are two issues adopted from Western law (Civil Code), namely regarding the inheritance rights of adopted children and the substitution of heirs, even though these have been aligned with Islamic inheritance law.

There are indeed two reasons for non-compliance among Muslims. *First*, it can originate from themselves (due to their beliefs) or because they are unaware of the risks involved. *Second*, it can come from external sources, such as the absence of coercive power from government authorities to enforce the legal rules that bind them.

<sup>17</sup> Sudirman Tebba, ed., "Recent Developments in Islamic Law in Southeast Asia," (Bandung: Mizan, 1993), p.21.

Since the government is not firm in implementing the Compilation of Islamic Law, the author believes that the function and purpose of law in Islam have not been achieved. The goal of Islamic law is to attain a life of happiness and prosperity in this world and in the hereafter.<sup>18</sup>

### CONCLUSION

The evident pluralistic nature of Indonesian society is manifested in the diverse array of sociocultural backgrounds and religious affiliations. This diversity is further underscored by the presence of distinct social groups within the societal framework. The intricate fabric of diversity inherent in Indonesian society plays a pivotal role in shaping the legal paradigm and fundamentally influences the law that is applied. Consequently, in the formulation of requisite legislation, the legislative body is compelled to conscientiously account for the evolving dynamics of social groups within the societal milieu.

In a pluralistic societal context such as Indonesia, the imperative for legal uniformity is not universal; certain circumstances warrant a recognition of legal pluralism. Two salient norms exerting influence on legal pluralism in a culturally diverse society are customary practices and religious norms. The higher adherence to Islamic law can be attributed to two primary factors: the conceptualization of compliance with legal precepts as a manifestation of worship and the acknowledgment that adherence to commands or obligations constitutes a moral duty, the neglect of which may result in sanctions in the afterlife.

Despite the stipulated unification of inheritance law in the Compilation of Islamic Law, the effective implementation of this directive remains elusive. Consequently, this scholarly exposition posits that achieving legal uniformity becomes progressively challenging in societies characterized by elevated levels of diversity.

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<sup>18</sup> Mohammad Daud Ali, *Op. Cit.*, p.9.





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