



## Settlement of Inheritance Dispute through Non Litigation on Sumbawa Community of West Nusa Tenggara Province

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### **Abstract**

This article aims to analyze the implementation of transition and distribution of inheritance from the inheritor to the recipient of inheritance, and the solution of inheritance disputes through non-litigation in the West Sumbawa community. This article sourced from the results of empirical legal research with a legal and anthropological approaches. The type of data is secondary and primary data that analyzed qualitatively. The results showed that, transition and distribution of inheritance in West Sumbawa community, generally conducted when the inheritor is still alive, with the aim that the inheritance recipient know the portion received, avoid rights disputes, support the lives of married inheritors, and so that the inheritor spirits can calm down akherat, while the determination of portion of each recipient of inheritances is two parts for men and one part for women. Settlement of inheritance disputes, generally through non-litigation efforts. This model refers to the principle of inter-family deliberation, or by mediation that involves a third party as a mediator. This model is beneficial for the parties because their secrecy is guaranteed to protect, the procedures for settlement are fast, very simple, informal, and the costs are very cheap. So, the parties are more free to negotiate, and the results are peace (Win-win Solution), so that the relations of the parties will remain harmonious.

**Keywords:** Settlement; Disputes; Inheritance; Community

### **Introduction**

Indonesia is one country whose population consists of various religions and beliefs, as well as different ethnic groups. Each ethnic group also has culture, customs and customary law that are different from one another. This shows that the population of Indonesia is a pluralistic and very heterogeneous society.

The existence of customary law as the original law of the Indonesian nation is rooted in customs which are a reflection of the basic values of the culture of the Indonesian society, this

also means that customary law is the norm that binds and determines all legal thoughts and feelings of the Indonesian people. This idea was also recognized by the Indonesian Constitution, namely the 1945 Constitution, this shows that the formulation of customary law as part of the basic law that remained valid as long as the community and traditional institutions still live in the Republic of Indonesia.<sup>1</sup>

In the life of the Indonesian society in addition to applicable customary law norms, Islamic law also applies specifically to the Indonesian people who are Muslim. The enactment of Islamic law in Indonesia is since the Islamic Religion was adopted by the Indonesian people, mainly related to treaty law, family law, marriage law and inheritance law. In addition, western legal norms are also known to apply along with the entry of Dutch colonialism in Indonesia. Applicability of western law especially in the field of civilization, regulated in the Civil Code (Burgerlijk Wetboek/BW), including the regulation of inheritance.

As a country with a pluralistic society with different ethnic backgrounds and different customary laws, the diversity of Indonesian society is reflected in the inheritance system. Therefore, the position of inheritance law is closely related to the characteristics of kinship or social structure of indigenous peoples as legal subjects in the process of transition and distribution of inheritance.<sup>2</sup> Thus, the form and system of inheritance is very closely related to the form of society and kinship structure in Indonesian people who base on the lineage system in the inheritance system include *patrilineal*, *matrilineal* and *parental* structures.<sup>3</sup> The difference in kinship structure and inheritance system is closely related to the transition process and the distribution of inheritance, as well as the resolution of inheritance problems.

Likewise in the region of West Nusa Tenggara (WNT), it is an area that has three main ethnic groups with different cultures, customs and customary laws, including the Sasak tribe on the Lombok Island, the tribe of *Samawa* and *Mbojo* on the Sumbawa Island, as well as migrant residents in the West Nusa Tenggara region. The existence of differences in customs and customary law in each tribe in WNT also influence on the family system and the kinship procedures adopted by each community. In Sasak people who are on Lombok Island, dominantly adhering to a patrilineal kinship system, this system is also adopted by the Batak people, and Balinese people, as well as Chinese people in Indonesia<sup>4</sup>. While in the Samawa tribe community adheres to a kinship system that is bilateral or parental, this is very influential in the system of transition and distribution of inheritance to the people of West Sumbawa.

The transition and distribution of inheritance in the Sumbawa community refers to the parental kinship structure with an individual system, meaning that each child has the same right individually to obtain inheritance from both parents. The portion of the proportion between boys and girls is two to one (2: 1), meaning two parts for boys and one for girls. The implementation of the transition and distribution of inheritance can be done at the time the inheritor is still alive, or after the inheritor dies, this is in accordance with the agreement of each family.

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<sup>1</sup> See Article 2 of the Transitional Rules, and Article 18 B paragraph (2) of the Constitution 1945,

<sup>2</sup> Djamat Samsori, *Indonesian Customary Law, Existence in the Dynamics of Legal Development in Indonesia*, (Bandung: CV. Nuansa Aulia, 2013) p. 314.

<sup>3</sup> M. Idris Ramulyo, *A Comparison between the Teachings of Sjafi'I and the obligatory testamentary in Egypt, concerning the Distribution of Inheritance for Grandchildren According to Islam*, Law and Development Magazine Number 2 Year. XII March 1982, Jakarta: FHUI, 1982, p. 154.

<sup>4</sup> Sulistyowati Iriyanto, *Pluralism of inheritance law and women's justice*, (Jakarta: Yayasan Obor Indonesia, 2016), p. 15.

In the implementing of transition and division of inheritance, sometimes it is difficult to avoid conflicts between inheritance recipients. Legacy disputes are often triggered by several factors, among others, the emergence of mutual suspicion because there are parties who want to claim more inheritance from others; also as a result of not implementing a fair distribution system of inheritance, especially towards the inheritance of the newly divided by inheritance recipient after the inheritor passed away. Likewise, inheritance can occur because the position of inheritance is unclear, or because among the inheritance recipient there are parties who intentionally manipulate the inheritance of their parents. Therefore, to avoid the occurrence of ongoing conflict in the family, then the inheritance should be resolved immediately, either through court (litigation) or outside the court (non litigation).

Based on the description above, the problems in this study are, how are the procedures for implementing the transition and the portion of the distribution of inheritance in West Sumbawa community; and how inheritance dispute solution through non-litigation efforts in West Sumbawa community (*Tau Samawa*).

### **Research Methods**

This research is empirical legal research, which analyze the procedures for the implementation on distribution inheritance and the portion of each recipient of inheritance in the Sumbawa community; and efforts to resolve the inheritance disputes through non-litigation in the Sumbawa community. The approach used in this study is legal and anthropologica approaches. The type of data used in the research, beside the secondary data that obtained through literature studies with documentation techniques on various references, also primary data that obtained through observation and interviews with informants and respondents in the field. Furthermore, the data analysis is done qualitatively starting from data reduction, data display, and concluding data sourced from facts that occur in the field that have relevance to the research problems.

### **Discussion**

#### *1. Implementation Transition and Distribution of Inheritance in West Sumbawa Community*

##### *a. Conception of inherit, inheritor, inheritance recipient, and inheritance*

The term of inherit comes from Arabic, which is from the word "Waratsa" which has become "waris" in Indonesian language. Inherit means "transitioning something from someone (inheritor) to another person (inheritance recipient) or from a people to the other people."<sup>5</sup> This definition is not limited to matters relating to assets only, but includes property and non-assets. The regulation of inheritance is regulated in Customary Law, Islamic Law, and Civil Law of BW (*Burgelijke Wetboek*). Thus, the term of inheritance in the legal literature of inheritance is obtained from Arabic which has become "warisan" in Indonesian. While the meaning of customary inheritance law will not solely describe the relationship between inheritor and inheritance recipients, but has a broader meaning,<sup>6</sup> this is because the inheritance issues are closely related to kinship structures and inheritance systems that prevail in each customary law community in Indonesia, including the Sumbawa community. Likewise, the inheritance that has been obtained by the inheritance recipient, in principle, must be maintained, and protected properly so that it can be passed on to the next generation.

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<sup>5</sup> Muhammad Ali Ash-Shabuni, *Distribution of inheritance according to Islam*. (Jakarta: Gema Insani, 1995), p. 33

<sup>6</sup> Hilman Hadikusuma, *Customary inheritance Law*, (Bandung: Citra Aditya Bakti, 2003), p. 7

The meaning of inheritance customary law contains regulations that regulate the process of continuing and passing goods and intangible objects from a human force to inheritance recipient derivatives.<sup>7</sup> Therefore, the meaning of inheritance law terminologically in Islamic law is called "faraid law" is a legal norm that regulates the transition of ownership rights of inheritance to inheritance recipients; determine who has the right to be inheritance recipient; what is the object of inheritance; and what portion of each inheritance recipient.

Based on the description above, there are several meanings which elements in the implementation of the transition and distribution of inheritance are, as follows:

- 1) Transition of inheritance is the transition of inheritance from the inheritor to the inheritance recipient, both when the inheritor is alive or after the pewars die. While the devision of inheritance is a process of distributing inheritance to the inheritance recipient in accordance with each portions.
- 2) Inheritor is the persons who have been died and leave a number of inheritances to his/her families who are still alive, both the families through kinship, marriage or family relationships with living in the household. Therefore, those who are classified as inheritance recipients are: parents (father and mother), brothers and sisters who are not married or who are married but do not have children, and their husbands or wives die<sup>8</sup>
- 3) Inheritance recipient are people who have the right to receive inheritance left by the inheritors either because of blood relations or marital relations with the inheritors, such as: biological sons of inheritors (male and female), parents if there are no children, brothers and sisters if no parents.<sup>9</sup>
- 4) Inheritance is something that left by someone who have died to inheritance recipients, such as: property in the form of inherited property in marriage or joint search assets in marriage. According to customary inheritance law, object inheritance is also something that is not tangible, such as nobility. The inheritance can also be in the form of inheritance plus a part of the joint assets after being used for the purpose of the testator during illness until the death of the cost of arranging the corpse, payment of the debt and the will of the testator.<sup>10</sup>

*b. Transition and distribution of inheritance to the people of West Sumbawa*

Transition and distribution of inheritance from the inheritor to the inheritance recipients in the West Sumbawa community, it can be carried out when the inheritor is still alive based on customary inheritance law or can be done after the inheritor dies according to Islamic inheritance law. The transition and distribution of inheritance when the inheritor is still alive is a form of inheritance habit that has been applied in Sumbawa community.

Based on the results of interviews with respondents in West Sumbawa Regency, there were several reasons or objectives for the transition and distribution of inheritance when the inheritor was still alive in the Sumbawa community, namely:

- 1) In order to the recipient of inheritances are more clearly know the portion/part, place, shape, and extent of inheritance to be received.

<sup>7</sup> Soerojo Wignojodipoero, *Introduction and Principles of Customary Law*, (Jakarta : Haji Masagung, 1988), p. 161

<sup>8</sup> Zainuddin Ali, *Implementation of inheritance law in Indonesia*, (Jakarta: Sinar Grafika, 2008), p. 2

<sup>9</sup> *Ibid.*

<sup>10</sup> Hilman Hadikusuma, *Op. Cit.* p. 7

- 2) To avoid disputes of rights between the inheritance recipients after their parents die in the future.
- 3) To support the lives of inheritance recipient, especially children of the inheritor who are married and separated from the inheritors.
- 4) There is a belief that the transition is intended that, the spirits of parents can be calm in the afterlife or the hereafter.

However, the determination of division and portion of each inheritance recipients refers to the bilateral (*parental*) structure with the individual system. This is similar to the proportion of shares according to the Islamic inheritance legal system in which all children (male and female) individually have the right to inherit from their parents with a balance of two to one (2 : 1), means that, two parts for men and one part for women.

Thus, that in the transition and distribution of inheritance on the Sumbawa community there is a combination of two legal systems which are mixed into one, namely the customary legal system and the Islamic legal system. This combination has happened since long ago, which has been carried out repeatedly and continuously, so that this method is difficult to be given a limit, whether customary inheritance law or Islamic inheritance law is more dominant. However, the application of these two norms is more seen in the meaning and benefits of inheritance for survival, and family welfare, and still maintains good relations between inheritance recipients. Therefore, the settlement of inheritance problems in the Sumbawa community prioritizes settlement in non-litigation (outside the court) with the aim that family relations remain peace and harmonious, towards a prosperous family.

## 2. *Inheritance Disputes Settlement through Non-Litigation (Outside the Court) in the Sumbawa Community (Tau Samawa)*

### a. *Model of Inheritance Disputes Settlement Through Non-Litigation (Outside the Court) in the Sumbawa Community*

The settlement of inheritance disputes through non litigation in Sumbawa community can be implemented by two ways, namely:

- 1) Deliberation problems settlement between families

The model of resolving inheritance disputes between families is always attended by all heirs (inheritance recipients) in the family. This is so that all parties get the opportunity to negotiate and communicate in two directions to achieve agreement and peace without involving third parties.

This method is a habit that refers to the principle of consensus agreement in Sumbawa customary law, that each side of people's lives aims to achieve a sense of togetherness, harmony, and order in outgoing relations. Inter-family deliberation is an initial level of effort, in the distribution of inheritance or in the settlement of inheritance disputes. This method is also one form of local wisdom that exists and is adhered to as a basis in the lives of Sumbawa people with the main goal being that family relations are maintained, and harmonious. If the deliberation in the family does not meet with consensus, it will continue at the Neighborhood Unit level, but there is a habit at the Neighborhood Unit level, if it involves land inheritance disputes in the form of land, it will be suggested to go directly to the Village Institution.

- 2) Settlement of problems involving the neutral third party, or resolution by mediation

The second method also still refers to the principle of deliberation and consensus, but this method involves neutral third parties as mediators who are neutral or mediation resolution. This third party is a mediator as a figure who is a role model in the community and believed to be able to solve problems in the community, among others: Head of District, Head of Village, Religious Leader, Customary Figure, and Notary Officer.

The procedure of dispute resolution in mediation, first the mediator delivers messages regularly to the dispute parties (Inheritance recipients); then arranging meetings and communicating to reach a meeting point, each party is given the opportunity to express their opinions about what is the objection that is the cause of problems with the parties to the dispute. In this case, a mediator must be neutral and able to provide fair consideration, and find a solution to a peaceful solution (win-win solution). In this way the parties are expected to respect peace, so that their relationship as a family becomes harmonious.

*b. Benefits of Inheritance Dispute Settlement Through Non Litigation (Outside the Court)*

The model of resolving inheritance disputes through non-litigas has long been known in Indonesia, including the Sumbawa community, long before the colonial nation entered Indonesia, which was called dispute resolution by deliberation and consensus. This settlement model has been applied in various regions in Indonesia, especially in rural areas, both in resolving legal issues, as well as other problems such as social culture, economics, and choosing leaders of village.

In resolving inheritance disputes, generally the parties to the dispute want their problems to be resolved immediately without going through a court. This is intended to achieve an effective dispute resolution process; therefore, the parties must respect the interests, rights and status of the other party. Various considerations for resolving inheritance disputes through non-litigation (outside the court) as follows:<sup>11</sup>

- 1) There is a voluntary attitude, and an increase in public legal awareness to resolve inheritance disputes through a process outside the court (non litigation).
- 2) During the process of resolving disputes, the parties are guaranteed confidentiality to protect their rights.
- 3) The process is simple, and does not require a long time if it is compared through the court (litigas), the process is protracted, and it is difficult to get an fix decision, that starting from the District Court process, appeal at the High Court, and cassation at the Supreme Court.
- 4) The cost is very cheap, this is in accordance with the conditions of the community, especially the rural communities far from the city which have difficult transportation costs, attorney fees, court fees if the settlement is conducted through litigation.
- 5) The settlement process is flexible, and the parties will be free to negotiate so that they will avoid the trap of playing cases that harm one party.
- 6) There is recognition of customary law norms, as well as respect for customary law institutions and traditional leaders as institutions that are believed to be able to solve various problems in the village.
- 7) The results obtained are peace or Win-win solution (no party feels defeated), so that the parties' relations do not become broken but remain harmonious as family members.

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<sup>11</sup> *Ibid.*, p. 226

## ***Conclusion and Recommendation***

### ***1. Conclusion***

Transition and distribution of inheritance in the Sumbawa Community, generally carried out when the inheritor is still alive based on customary law. In addition, there are also some who do after the inheritor dies according to Islamic inheritance law. Some reasons or objectives of the transition and distribution of inheritance at the time the inheritor is still alive, so that the inheritors clearly know the portion received; to avoid rights disputes between inheritors after their parents have died; to support the lives of inheritors, especially children of married inheritors; and so that the spirits of parents can be calm in the afterlife or in the hereafter.

The determination of the portion (part) of each inheritor refers to a bilateral (parental) structure with an individual system. This is similar to the proportion of shares according to the Islamic inheritance legal system in which all children (male and female) individually have the right to inherit from their parents with a balance of two to one meaning, two parts for men and one part for women.

Efforts to dispel heritage disputes in the Sumbawa Community (Tau Samawa) are carried out through non-litigation efforts (out of court). This method refers to the principle of consensus agreement between families as one form of local wisdom that exists and is adhered to as a basis in the life of Sumbawa people with the main goal of achieving a mutual, harmony and order in outgoing relationships or relatives. If the settlement between families has not been successful, then it can be done by means of mediation by involving neutral third parties as mediators, are community leaders who are believed to be able to resolve problems in the community, such as the District Head, Village Head or Notary Officer.

This settlement model that the parties to the dispute must be voluntary, respect each other. Therefore, the benefit of the settlement in this way is that the secrecy of the parties is guaranteed to protect their rights. Then, the settlement procedure does not require a long time, and the costs are also very cheap, the process is very simple and not formal, so the parties are more free to negotiate. The results obtained are peace or also called win-win Solution, and in the end the relations of the parties remain harmonious.

### ***2. Recommendation***

Settlement of disputes outside the court by means of deliberation (negotiation) and mediation has become a tradition in Indonesian society, including rural communities in Sumbawa using local wisdom values as their legal basis, this should be maintained, and solutions are sought for weaknesses there can be minimized. Therefore, it needs to be made regulations which essentially can provide legal certainty in resolving inheritance problems.

The results of the agreement in the settlement of inheritance disputes, both resolved through negotiations (family deliberations), as well as by mediation involving third parties (customary institutions), so that it cannot be submitted to the court again. This is intended so that the existence of legal certainty for parties who have good ethics in solving inheritance problems.

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