

LEGAL CULTURE HYBRIDITY OF THE SOUTH KALIMANTAN MALAY-CHINESE IN THE DIVISION OF INHERITANCE

¹Firqah Annajiyah Mansyuroh, ²Ahmadi Hasan, ³Gusti Muzainah

Universitas Islam Negeri Antasari, Banjarmasin

e-mail: ¹firqahannajiyahmansyuroh@uin-antasari.ac.id, ²ahmadihasan58@yahoo.com,
³drmuzainah232@gmail.com

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Abstract

Cultural negotiation is essential because the process always involves conflict and differences. Malay-Chinese is one of the minority groups in South Kalimantan. This study aims to find out how Malay-Chinese culture negotiates differences in the legal culture of inheritance distribution between Chinese customary law, Malay custom, and Islamic law. This research is empirical legal research conducted under an interdisciplinary umbrella. This type of research is field research or research, empirical law. In this study, the author uses a legal sociology approach or practical juridical approach, which is an approach that looks at the legal reality in society, and a legal anthropological approach. The research findings show that Malay-Chinese negotiates differences in Islamic values and religion by choosing or combining the two cultural values. The negotiation process is carried out by applying cultural values as they are ethnic and adapt to the cultural values of Malay Islam. This cultural negotiation process then builds a hybrid Malay-Chinese identity.

Keywords: Legal Culture, Hybridity, Malay-Chinese, Inheritance Customary Law

Abstrak:

Negosiasi budaya sangat penting karena prosesnya selalu melibatkan konflik dan perbedaan. Melayu-Tionghoa merupakan salah satu kelompok minoritas di Kalimantan Selatan. Penelitian ini bertujuan untuk mengetahui bagaimana budaya Melayu-Tionghoa menegosiasikan perbedaan budaya hukum pembagian waris antara hukum adat Tionghoa, adat Melayu, dan hukum Islam. Penelitian ini merupakan penelitian hukum empiris yang dilakukan dalam payung interdisipliner. Jenis penelitian ini adalah penelitian lapangan atau penelitian hukum empiris. Dalam penelitian ini, penulis menggunakan pendekatan sosiologi hukum atau pendekatan yuridis praktis, yaitu pendekatan yang melihat realitas hukum di masyarakat, dan pendekatan antropologi hukum. Hasil penelitian menunjukkan bahwa Melayu-Tionghoa menegosiasikan perbedaan nilai-nilai Islam dan agama dengan memilih atau memadukan kedua nilai budaya tersebut. Proses negosiasi dilakukan dengan menerapkan nilai-nilai budaya sebagaimana adanya dan menyesuaikan dengan nilai-nilai budaya Islam Melayu. Proses negosiasi kultural ini kemudian membangun identitas Melayu-Tionghoa yang hibrid.

Kata Kunci: Budaya Hukum, Hibriditas, Melayu-Tionghoa, Hukum Adat Pewarisan

Introduction

The most crucial development in hominid evolution is the development of culture, which distinguishes humans from other creatures. The emergence of civilization is related to the growth of the brain and the development of human thinking abilities. Culture is developed by developing a unique pattern of human communication, symbolic communication. All creatures communicate, that is, transmit certain information behaviorally.¹

Legal activity is a form of culture in human patterned actions.² This form is called the social system. The social system consists of human activities that interact, make contact, and associate with other humans according to specific patterns based on customs, values, and behavior. This legal culture is concrete, occurs in everyday life, and can be observed and documented.

The contact of the Malays of South Kalimantan with the Peranakan Chinese of South Kalimantan has been going on for a very long time, even before the Unitary State of the Republic of Indonesia was independent and established. For centuries, in their interactions, there has been a cross-breeding of cultures, including legal culture in society; there have been elements of mixed legal culture. Past and present forms of legal culture do not move in the process of uniformity and standardization. One of them is how the South Kalimantan Chinese Peranakan people share their heritage.

The Chinese Peranakan community is part of the life of the nation and state as a whole, one of the many ethnicities that are the features of the archipelago's social identity. Recently, many Chinese people have married Malays and converted to Islam. Even among Muslim Chinese, there are already institutions and foundations. The history of Malay and Chinese development in South Kalimantan is closely related. For example, during the Islamic kingdom of Banjar, the daughter of a Chinese immigrant with the title of Captain Frog, namely Mr. Go Hwat Nio, was married to the great scholar of South Kalimantan, Sheikh Muhammad Arsyad Al-Banjari, and sent down many descendants who also became great scholars in South Kalimantan.³

Based on the provisions as regulated in Article 163 of the Indische Staatsregeling, which divides the population into three groups, it is pretty clear that Islamic inheritance law does not look at ethnicity, taste, or nationality but determines that for Indonesians who are Muslim, Islamic inheritance law applies to them. For Chinese descendants, the legal provisions based on these regulations, namely civil inheritance law, apply to him. This shows that Indonesian citizens of Chinese Muslim descent have a choice of law regarding inheritance. Many studies state that the Chinese community in Indonesia uses customary inheritance law that has been

¹ Beni Ahmad Saebani and Encup Supriatna, *Antropologi Hukum* (Bandung: Pustaka Setia, 2012). p. 97.

² Ibid. p. 101.

³ Kurnia Widiastuti and Anna Oktaviana, "Bentuk Dan Makna Rumah Tinggal Etnis Tionghoa Di Banjarmasin," *Info Teknik* 16, no. 2 (2015): 1689–99, doi:10.1017/CBO9781107415324.004. p. 244

passed down from generation to generation among the Chinese community and does not use civil inheritance law.⁴

Chinese society is a patrilineal society consisting of clans or tribes that are not geometrically and territorially bound. The Chinese community still adheres to their melting tradition and is more likely to use ancestral customary law in the distribution of inheritance. In the estate division, more emphasis is placed on the distribution of sons than daughters. The presence of traditional ashes or deceased parents must be cared for by boys. This is what implements customary inheritance law carried out continuously for generations. The existence of several religions in the Peranakan family indicates that inheritance can occur between those with different beliefs, for example, heirs who are Muslim while heirs are non-Muslim or vice versa, heirs are Muslim while heirs are non-Muslims. Although in the distribution of customary inheritance law, there is no problem with the religion of the heir or heir, Islam has essential principles and should be considered for the Chinese Peranakan community who are Muslim.⁵

Where the condition of the Chinese Peranakans is related to the Islamic inheritance system, which has its inheritance division system and has also blended in with the indigenous Indonesian ethnic groups, it is essential to feel that it is explored and developed, especially in research on hybrid inheritance systems, which is still lacking. Religion, the community's social identity, clearly influences the distribution of inheritance, including among the Chinese Peranakans.

Chinese Peranakan, both Muslim and non-Muslim, have lived in South Kalimantan for a long time; their grandparents were born, raised, and died in South Kalimantan. South Kalimantan is heterogeneous in terms of population, where the tribes who live here interact with each other, giving rise to dynamics that can influence the customary inheritance law of the community, especially the Chinese Peranakans, where the Banjar people who live in South Kalimantan also have their inheritance laws, cultural interactions. The law that blends into a hybrid in the Peranakan Chinese community of South Kalimantan is interesting to study further.

In connection with the descriptions above, the author would like to conduct research under the title 'Legal Culture Hybridity of the South Kalimantan Malay-Chinese in the Division of Inheritance.' Another author has never written the title that the author took. In this study, the author will focus on the hybridization of legal culture in the inheritance system of the Chinese Peranakan society and how the hybridization of legal culture can occur.

Method

This type of research is field research (field research) or empirical law research. In this study, the author uses a legal sociology approach or practical juridical approach, which is an approach that looks at the legal reality in society, and

⁴ Sriono, "Sistem Pewarisan Pada Warga Negara Indonesia Keturunan Tionghoa (Cina) Muslim," *Jurnal Ilmiah Advokasi* 05, no. 02 (2017): 110–22. p. 112.

⁵ Yuliana Ira Ekawaty, M. Arfin Hamid, and Muhammad Basri, "Pembagian Harta Warisan Muslim Tionghoa: Studi Komparatif," *Amanna Gappa* 28, no. 1 (2020): 21–30. p. 23.

a legal anthropological approach.⁶ The research location is in the city of South Kalimantan Province. The research subjects are respondents, namely the Chinese Peranakan community who are Muslim, domiciled in South Kalimantan, actively interact with the Malay race, are adults, and have done or witnessed the distribution of inheritance, as well as informants, namely people who know the norms of traditional Chinese estate and or Islamic heritage. Based on the research needs that the author will do, the data collection technique that the author will use interviews. The analysis processing technique in this study uses qualitative analysis.

The subject of empirical legal research is legal behavior. Legal behavior, namely the actual behavior of individuals or communities by what is considered appropriate by the applicable legal rules. The research subjects, in this case, were the Muslim Peranakan community, Muslim Peranakan community leaders in South Kalimantan, and Muslim Peranakan religious leaders in South Kalimantan as informants.

Discussion

The implementation of inheritance law for the Chinese Peranakan community in South Kalimantan, who have embraced Islam, cannot be separated from the habits of the people themselves in the distribution of inheritance. Given that the existence of the Peranakans in South Kalimantan existed long before the state of Indonesia, their custom has become a habit that many people accept. This is similar to the inheritance law in Indonesia that inheritance will only occur if someone dies. In Western civil law, it is regulated regarding estate, which applies to the Chinese Peranakan group. Still, if there is an inheritance event, the South Kalimantan Chinese Peranakan community does not necessarily comply with Western civil law in dividing the inheritance between their family.

This is by the results of interviews that the author obtained from Malay-Chinese Peranakan respondents in South Kalimantan, who tend to share inheritance using customary law, where they can distribute the estate to heirs regardless of religious differences that exist because of religious pluralism that exists in each family. . However, they are also not subject to traditional Chinese full-blooded laws, which do not give girls inheritance rights. The Malay-Chinese Peranakan society has given inheritance rights to girls but not more than boys.

From the decisions mentioned above, it can be understood that there has been a shift in views and socio-culture related to patrilineal customary inheritance law norms, which initially only recognized boys as heirs. To put it simply, the distribution of inheritance to daughters and even the non-distributing of heritage means that many Malay-Chinese South Kalimantan families already have a shift in their views on the customary norms of the Totok ancestors. The issue of inheritance is a personal issue that is highly dependent on conditions and circumstances on a

⁶ Suteki and Galang Taufani, *Metodologi Penelitian Hukum (Filsafat, Teori Dan Praktik)* (Depok: Raja Grafindo Persada, 2018).

case-by-case basis (the law is sensitive and depends on the awareness and legal culture of the legal subject itself). Moreover, customary inheritance law is an unwritten, not rigid, and dynamic living law.⁷

The shift in the legal norms of patrilineal inheritance occurs with recognizing the rights and position of girls and widows in certain areas or groups. The patrilineal inheritance system should only recognize boys as heirs. This shift arises because of changes in socio-cultural values and views caused by the influence of religion, modernization, urbanization, migration, and the increasing role of women in building family welfare. The shift in the norms of patrilineal customary inheritance law is to the characteristics of customary law itself, originating from community beliefs and habits, dynamic and unwritten, by prioritizing principles such as togetherness, harmony, and justice.⁸

For more details, it can be seen in the table Details of the interview results of the respondents below:

Table. 1
Elements of Respondents' Interview

Respondent	Customary Laws That Have Mixed Malay-Chinese	Islamic Inheritance Law	Religion Is Not a Barrier	Inheritance	
				Shared	Not Shared
I	√	-	√	-	√
II	√	-	√	-	√
III	√	-	√	-	√
IV	√	-	√	-	√
V	√	-	√	√	-
VI	√	-	√		√
VII	√	-	√	√	-
VIII	√	-	√	-	√
IX	√	-	√	√	-
X	-	√	-	√	-
XI	-	√	√	√	-
XII	√	-	√	√	-
XIII	√	-	√	√	-
XIV	√	-	√	√	-

From Table. 1 Details of the Interview Results Respondents above can be classified as follows:

⁷ Sonny D. Judiasih et al., "Pergeseran Norma Hukum Waris Pada Masyarakat Adat Patrilineal," *RechtIdee* 16, no. 1 (2021): 65–87.

⁸ Ibid. p. 70

1. Respondents I, II, III, IV, VI, and VIII did not share property in the form of buildings based on the mutual agreement of each heir. Many mementos have been left there, and all heirs who want to use or use to reminisce are welcome.
2. Respondents X and XI's assets have been distributed so that each heir gets a share based on the provisions of Islamic law.
3. Respondents V, VII, IX, XII, XIII, and XIV's assets have been divided equally, based on the results of an agreement or deliberation among the heirs regardless of the religion they believe in. So that religious differences do not become a barrier to receiving the inheritance.

The main goal in the Malay community of South Kalimantan and the Chinese Peranakan is the same, namely so that the heirs and other inheritors do not get into a dispute in the form of 'barabut' (fighting over) the inheritance, which according to the belief that the existence of such a dispute will cause the heir to be uneasy in the grave. Therefore, the obedience of the heirs and other inheritors is based on a sense of observation and respect for parents (the principle of togetherness) in the context of their safety through the stages of life in the grave. Thus, the actions of the heirs and other heirs who are not based on what the heir wills are believed to have a double impact on spiritual mentality, namely: the heir (deceased) becomes obstructed or disturbed or is not peaceful in living life in his grave; and other heirs and heirs become restless or relaxed in their lives, which usually will always feel visited by their parents (deceased) in dreams.

Furthermore, it was found that the hybridization of Islamic inheritance law and customary inheritance law applied by the respondents did not use Dutch colonial law (a law that constantly looks for contradictions and differences between Islamic inheritance law and inheritance law). We see a meeting point between the two Malay-Islamic cultures of South Kalimantan and the Chinese Peranakans, namely that the property of the heirs themselves is not the absolute property of each heir according to their respective principles but is divided among all heirs according to their terms. Furthermore, all respondents said disputing inheritance issues in court is taboo even though they have a right to it and know their rights.

This is also in line with the 'Badamai' Urang Banjar custom, which resolves disputes through amicable deliberation without going to court.⁹ The respondents said that the family's good name is also an inheritance (in customary law, inheritance is not only material) that must be preserved and maintained. According to the respondents, if they have a dispute or claim inheritance rights in court, they will be considered greedy people and not affectionate between families. This will tarnish their family's reputation, and their business will not run smoothly. The majority of South Kalimantan Chinese Peranakan have jobs in the business sector. If there is news of someone having an inheritance dispute, their business partners will consider it one of the wrong values and can cut off the relationship of partners in the business.¹⁰

⁹ Ahmadi Hasan, "Penyelesaian Sengketa Hukum Berdasarkan Adat Badamai Pada Masyarakat Banjar Dalam Kerangka Sistem Hukum Nasional" (Universitas Islam Indonesia, 2007).

¹⁰ "Dengan keluarga saja sudah terlihat sifat tamak bagaimana dengan rekan bisnis," ucap salah seorang responden.

In the Peranakan Chinese Muslim community in South Kalimantan, if they have an inheritance dispute, they generally ask their elder relatives for help first. They will ask the oldest person in the family as the social mediator in their argument. There are two inheritance distribution practices: the heirs carry out peacefully if there is no conflict. In contrast, if there is a dispute between the heirs regarding the position of the heirs and the amount of each heir's share, the distribution will be resolved by the court. However, in the Malay-Chinese Muslim community, in the distribution of inheritance, whether there is no dispute or a dispute, everything is resolved by non-litigation, namely equality between the parties.

From these things, it is clear that there is hybridity of legal culture in the distribution of inheritance in the Peranakan Chinese, South Kalimantan, namely the hybridity between the legal culture of the Malay and Peranakan people. The hybridization process is defined as "how forms become separated from existing practices and recombine with the new forms in new practices"¹¹ From this understanding, hybridization is a process where forms are fused from the old to the new format. Hybridization emphasizes the fusion of superior elements that can come from the past and form something unique and special. In legal culture, this hybridity refers to the mixing of Islamic Malay legal culture and the Peranakans in South Kalimantan.

There are two varieties of hybridity, namely old hybridity and new hybridity. The old hybridity is the existence of cultural forms and institutions which are cross-cultural and trans-local. The process of this hybridity is found in trade, conquest, and cultural contacts in the history of past human civilizations. For example, in the syncretism of religious teachings and the architecture of places of worship. Meanwhile, new hybridities are new combinations of culture and institutional forms. The dynamics are found in migration, trade, communication and information technology, multiculturalism, and globalization, including from a legal perspective.¹²

There are several ways of looking at the practice of cultural hybridity. First, based on the space/location of cultural traditions; second, the people who play a role or cultural agents involved in it; and third, historicity. The location of cultural practices in South Kalimantan, for example, can be seen in the communication activities carried out by the mixed descendants of Malay-Chinese in South Kalimantan. According to Hymes in Kuswano, communication activities explain three things: communicative situations, communication events or the whole set of components intact, and the existence of communicative acts.¹³ In a society of mixed Malay-Chinese descent in South Kalimantan, communicative situations occur naturally, and there is no compulsion. They identified communicative events while gathering with family and neighbors while in the environment. Participants consisted

¹¹ J N Pieterse, *Globalization and Culture: Global Melange* (Maryland: Rowman and Littlefield Publishers, Inc., 2009). p. 70.

¹² Bastian Yunariono, "Identitas Hibriditas Masjid Tionghoa Muslim Di Indonesia," *BioKultur* VIII, no. 2 (2019): 35–57.

¹³ Engkus Kuswano, *Etnografi Komunikasi: Suatu Pengantar Dan Contoh Penelitiannya* (Bandung: Widya Padjajaran, 2008).

of nuclear family members, such as father, mother, and siblings, then extended to neighbors who were native Malays. Discussions about various things flow according to communication needs. Non-specific conversation topics include saying hello, talking about everyday life, etc.

Gathering with friends often occurs because there must be social interaction in the community. As in the process of visiting, it is an act of courtesy to enter someone's house by greeting first or kissing and shaking hands with the host. Then there are cultural actions when joking with close friends or other family members, giving statements, asking questions, giving orders, gossiping, and so on. The legal culture of mixed Malay-Chinese descent upholds ethics and norms of decency.

Arguably, marriages between ethnic Malays and Peranakan Chinese in South Kalimantan further strengthen the hybridization of inheritance law. Social interactions in the Chinese and Malay Peranakan communities of South Kalimantan are supported by internal and external factors from both parties. The internal factors of ethnic Malay that support interaction are the attitude of the open Malays and the teachings of Islam, which teach good relations between human beings (*habluminannas*). The Peranakan community interacts to fulfill their needs and interests and strengthens their identity as part of Indonesian citizens. External factors that support social interaction between the two ethnic groups are settlements that have blended in, especially in the Banjarmasin City area. In addition to payments, religious equality, education, and livelihoods or professions strengthen the interactions between the two ethnic groups.

But that does not mean that social interaction is free of obstacles. Social interaction between the Chinese and Malay Peranakan communities of South Kalimantan has inhibiting factors from Chinese and ethnic Malays. The Malay ethnic factors that hinder social interaction are, among others, because there is still a feeling of being higher in rank than the ethnic majority, the religious teachings they follow, a lack of tolerance and solidarity, and social jealousy. The Chinese Peranakan factor that hinders social interaction is that they still close themselves off to other ethnicities because of their attitude as an ethnic minority. External factors from the Chinese and Malay of South Kalimantan that hinder social interaction are separate settlements, competition for jobs, buying and selling transactions, and educational achievements.

These barriers are also included as the reason for hybridity to occur. Chinese Malay South Kalimantan negotiated the differences in the cultural values of inheritance law between the Chinese and Malays by choosing or combining the two cultural values. The negotiation process is carried out by adopting the cultural values of Chinese inheritance law as their ethnic culture and adapting to the cultural values of Islamic inheritance law from the Malay community of South Kalimantan. The process of negotiating this legal culture then builds a Malay-Chinese hybrid identity. In short, their hybridity is used to survive and to fight the dominant Malay Islamic values.

Flexibility in the South Kalimantan Chinese Peranakans is evident in the form of the Malay language used, the Malay literary genre, the philosophy of almost the same values, and the connection with the people in which they live. The security factor tends to cause them to be inclusive and protect themselves from the violence of power from time to time. Until now, Chinese Peranakans carry out cross-cultural

practices related to birth, marriage, and death rituals, including the distribution of inheritance. Many of them embrace the divine religion while still carrying out traditional ceremonies. Hybrid practices occur because they live in a multicultural society and nation.

Conclusion

From this explanation, the hybrid identity of the legal culture of inheritance distribution by the Chinese-Malay in South Kalimantan is not something new. The distribution of inheritance without fuss and disputes reflects the harmonious relationship between Islam and China and is expected to build better family relations between the Malay people of South Kalimantan and the Chinese. Exploring and merging the same values into one legal culture is a harmonious middle way.

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