

National Inheritance Law: Looking at the Weaknesses and Challenges of Its Implementation in Indonesia

A.Sukmawati Assaad¹, Baso Hasyim², Yusmita³

^{1,2}Institut Agama Islam Negeri (IAIN) Palopo, Indonesia

³Universitas Islam Negeri Fatmawati Sukarno Bengkulu, Indonesia

Correspondence: hj.a.sukma@iainpalopo.ac.id

Abstract. This article describes the inheritance law in Indonesia, namely customary inheritance law, Islamic inheritance law and Western civil inheritance law (BW). The three inheritance law systems have their respective adherents from the original community, descendants of both Muslim and non-Muslim. Thus, there is a pluralism of inheritance law in Indonesia; this is not the case regarding marriage which already has a legal umbrella, namely Law Number 1 of 1974 which is the result of the achievements of Indonesian Islamic jurists during the New Order era which was able to unite the Indonesian people in the form of legal unification. The unification and codification of inheritance laws that apply nationally would require a long process to achieve the goals and ideals of the Indonesian nation. The purpose of writing this article is to find out: 1. what is the form of the National Inheritance Law in Indonesia? 2. What are the results of the SWOT analysis of the National Inheritance Law in Indonesia? This study uses descriptive research methods, i.e. by exploring or photographing social situations that were studied thoroughly, broadly, and deeply. This article concludes that the national inheritance law in Indonesia is constitutionally enforceable. In addition, there is a need for the role of religion in contributing to the development of the inheritance law. However, it takes a great effort by the parties involved to socialize the law because there are still many inheritance disputes that occur in the community because they leave the legal institutions, both religious courts and general courts

Keywords: Law, Inheritance, SWOT Method

Introduction

The Government of Indonesia through the 1973 GBHN formulated its legal politics towards verification and codification of law in certain

legal fields whose contents pay attention to legal awareness in the community.¹

The enactment of civil law in Indonesia to date is pluralistic; more than two laws are applied to each community group, namely for the indigenous Indonesian group, the European group and the East Asian group residing in Indonesia. The pluralism of civil law and its history was due to the legal politics of the Dutch East Indies government at that time which enforced the provisions of Article 131 Jo. 163 1S (*Indische Staats Regeling* S.1855-2). Based on this provision, the enactment of civil law for native Indonesians is customary law.² Until now, the legal politics of the Dutch East Indies government is still valid even though in some parts of civil law it has been replaced with Indonesian national law.

The current application of inheritance law is still influenced by the legal politics of the Dutch East Indies government (article 131 Jo 163 1S), namely for the native Indonesian group customary law applies, for the European group Bw applies and for the Foreign Eastern group their customary law brought in Indonesia applies. Thus there is a pluralism of inheritance law in Indonesia. Until now, the government has not changed the legal politics related to the inheritance law. Thus the legal politics in Indonesia regarding inheritance law still continues the legal politics of the Dutch East Indies government, namely enforcing customary law.

The government is still having difficulty determining legal politics for inheritance issues in terms of determining which direction the inheritance law will be developed. The government is at a crossroads because there is a pluralism of interests in society that needs to be considered, namely whether to apply the provisions of Islamic law,

¹Hartono Hadisoeparto, *Pengantar Tata Hukum Indonesia* (Yogyakarta: Liberty, 1993), 8.

² Laurensius Arliman, "Hukum Adat Di Indonesia Dalam Pandangan Para Ahli Dan Konsep Pemberlakuannya Di Indonesia," *Jurnal Selat*, 2018, doi:10.31629/selat.v5i2.320.

customary law provisions, or customary law which is completely different from the two.³

There are three legal systems to be integrated into the structuring of the national legal system, namely religious law (Islamic law), customary law and Dutch colonial law. The three legal systems will substantially be verified and codified in the form of a national law that applies to all levels of society in Indonesia. However, it is undeniable that in the implementation of national law in Indonesia, it is not easy to turn the palm of the hand, for that the author seeks to reveal in this chapter how the form of national inheritance law in Indonesia is and the results of a SWOT analysis of the law.

Results and Discussion

The Strength to Realize National Inheritance Law

The efforts to realize Indonesia's national inheritance law in a pluralist society,⁴ requires strategic analysis so that its implementation in all levels of Indonesian society can be implemented and will be under the umbrella of law as a positive law.⁵

The basis for the formulation of a national inheritance law that can be applied to the people of Indonesia is the Indonesian constitution, the 1945 Constitution and Pancasila as the legal source of the Indonesian government through the 1973 GBHN, formulating its legal politics towards legal unification and codification. a comprehensive and integrated national legal system by recognizing and respecting Islamic religious law and customary law and the Dutch colonial laws and regulations.

The 1960 MPRS decree concerning inheritance, the Provisional People's Consultative Assembly of the Republic of Indonesia as the body

³Sunaryati Hartono, *Dari Hukum Antar Golongan Ke Hukum Antar Adat* (Bandung: Alumni, 1971), 7.

⁴ Pluralism is an understanding that recognizes the diversity in society, it can be in the form of cultural diversity, law, custom, value, religion and so on.

⁵ Positive law is the law that applies in a country at a certain time.

determining the direction of the state, the steering body for the life of the state and Indonesian people in the 1960s had given directions on inheritance law in Indonesia. In the attachment of MPRS No.II/MPRS/1960 dated December 3, 1960, it has been regulated as follows:⁶

402 letter c sub 2 says that it is deemed necessary so that the marriage law is regulated as well as possible.

402 letter c sub 4, states the need for legislation regarding inheritance law which contains:

- a. All inheritance is for children and widows, if the inheritance leaves children and widows.
- b. Regarding the heir replacement system
- c. About Grant

In connection with 402 letter c sub 2 and sub 4, there is an explanation in attachment A of the MPRS decree dated December 3, 1960 no.11 with the confirmation under no. 38, that "regarding letters C 2 and 4 in the refinement of the marriage law and inheritance law, it is necessary to pay attention to the existence of religious, customary and other factors."⁷

In discussing the MPRS decree and its attachment A, Hazairin concluded his opinion that the MPRS demands that inheritance in Indonesia be regulated parentally (patrilineal) in accordance with the will of the Qur'an and the Sunnah of the Prophet. Likewise with customs and others, what needs to be considered is what is in accordance with the Qur'an and the Sunnah of the Prophet and here as far as Islamic inheritance law is concerned.⁸

⁶ Sajuti Thalib, *Hukum Kewarisan Islam Di Indonesia* (Jakarta: Rosdakarya, 2000), 172.

⁷ Ibid., 318.

⁸ Hazairin, *Hukum Kekeluargaan Nasional* (Jakarta: Tinta Mas, 1968), 3.

Although formally the directive is no longer valid, at least the idea towards enacting inheritance law has existed and has been felt to be important since 1960.

The results of the national law seminar in Jakarta in 1963, one of the areas discussed was the field, "Basics of the national legal system in the field of inheritance law". In the resolution of the seminar, as far as the inheritance field is concerned, it is stated;⁹ The field of "Basics of the National Legal System in the field of Inheritance Law".

1. The aim of Indonesian Socialism as the emanation of Pancasila should always be to animate the drafting of a national inheritance law by taking into account the principle of a balanced division between men and women.
2. (1). Parental inheritance in explaining it does not necessarily have to immediately result in the complete withdrawal of the parental family line. Therefore, in an effort to achieve the parental family system, it should be carried out wisely in accordance with the development of the situation.

(2). Regarding Hazairin's proposal, the seminar was of the opinion that in principle it was acceptable: the National Inheritance Law of the Republic of Indonesia.
 - a. Inheritance law in the unanimous unity of the national legal system
 - b. Unification and codification of inheritance law
 - c. National inheritance law based on Pancasila
 - d. Customary laws that do not conflict with the laws on individual parental inheritance and socialism may continue to apply.
 - e. The written inheritance law from the colonial era was completely repealed.
 - f. Faraid regulations for Muslims are recognized as variations in the individual parental inheritance system.
 - g. For people who are not Muslim, there is no variation in the individual parental inheritance system.

⁹ Ibid., 91-92.

- h. Islamic inheritance law is individual parental, receipte-exit theory.
 - i. Individual parental inheritance laws for people who are not Muslim are based on customary law in accordance with Pancasila.
 - j. Widows and Widowers as heirs.
 - k. The parental inheritance system for the Indonesian people must be individual.
 - l. Limited liability of the heirs.
 - m. Time to share as soon as 40 days after the death of the month task expansion
 - n. Grants, grant-testament and wills
 - 1) According to Islamic law
 - 2) According to customary law
 - o. Zakat- Baitul mal
 - p. Inheritance of the dweller (death to extinction)
3. Regarding paragraph 16, the opinion is unanimous so that husband/wife respects each other.

There are Other laws and regulations relating to inheritance law. The two draft marriage laws that have been in the DPR have never become law, but because the main content of these drafts is about marriage, then inheritance is of course only as far as husband and wife's assets are concerned.¹⁰

The two draft laws are;

- a. The R.U.U which was proposed by the government/Ministry of Religion of the Republic of Indonesia to the DPR on May 22, 1967 under the name R.U.U on the main points of Muslim marriage regulations.
- b. The R.U.U proposed by the government/Ministry of Justice of the Republic of Indonesia to the DPR on September 7, 1966 under the name R.U.U concerning the basic provisions of marriage, the main conclusions of the two R.U.Us lead to that if a husband and wife live divorced, the joint property of husband and wife is divided between

¹⁰ Mr Sakirman, "Urgensi Undang-Undang Perkawinan Dalam Membentuk Keluarga Harmonis," *Justicia Islamica* 13, no. 1 (2016): 91-112, doi:10.21154/justicia.v13i1.458.

the two husbands and wife. The distribution is carried out in a balanced manner or one-half according to the bill from the Ministry of Justice, in the event of a death divorce because one of the husband and wife dies, all assets are separated first which part of the deceased and which part is still alive. Meanwhile, what becomes inheritance and is divided as inheritance is the part that has been separated which becomes the part that dies.

The two bills did not become law, and both were returned by the House of Representatives to the government with a recommendation that the government advance a new draft marriage law to replace the two bills. On July 31, 1973 the government re-submitted a marriage bill; the 1973 marriage bill later became law no. 1 of 1974 with amendments to the article relating to inheritance. Now matters relating to the property of husband and wife (will be able to have an inheritance relationship) are contained in articles 35, 36, and 37 of those articles which read:

- 1) Property acquired in marriage becomes joint property.
- 2) Inherited property of each husband and wife and property obtained by each as a gift or inheritance are under the control of each as long as the woman, does not specify otherwise.

Article 36;

- 1) Regarding joint property, husband or wife can act with the approval of both parties.
- 2) Regarding the innate property, each husband and wife have the full right to take legal actions regarding their property

Article 37; If the marriage breaks up due to divorce, the joint property is regulated according to their respective laws.

From article 37 of the law we can see that the thought as it was in the two old drafts continues to live in our society.

The material of Islamic law that has been successfully enforced formally through the legislative process in the form of laws, government regulations, and presidential instructions, is the first, as mentioned above, that the 1973 marriage bill was challenged because it contained

provisions that were contrary to Islamic law. Judging from the political power in the DPR, opponents of the marriage bill are certain to lose: the Fraksi Persatuan Pembangunan (FPP), against the ABRI faction, the Development Work Faction (FKP), and the Partai Demokrat Indonesia (FPDI) faction were approved after the controversial provisions were removed, at the insistence of extra-parliamentary powers so that Law no. 1 year 1974 was born.

The second, both the law on religious courts and the 1988 religious court bill, received wide responses from various groups in the DPR, FPP, FKP and the ABRI faction who welcomed the bill. Unlike the other three factions, FPDI conveyed several objections. Outside the DPR, the pros and cons were no less exciting. With the ratification of the Law on Religious Courts, it was hoped that the diversity of regulations on religious courts would end as a result of the legal politics of the Dutch colonial government. Thus, Law no. 7 of 1989 concerning religious courts, previously Law no. 14 of 1970 concerning Religious Courts was born.

Third, three compilation of Islamic law (KHI). The compilation of Islamic law is not a law or is not yet in the form of a law due to political constraints. KHI was born from the desire to realize the unity and certainty of the applied law of the Religious Courts. The KHI draft was approved by the ulama in a workshop in Jakarta in February 1988. The President of the Republic of Indonesia with Presidential Instruction No. 1 of 1991, instructed the minister of religion to disseminate KHI. The form of the Presidential Instruction is a breakthrough, because of the heavy political obstacles to enacting a law.

Fourth, the law on the implementation of the pilgrimage. In 1998, a bill on the organization of the pilgrimage was proposed, which is a bill proposed by the House of Representatives (DPR). There was no controversy regarding this bill because it had the support of all factions and received a good response from the government so that Law no. 17 of 1999 was born, concerning the implementation of Hajj.

Fifth, the zakat management law in 1999. The government submitted a zakat management bill. All factions in the DPR responded

positively to this bill so that the discussion ran smoothly and Law No. 38 of 1999 concerning zakat management was issued.

Sixth, law No. 7 of 1992 concerning Banking and Law No. 10 of 1998 concerning Bank Indonesia which are not yet specific so that they need to be regulated in a separate law, namely Law No. 21 of 2008 concerning Islamic banking¹¹ which further strengthens the position of Islamic economic activities in Indonesia.¹²

Seventh, law No. 18 of 2001 concerning Nangro Aceh Darussalam which gave special autonomy to the Special Region of Aceh to implement Islamic Sharia.

Eighth, law No. 16 of 2019 concerning amendments to Law No. 1 of 1974 concerning Marriage contains the minimum age limit of 19 years for both men and women.¹³

With the enactment of several regulations, both in the form of government regulations and presidential instructions, the Indonesian political system gives great power to Islamic law in developing Islamic political aspirations, including Islamic law legislation.

In addition to the power system described above, the inheritance system according to the Civil Code law adheres to an absolute individual system in which the heirs have equal rights between male heirs, as well as the share of inheritance distribution which is equally enforced

¹¹Mardani, *Hukum Islam (Pengantar Ilmu Hukum Di Indonesia* (Yogyakarta: Pustaka Pelajar, 2010), 181.

¹² Andi Ishak et al., "Penyelesaian Sengketa Perbankan Syariah Menurut Peraturan Perundang-Undangan," *Journal of Lex Generalis (JLG)* 2, no. 1 (2021): 168–84, doi:10.52103/jlg.v2i1.316.

¹³ Badan Legislasi DPR, "19 Tahun Jadi Batas Usia Minimal Lakukan Pernikahan," *Dewan Perwakilan Rakyat*, 2019; Nurhikmah Hairak H. Biga, "Sejarah Pembaruan Hukum Keluarga Islam Di Indonesia," *Al-Mizan* 13, no. 2 (December 2017): 185–203, doi:10.30603/am.v13i2.876.

between the rights and obligations of male heirs is the same.¹⁴ The following are the weaknesses in the effort to realize the Indonesian National Inheritance Law, among others, factually showing that the legalization of some of these statutory regulations provides strength and convenience for the formation of the codification of the Indonesian National Inheritance Law.¹⁵

Weakness

First: Indonesia's inheritance law system is plural because until now in the Republic of Indonesia there are several legal systems that have their own style and structure, namely the customary law system, the Islamic legal system and the Western legal system. In addition, the Indonesian people also in some areas use inheritance law in accordance with their customs which have been passed down from generation to generation.¹⁶ On the other hand, Indonesia has a very wide area, each region has its own cultural conditions and culture and different religions. Religion on the one hand is a religious value that leads people to a peaceful life; on the other hand it can be a source of conflict. As stated by Scopt Appleby which states the ambiguity of the function of religion. On the one hand, religion can produce humanistic values, tolerance, inclusion, love and peace. Religion on the other hand produces authoritarianism, violence, conflict, and war ¹⁷. Differences in religion can

¹⁴ Israfil Israfil and Muzakir Salat, "Perlindungan Hukum Terhadap Ahli Waris Perempuan Menurut Hukum Kewarisan Islam Adat dan Khuperdata," *Jurnal Ilmiah IKIP Mataram* 7, no. 2 (2020): 273–83.

¹⁵ Said Aqil Husain al-Munawar, *Hukum Islam Dan Pluralitas Sosial*, (Jakarta: Pena Madani, 2004), 17.

¹⁶ Nur Qalbi Husain and Musyifikah Ilyas, "Praktik Hukum Kewarisan Pada Masyarakat Islam (Studi Kasus Tahun 2017-2019)," *Qadauna: Jurnal Ilmiah Mahasiswa Hukum Keluarga Islam* 1, no. 2 (2020): 31–45, doi:10.24252/qadauna.v1i2.12966. 43; Hardivizon and Muhammad Sholihin, "Hybrid Rationality behind Customers' Choices of the Islamic Banks : An Experience of Bengkulu, Indonesia," *Journal of Islamic Thought and Civilization* 11, no. 1 (June 23, 2021): 175–200, doi:10.32350/jitc.111.10.

¹⁷R.Scopt Appleby, "The Ambivalence Of The Secred, Religion, Violence, and Reconciliation," in *Hukum Yang Netral Bagi Masyarakat Plural*, by E.Sundari and Endang Sumiarni (Bandung: Karya Putra Darwati, 2000), 60.

lead to conflicting interests between adherents. Conflicts due to religious plurality can lead to bloodshed, competition and suspicion. An example of a conflict between religious communities is what occurred in Central Maluku in 1999/2000.

Second: Legal education methods. So far, the legal studies taught to students are based on the dichotomy between customary law, Islamic law, and western law. Dealing with Indonesian society is relatively heterogeneous and has a fairly wide area, this results in the search for common ground between the elements of these laws. So, what is needed now is an integral understanding of legal experts from the three sources of law. It requires a very heavy intellectual struggle.

The result of pluralism; plurality, heterogeneity of religion, cultural customs and law have reduced the understanding of the Indonesian people about the law, especially inheritance law, so that it is not easy to bring or unite one another in an effort to integrate it into the national legal system. In addition, with the enactment of the three inheritance law systems, it affects the settlement of inheritance problems; this is because they only choose one of the three laws.¹⁸ Besides that, the compilation of Islamic law needs improvement because it still has not confirmed the inheritance problem as a whole, there are also some contents of KHI that are contrary to the fiqhi of Mawaris, one of which is related to the father's part of 1/3 in KHI and ashabah in Fiqhi Mawaris as the result of the understanding of the scholars of fiqhi.

Oportunities

Zarkowi Soejoeti, in one of his writings stated that if referring to Law No.1 of 1974, religion can be used as a solution in the development of national law because Islamic law as one of the systems of Islamic

¹⁸ Muhammad Anis, "Pelaksanaan Hukum Kewarisan Islam Di Kota Makassar," *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam* 5, no. 2 (2018): 281-94, doi:10.24252/al-qadau.v5i2.7109; Muhammad Sholihin et al., "The Effect of Religiosity on Life Satisfaction: A Meta-Analysis," *HTS Teologiese Studies / Theological Studies* 78, no. 4 (2022): 10, doi:10.4102/hts.v78i4.7172.

teachings adopted by the majority of the Indonesian people, has a great opportunity to provide contribution to the development of national law.

The opportunity to realize Islamic inheritance law in the national legal order is influenced by several factors as follows:

a. Historical Factor

Regarding the history of the enactment of Islamic law in Indonesia (Islamic Inheritance Law), it can be seen from two periods, namely the period of full acceptance of Islamic law called the *receptio in complex theory*, which is a period in which Islamic law is fully enforced for Muslims. Since the existence of Islamic kingdoms in Indonesia, the Dutch colonial government enforced Islamic law for Muslims, especially marriage law and inheritance law, which were called family law. To ensure the implementation of the law, the Dutch issued the *Resolutie der Indische Regeering* regulation on May 25, 1960, which was later known as the *Freijer compendium* in the *Regeerings-reglement (RR)* in 1885, article 75 stated that; Indonesian judges should enact a religious law (*Godsdienstige wetten*). The period of acceptance of Islamic law by customary law is called *receptie theory*, it is understood that Islamic law only applies if it is desired or accepted by customary law. Through the *Indische staatsregeling (IS)* promulgated in *stbl.1929: 212*, it was stated that Islamic law was repealed from the Dutch East Indies legal system. In article 134 paragraphs (2) *IS 1929* it reads: "In the event of a civil case between fellow Muslims, it will be resolved by Islamic religious judges if their customary law so desires and to the extent that it is not determined otherwise by an ordinance." Furthermore, in 1937, the government The Dutch East Indies put forward the idea that the authority of the Religious Courts, which had been adjudicating inheritance issues since 1882, had been transferred to the authority of the district courts. Through *stbl 177: 116*, the authority of the Religious Courts was revoked, on the grounds that the inheritance law had not been fully accepted by customary law. When approaching independence, the chairman of BPUPKI, Dr.KRT.Rajiman wedyadinigrat, questioned the basic ideology of the Indonesian state which would be established as a philosophical foundation for the spirit that underlies the structure of an independent Indonesia. From these questions, two groups within the BPUPKI emerged,

namely from the Muslims who felt they had contributed and sacrificed a lot since the time of the sultanate of the archipelago, this Islamic group wanted an Islamic state of Indonesia to be established, others who mostly received Western education and were heavily influenced by the view of separating religion from the state. The formation of a national state has nothing to do with religion. This compromising attitude led to the birth of the Jakarta charter in which it was formulated about "God with the obligation to carry out Islamic law for its adherents", this is what is called the sacrifice of Muslims by withdrawing these demands in order to realize Indonesian independence.¹⁹

b. Population Factor

The majority of Indonesia's population is Muslim. Islamic texts do not define the content, form and system of a state, but only offer the basic principles of socializing and relating to one another.²⁰ In this regard, one of the characteristics of Islamic law is that it is universal, meaning that the law is relevant to all human beings, without any discrimination related to geography, religion or ethnicity.²¹ This is in line with Islamic inheritance law which is one of the raw materials of national inheritance law where the adherents are the majority population/community in Indonesia so that there is a strong desire from the Indonesian Islamic community so that Islamic inheritance law becomes the basis for the formation of Indonesian national inheritance law.

¹⁹Alamsyah Ratu Perwira Negara, "Strategi Perjuangan Umat Islam Di Bidang Hukum," in *Dimensi Hukum Islam Dalam Sistem Hukum Nasional, Mengenang 45 Tahun Bustanul Arifin*, by Amrullah Ahmad (Jakarta: Gema Insani Press, 1996), 238.

²⁰ These basic principles are in the form of ethics, morals and etiquette to adapt to God, humans and other creatures, including the interpretation of Islamic texts on state administration as a response to the reality of the Islamic world managing society and the state. The basic principles in the law are universal and flexible, can adapt to situations and conditions, even the text message does not conflict with the reality of the society in which the text is applied. Sabri Samin, *Menguak Konsep Dan Implementasi Ketatanegaraan Dalam Islam* (Makassar: Alauddin University Press, 2000), 7.

²¹Kasjim Salenda, *Terorisme Dan Jihad Dalam Perspektif Hukum Islam* (Makassar: Alauddin University Press, 2011), 53.

c. Political Factor

The Indonesian political system provides great opportunities for Islamic law, Islamic inheritance law in developing Islamic political aspirations, including efforts to legislate Islamic inheritance law. Thus, the opportunities for Islamic parties are increasingly open in legalizing Islamic inheritance law into national inheritance law.

The Indonesian political system provides great opportunities for Islamic law in developing political aspirations in the unification and codification of inheritance law.

With the political will²² from the political parties sitting on the council are very open to proposing laws related to the unification and codification of the national inheritance law, the raw materials of which are Islamic inheritance law, customary inheritance law and Dutch colonial inheritance law.

Threats

Threats or challenges in the effort to realize national inheritance law are not only internal, but also external, among others, can be seen from several factors;

a. Structural Threats or Challenges

Structurally, the idea of implementing Indonesia's national inheritance law is still debated among the Indonesian people. Among the Muslim community in Indonesia is also debated, there are those who support and some reject. Referring to the theories of the application of Islamic law, it can be understood that the biggest challenge in implementing Islamic law in the form of formalization or legislation of Islamic law, including Islamic inheritance law in Indonesia, is the absence of a common ground or integration of the concept of proper application of Islamic law in Indonesia. Because legislation is a political product, Islamic law must get the support of a majority vote from law-forming institutions, in fact the Islamic political aspirations of the council (DPR)

²²Political will is awareness and a strong desire to support political parties as a means of political struggle in the context of national inheritance law legislation.

are not the majority group even though the composition of the DPR's membership is currently predominantly Muslim but they are reluctant to fight for Islamic law legislation by because of their low understanding of Islamic inheritance law.

b. Substantial Threats or Challenges

The substance of national inheritance law includes a very broad and complex legal material consisting of Islamic inheritance law, customary inheritance law and Western civil inheritance law (Bw) as a legacy of the Dutch colonial era, each of which has followers or adherents. The substance of customary inheritance law is legal awareness that lives in indigenous peoples. However, people often doubt that there is homogeneity of the legal awareness of the Indonesian people which is spread in various customary circles throughout the archipelago. The substance of Islamic law (shari'a) is the will of Allah in the form of revelations contained in the Qur'an and the Sunnah of the Prophet Muhammad which are written in the books of hadith. In addition, there is *ijtihad* (*fiqh*), namely the mind or *ra'yu* of people who meet the requirements for *ijtihad* by using *Ijma'*, *Qiyas* and others. As a method of determining the law or drawing legal lines, the substance of Western law was the will of the legislators in the Netherlands in the past. This can be studied in Dutch which has something to do with the formation of the law in question. However, this claim can no longer be carried out because many of our officers and law enforcement do not master the language used by these Western lawmakers.²³

Both structural and substantial threats or challenges allow the community not to use the legal system or in other words, the community will leave both the religious courts and the general courts because there is no national legal umbrella that will accommodate all levels of Indonesian society. In fact, inheritance disputes or inheritance cases are very common in the community, but they are reluctant to take them either to the religious courts or general courts so that the results of

²³Muhammad Daud Ali, *Hukum Islam: Pengantar Ilmu Hukum Dan Tata Hukum Islam Di Indonesia* (Jakarta: Raja Grafindo Persada, 2004), 215.

deliberations or inheritance agreements between them do not have legal certainty.

For the sake of legislation in the form of national inheritance law, there will be a conflict between one inheritance law material and another. Thus, the legislative effort will face a strong challenge.

Conclusion

From the results of the above discussion, the authors conclude that the national inheritance law in Indonesia is the result of verification and codification of a combination of religious, customary and Dutch colonial law. Furthermore, its application is applied to all levels of Indonesian society.

The results of the analysis using the SWOT method, namely Strength in the application of Indonesia's national inheritance law is poured into the umbrella of state law which refers to Law no.1 of 1974 concerning marriage. Furthermore, weakness is the lack of public understanding of inheritance law due to the pluralism of laws that apply in Indonesia. Then, The opportunity in which the religion, in this case Islam, is the majority adopted by the Indonesian population can be used as a solution in developing national law. Finally, the next is threats or challenges, where many people leave the legal system, both religious courts and general courts, because there is no one legal system and legislation that applies to all levels of Indonesian society, resulting in many inheritance disputes that are found without going through court, and inheritance issues that are not resolved properly.

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