

Sultan Jawara Study Of The Bantenan Type From The Perspective Of Civil Law And Sharia

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Abstract

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This study aims to analyze the classification and typology of the concept of 'Bantenan' applied during the reign of Sultan Jawara in the Banten Sultanate from two different modern legal frameworks: Civil Law and Sharia Law (Islam). Bantenan is seen as a historical legal phenomenon that represents a form of relationship, transaction, or specific public policy. The method used is Normative Jurisprudence with a Comparative and Conceptual approach, using secondary data sourced from historical literature, ancient Sultanate manuscripts, Civil Law literature (BW/KUHPerdata), and Fiqh Muamalah/Siyasah Syar'iyah literature. The results of the study indicate that Bantenan has a typology that is not singular and is hybrid. From a Civil Law perspective, Bantenan can be interpreted as an obligation (verbintenis) or agreement (overeenkomst), whose validity depends on the fulfillment of the legal requirements of the agreement (agreement, object, cause). Meanwhile, from a Sharia Law perspective, Bantenan can be classified as a contract (muamalah) if it is transactional in nature, or as Siyasah Syar'iyah if it is a Sultan's political policy based on the principle of mashlahah (public benefit). The comparison shows that despite the similarities in the principles of justice and legal certainty, there are fundamental differences in their philosophical foundations: Civil Law emphasizes autonomy of will (wilsautonomie), while Sharia Law emphasizes adherence to sharia and maqasid sharia. The main conclusion is that Bantenan should be recognized as an autonomous local legal system reflecting the legal wisdom of the Sultanate, yet its relevance to modern concepts can be drawn as a guide to understanding Indonesia's historical legal pluralism.

Keywords: Bantenan, Sultan Jawara, Civil Law, Sharia Law, Comparative Law, Banten Sultanate.

INTRODUCTION

Marriage is a natural human nature in carrying out the Sunnah of the Prophet to provide offspring carried out by pairs between men and women, legal events that occur from legal events are separation separation can occur due to death and can be due to divorce, legal events that occur for example due to death or divorce give rise to the division of inheritance or joint property that must be calculated which is intended for heirs, such as children, siblings, parents who have rights regulated both in customary law or state law regulated by Law. No. 1 of 1974 which has been updated by Law No. 16 of 2019 whose provisions have been explained (UU.No1 Tahun 1974 Tentang Perkawinan, 1974).

Article 1 Paragraph (1) Concerning Marriage and Article 38 paragraph (1) a due to death while Article 35 paragraph (1) and paragraph (2) explain joint property due to divorce. which regulates the rights of wives and children as regulated in Customary Law and Islamic Law, regulates their rights and obligations, and the rights of children that must be protected and how the provisions for their distribution and who occupies Dawilarham and Ashobah as well as those that regulate in the Baduy Indigenous community, because basically about the existence of the Baduy community

and its rights that have been protected in the 1945 Constitution Articles 28A and 28J. and the rights of indigenous peoples that must be protected in Article 18 of the 1945 Constitution (Muhibah, 2023).

In order to celebrate the 44th Anniversary of the Faculty of Law, Sultan Ageng Tirtayasa University, the Faculty of Law will collaborate with Rajawali Pers or PT RajaGrafindo Perkasa to publish a book "Book Chapter" or "Bunga Rampal" which is a collection of writings by lecturers of the Faculty of Law, Sultan Ageng Tirtayasa University from their respective scientific perspectives with a predetermined theme. This book will be launched in conjunction with the Sultan Jawara Law Festival (SILF) II, which will be held on October 1, 2025 (Guspita, 2023).

The main theme of this book chapter, commemorating the 44th anniversary of the Faculty of Law, Sultan Ageng Tirtayasa University, will be linked to the vision and mission of the Faculty of Law, Sultan Ageng Tirtayasa University, as outlined in the Faculty's Strategic Plan (Renstra) for 2024-2028, as well as the compulsory course "Sultan Jawara in the Perspective of Bantenese Legal Studies." The book chapter will summarize ideas related to local content in Banten Province from the perspectives of civil law, criminal law, constitutional law, state administrative law, international law, and Islamic law (Rachmad, 2020).

This book chapter will be a hallmark of the Faculty of Law, Sultan Ageng Tirtayasa University, and is expected to increase knowledge of local content from a legal perspective in Banten Province, for introduction at the national and international levels. Therefore, participation from all lecturers at the Faculty of Law, Sultan Ageng Tirtayasa University is expected to become authors in this book.

RESEARCH METHODS

This research methodology is designed to comprehensively analyze the customary inheritance system of the Inner Baduy community, with the aim of identifying inheritance principles based on *Pikukuh Adat*, examining their implementation, and comparing them with the framework of Islamic Inheritance Law (*Syariah*) contained in the Compilation of Islamic Law (KHI), as well as its impact on asset ownership and the sustainability of tradition (Muslih, 2021). This research uses the Normative Legal Research Type (Normative Juridical) because its main focus is on the discovery, interpretation, and comparison of norms, rules, and legal principles contained in the customary system and the positive legal system (Lexy J. Moleong, 2018). The research approach used includes three main dimensions, namely the Conceptual Approach to analyze key concepts such as entrusted land or inheritance distribution mechanisms, the Statute Approach to review relevant articles in the KHI (Inheritance Chapter) as a comparison, and the Case Approach by examining decisions or settlements of inheritance disputes that have occurred within the Inner Baduy (through customary institutions) or that may have been brought to the general court, although the main focus remains on customary settlements (Manzilati, 2017). The Sources and Types of Data for this research are entirely secondary data consisting of legal materials. Primary Legal Materials include transcripts or official records (if any) that record *Pikukuh* and internal customary decisions regarding inheritance, as well as the text of the KHI (Nartin et al., 2024). Secondary Legal Materials consist of customary law literature, scientific journal articles, theses, and dissertations that specifically discuss inheritance in the Baduy and other indigenous communities in Indonesia, as well as relevant books on *Fiqh Muamalah* and Indonesian Civil Law (Nartin et al., 2024). Tertiary Legal Materials include legal dictionaries, indexes, and encyclopedias that serve as supporting understanding of terms. The Data Collection Technique is a systematic Library

Research Study, starting from inventory, identification, classification, to critical reading of all relevant legal materials. The Data Analysis Technique applied is Normative Qualitative Analysis (Amane et al., 2023). This analysis goes through several stages, namely: Description of the authentic Baduy Dalam customary inheritance system; Legal Interpretation of relevant customary norms and KHI norms; Legal Comparison to compare the fundamental differences between the Pikukuh principle and the Faraidh principle (Islamic Inheritance Law), for example regarding the position of widows, adopted children, or inherited property; and finally, Synthesis to formulate the implications of these differences for legal pluralism in Indonesia and provide recommendations regarding legal recognition for the Baduy Dalam customary inheritance system (Cosmas, 2020). All of these stages aim to produce a deep understanding of the dual legal system operating in the Baduy Dalam community, especially in the context of inheritance distribution (Sugiyono, 2019).

RESULTS AND DISCUSSION

RESULT

Baduy Community Inheritance Provisions, Law No. 1 of 1974 in conjunction with Law. No. 16 of 2019 concerning Marriage

The provisions for inheritance distribution in the Outer Baduy and Inner Baduy indigenous communities, as described above, are generally based on equal inheritance distribution. The Outer Baduy adhere to the same principle of equality (Mardani, 2010). The Muslim Baduy adhere to the principle of *maslahat* (benefit sharing) in inheritance distribution, meaning that inheritance distribution is carried out through deliberation within the family, led by relatives and sometimes guided by local leaders (Mardani, 2011).

The creation of inheritance law in the Baduy community is certainly influenced by the family system and environmental conditions, as well as legal culture, which are the primary factors determining law within the Baduy community. For example, in the Inner Baduy, where land is not owned by individuals, the land as a whole is communally owned and cannot be divided individually. According to the compilation of Islamic law, it is stated in Article 183 that the distribution of inheritance can be achieved through peaceful means or through the agreement of all parties concerned with the inheritance left behind. This means not referring to the *faraidh* provisions that men and women receive a share (2:1) as explained in Article 176 of the KHI (Muisumut, 2024).

Inheritance According to Scholars and Islamic Law

Inheritance is an aspect in Islam that is considered important by Allah SWT has established its law in inheritance concerning the importance of family relationships, kinship, as well as the welfare of those who die and leave behind assets. In Islamic inheritance law, in the group of heirs regulated in the compilation of Islamic law regulated in Islamic law article 174, including (Dhuafa, 2025): 1. Half division: *Ashubul furudh* from the law of inheritance there are five, namely one from the male group and the other four women. The five *ashabu* 1. *furudh* are husband, daughter, granddaughter of male descendants, female siblings, and female half-siblings. 2. Quarter division: The heirs who are entitled to receive a quarter of the assets of the person left behind are husband and wife. 3. Distribution of one-eighth: The person who is entitled to receive one-eighth of the inheritance is the wife, if the husband has children or grandchildren, whether the children are born from the womb or from another wife as in the verse below: "If you have children, then the wives get one-eighth of the property you left after the fulfillment of the will you made has been paid your debts. 4. Distribution of two-thirds: The heirs who are entitled to receive two-thirds of the inheritance of the testator are four and all of them are women, they consist of 2 or more daughters (biological) children, 2 or more granddaughters of male children, 2 or more female siblings, 2 or more paternal siblings. 5. Distribution of one-third: The heirs who are entitled to receive one-third of the inheritance of the testator's property are only two, namely the mother and two siblings (male or female) of the same mother. 6. Distribution of one-sixth: The heirs entitled to one-sixth consist

of seven people. Namely: father, natural grandfather (father's father), mother, granddaughter, descendants of half-father's brother's son, natural grandmother, brother, and half-mother's daughter. According to scholars, it is explained that the distribution of inheritance adheres to the Quran and Hadith: 1). At-Tirkah according to Hanafiyah: something that is left behind by the simati from his assets which are free from any connection with other people's rights, due to debts or so on. 2). According to Syafi'iyah: everything that a human has during his life and is inherited after his death, both property and rights. 3). According to Hanabilah: the rights inherited from simati are called "turas" or inheritance. 4). According to Malikiyah, it is: a right that can be shared, which is given to the entitled person after the death of the person who previously had that right.

Analysis, Similarities and Differences in Inheritance Distribution According to the Baduy Traditional Community, Islamic Law and Law No. 1 of 1974 and No. 16 of 2019

Inheritance regulated according to Baduy community law is very contrary to the provisions stipulated in the Qur'an and hadith. Because the provisions in the Baduy community's legal inheritance are seen from a sociological approach, prioritizing kinship in the Maternal, Patronal, and Parental systems and as long as it does not conflict with state law, the distribution of inheritance should be maintained from a sociological object perspective. However, when viewed from the perspective of Islamic law, everything has been systematically arranged as regulated in the word of Allah SWT in verses 7, 11, 12, and 176 of Surah An-Nisa, and Al-Baqarah verse 180. In verse 12 of Surah An-Nisa, it is emphasized that it is directed to siblings if there are no children of the same father. In verse 11, the distribution of inheritance for children is with a share for sons twice that of daughters and in verse 176, there is no distribution of inheritance by heirs who do not have a lineage relationship. These verses regulate (Sandi, 2025): a. wills, b. ashabul furudh, c. ta'shib (heirs who receive an inheritance after the ashabul furudh portion is fulfilled) .

Article 35 paragraph (1) and paragraph (2) of Law No. 1 of 1974 stipulates that inheritance caused by inheritance in the form of death is divided 50:50 between the deceased husband and wife with the inheritance property being subject to change in the inheritance if it is not in accordance with the marriage agreement.

CONCLUSION

This study concludes that the concept of 'Bantenan', which existed during the Banten Sultanate, particularly as it related to policies or practices involving Sultan Jawara, represents a form of legal relationship or transaction that presents an ambiguous classification when confronted with modern legal frameworks, both Civil Law (Western) and Sharia Law (Islamic). From a Civil Law perspective, Bantenan—if interpreted as a legal act or agreement between parties (including the Sultanate)—can be classified as either a *verbintenis* (binding) or an *overeenkomst* (agreement). The specific classification depends on the substance of the Bantenan; for example, if it relates to the transfer of rights, it can be categorized as a sale or a grant (gift), with its validity dependent on the essential elements of the agreement (agreement, competence, specific object, and lawful cause). Meanwhile, from a Sharia Law perspective, Bantenan is more likely to be classified within the realm of *Fiqh Muamalah*. This practice can be analyzed as a form of *akad* (contract) that must fulfill the pillars and requirements for a valid contract (the presence of a subject, object, and *sighat* or consent). If Bantenan relates to public governance or the Sultan's policies, it falls into the category of *Siyasah Syar'iyah*, where the actions of Sultan Jawara are considered *tasharruf al-imam* (leader's policies) that must be based on the principle of *mashlahah* (public benefit). Thus, the Bantenan type is not singular, but rather a hybrid that may include elements of an exchange contract, *sadaqah* (non-commercial gift), or public regulation (*regeling*).

Comparative studies show substantial similarities in the principles of justice and legal certainty pursued, but significant terminological and philosophical differences exist. Civil law focuses on *wilsverklaring* (statement of will) and *openbare orde* (public order), while Sharia law focuses on compliance with sharia (permissible and forbidden) and the welfare of the community. The final conclusion emphasizes that to understand Bantenan as a whole, it is necessary to

acknowledge that it is an autonomous local legal system that reflects the legal wisdom of the Banten Sultanate, which cannot be completely reduced or equated with the categories existing in Civil Law or modern Sharia Law, even though it has relevant points of contact.

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