
PROCEEDINGS

**INTERNATIONAL CONFERENCE ON ISLAM,
DEVELOPMENT AND SOCIAL HARMONY IN
SOUTHEAST ASIA (ICDIS) 2019**

The Challenges In Achieving an Integrated
and Prosperous ASEAN Community

VOLUME 2

28th November 2019 / 01 Rabiul Akhir 1441H
Fakulti Pengajian Islam ● Universiti Kebangsaan Malaysia

Penyunting

Mohamad Zulkifli Abdul Ghani, Al-Muslim Mustapa,
Muhammad Razak Idris, Adawiyah Ismail, Anis Pattanaprichawong

Prosiding
Persidangan Antarabangsa Islam, Pembangunan dan
Keharmonian Sosial Di Asia Tenggara 2019

Cetakan Pertama 2019

©Hak Cipta Fakulti Pengajian Islam UKM 2019
INTERNATIONAL CONFERENCE ON ISLAM, DEVELOPMENT AND SOCIAL HARMONY
IN SOUTHEAST ASIA (ICDIS) © 2019

Hakcipta terpelihara. Tiada bahagian daripada terbitan ini boleh diterbitkan semula, disimpan untuk pengeluaran atau ditukarkan ke dalam sebarang bentuk atau dengan sebarang alat juga pun, samada dengan cara elektronik, gambar, rakaman dan sebagainya tanpa izin bertulis daripada Pihak Fakulti Pengajian Islam, Universiti Kebangsaan Malaysia. Perundingan tertakluk kepada perkiraan royalti atau honorium

ISBN: 978-967-2256-27-4

Diterbitkan di Malaysia | *Published in Malaysia*
Fakulti Pengajian Islam
Universiti Kebangsaan Malaysia
43600 UKM Bangi, Selangor Darul Ehsan, Malaysia
Laman Web: www.ukm.my/fpi

Dicetak di Malaysia | *Printed in Malaysia*
UKM CETAK SDN. BHD.
Aras Bawah, Bangunan Penerbit UKM,
Universiti Kebangsaan Malaysia,
43600 UKM Bangi, Selangor Darul Ehsan, Malaysia

PRAKATA

السلام عليكم ورحمة الله وبركاته،

Alhamdulillah dengan keizinanNya, “International Conference on Islam, Development and Harmony in Southeast Asia (ICDIS) 2019 atau dalam bahasa melayunya “Persidangan Antarabangsa Islam, Pembangunan dan Keharmonian Sosial Di Asia Tenggara 2019 dapat kita laksanakan. Pada kali ini, persidangan ini bertemakan Cabaran dalam mencapai Integrasi dan Keharmonian Komuniti Asia ini dianjurkan secara sinergi antara Fakulti Pengajian Islam, Universiti Kebangsaan Malaysia (UKM) dengan Princess of Naratdhiwas University (PNU).

Selain itu, dari segi kertas pembentangan, sebanyak 68 kertas kerja akan dibentangkan dengan tema yang selari dengan tema utama persidangan ini. Oleh itu, sebagai ruang pengembangan ilmu, prosiding ICDIS ini diterbitkan sebagai rujukan dan tatapan kepada pengkaji sama ada di peringkat sarjana atau doktor falsafah. Terima kasih kepada pihak Fakulti Pengajian Islam khususnya sidang editor yang banyak membantu penerbitan prosiding ini.

Bagi pihak jawatankuasa pengelola dan rakan sinergi ICDIS, saya merakamkan setinggi-tinggi penghargaan kepada penaja iaitu Yayasan Dakwah Islamiah Malaysia (YaDIM) Dan Institut Darul Ehsan (IDE), para pembentang, urus setia serta semua pihak yang terlibat dalam penganjuran persidangan kali ini. Semoga program sebegini akan terus menjadi saham akhirat yang berpanjangan bagi memastikan sinar Islam terus dimartabatkan.

Mohamad Zulkifli Abdul Ghani
Al-Muslim Mustapa
Muhammad Razak Idris
Adawiyah Ismail
Anis Pattanaprichawon

PENGANTAR

PENGAJIAN ISLAM MENANGANI CABARAN MEMBINA KEMAKMURAN PERADABAN ASIA TENGGARA

Bidang Pengajian Islam (*Islamic Studies*) adalah satu jurusan penelitian ilmiah yang berakar umbi dari dasar berfikir keagamaan berteraskan wahyu, seterusnya tumbuh dan berkembang pesat dipandu oleh daya akliah para Muslim yang beridentiti tauhidik, objektif dan realistik mendepani realiti kehidupan yang mencabar sepanjang sejarah peradaban zaman.

Pengajian Islam telah menekuni pelbagai persoalan kehidupan dan peradaban Muslim dengan jayanya sepanjang sejarah. Pertumbuhan pelbagai aliran dan perkumpulan berfikir samada dalam aspek perundangan, teologi, politik, falsafah, kerohanian dan kebudayaan adalah bukti-bukti tentang kehadiran pengajian Islam memberikan respon serta tindakbalas terhadap persoalan-persoalan peradaban yang timbul dalam situasi dan persekitaran yang rencam menerusi sejumlah pendekatan dan pengkaedahan yang khusus dan tersendiri.

Dalam erti kata lain, pengajian Islam sentiasa bersifat responsif, tidak pasif terhadap cabaran-cabaran yang wujud dalam persekitaran dan kehidupan. Sifat responsif beerti pengajian Islam sentiasa proaktif menggubah pemikiran dan idea baru (*tajdid*) serta aktif membina penyelesaian-penyelesaian praktikal (*islah*) terhadap cabaran dan persoalan yang wujud dalam realiti kemanusiaan dan alam kehidupan. Sifat-sifat yang dimiliki pengajian Islam inilah yang telah menjadikannya satu bidang keilmuan yang teras, mustahak dan relevan setiap era dan zaman.

Keaktifan pengajian menangani cabaran kehidupan dan peradaban didorong oleh wawasan wahyu keagamaan Islam. Konsep kehidupan sepadu bertunjangkan prinsip tauhid dalam erti melestarikan nilai keseimbangan dan kesaksamaan dalam segenap aspek kehidupan insan adalah dasar utama perjuangan pengajian Islam. Wawasan agama juga memugarkan idea ‘khayra ummah’ – iaitu umat Islam sebagai warga terbaik kerana peranan besar yang dipertanggungjawabkan agama ke atas mereka sebagai golongan yang mampu mewujudkan keseimbangan dalam segenap segi peradaban kemanusiaan. Dalam mencapai tujuan itu, wawasan Islam mengemukakan pengkaedahan ‘dakwah’ – seruan dan dialog bagi membina kefahaman dan persefahaman sesama manusia serta nasihat agar manusia tidak melewati garis-garis sempadan pemikiran dan perlakuan yang boleh mengundang kepada kerosakan kehidupan dan peradaban. Wawasan wahyu yang menjadi dasar serta dorongan pengajian Islam menganjurkan kesatuan kehidupan umat manusia berpaksikan sebuah persefahaman sejagat yang diperakui oleh semua (*kalimatun sawa*) seterusnya membina sebuah ummah sedunia (*ummatan wahidah*) yang hidup secara aman bagi memakmurkan bumi dan alam kehidupan.

Menjayakan wawasan besar Ilahiyah tentang kehidupan dan peradaban insaniyyah yang aman dan makmur ini adalah cita-cita utama pengajian Islam sepanjang zaman. Ia secara langsung adalah tanggungjawab yang diamanahkan kepada seluruh para pencinta, pendokong dan pemikir bidang pemikiran Islam untuk melestarikan wawasan besar kesejahteraan insan pada setiap era kehidupan.

Pengajian Islam di Asia Tenggara hendaklah didorong ke arah mencapai cita-cita besar keagamaan bagi membina masyarakat Asia yang bersatu, berdaya maju, aman dan makmur sepanjang waktu. Cita-cita ini hendaklah menjadi paksi dalam setiap perancangan dan gerak kerja ilmiah pengajian Islam di Asia Tenggara meliputi kandungan kurikulum, wacana serta agenda penelitian dan penerbitan karya-karya. Pengajian Islam juga hendaklah bergerak secara sepadu antara individu, perkumpulan dan institusi pengajian di segenap peringkat kemasyarakatan bagi menjayakan cita-cita besar keagamaan. Para sarjana dan institusi pengajian Islam hendaklah melestarikan persefahaman, berkongsi idea dan sumber serta aktif melibatkan diri dalam pembangunan masyarakat Asia Tenggara bertujuan mencari penyelesaian baru terhadap cabaran-cabaran politik, sosial dan ekonomi dalam peradaban Asia Tenggara semasa.

Masyarakat Asia Tenggara hari ini berada di era peralihan setelah melalui dekad-dekad keterjajahan yang panjang sepanjang sejarahnya. Era peralihan menuntut pengisian wawasan kehidupan bersama sebagai sebuah Keluarga Besar Asia Tenggara yang akrab dan harmoni. Cabaran mewujudkan integrasi komuniti Asian adalah sebuah agenda besar perjuangan pengajian Islam di era kontempori di Asia Tenggara. Cabaran ini amat besar terutama bagi mengikis taasub ras yang masih mandalam antara perkumpulan warga Asia, menanam rasa kebersamaan sebagai sebuah keluarga besar Asian seterusnya membangunkan nilai-nilai kebersamaan dan kesejagatan dalam segenap aspek kehidupan.

Pengajian Islam juga bertanggungjawab mencari jalan penyelesaian terhadap saki baki permasalahan kehidupan yang ditinggalkan oleh era keterjajahan. Cabaran besar pengajian Islam di Asia Tenggara hari ini ialah membina model keseimbangan ekonomi bagi memastikan pertumbuhan pesatnya dapat dinikmati secara meluas oleh seluruh warga Asian. Asia Tenggara hakikatnya masih berdepan dengan jurang ketidakseimbangan pendapatan di mana perbezaan taraf hidup di antara kelompok kaya dan miskin keterlaluan. Ketidakseimbangan juga wujud dalam ruang pendidikan di antara golongan berpendidikan dan tidak berpelajaran yang juga berpunca akibat peluang ekonomi yang tidak setara. Pengajian Islam di Asia Tenggara mesti memperjuangkan agenda kesejahteraan ekonomi yang saksama serta dasar keadilan sosial yang seimbang sesama warga Asian ia meliputi agenda pendemokrasi pendidikan yang membuka peluang pengajian secara terbuka dan berpatutan.

Pembangunan Asia Tenggara yang aman dan makmur menuntut pengajian Islam melahirkan warga pemimpin masyarakat berkaliber yang menghayati aspirasi kesatuan warga Asian sebagai sebuah keluarga besar. Pendidikan politik berasaskan nilai-nilai mulia kemakmuran Asia Tenggara hendaklah menjadi salah satu dari agenda pendidikan dalam sistem pengajian Islam kontemporari di Asia Tenggara. Penekanan pengajian politik Islam mestilah menumpu kepada pembinaan kader-kader politik berjiwa Asian yang gigih mempromosi perpaduan bukan perpecahan, tata kelola kerajaan yang baik serta mengemukakan dasar yang prihatin terhadap golongan terpinggir.

Pengajian Islam di Asia Tenggara hari ini berhadapan dengan banyak cabaran kontemporari warga Asia yang telah berkembang dalam persekitaran sejarahnya yang unik dan rumit. Kerelevanan bidang pengajian Islam tergantung kepada sejauh mana keupayaannya memberi tindakbalas positif memberi penyelesaian terhadap cabaran-cabaran peradaban semasa yang dihadapi Asia Tenggara hari ini.

Mendoakan pertemuan warga ilmiah pengajian Islam menerusi wadah ICDIS akan menemukan idea-idea terbaik demi keamanan dan kemakmuran Asia Tenggara di abad ini. Penghargaan setingginya kepada semua panitia penganjuran UKM dan PNU semoga peroleh kerjasama terus subur dan berkekalan menyumbang pembangunan peradaban Asia Tenggara.

Dr. Muhamad Razak Idris

Pengarah

Persidangan Antarabangsa Islam

Pembangunan dan Keharmonian Sosial Di Asia Tenggara 2019.

SINOPSIS

Institusi Pengajian Tinggi merupakan pusat kecemerlangan ilmu sinomin dengan peranannya menjana kecemerlangan masyarakat. Dalam bidang pengajian Islam, Fakulti Pengajian Islam, Universiti Kebangsaan Malaysia sebagai sebahagian daripada pusat tradisi keunggulan ilmu-ilmu Islam di peringkat pengajian tinggi mempunyai peranan besar dalam memacu keunggulan peradaban ummah. Matlamat ini akan tercapai antara lainnya melalui kegiatan penyelidikan ilmiah sama ada di peringkat prasiswazah mahupun di peringkat pascasiswazah. Justeru, Persidangan Antarabangsa Islam, Pembangunan dan Keharmonian Sosial Di Asia Tenggara 2019 adalah inisiatif yang diambil FPI, UKM dalam mengisi agenda tersebut. Kesungguhan mencapai matlamat ini terbukti dengan pemilihan tema persidangan ini iaitu “Cabaran dalam mencapai Integrasi dan Keharmonian Komuniti Asia”.

Persidangan Antarabangsa ini bertujuan memberi peluang kepada pelajar siswazah untuk membentangkan hasil kajian mereka yang bermutu kepada masyarakat. Di samping itu, ia memberikan pendedahan awal kepada pelajar siswazah untuk membentangkan hasil kajian penyelidikan mereka dalam persidangan antarabangsa ini. Selain itu, persidangan ini juga dapat menyemarakkan lagi kegiatan penyelidikan dalam bidang pengajian Islam terutama sekali dalam kalangan pelajar siswazah. Tambahan pula, ia juga merupakan pentas terbaik kepada para pelajar dan juga para penyelidik untuk berkongsi idea serta maklumat terkini berkaitan dengan penyelidikan mereka bagi menghasilkan penyelidikan yang lebih mantap dan berkualiti.

KANDUNGAN

PRAKATA	ii
PENGANTAR	iii
SINOPSIS	v
KANDUNGAN	vi
BAHASA INGGERIS	
Excellent Quality Time With Working Parents and Children to Present The Harmony Family Adawiyah Ismail & Nurhaziqah Hishamudin	1
Religious Peacebuilding In A Plural Society: A Fundamentalist Perspectives Abdullah Latuapo & Muhammad Farid	7
Customary Inheritance Law Acculturation On The Meratus Dayak Community Gusti Muzainah & Miftah Faridh	14
Building Diversity In a Multicultural Society Based On Local Culture In Indonesia Kunawi Basyir	24
Manuscript Preservation In South Kalimantan (Case Study On Library And Archives Service And Lambung Mangkurat Museum) Laila Rahmawati	36
Towards The Empowerment Of Dakwah Activities In Interior Areas Of Sabah Ke Arah Memperkasakan Aktiviti Dakwah di Kawasan Pedalaman Sabah Mohd Faizal Noor Bin Ariffin	46
The Understanding Of Religious Tolerance Among Buddhist Community Of Chittagong, Bangladesh Mohammad Zahir Raihan & Jaffary Awang	52
Guidelines For Teaching Twice Exceptional Students In Learning Arabic Vocabulary In The Classroom Mohd Sham Kamis, Muhammad Nazir Alias, Norhayuza Mohamad, Aini Akmar Mohd Kasim, Rorlinda Yusof & Noriah Mohd. Ishak	57
The Role Of Media In Islamic Da'wah In A Plural Society Muhammad Akram Hureri, Mohd Roslan Mohd Nor & Muhammad Tahir	68
The Development Of Spouse In The Light Of Holy Prophet Muhammad (PBUH)'S Relation With Sayyedah Aisha RA. Muhammad Omer Rafique	73

CUSTOMARY INHERITANCE LAW ACCULTURATION ON THE MERATUS DAYAK COMMUNITY

Gusti Muzainah

E-mail: drmuzainah232@gmail.com

Lecturer at the Faculty of Sharia, State Islamic University of Antasari Banjarmasin

Miftah Faridh

E-mail: meftah.faredh@gmail.com

Lecturer at the Faculty of Sharia, State Islamic University of Antasari Banjarmasin

Abstract: The people who live in Loksado (Meratus Dayak tribe) have a heterogeneous style where they interact with one another and embrace different religions, one of which is Islam. This resulted in the Meratus Dayak tribe which originally adhered to the ancestral belief (Kaharingan), changed to the Islamic religion. Some of the Meratus Dayak people formally have converted to Islam. However, in carrying out the distribution of inheritance they still carry out the distribution of inheritance using customary inheritance law. Religious differences for them are not barriers to inheritance, whereas in Islam religious differences are obstacles to mutual inheritance. This is contrary to the principle in terms of *fiqh mawaris* or Islamic inheritance law.

The purpose of this study was to determine the factors that resulted in acculturation in the Meratus Dayak community. To be able to answer that goal, empirical legal research methods/ field research are used. The approach used is a sociological approach, by conducting interviews with the Meratus Dayak community. Data obtained through observation and interviews are then processed and analyzed through qualitative analysis.

The results of this study indicate that acculturation in the Dayak Meratus community is influenced by several factors including: 1) they embraced Islam due to marriage not from their personal awareness; 2) they consider tradition to exist before religion, so tradition must be prioritized compared to religious law, especially in the case of inheritance.

Keywords: Acculturation, Customary Inheritance Law, Meratus Dayak

A. Background

In Article 18 b paragraph (2) of the 1945 Constitution of the Republic of Indonesia that "the State recognizes and respects the customary law community units along with their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State Republic of Indonesia, which is regulated in law ". The recognition includes traditional rights, as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia. When the customary law is no longer in accordance with the development and principles of the Unitary State of the Republic of Indonesia, it is automatically not recognized by the state.

From the history of law, the customary legal system is the oldest legal system in Indonesian society. This legal system together with the public and religious belief systems have played a very important role in social control¹. The existence of customary law in indigenous peoples has provided a picture of the order of life values that are believed to be true by the community in regulating their lives. This fact illustrates that in the customary law contained the very essence of life, which is a crystallization of various beliefs and ideologies of these

¹ Ahmadi Hasan, *Adat Badamai Interaksi Hukum Islam Dan Hukum Adat Pada Masyarakat Banjar* (Banjarmasin: Antasari Press, 2009), page 68

communities that can only be understood by looking casually at the indigenous people². The customary inheritance law has its own characteristics that are unique to Indonesia, which are different from Islamic law and western law. Because the difference lies in the background of the mind of the Indonesian people who philosophize with Pancasila and the people who have Unity in Diversity³.

The native inhabitants of South Kalimantan consist of various ethnic groups, including: (1) Banjar tribes, who inhabit watersheds from Banjarmasin to Amuntai, and preliminary or inland areas from Banjarmasin, Martapura, Pelaihari, Rantau, Kandangan, Barabai, Amuntai and Tanjung ; (2) Dayak Deyah Dusun tribe, who inhabit Upau Pangelak, Mount Riyut, Kawang, Haruai, Mangkupum, and Kinarum areas in Tabalong Regency (3) Balangan Dayak tribe, who inhabit Halong and surrounding areas in Balangan Regency; (4) Maanyan, who inhabit the Warukin and Pasar Panas areas in Tabalong Regency; (5) Lawangan tribe, who inhabit north Muara Uya area, Tabalong Regency; (6) the Abal tribe, who inhabit the area of Kampung Agung to Haratai, Tabalong Regency; (7) The Bukit Tribe, which inhabit the Meratus mountains, among others, in the mountainous area in Tabalong Regency, Hulu Sungai Tengah Regency, Hulu Sungai Selatan Regency, Tapin Regency, Tanah Laut Regency, Kota Baru Regency; (8) Bakumpai tribe, who inhabit the area of Barito Kuala Regency, namely Marabahan and its surroundings⁴.

Mujiburrahman, Alfisyah, and Ahmad Syazali argued that the Meratus Dayak community had experienced quite dynamic developments in line with socio-political and cultural changes in the Meratus region in particular, and South Kalimantan in general⁵. Meratus Dayak itself looks closer to the Banjar Hulu people. This is based on the closeness of religion, language, and symbols that indicate the existence of syncretism of both⁶. In its development, these two ethnicities are often identified differently especially when viewed from their native religion. The Dayaks are identical with Kaharingan as their native religion while the Banjarese people are Muslim⁷.

A study of the Loksado community has been carried out by a number of local and foreign researchers. Noerid Haloe Radam (2001) mentioned more about the religious life and beliefs of the Dayak tribe (Bukit). In addition to the Loksado region, according to Radam, Dayak Meratus people are widely spread in several areas such as Awayan District in Hulu Sungai Utara Regency (now including Balangan Regency), Batang Alai Selatan District and Batu Benawa in Hulu Sungai Tengah District, Padang Batung District in Hulu Sungai Selatan Regency, Padang Batung Sub-district in Hulu Sungai Selatan Regency, Tapin Utara Sub-district in Tapin Regency, Belimbing District in Banjar Regency, Sampanahan District and Kalumpang in Kota Baru Regency⁸.

Some of the Meratus Dayak people in the Hulu Sungai Selatan Regency still live in groups in one traditional area, or the traditional hall where there are several *umbun* (head of family) in the traditional hall. At least there are 42 traditional halls in Loksado District. As an indigenous ethnic of Kalimantan, Meratus Dayak indigenous people uphold the customs, self-esteem and local wisdom. Most of the Meratus Dayak people are still holding ancestral belief, namely Kaharingan and there are a small proportion who are Muslim.

Most of Loksado's population comes from a family or group of *Balai* who live around this area. Residents living in these halls are natives who embrace Balian or Kaharingan religion.

² Gusti Muzainah, *Asas Kemanfaatan Tentang Kedudukan Perempuan Dalam Hukum Waris Adat Masyarakat Banjar* (Yogyakarta: Pustaka Akademika, 2016), page 1.

³ Hilman Hadikusuma, *Hukum Waris Adat* (Bandung: Citra Aditya Bakti, 2003), page 9.

⁴ Suriansyah Ideham, *Urang Banjar Dan Kebudayaanannya* (Yogyakarta: Penerbit Ombak, 2015), page 9.

⁵ Mujiburrahman, *Badingsanak Banjar-Dayak; Identitas Agama Dan Ekonomi Etnisitas Di Kalimantan Selatan* (Yogyakarta: CRCS UGM, 2015), page 4.

⁶ Noerid Haloe Radam, *Religi Orang Bukit* (Yogyakarta: Semesta, 2001), page 105.

⁷ J. J. Ras, *Hikajat Bandjar: A Study in Malay Historiography* (Netherlands: Koninklijk Instituut, 1968), page 195

⁸ Radam, *Religi Orang Bukit*, page 71

Meanwhile, the Muslim population - who are generally Banjar people - live in their respective homes outside the Balai. In addition, the Muslim population is also formed from a number of converts who live in the region. This fact shows that there is a socio-cultural relationship between adherents of the original religion and Islam⁹.

Based on preliminary observations on the Meratus Dayak Muslim community in the village of Loksado, there are indications that they are still implementing a customary inheritance system. Specifically, in the case of inheritance of different religions, for example, a child (who is already Muslim) can still inherit from his parents who are native religion and other non-Muslims. This is when viewed from the perspective of Islamic law there is a gap between theory and practice. Islamic law stipulates that there is no inheritance between two people of different religions, even if it is parents or close relatives. In this context it is interesting to examine how social processes arise from religious and cultural relations.

B. Problem Formulation

Based on the background of the problems that have been raised, the formulation of the problem under study are:

1. What is the Loksado Dayak community's customary inheritance law?
2. How is the acculturation of Loksado Dayak community's customary inheritance's law?

C. Research Methods

This type of research is field research, empirical legal research. In this study, the authors used several usual approaches, including¹⁰: (1) Legal sociology approach; (2) Legal psychology approach; and (3) Legal anthropological approach.

The research location is in the Regency of Hulu Sungai Selatan in Loksado District which consists of 11 villages. The focus of the study took the Loksado village because of the heterogeneous Dayak Meratus community.

The data source in this study consisted of 3 (three), namely primary data sources, secondary data sources, and tertiary data sources. The primary data sources that are directly related to the object of research, include informants and respondents. The data collected through observation, interview, and documentation techniques.

D. General Review of Inheritance Law in Indonesia

Inheritance law in Indonesia consists of a customary inheritance legal system, an Islamic inheritance legal system, and a Western inheritance legal system. Customary inheritance law is essentially a natural continuation of the lineage to take responsibility for property owned by members of indigenous peoples. Therefore, the existence of death as a legal event will determine who is entitled to the inheritance¹¹.

Theoretically, the inheritance system in inheritance law can be distinguished in three patterns, namely: (1) Patrilineal system, namely the inheritance system that is drawn according to the line of the fathers, where the position of men is more prominent influence from the position of women in inheritance; (2) Matrilineal system, which is a hereditary system that is drawn according to the maternal line, where the position of women is more prominent than the position of men in inheritance; and (3) Parental or bilateral systems, namely inherited systems

⁹ Mujiburrahman, *Badingsanak Banjar-Dayak; Identitas Agama Dan Ekonomi Etnisitas Di Kalimantan Selatan*, page 24.

¹⁰ Salim HS and Erlies Septiana Nurbaini, page 20.

¹¹ Muzainah, *Asas Kemanfaatan Tentang Kedudukan Perempuan Dalam Hukum Waris Adat Masyarakat Banjar*, page 5

that are drawn according to parental lines, or according to a two-sided line (father-mother), where male and female positions are not differentiated in inheritance¹².

In the customary law system there are at least 3 inheritance systems as follows:

1. Individual Inheritance System

Inheritance with an individual or individual system is a system of inheritance in which each inheritance gets a share to be able to control and or have inheritance according to their respective parts¹³.

2. Collective Inheritance System

Inheritance with a collective system is where inheritance is transferred and ownership is transferred from the heir to the inheritance as a unit that is not divided into its dominion and ownership. Regarding its use is regulated together on the basis of deliberation and consensus by all family members who are entitled to inheritance under the guidance of the head of the relative¹⁴.

3. Major Inheritance System

The major inheritance system is basically a system of collective inheritance in which the management and transfer of the right of ownership of the assets transferred to the eldest child is responsible for replacing the position of father or mother¹⁵.

In customary law, the distribution of assets can be done when the testator is still alive. Even so, in general the property is counted on the distribution of inheritance, after his/ her parents died¹⁶. All children must receive an appropriate portion of their assets, but he also has the freedom of distribution and the determination of the amount of each part¹⁷.

In the Islamic inheritance legal system, the distribution and settlement of inheritance are carried out after the heir dies. The property left behind must be distributed to the surviving heirs. According to Hazairin, this Islamic inheritance system is a bilateral individual¹⁸. Unlike the individual system of customary inheritance law, according to the Islamic inheritance legal system the heirs have been determined along with their respective parts. The terms of the division can be traced to the QS. Al-Nisa verses 8, 9, 11, 12, 13, 14, and 176, QS. Al-Baqarah verses 180 and QS. Al-Anfal verse 75.

Islamic law stipulates, that the transfer of property of a person who lives the world to an heir applies automatically (*ijbari*) according to the decree of Allah. without depending on the will of the testator or the request of his heir¹⁹. Inheritance occurs when between heirs and heirs (who are still alive) there is kinship, marital relations (marriage), and the power of freeing slavery (*al-wala'*)²⁰.

One of the most important things to note about the distribution of inheritance is the hijab or barrier. A person who is initially entitled to inheritance, but due to a condition, his inheritance rights can be reduced or even not obtained at all²¹. Broadly speaking, in Islamic law, there are two kinds of inheritance barriers: (1) The difference in religion between ancestors and heirs. The reason for this barrier is the hadith of the Prophet Muhammad. which confirms that Muslims are not entitled to inherit the assets of non-Muslims, and vice versa; and (2) Murder. In the hadith of the Prophet Muhammad. explains that the killer has no right to inherit the legacy

¹² Hadikusuma, *Hukum Waris Adat*, 2003, page 23

¹³ Hadikusuma, page 25

¹⁴ Hadikusuma, page 26

¹⁵ Hadikusuma, pages 28-29

¹⁶ Iman Sadiyah, *Hukum Adat Sketsa Asas* (Yogyakarta: Liberty, 1981), pages 158

¹⁷ Iman Sadiyah, page 159.

¹⁸ Hazairin, *Hukum Kewarisan Bilateral Menurut Qur'an Dan Hadith* (Jakarta: Tinta Mas, 1964), page 14.

¹⁹ Moh. Muhibbin and Abdul Wahid, *Hukum Kewarisan Islam Sebagai Pembaruan Hukum Positif Di Indonesia* (Jakarta: Sinar Grafika, 2009), page 23

²⁰ Wahbah Az-Zuhaili, *Fiqh Islami Wa Adillatuh Jilid 10*, Penerj. Abdul Hayyie al-Kattani, dkk (Jakarta: Gema Insani Press, 2011), pages 346-347

²¹ Suryati, *Hukum Waris Islam* (Yogyakarta: Penerbit Andi, 2017), page 61

of the person who was killed. The murderer in question is someone who intentionally killed in which there is a criminal clauses²².

The inheritance system according to Western law is regulated in the Civil Code (*Burgerlijk Wetboek/ BW*) which adheres to the individual system. This system is mostly adopted by Indonesian citizens of foreign descent such as those of European descent, Chinese, even Arab descendants or others who no longer hold fast to their religious teachings²³. According to Hilman, the Western inheritance legal system is not in accordance with the mindset of the Indonesian people because it is concerned with individual rights over material things. This is due to the heirs being able to choose between three attitudes, namely: (a) the attitude of accepting all inheritance including the inheritance's debts, (b) the attitude of accepting under certain conditions, and (c) the attitude of refusing or not accepting the inheritance because want to relinquish the responsibility of managing the inheritance²⁴.

The existence of an alternative attitude shows that Western inheritance law is purely individual, where the relationship between heirs and heirs is not based on the principle of kinship, but based on the principle of their respective interests. If viewed from the perspective of the nature of national development, namely the development of Indonesian people as a whole and the development of all Indonesian people based on the Pancasila and the 1945 Constitution, all matters that are contrary to the principles of harmony, balance and justice cannot be accepted in Indonesian law and legislation²⁵.

In relation to patterns of interaction between customary law and religious law in Indonesia, at least it can be seen in the following discourses namely *Receptie* Theory. In *receptie* theory, what exists is customary law while Islamic law is considered to be non-existent. Islamic law is considered to exist if it has been received by customary law²⁶. In other words, local customary law is a benchmark against the validity of applicable law. This theory was developed by Snouck Hurgronje so that the indigenous people did not hold strong Islamic (legal) teachings and were closely related to Dutch political interests at the time²⁷.

E. Research Results

1. The Customary Inheritance Law of the Meratus Dayak Community

The distribution system of inheritance in Dayak customary law is by consultation, regardless of sex, only regulates the distribution of inheritance left to the wife, if the husband dies, or the eldest son of the family, the distribution of customary inheritance requires them to divide by agreement, as their compliance against customary law. Customary inheritance law is very thick with local customs. After the community converted to Islam, the law used was customary law, because customary law first existed since the time of ancestors²⁸.

The kinship system adopted by the Loksado Dayak community is a bilateral or parental system. This is evident from the position of heirs in the customary inheritance law of the Dayak Loksado community, both women and men are equally heirs. The heirs in the customary inheritance law are the family of the heir, be it children, siblings, grandchildren, if you do not have children, the siblings and cousins will get the inheritance, "*sadikit saurang*" (although a little but still gets an inheritance according to the results of deliberation)²⁹

In the Loksado Dayak Community there is customary law for the distribution of inheritance, citizens tend to use customary law rather than religious (Islamic) law, if the issue of

²² Ahmad Khisni, *Hukum Waris Islam* (Semarang: Unissula Press, 2013), page 6

²³ Hadikusuma, *Hukum Waris Adat*, 2003, page 32

²⁴ Hadikusuma, page 33

²⁵ Hadikusuma, page 34

²⁶ Imam Syaukani, *Rekonstruksi Epistemologi Hukum Islam Indonesia* (Jakarta: Rajawali Press, 2006), page 76

²⁷ Rahmat Djatmika, *Hukum Islam Di Indonesia: Pengembangan Dan Pembentukan*. (Bandung: PT. Remaja Rosdakarya, 1994), page 122

²⁸ Interview with Ermanto, The Highest Customary Headman on June 20, 2019

²⁹ Interview with Guyam, Customary Headman on June 21, 2019

inheritance is left to the preacher or cleric then most likely will cause problems. Society considers preachers or religious teachers do not refer to the law, so it does not have legal power.

In the Loksado Dayak community, most of the distribution system uses a grant system and not an inheritance legal system. Wealth is given to the heir before the heir dies. By using this grant system, wealth is only concentrated only on children and causes other families not to get it. Even if you get inheritance, the amount remains based on the results of deliberation³⁰. Distributed heirs are shared assets, which are distributed to all heirs and left for *adat* cash, as explained by informant II. Joint assets are assets that are jointly owned, assets that can be in the form of land, gardens, houses, rice fields, and others³¹.

Distribution of inheritance in the Loksado Dayak community is carried out by consultation in accordance with family agreements. In addition, they did not differentiate between male heirs and female heirs. If this is distinguished, the daughter will be disappointed, unless the girl marries without the knowledge of her parents or siblings, so that her share of inheritance can be reduced, depending again on the results of deliberation. If there is a missing child, while he is still there, then he usually gets less inheritance than other heirs, so also if a child is ungodly or kills his parents, then he can still inherit, but he gets customary sanctions.

In the customary inheritance law of Dayak Loksado, whatever the child does, he remains a child, including if the child converts, is not an obstacle to inheritance. It's just that heirs who have converted are not Kaharingan anymore, get a smaller amount. Because, after all the conditions they are still native Dayak Loksado.

In the distribution of inheritance, if the husband dies, the person who has the right to distribute inheritance to the child is the wife, and vice versa. If both are not available, then the eldest child who distributes, usually the eldest child gets two parts, the other child is one part, both inheritance in the form of land, gardens, rice fields, and money. If the inheritance is divided a little, the child is the heir preferred, while the wife and siblings get a smaller amount.

By using customary inheritance law in the distribution of inheritance, inheritance disputes rarely occur, if there will be resolved by custom and family, the problem will be brought to the *Pangulu Adat* in partnership with the RT, if not finished also brought to *Damang* in partnership with the village head. To strengthen the agreement, the "*tetuha adat*" must be witnessed, which includes the *Pangulu Adat* for the "Kaharingan" community, the Customary Stake for the Christian community, and the *Penghulu/ KUA* for the Muslim community.

By looking at the inheritance law that applies to the Loksado Dayak community, inheritance law establishes the basis of equal rights, this equal right to be treated equally by his parents in the process of continuing property in the family, besides also laying the foundation of harmony in the process of carrying out inheritance discussion. Customary inheritance law is closely related to the family characteristics of the Loksado Dayak community. The customary inheritance system that applies to the Loksado Dayak community is an individual inheritance system. In this system, inheritance can be distributed among heirs, this usually applies to people who embrace a bilateral kinship system.

In addition to the individual inheritance system, there is another system of collective inheritance and a major inheritance system, and these two systems are not found in the Loksado Dayak community. This individual system applies a lot among people whose parental kinship system, as in the Javanese indigenous community or also where *adat* applies, "*manjae*" (Javanese: scatter, *mentas*) or also among people who are strongly influenced by Islamic law³².

Interesting distribution of inheritance to the Loksado Dayak community here is a system of inheritance based on deliberation, regardless of gender and religion. This shows the nuances of kinship and emotional ties are very high. The existence of traditional leaders is highly

³⁰ Interview with Mahyudi, Head of Indonesian Ulema Council of Loksado District on June 21, 2019

³¹ Interview with Kapau alias Fauziono, Chairperson of the Meratus Dayak Tribe, on June 21, 2019

³² Hadikusuma, *Hukum Waris Adat*, 2003, page 25

respected and heard by their advices. With deliberations, the possibility of disputes can be minimized.

The customary inheritance law of Dayak Meratus, when compared with the Islamic inheritance law, there are things that are at the same time there are also things that are not compatible. For example, like the principle of *ijbari*, namely the transfer of property from a deceased person to a living person applies automatically without any effort from the deceased or the will to receive³³. This principle also applies in Meratus Dayak customary inheritance law. The existence of inheritance-inheritance rights will only be realized if someone has died, so that automatically there is a transfer of ownership of property to people who are still alive.

The other principle is bilateral principle, this means that everyone receives inheritance rights from both sides of the kin line, that is, the kin of the male line and the female line³⁴. This also corresponds to the kinship system adopted by the Meratus Dayak community in Loksado. The kinship line adopted affects anyone who is a heir. In this case, both from the men's line and from the women's line, both are domiciled.

Individual principle in Islamic law, that inheritance can be divided to be owned individually. Each heir receives its own portion without being bound by other heirs. The whole inheritance is stated in a certain value that may be divided, then the amount is distributed to each heir who is entitled according to their respective levels³⁵. This also applies to the implementation of the distribution of indigenous heirs of the Dayak Meratus people. Deliberation conducted by the heirs accompanied by the "*tetuha*" will determine the part of each heir.

The principle of balanced justice, in relation to rights concerning material matters, especially those relating to inheritance, this can be interpreted as a balance between rights and obligations and a balance between those obtained with needs and uses. Based on the above understanding, the principle of justice in the distribution of inheritance is seen, both men and women in obtaining the same rights³⁶.

In the distribution of inheritance to the Dayak Meratus community in Loksado, the distribution of inheritance is based on fair justice in which the division is not necessarily the same, but it is decided based on deliberation. Decisions on the outcome of deliberations are understood as the best decisions traditionally and provide an aspect of justice to the parties. In this context, the outcome of deliberation is what is called balanced justice.

2. The Acculturation of Loksado Dayak Community's Customary Inheritance's Law

According to Soerjono Soekanto³⁷, acculturation is a social process in which a cultural structure of society is confronted with foreign cultural elements in which foreign cultural elements which gradually fuse into the original culture, without losing the personality of the two elements of the culture. If related to acculturation in the Loksado Dayak Society are as follows:

The Meratus Dayak people who live in Loksado have been following Kaharingan beliefs, then in the social process they interact with other communities of different religions with them. The result of this interaction resulted in them changing beliefs from Kaharingan into adherents of Islam.

The majority of the Loksado Dayak community converted to Islam because they married a Muslim. Based on field data, it is very rare that they want to embrace Islam because of their own soul or awareness. In addition, they embraced Islam because they went to school outside Loksado, such as in Kandangan which is predominantly Muslim, so they are ashamed if they still adhere to Kaharingan, and tend to have difficulty finding work if they are not Muslim.

³³ Amir Syarifuddin, *Hukum Kewarisan Islam* (Jakarta: Kencana, 2012), page 17

³⁴ Amir Syarifuddin, page 19.

³⁵ Amir Syarifuddin, page 21.

³⁶ Amir Syarifuddin, page 24.

³⁷ Soerjono Soekanto and Budi Sulistyowati, *Sosiologi Suatu Pengantar* (Jakarta: Rajawali Press, 2013), page 80

When they become Muslims they do not study the laws of the Islamic religion. After they returned to Loksado, they also returned to their customs and traditions, even though the identity written on the KTP (identity card) was Islam³⁸. There is a religious study conducted for those who are Muslim. However, the study only revolves around the issue of daily worship and almost never addresses the issue of inheritance law³⁹.

According to interviews with informants, the religious differences between heirs and heiress are not a barrier to inheritance, even though the Loksado Dayak community has embraced Islam. In the distribution of inheritance, the customary inheritance law remains because customary law first existed since the time of their ancestors. Religion (Islam) is seen as something that comes later and cannot replace the existing customary provisions. Children as heirs, even though their religion is different from the heir is not a problem, because they remain as native people of Loksado⁴⁰.

In the Loksado Dayak community who are already Muslim, in terms of the distribution of inheritance, they still use the customary inheritance law from the ancestral heritage due to their minimal knowledge of Islamic religion. If divided according to Islamic inheritance law, it will cause problems. By using customary inheritance law, they do not distinguish between religions, all of whom are entitled to become heirs, although between heirs and heirs of different religions, heirs adhere to Kaharingan while heirs are Muslim.

People who have embraced Islam should be subject to provisions based on Islamic law - that is, they cannot inherit each other due to religious differences. However, in reality the Muslim community there is still subject to the provisions of customary law which is believed to be stronger and first exist. This is interesting to see from the *receptie* theory which states that Islamic law can only apply if it has been accepted or entered into the customary law system⁴¹. Or, in this theory, if religious (Islamic) law conflicts with customary law, then what is used is customary law. This is what happened to the Meratus Dayak people in Loksado who had converted to Islam, that what they were using was customary law which, in this case, was contrary to religious law concerning barriers to inheritance. Because, in the customary inheritance law of Dayak Meratus in Loksado, there is no obstacle to obtaining inheritance - whether it is religious differences or lawless children to parents - all get a part as heirs, only parts are different, where the division is based on the results of deliberation .

Acculturation that occurs in the Loksado Dayak community is that they have changed their faith, from Kaharingan to adherents of Islam, but the traditions that exist in particular the distribution of inheritance still follow the customary inheritance law of ancestral heritage - where in different religious matters is not an obstacle to inheritance. The reason they share the inheritance is still using the customary inheritance law from the ancestors, because the tradition must be carried down from generation to generation. Thus, it is clear that acculturation of customary inheritance law is apparent in the Meratus Dayak people who live in Loksado. Acculturation according to Koentjaraningrat is, a social process in which the entry of foreign culture can slowly be accepted without losing the original culture of a society. So, in a heterogeneous society in terms of ethnicity and religion in the village of Loksado, the people in it interact with each other, the Dayak people who were originally Kaharingan religion changed their religion to become Muslims. Here, the religion of Islam entered as a foreign culture that was slowly being accepted, but even though they had embraced Islam, they still maintained their traditions that were carried down for generations, namely in the case of the distribution of inheritance they continued to use customary inheritance laws from their ancestors.

³⁸ Interview with Mahyudi, Head of Indonesian Ulema Council (MUI) of Loksado District on 21 Juni 2019

³⁹ Interview with Bardiah, respondent, on Friday June 21, 2019 at her house in Loksado Village, Loksado District.

⁴⁰ See the description of the results of the previous informant interview

⁴¹ Yaswirman, *Hukum Keluarga: Karakteristik Dan Prospek Doktrin Islam Dan Adat Dalam Masyarakat Matrilineal Minangkabau* (Jakarta: Rajawali Press, 2013), page 73

Acculturation of customary inheritance law in the Meratus Dayak community in Loksado can be analyzed from this theory, in which the law is effectively or not dependent on these three elements. In this case the agency authorized to make national inheritance law still has not made laws on National Inheritance Law. Then from the substance of substance, regulations on customary inheritance law are not written, but apply in Meratus Dayak communities, whether Kaharingan or even Moslems, their existence is still recognized by prioritizing tradition - namely customary inheritance law rather than religious law. So, they still maintain the tradition carried on from generation to generation, even though they have embraced Islam. The legal culture here refers to people's behavior which prioritizes tradition, in this case customary inheritance law rather than religious (Islamic) law.

F. Conclusions

There are two main points that conclude this research, namely: First, the implementation of the customary inheritance law of the Dayak Meratus community in the village of Loksado is based on the results of deliberations. Men and women are both heirs. The inheritance system that applies is an individual system, where inheritance can be controlled directly by the heirs. The customary inheritance law of Dayak Meratus does not recognize any obstacle to obtaining inheritance, whether due to disobedience to parents or different religions between heirs and heirs, all of them are entitled to inheritance. Secondly, there is acculturation in the Meratus Dayak community in the village of Loksado as a result of their social interaction. Where the entry of foreign elements slowly accepted, but the tradition is still maintained. The results of social interaction in heterogeneous communities cause them to convert, from Kaharingan religion / beliefs to convert to Islam. However, in carrying out the distribution of inheritance, they still use the customary inheritance law of ancestral heritage. They assume the tradition of inheritance has been handed down from generation to generation must be respected, and tradition in this case the customary inheritance law of ancestral heritage comes first before the coming of religion (Islam). Therefore, according to them, customary law must be prioritized above religious (Islamic) law.

Departing from this study, it is expected that the Ministry of Religion of the Hulu Sungai Selatan Regency will continue to pay special attention to the Meratus Dayak Muslim community in Loksado sub-district. The existence of those who are far from urban areas needs more attention especially related to their religious life. In addition, the local Indonesian Ulema Council (MUI) can also play an active role in providing education and counseling about the position of Islamic law for Muslims. This study on the acculturation of customary inheritance law in the Meratus Dayak community is only one side of their relatively complex religious life, so that there is still room for further studies from different sides.

DAFTAR PUSTAKA

- Abbas, Syahrizal. *Hukum Adat dan Hukum Islam*. Aceh: Nadya Foundation, 2004.
- Az-Zuhaili, Wahbah. *Fiqh Islami Wa Adillatuh Jilid 10*. Penerj. Abdul Hayyie al-Kattani, Dkk. Jakarta: Gema Insani Press, 2011.
- Badan Pusat Statistik Kabupaten Hulu Sungai Selatan. *Kecamatan Loksado dalam Angka Tahun 2018*. BPS HSS, 2018.
- Djatmika, Rahmat. *Hukum Islam di Indonesia: Pengembangan dan Pembentukan*. Bandung: PT. Remaja Rosdakarya, 1994.
- Friedman, Lawrence M. *Sistem Hukum Perspektif Ilmu Sosial*. Bandung: Nusa Media, 2011.
- Hadikusuma, Hilman. *Hukum Waris Adat*. Bandung: Citra Aditya Bakti, 2003.
- Hasan, Ahmadi. *Adat Badamai Interaksi Hukum Islam dan Hukum Adat pada Masyarakat Banjar*. Banjarmasin: Antasari Press, 2009.
- Hazairin. *Hukum Kewarisan Bilateral Menurut Qur'an dan Hadith*. Jakarta: Tinta Mas, 1964.
- HS, Salim, dan Erlies Septiana Nurbaini. *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi*. Jakarta: Rajawali Press, 2016.

- Ideham, Suriansyah. *Urang Banjar dan Kebudayaannya*. Yogyakarta: Penerbit Ombak, 2015.
- Khisni, Ahmad. *Hukum Waris Islam*. Semarang: Unissula Press, 2013.
- Mujiburrahman. *Badingsanak Banjar-Dayak; Identitas Agama dan Ekonomi Etnisitas di Kalimantan Selatan*. Yogyakarta: CRCS UGM, 2015.
- Muzainah, Gusti. *Asas Kemanfaatan tentang Kedudukan Perempuan dalam Hukum Waris Adat Masyarakat Banjar*. Yogyakarta: Pustaka Akademika, 2016.
- Prodjodikoro, Wirjono. *Hukum Warisan di Indonesia*. Bandung: Penerbit Sumur, 1976.
- Radam, Noerid Haloei. *Religi Orang Bukit*. Yogyakarta: Semesta, 2001.
- Rafiq, Ahmad. "Relasi Dayak-Banjar dalam T tutur Masyarakat Dayak Meratus." *Al-Banjari* Vol. 12, no. No.1 (Januari 2013).
- Rahman, Fatchu. *Ilmu Waris*. Bandung: Al-Maarif, 1981.
- Ras, J. J. *Hikajat Bandjar: A Study in Malay Historiography*. Neteherland: Koninklijk Instituut, 1968.
- Saifullah. *Refleksi Sosiologi Hukum*. Bandung: PT. Refika Aditama, 2007.
- Salim, Agus. "Praktik Pembagian Waris Beda Agama Dan Peranan Hukum Adat Dikalangan Etnis Dayak Kecamatan Gunung Bintang Awai Kabupaten Barito Kuala." Tesis, UIN Antasari Banjarmasin, 2015.
- Soekanto, Soerjono, dan Budi Sulistyowati. *Sosiologi Suatu Pengantar*. Jakarta: Rajawali Press, 2013.
- Soepomo. *Bab-bab Tentang Hukum Adat*. Bandung: Penerbit Universitas, 1967.
- Sudiyat, Iman. *Hukum Adat Sketsa Asas*. Yogyakarta: Liberty, 1981.
- Suryati. *Hukum Waris Islam*. Yogyakarta: Penerbit Andi, 2017.
- Syarifuddin, Amir. *Hukum Kewarisan Islam*. Jakarta: Kencana, 2012.
- Syaukani, Imam. *Rekonstruksi Epistemologi Hukum Islam Indonesia*. Jakarta: Rajawali Press, 2006.
- Thalib, Sayuti. *Receptie a Contrario*. Bandung: Bumi Aksara, 1985.
- Yaswirman. *Hukum Keluarga: Karakteristik dan Prospek Doktrin Islam dan Adat dalam Masyarakat Matrilineal Minangkabau*. Jakarta: Rajawali Press, 2013.