



**The Accommodation of Customary Law to Islamic Law:
Distribution of Inheritance in Aceh from a Pluralism Perspectives**

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Abstract: With the emergence of *receptie* theory, there was a conflict between customary laws and Islamic law in the past, resulting in a protracted systemic conflict. However, the opposite occurs in the context of legal practices in Aceh, namely the accommodation of the two legal systems. This study aims to elucidate the incorporation of customary laws in Islamic law as it pertains to inheritance issues in Aceh. This study analyzes empirical legal research through the lens of legal pluralism. The data was gathered through in-depth interviews and literature reviews. This study found that various inheritance-related cases involving substitute successors, joint assets, heirs of different religions, and obligatory wills for adopted children are examples of how Islamic law accommodates customary laws. The two factors responsible for the accommodation of *adat* in Islamic law are the nature of the law, which is dynamic, elastic, and flexible, and the sociological condition and personality of the Acehnese, which support this integration. Moreover, this accommodation has a positive impact on the lives of people so that the maintenance and observance of *adat* or customs become firmer, the law functions as social control and Islamic law is cultivated in society. Theoretically, in the context of legal pluralism, accommodation between *adat* in Islamic law creates a space for harmonization as the main goal of this theory, not the theory of *receptie* which gives birth to conflicts and conflicts between legal systems.

Keywords: Accommodation, Islamic law, customary law, inheritance, legal pluralism

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Abstrak: Pada masa lalu antara hukum adat dan hukum Islam dipertentangkan dengan munculnya teori *receptie* sehingga menimbulkan konflik sistem yang berkepanjangan. Namun dalam konteks praktik hukum di Aceh justru terjadi sebaliknya, yaitu adanya akomodasi kedua sistem hukum tersebut. Tujuan penelitian ini yaitu untuk mengungkapkan secara jelas menyangkut bentuk dan akomodasi hukum adat ke dalam hukum Islam yang berkaitan dengan masalah kewarisan di Aceh. Kajian ini merupakan penelitian hukum empiris yang dianalisis dengan memakai teori pluralisme hukum. Data dikumpulkan melalui wawancara mendalam dan studi literatur. Penelitian ini menemukan bahwa bentuk-bentuk akomodasi hukum adat dalam hukum Islam yaitu berbagai kasus yang berkaitan dengan masalah warisan berupa ahli waris pengganti, harta bersama, ahli waris beda agama dan wasiat wajibah untuk anak angkat. Kemudian faktor penyebab terakomodasinya hukum adat dalam hukum Islam, terdapat dua; dari dalam yaitu sifat hukum yang memiliki daya lentur, elastis dan fleksibel sekaligus dinamis, sedangkan faktor dari luar adalah keadaan sosiologis dan karakter masyarakat Aceh yang mendukung. Selanjutnya akomodasi ini berpengaruh secara positif dalam kehidupan masyarakat sehingga pemeliharaan dan keataan pada adat semakin kuat, hukum berfungsi sebagai pengendalian sosial dan membudayanya hukum Islam dalam masyarakat. Secara teoritis, dalam konteks pluralisme hukum akomodasi antara adat dalam hukum Islam menciptakan ruang harmonisasi sebagai tujuan utama teori ini, bukan teori *receptie* yang melahirkan konflik dan pertentangan antara sistem hukum.

Kata Kunci: Akomodasi, hukum Islam, hukum adat, kewarisan, pluralisme hukum

Introduction

The customary laws and the religious law, particularly Islam, occupy a strategic position in the context of the development of national legal materials. In Dutch colonial history, however, these two legal systems have been contested. The Dutch created the conflict between the legal systems to undermine the Islamic community's respect for their religion and to fulfil their desire to maintain power in Indonesia.¹

Having conducted an ethnographic study on the Acehnese and the Gayonese, Christian Snouck Hurgronje (1857-1936), a Dutch advisor, proposed evidence of a conflict between these two legal systems, which he then formulated

¹ M. Noor Harisuddin, "The Taqin of Indonesian Islamic Law Dynamic," *Journal of Indonesian Islam* 9, No. 1 (2015). Ratno Lukito, "Law and Politics in Post-Independence Indonesia: A Case Study of Religious and Adat Courts," *Studia Islamika* 6, No. 2 (2014). Mursyid Djawas, et.al., "The Construction of Islamic Inheritance Law: A Comparative Study of the Islamic Jurisprudence and the Compilation of Islamic Law," *Juris (Jurnal Ilmiah Syariah* 21, No. 2 (2022). Khairuddin Hasballah, et.al., "Patah Titi and Substitute Heirs: A Study of Legal Pluralism on the Inheritance System in Aceh Community," *Ahkam: Jurnal Ilmu Syariah* 21, No. 1 (2021).

the *receptie* theory. He contended that the applicable law in these two areas is not Islamic law, it is rather the customary law. The Islamic law applies only if it is approved and desired by customary laws; in the *receptie* theory, the Islamic law is subordinate to customary law.² This theory was actually opposed by fellow Dutch scholar, Van Den Breg (1845-1927) with the theory of *receptie in complexu* and the theory of *receptio a contrario* stating that the Islamic law as practiced by Indonesians and Hazairin, is in accordance and in harmony with the Customary laws.³

This theory clearly shows the conflict and prominence of one legal system, namely the customary law, and weakens another legal system, which is the Islamic law. Even in contemporary public circles, this legacy of Dutch customary law remains influential. The concept of customary law was formed to achieve various goals of colonial legal administrations and political interests, including applying local rules to indigenous Indonesians, understanding the culture of certain ethnic groups, and ostensibly distancing the Islamic law from Indonesian Muslim natives.⁴ In Indonesia, customary law plays an important role in governing the society. Although it is not a formal legal entity, it is often referred to by some societies to base their actions and decisions. The customary law reflects attitudes of certain societies, since it is regarded as more trustworthy as it is embedded and customed in certain societies.⁵ Therefore, it is timely that these two legal systems be investigated. The aim is to show the relationship between the two, which has so far been considered to have been in conflict.

The Islamic law as an independent entity existed within the Muslim society long before the Dutch colonialization in Indonesia. Islamic kingdoms that once existed in the archipelago, such as the Kingdom of Pasai, Aceh Darussalam, Palembang, Cirebon, Banten, and others, implemented the Islamic law in their

² Muhammad Jazil Rifqi, "The Superiority of Customary Law over Islamic Law on the Existence of Inheritance: Reflections on Snouck Hurgronje's Reception Theory," *Millah*, December 31, 2021, p. 217–52. Syahrizal, *Hukum adat dan hukum Islam di Indonesia: Refleksi Terhadap Beberapa Bentuk Integrasi Hukum dalam Bidang Kewarisan di Aceh* (Lhokseumawe: Yayasan Nadiya, 2004).

³ Mark Cammark, "Islamic Inheritance Law in Indonesia: The Influence of Hazairin's Theory of Bilateral Inheritance." *Australian Journal of Asian Law* 4 (2002), p. 295. p. 295. Khairuddin Tahmid and Idzan Fautanu, "Institutionalization of Islamic in Indonesia," *Al-'Adalah* 18, No. 1 (2021). Abdullah Jarir, "Teori-Teori Berlakunya Hukum Islam di Indonesia," *Al-Ahkam* 14, No. 2 (2018).

⁴ Arskal Salim, "Adat and Islamic Law in Contemporary Aceh, Indonesia: Unequal Coexistence and Asymmetric Contestation," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, no. 2 (2021), p. 529.

⁵ Sonny Dewi Judiasih and Efa Laela Fakhriah, "Inheritance Law System: Considering the Pluralism of Customary Law in Indonesia," *Padjadjaran: Jurnal Ilmu Hukum (Journal of Law)* 5, no. 2 (2018), p. 315–30.

respective territories. The Islamic law then grows and develops alongside the habits or customs of the inhabitants of the archipelago.⁶

The preceding description can be viewed as the context of the problem, which also highlights the significance of exploring this issue. Issues concerning the relationship between the customary law and the Islamic law continue to attract the attention of the Indonesian people and have been popular in recent years. Moreover, the majority of people continue to have a misunderstanding of the relationship between the customary law and the Islamic law in Indonesia, particularly in relation to inheritance. In addition, the issue of dividing inheritance, determining heirs, and determining the share of each beneficiary can sometimes cause rifts in family relationships, which is another reason why it is necessary to study the relationship between customary law and Islamic law, particularly in terms of inheritance.

Consequently, post-reform regional autonomy has strengthened, respect for customs, democracy, and cultural diversity has increased. In this context, the theory of legal pluralism is widely used to study legal pluralism. Although legal pluralism is not a new concept in the modern legal system, it is an approach to analyzing the functioning of various legal systems side-by-side in the government system of a nation state. Aceh is one of Indonesia's provinces implementing multiple legal systems. In Aceh, there are three legal systems works out in the society: the positive law, the customary law, and the Islamic law. In fact, Aceh is the only region within the Republic of Indonesia that formally applies the Islamic law.⁷

This study employs empirical sociological (juridical) research methods and the legal pluralism theory as its analytic instrument.⁸ Two methods were used to acquire data: in-depth interviews and a literature review. The purpose of sociological research is to examine the social actuality of the accommodation between the customary law and the Islamic law regarding inheritance issues. In contrast, legal pluralism is a theory that recognizes the actuality of law in a pluralistic society, which leads to the harmonization and accommodation of the legal system.⁹

⁶ Jejik Zulfikar Hafizd, "Sejarah Hukum Islam di Indonesia: Dari masa Kerajaan Islam sampai Masa Modern," *Jurnal Tamaddun* 9, No. 1 (2021). Kamaruzzaman Bustamam-Ahmad, "The Application of Islamic Law in Indonesia: Case Study in Aceh," *Journal of Indonesian Islam* 1, No. 1 (2007).

⁷ Hairun Tri Wahyudi Sagala, "Kajian Teori Pluralisme Hukum terhadap Sistem Hukum di Aceh," *Interdisciplinary Journal on Law, Social Sciences and Humanities* 3, No. 2 (2022).

⁸ Bambang Waluyo, *Penelitian Hukum Dalam Praktek* (Jakarta: Sinar Grafika, 2002). Salim and Erlies Septiana Nurbayani, *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi* (Jakarta: Rajawali Pres, 2017), p. 95-98.

⁹ Arskal Salim, "Dynamic Legal Pluralism in Indonesia: Contested Legal Orders in Contemporary Aceh," *The Journal of Legal Pluralism and Unofficial Law* 42, No. 61 (2013).

The Nature of the Integration of the Customary and the Islamic Law

After being weakened and suppressed during the Suharto era, *adat* or custom has served as a means of bolstering ethnic and cultural identity in contemporary Indonesian politics. *Adat* was used to support public campaigns for ethnic solidarity groups, to restore symbolic cultural power (sultanates), to empower indigenous peoples' land rights, and to obtain broader powers under the new decentralized system, including to strengthen autonomy, customary sovereignty and the expansion of customary law's influence.¹⁰

The results of studies on the Compilation of Islamic Law and its application by the *Shar'iyah* Court to the resolution of inheritance cases suggest various settlements of inheritance cases: the Islamic law accommodates the customary law in numerous ways, including issues of substitute successors, joint assets, inheritance of different religions, and mandatory wills for adopted children.

1. Alternate or Substitute Successors

The Dutch term for replacement successor is *plaatsvervulling*. In inheritance law, substitute heirs are replacement heirs, implying that when a person dies, they leave behind grandchildren whose parents predeceased them. This grandson will receive an inheritance from his grandparents in lieu of his deceased parents.

The term substitute successor consists of the words heir and substitute. Those who are entitled to inherit the inheritance left by the heir are the successors.¹¹ In addition, the word replacement is derived from the pronoun with the prefix re-, which signifies a person who takes over another's position as a representative.¹² The purpose of substitute heirs is "replacement in the distribution of inheritance if the heir dies before the inheritor, with the deceased heir's children receiving the inheritance."¹³

According to Shahrizal, if a child dies while his parents are still alive, the deceased child's children inherit their grandfather's property in lieu of their

Franz Von Benda-Beckmann and Keebet Von Benda-Beckmann. "The Dynamics of Change and Continuity in Plural Legal Orders," *Journal of Legal Pluralism and Unofficial Law* 38, 53–54 (2006). Franz Von Benda-Beckmann and Keebet Von Benda-Beckmann., "Islamic law in a plural context: The Struggle Over Inheritance Law in Colonial West Sumatra," *Journal of the Economic and Social History of the Orient* 55, 4/5 (2012).

¹⁰ Arskal Salim, *Adat and Islamic Law...*, p. 529.

¹¹ Ali Parman, *Kewarisan Dalam Al-Qur'an* (Jakarta: Raja Grafindo Persada, 1995).

¹² WJS. Poerwadarminta, *Kamus Umum Bahasa Indonesia* (Jakarta: Balai Pustaka, n.d.).

¹³ Yan Pramdy Puspita, *Kamus Hukum* (Jakarta: Aneka Ilmu, 1977).

father.¹⁴ This replacement of place or *plaatsvervulling* is derived from Western law and the customary law, especially in Java.¹⁵

Articles 841 to 848, 852, 854 to 857, 860, and 866 BW (Code of Civil Code) govern *plaatsvervulling* or replacement of place (substitute successors) under Western law. It is evident from the preceding article that BW has meticulously planned the substitution of the heir's position.¹⁶ The customary law is also known as replacement of successors or *plaatsvervulling*. Djoljodigoeno and Tirtawinta discovered this practice in Central Java, as stated in their book on the customary Law in Central Java. According to the *Indisch Tijdschrift van Het Recht*, Part 149, page 141, Gondokoesoemo and Emanuels found a practice of exchanging positions in the Magelang region. Likewise, Wirjono Prodjodikoro discovered the successor institution in Central Java in 1938 while conducting research in the vicinity.

In addition, Ismuha provides a distinct interpretation of the replacement of successors. According to him, replacement includes not only those defined above, but also those who become entitled due to succession after the persons above them have left. According to Ismuha, the grandson and brother of the same parent are included in the heirs due to substitution (he uses the term substitution). It appeared as though Ismuha intended to equate the decisive heir and the substitute heir.¹⁷

In the Islamic law, the term replacement of place or *plaatsvervulling* as in the term of BW is completely unknown, as neither the verses of the Qur'an, the traditions of the Prophet, nor the opinions of the scholars that explain its existence. Without a single text or scholarly opinion indicating that there is a replacement of successors in the context of transferring inheritance, the *mujtahid* scholars have *ijmā'* reached a (consensus) regarding the absence of replacement of inheritance in Islamic law.

Whereas Hazairin explained that the meaning of verse 33 of surah an-Nisa' is that Allah made *Mawāli* for so-and-so from the inheritance of parents and close relatives (as well as *allazina 'aqa'at aymanukum*), and then gave that *Mawāli* (the given rights) his share. They are designated heirs because they are accompanied by the heir-related words *walidan* and *aqrabun*. According to Hazairin, when the

¹⁴ Kartini and Ety Nur Inah, "The Legal System of Inheritance of Indigenous Bugis-Bone: Islamic Law Perspective," *IOP Conference Series: Earth and Environmental Science* 175 (2018): 012139.

¹⁵ Syahrizal, *Hukum adat dan hukum Islam di Indonesia*.

¹⁶ Ahmad Redi and Hartini Antasari, "Comparative Analysis on the Regulation of Substitute Heir's Position in the Civil and Islamic Inheritance Law Perspective:" (3rd Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2021), Jakarta, 2022).

¹⁷ Ismuha, *Penggantian Tempat Dalam Hukum Waris Menurut KUHPerdara, Hukum Adat Dan Hukum Islam* (Jakarta: Bulan Bintang, 1978).

heirs are the parents (father and mother), the heirs are either the child or the child's parent.¹⁸ If the children are still alive, verse 11 of surah an-Nisa specifies that they are the ones who promptly inherit the estate. In verse 33, there are also *Mawāli* from offspring who have the right to inherit. *Mawāli* can only be considered a descendant of a child who perished before him. Thus, it is said, because when the father or mother's name is mentioned, the heir is automatically the child. There is no alternative to interpreting *Mawāli* with the descendants of a deceased child, although in this instance the father's position as heir will not be confused.

Hazairin interpreted the term "*Mawāli*" to indicate a grandson whose father died while his grandparents were still alive. This grandson succeeds his father as the beneficiary of his grandparents' property. In fact, if the deceased's father's sibling is still alive, the grandson will not inherit his grandparents' property because he is concealed with his still-living uncle (uncle) as *ashabah*. Several commentators, including al-Qurtubiy, hold views that are diametrically opposed to Hazairin's interpretation. Al-Qurtubiy interprets the term *Mawāli* in verse 33 of surah an-Nisa' as referring to the *ashabah* who inherits his property. Based on the remarks of the Prophet, this became the remainder of the inheritance distribution for the principal male *ashabah*. This is consistent with the Hadith attributed to Zaid bin Sabit by Bukhari. This hadith demonstrates that the son of the deceased does not inherit his position.¹⁹

2. The Shared Property

In Aceh, there is a communal property known as *hareuta seuharkat*. In several areas of Aceh, such as Gayo and Alas (Central Aceh and Southeast Aceh), which adhere to a patrilineal family system, they do not recognize joint assets between husband and wife. This is due to the close relationship between joint property and the marriage paradigm adopted by the Gayo community. In a *juelen* marriage, only *tempeh* becomes the wife's property upon divorce, while all other assets acquired during the marriage become the husband's. In contrast, in a shared marriage or *angkap* marriage, if there is a divorce, the husband does not receive anything from the assets they have acquired during the marriage. Instead, he returns to his parents' home with only the clothes on his back, unless his in-laws are compassionate.

The Marriage Law No. 1 of 1974 regulates the issue of joint property in Chapter VII Article 35 concerning Property in Marriage. The provisions contained in this law are emphasized again with the issuance of Government Regulation No. 9 of 1975. Thus, since October 1, 1975, the issue of joint property

¹⁸ Mark Cammark, *Islamic Inheritance Law in Indonesia...*, p. 295.

¹⁹ Abu Abdillah Muhammad bin Ahmad bin Abi Bakr Al-Qurtubiy, *Al-Jami al-Ahkām Qur'ān* (Mesir: Dar al-Fikr al'Arabiy, 1348H).

between husband and wife has been uniformly regulated throughout Indonesia. Articles 35 and 36 establish the uniformed arrangement. Article 35, section 1, states that all properties acquired during the marriage become community property. As long as the parties do not stipulate otherwise, paragraph (2) states that the inheritance of each husband and wife and the assets obtained by each as a gift or inheritance are under the control of each spouse. Article 36, paragraph 1, states that a husband and a wife can act jointly with regard to their community property. Paragraph 2 explains that he has the absolute right to pursue legal action concerning his property.

Ismuha stated that the origin of assets owned by a husband and a wife in Aceh can be categorized into four types of sources, namely: inheritance, gift, gift from a deceased relative, and inheritance from a deceased relative:

1. Gifts and inheritances received by one of the spouses,
2. Individual assets acquired prior to marriage,
3. Assets accumulated during the marriage or as a result of the marriage,
4. Assets acquired during the marriage, excluding gifts to the husband or wife and inheritance.

When viewed in terms of ownership of assets by the parties, both the husband and the wife, the four above classifications can be divided into two groups: joint assets that are jointly owned and controlled and individual assets that are owned and controlled by each of the husband and the wife.

First-hand assets in the form of grants or inheritance, whether acquired before or during the marriage, have the same status, that is, they remain the property of each spouse separately. Contrary to the provisions of Civil Code Articles 119-122, the regulation that there are two categories of husband-and-wife property status is in effect. The Civil Code prohibits the commingling of spouse and wife's assets. Unless otherwise stipulated in the marriage contract, the *mélange* applies without regard to the nature of each individual component. This also applies to inheritances and grants, unless the beneficiary or grantor expressly stipulates otherwise.

On the other hand, Law no. 1 of 1974 Article 35 paragraph (2) stipulates that the inherited assets of each husband and wife and the assets obtained by each as a gift or inheritance are under the control of each as long as the parties do not specify otherwise. Article 29 paragraph (1) stipulates that both parties can enter into a written agreement that is legalized by the marriage registrar at the time or before the marriage.

The assets mentioned in the second part are those acquired through one's own efforts. In Aceh, these assets are included in the *hareuta tuha*, which is controlled by both the husband and the wife. In different part of Indonesia, such a property is known in different term, but the concept remains the same. Group three assets are those acquired through marriage or as a result of marriage.

According to the results of research conducted in Aceh, there is no uniformity in the proportion of each spouse in the distribution of joint assets. The distribution of joint assets is contingent on the following factors:

- a. In the case of a divorce without children, the *hareuta seuharkat* (*harta bersama*/joint property) is divided equally between the husband and wife.
- b. In the event of a divorce with children, the wife receives fifty percent, the husband receives a quarter, and the children receive a quarter.
- c. When a divorced person dies without children but leaves other beneficiaries, three-quarters of the estate goes to the surviving spouse and one-quarter to the heirs.
- d. In the case of a divorcee who passes away without children or descendants, three quarters go to the surviving spouse and one quarter to the Baitul Mal.
- e. In the event of a divorce and death, leaving behind a son, the wife and children inherit the entire property.
- f. In the event of a divorce and having only daughters, apart from the wife and children, the guardian is entitled to a share.

It can be argued that in the customary law, property owned by a husband and a wife can be divided into two general categories: property acquired before marriage and property acquired after or during marriage. This category exists in societies that adhere to both patrilineal and matrilineal family systems, and their existence is acknowledged in marriage law that addresses property issues, particularly Articles 35 to 37 of Law No. 1.

From the perspective of Islamic law, neither the Syafi'iyah group of legal experts (as the legal understanding most widely adhered to and followed by Indonesian clerics) nor other legal experts representing other schools of thought have discussed the topic of joint property in marriage. This is consistent with the understanding of the customary law. When viewed from a technical perspective, however, joint property ownership between husband and wife in married life can be equated to a form of cooperation (*shirkah*) that has been generally discussed by Islamic jurists, although in fiqh books, experts classify it not under the topic of marriage (*bāb al-nikah*), but under the chapter on trade (*bāb al-buyu'*).

As an institution involving two parties in a *shirkah* transaction, Islamic jurists classify it as a legitimate business venture as long as there are no acts of fraud or injustice committed by the parties involved. The famous jurist from the Hanabilah group, Ibn Taimiyah stated that most jurists divide cooperation (*shirkah*) into two forms, namely cooperation in ownership and cooperation in terms of contracts.²⁰

²⁰ Ahmad ibn Abd al-Halim ibn al-Taimiyah, *Majmu' Fatawa al-Syaikh al-Islam Ahmad Ibn Taymiyah* (Rabat: Maktabah al-Ma'rif, 1981).

The most recent regulations regarding cooperation in marriage can be found in Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*) Chapter XIII on Property in Marriage. Efforts to improve the quality of regulations regarding joint assets contained in the previous marriage law have resulted in the emergence of no less than thirteen detailed articles (85-97) in the compilation which regulate the institution of joint assets in marriage.

These rules demonstrate the efforts made by Islamic jurists in Indonesia to accommodate the Islamic law and the customary law. Since most fiqh books do not explain the institution of joint property in marriage, scholars feel obliged to include this social institution in the Islamic legal system. This effort is based on a joint property institution that is deeply rooted in the community. Islamic jurists' compromising stance toward customary law is a result of the fact that, in daily life, Indonesians continue to practice the customary law-derived norms.

3. Heirs and the Inheritors are in Different Faith

According to Habiburahman, in the customary law and western civil law (BW), religious differences between heirs and inheritors are not a barrier to obtaining a share of the inheritance.²¹ However, in the Islamic law, scholars of *tafsir*, hadith, and fiqh agree that religious differences between heirs and heirs are a barrier to obtaining an inheritance. Various references to classical fiqh also agree on this consensus.²² According to the Hadith of Rasulullah, "Said by Abu 'Asyim, "Reported by Ibn Juraij," "Reported by Ibn Shihab," "Reported by Ali bin Hussain," and "Reported by 'Amr bin Uthman bin Zaid," Rasulullah PBUH stated that neither a Muslim nor an infidel may inherit from the other."

In the context of Islamic law in Indonesia with the existence of the Compilation of Islamic Law (KHI), it has accommodated the existence of heirs of different religions as inheritors because KHI does not include different religions as one of the prohibitions on inheritance. This is stated in Article 173 KHI, which states that a person cannot inherit if he or she is still punished for violating a judge's legally binding decision:

- a. Charged with murder, attempted murder, or grievous mistreatment of the heir.
- b. Being falsely accused of filing a complaint alleging that the witness committed a crime punishable by up to five years in prison or a more severe sentence.

Habiburahman argues, based on this description, that if religious distinctions are not a barrier to receiving inheritance, the legal logic is the same

²¹ Habiburrahman, *Rekonstruksi Hukum Kewarisan Islam di Indonesia* (Jakarta: Kencana Prenada Media Group, 2011).

²² Asni Zubair, et.al., "The Construction of Inheritance Law Reform in Indonesia: Questioning the Transfer of Properties through Wasiat Wājibah to Non-Muslim Heirs," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, no. 1 (2022), p. 176.

as that is regulated in the customary law and Western civil law (BW), which means that KHI has accepted heirs of different religions as inheritors as regulated in the customary law. For instance, in the case where the High Religious Court of DKI Jakarta and the Supreme Court issued a mandatory will to one of the daughters of an apostate heir, both the Appeal Judge and the Supreme Court Judge of Cassation in the *in casu* case agreed to overturn the initial judge's decision not to give the child a share.²³ There have been numerous objections to this decision for a variety of reasons, one of which is that the formulation of a law that is implemented by a court decision and uses a *wasiat wājibah* as an alternative to the transfer of inheritance rights for non-Muslims must adhere to the principle of obligatory wills.²⁴

4. Required Wills for Adopted Offspring

In general, a testamentary verse is *surah* al-Baqarah verse 180 of the Qur'an, which instructs Muslims to make a will to distribute to their parents and close relatives. Although most Islamic jurists state that this verse has been sanctioned when the verses of the Qur'an governing inheritance were revealed, other scholars put forward a stronger argument that the verse regarding wills was actually only partially abolished, i.e., only those relating to the distribution of property to parents and close.

This latter view is supported by the fact that the Qur'an recognizes the right to make a testamentary statement in the distribution of inheritance, where the inheritance is described as the portion of the assets remaining after payment of the will and debts. Therefore, wills made for other close relatives (who are not heirs) are still permissible. Al-Qur'an commentators support this view by citing the hadith attributed to the Prophet, which states, "God has given each person what he desires, so there is no inheritance.

According to Ibn Hazm, this testament verse establishes a legal obligation for Muslims to make a will for close relatives who are not heirs. He also argued that if the deceased failed to fulfil this obligation while he was alive, the court should make a will in his name. The logic of this opinion dictates that when a decedent fails to leave a will for close relatives who are not beneficiaries, the court must act as if the decedent had left a will.²⁵

The problem arises in determining which close relative will receive the obligatory will and which of them are included in the close relative that permit her to receive the obligatory will, because both the Al-Qur'an and the Hadith themselves leave this fundamental problem unanswered. A new interpretation

²³ Habiburrahman, *Rekonstruksi Hukum Kewarisan Islam di Indonesia*.

²⁴ Asni Zubair, et.al., "The Construction of Inheritance Law Reform in Indonesia."

²⁵ Ali Ahmad ibn Hazm, *Al-Muhalla* (Kairo: Idarah at-Thaba'ah al-Muniriyyah, 1347 H).

was first proposed by Egyptian jurists in 1946, limiting the definition of close relative to the grandson whose pious father died before him. This specification is based on the premise that children of sons or daughters who deceased before the heir are living relatives who fall under the heir's care.

The KHI particularly Chapter IV book II, which begins with Articles 194-209. Article 209 paragraph (2) mandates that adopted children who do not receive a will receive a will containing one-third of their adoptive parents' inheritance.²⁶

In contrast to Islamic jurists in general, who designate orphaned grandchildren as beneficiaries of the obligatory will, Indonesian Islamic jurists have used the obligatory will to permit adopted children and adoptive parents to claim a portion of the inheritance. Article 209 KHI stipulates that adopted children and adoptive parents are beneficiaries of obligatory wills with a maximum receipt of one-third of the inheritance. Given that neither the adopted child nor the adoptive parents had familial ties with the heir, this revolutionary reform inexorably overturned a well-established principle in Islamic inheritance, namely that a blood relationship is a legal requirement for the distribution of inheritance from inheritors to heirs. Thus, it can be said that KHI's reforms are primarily dependent on the institution of customary law governing adoptions.²⁷

The provisions of this article can be interpreted to mean that, according to the KHI, if adopted children do not receive a will from their adoptive parents while they are still alive, i.e., if their adoptive parents have never given an *ikhtiyary* will, i.e., a will given on impulse, to the adopted child, then the child has the right to be given a mandatory will as long as it does not exceed one-third from the inheritance.

From the provisions of this KHI, a legal line can be drawn that in the absence of an element of *ikhtiyaryah* from the giver of the will (adoptive parents), an element of the obligation to make a will arises even if there is no willingness from the person who died, and the child has the right to receive a will in the sense of an obligatory will (*wasiat wājibah*) according to the provisions of Article 209 paragraph (2) KHI. This provision can be applied to the Religious Courts because the KHI is a collection of laws relating to Islamic legal regulations, and these regulations are a source of material law that can be used by religious judges in resolving cases at the Religious Courts, such as marriage, inheritance (which includes a will), and endowment cases.

²⁶ Dewi Sukarti and Isnawati Rais, "Islamic Inheritance Law for Economic Social Justice in Indonesia," in *Proceedings of 1st International Conference of Law and Justice - Good Governance and Human Rights in Muslim Countries: Experiences and Challenges (ICLJ 2017)* (1st International Conference of Law and Justice - Good Governance and Human Rights in Muslim Countries: Experiences and Challenges (ICLJ 2017), Atlantis Press, 2018).

²⁷ Yeni Salma Barlinti, "Inheritance Legal System in Indonesia: A Legal Justice for People," *Indonesia Law Review* 3, no. 1 (2013).

Experts in Islamic law in Indonesia feel obliged to bridge the divide between Islamic law and customary law due to the nature of customary law. Due to the nature of the customary law, and because the Islamic law rigorously rejects this adoption institution, Indonesian Islamic law experts feel obliged to bridge the gap between Islamic law and customary law due to the nature of customary law. Since Islamic law strictly rejects this adoption institution, Indonesian Islamic jurists attempt to accommodate the value system that exists in both laws by utilizing the institution of obligatory wills originating from Islamic law as a means to obtain the moral values that lie behind adoption practices in customary law.²⁸

Efforts must be made to accommodate the principles of customary law and Islamic law regarding the adoption, because several facts indicate that in societies that practice adoption, adoptive parents always consider the welfare of their adopted children after their death. Therefore, the common practice for adopted children is to receive a portion of their parents' inheritance through gifts (grants) that guarantee life.²⁹

The Compilation of Islamic Law also establishes that adoptive parents have the legal right to become beneficiaries of an obligatory will. KHI considers the relationship between adopted children and adoptive parents to be so close that the term "close relatives" (*al-aqrabin*) in the verse about wills can be translated to include both adopted children and adoptive parents. This tacit approval of the practice of adoption, which was subsequently bolstered by the KHI, which recognizes a new and two-way relationship in terms of inheritance between adopted children and adoptive parents through the institution of obligatory wills, is a genuinely unique reform in Indonesia.

In the Acehese society, the practice of adopting children is based on the Islamic law. As a result, adoption as it is known in other legal systems is almost non-existent in Aceh. The people of Aceh view adoption as a prohibited act if it breaks the bloodline relationship with the biological parents, equates the distribution of inheritance between biological and adopted children, or makes adopted children into slaves who lack dignity.

The practice of adoption in Aceh also shows that there is accommodation between the two different legal systems. This is strong evidence of how the necessary efforts are always made by experts in the Islamic law and the customary law to avoid the emergence of conflicts. Even though the KHI does not equate the status and position of adopted children with biological children as is stipulated by the customary law, revitalizing the close relationship between adopted children and adoptive parents through the obligatory will is an attempt to bridge the

²⁸ Zul Anwar Ajim Harahap and Zulfan Effendi Hasibuan, "The Dominance of Islamic Law over Customary Law in Indonesia in Marriage Law," *ITALIENICH* 12, no. 1 (2022), p. 868–873.

²⁹ Asni Zubair, et.al., "The Construction of Inheritance Law Reform in Indonesia."

theological gap between the two legal systems. Arguably this kind of conception is actually in line with the basic rules of Islamic law regarding adoption, because the obligatory will be stipulated in the KHI does not equate the legal status between adopted children and biological children and does not give inheritance rights to adopted children as obtained by *ahl al-farāidh*. In addition, KHI does not give adopted children the right to inherit more than one-third of the total inheritance from the heir.

Factors Contributing to the Accommodation of Customary Law to Islamic Law

In the discussion regarding the factors that contribute to the relationship between the customary law and the Islamic law, particularly in the area of inheritance, it is possible to divide them into two categories: internal and external factors.

a. Adat or customs as the Legal Source

In general, scholars concur that there are four sources of Islamic law: Al-Qur'an, Hadith, *Ijmā'*, and *Qiyas*. However, there are those who argue that Al-Qur'an and Hadith are the primary sources of Islamic law.

In addition to the four sources of Islamic law listed above, there are additional sources of *ittihadiyah* Islamic law, such as *mashālih al-mursalah*, *istihsān*, *istishāb*, and *'urf (adat)*. The nature of these sources is to supplement the main sources of the Qur'an and Hadith. The use of this source is carried out when a problem lacks legal provisions in the Al-Qur'an and Hadith.³⁰ Consequently, its application is determined by the requirements of a community in a particular setting. The manifestation of the social environment's influence on Islamic law is the recognition of customs that are deemed beneficial by the community, known as *'urf* or *adat* in Islamic law. Therefore, the implementation of Islamic law is extremely concerned with the *'urf* of a particular society.³¹

b. Substantive Elements of Traditional Law and Islamic Law

Our interviews of the respondents: the Ulama and Judges at the *Shar'iyah* Court, forty percent of respondents stated that the factors causing the relationship between the customary law and the Islamic law were the substantive factors which made it possible to accept changes. This factor is a substance that is attached to these two systems and makes it possible for them to embrace change. The nature

³⁰ JM. Muslimin, "Law and Culture: 'Urf as a Substance of Islam Nusantara as Reflected in Indonesian Religious Court Decisions," in *Proceedings of the International Conference on Culture and Language in Southeast Asia (ICCLAS 2017)* (International Conference on Culture and Language in Southeast Asia (ICCLAS 2017), Jakarta, Indonesia: Atlantis Press, 2018).

³¹ Syahrizal, *Hukum adat dan hukum Islam di Indonesia*.

of the elasticity and flexibility of legal material from the two legal systems, namely customary law and Islamic law, can be used to identify this substantive factor. Which implies the extent to which the legal system is able to accept change and accommodate various societal developments, particularly in regard with the debatable matters.³²

c. Situational Factor and the Community Conditions

External factors are those originated from outside the substance of the customary law and the Islamic law. These external factors are closely related to the situation and condition of a society in which customary law and Islamic law are applied. Sociological analysis of a society can identify external factors, meaning that the circumstances and changes in a society will have an impact on the legal substance of customary law and Islamic law. This is entirely logical, given that legal rules operate in the social arena (society).³³

The results of the aforementioned interviews with the sources can be displayed in the table below:

Table 1: Factors Contributing to the Coexistence of Customary Law to Islamic Law

No	Factors	Responses		Total	%
		the Ulama Council of Aceh	Judge		
1	<i>Adat</i> or custom as the legal source	4	3	7	35
2	The nature of the Islamic law, which is flexible and inclusive	4	4	8	40
3	Situation and conditions of certain communities	2	3	5	25
	Total	10	10	20	100

Source: Interviews, 2022.

On the basis of the aforementioned data, it can be emphasized that there are factors causing the easy incorporation of the customary law into Islamic law: the internal factor is attributable to the concept of the Islamic law, which is elastic,

³² Interviewed with Abubakar Ismail, Chair of the Ulama Council of the City of Lhokseumawe, June 14, 2022.

³³ Interviewed with Yusri, Judge of the Shariah Court Banda Aceh, July 4, 2022.

flexible, and dynamic. External factors are the social and cultural conditions of the society that are contingent on accepting Islamic law.

As the last messenger of God, the Prophet Muhammad PBUH conveyed the final *syari'at*, so there is no heavenly *shari'ah* after Islamic *shari'ah*. Allah states in surah al-Ahzab ayat 40: "Muhammad is not the father of any of your men, but (he is) the Messenger of Allah, and the Seal of the Prophets".

According to Abd Rahman, Taj argues that "on this basis, the Islamic law is an eternal law that has existed for as long as this mortal world has existed, and it will not be abolished suddenly."³⁴

The perpetuity of the Islamic law is made possible in part by its teachings, which are contained in both the Al-Qur'an and Hadith, as well as those that are *qath'i* (definite) and *zhanni* (interpretable). The *qath'i* are outnumbered by even the *zhanni*. Thus, it is clear that with *qhath'i*-natured Islamic teachings, Islamic religious identity can be guaranteed at all times; it is static, while its dynamics reside in *zhanni*-natured objects. This is the significance of "*Ash-shariah al-Islamiyah shālihu li kulli al-zamān wa al-makān*"; the Islamic Shari'a is (always) applicable to all times and places.³⁵ This suggests that the Islamic law is persistently changing and *up to date*. The elasticity of Islamic law can be seen, among other things, in the small number of legal verses (verses regarding laws) in the Qur'an and the hadith.

As is well-known, a society is dynamic rather than static in nature. Consequently, what sociologists refer to as social change will occur in every environment of mankind and will necessitate changes and updates in many fields, including inheritance law and legislation, which is one of the most important institutions of human life.

Changes in laws and regulations, including Islamic law, are a logical consequence of changes in norms and shifts in values that occur in an ever-changing society. Islamic Fiqh, which is said to have elastic power, provides adequate space for possible changes in law from time to time and place to place. This is as affirmed by Ibn Qayyim al-Jauziyah that the fatwa/law can change due to changes in times and places.³⁶

Changes and reforms in the Islamic law are closely related to the practices of *ijtihad*, because the frequency of *ijtihad* performed by *mujtahids* determines the shifts in the Islamic jurisprudence. In the other word, the key to the advancement of the Islamic law is the sincerity of the *mujtahid's* performance of the *ijtihad*, whereas the setback is partially attributable to their *ijtihad* frailty. This

³⁴ Abd Rahman Taj, *Siyasah Asy-Syar'iyah Wa al-Fiqh al-Islam* (Mesir: Dar at-Tak'lif, 1993).

³⁵ Interview with Faisal Ali, Chair the Ulama Council of Aceh, July 14, 2022.

³⁶ Ibn Qayyim al-Jauziyah, *I'lam al Muwaqqi'in an Rabb al-'Alamin*, 3rd ed. (Mesir: Dar al-Jail, n.d.).

internal aspect of the Islamic law is responsible for the Province of Aceh's ability to synchronize the inheritance principles of the customary law and the Islamic law.³⁷

Factors from within the customary law are dynamic factors that are owned by the customary law. This dynamic factor can be seen from the characteristics of the customary law, which legal scholars generally divide into four characteristics, namely religious-magical, communal, cash and concrete characteristics. The nature of legal entity is concrete, sociable, and dynamic.

Regarding external factors, it is the nature of the Acehnese people in responding and accepting the changes brought about by both the customary law and the Islamic law. This condition is definitely, influenced by the attitude and character of the people, who are extremely fanatical towards religious teachings. Consequently, any traditions or customary practices that are considered contrary to or in conflict to religious values will be rejected altogether. In addition, the level of public education has an impact on the adoption and incorporation of customary law and Islamic law principles. This open attitude also precludes conflict between customary law and Islamic law in Aceh, which may differ from other regions.³⁸

In addition, the emergence of the global era and the strong flow of information can be categorized as external factors, helping to strengthen the Acehnese people's ability to accept changes, particularly regarding adjustments between the customary law and the Islamic law. At the very least, the influence of information and globalization shapes attitudes not to defend only one legal system as the best without considering other legal principles that may be more applicable to our current lives.³⁹

The Effect of the Accommodation of the Customary Law to Islamic Law

The accommodation of customary law into Islamic law in Aceh has affected people's livelihoods, particularly in the area of inheritance. The effect of incorporating the customary law into the Islamic law in the area of inheritance is as follows:

a. Preservation and Enforcement of the Customary Law

A compromise between the customary law and the Islamic law enriches the lives of individuals. The positive value is that the maintenance of the customary provisions can be so robust that the custom itself is more robust and intact in the

³⁷ Interview with Mufardisshardi, Chair of *Shari'ah* Court, Langsa, June 13, 2022.

³⁸ Interview with Salahuddin, Chair of the Ulama Council Langsa, June 13, 2022.

³⁹ Interview with Almihan, Judge of Shariah Court Banda Aceh, July 4, 2022.

community's wellbeing. People fear breaching *adat* just as much as they fear violating religious regulations. Due to the dread of committing sins, people are hesitant to violate religious provisions; the same holds true for customs that are intertwined with religion and have the same authority as religion.⁴⁰

Thus, the maintenance of the Islamic law and the customary law proceeds hand-in-hand, so that there is no separation of social norms and values. A harmonious relationship between religion and tradition makes social control possible. In addition, traditional and religious leaders share the same authority in the eyes of the community, to the point where they are virtually indistinguishable. Religious leaders may be knowledgeable about *adat*, and those who are regarded as traditional leaders are also knowledgeable about religion. This is a historical legacy in the life of the people of Aceh, who have always involved religious leaders in addressing social issues since ancient times.

b. The Social Control Mechanism

The combination of religious and customary laws will also influence the social control system. Religious leaders have authority primarily because of their religious knowledge and the traditions they uphold. Overall, the authority of the Ulama in Aceh is quite high, but the community's respect for Ulama varies. Scholars who do not intervene in social problems (scholars who isolate themselves from community life) will be regarded less highly than those who are active in religious worship and other social tasks. In Acehnese society, the latter is seen to have greater authority than those of the former.

c. The Internalization of the Islamic Law the Acehnese Society

An additional accommodation between the customary law and the Islamic law is the internalization of several provisions of Islamic law among the people of Aceh, so that they are known as a religious society. This demonstrates that the people of Aceh are very steadfast in adhering to customs that have been integrated with Islam, leading to the conclusion that people follow religious teachings because they heed customs.⁴¹

At the level of ordinary people, it appears that they are unable to differentiate between the provisions contained in the religious law and the provisions contained in *adat*. This is reasonable, given that the application of law in the society is always associated with religion, so that the influence of religion appears to be very dominant. Any kinds of societal problem are viewed from a religious perspective, so if it differs from religious provisions, it is adapted to religion without the person's knowledge. People tend to view this issue as a

⁴⁰ Interview with Salahuddin, Chair of the Ulama Council Langsa, June, 13 2022.

⁴¹ Interview with Faisal Ali, Chair of Ulama Council of Aceh, July 14, 2022.

religious provision, despite the fact that it is a matter of custom that has been adapted to religion. Thus, it would appear that the customary law and the Islamic law are not in conflict in the Acehese society.⁴²

However, there are also fears of confusion between religious provisions and customary provisions. This kind of view will make it difficult to find pure Islamic teachings in people's lives (*mu'āmalah*). Including local customs and traditions does not diminish the value of religious practices, but the quality of religious practices may be ignored if customs change with the times.⁴³

In order to determine the point of separation between the customary and religious provisions and the relative strength of the two sources, a relatively high level of community religious education is required so that the community can be classified as a religious community or not. If the community has a higher level of religious education, the negative possibility of a combination of the religious and customary law can be avoided, and the customary practices will always be based on the provisions of Islamic law.

In light of the preceding discussion, it can be stated that cultural and customary pluralism has led to the emergence of respect for legal pluralism. Indonesia, a pluralistic society in terms of culture, religion, and the legal system, allow the emergence of legal pluralism by increasing the diversity of legal systems. Legal pluralism allows for the harmonization and accommodation of different legal systems.

Conclusion

In various inheritance-related cases, forms of accommodation between customary law and Islamic law include substitute successors, joint assets, heirs of different religions, and obligatory wills for adopted children. Internal factors and external factors contribute to reconciliations and accommodations between customary law and Islamic law, especially in the area of inheritance. Internal factors are those that pertain to the substance and material of the customary inheritance law and the Islamic inheritance law. This factor consists of the elastic, flexible, and dynamic nature of law, which allows it to satisfy the legal needs of the community and adapt to various changes. The sociological conditions and personalities of the Acehese are external factors. The accommodation between customary law and Islamic law has positive effects, including the preservation and strengthening of customary law, law as social control, and the cultivation of Islamic law in society. As opposed to the theory developed by previous legal scholars, accommodations between legal systems increase harmonization in the legal order of the society as the primary form of the legal pluralism. Consequently,

⁴² Interview with Faisal Ali, Chair of Ulama Council of Aceh, July 14, 2022.

⁴³ Interview with Nazaruddin, Chair of Ulama Council of Bireuen, June 14, 2022.

the conflict between the customary law and Islamic law persisted from the colonial era until the end of the New Order era, influencing the policy of enforcing Islamic law in Indonesia.

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