



THE DYNAMICS OF APPLYING BOTH ISLAMIC AND CONVENTIONAL LAW IN THE INHERITANCE OF BANCEAUY CUSTOMARY VILLAGE

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ABSTRACT

Due to the existence of three distinct systems of inheritance law—civil heirship law, Islamic inheritance law, and customary inheritance law—Indonesian inheritance law is still pluralistic. There are parallels and variances among the components of inheritance law because there are variations in the legal system governing such inheritance. Finding out how inheritance disputes are resolved in Banceuy Customary Village in relation to Islamic law is the aim of this study. This normative research approach employs descriptive analytical research specifications, which involve describing, analyzing, and putting into practice the relevant legal laws. Research indicates that, even though the indigenous communities in the Banceuy district of Subang are Islamic, the law of parental inheritance appears to apply to the indigenous village. However, the division of inheritance appears to be dependent on the affinity system in place, as the group of heirs equally accounted for the relationship of relativity through the male and female lines. This division of inheritance falls under the category of the receipt theory, which was abandoned but held that Muslims are subject to Islamic law if it is accepted or mandated by customary law. The concept of equal inheritance division in the indigenous village of Banceuy, if linked to

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Islamic law, the author claims, originated from a cooperative agreement that was carried out successively so that it became a customary practice that was initially a disclaimer for the implementation of division of heritage religiously or disclaimed.

Keywords: Heritage; Islamic Law, Banceuy Customary Village.

INTRODUCTION

The country of Indonesia has not yet had an inheritance law that can be applied uniformly. This is because of the different backgrounds of the people, both tribes and religions.¹ In Indonesia, there is more than one body of legislation governing family law; it is not limited to just one.² In Indonesia, the law that governs family law is not contained to only one set of rules, but is also regulated in various laws.³ The rules of the era of Dutch colonial rule still have a large share in the application of inheritance law in Indonesia. It turns out that the law of succession is one part of civil law and is part of family law. The law of inheritance is very closely connected with human life because every human being will experience the event of the law of death. Such a legal event shall have legal consequences concerning the continuation of the rights and obligations of the deceased person and in relation to his family or other persons entitled to his property.⁴ Indonesia recognizes the existence of three inheritance systems in force, three of which are customary, Islamic, and civil.

¹ Bambang Daru Nugroho, Ranti Fauza Mayana, Selly Riawanti, " Sosialisasi Hukum Waris Adat Jawa Barat Dalam Penegakan Hukum Keluarga Di Kecamatan Darmareja Kabupaten Sumedang", *Jurnal Kumawula* 4, No 3 (2021): 500-507, <https://doi.org/10.24198/Kumawula.V4i3.34454>.

² Hazar Kusmayanti, Efa Laela Fakhriah, Bambang Daru Nugroho. "The Settlement of Disputes Regarding Division of Joint Property After a Divorce in The Central Aceh Regency." *Jurnal Ilmiah Islam Futura* 21, No. 2 (2021): 170-182. <https://dx.doi.org/10.22373/Jiif.V21i2.6599>

³ Supriyadi Supriyadi, " Pilihan Hukum Kewarisan Dalam Masyarakat Pluralistik (Studi Komparasi Hukum Islam Dan Hukum Perdata)", *Al-Adalah* 12, No 1 (2015), 553-568, DOI: <http://dx.doi.org/10.24042/Adalah.V12i1.235>

⁴ M. Idris Ramulyo, *Hukum Waris Indonesia Dalam Perspektif Islam, Adat Dan BW*, Refika Aditama, Bandung, 2005, p.1



J. Satrio explains that there is a close relationship between marital property law and family law.⁵ Marriage property law is also referred to as marital property law, which is a translation of the word *huwelijksgoederen recht*. As provided in article 35 of the Marriage Act, it is stated that the property acquired during the marriage becomes joint property, the inheritance of each one as a gift or in heritage shall be under the possession of each other, if the parties do not determine otherwise.

The existence of differences in the legal system of such inheritance causes the elements contained in the law of inheriting to have similarities and differences. The law of inheritance in accordance with the Scriptures of the Civil Law and the Law of Islamic Succession applies throughout the territory of Indonesia to the inhabitants who are subject to both such laws. The existence of customary inheritance law has differences in each region in Indonesia that has different customs. The law of inheritance has undergone different developments and institutional processes. The law of the inheritance of the West is relatively unchanged, namely, it is based on the *Burgelijk Wetboek*. Legislation of the heritage of the Customary developed through various jurisprudence, and what is probably different is the process of institutionalizing the law of heirs of the Islamic community is one of the customary communities whose majority belongs to Islam in the conduct of their daily lives one of them is the ordinary community in the tribe of the Western Sunda Java.

Sunda is a term used to name the northwestern plains of East India while the southeastern mainland, health is closely intertwined with the understanding of culture. There is a culture of Sund, that is, a culture that lives and grows and develops among the people of Sund who reside in the Land of Sunda. (West Java). According to Hurgronje (1931) Islam entered the Sunda Land in the condition that his people had faiths inherited in succession from his ancestors. The heritage of this belief is the moral guideline and guide in every aspect of the life of the Sundays. When Islam in Sunda Land began to be spread by Sunan Gunung Djati, founder of the Sultanate of Cirebon, the task was

⁵ J. Satrio, *Hukum Harta Perkawinan, Bandung*, Citra Aditya Bakti, 1993, p. 10-15



continued by the spiritual leader. Spiritual leader is a master of Islam and a charismatic leader in the religion that spreads Islam by continuing what Sunan Gunung Djati inherited. So, the existing Hindu-Buddhist traditions are increasingly adding to the cultural treasures of Sunda.⁶

The impact is that there is a particular peculiarity for the region of Sunda in particular, the acculturation of local culture with the teaching of Islam is increasingly increasing the link between the local culture and Islam so that a part of the community of the Sunda concludes that the Sunda Society is the Islamic Society and Islamic Religion is the religion of the people of Sunda. The impact that is felt by this region is that the region of Sunda is one of the strong Islamic bases in the island of Java with the presentation of the number of Islamic leaders that dominate.⁷

The practice of dividing inheritance according to customary law in the Banceuy Customary Village Society in the Negla Village of Subang district which is most of the Islamic religion is very interesting to be studied because this customary village has become the object of field research from various fields of science, but no one has yet studied from the legal sciences in particular inherited law. The origins of the village of Banceuy originated from the existence of Negla village which was in the high plains and open. Around the 1800s, in the village of Negla there was a thunderstorm that destroyed the houses of the inhabitants, including the seventh house of the village, so that livestock and plants were ruined. After the disaster passed, the seven people of the village of Negla wished to find a way of preventing the natural disaster from coming again. According to the agreement, the seven characters were trying to bring a paranormal.⁸

Paranormal believed to be Eyang Suhab who came from Ciupih Village, Pasanggrahan Village, Kasomalang Prefecture. And then we're

⁶ Nina Herlina Lubis, D. *Sejarah Perkembangan Islam Di Jawa Barat*. Bandung: Yayasan Masyarakat Sejarahwan Indonesia Cabang Jawa Barat, 2011, p. 9 (Dikutip Oleh Budi Sujati, "[Tradisi Budaya Masyarakat Islam Di Tatar Sunda \(Jawa Barat\)](https://doi.org/10.32939/Ishlah.V1i1)"), *Ishlah: Journal Of Ushuluddin, Adab And Dakwah Studies* 1, No. 1 (2019) 37-51, DOI: <https://doi.org/10.32939/Ishlah.V1i1>

⁷ Noer, D. *The Modernist Muslim Movement in Indonesia*, Singapore: Oxford University Press, 2000, p. 1900-1942.

⁸ Interview with Odang In his capacity as a traditional figure from the village of Banceuy Subang, Thursday September 30, 2023, 11.30 WIB



going to carry out a numerical arrest. Based on the counting of the name of Java the new name agreed was Banceuy customary village as a substitute for Negla village, because Negla is believed to be the name that caused disaster to the village and its inhabitants. Besides, with the name change of the village, it is hoped that the people will live better and blessed, as the word Banceuy which means disengagement. The villagers hope that the village can be a place of gathering and exchange of ideas at the time and in the future. The event is then commemorated every year and is known as the Earth Square, or often called the Earth Row.⁹

The indigenous people of Banceuy are obliged to keep the traditions and customs that have been inherited by the ancestors and it is done so as not to cut off an inheritance from the forefathers by the change of times in the era of digitalization today.¹⁰ The indigenous people of Banceuy believe that the ancestors who have saved this village in truth from the Almighty. Not only is religion a lifeblood, but even cultural customs are also a lifeblood for the indigenous people of Banceuy. Because there were the teachings of the ancestors that they believed in salvation. The norms of religion have been established and written in the Qur'an and the Hadith, while the people of the village of Banceuy accepted the oral tradition that was conveyed from the ancestors in descent on a norm of the norm of life.¹¹

Based on the above background, the author would like to study how the process of division of inheritance in the majority Islamic Banceuy village community and conduct his life according to the Islamic norms he adheres to. Previous research that discusses the Banceuy custom village has not yet discussed the practice of inheritance division and some research related to Banceuy customary village is that carried out by Selma Nurul Afifah and Syarif Moeis, who researched the life of

⁹ Interview with Odang In his capacity as a traditional figure from the village of Banceuy Subang, Thursday September 30, 2023, 11.30 WIB

¹⁰ Nurhabibah, Widiati Isana, "Kehidupan Sosial Budaya Kampung Adat Banceuy Dalam Perspektif Agama", *Priangan* 2, No.1, (2023): 41-51

¹¹ Rusmin Tumanggor, Kholis Ridho, Nurrochim, *Ilmu Sosial & Budaya Dasar*, Jakarta: Kencana, 2010, p.10

Banceuy custom village,¹² Ratna Umaya, Cahya Isbi, Imam Setyobudi, who researched the Numbal Ritual in the Ceremony of the Earth Rule in Banceuy-Subang,¹³ Ali Anwar, Uga Pratama Gunawan, Abidah Muflihati, who researched the preventive or preventive efforts to prevent marriage in Banceuy Customary Village.¹⁴

METHODS

Normative jurisprudence is a method of legal research that prioritizes the study of library material in the form of positive law through scientific research procedures to find truth based on the legal science of its normative side.¹⁵ This method also prioritizes library research as well as how it is implemented in practice. The data sources and research materials consist of library materials that are focused on the use of secondary data. Field research phases can be conducted to obtain primary data through direct interviews with sources that are closely related to this research. This research uses specifications of research characteristic analytically descriptive, which is the description, examination, and implementation of the applicable legal provisions. Through this research, it is expected to be able to describe in a comprehensive, systematic, factual, and accurate manner the problems to be investigated concerning the practice of sharing inheritance in the Muslim-majority Banceuy Customary community.

RESULT AND DISCUSSION

The law as a social rule is not apart from the values that apply in a society, it can even be said that the law reflects the living values in

¹² Selma Nurul Afifah Dan Syarif Moeis, “Kehidupan Masyarakat Adat Kampung adat Banceuy: Kebertahanan Adat Istiadat Menghadapi Perubahan Sosial Budaya (Kajian Historis Tahun 1965-2008)”, *FACTUM* 6, No. 1, (2017), 97-114

¹³ Ratna Umaya, Cahya Isbi, Imam Setyobudi, “Ritual Numbal Dalam Upacara Ruwatan Bumi Di Kampung adat Banceuy-Subang (Kajian Liminalitas)”, *Jurnal Budaya Etnika* 3, No. 1 (2019), 41-60, DOI: [10.26742/Be.V3i1.1126](https://doi.org/10.26742/Be.V3i1.1126)

¹⁴ Ali Anwar, Uga Pratama Gunawan, Abidah Muflihati, “Pengorganisasian Masyarakat Dalam Upaya Pencegahan Pernikahan Anak Di Kampung Adat Banceuy Kecamatan Ciater Kabupaten Subang”, *Jurnal Ilmu Kesejahteraan Sosial Humanitas* 5, No. 1 (2023):1-9

¹⁵ Soerjono Soekanto Dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Jakarta:Rajawali Press, 2007, p.13.

society.¹⁶ Thus, what is meant as “law” is not just “laws”, because “lawy” is only a small part of the law. Laws must be made by the government but must be recognized by the Government. For example, Islamic law and customary law that to a certain extent also apply in Indonesia, not a government product, but clearly acknowledged to be in force by the state.

Customary law has a role in Indonesia with the dynamics of the development of national law, which develops and lives along with society.¹⁷ According to Soepomo, customary law is an unwritten law that includes rules of life not established by the responsible party, but obeyed by the people based on the belief that such rules have legal force.¹⁸ The custom or tradition is the oldest source of law, the source from which we know or can dig out part of the law beyond the law, where we can find or dig out the law. Customary legal systems grow and flourish in the environment of social life in Indonesia, China, India, Japan, and other countries.

It is impossible to divorce Indonesian legal progress from its historical context. History demonstrates how Indonesia has three recognized legal systems, each of which influences the other based on how well it can adjust to the different ethnic, linguistic, cultural, and other aspects of Indonesian society.¹⁹ The origin of Adat law in Indonesia dates to the "Adat recht," which was drafted by Cristian Snouck Hourgronye. The legal system is usually based on unwritten legal regulations that grow and change over time, as well as regulations that are based on the collective legal knowledge of society. Customary Law interpretation is based on the concept of Ancestors. One of the desires that humans will always have been the desire to be free from

¹⁶ Soerjono Soekanto, *Pokok- Pokok Sosiologi Hukum*, Jakarta : PT.Rajagrafindo Persada, 2004. p.161

¹⁷ Karwiyah, Bambang Daru Nugroho, Hazar Kusmayanti, “ Dinamika Hukum Perkawinan Adat Pada Sistem Keekerabatan Parental/Bilateral Terhadap Masyarakat Sunda”, *Recital Review* 6, No, 1 (2024): 52-73

¹⁸ [Lita Tyesta Addy Listya Wardhani](#), [Muhammad Dzikirullah H Noho](#), [Aga Natalis](#), “The adoption of various legal systems in Indonesia: an effort to initiate the prismatic Mixed Legal Systems”, *Cogent Social Sciences* 8, No.1, (2022), 1-21.

¹⁹ Hazar Kusmayanti, Lisa Krisnayanti, “ Hak Dan Kedudukan Cucu Sebagai Ahli Waris Pengganti Dalam Sistem Pembagian Waris Ditinjau Dari Hukum Waris Islam Dan Kompilasi Hukum Islam”, *Jurnal Ilmiah ISLAM FUTURA* 19, No. 1, (2019): 68-85, DOI: [10.22373/Jiif.V19i1.3506](https://doi.org/10.22373/Jiif.V19i1.3506)



Ancestors. Due to very negative social and psychological effects, the customary law is changing. Due to its easy elasticity and ability to adapt to changing social situations, its law is elastic. Due to its vague nature, the law is not clear and can easily be adjusted to the changing needs of the public.

The law of inheritance that applies in Indonesia has been explained above is still pluralistic, so the law of succession which applies to society is not only the civil law of Islam and the Book of Laws of the Civil Law. However, there are still many that apply in society that is the use of customary law system in the division of heritage which is very closely related to the system of descent.²⁰ The law of inheritance, as opposed to the customary system of law concerning inheriting, according to the two systems of law above, which is referred to as inherit or inherited property is a number of the property of the heir in a clean state. The inheritance of the inheritors shall be exempt from the claim of the creditors.²¹

Soepomo defines customary inheritance law as a set of rules governing the transfer and operation of legacy or inherited property from one generation to another, both in material and intangible matters. Hilman Hadikusuma said that customary inheritance law is a law that contains the lines of the rules of the system and the foundations.²² The law of customary inheritance, the way in which the property is transferred from the heir to the inheritor, is closely related to the form of society and the nature of the family in Indonesia.

In other words, customary inheritance law is strongly influenced by the system of affinity that exists in Indonesian society that is based on the system that draws the line of offspring that there are three (3) such, namely: system of parental affinities, children connect themselves with both parents and relatives of both parents bilaterally, for example

²⁰ Tyara Maharani Permadi, Djanuardi, Hazar Kusmayanti, “ Penyelesaian Sengketa Waris Dalam Masyarakat Adat Kampung Naga Berdasarkan Hukum Islam Dan Hukum Adat” *Jurnal Kertha Semaya* 9. No. 10 ,(2021): 1821-1829, doi: <https://doi.org/10.24843/KS.2021.v09.i10.p08>

²¹ Sonny Dewi Judiasih, Hazar Kusmayanti, Deviana Yuanitasari , *Pergeseran Norma Hukum Waris Adat di Indonesia*, Cetakan 1, Jatinangor: UNPAD Press, 2020,p. 5

²² Hilman Hadikusuma, *Hukum Waris Adat*, Bandung: Citra Aditya Bakti, 2015, p. 10

in the indigenous society of Java. Patrilineal family system, the family system that follows the father's line of descent, for instance in Bali, Batak.

As is known, the law of parental or bilateral inheritance in the region of Western Java, which refers to the customary law of Sunda, is to give equal rights between men and women, both to husbands and wives, as well as sons and daughters including families of men and families of women. This means that boys and girls are equally entitled to inherit from both parents, even widows and widows in their development also include inheriting each other. Even the process of giving property to the heirs, especially to the children, both to the sons and daughters in general, has begun before the parents or heirs are still alive. And the system of inheritance distribution in this society is individual, which means that the estate can be divided from the owner or heir to the heirs and owned personally.

The inheritance system of the Banceuy Customary Village is an Individual system, the heirs inherit individually. For the village of Banceuy, the position between men and women is equal as the heirs of their parents, this is because the community of Banceuy adheres to the system of parental or bilateral inheritance, that is, their offspring are drawn according to the line of father and mother so that the roles between male and female are equal, there is no distinction between the position of men and females. Traditional figures and public figures in the village of Banceuy, can be defined as what is meant by the law of inheritance is a rule concerning the transfer of a person's property, whether alive or dead, to be passed on to his family or descendants.

The practice of inheritance division in Banceuy Customary Village can be done when the heir is still alive to be distributed to his heirs, that the inheritance should be divided while the heir is still alive, that there should be no trouble, so that it is divided equally, but the heirs have set aside the possessions of the estate, when the heir died there was a cost of death, because in the village of Banceuy there is a cost for the event of death like there are villages, praying for a week, up to 40 days, 50 days, 100 days, 1000 days to 3 years of continuous journey for the ceremony of prayer and commemoration of death.²³

²³ Interview with Odang In his capacity as a traditional figure from the village of Banceuy Subang, Wednesday, Februari 06, 2024, 11.50 WIB.



The division of inheritance is often found to cause disputes between the inheritors, which is triggered by the issue of the uneven division of the estate, it is often distanced from the main objective of the division of such inherited property. The inheritance shall be divided between the inheritors and the heirs to find an agreement on the estate of their parents. The enforcement of the customary law shall be carried out according to the outcome of the agreement of heirs after the heir died and left the property either moving or unmoving. The heirs of the heirs are gathered and discuss the inheritance of their parents. If there is a dispute the heir is in mutual agreement, adjusted by the family.

The nature of the legal system of parental or bilateral customs inheritance that generally exists in the Banceuy customs village of Subang district, can be seen from some point of view. Such as :

1. They are divided into two groups: first, the male and the female; and second, the heir and heir.
2. As for the relationship between heirs and heirs, there are also the first two groups, the group of heirs by marriage, the husband and wife.

The second group is the family of the inheritors, because there are three families: the children of the heirs, the sons of the children, and the grandchildren, the daughters, and all that is inherited; the parents of the parents, the fathers, the grandparents, the father-in-law, the brothers, the sisters, and everyone who is in-heritance. Thirdly, the brothers of the heirs, both male and female, even to their children, and uncles and aunts and grandchildren, even their children; and the sons and the daughters, even the children of their children. In the legal system of parental or bilateral inheritance also takes precedence as in the matrilineal legal system.

According to Hazairin, there are seven priority groups of parent or bilateral heirs. That means there's the first group of experts, the second group of heirs, the third group of inheritors and so on until the seventh group. The first group is preferred to the second group and the second to the third group and so on. So that these groups have legal effect, that the first group closes the second, and the latter group closes the third until the seventh group, the priority group of the heirs is as follows:



1. The children with their offspring or their descendants.
2. Parents (fathers and mothers) or the upper line of the first row.
3. brothers and their offspring, or the first line.
4. The parent of the parent or the upper line of the second stage.
5. The brothers of the elders and the children of the brothers and sisters of the fathers, or the second line.
6. Parent of parent of parent (a total of eight persons) or upper line of the third row; and
7. The brother of the parent of the elder brother and his offspring of the brother.

In Sunda, there are three options for inheritance division:

First, is the system of equal inheritance distribution between men and daughters, which maintains the groups of related heirs. West Java's paternal or bilateral inheritance law, which is based on Sundanese customary law, grants equal rights to male and female parties, including spouses and wives, sons and daughters, and the families of the male and female parties. This implies that both sons and daughters have the right to inherit from their parents, and that widowers and widows also have the right to inherit from one another as part of their mutual development. Even the process of transferring an inheritance to heirs, particularly to sons and daughters, usually starts before to the death of the original parents or heirs. In a parental culture, the inheritance distribution system is individualized, which means that the inheritance is owned personally and can be passed down from the owner or heir to the heirs.²⁴

Secondly, the system of inheritance division, the legacy system 2 versus 1 is not very much used by society. This division of inheritance is governed by the law of Islam which regulates the transfer of the property of the deceased to the living heirs according to the parts set forth in the Qur'an and the Hadith of the Prophet.²⁵

²⁴ Bambang Daru Nugroho, Hazar Kusmayanti, Dede Mulyanto, "The Division of Inheritance Of Adopted Children In The Indigenous People Of Kampung Naga Associated With Islamic Law", *Jurnal Bina Mulia Hukum* 7, No 1, (2022), 103-113, DOI: [Http://Dx.Doi.Org/10.23920/Jbmh.V7i1.985](http://Dx.Doi.Org/10.23920/Jbmh.V7i1.985)

²⁵ Muhammad Alwi, "Perbedaan Penerapan Hukum Islam Dan Hukum Adat Tentang Pembagian Harta Waris Yang Ada Di Masyarakat Di Desa Ugi Baru", *J-ALIF Jurnal Penelitian Hukum Ekonomi Syariah Dan Sosial Budaya Islam* 4, No. 1, (2019), 100-114, DOI: [10.35329/Jalif.V4i1.540](https://doi.org/10.35329/Jalif.V4i1.540)



The third, inheritance system is used to avoid future damage, because in general, if the inherited system does not use this system, then in later days there will be problems or disputes between the heirs. Generally, the third system is the same as the second (equal) system, the difference lies in the division of the estate. When the son becomes a son, the estate will be divided into two daughters who are closer to the birth distance to him, while when the daughter becomes the daughter, the whole house becomes his.

In general, on Sunda, the law of Islam's inheritance and the heritage of Sunda are preserved and still in use and continue to this day. Every Muslim should follow the principle of the inheritance of Islam because it is a commitment for every Muslim who is based on the Qur'an and the Hadith. Given the principle and substance there are no different similarities. Whereas a widow in the law of the inheritance of Java has a special position, therefore, if her children are scattered, the wife as widow lives alone in the household that her husband left and has the right to stay in the house and to hold the property that she left, if she needs and as long as she needs for her life.

However, based on research, it appears that the law of parental inheritance of the indigenous village of Banceuy district of Subang in western Java although the Indigenous people in the village are Islamic but if the division of inheritance is not independent of the system of affinity in force, because the group of heirs counts the relationship through the male and female paths. So, the position of the heirs' men and women are equal as heirs, if associated with the theory of acceptance of Islamic law by customary law in Indonesia then the practice of this division can be categorized as the receptie theory. This theory was pioneered by Christian Snouck Hurgronje and Cornelis van Volenhoven in 1857-1936. According to the receptie theory, Islamic law does not automatically apply to Muslims. Therefore, it is the customary law that determines the validity of the law of Islam. This theory was valid until the time of Indonesian independence.²⁶

So, the author will analyze the inheritance-sharing practices carried out by the Banceuy Customary Village Society based on customs

²⁶ Zaelani, "Hukum Islam Di Indonesia Pada Masa Penjajahan Belanda:Kebijakan Pemerintahan Kolonial, Teori Receptie In Complexu, Teori Receptie Dan Teori Teceptio A Contrarioatau Teori Receptio Exit", *Jurnal Komunike* 11, No. 1 (2019): 153-154. <https://doi.org/10.20414/jurkom.v11i1.2279>

that apply with different approaches. As it is known that the inheritance is divided before the heir died, it is not in accordance with the provisions of the division of the estate according to Islamic law. The inheritance shall be divided according to the law of Islam. A person's property can only be inherited when he has died. The provision is also affirmed in article 171 letter b of the Compilation of Islamic Law as follows: "A heir is a person who at the time of his death or who is declared dead pursuant to the judgment of the Islamic courts, leaves the heir and legacy". Although The provisions of Islamic inheritance law have been regulated in detail and clearly in the Qur'an, so it is impossible to change them²⁷ and the Compilation of the Islamic Law has insisted that the division of inheritance can be carried out when the death of a person (the heir), the Completion of the Muslim Law also accommodates the customs that have occurred in the society of dividing inherited property while the owner of the estate is still alive. The division of the inheritance by the community of the Banceuy Customary village according to the custom, that is, before the owner of the estate has died, the property has been divided and is not contrary to the provisions of Article 187 paragraphs (1) and (2) of the Compilation of Islamic Law.²⁸

However, according to Prof. Hazairin stated Receptie Theory has been absent, not valid and exit from the Indonesian state system since 1945 with the independence of the nation of Indonesia and the entry into force of the 1945 UUD and the base of the state of Indonesia. According to UUD 1945 Article 29 paragraph 1 then the State of the Republic of Indonesia is obliged to form, the national law of Indonesia whose substance is the law of religion. The state has a state duty for that. The law of religion, which has come into being, is not the law of Islam alone, but also of other religions.²⁹

²⁷ Qurratul Uyun, Madah Rahmatan, "Scientific Socialism In The Inheritance Law In Somalia", *Jurnal Al-Dustur* 5, No 2 (2022), 228-242, DOI : [10.30863/Aldustur.V5i2.2957](https://doi.org/10.30863/Aldustur.V5i2.2957)

²⁸ Risnayani Lahinda, "Pembagian Harta Warisan Secara Adat Masyarakat Muslim Talaud, Al-Mujtahid", *Journal Of Islamic Family Law* 3, No. 1 (2023): 1-11, DOI: [Http://Dx.Doi.Org/10.30984/Ajifl.V3i1](http://Dx.Doi.Org/10.30984/Ajifl.V3i1)

²⁹ Nurjannah, Lomba Sultan, "Fatmawati, Teori-Teori Pemberlakuan Hukum Islam Di Indonesia", *Madani: Jurnal Ilmiah Multidisiplin* 1, No. 11, (2023): 678-684, DOI: [Https://Doi.Org/10.5281/Zenodo.10370694](https://doi.org/10.5281/Zenodo.10370694)

The inheritance may be divided based on a dispute between the two parties or jointly based on each other's needs. It can only be implemented if both or both parties do not feel a loss. The practice of equal inheritance division is derived from a mutual agreement made in succession so that it becomes a customary practice that was initially a settlement for the implementation of inherited division in a religious or mutual manner. The settlement in the inheriting division can be equated with the term *Takharuj* in which one of the heirs chooses to resign and hand over his right to another heir. The emphasis of this *Takharuj* is that it is done in such a way that all the heirs agree with the decision. The concept of *takharuj* put forward by scholars of the Hanafi school of thought, Zahir Seeming gratitude is an action not happy with the law of Allah SWT, so efforts are made to correcting the law of Allah SWT, even if it isn't that's how it is. The willingness of the parties necessary and decisive in policy sincerely.³⁰

Hanafi's worship came to an absolute conclusion because he was younger and more practical. It is a work of wisdom in certain circumstances if it is for the purity and the will of righteousness. This is done only with the intention of removing the constraints in the blasphemy without avoiding at all the established provisions Allah SWT.³¹

The system of equal inheritance is based on the author's interview with indigenous figures,³² There are some positive aspects of the use of customary law in the division of inheritance in the indigenous village of Banceuy. Among them, the parents are easy in dividing their inherited property and the average parent in the Indigenous Village only understands with the system of division of such inheritors and the Division of the inherits can be divided when the heirs before death thus reducing disputes between brothers and sisters in the establishment of the division. The negative impact is that sometimes there is social jealousy between heirs so that there is a distance between brothers and

³⁰ Elfia, *Ishlah Dalam Takharuj Menurut Hanafiyah Versus Ishlah Dalam Kompilasi Hukum Islam (Analisis Kebijakan Hukum)*, Jurnal Ilmiah Syariah 7 No. 1,(2018), 20-33

³¹ Syarifuddin, A, *Hukum Kewarisan Islam*, Prenada Media. (2015),p. 15

³² Interview Odang Selaku Tokoh Kampung Adat Banceuy, Wenesday, 06 Februari 2024, 11.50 WIB.

sisters in the family and can even result in a break of the bond of mercy between the family.

The settlement of an inheritance dispute on the parental or bilateral system of relativity in the region of West Java is settled first through a settlement with the heir and if it cannot be settled in a settled manner then it can be brought to court. If the settlement is not found in the dispute, then you can file a lawsuit in court. In the case of a judge settling disputes of customary inheritance law in the system of parental affinity (Jawa), then the judge saw that the rules of the law of inheritors in the parent society, for example the status of a widow or widow is not as an heir on the basis of unwritten rules or customary law, so that the judges settled the dispute of the legal heiress in Java using the discovery of law.

CONCLUSION

According to the research, it appears that the law of parental inheritance of the Banceuy village in Subang district in West Java although the indigenous people in the village are Islamic but if the division of inherits is not independent of the system of affinity in force, because the group of heirs counts the relationship of affine through the male and female paths equal. This inheritance division can be categorized as a receipt theory, in which Islamic law applies to Muslims if accepted or prescribed by customary law, but this theory has been abolished. According to the author, if associated with Islamic law, the concept of equal division of inheritance in the Banceuy indigenous communities originated from a joint agreement carried out successively so that it became a customary custom which was initially a disclaimer for the implementation of the division of heritage religiously or successfully. Inheritance divisions can be equated with terms *Takharuj*.

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