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Inheritance in the Community of Juwono Village, Kertosono Subdistrict, Nganjuk Regency, East Java

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ABSTRACT

In Juwono Village, Kertosono Subdistrict, Nganjuk Regency, East Java, inheritance follows a parental kinship system where descent is traced from both parents. All children, regardless of gender, have equal rights to their parents' inheritance, including original and joint property. Disputes may arise if any heir is dissatisfied with their share. This research aims to identify the system and the settlement of inheritance distribution in the Juwono Village Community, Kertosono Subdistrict, Nganjuk Regency, East Java. This research is a socio-legal research that can be classified into descriptive analytical research as this research examines the behavior of Juwono Village community members in the tradition of resolving disputes over the distribution of inheritance property to their heirs. The findings of this research revealed that in Juwono Village, inheritance is distributed based on parental kinship, granting equal rights to male and female heirs. Each heir receives an individual share to own and control. However, disputes often arise due to perceived inequities in the distribution, particularly concerning the shares of widows, widowers, biological children, adopted children, and stepchildren. These disputes, driven by differing interests and dissatisfaction, frequently lead to legal conflicts within the community.

Keywords: *Dispute, Heirs, Inheritance*

INTRODUCTION

Customary inheritance law is still influenced by diverse community structures, hence it has distinctive characteristics that reflect the traditional ways of thinking within the community. This form of kinship in customary inheritance law can be categorized into three types, which are:

1. Patrilineal kinship, a system in which sons are given priority over daughters. In this system, the custom of fair marriage applies, thus upon marriage, the wife follows the husband and becomes a member of the husband's relatives, including the children born from the marriage. The patrilineal kinship system is practiced by the people of Batak, Bali, Nias, Lampung and others.
2. Matrilineal kinship is a system in which daughters take precedence over sons. In this system, consanguineous marriage usually prevails, which means that after marriage, the husband follows the wife but remains a member of his original kin and does not join the wife's kin. In this system, children follow their mother's kin. The matrilineal kinship system is applied by the Minangkabau people.
3. Parental or bilateral kinship is a system in which sons and daughters are of equal status. In this system, free marriage applies, which means that the position of husband and wife is equal and balanced. This kinship system is practiced by the people of Java, Aceh, Kalimantan, Sunda and others.¹

In Juwono Village, Kertosono Subdistrict, Nganjuk Regency, East Java, inheritance law follows a parental or bilateral kinship system, which draws the line of descent from both sides, both father and mother. In this system, every child, whether male or female, is recognized as an heir and successor to the family lineage. They are entitled to equal rights to their parents' inheritance, including the inheritance of the father and mother as well as joint or shared property. When both parents pass away, the inheritance process provides sons and daughters with equal rights to the family's wealth.

Knowledge and comprehension of inheritance law among the people of Juwono Village, Kertosono Subdistrict, Nganjuk Regency, East Java is still relatively limited. Although the majority of the population is Muslim and works as farmers, laborers, traders, and civil servants, they lack an in-depth understanding of inheritance law. As a result, in settling the distribution of inheritance, the community is more likely to apply customary law that has been applied since the time of their ancestors and passed down from generation to generation to the present.

¹ Ellyne Dwi Poespasari, *Pemahaman Seputar Hukum Waris Adat Di Indonesia* (Jakarta: Prenadamedia Group, 2018).

The division of inheritance property in Juwono Village, Kertosono Subdistrict, Nganjuk Regency, East Java, often involves important village figures such as the village head, urban village head, and sub-district head. However, this division often causes problems as it is unfair to the inheritance rights of widows, biological children, adopted children, and stepchildren. Therefore, there is an urgent need for research and community service related to the system and position of the division of inheritance in Juwono Village. This research aims to analyze the system of inheritance distribution and its settlement in Juwono Village.

RESEARCH METHODOLOGY

This research is a socio-legal research that can be categorized into descriptive analytical research. It is called socio-legal legal research as this research does not only examine the normative aspects of law, but also analyzes how the law is applied and interacts with society.² The focus of this research is on the behavior of the people of Juwono Village, Kertosono Subdistrict, Nganjuk, East Java in the tradition of resolving disputes over the division of inheritance among the heirs. This research attempts to reveal how the local community practices and understands inheritance law, as well as how they resolve disputes that arise in relation to the division of inherited property. Using an analytical descriptive approach, this research not only describes the prevailing situation but also analyzes the various factors that influence community behavior in such contexts.

RESULT AND DISCUSSION

Inheritance Distribution System in the Community of Juwono Village

Ter Haar explains that customary inheritance law is a set of legal regulations that govern the external process of transferring material and non-material assets from one generation to the following, in relation to pre-existing relationships.³ This means that the process of transferring property begins even when the owner of the property is still alive, and continues until each descendant forms a new, independent family. Then, in time, each such family will continue the process of inheritance to the next generation.

Inheritance law is a set of rules governing how property or inheritance is transferred from one generation to the next, including both material and immaterial assets.⁴ In this concept, inheritance law also includes everything related to the

² Ellyne Dwi Poespasari, Soelistyowati, and Afga Samudera Erlangga, "The Existence of Customary Inheritance Law Norm Development in Jurisprudence Supreme Court," *IUS POSITUM: Journal of Law Theory and Enforcement* 2, no. 2 (2023): 85–101, <https://doi.org/10.56943/jlte.v2i2.326>.

³ Rahmat Haniru, "Hukum Waris Di Indonesia Perspektif Hukum Islam Dan Hukum Adat," *AL-HUKAMA: The Indonesian Journal of Islamic Family Law* 4, no. 2 SE-Articles (August 7, 2023): 456–74, <https://doi.org/10.15642/al-hukama.2014.4.2.456-474>.

⁴ Yeni Salma Barlinti, "Inheritance Legal System in Indonesia: A Legal Justice for People," *Indonesia Law Review* 3, no. 1 (2014), <https://doi.org/10.15742/ilrev.v3n1.28>.

transfer of wealth while a person is still alive. One of the mechanisms used in this context is grants. In principle, inherited property can be divided into 4 (four) groups, including:

1. The property of the husband or wife which is a grant or gift of the family brought into the family (constitutes the original property);
2. Husband's or wife's business acquired after marriage (constitutes joint property);
3. Property that is a gift to husband and wife during the marriage period (constitutes original property); and
4. Assets that are the business of the husband and wife during the marriage period (constitute joint assets).⁵

There are three types of inheritance systems in customary law. The first is the individual inheritance system, in which the estate is distributed individually to the heirs, as applied in certain parts of civil law and Islamic law. This system generally applies in communities with certain customary law traditions, such as in Batak families that adhere to the patrilineal system and Javanese families that adhere to the parental system. However, the disadvantage of this system is the potential for splitting the inheritance and weakening kinship relations due to personal desire to own property independently. This individual inheritance system is commonly found in indigenous communities in Lampung, Java, Kalimantan and Aceh.⁶

The collective inheritance system is one in which the estate is inherited or controlled by a group of heirs without individual division, thus forming a legal entity of family or relatives. This type of inheritance is recognized as "harta pusaka" in Minangkabau and "harta menyanak" in Lampung. The advantage of this system is that each heir takes free ownership of their share. The disadvantage is the tendency to focus primarily on family concerns and think too narrowly. This collective inheritance system generally applies in the Minangkabau indigenous community.⁷

The majorate inheritance system involves inheritance that is not distributed to individual heirs, but dominated by the eldest child, either male (male majorate) in Balinese and Lampungese societies, or female (female majorate) in matrilineal societies such as Semendo in South Sumatra and Lampung. There are two types of this majorate system due to differences in the descent system adopted: (1) male majorate, as applied in the indigenous communities of Lampung, Bali, and so on, and (2) female majorate, which is applied in the Semendo indigenous community in South Sumatra.⁸

⁵ Annisa Azria Putri and Mohamad Fajri Mekka Putra, "Kedudukan Harta Bawaan Dalam Putusan Perbuatan Melawan Hukum Berdasarkan Undang-Undang Perkawinan," *Kertha Semaya: Journal Ilmu Hukum* 10, no. 4 (April 3, 2022): 804, <https://doi.org/10.24843/KS.2022.v10.i04.p08>.

⁶ Poespasari, *Pemahaman Seputar Hukum Waris Adat Di Indonesia*.

⁷ Poespasari.

⁸ Poespasari.

Parental inheritance law emphasizes the equality of position and rights between men and women, both in conjugal relations and in terms of children, including the families of both parties. This guarantees that both sons and daughters are entitled to the equal rights to inheritance. In the community of Juwono Village, the inheritance system adopts customary inheritance law that adheres to a parental or bilateral kinship pattern, where the line of descent is drawn from both parents. They apply an individual inheritance system, where each heir receives a share of the inheritance in accordance with the division made, hence they have the right to control or own a share of the inheritance in accordance with their share.

Settlement of Inheritance Dispute in Juwono Village Community

Ali emphasizes that there are 5 (five) types of customary inheritance law principles:

1. The principle of divinity and self-control refers to the realization that wealth that can be controlled by humans is a gift and will of God. Consequently, when a person deceases and leaves an inheritance, the heirs are expected to make use of inheritance law to distribute the property with this realization. This aims to avoid conflicts and disputes between heirs that would burden the journey of the testator's spirit before God. Therefore, whether or not the inheritance is divided is not the main objective, rather it is important to maintain harmony among the heirs and their descendants;
2. The principle of equality and togetherness of rights outlines that each heir has equal rights in receiving inheritance from the testator, in line with the responsibilities and obligations they have;
3. The principle of harmony and kinship emphasizes the importance of the heirs maintaining harmonious and peaceful family relations, both when managing the undivided inheritance and in the process of distributing the inheritance;
4. The principle of deliberation and consensus, where the heirs agree to distribute the inheritance through a deliberation process led by an individual who is considered the wisest among them. If there is an agreement in the distribution of inheritance, the agreement must be sincere and genuine, conveyed in good words that come from the conscience of each heir; and
5. The principle of justice emphasizes the importance of implementing a fair system within the family environment. This aims to encourage harmony in the family and reduce the risk of a rift between family members.⁹

⁹ Patricia Sarah Pongoh, "Analisis Pengaturan Hak Anak Tiri Dalam Mewaris Menurut Hukum Waris Adat," *Lex Privatum* 7, no. 2 (2019): 128–35.

There are three requirements that should be fulfilled before the inheritance process can be carried out, which include (1) the presence of a testator who leaves an inheritance when he deceases; (2) the existence of one or several heirs who are entitled to receive the property; and (3) the inheritance or property to be distributed to the heirs. The property to be divided is the inheritance after deducting the debts of the testator, therefore the heirs will only receive a net share of the inheritance.

According to Javanese inheritance law tradition, widows and widowers are not immediately heirs of a deceased spouse. However, they have the right to a share of the spouse's estate, either jointly with other heirs or for the purpose of their future living expenses. If there are any children from the marriage, the widow or widower has the right to control and distribute the inheritance to the heirs.

Widows or widowers are considered to be parties who are not related by blood to the testator and therefore do not legally have the right to inherit the estate of the deceased spouse. However, as wives, they have the right to joint property generated during marriage with the deceased. One exception is in a family environment that adheres to the maternal system, where a widow or widower can have the right to inherit property during their lifetime. The position of a widow or widower is as follows:

1. A widow or widower is the heir of their deceased spouse.
2. A widow or widower whose spouse is deceased without any children is not entitled to inherit the estate of their deceased spouse.
3. Regarding the joint property, a widow or widower is entitled to inherit.

The position and rights of widows and widowers in the distribution of inheritance in Juwono Village can be divided into two:

1. The position and rights of widows and widowers in their marriage in cases of no offspring:
 - a. The original property returns to the original, the widow or the widower does not inherit;
 - b. The gono-gini property is controlled entirely by the widow or the widowers while still alive or while not remarried. The right of inheritance of the new spouse to inherit may occur if the widow or the widower passes away or remarries, with the following conditions:
 - 1) The original property returns to the original;
 - 2) The joint property is divided into two:
 - a) Half of the share becomes the absolute right of the widow or the widower and becomes the inheritance of the widow or the widower's siblings on the death of the widow or the widower;
 - b) The half share to which the spouse is entitled becomes the inheritance of the heirs of the late spouse.

2. The position and rights of widows and widowers in marriages where there are children:
 - a. The original property becomes the inheritance right of the biological children.
 - b. The joint property:
 - 1) The joint property remains intact in the authority of the widow or the widower as long as they are alive or have not remarried;
 - 2) The joint property remains intact until the children reach adulthood. When the children have reached adulthood, the property is then divided as follows:
 - a) Half share is the complete right of the widow or the widower;
 - b) Half of the share becomes the right of the late spouse to be inherited by the children and widow or widower with equal distribution.

In customary inheritance law that follows a parental or bilateral system, the position and rights of children, including biological children, extra-marital children, adopted children, and stepchildren in the distribution of inheritance, are considered in accordance with their origin. Children are categorized as legitimate children, extra-marital children, and adopted children. In accordance with Article 42 Paragraph 1 of Law No. 1/1974, legitimate children are those born from a legal marriage.¹⁰ If a child is born to parents who are not legally married, then it is considered an illegitimate child (extra-marital child). This is in line with Prawirohamidjojo's view, stating that a child born to a married woman is the legitimate child of the biological father.¹¹ In the context of inheritance, the position of biological children is extremely important, since they are the ones who are entitled to receive the inheritance in its entirety. Sons and daughters have the same right to inherit their parents' property with equal distribution.

In Juwono Village, children born outside of marriage are referred to as *anak kowar*, who only receive inheritance from their mother or their mother's family. *Anak kowar*, or *kowar* child, is a term from Javanese culture. The term *kowar* itself means illegitimate, thus, *anak kowar* refers to a child born out of wedlock. This term is often used to describe a child whose parents were not married at the time of the child's birth, and it carries a negative connotation in traditional contexts.¹² However, in societies with a parental or bilateral system, extra-marital children are

¹⁰ Kesekretariatan Republik Indonesia, *Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan* (Jakarta, 1974).

¹¹ Abdul Hamid Dunggio, Zulkarnain Suleman, and Dedi Sumanto, "Status Hukum Anak Diluar Nikah Dalam Perspektif Fikih Islam Dan Hukum Positif Indonesia," *As-Syams: Journal Hukum Islam* 2, no. 1 (2021): 12–21.

¹² Ellyne Dwi Poespasari, "Kedudukan Anak Luar Kawin Dalam Pewarisan Ditinjau Dari Sistem Hukum Kekerabatan Adat," *Perspektif* 19, no. 3 (2014), <https://media.neliti.com/media/publications/157788-ID-kedudukan-anak-luar-kawin-dalam-pewarisa.pdf>.

often given a share of the inheritance by their biological father, making the inheritance distinction between *kowar* children and legitimate children uncertain, or at least they still receive a share of the inheritance from their parents. The extra-marital child can also have a close relationship with the biological father's family and even become part of the family. However, the existence of extra-marital children can lead to conflicts between families or within the community over the rights and obligations of the child.

Children born to parents who are not legally married are considered illegitimate children or extra-marital children. Extra-marital children only have a civil legal relationship with their mother and their mother's family. It can be concluded that extra-marital children do not share the same position as legitimate children.¹³

In its decision, the Constitutional Court stated that Article 43 Paragraph 1 of the Marriage Law is contrary to the 1945 Constitution if interpreted as eliminating the child's relationship with the father, which can be proven through science and technology and other evidence. The decision of the Constitutional Court, as a judicial institution with the final authority in resolving cases, has a significant impact on inheritance law in Indonesia. Previously, according to the initial regulation, an extra-marital child would only receive inheritance if it had been recognized. However, due to Constitutional Court Decision No. 46/PUU-VIII/2010, extra-marital children are recognized as legitimate children and have inheritance rights with their biological father. This implies that an extra-marital child who is born will automatically establish a legal bond with the biological father.

Adopting a child is an act of taking another person's child into one's own family so that there will be the same family relationship between the adopting parent and the adopted child as the one between the parents and their own biological child. Hadikusuma explains adopted children as other people's children who are adopted by adoptive parents officially according to local customary law for the purpose of continuity of offspring or maintenance of household property.¹⁴ According to Wignjodipuro, adoption is the act of welcoming a child into one's own family, establishing the same legal familial relationship between the adoptive parent and the adopted child as there is between biological parents and their own children.¹⁵

In Juwono Village, the community believes that child adoption does not break the family ties between the adopted child and their biological parents. Adopted children are considered part of the family of the parents who adopt them and live

¹³ Kesekretariatan Republik Indonesia, *Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan*.

¹⁴ Anwar Machzumi, "Pembatalan Akta Hibah Pasca Terbitnya Sertipikat Hak Milik (Analisis Putusan Pengadilan Negeri Depok No.14/PDT.G/2007/PN.DPK)" (Universitas Narotama, 2019).

¹⁵ Teddy Prima Anggriawan, "Hukum Pengangkatan Anak Melalui Akta Pengakuan Pengangkatan Anak Yang Dibuat Oleh Notaris," *Pranata Hukum* 3, no. 1 (2021).

with them as family members. However, their status as adopted children is not equal to that of biological children in terms of continuing to inherit from their adoptive father. The adopted child is usually the nephew of the adoptive parents, either a son or a daughter, and the reasons behind this are as follows:

1. To strengthen the relationship with the parents of the adopted child;
2. To help the child out of compassion;
3. To help parents with the daily chores at home.

In the family environment, there are stepchildren, also known as *kuwalon* children or *gawan* children, which are children from a previous marriage by a husband or wife. According to Hadikusuma, stepchildren are biological children who are brought into marriage by a husband or wife, resulting in one of them considering the child to be the result of a previous marriage.¹⁶ The status of stepchildren within a family or household can vary in indigenous communities, both because of the kinship structure and the type of marriage between the biological father or mother and the stepfather or stepmother. Stepchildren who live in the same house as their biological mother and stepfather, or vice versa, are part of the same family members. They are considered heirs of their biological mother or father, but not of their stepmother or stepfather.

Living with stepchildren in a household brings obligations and rights between family members. Occasionally, the relationship between a stepfather and his stepdaughter becomes so close that the stepfather gives his stepdaughter a piece of paddy field or moorland. Although the stepchild does not actually have inheritance rights from the stepfather, they receive income and a share of their stepfather's estate that is given to their biological mother.

When considering the parents of these children, this difference greatly affects their position and rights. However, biological children, extra-marital children, stepchildren and adopted children have equal rights in terms of supervision, maintenance and education from their parents according to the law. However, in the context of inheritance distribution, biological children, extra-marital children, stepchildren and adopted children receive different, unequal or proportionate shares.

In conflict resolution in Juwono Village, inheritance disputes often arise due to the distribution of property left by the deceased heir. These disputes often arise because there are family members who are not satisfied with the share they receive from the inheritance or even feel that they receive no share at all. Such disputes can trigger conflicts between family members, typically involving widows, widowers, biological children, adopted children, extra-marital children and stepchildren who feel aggrieved and sue each other.

¹⁶ Reski Amalia Sondakh, "Kedudukan Hak Waris Anak Tiri Dalam Perkawinan Sah Menurut Hukum Waris Islam," *Lex Crimen* 6, no. 3 (2017).

Initially, in Juwono Village, the settlement of inheritance law disputes was conventionally conducted through deliberation among family members led by a respected figure in the family, such as a respected paternal or maternal grandfather, uncle, or eldest son. However, if the deliberation does not reach an agreement, the dispute then involves village officials, such as the village head, *lurah*, and *camat*. However, if the dispute over the division of inheritance cannot be resolved through family deliberation or through the assistance of village officials, the parties can file a lawsuit with the court for further resolution.

CONCLUSION

The inheritance distribution system in Juwono Village, Kertosono Subdistrict, Nganjuk Regency, East Java, is based on parental kinship which grants equal rights to men and women. The distribution of inheritance is conducted individually, where each heir receives a share that they can own or control according to their respective portions.

The distribution of inheritance in the community of Juwono Village, often causes problems because its implementation causes several family members to feel unfair. For instance, the distribution of inheritance to widows, widowers, biological children, adopted children, and stepchildren, even though there is already a portion for each. As a result, inheritance disputes may occur between parties with different interests in one or more objects of inheritance, which can have legal consequences. Differences of opinion or dissatisfaction of one of the heirs with their share often triggers inheritance disputes.

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