ABSTRACT

Titles of this research is "Comparative Studies of Inheritance Division in the Nuclear Family According to the Serawai Customary Law Systems and Islamic Law System in Bengkulu". The background of the problems in this thesis, that the majority of Serawai people are Muslim, but in terms of the division of inheritance they do not apply the provisions of the division of inheritance in Islam. This study aims to: (1) provide a description and explanation about the division of inheritance under Serawai law system with Islamic law system in the nuclear family in Bengkulu city (2) to determine the similarities and differences between both of them. Based on the type of research, this research was categorized as descriptive empirical. Results of research on the division of inheritance in Serawai Customary System and Islamic law system: System in division of inheritance of the nuclear family in the Serawai community based on: (1) the form of marriage, whether taking the form of Semendo terambil anak, berjujuran/beleket, or Semendo rajo-rajo/merdeko. Whereas in the Islamic law system, there is an existing provisions of each heir of the nuclear family, and the division of property on the beneficiary under the calculates system from the Origin Problem (Smallest Multiples Guild / KPK) and the comparison system. (2) comparative of the both, they both use the deliberation system, but in Serawai Customary system there is no provision of section of the heir while in Islamic Law System there is an existing provisions of the inheritance.

Keywords : Division of Inheritance, Nuclear Family, Serawai Customary Law and Islamic Law
A. INTRODUCTION

1. Background

The variety of inheritance law system in Indonesia is not only because of kinship diverse, but also due to the customs of the Indonesian people which are also known to be various. Therefore, it is not surprising that the customary inheritance law system is also diverse and has a style and properties of its own according to the kinship systems of the indigenous community. As in patrilineal legal community, in which the marriage is *jurur* or *beleket*, the wives should obey the husbands’ kinship law, then all marital properties are owned by the husbands as head of the household. Therefore, in patrilineal societies there is no separation of joint properties and possessions default. Because in the form of *jurur* marriage, after the marriage the wife follow her husband to his place and live forever in the domicile of her husband until her death. If there is a divorce, the wife will not get anything and cannot demand a share of common properties, or property defaults, or bring their children.¹

Likewise, in the community with matrilineal law, the marriage form is *semendo*, there is a separation of powers of the marital properties. Mastery of common inheritance is held by *mamako* chief beneficiary. Wife and husband only hold *gamingambauntiq* rights (right of use). As for a making a living, the husband and wife jointly work on it, while the innate property controlled respectively.²

While in the community with parental/bilateral law, it is highly relevant to the concepts taught in Al-Quran in which the marriage form is a form of free marriage, the position of husband and wife is parallel or equivalent. Therefore common

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¹Local Secretariat of Bengkulu City, *Adat Kota Bengkulu*, 2005, p. 117
properties \((gono-gini)\) are controlled jointly between husband and wife for the common good.

According to the writer's analysis, the kinship system of Serawai depends on \textit{semendo} used according to the agreement in a marriage, if \textit{semendo berjujuranor beleket} it means that Patrilineal kinship system should be applied. If they use \textit{semendoterambilanak}, then the kinship system used is Matrilineal, if \textit{semendo Rajo-rajo}, then the kinship system used is bilateral or parental. However, before carrying out the marriage, they embrace the bilateral system which means there is no limitation in arranging the family both from the father or the mother sides, but the bilateral nature are visible only in embracing system of marriage.

Their way of thinking about the division of inheritance rights, community of Serawai is likely to see forms of marriage first. Agreement before marriage affects the issue of inheritance. If the forms of marriage is \textit{semendo berjujuranor beleket}, in which as if the husband had bought the wife it means the wife has not possessed any right to become heirs of the parent's inheritance, because it is considered that the relationship of parents and children has been cut. If the husband dies and the wife has not remarried, the entire properties of the husband would go to his wife, but if the wife has remarried, the entire properties will fall into the hands of their children.

If they use \textit{semendoterambilanak} as if the wife had bought her husband. Then the husband has lost the right to inherit from their parents, even though he was as a man. Those who inherit the husband and wife possessions are the children.

If \textit{semendo} used is \textit{semendo-rajorajo}, in this case the husband or the wife still have the right of inheritance of the property of their parents. In case of divorce, the property
acquired is divided into two shares, those who can inherit the fortune is the children who do not lost inheritance rights. If they do not have children then the fortune is inherited by the parents of both parties.

Based on interviews with Harmen, on Wednesday, February 16th, 2017 states: there is a tendency the division of inheritance was divided equally among heirs, both male and female. Equal distribution is not necessarily exactly the same, because the inheritance is usually not counted by money. The inheritance is usually divided by plot of land in which the size is not necessarily the same, but usually the size is not too much different. The division of inheritance is usually provided with the instructions from parents prior to his death and agreed upon by the heirs, but the implementation is done after they died.

In Islam, Qur'an governing this inheritance, among others: Surah An-Nisa 'verse 7, which means (more or less):

"For men there is the right piece of property left by the father's mother and relatives, and for women there is a right section (also) on the possessions of the mother's father and relatives, either more or less according to the part that has been set".

And Surah An-Nisa 'verse 11 which means (more or less):

"Allah instructs you concerning (the division of inheritance) for your children: is for the male, what is equal to the share of two females. But if there are (only) daughters, two or more, for them is two thirds of one’s estate, if there is only one, for her is half. And for the two mother-father, for each one-sixth of the inheritance, if he left children, if the he did not have children and the parent inherited by the mother-father, then the mother can be a third, if the deceased left several brothers, then his mother gets one-sixth. (Divisions mentioned above will be met after he made or paid after debts ".

Surah An-Nisa 'paragraph 7 above explains that a person entitled to a legacy or an inheritance from their parents or

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1Interview with Harmen as one member of Serawai tribe in Bengkulu City, dated on February 16th, 2017
relatives who have died, whether he is male or female. Relatives in question here are relatives or family in the category heirs and there are no obstacles (circumstances which led to an heir cannot obtain the inheritance, namely: killer, different religions and slavery. In addition, there are also so-called hijab that is blocking a particular person becomes entitled to receive a share of the estate or to be reduced admission for him, because of the existence of another heir) to get the inheritance.\(^4\) The second paragraph detailing the specific part of the property that is the right heir, and under what conditions he get that particular part.

From the paragraph above is very clear to us that the reference in the division of the estate is for someone dies and leaves a number of property. Boys’ part is two girls section.

If the deceased left only a daughter two or more persons, they shall have two-thirds of the legacy. If the girls themselves, then the half share of the estate. For the parents who died is also given respectively each mother and father gets one-sixth of the legacy if the deceased left children. If they do not have children, the father takes the rest of the property, while the mother has a third of the property, or a sixth, if she is with the sister of the deceased. Thus there should be no more doubt about the parts heir in Islam, because the original source is the legal basis directly from the Qur'an.\(^5\)

A boy when he is alone, he receives the entire property. A female child when she is alone, she gains half the treasure. And when the girls are in number three or more, they receive two-thirds.

Based on the problems above, the authors wanted to examine more deeply about the "Distribution of


Inheritance According to Serawai Customary Law System and Islamic Law System toward the Nuclear Family in Bengkulu City”.

1. Identification of Problems

Based on the explanation above, it described that the Islamic Shari'a division of inheritance is set explicitly in the Qur'an, including parts of the nuclear family. On the other hand, from the writer's observation, the division of inheritance of Serawai society, especially the inheritance of children is not based on the rules contained in the Qur'an. Therefore, it may be possible formulation of the problem as follows:

- How was distribution of inheritance according to serawai customary law system and Islamic law system toward the nuclear family in Bengkulu city?

B. Research Methodology

This research used purposive method, which is the informant is determined by the researchers based on logical and scientific considerations such as experience, job title, education, employment, and so forth.² So, here informants have been intentionally criteria set in advance and is considered to know and be able to provide information and knowledge that they know based on the views and experiences of their lives on the issues examined. The research was descriptive empirical categorized. Descriptive research is research that aims to depict or describe a case or a particular problem in the area and at a particular time. According Soerjono Soekanto, research is descriptive that is intended to provide the data as thoroughly as possible about the people, circumstances or phenomena of others, the intention is mainly to reinforce the hypotheses, in order to assist in strengthening the old theories, or within the framework of preparing the new theory.⁷ The purpose of

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descriptive research is to gain an overview of a certain time (the picture in a moment) or the development of something.\(^8\)

Thus this study provided an overview of how "Heritage Division in the Family Nucleus (Nuclear Family) According to the Customary Law Systems of Serawai with the system of Islamic Law in Bengkulucity."

C. Results and Discussion

1. Inheritance Customary

The word "custom" is derived from an Arabic word which mean habits. The law stems from human beings who pose a "personal habits" later imitated by other people because it is considered to a propriety value, then gradually becomes "custom" that should apply to all members of society, so that it becomes "Customary Law".\(^9\)

Thus, indigenous customary law is an acceptable law and should be implemented in the relevant community.

2. Definitions Customary Inheritance

According to the opinion of Soepomo\(^10\), the customary law of inheritance is the rules that govern the forwarding process and bestows ownership of goods possessions and goods that are not tangible objects (immaterielegoederen) of a human force (generatie) to its descendants.

Thus, the understanding of customary inheritance law is a set of rules that govern the forwarding and transferring the inheritance of the heir to his heir, whether or not it has in relation to property and rights objects.

3. Customary Inheritance System

In Indonesia were found three kinds of inheritance system in customary law as follows:

a. Individual Inheritance System

The characteristic of the individual's inheritance system is that treasures can be distributed among the

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\(^8\) Ibid, Hlm. 11
\(^9\) Suriyaman, *Hukum Adat Dahulu, Kini dan akan Datang*, Publisher Prenandamedia Group, Jakarta, 2014, p. 1
heirs as well as on bilateral society (in Javanese, Batak, Sulawesi, and others).\textsuperscript{11}

b. Collective Inheritance System

The characteristic of this collective inheritance system, the legacy inherited by a set of heirs together a kind of civilized law, where such property as inheritance should not be distributed among the owners of the heirs referred to and may only be indivisible just use them to share it (only have use rights only) such as in the matrilineal society (Minangkabau).\textsuperscript{12}

c. Mayorat Inheritance System

The characteristic of this mayorat inheritance system is that the legacy will be inheritable for all or most (number of property subject of a family) by a child only, as well as in Bali where there are mayorat rights for oldest boys and in Land Samendo (South Sumatra, Bengkulu, Lampung) where there are mayorat rights to the eldest daughter.\textsuperscript{13}

4. Definition of Family Nucleus (Nuclear Family)

In the Sociology dictionary mentioned that the Nuclear Family is a family consisting of husband, wife and their children.\textsuperscript{14} Thus, according to the Dictionary of Sociology nuclear family is a core family consisting of a husband, wife and their children.

According to Andry Harijanto Hartiman in the writing "Tunggu Terbang Customs in Semendo Society of Bengkulu" The nuclear family is composed of a father and biological mother and biological children.\textsuperscript{15}

The term of nuclear family (nuclear family) in the Compilation Custom of Bengkulu City called by the term

\textsuperscript{11} Tolib Setiady, \textit{Intisari Hukum Adat Indonesia dalam Kajian Kepustakaan}, Alfabeta Publisher Bandung 2013, p. 285.

\textsuperscript{12} Ibid, p.286

\textsuperscript{13} Hazairin, \textit{Hukum Kewarisan Bilateral menurut al-Qur’an dan Hadits}, Publisher : Tinta Mas, Jakarta, 1982, p. 15


\textsuperscript{15} Sarwit Sarwono, Op. cit., p. 128
“nuclear family” that is the smallest community group consisting of father, mother and children this small family.\textsuperscript{16} 

5. Inheritance division of Family Nucleus (Nuclear Family) According to the Serawai Customary Law Systems of Bengkulu City 

To obtain information about the terms of the division of inheritance extended family or family nucleus (nuclear family) under the Customary Law of Serawai the authors search for material directly to the community leaders Serawai ethnic through interviewing them to get accurate information, because of the author did not find the provisions of the division of inheritance in the extended family mentioned in the books of customary in the city of Bengkulu though it discussion of Serawai.

According to Harmen\textsuperscript{17} one of the ethnic leaders of Serawai of Bengkulu city, the division of inheritance provisions of the nuclear family in the community Serawai was by consensus. Harmen pointed out in his own family in terms of the division of inheritance to the family nucleus. They are seven brothers (7) by four (4) men and three (3) women, Harmen is the oldest son while the oldest child was his sister that women, when their were small, Harmen already set his sister about inheritance of his parents, because he is the oldest children that has an obligation to arrange his younger brothers and his oldest sister, by making a deal after deliberation, when later in the future between the brothers had become civil servants (Civil Servant) then it should not receive inheritance from parents, Alhamdulillah 4 (four) brothers including Harmen become civil servants, according to the agreement inheritance they do not get the

\textsuperscript{16}Secretariat of the city of Bengkulu, op., Cit., P. 135.  
\textsuperscript{17}Interview with Harmen as community leaders in the village of Serawai at Sidomulo Bengkulu city, dated February 16, 2017 At 20:15 AM
inheritance, but it was managed by his brother that three (3) others who are not civil servants. Inheritance left by their parents are so many, including the land in some places, oil palm plantations, rented house, a residential house in the hamlet, and have a lot livestock. The inheritance is managed by his three brother (3) persons who are not civil servants. Under an agreement the 3 (three) brothers are likely to sell livestock for school purposes nephews or children of his brother who are not civil servants, but the immovable property may not be sold. If the children of his brother who are not civil servants have already finished college and have a job, then the inheritance that the immovable property that based on the agreement may be sold, there is some land sold and the proceeds from the sale are divided more to his brother who are not civil servants. Until now the estate like gardens, the boarding house and the house in the village is still managed and cared for by his brother who is not civil servants. However if there is such agreement to resell the house then they could proceed that.

Based on the analysis of hereditary law of Serawai Tribe on Harmen family then the writer concluded that the system of hereditary in nuclear family is based on *musyawarah* (discussion). This system seemed to be appropriate and was in line with Islamic values that concerns on *musyawarah* to solve problems among society.

6. Hereditary system for Nuclear Family Based on Islamic Law

In Islam, Al-Qur’an states clearly the regulation of hereditary in an-Nisa’.

Surah an-Nisa’ verse 7 of Al-Qur’an states the hereditary law as follow:

“For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave, be it little or much – an obligatory share”.

And in verse 11 that states:

*Allah instructs you concerning your children [i.e., their portions of inheritance]: for the male, what is equal to the share of two females? But if there are [only]
daughters, two or more, for them is two thirds of one's estate. And if there is only one, for her is half. And for one's parents, to each one of them is a sixth of his estate if he left children. But if he had no children and the parents [alone] inherit from him, then for his mother is one third. And if he had brothers [and/or sisters], for his mother is a sixth, after any bequest he [may have] made or debt. Your parents or your children – you know not which of them are nearest to you in benefit. [These shares are] an obligation [imposed] by Allah. Indeed, Allah is ever Knowing and Wise.

Thus, Al-Qur’an is the main guideline in hereditary system. It is also found that Al-Qur’an states clearly and specifically the whole details of hereditary system compared to other regulations. It is due to the hereditary is one of legal ownership and right in Islam. Besides, wealth is the foundation of livelihood for an individual or group of people in society.

Based on Surah an-Nisa’ in Al-Qur’an, it is suggested the hereditary distribution consider the closest member in nuclear family (spouses and children), and then relatives (blood relation), and eventually it is possible if the heir is generous enough to give the fortune away to other Muslims. According to Yusmita\(^{18}\), a lecturer in Faculty of Syariah of IAIN Bengkulu, “Muslims are obligated to follow the hereditary law stated in Al-Qur’an even though they have their Adat Law regarding to hereditary (which is different from Islamic Law), the principle is based on the fact that Al-Qur’an states every regulation concerning to hereditary in detail and specific and this never occurs in other issues, thus it shows the importance of hereditary law in Al-Qur’an”. This opinion was strengthened by other tafsir expert from IAIN, Rohimin\(^{19}\), that stated “the principle of hereditary law stated in Surah an-Nisa’ verse 13 meansit (Islamic hereditary law) is the obligatory share, which means that Muslims are obligated to follow the regulation stated by Allah in Al-Qur’an.

D. Closing
1. Conclusion
Hereditary system of nuclear family in Adat Law of Serawai is based on matrimony principle whether it is semendo beleket,  

\(^{18}\)Interview with lecturer of Faculty of Syariah of IAIN Bengkulu on Saturday, December 17, 2016 at 8 pm.

\(^{19}\)Interview with Rohimin on Monday December 19, 2016 at 8 pm.
terambil anak, or semendo Rajo-rajo. If the matrimony adopts semendo beleket or berjujuran where the bride demands big amount of dowry, then she would not inherit any fortune after his husband passed away, but she could still get some legacy under her husband’s consideration. The second is matrimony based on terambil anak where bridegroom agrees to be part of bride’s family. In this case, all the cost of wedding ceremony is charged upon bride’s family. In case of divorce in this kind of matrimony, then the husband should walk out of marriage and leave any wealth earned along the marriage. Thus, the husband would not inherit any fortune after his wife passed away but he could still get some legacy under his wife’s consideration. The third is the matrimony based on semendo Rajo-rajo where both parties, husband and wife, have the same right upon the heritage wealth and children will inherit the legacy based on their necessities.

However, the system of hereditary for nuclear family in Serawai tribe is based on musyawarah (discussion) of heirs. While Islamic law regarding to hereditary system is stated clearly and specifically in Surah an-Nisa’ verse 7-14 of Al-Qur’an which is divided based on the load and responsibility. Male gets equal share of two females due to the bigger responsibility charged on him.

3. Suggestion

Though the hereditary system for nuclear family in Serawai tribe is different compared to Islamic Law of hereditary, writer does not think that as an issue. In general, Serawai people have followed the regulation stated in Surah an-Nisa’ verse 7 regarding to heredity distribution, but specifically they still do not follow the regulation stated in Surah an-Nisa’ verse 11. Writer believes that it will be perfect and better if people could follow both regulations regarding hereditary law in Surah an-Nisa verse 7 and 11.

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