

Towards the Unification of Inheritance Law in Indonesia: Challenges and Opportunities in the Context of Religious and Cultural Diversity



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ABSTRACT: This research examines inheritance law in Indonesia which is very pluralistic and not uniform, consisting of civil inheritance law regulated in the Burgerlijk Wetboek (WB), customary inheritance law regulated in their respective customary inheritance laws based on the existing kinship system (patrilineal, matrilineal, and parental), and Islamic inheritance law regulated in Islamic law. In heading towards the unification of inheritance law in Indonesia, there are challenges and opportunities that must be faced due to the diversity of religions and cultures that exist in Indonesia. This research uses normative research methods. The subject matter will be studied juridically normative and juridically philosophical with a systemic and comparative juridical approach. The nature of this research is descriptive, namely describing the overall object that is explored and collected systematically. The approaches used in this research are statute approach and conceptual approach. In this research, library materials in the form of secondary data are used as the main source. Secondary data includes primary legal materials, secondary legal materials and tertiary legal materials. These various data can be obtained through literature studies or online data searches. Data collection provides verification, correction, supplementation, and itemization of each other. Will be analyzed qualitatively after being collected. The results of this study, to unify inheritance law in Indonesia can be done by adjusting the elements of the applicable legal order within the framework of the legal system. In each legal system consists of 3 (three) sub-systems, namely legal substance, legal structure, and legal culture. Furthermore, to create opportunities for the unification of inheritance law in Indonesia, the steps that can be taken are studies and research related to the inheritance law system that applies in Indonesia; dialogue and discussion between stakeholders; submitting proposals and discussions at the legislative level to make rules for the unification of inheritance law in Indonesia; conducting socialization and education to the public about the importance of unification of inheritance law; and after the unification of inheritance law is passed, implementation and evaluation of its implementation are carried out.

KEYWORDS: Culture; Inheritance Law; Religion; Unification

I. INTRODUCTION

One of the roots of the diversity of Indonesian inheritance law is inseparable from the influence of history, namely the Dutch colonial period for 350 years. During the Dutch colonial period, the constitutional system of the Dutch East Indies was called the Indian National Constitution (*Indische Staatsregeling, IS*). The application of Articles 131 and 163 of the *IS* is one of the factors that gave birth to legal pluralism in the civil sphere, especially inheritance law. The Dutch regulated the classification of residents of the Dutch East Indies in Article 163 of the *IS*. At that time Indonesia or the Dutch East Indies had not yet become a sovereign state and was still a Dutch colony. Therefore, the Dutch East Indies at that time did not recognize the term citizen.

There are three groups of residents in Article 131 *IS*. The first group is the white group, or European society and people who are equated with Europeans. The second group is the Chinese and other foreign easterners, and the third group is the Bumiputra group or the original natives of the archipelago. The division of population groups is also followed by the enactment of the rule of law in accordance with the group.¹

The law that applies to each of these groups is regulated in Article 131 of the *Indische Staatsregeling* which was established by *Staatsblad* 1919 No. 286 and Dutch East Indies *Staatsblad* 1919 No. 621. This can be described as follows. For

¹ Supriyadi, "Pilihan Hukum Waris Dalam Masyarakat Majemuk (Studi Banding Hukum Islam Dan Hukum Perdata)," *Al-Adalah* 12, no. 1 (2015): 553.

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European Groups, Civil Law (*Burgerlijk Wetboek*) and Commercial Law (*Wetboek van Koophandel*) apply in accordance with the principle of concordance. For the Foreign Eastern Group, their respective Customary Law applies, based on Article 75 of the *Regeering Reglement*, *Staatsblad* 1854 No. 129 in the Netherlands jo. *Staatsblad* of the Dutch East Indies Year 1855 No. 2:²

1. For those who submit themselves (*Toepasselijk Verklaring*), *Staatsblad* 1917 No. 12 applies to them, which means European Law in accordance with *Staatsblad* 1926 No. 30.
2. In 1855, with *Staatsblad* 1855 No. 79, a partial codification of European Law (*Burgerlijk Wetboek* and *Wetboek van Koophandel*), which included family law and *ab-intestato* inheritance.

Furthermore, the Foreign Eastern group is further subdivided into the following:

1. The Chinese Foreign Eastern Classes under *Staatsblad* 1917 No. 129, which took effect on May 1, 1919 and *Staatsblad* 1924 No. 557, which took effect on May 1, 1925, as well as *Staatsblad* 1925 No. 29 which took effect on September 1, 1925, shall apply to them:³
 - a. The *Burgerlijk Wetboek* and the *Wetboek van Koophandel*, except for certain articles of the Second and Third Parts of Book I of Title IV relating to ceremonies to be performed before marriage and to means of preventing marriage.
 - b. Civil registration itself which is regulated by *Staatsblad* 1917 No. 130 and *Staatsblad* 1919 No. 81.
 - c. Special provisions on adoption and sharing (child adoption) which are regulated by *Staatsblad* 1917 No. 129 and *Staatsblad* 1919 No. 81.
2. The non-Chinese foreign eastern groups (in Java and Madura), based on *Staatsblad* 1855 No. 79, are subject to the codification of Civil Law, except regarding Family Law and Law of Inheritance *ab-intestato* (inheritance without a will). In addition, their customary law established by *Staatsblad* 1924 No. 556, was enacted and came into force on March 1, 1925. In terms of property, (*vermogensrecht*) only applies to non-Chinese foreigners.⁴

According to Article 131 *IS* paragraph (2) sub b, the applicable law for the Bumi Putera (Indigenous Indonesian) Group is legislation, religion, folk institutions, customs of the population, or *Godsdiestige Wetten, Volkinstelling en Grebruiken*, or Customary Law. Therefore, the applicable law for the Bumi Putera (Indigenous Indonesian) Group is their written Customary Law or voluntary submission to Western Civil Law (*Burgerlijk Wetboek*) based on *Staatsblad* 1917 No. 12 jo. *Staatsblad* No. 300 of 1926. There are several possibilities for submission:⁵

1. Submission to all European Civil Law (applicable to non-Chinese foreigners and Bumi Putera).
2. Partial submission to European Civil Law (applicable to the Bumi Putera group).
3. Submission to a certain legal act (applicable to the Bumi Putera group).
4. Silent submission or presumption (applicable primarily to the Bumi Putera group).
5. Article 1601, 1602, and 1603 BW (*Staatsblad* Year 1879 No. 256) concerning labor agreements.
6. About gambling (debts due to gambling) and betting Article 1788 jo. Article 1791 BW based on *Staatsblad* Year 1907 No. 306.
7. Several articles of *Wetboek van Koophandel* Book II most of the law of the sea based on *Staatsblad* Year 1933 No. 49 jo. *Staatsblad* 1939 No. 214 jo. *Staatsblad* 1938 No. 2.
8. Regulations applicable to all classes such as the Copyright Act (Authors) *Auteurswet Staatsblad* 1912, the General Regulation on Cooperatives *Staatsblad* 1933 No. 108, and the ordinance on transportation in the air (*luchtver Voor Ordonantie Staatsblad* 1938 No. 98 jo. *Staatsblad* 1939 No. 100).

In addition, some special regulations apply to certain groups:⁶

1. Marriage regulations for Indonesian Christians and Catholics, known as the *Huwelijks Ordonantie Christen Indonesiers or HOCl*. Based on *Staatsblad* 1933 No. 74 jo. *Staatsblad* 1936 No. 247 and 607, later amended and supplemented by *Staatsblad* 1938 No. 264 and No. 370 jo. *Staatsblad* 1938 No. 288.
2. Article 2 Paragraph 2 of Law No. 1 of 1974 concerning Marriage applies to Hinduism and Buddhism.
3. The Marriage Ordinance (*Huwelijks Ordonantie*), *Staatsblad* 1929 No. 348, *Staatsblad* 1932 No. 482, and *Staatsblad* 1933 No. 48 applies to native Indonesians who are Muslims. However, this law only applied to Java and Madura in 1946. Law No. 32 of 1954 was then implemented throughout Indonesia. Marriage Law No. 1 of 1974 was enacted in 1974. The Compilation of Islamic Law was then established through Presidential Instruction of the Republic of Indonesia Number 15 of 1991 in

² Mohd. Idris Ramulyo, *Beberapa Masalah Pelaksanaan Hukum Kewarisan Perdata Barat (Burgerlijk Wetboek)* (Jakarta: Sinar Grafika, 1993).

³ H. Suparman Usman, *Ikhtisar Hukum Waris Menurut KUH Perdata (BW)* (Serang: Darul Ulum Press, 1990).

⁴ Mohd. Idris Ramulyo, *Op.Cit.*, p. 17.

⁵ H. Suparman Usman, *Op.Cit.*, p. 8.

⁶ *Ibid.*, p. 9.

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accordance with the Decree of the Minister of Religious Affairs of the Republic of Indonesia Number 154 of 1991 (see Article 5 paragraph (2)).

4. Every Indonesian citizen is subject to Law Number 1 of 1974 concerning Marriage.
5. Mixed Marriage Regulation (*Regeling op de Gemengde Huwelijken*) also abbreviated as *GHR* which was re-established by the King of the Netherlands on December 29, 1896 (*Staatsblad* 1898 No. 158 amended and supplemented by *Staatsblad* 1901 No. 348 jo. *Staatsblad* 1902 No. 311 jo. *Staatsblad* 1907 No. 205 jo. *Staatsblad* 1918 No. 30 JIS *Staatsblad* 1931 No. 108 and 423).

Until now, there are various legal systems that apply in Indonesia regarding other inheritance laws, namely as follows:⁷

1. The Civil Inheritance Law System is regulated in the *Burgerlijk Wetboek (BW)* based on the provisions of Article 131 *IS* jo. *Staatsblad* 1917 Number 12 jo. *Staatsblad* 1924 Number 557 concerning Submission to European Law:⁸
 - a. Europeans and those considered to be the equivalent of Europeans;
 - b. Chinese from the Middle East (*Staatsblad* 1917 No. 129); and
 - c. Other foreigners and Indonesians who follow European law.

The Law of Inheritance *BW* does not apply to Indonesians of foreign eastern descent other than Chinese, except for Chapter 13, which deals with wills (*Staatsblad* 1924: 556). According to Article 4 of the *Staatsblad*, people of such descent can only make a will in the form of a general will except in the cases mentioned in Articles 946, 947, and 948.

2. Customary Inheritance Law System. This system varies due to the various ethnic forms within customary law. There are matrilineal, patrilineal, and bilateral or parental systems.⁹
3. The Islamic inheritance law system also consists of various teachings, such as the teachings of *ahlus sunnah wal jama'ah*, the teachings of Shia, and the teachings of Hazairin Indonesia. The most dominant teaching adopted in Indonesia is the teaching of *ahlus sunnah wal jama'ah* (Syafi'i, Hanafi, Hambali and Maliki schools of thought). However, among the four madhhabs, the most dominant is the Syafi'i madhhab. At the same time, Hazairin's teachings began to be influential since 1950 in Indonesia. This is an *ijtihad* to elaborate the law of inheritance in the Qur'an bilaterally.¹⁰

The laws of inheritance that even apply until now (both customary inheritance law, Islamic inheritance law and Western inheritance law, are positive laws that are determined or enforced by the court. According to the former Chief Justice of the Supreme Court, Bagir Manan, the various inheritance laws even without codification, without unification, does not mean that there will be no national law. Legal diversity is not something that needs to be avoided, as long as it is not intended to give privilege or otherwise to demean a group. Legal diversity can actually be useful in building unity and harmonization of relations between groups because each feels valued and given a reasonable and reasonable place in the common life system, besides that it is also in order to accommodate the landscape of Indonesian society which is very pluralistic sociologically.¹¹

Since the Dutch East Indies, inheritance law has evolved and changed, as shown by the decisions of the Padang, Batavia and other landrads in the application of Minangkabau customary inheritance law, which allows wives and children to inherit the estate of their husbands or fathers, or the decision of the Supreme Court of the Republic of Indonesia that establishes widows in the customary law community of Tanah Batak as heirs. In Bali, there have also been Supreme Court decisions that have attempted to reduce the strictness of inheritance laws for children who marry out. Even the various Supreme Court decisions on the relationship of children within the family in Minangkabau and other issues show a change in judges' opinions on the application of customary law. In the same way as the changes caused by religious beliefs, more and more people who are Muslims are applying the law of inheritance (*kewarisan*) according to Islam.¹²

⁷ Surini Ahlan Syarif, *Intisari Hukum Waris Menurut Burgerlijk Wetboek* (Jakarta: Ghalia Indonesia, 2003).

⁸ Ali Afandi, *Hukum Waris, Hukum, Keluarga, Hukum Pembuktian* (Jakarta: PT. Rineka Cipta, 2000).

⁹ Ramulyo, *Beberapa Masalah Pelaksanaan Hukum Kewarisan Perdata Barat (Burgerlijk Wetboek)*, *Op.Cit.*, p. 4.

¹⁰ H.M. Idris Ramulyo, *Perbandingan Hukum Kewarisan Islam Dengan Kewarisan Kitab Undang-Undang Perdata, Edisi Revisi* (Jakarta: Sinar Grafika, 2004).

¹¹ Bagir Manan's paper, Towards National Inheritance Law, delivered at the Symposium on Towards a National Certificate of Inheritance for Indonesian Citizens, organized on May 6, 2009 by BPHN in collaboration with the Notariat-UNPAD Alumni Family Association in Jakarta.

¹² According to Daniel S. Lev, an American scholar who wrote the book *Islamic Courts in Indonesia*, the results of his research on Religious Courts in Indonesia, that religious courts in Java and Madura even though they lost their power over inheritance cases in 1937, but in reality they still continue to resolve inheritance cases in very impressive ways. This is evident from the fact that more Muslims file inheritance cases in the Religious Courts than in the District Courts. (Mrs. Habibah Daud conducted research in DKI Jakarta in 1976, and the result was that out of 1081 people only 47 people filed inheritance cases with the District Court (4.35%), and 1034 people (96.65%) filed inheritance cases with the Religious Court), Vide Muhammad Daud Ali, 1984, *The Position of Islamic Law in the Indonesian Legal System*, Yayasan Risalah, Jakarta, pp. 24-25

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The aforementioned legal diversity is not only caused by legal and political norms; it is also influenced by social, cultural, belief and other aspects. In addition, customary inheritance law is extremely diverse, with different inheritance laws based on kin, matrilineal, and parental¹³. In inheritance law, there are many aspects of inheritance, including the definition of inheritance, the object of inheritance, the inheritor and the recipient of inheritance, the method of inheritance distribution, the obligation to distribute inheritance, the relationship between inheritance and the rights of third parties, the relationship between inheritance and other rights such as grants and wills, and the principles governing the relationship between different inheritance law systems, including the link between the inheritance law system and the object of inheritance as a whole.

Inheritance law is closely related to marriage law, marriage between customary law communities or between people of different beliefs will cause problems. Likewise, how the inheritance law should be applied when a testator dies and leaves children of different religions. In the context of legal development, the matters mentioned above are an effort towards the unification of inheritance law in Indonesia. From the background mentioned above, the issues that are the focus of this research are:

1. What are the challenges faced in implementing the unification of inheritance law in Indonesia, given the diversity of religions and cultures that exist?
2. What are the opportunities in moving towards unification of inheritance law in Indonesia?

II. RESEARCH METHOD

Based on the identification of the problem as described earlier, this research is a normative legal research, therefore this research will use normative research methods. The subject matter will be studied juridically normative and juridically philosophical with a systemic and comparative juridical approach. The nature of this research is descriptive, namely describing the overall object that is explored and collected systematically. The approaches used in this research are statute approach and conceptual approach.

In this research, library materials in the form of secondary data are used as the main source. Secondary data includes:¹⁴

- a. Primary legal materials: the binding legal basis derived from the state constitution, both written and unwritten, as well as other norms governing the lawmaking system.
- b. Secondary legal materials: materials that explain primary legal materials, such as draft laws, theses, dissertations, and other research.
- c. Tertiary legal materials, which are materials that help interpret and explain primary and secondary legal materials, such as dictionaries and encyclopedias.

This variety of data can be obtained through desk research or online data searches. Data collection provides verification, correction, supplementation, and itemization of each other. It will be analyzed qualitatively once collected.

III. RESULT AND DISCUSSION

A. *Challenges in Implementing Unification of Inheritance Law in Indonesia in the Context of Religious and Cultural Diversity*

The idea of inheritance law has been developing since the beginning of independence. Quoting Soetandyo Wignjosebroto, the 1945 Constitution of the Republic of Indonesia incorporates the principle of the rule of law from the doctrine of *rechtsstaat*, the principle of impartiality in the administration of justice, and the principle of a state not based on power (*machtsstaat*).¹⁵

Daniel S. Lev notes in his research that since 1945 unification and modernization have always been the main motives for legal change.¹⁶ Ratno Lukito argues that Indonesian leaders have faced the challenge of building a coherent legal system in a pluralistic country without eliminating the ethnic, cultural and social practices of its people.¹⁷

The ideas of uniformists on the one hand, and pluralists on the other, were a natural result of these attempts at legal unification. The first group are those who hold the idea of modernizing Indonesia, that the state must adapt itself to modern state models if development and growth are to be realized. This group regarded customary law as a symbol of backwardness.¹⁸

¹³ Bagir Manan, *Op.Cit.*

¹⁴ Sri Mamuji Soerjono Soekanto, *Penelitian Hukum Normatif* (Jakarta: CV. Rajawali, 1990).

¹⁵ Soetyandyo Wignjosebroto, "Hukum Nasional: Unifikasi Dicitacitakan, Pluralisme Acap Merupakan Fakta Menyulitkan," *Majalah Hukum Nasional*, no. 2 (2008): 56.

¹⁶ Danile S. Lev, *Hukum Dan Politik Di Indonesia*, ed. Nirwono dan A.E. Priyono (Jakarta: LP3ES, 1990).

¹⁷ Ratno Lukito, *Pergumulan Antara Hukum Islam Dan Hukum Adat Di Indonesia* (Jakarta: INIS, 1998).

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However, the second group, known as pluralists, argue that the law of pluralistic nature is the only law that can be applied to the diverse society in Indonesia. Therefore, pluralists argue that inheritance law agrees to assign the position of inheritance law to pluralistic law.

In connection with the unification of inheritance law, according to Soetandyo Wignjosebroto emphasized:¹⁹ "The difficulty of national legal unification is due to the fact that this country, like other developing countries, is built on the interests of the organization of the nation-state life on top of socio-cultural pluralism. That is why the western experience of legal unification cannot be taken for granted. Western nation-states are built on the foundation of a culturally factual national unity, primarily the existence of a common language despite its dialectal variants. This is in contrast to developing countries, including Indonesia, which consists of units of society that culturally in the aspect of language and customs do not depict unity".

The above opinion suggests that unification is difficult to achieve, however, understanding existing laws is the way to achieve it. In terms of inheritance law, it needs to be understood that the current system of inheritance law, which consists of three systems, can be considered pluralistic.²⁰ It is pluralistic because inheritance law is not uniform; civil inheritance law is regulated in the *Burgerlijk Wetboek (WB)*, customary inheritance law is regulated in its respective customary inheritance law based on the existing kinship system (patrilineal, matrilineal, and parental), and Islamic inheritance law is regulated in Islamic law.

1. Civil Inheritance System

Civil inheritance law system as stipulated in the Civil Code.²¹ In civil inheritance law, there are 3 conditions for inheritance, namely:

- a. The existence of the deceased (Heir);
- b. There are people who are still alive, as heirs of the heir (heirs);
- c. The existence of a number of assets left by the heir (inheritance).

In the division of inheritance according to civil law after the fulfillment of these three conditions, the group of living heirs is seen. In civil inheritance law is divided into four groups, namely:²²

a. First Class Heirs

Article 852 of the Civil Code states that boys and girls have the same rights or are considered equal. Meanwhile, adopted children or children out of wedlock who are not explicitly mentioned in the court decision have a different status from legal children.

b. Second class heirs

The second class of heirs consists of parents, brothers and sisters, and their descendants. Articles 854, 855, 857, and 859 of the Civil Code regulate the division of this estate.

c. Heirs of the third group

If the testator leaves no descendants, husband or wife, parents, brothers and sisters, or their descendants, they are considered the third class of heirs. According to articles 850 and 853 BW, paragraph (1) and paragraph (3), the estate must be divided into two equal parts: one for all blood relatives in a straight line up and another for all blood relatives in the mother's line.

d. Heirs of the Fourth Group

Article 858 of the Civil Code stipulates that in cases where there are no brothers and sisters, the family in a straight line upwards will not exist. Half of the inheritance will be given to all relatives in the straight line up who are still alive, while the other half, except in cases mentioned in article 859 will be given to relatives in other lines. Other relatives in the lateral line limited to the sixth degree are the fourth class of heirs.

2. Customary Inheritance System

Customary inheritance law is closely related to kinship and marriage law, so the formation of customary inheritance law of a community is not inseparable from the kinship and marriage laws that apply there. According to Soerojo Wignjodipuro:²³

"that customary inheritance law is closely related to the familial characteristics of the legal community concerned, and affects the property left behind in that community. Therefore, in discussing the issue of inheritance, kinship law and marriage law must also be discussed".

¹⁸ *Ibid.*, p. 64

¹⁹ Soetandyo Wignjosebroto, *Op.Cit.*, p. 24

²⁰ Soeroyo Wignjodipuro, *Pengantar Dan Asas-Asas Hukum Adat* (Jakarta: Gunung Agung, 1995).

²¹ Surini Ahlan Syarif, *Log.Cit.*

²² Elviana Sagala, "Hak Mewaris Menurut Ketentuan Hukum Waris Perdata," *Jurnal Ilmiah: Advokasi* 6, no. 1 (2018): 121–122.

²³ Soerojo Wignjodipuro, *Pengantar Dan Asas-Asas Hukum Adat* (Jakarta: Haji Masagung, 1990).

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The customary descent and kinship system is still strong in society, especially in rural communities. According to Hazairin:²⁴ "...customary inheritance law has its own style from the mind of a traditional society with a form of kinship whose descent system is patrilineal, matrilineal, parental or bilateral".

In terms of the nature of the family Hilman Hadikusuma mentions it as a descent system, he says that in Indonesia the descent system has been in effect since a long time ago before the entry of Hinduism, Islam and Christianity.²⁵ Different descent systems appear to have an influence on the customary law inheritance system.²⁶ This can be described as follows, namely:

- a. Patrilineal system, this is a system that draws the line of descent and only links children to their father. This occurs both in a pure patrilineal system such as in Tanah Batak and in a switched patrilineal system, where children are linked to their father or mother depending on the type of marriage of their parents, such as in Lampung and Rejang.²⁷
- b. Matrilineal system, which is a system of descent based on the mother's line, where the position of women is more prominent than men (Minangkabau, Enggano, and Timor).²⁸
- c. According to Hazairin, the parental or bilateral system is a system of inheritance drawn through the parental line, or a two-sided line (father-mother), where the roles of men and women are equal in inheritance.²⁹ Soerojo Wignjodipuro expressed the same opinion and then said that societies that recognize only patrilineal or matrilineal descent in everyday life are called unilateral, and societies that recognize both are called bilateral.³⁰

The nature of customary inheritance law can be compared with the nature or principles of inheritance law applicable in Indonesia, including:³¹

- a. In the customary law system, inherited property is not regarded as an asset that can be valued in money, but as an asset that cannot be divided or divided based on its type and the interests of the heirs. In contrast, in the Islamic and Western legal systems, inherited property is considered an asset that can be valued in money;
- b. As stipulated in Western inheritance law and Islamic inheritance law, customary inheritance law does not recognize the principle of *legitime portie* or absolute share;
- c. Customary inheritance law does not recognize the right for heirs to demand that the inheritance be distributed at any time.

There are three customary inheritance systems found in Indonesia, namely:³²

- a. According to the individual inheritance system, each heir receives or owns the inheritance according to their own share. This system is usually used in Javanese society which adheres to a bilateral social system.
- b. Collective inheritance system: this system considers the inheritance property as a unit that cannot be divided, and the heirs only have the right to use or obtain the results of the property.
- c. Majority inheritance system: in this system, the property is inherited as an undivided unit, with the right of control given only to certain children. For example, the oldest son (Bali, Lampung, Teluk Yos Sudarso) or the oldest daughter (Semendo/South Sumatra), the youngest son (Batak), or the youngest daughter or son only.

In customary inheritance law, several principles are recognized, namely:³³

- a. The general principle that states, "If inheritance cannot be carried out based on the applicable provisions, then this inheritance is carried out upwards or sideways. This means that the heirs are first of all sons or daughters and their descendants. If there are no children or descendants by descent, then the inheritance falls on the father, grandmother and so on up. If this also does not exist who inherit is the brothers of the deceased property and their descendants, namely blood relatives according to the line sideways, with the understanding that the closest family excludes the family far".
- b. The principle of replacement of place (*Plaats Vervulling*) which states that if a child is the heir of his father, and the child dies, the place of the child is replaced by the children of the deceased (grandchildren of the deceased) And the inheritance of this grandchild is the same as that which will be obtained by his father as part of the inheritance he received. There is also the institution of child adoption, where the rights and position can also be like their own children".

²⁴ Hazairin, *Bab-Bab Tentang Hukum Adat* (Jakarta: Pradnya Paramita, 1975).

²⁵ Hilman Adikusuma, *Hukum Waris Indonesia, Perundang-Undangan Hukum Adat, Hindu, Dan Islam* (Bandung: Cipta Aditya Bakti, 1994).

²⁶ Soerojo Wignjodipoero, *Op.Cit.*, p. 109

²⁷ Mohd. Idris Ramulyo, *Op.Cit.*, p. 4

²⁸ Ali Afandi, *Log. Cit*

²⁹ Hazairin, *Hukum Kewarisan Bilateral Menurut AL-Qurán Dan Hadist, Cet. Kelima* (Jakarta: Tintamas, 1983).

³⁰ Soerojo Wignjodipoero, 1995, *Op.Cit.*, p. 110

³¹ Adelina Nasution, "Pluralisme Hukum Waris Di Indonesia," *L-Qadhâ* 5, no. 1 (2018): 25.

³² Tolib Setiady, *Intisari Hukum Adat Indonesia (Dalam Kajian Kepustakaan)* (Bandung: Alfabeta, 2008).

³³ Adelina Nasution, *Op.Cit.*, p. 26.

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In customary law, in general, religious differences are not a problem because they are not a barrier to inheritance. When customary law is implemented, there is no legal certainty because each custom is different, so there will be many different laws. And if customary law is applied in the distribution of inheritance, there are two things that make injustice and harm one party, namely: First, patrilineal societies (fatherhood) such as the Batak tribe in general who give much more inheritance to the male party. Second, matrilineal (maternal) societies such as the Minang tribe in general who give much more inheritance to the women.

3. Islamic Inheritance System

Islamic inheritance law is basically sourced from several verses of the Qur'an and the Hadith of the Messenger which consists of the sayings, actions, and things determined by the Messenger.³⁴ Some verses of the Qur'an that directly regulate the division of inheritance are as follows:

a. Surat An-Nisaa verse: 7

"For men there is a right to a share of the estate of their fathers and their relatives, and for women there is a right to a share of the estate of their fathers and their relatives, either a little or a lot according to a predetermined share".

b. Surah An-Nisaa verse: 11

"Allah has prescribed for you the division of inheritance for your children. That is, the share of a son is equal to the share of two daughters, and if the children are all girls more than two then their share is two-thirds of the property left behind, if the daughter is alone then she gets half the property. And for two mothers and fathers, for each of them a sixth of the property left behind, if the deceased has children, if the deceased has no children and he is inherited by his mother and father alone then his mother gets a third, if the deceased has several brothers then his mother gets a sixth. (These divisions shall be made) after the fulfillment of any will he may have made or (and) after the payment of his debts (concerning) your parents and your children, you do not know which of them is more likely to benefit you. This is the decree of Allah. Verily, Allah is All-knowing and All-wise".

c. Surah An-Nisaa verse: 12

"And for you (husbands) one-half of the property left by the wives, if they have no children. If your wives have children, then you get a quarter of the property they leave behind after fulfilling the will they make or (and) after paying their debts. If you have no children, the wives get a quarter of the property you leave behind. If you have children, then the wives get an eighth of what you leave after fulfilling the will you make or (and) after paying your debts. If a man or woman dies, leaving no children, but has a brother or sister, then each of the brothers or sisters shall receive one-sixth of the estate. But if the brothers are more than one, then they are allies in the third, after the fulfillment of the will made by him or after the payment of his debts with no harm to the heirs. Allah has established this as a true law from Allah, and Allah is All-knowing and Merciful."

d. Surah An-Nisaa verse: 33

"For each of the property left behind by parents and relatives, we have made heirs. And (if there are) those with whom you have sworn allegiance, then give them their share. Verily, Allah is witness to all things."

e. Surah An-Nisaa verse: 176

"They ask you for a fatwa (about kalalah). Say: Allah gives you a fatwa on kalalah (namely): if a man dies, and he has no children and has a sister, then for his sister is one-twelfth of the property he leaves behind, and his brother uses (all the property of the sister), if he has no children; but if the sisters are two, then for them two-thirds of the property left by the deceased. And if they (the heirs consist of) brothers and sisters, then the share of a brother is as much as the share of two women. Allah has explained this to you, so that you may not go astray, and Allah knows all things".

The hadiths of inheritance from the Prophet are very helpful in gaining an understanding of inheritance. Here are some Hadiths that are related to the law of inheritance, namely:³⁵

- The Prophetic Hadith of Ibn Abbas narrated by Al-Bukhari and Muslim which reads: Give *fara'idh* (the part that has been determined in the Qur'an) to the part that is entitled to receive it and the rest give it to the closest male family.
- Hadith of the Prophet SAW narrated by Imam Ahmad, At-Tirmidzi and An-Nasaa'i: Learn the Qur'an and teach it to people and learn *fara'idh* and teach it because verily you are a person who will die and knowledge will be raised, it may be that there will be two people who dispute, but they will not meet someone who will tell them (the law).
- The Hadith of the Prophet SAW narrated by Ibn Majah and Ad-Daarquthni reads as follows: Learn *fara'idh* and teach it to people because it is half knowledge, and it will be forgotten. *Fara'idh* is the first knowledge that will be uprooted from my people.

³⁴ Retnowulan Sutantio, *Wanita Dan Hukum* (Bandung: Alumni, 2000).

³⁵ Surini Ahlan Sjarif dan Nurul Elmiyah, *Pewarisan Menurut Undang-Undang* (Jakarta: Kencana, 2006).

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- d. The Hadith of the Prophet SAW narrated by Imam Abu Daud and Ibn Majah reads as follows: Knowledge is three, apart from that all branches are firm verses, valid sunnah and fair distribution of inheritance.
- e. The Hadith of the Prophet SAW from Jabir according to the narration of Imam Abu Daud AtTirmidzi, Ibn Majah and Imam Ahmad which means: The wife of Sa'ad Ibn Rabi' came to the Messenger of Allah SAW with two daughters of Sa'ad Ibn Rabi' who had died in battle. Their uncle took their father's estate and gave nothing to them. While both of them could not marry without property, the Prophet said: Allah will determine the law in this incident after which the verses on inheritance will be revealed.

The elements of Islamic inheritance law in the implementation of inheritance law for Muslim communities inhabiting the republic of Indonesia consist of three elements, namely: heirs, inheritance and heirs. The three elements are interrelated, and each has its own provisions.

1) Heirs

The heir is a person who at the time of death is Muslim, leaving an inheritance and a living heir. The term heir is specifically associated with a process of transferring rights to property from someone who has died to his family who are still alive.³⁶

Heirs in the Qur'an Surah al-Nisa' verses 7, 11, 12, 33, and 176, consist of parents/father or mother (*al-wālidaini*), and relatives (*al-aqrabīn*). *Al-wālidain* can be expanded to grandparents if the father or mother has died. Similarly, the notion of children (*al-walad*) can be expanded to grandchildren if there are no children. Likewise, the definition of relatives (*al-aqrabīn*) is all family members who can and legitimately become heirs, namely the nasab relationship from the straight line up, down, and side lines. In addition, the marriage relationship is also the heir, wife or husband.³⁷

2) Inherited Property

Inheritance or inheritance is mentioned by al-Qur'an surat al-Nisa'verse 7 with the term *taraka* or property that will be left (al-Qur'an surat al-Nisa' verse 180) transferring to those who are entitled to receive it (heirs). *Taraka* mentioned by the Qur'an surat al-Nisa' verses 11 and 12, which is then translated as the inheritance consists of objects and rights whose distribution is carried out according to the specified portion after the payment of debts and wills of the testator. The rest of the property after the fulfillment of these various obligations, that is what must be divided by the heirs as inheritance.³⁸

In connection with the rights of the heirs, the majority of Sunni scholars stipulate three obligations that must be carried out by the heirs before dividing the testator's estate, namely the cost of managing the body of the deceased, paying off the debts of the testator, and fulfilling the testator's will.³⁹

3) Heirs

Kin heirs (*nasab*) consist of :

- a) Children, the position of children as heirs, both male and female, is determined by their respective shares in the legal line of the Qur'an surat al-Nisa' verse 11, which regulates the acquisition between the rights and obligations of a boy and a girl, namely 2:1.⁴⁰ Regulates the acquisition of two or more daughters, which is $\frac{2}{3}$ of the inheritance. Regulates the acquisition of a daughter, which is $\frac{1}{2}$ of the inheritance.⁴¹
- b) Mother-father, the position of parents as heirs, both mother and father have determined their respective shares as heirs in three lines of law al-Qur'an surat al-Nisa' verse 11. First, regulates the acquisition of mother-father, each of whom gets $\frac{1}{6}$ of the inheritance if the deceased has children. Second, only determines the acquisition of the mother only, which is $\frac{1}{3}$ of the inheritance while the father gets an open share if the deceased has no children or brothers. Third, it determines the mother's acquisition of $\frac{1}{6}$ of the inheritance if the deceased does not leave children but has siblings, both brothers-father, mother, and siblings.⁴²
- c) Widowers and widows, both of which have been determined by their respective shares as heirs in the legal line of the Qur'an surat al-Nisa' verse 12. Regulates the acquisition of widowers by $\frac{1}{2}$ of his wife's estate if the wife has no children,

³⁶ Husnain Muhammad, *Makhluf, Al-Mawāriṭh al-Sharī'ah Al-Islāmiyyah ,Matabi' Al-Ahram Al-Tijariyyah* (Kairo, 1971).

³⁷ Hazairin, *Hukum Kewarisan Bilateral Menurut Al-Qur'an Dan Hadis* (Jakarta: Tintamas, 1990).

³⁸ Zainuddin Ali, *Pelaksanaan Hukum Waris Di Indonesia* (Jakarta: Sinar Grafika, 2008).

³⁹ *Ibid.*, p.47

⁴⁰ Rahmad Haniru, "Hukum Waris Di Indonesia Perspektif Hukum Waris Dan Hukum Adat," *AL-HUKAMA: The Indonesian Journal of Islamic Family Law* 4, no. 2 (2014): 460.

⁴¹ H.M. Tahir Azhary, *Bunga Rampai Hukum Islam* (Jakarta: Ind-Hild-Co, 1992).

⁴² Hazairin, *Op.Cit.*, p. 6

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but if the wife has children, the acquisition is $\frac{1}{4}$ of his wife's estate. Conversely, the widow gets $\frac{1}{4}$ of her husband's estate if the husband does not leave children, if the husband leaves children then the widow gets $\frac{1}{8}$ of her husband's estate.⁴³

d) Brother, a brother either alone or with several brothers have been determined share each as heirs in the legal line al-Qur'an Surat al-Nisa' verse 12 and 176. Verse 12 regulates the acquisition. a brother or a sister, who each get $\frac{1}{6}$ of the inheritance. Also regulates the acquisition of two or more brothers, all brothers share equally on $\frac{1}{3}$ of the inheritance.⁴⁴ Verse 176 is a definition of *kalalah*. *Kalalah* is a man or woman who dies leaving no children or no descendants, but only brothers and sisters.⁴⁵ Also regulates the acquisition of a sister by $\frac{1}{2}$ of the inheritance. Regulates the acquisition of one or more brothers equal to the entire inheritance. In addition, it also regulates the acquisition of two or more sisters amounting to $\frac{2}{3}$ of the inheritance, then regulates the balance of rights and obligations of acquisition between brothers and sisters, namely 2:1.⁴⁶

e) Surrogate Heirs, a child or more than one, both male and female who replaces the position of his parents as heirs, the heir is determined in the legal line of the Qur'an surat al-Nisa' verse 33. The line of law, regulates the replacement heirs for the estate of the mother-father, for the estate of the immediate family. However, the share of each successor heir refers to the provisions of Surah al-Nisa' verses 11, 12, and 176.⁴⁷

As a religious law that is primarily based on the revelation of God delivered by the Prophet Muhammad SAW, Islamic inheritance law contains various principles that in some cases also apply in the law of inheritance derived from human reason. These principles are:⁴⁸

- a. *Ijbari* Principle: In Islamic law, the transfer of property from a deceased person to a living person takes place automatically without the efforts or wishes of the deceased. This method of transfer is known as *Ijbari*.
- b. Bilateral Principle: In terms of inheritance, the right of inheritance is given to each individual from both sides of the bloodline, namely from the male and female bloodlines.
- c. Individual Principle: Islamic law teaches the principle of individual ownership, which means that property can be divided for each person to own. All inherited property can be divided into a certain amount that can be divided, and each heir is entitled to receive their respective shares, without being bound by other heirs.
- d. The Principle of Balanced Justice refers to the balance between rights and obligations and what is obtained based on need and utility. In other words, it can be said that gender does not affect inheritance rights. However, in societies that adhere to the patrilineal lineage system, where heirs are only of the fatherly line or male descent, this principle of balance does not exist.
- e. Islamic Inheritance Law stipulates that death is the only reason for the transfer of property. In other words, a person's property cannot be transferred if he is still alive.

Based on the explanation above, inheritance law in Indonesia still adheres to three systems, namely civil inheritance law, inheritance law based on custom and inheritance law according to Islam. The current regulation of inheritance law in Indonesia is based on a system of diversity, related to the different religions and cultures that exist in this country. This creates significant challenges in achieving equality and justice in the distribution of inheritance.

Indonesia is a country with high religious diversity. Inheritance law is governed by each religion, such as Islam, Christianity, Hinduism, Buddhism, and other religions practiced by the Indonesian people. Each religion has its own provisions regarding inheritance, including who is entitled to receive inheritance, the proportion of distribution, and the implementation mechanism. This religious diversity is a challenge in creating consistency and uniformity in the regulation of inheritance law throughout Indonesia. In addition, cultural diversity also affects the regulation of inheritance law in Indonesia. Each ethnic group and region has different customs in terms of inheritance. These customs involve traditions, norms and cultural values that affect the distribution of inheritance. These differences can cause injustice and conflict between family members who come from different cultures.

In this context of religious and cultural diversity, there are challenges that need to be overcome in the effort to unify inheritance law in Indonesia. One of the main challenges is achieving consensus among diverse stakeholders, including legal experts, religious leaders, customary communities and the general public. The process of unifying inheritance law must consider

⁴³ *Ibid.*, p.7

⁴⁴ Sajuti Thalib, *Hukum Kewarisan Islam Di Indonesia* (Jakarta: Bina Aksara, 1981).

⁴⁵ Hazairin, *Op.Cit.*, p. 8

⁴⁶ Sajuti Thalib, *Op.Cit.*, p. 134

⁴⁷ Zainuddin Ali, *Op.Cit.*, p.50

⁴⁸ Amir Syarifuddin, *Hukum Kewarisan Islam* (Jakarta: Kencana, 2004).

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the needs and interests of all parties, while maintaining Indonesia's diversity and religious freedom. However, amidst these challenges, there are also opportunities to create a fairer and more harmonious inheritance law system in Indonesia. Unification of inheritance law can simplify the process of inheritance administration, reduce bureaucracy, and avoid conflicts that often arise in the division of inheritance. In addition, by applying the principles of justice and equality in the unification of inheritance law, Indonesia can strengthen public trust in the justice system and improve social stability in the country.

B. Opportunities Toward the Unification of Inheritance Law in Indonesia

Indonesians are welcome to choose which inheritance law to use. As long as there is an agreement, people can choose customary inheritance law, Islamic inheritance law or civil inheritance law. But the problem becomes complex if there is no agreement between the disputing parties. If so, then the problem can become endlessly long and protracted. In such a situation, it is of course inevitable that there will be a conflict of interest from each party. The problem is widening which then leads to a conflict over the use of inheritance law, namely whether Islamic inheritance law will be used, or customary inheritance law, or civil inheritance law.⁴⁹

The complexity that stems from such legal conflicts is time to find a way out. There are two possible ways to resolve the problem of conflicts in inheritance law, namely: (1) keep the inheritance law in diversity and when a legal conflict arises, it is then submitted to the court; or (2) unify it by making a new law in the field of inheritance that is national in nature.

In order to realize national unity, one of them can only be achieved through legal unification. The idea of maintaining legal plurality is certainly not in line with the ideals of legal equality. On a more fundamental level, there is no constitutional basis for making different laws applicable to different groups of people. If we look deeper, the Indonesian Constitution does not recognize population groups.

The argument to keep inheritance law in Indonesia in a state of diversity has more negative consequences, because allowing this situation to continue is clearly contrary to the ideals of the nation which wishes to have a national law (which is unified and codified) which is the nation's own product. By ignoring this, it also means preserving the legal conflict between the three systems of inheritance law that has occurred since the Dutch colonial period and which continues to this day.⁵⁰

Efforts towards the unification of nationally applicable inheritance law should be started immediately, in addition to avoiding family conflicts, providing legal certainty, as well as updating things that are considered unfair in the existing inheritance law system.

The pattern of drafting the future national inheritance law can use the view of Sociological Jurisprudence from Roscoe Pound. According to Pound, a good (written) law is a law that is in accordance with the laws that live in society.⁵¹ This formulation shows a careful compromise between written law (from the national legislative process) as the legal needs of the legal community for legal certainty and living law as a form of appreciation for the importance of the role of society in law formation and legal orientation.⁵² In line with Pound's view, Eugen Ehrlich emphasized the principle of the importance of balance between formal law and the living law. Balance between the interests of the state and the interests of society.⁵³

Furthermore, to unify inheritance law in Indonesia can be done by adjusting the elements of the applicable legal order within the framework of the legal system. According to Sudikno Mertokusomo, a legal system is a collection of elements that work together to achieve certain goals.⁵⁴ According to Lawrence M. Friedman, every legal system consists of 3 (three) sub-systems, namely legal substance, legal structure, and legal culture.⁵⁵

The substance of inheritance law refers to the rules and principles that govern the distribution of a person's property, possessions or wealth after death. The substance of inheritance law can vary from one country to another, and can also sometimes vary depending on the prevailing religion, customs, or legal system. Therefore, there must be synchronization and harmonization in determining the substance of inheritance law towards unification.

Legal structure refers to the organization and structure of law within a particular country or jurisdiction. It includes the legal framework that governs how laws are made, applied and enforced within a legal system. Legal structure can vary from custom/culture to custom/culture, as can inheritance law. It can also involve independent judicial systems, law enforcement

⁴⁹ Mohammad Yasir Fauzi, "Legislasi Hukum Kewarisan Di Indonesia," *Jurnal Pengembangan Masyarakat Islam* 9, no. 2 (2016): 71.

⁵⁰ Busthanul Arifin, *Pelembagaan Hukum Islam Di Indonesia Akar Sejarah, Hambatan Dan Prospeknya* (Jakarta: Gema Insani Pres, 1996).

⁵¹ Lili Rasjidi, *Dasar-Dasar Filsafat Hukum* (Bandung: Alumni, 1985).

⁵² Lili Rasjidi dan I.B. Wyasa Putra, *Hukum Sebagai Suatu Sistem* (Bandung: Rosdakarya, 1993).

⁵³ *Ibid.*, p.84

⁵⁴ Sudikno Mertokusomo, *Mengenal Hukum* (Yogyakarta: Liberty, 1991).

⁵⁵ Lawrence M. Friedman, *Hukum Amerika: Sebuah Pengantar, Terjemahan Dari American Law An Introduction, 2nd Edition*, ed. Wisnu Basuki (Jakarta: Tatanusa, 2001).

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bodies, legislatures and executive governments that have roles and responsibilities in law making, implementation and enforcement. It is important to remember that legal structure can vary between customary, Islamic and Western inheritance law and the legal systems are different. Each inheritance law system has its own legal system that is based on history, culture and prevailing legal values.

Meanwhile, legal culture, also known as legal culture, refers to the values, norms, beliefs and practices relating to law in a particular society or group. This includes the perspective, attitude, and behavior towards the law adopted by individuals in that society. Legal culture affects the way people understand, obey and interact with the law. Here are some factors that influence legal culture:

1. **History and Cultural Heritage:** A society's history and cultural heritage have a significant influence on its legal culture. Past experiences, existing legal systems, and long-standing legal traditions can shape people's perceptions and legal values.
2. **Religion and Belief:** Religion and belief also play an important role in shaping legal culture. The value systems and ethics advocated by religions can influence people's views and behaviors towards the law. For example, some religions have rules and regulations that their followers follow, which can influence the legal culture in that society.
3. **Social Values and Personality:** The social values upheld by a society also have an impact on the legal culture. For example, if a society has a high concern for justice, equality or a sense of social responsibility, then their legal culture is likely to reflect these values.
4. **Economic and Social Factors:** The economic and social context of a society also affects legal culture. Economic inequality, social conflict, and certain social problems can reflect attitudes and views towards the law. In addition, these factors can also affect the level of compliance with the law and people's interaction with the justice system.
5. **The prevailing legal system:** The legal system that exists within a country or jurisdiction plays an important role in shaping the legal culture. A particular legal system, such as a common law system or continental legal system, can provide guidelines, rules and procedures that influence the way people interact with the law. Legal culture is not a fixed or universal entity, but varies across societies. Each society has its own legal culture that is influenced by a number of factors. Understanding the legal culture in a society is important to understand how the law operates, is accepted, and is carried out in it, as well as in efforts to unify inheritance law, it is necessary to understand each culture of the existing inheritance law system, namely customary inheritance law, Islamic inheritance law and civil inheritance law.

Furthermore, to create opportunities for the unification of inheritance law in Indonesia, the following steps can be taken:

1. An in-depth study and research should be conducted regarding the inheritance law systems applicable in Indonesia, namely the Civil inheritance law system, customary inheritance law, and Islamic inheritance law. This research can involve legal experts, academics, and legal practitioners to analyze the differences and similarities between the three legal systems.
2. Open dialog and discussion between stakeholders, such as legal experts, religious leaders, indigenous people, and the government. This discussion aims to find an understanding and solution that can be accepted by all parties regarding the unification of inheritance law.
3. Submitting proposals and discussions at the legislative level to adopt laws governing the unification of inheritance law in Indonesia. This process involves discussion and decision-making by members of parliament to determine the form and content of the law.
4. Socialize and educate the public on the importance of unification of inheritance law and the benefits of legal certainty in inheritance. This can be done through public campaigns, seminars, workshops and mass media.
5. After the unification of inheritance law is passed, implementation and evaluation of its implementation should be carried out. This evaluation aims to ensure that the unification of inheritance law can be implemented properly and provide justice and legal certainty for all parties involved.

However, it should be remembered that the chances of unification of inheritance law in Indonesia are still very small due to the different views, beliefs and values in society. Therefore, efforts to create unification of inheritance law need to be done carefully and involve all parties involved to reach a broader understanding.

IV. CONCLUSIONS

Inheritance law in Indonesia is very pluralistic because inheritance law is not uniform, consisting of civil inheritance law regulated in the Burgerlijk Wetboek (WB), customary inheritance law regulated in their respective customary inheritance laws based on existing kinship systems (patrilineal, matrilineal, and parental), and Islamic inheritance law regulated in Islamic law. There are challenges that need to be overcome in the effort to unify inheritance law in Indonesia. One of the main challenges is achieving consensus among diverse stakeholders, including legal experts, religious leaders, customary communities and the

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general public. The process of unifying inheritance law must consider the needs and interests of all parties, while maintaining Indonesia's diversity and religious freedom. However, amidst these challenges, there are also opportunities to create a more just and harmonious inheritance law system in Indonesia.

To unify inheritance law in Indonesia can be done by adjusting the elements of the prevailing legal order within the framework of the legal system. A legal system is a collection of elements that work together to achieve certain goals. In every legal system consists of 3 (three) sub-systems, namely legal substance, legal structure, and legal culture. Furthermore, to create opportunities for the unification of inheritance law in Indonesia, the following steps can be taken: Conduct in-depth studies and research related to the prevailing inheritance law system in Indonesia; Open dialogue and discussion between stakeholders, such as legal experts, religious leaders, indigenous peoples, and the government; Submit proposals and discussions at the legislative level to adopt laws governing the unification of inheritance law in Indonesia; Conduct socialization and education to the public about the importance of unification of inheritance law; And after the law on unification of inheritance law is passed, implement and evaluate its implementation.

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