

# The Legal Culture In the Distribution of Heritage Property Among the Muslim Community In Karas Kepoh Village, Pancur District, Rembang, Central Java

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**Abstract:** *The Legal Culture In the Distribution of Heritage Property Among the Muslim Community In Karas Kepoh Village, Pancur District, Rembang, Central Java.* This study aims to reveal the legal cultural background of the community in the distribution of inheritance in the village of Karas Kepoh, Pancur sub-district, Rembang district. All members of the village community can be said to have embraced Islam so that, theoretically, the community should follow Islamic law in the distribution of inheritance. In reality, however, they use the provisions in the Civil Code. This study uses a socio-legal research approach which is analyzed qualitatively. The results of the study indicate that several things underlie the legal culture of the community in the distribution of inheritance. *First*, the long history of Dutch colonialism which only knows the Civil Code (*Burgerlijk Wet Boek*). *Second*, almost all community members study in general education, only very few residents attend Islamic boarding schools. As a result, there are almost no community leaders or religious leaders who understand Islamic inheritance law (*farâids*). *Thirds*, village leaders in the past only justified or legalized the distribution of inheritance based on the Civil Code. Such things encourage the formation of an inheritance tradition that is not based on the provisions of Islamic law, but on the Civil Code instead. The tradition, then, turn out to be a culture that is then passed from a generation to the next generation.

**Keywords:** legal culture, inheritance system, Karas Kepoh Villagers

**Abstrak:** *Budaya Hukum Pembagian Harta Warisan dalam Masyarakat Muslim di Desa Karas Kepoh, Kecamatan Pancur, Rembang, Jawa Tengah.* Penelitian ini bertujuan untuk mengungkap latar belakang budaya hukum masyarakat dalam pembagian harta warisan di Desa Karas Kepoh, Kecamatan Pancur, Kabupaten Rembang. Seluruh anggota masyarakat desa dapat dikatakan telah memeluk agama Islam sehingga secara teoritis masyarakat harus mengikuti syariat Islam dalam pembagian harta warisan. Namun pada kenyataannya mereka menggunakan ketentuan dalam KUHPerdato. Penelitian ini menggunakan pendekatan penelitian socio legal yang dianalisis secara kualitatif. Hasil penelitian menunjukkan bahwa ada beberapa hal yang mendasari budaya hukum masyarakat dalam pembagian harta warisan. *Pertama*, sejarah panjang penjajahan Belanda yang hanya mengenal Kitab Undang-Undang Hukum Perdata (*Burgerlijk Wet Boek*). *Kedua*, hampir semua warga masyarakat mengenyam pendidikan umum, hanya sedikit warga yang bersekolah di pesantren. Akibatnya, hampir tidak ada tokoh masyarakat atau tokoh agama yang memahami hukum waris Islam (*farâid*). *Ketiga*, para pemimpin desa pada masa lalu hanya membenarkan atau mengesahkan pembagian harta warisan berdasarkan KUHPerdato. Hal-hal seperti itulah yang mendorong

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terbentuknya tradisi pembagian warisan yang tidak didasarkan pada ketentuan hukum Islam, melainkan pada Kitab Undang-Undang Hukum Perdata. Tradisi kemudian menjadi budaya yang kemudian diturunkan dari generasi ke generasi berikutnya.

**Kata Kunci:** budaya hukum, sistem warisan, masyarakat Desa Karas Kepoh

## Introduction

Law is a value that guides daily behavior and functions as a regulator of people's lives. The law used by the community is full of values that are believed to be true. Brian Z. Tamanaha, whose opinion was based on the "Mirror Thesis", explains that law is an idea of values that aims to regulate society. As a reflection of a community, law manifests itself in the form of tradition/culture,<sup>1</sup> which is also empirically influenced by internal values that live in society.

Legal culture can be seen as a form of community behavior relationship related to law. Like legal norms, legal culture is also determined by the values or norms followed by the community. As emphasized by Friedman, society has values related to the institutions adopted as its legal culture. This legal culture will be obeyed because it functions as a driving force to achieve the goal of the law, namely justice. Justice is a bridge that connects the legal system with human behavior as part of society.<sup>2</sup>

Residents of Karas Kepoh Village, Pancur District, Rembang Regency, Central Java Province, have their unique inheritance distribution system that is different from what is common among Muslim communities. In general, indigenous Muslim peoples in Indonesia in the distribution of customary inheritance tend to use Islamic law (*farâid*) or at least influenced by Islamic law. But, uniquely, even though all Kepoh villagers adhere to Islam, in terms of their inheritance they do not follow the provisions of Islamic inheritance law (*farâid*) but rely on certain values that refer to the Civil Code (*Burgelijk Wet Boek*) inherited from the Dutch East Indies. This phenomenon is interesting to study, not only because

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<sup>1</sup> Brian Z. Tamanaha, *A General Jurisprudence of Law and Society* (New York: Oxford University Press, 2006), pp. 1–2.

<sup>2</sup> Esmi Warasih, 'Penelitian Socio Legal' (Bandung: Makalah Workshop Pemutakhiran Metodologi Hukum, 2006), p. 7.

it contradicts general assumptions but also to find out what is behind the local Muslim community so that in the distribution of inheritance they do not use Islamic Law but use Civil Law instead

## Research Methods

This research is qualitative research with descriptive analysis.<sup>3</sup> The aim is to provide an objective picture of a situation through certain information related to community norms or provisions that exist in society. The research uses a socio-legal research approach,<sup>4</sup> which is a combination of legal research, which is research that studies the normative/legal provisions, and social research, which is a means to analyze using methods and social sciences related to law.<sup>5</sup> Primary data were obtained through interviews or observations related to community activities in the distribution of inheritance; While secondary data were obtained from literature sources and other writings related to the core of the problem being studied.

This study is based on the constructivism paradigm,<sup>6</sup> (legal constructivism), meaning that the truth of the law will be relative depending on which aspect of the law sees the reality of society. The researcher will construct this reality into a legal reality which will be analyzed using a qualitative approach. In other words, here the researcher acts as a tool to construct legal reality.<sup>7</sup>

## Law and Legal Culture

Law functions as a means to regulate people's behavior patterns. The law is used not only to regulate habit patterns but also to abolish something that is not following the need of the community. The law

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<sup>3</sup> Warasih, h. 89

<sup>4</sup> Ronny Hanutijo, *Metodologi Penelitian Hukum* (Jakarta: Ghalia Indonesia, 1985), p. 10.

<sup>5</sup> Zamroni, *Pengembangan Pengantar Teori Sosial* (Yogyakarta: Tiara Yoga, 1992), p. 81.

<sup>6</sup> Soetandyo Wignjosebroto, *Disertasi: Sebuah Pedoman Ringkas Tentang Tata Cara Penulisan* (Surabaya: Penerbit Laboratorium Sosiologi Fakultas Ilmu Sosial dan Politik Universitas Airlangga, 2007), p. 21.

<sup>7</sup> Robert K Yin, *Studi Kasus, Desain dan Metode* (Jakarta: PT Raja Grafindo Persada, 2006), h. 103.

can also create new habit patterns in this life. Besides, the law is also a norm that regulates people's behavior to create justice in social life.<sup>8</sup> Therefore, in common life, the principles of justice must be used, or it can be said that a peaceful and just life is the goal of the law.<sup>9</sup> On the other hand, the law has a role in maintaining the values that have been achieved in civilization. Law also creates values that serve as opening up possibilities to accommodate and spur the development of human capabilities in advancing their civilization.<sup>10</sup> Because the existence of law is determined by how humans use it, the law is final.<sup>11</sup> The regularity of values that are implemented in people's lives eventually becomes a legal culture that is used as a common guideline. It is the regularity of these values that ultimately influences society in deciding life matters.

Law is a norm that regulates people's behavior. The public's perception of the meaning of the law, that is to create or to achieve justice for the community, must be carried out fairly and peacefully.<sup>12</sup> In achieving legal goals, it is necessary to pay attention to three basic legal values which include legal certainty, expediency, and justice.<sup>13</sup> Legal certainty is not enough if the law does not provide fair benefits. The benefit is also not enough if it does not provide legal certainty and a sense of justice. Although sometimes the three contradict each other, harmonization of the three should be sought as much as possible. If the three cannot be reconciled, then justice is the priority. Justice is something that the community strives for, although achieving substantive justice is not an easy thing to do. To achieve legal certainty, a desirable legal system must be realized.

Harry C. Bredemeier explained that the legal system functions to integrate and incorporate economic sub-systems into outputs in the form

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<sup>8</sup> Satjipto Rahardjo, *Hukum dan Perilaku*, h. 206.

<sup>9</sup> Utrecht E, h. 74.

<sup>10</sup> Moh Koesno, *Makalah dalam Varia Peradilan*, 1994, h. 24.

<sup>11</sup> Satjipto Rahardjo, *Ilmu Hukum* (Bandung: PT Citra Aditya Bhakti, 2016), h. 33.

<sup>12</sup> Moh Saleh Djindang Utrecht E, *Pengantar dalam Hukum Indonesia* (Jakarta: Ichtiar Baru, 1993), h. 11.

<sup>13</sup> Gustav Radbruch Sudikno Mertokusumo, *Bunga Rampai Ilmu Hukum* (Yogyakarta: Liberty, 1984), h. 1.

of rearranging the production process in society.<sup>14</sup> By the same token, input from the political sub-system will produce output in the form of legitimacy and concretization of goals while culture will provide output in the form of justice. Law must be able to respond to the wishes of the community to achieve the expected goals. Responsive law is a law that accommodates all community interests and can follow cultural developments in society. Although the effort to respond to the interests of the community is not easy, the law must be able to integrate what the community wants. Law that is following the will of the community will be more obeyed, while if it is not in accordance, the law will be abandoned by the community. This is similar to what was said by Von Savigny who emphasized that the law must be following the wishes or soul of the community as the law comes from the community. Law will evolve and disappear following the desire of society.<sup>15</sup> There is no law without society. Similar to this opinion, Warasih explained that the law should not be separated from the ideas or thoughts of the community,<sup>16</sup> because, according to Roeslan Saleh, the law is a crystallization of general norms accepted in society.<sup>17</sup>

Legal culture is an abstraction of the values of good and evil that are non-material or spiritual, in which good things will be followed and bad things will be left behind. This is the basis of ethics, norms, or rules that contain appeals or prohibitions.<sup>18</sup> Having legal culture, according to Darmodiharjo and Sidarta, is to create legal awareness of the community as a whole.<sup>19</sup> Legal awareness is a basic concept to create harmony, order, and peace in humans as desired or appropriate. Parameters to measure a person's level of legal awareness are legal knowledge, legal

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<sup>14</sup> Harry C. Bredemeier, *Law as Integrative Mechanism, dalam Vilhelm Aubert, (Ed) Sociology of Law* (New York: The Free Press of Glenco, 1962), h. 62.

<sup>15</sup> Satjipto Rahardjo, *Hukum dan Perilaku* (Jakarta: Penerbit Buku Kompas, 2009), h. 17.

<sup>16</sup> Esmi Warasih, *Pranata Hukum Sebuah Telaah Sosiologistle* (Malang: PT. Suryandaru Utama, 2005), h. 85.

<sup>17</sup> Roeslan Saleh, *Segi Lain Hukum Pidana* (Jakarta: Ghalia Indonesia, 2014), h. 42.

<sup>18</sup> Daniel S Lev, *Hukum dan Politik di Indonesia, Kesenambungan dan Perubahan* (Jakarta: LP3ES, 1998), h. 87.

<sup>19</sup> Darmodiharjo Sidharta, *Perjalanan Nilai Nilai Pancasila dalam Sistem Hukum Indonesia* (Jakarta: PT RajaGrafindo, 1996), h. 155–56.

substance, and attitude.<sup>20</sup> The high legal awareness of the community will create a legal culture that is full of the spirit of kinship and peace; Conversely, low legal awareness will create social deviations and even have the potential to cause conflict in society. If this conflict continues, there will be divisions that cause discomfort in society. This is what the community must avoid if they want security and order. Violations of the order will certainly affect harmonization in social life.

In relation to values, legal culture can be identified according to the quantity and quality of society's responses. The higher response of the community to follow and obey the culture the higher value of their culture will be. Values are something that can be useful for human interests. Values do not depend on the carrier. The quality of the values does not change when the carrier is changed and is not damaged when the carrier is turned off or destroyed.<sup>21</sup> This indicates a difference between the value and the carrier. Values become a driving force and direction in humans to take actions or ways of behaving. It will develop and become guidelines for behavior. Values are believed by the community to provide regularity so that the community members will obey them. Because these values grow and develop following the development of society, the order of values will form a pattern of behavior towards the community. If there are members of the community who violate it, they will be sanctioned by the community.

Culture functions to provide certain identities or characteristics that are shaped by historical factors, geographical locations, or social systems of the community. Culture is also a binder of a society, a source of inspiration, as well as a driving force to develop dynamically.<sup>22</sup> The behavior of the community is adjusted to something that has been agreed upon by the community. A cultural actor is any person or group of cultured people. Thus, legal culture is a set of knowledge and values held by a group of people and is used as a guide for taking actions related to

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<sup>20</sup> Soerjono Sukanto dan Soleman B, *Hukum Adat Indonesia* (Jakarta: Penerbit Rajawali, 1993), h. 348.

<sup>21</sup> Paulus Wahana, *Nilai, Etika Aksiologis Maxscheler* (Yogyakarta: Penerbit Kanisius, 2016), h. 51.

<sup>22</sup> Taliziduhu Ndraha, h. 44–45.

norms. These norms can be in the form of unwritten laws or customary norms that are following community values.

The legal culture that lives in society differs from one community to another. This is because each community has distinctive tendencies and characteristics that are not the same as other communities. Viewed from this aspect, culture can be divided into local culture, regional culture, and global culture.<sup>23</sup> Each of these cultures will develop following the development of society. Local culture develops following the local wisdom of the local community. This culture will have different characteristics according to the values that live in society. As is the case with legal culture, inheritance law and inheritance law culture are also influenced by norms or values in society. Inheritance law has an important role in the structure of society and is used as a guide for society.

### **Inheritance System in Indonesia**

The term inheritance comes from the Arabic *warisa-yarisu* or *irsân/turâs* which means to inherit or inheritance. The inheritance system consists of a person who owns a property ( heir), people who are entitled to inherit (heirs), and the amount of property received by the heirs.<sup>24</sup> In reality, the definition of inheritance law is not uniform among the experts. According to Supomo, inheritance is a set of rules that contain the process of transferring or passing on from the heir to the heirs in the form of goods or inheritance.<sup>25</sup> Wirjono describes that inheritance is the emergence of rights and obligations of a person towards inheritance.<sup>26</sup> Meanwhile, according to Hilman Hadikusuma, inheritance is property left by the heir, both undivided and divided.<sup>27</sup>

Juridically, three kinds of inheritance law apply in Indonesia, namely Islamic inheritance law (*farâid*), civil law, and customary inheritance Law.

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<sup>23</sup> Taliziduhu Ndraha, *Budaya Organisasi* (Jakarta: PT Rineka Cipta, 1997), h. 122–23.

<sup>24</sup> Ensiklopedi, h. 89.

<sup>25</sup> Supomo, *Bab-Bab Tentang Hukum Adat* (Jakarta: Penerbit Universitas, 1968), h. 12.

<sup>26</sup> Wirjono Projodikoro, *Hukum Warisan di Indonesia* (Bandung: Vorkint Van Hoeve, 1978), p. 17.

<sup>27</sup> Hilman Hadikusuma, h. 27.

Islamic inheritance law applies to those who are Muslim. Civil law is inheritance law that applies to Europeans and foreign Eastern groups and is regulated in the Dutch colonial's Civil Code (*Burgerlijk Wet Boek*).<sup>28</sup> The division of society at that time was regulated by Articles 131 and 163 IS (*Indische Staatsregeling*) which up to now remained in effect based on Article II of the transitional rules of the 1945 Constitution. This provision divided the groups of people in Indonesia into three parts, namely: the European group, which included the Dutch, German, British and their descendants, the Foreign Eastern Group which includes Chinese, Arabs, Pakistanis and their descendants, and the Bumi Putra group which includes native Indonesians. The European group follows the provisions stipulated in the Civil Code, the Foreign Eastern Group is also subject to the Civil Code, except for inheritance, they are subject to their respective customary inheritance law, while the Indigenous group is subject to customary law as a whole.<sup>29</sup>

The emergence of inheritance rights in the Civil Code is based on two things: first, the *ab intestato* of inheritance law, meaning that inheritance is determined based on blood relations and marital relations. The second, law of inheritance is testamentary, meaning inheritance caused by the existence of a testament or will. *Ab intestato* is regulated in Article 832 of the Civil Code which states that those who are entitled to become heirs must have blood relations with the heir. However, the heir during his lifetime can also provide a statement regarding his assets or an appointment to a certain person if he dies. This act is called a will. Article 875 of the Civil Code states that a will must be made in writing according to the wishes of the testator. If there is no will, then all the inheritance belongs to the heirs, as regulated in Article 874 of the Civil Code essentially states that the heirs have rights over all the inheritance of the heirs' assets when the testator dies unless the heir makes a will on the inheritance.

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<sup>28</sup> Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: Intermedia, 2001), h. 10.

<sup>29</sup> Supriyadi, *Dasar-Dasar Hukum Perdata di Indonesia* (Semarang: Pustaka Magister, 2015), h. 78. See also Supriyadi 'Pilihan Hukum Kewarisan dalam Masyarakat Pluralistik (Studi Komparasi Hukum Islam dan Hukum Perdata)', *Jurnal Al 'Adalah*, vol XII. N (2015), 364.



Furthermore, the Civil Code divides the heirs into four groups. The first group includes children or their descendants and living wives (husbands). The second group includes parents (father and mother) and heirs. The Third Group includes grandmothers and grandfathers, or other ancestors in a straight line up. The fourth group includes uncles, aunts, and their descendants up to the sixth degree. The classification of the four heirs above applies sequentially, with the provisions that the most entitled to inherit are the heirs of class one. If there are no heirs from group one, the inheritance rights fall to group two. Likewise, if the second-class heir does not exist, the inheritance will fall to the third group and so on. When the four groups above do not have heirs, the inheritance will be handed over to the state.

Meanwhile, among the customary peoples, the inheritance law has varied performance, following the structure of Indonesian society which has different characteristics in each region. The structure of customary peoples in determining heirs generally follows the kinship and descent system adopted. It includes three things, namely: *First*, the patrilineal system/patriarchal nature, in principle, draws the kinship system from the father's descendants, for example in the Tanah Gayo, Batak, Ambon, Papua communities; *Second*, the matrilineal system/motherhood, looking at kinship from the mother's line or female ancestors, for example in Minangkabau society; *Third*, the parental system that draws from the father's or mother's side, for example in Java, Sumatra, and Kalimantan.<sup>30</sup>

The provisions of customary inheritance law regulate the process of transferring assets from the owner of the property to his successor, namely from generation to generation. In the distribution of inheritance, there are at least three elements that must exist, namely the heir, inheritance, and heirs. The heir is the owner of the inheritance and has died. Inheritance assets are assets in the form of movable or immovable objects inherited from the heir. An heir is a person who has a kinship with the heir and who will receive the inheritance.

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<sup>30</sup> Supriyadi, *Dasar-Dasar Hukum Perdata di Indonesia*, h. 23.

The requirement as an heir, in general, is a person who has died. However, the transfer of the inheritance of the heir in customary law can be done when the owner of the property is still alive or has died.<sup>31</sup>

Concerning heirs, the inheritance law of the Civil Code adheres to an individual system. With this system, the general principle is that the biological children are entitled to receive an inheritance; but it can also include other figures in the related kinship system which includes nieces, grandchildren, or other existing relatives, including children who are still in the womb. Even adopted children have the same rights as biological children in the distribution of inheritance. The difference is, the adopted child only inherits the *gono gini* property (joint property), not separate property, while biological children inherit both.<sup>32</sup> So that the boundaries between heirs and non-heirs sometimes become very thin because both of them get the transfer of inheritance.<sup>33</sup>

In the customary inheritance system, the distribution of inheritance can be carried out while the heir is still alive and there is no requirement for the death of the heir.<sup>34</sup> The purpose of dividing the inheritance when the testator is still alive is to prevent disputes when their parents have died.<sup>35</sup> The inheritance referred to the entire testator's property after deducting the funeral expenses and debt owed by the testator. Payment of debt is an obligation of the heirs which is taken from the inheritance. If all debts have been paid off, then it will be verified whether the testator leaves a will or not. If the testator leaves a will then the will takes precedence to be taken into account. After all of this is calculated, the remaining property becomes the property to be divided by the heirs.<sup>36</sup>

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<sup>31</sup> Hilman Hadikusuma, h. 18.

<sup>32</sup> Muhammad Amin Suma Kiki Adnan Muzaki, Asep Saepuddin Jahar, 'Reform of the Law of Inheritance in Turkey and Tunisia', *Jurnal Al- Adalah*, Vol 17, No (2020), h. 253.

<sup>33</sup> Hilman Hadikusuma, h. 77.

<sup>34</sup> Supomo, h. 37.

<sup>35</sup> Jainuddin, 'Pembagian Harta Warisan: Telaah Pembagian Warisan Oleh Pewaris Kepada Ahli Waris Sebelum Pewaris Meninggal Dunia Pada Masyarakat Bima', *Sangaji Jurnal Pemikiran Syariah dan Hukum*, Volume 4 N (2020), h. 303. See also Abdul Qodir Zaelani, 'Kedudukan Ahli Waris Pengganti (*Plaatsvervulling*) dalam Kompilasi Hukum Islam dan Pemecahannya', *ADHKI: Journal of Islamic Family Law*, Vol 2 No 1 (2020).

<sup>36</sup> Salim HS, *Pengantar Hukum Perdata Tertulis* (Jakarta: Sinar Grafika, 2012), h. 141.

In contrast to the Criminal Code and customary inheritance law, Islamic Inheritance Law (*farâd*) has a distribution system based on marital relations or blood relations with the heirs.<sup>37</sup> In principle, Islamic Inheritance Law is an overhaul of the inheritance system that prevailed in pre-Islamic Arab society, which at that time did not give inheritance rights to children and women. The portion of the division for each heir in the *Farâid* has been clearly and in detail determined in the Qur'an and Hadith,<sup>38</sup> with very fair distribution.<sup>39</sup> In Islamic law, it is regulated that the son gets twice the share for the daughter (2:1). However, according to Article 183 of the Compilation of Islamic Law, all heirs may agree on the distribution of inheritance following the awareness of each heir.

The three inheritance law systems above are still valid and are used as guidelines in the distribution of inheritance by the Indonesian people. In fact, in its development, the three inheritance laws can give birth to collaboration, in the sense that there are people who carry out the distribution of inheritance law using *farâids*, some use the Civil Code of Dutch colonial heritage, some use customary law, and some use collaboration between customary law and the Civil Code.

As for the distribution of inheritance after the testator dies, this applies if the inheritance distribution follows the perspective of Islamic law and the Civil Code. In the perspective of customary law, however, the distribution of property belonging to the testator does not have to wait for the testator to die first. This is a reality in customary peoples, especially in Java, which often divides inheritance when the heir is still alive.

As explained by Supomo, giving inheritance while the heir is still alive is mainly to prevent disputes between the heirs.<sup>40</sup> In line with that,

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<sup>37</sup> Anak Hadi Kurniawan, Ade Darmawan Basri, 'Analisis Terhadap Pembagian Harta Warisan Ditinjau dari Hukum Perdata dan Hukum Islam', *Alauddin Law Deveolpment Journal (ALDEV)*, Volume 2 N (2020), h. 258.

<sup>38</sup> Moh Muhibbin, *Hukum Kewarisan Islam Sebagai Pembaharuan Hukum Positif di Indonesia* (Jakarta: Sinar Grafika, 2015), h. 3.

<sup>39</sup> Ahmad Faridah, 'Sejarah Pelaksanaan Hak Pewarisan Pusaka pada Zaman Jahiliah dan Zaman Pasca Islam Kajian Perbandingan', *Journal of Law, UUMJLS*, 2017, h. 133–1165.

<sup>40</sup> Supomo, h. 91.

according to Rofiq, the distribution of inheritance is carried out while the owner of the property is still alive with the aim that the giving of property from the owner can proceed peacefully and harmoniously. It is hoped that, in the future, after the heir dies, the children will continue to live in harmony and there will be no conflict/dispute between them due to the problem of inheritance distribution.<sup>41</sup>

### **Inheritance Sharing System Among Karas Kepoh Villagers**

The community of Karas Kepoh Village, the subdistrict of Pancur, uses a parental or bilateral kinship system that draws a lineage from both father and mother.<sup>42</sup> This system then affects the distribution of inheritance. Individually, the position of male and female heirs is not distinguished. They have the same rights in inheritance and will receive an inheritance from the heirs according to the lineage of the father and mother.<sup>43</sup> Children or heirs control and utilize the inheritance of the heir given to them, including heirlooms such as kris and other heirlooms.

The inheritance distribution system among the Karas Kepoh Villagers is carried out by involving external parties, village heads, or community leaders, whether there is a dispute or not. In principle, the distribution of inheritance is carried out using deliberation to reach consensus, but if they do not reach a meeting point or agreement, the settlement is carried out by trusting the village head or certain community leaders. Usually, the interested party comes to the village head or community leaders and asks them for help in distributing the inheritance following applicable law. The community considers the village head or community leader as a wise figure and able to share inheritance fairly. In that distribution, the Village Head or community leader will then divide the rights equally between men and women by 1:1 ratio. This way, in local terms, is referred to as the "kupati dundum" division. This division, justified by the village heads, is similar to the provisions in the Civil Code because village heads

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<sup>41</sup> Ahmad Rofiq, *Hukum Islam di Indonesia* (Jakarta: PT Raja Grafindo Persada, 1995), h. 56.

<sup>42</sup> Wirjono Projodikoro, h. 51.

<sup>43</sup> Subekti, *Hukum Adat dalam Yurisprudensi Mahkamah Agung* (Bandung: Alumni, 1984), h. 98.

and community leaders at that time only knew the distribution method as stipulated in the Civil Code.

The settlement of inheritance distribution using the individual and 1:1 principle is favored by the community because they consider the inheritance for men and women to be balanced. They believe that such a distribution is appropriate for the local community even though the Islamic inheritance law determines otherwise. As for the distribution of inheritance after the testator dies, this applies if the inheritance distribution follows the perspective of Islamic law and the Civil Code. Meanwhile, following the perspective of customary law, the distribution of property belonging to the testator does not have to wait for the testator to die first. This reality can be found in many customary peoples, especially in Java, which often divides inheritance when the heir is still alive.

In dividing the inheritance, the method used by the people of Karas Kepoh Village is "*rembugan*". *Rembugan* is a way to reach a consensus-based on a sense of sincerity to get each other's share. The agreement was also accompanied by a spirit of mutual assistance and cooperation. The poor families will be assisted by the wealthy so that if there are among the heirs who are in need, their portion will be more. This is because wealthy families will provide additional wealth to poor families. With this principle, the wealthy heirs give part of their share to be reduced/"added" to other heirs. The term "added" emphasizes that the part of the giving heirs is not given as in the sense of a grant which is completely independent of a person's rights to inherit.<sup>44</sup> In other words, the rights of the giving heirs remain, it's just that, at their willingness, is reduced to be "added" to other heirs who are in need. This attitude is more about giving a portion that must be obtained compared to the shape or form of the object.

Furthermore, in distributing inheritance, the people of Karas Kepoh Village also use the principle of kinship. For them, harmony, peace, and family or kinship are very important and must be maintained so as not

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<sup>44</sup> Abdul Ghofur Anshori dan Nawawi Ismail, *Pengadilan Agama Diantara Wawasan Nusantara* (Yogyakarta: Yayasan Bumi Nusantara, 2000), h. 106.

to be interrupted. For this reason, in the distribution of inheritance, they will understand each other and prioritize family relationships so that family conflicts/disputes caused by inheritance problems can be avoided. The distribution of inheritance by way of deliberation, evenly or proportionally is actually what the heirs want.<sup>45</sup>

The deliberation approach to reach consensus also overshadows the transfer of inheritance when the heir is still alive.<sup>46</sup> This method is intended to prevent conflicts that occur between their children (heirs). Based on the experience of parents in several other villages, kinship relationships are often broken due to the division of inheritance. The breakup of this kinship, of course, is not desired by the parents. To prevent this, the parents gather all the children (heirs) for deliberation to reach a consensus. Usually, parents designate certain assets which are then given to their children. After the gift, the child is allowed to accept or reject the distribution. However, in general, there are no children who refuse the distribution from their parents and they will always act "*sendiko dawuhl*/obey orders" to accept gifts from their parents.

The distribution of inheritance which is carried out while the heir is still alive among the people of Karas Kepoh Village is generally carried out on children who are married. This is because, in general, married children no longer live in the same house with their parents, which in local customary terms is called "*kumpul*/gathering". The part of the inheritance, therefore, can be the initial capital for married children so that they can live and build their households and do not experience deficiencies in their lives. With this capital, they are expected to be able to determine their life independently without depending on their parents. As for the last child who continues to get together with his parents, he will usually get more wealth than the others to care for the parents. After the parents die, the property belongs to the child.

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<sup>45</sup> Hamid Pongoliu, 'Pembagian Harta Waris dalam Tradisi Masyarakat Muslim di Gorontalo', *Al-Manabij Jurnal Kajian Hukum Islam*, Vol XIII N, h. 189.

<sup>46</sup> Hazairin, *Hukum Kewarisan Bilateral Menurut Al Quran dan Hadis*, Cet III (Jakarta: Tinta Mas, 1969), h. 11.

## Influencing Factors

Theoretically, the Muslim community of Karas Kepoh Village, Rembang Regency should use Islamic inheritance law (*farâid*) on account of their majority being Muslim. But in reality, it is not so. Instead, they use traditional procedures following local wisdom which is a collaboration of local culture with the Civil Code. The factors that influence the legal culture of the local community in inheritance can be described as follows.

### 1. The Influence of Dutch Colonial Law

Historically, the existence of the Civil Code cannot be separated from the national history of Indonesia which was colonized by the Dutch. The Civil Code was applied to Europeans residing in Indonesia which was promulgated in 1847 as a codification effort initiated by *bewuste rechtspolitiek* to strengthen the Dutch East Indies government.<sup>47</sup> The reason was that customary law in Indonesia did not provide legal certainty because customary law was generally unwritten. Consequently, judges will find it difficult to decide on civil cases that are the subject of disputes in the community. Whereas the Civil Code was a written law that make it easier for judges to use it as a guide in carrying out their duties as juries. Although later, after Indonesia's independence, the government tried to replace all legal products of the Dutch East Indies, there are always differences of opinion in viewing the development of national civil law. On the one hand, some parties want to abolish the Civil Code, but on the other hand, some want the Civil Code to continue to apply together with customary law, and some are even of the view that they want to enforce customary law only. This dissimilarity of attitude ultimately makes the Civil Code still valid as one of the laws governing people's lives.<sup>48</sup>

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<sup>47</sup> Soetandyo Wigjosoebroto, *Dari Hukum Kolonial ke Hukum Nasional* (Jakarta: Jakarta Press, 1999), h. 56.

<sup>48</sup> Ahmad Miru, *Hukum Kontrak dan Perorangan Kontrak* (Jakarta: PT Raja Grafindo Persada, 2014), h. 6.

## 2. The Role of the Village Head

The village government has an important role in resolving the distribution of inheritance, especially the village head as a community figure who has been chosen by the community.<sup>49</sup> In deciding the distribution of inheritance, whether there was a dispute or not, the village government often acted as a village peace judge. The public has never read the articles on inheritance regulated in the Civil Code; But when they encountered difficulties in the distribution of inheritance they consulted local traditional leaders, especially the village head. The village head was considered a person who understands the law so that what the village head says is like a law that must be followed. The involvement of the village head in the settlement of inheritance problems at the time was considered more appropriate by the village community than the settlement through the courts because it is shorter and no need for appeals or other forms.<sup>50</sup>

The village head, in carrying out his role, strove to maintain the legal culture of the community that upholds the consensus approach following the traditions of the local community.<sup>51</sup> He made summons to the disputing parties, listened to their statements and sought peace, and even directed the party to agree on the distribution of inheritance. The village head would provide advice to the community, whether requested or not because it was indeed his duty and obligation. Although using the principle of consensus, in the end, the basis used in the distribution of inheritance was the Civil Code. This was because the knowledge of the village head about Islamic law was very lacking, especially in terms of *farâids*. This phenomenon then continues from generation to generation so that it becomes a culture that is followed by the next generation to this day.

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<sup>49</sup> Soerjono Sukanto, *Memperkenalkan Sosiologi* (Jakarta: Rajawali, 1992), h. 33.

<sup>50</sup> Anti Mayastuti, 'Pemberdayaan Fungsi Kepala Desa Sebagai Mediator Penyelesaian Sengketa Pasca Undang Undang Nomer 6 Tahun 2014 Tentang Desa', *Journal of Law*, Volume II, (2015), h. 78.

<sup>51</sup> Mushadi, *Mediasi dan Resolusi Konflik di Indonesia* (Semarang: Walisongo Center, 2007), h. 38.



### 3. The Lack of Community Leaders Who Comprehend *Farâid*

The community of Karas Kepoh Village can be said to be very lacking in Kiai<sup>52</sup> figures or individuals who understand Islamic inheritance law. Even if there are residents from the pesantren, they study with Kiai in neighboring villages, for example in Tuyuhan Village, Jeruk Village, or in Lasem sub-district, Rembang Regency. Even then, when they returned to Karas Kepoh Village, their character was still inferior to other figures from the "abangan" circles.<sup>53</sup> These "abangan" community leaders have very little understanding of Islam because their educational background is not from the Islamic boarding school. Their knowledge is the knowledge of inheritance distribution obtained from general education which follows the inheritance distribution which is sourced from the Civil Code.

### Conclusion

In dividing the inheritance, the Muslim community of Karas Kepoh Village, Rembang Regency tends not to use Islamic inheritance law but uses local customary law in collaboration with the Civil Code. This can be seen in the practice of inheritance distribution which uses the individual principle of 1:1 and other practices, including the distribution of property which is carried out while the heir is still alive. The long history of Dutch colonialism which only knew the Civil Code (*Burgerlijk Wet Boek*), plus the role of village heads in the past who justified the distribution of inheritance according to tradition, as well as the scarcity of community leaders or religious leaders who understood Islamic inheritance law (*farâids*), were three important factors that encourage the formation of legal culture of local community inheritance which is then adopted from generation to generation from one generation to the next.

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<sup>52</sup> The name for a religious teacher

<sup>53</sup> A figure who claims to be Muslim but does not know Islamic laws, including practicing them, and tend to be syncretic.

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