



Ahkam

Jurnal Ilmu Syariah

- ❖ M. ARSKAL SALIM GP
Competing Political Ideologies on the Implementation of Islamic Law in Indonesia: Historical and Legal Pluralist Perspectives
- ❖ ATANG ABD HAKIM, HASAN RIDWAN, M. HASANUDDIN, SOFIAN AL-HAKIM
Towards Indonesia Halal Tourism
- ❖ DEWI SUKARTI
Customary Law of Inheritance and Migration: Adoption of the Old Regime or Adaptation to the New One?
- ❖ JAENAL EFFENDI & ANGGITA AULIA PRATIWI
Factors Affecting the Repayment Rate of *Mushāraka* Financing on Micro Enterprises: Case Study of BMT Al Munawwarah, South Tangerang
- ❖ RUSLI HASBI
Al-Muzāharāt al-Silmiyyah Tatbīqan li Nizām al-Riqābah al-Sha‘biyyah fi al-Fiqh al-Islāmī wa al-Qānūn al-Waḍ‘ī al-Indūnīsī
- ❖ DAUD RASYID & AISYAH DAUD RASYID
Ribā al-Qarḍ fi al-Mu‘āmalāt al-Mu‘āṣirah fi Mīzān al-Iqtisād al-Islāmī



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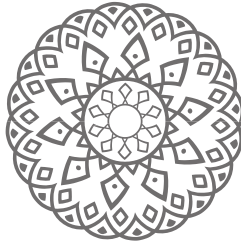
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TABLE OF CONTENTS

- 259 M. ARSKAL SALIM GP
Competing Political Ideologies on the Implementation of
Islamic Law in Indonesia: Historical and Legal Pluralist
Perspectives
- 279 ATANG ABD HAKIM, HASAN RIDWAN, M. HASANUDDIN,
SOFIAN AL-HAKIM
Towards Indonesia Halal Tourism
- 301 DEWI SUKARTI
Customary Law of Inheritance and Migration: Adoption
of The Old Regime or Adaptation to The New One? 301
- 321 JAENAL EFFENDI & ANGGITA AULIA PRATIWI
Factors Affecting The Repayment Rate of Musharaka
Financing on Micro Enterprises: Case Study of BMT
Al Munawwarah, South Tangerang
- 335 A. BAKIR IHSAN
Kebijakan Berdimensi Syariah dalam Sistem Partai Politik
Islam

- 351 M. BENI KURNIAWAN
Pembagian Harta Bersama Berdasarkan Kontribusi dalam
Perkawinan
- 373 SALNUDDIN
Indikator Penciri Penanggalan Hijriah pada Pergerakan
Pasang Surut
- 389 MOH. ALI WAFA
Telaah Kritis Terhadap Perkawinan Usia Muda Menurut
Hukum Islam
- 413 JA'FAR
Al Jam'iyatul Washliyah dan Problem Kepemimpinan
Non Muslim dan Perempuan
- 435 SAUT MARULI TUA MANIK, YASWIRMAN, BUSRA AZHERI,
IKHWAN
Penyelesaian Sengketa Ekonomi Syariah Melalui
Pengadilan Khusus Ekonomi Syariah di Lingkungan
Peradilan Agama
- 449 رسلي حسي
المظاهرات السلمية تطبيقا لنظام الرقابة الشعبية في الفقه الإسلامي
والقانون الوضعي الإندونيسي
- 475 داود راشد وعائشة داود راشد
ربا القرض في المعاملات المعاصرة في ميزان الإقتصاد الإسلامي



CUSTOMARY LAW OF INHERITANCE AND MIGRATION: ADOPTION OF THE OLD REGIME OR ADAPTATION TO THE NEW ONE?

Dewi Sukarti

Abstrak: Artikel ini adalah hasil dari penelitian lapangan tentang budaya waris masyarakat migran Besemah di Jakarta. Masalah yang dimunculkan dalam artikel ini adalah apakah masyarakat migran Besemah mengadopsi hukum adat waris mereka atau mereka beradaptasi dengan hukum yang berlaku di Jakarta? Artikel ini menemukan bahwa masyarakat migran Besemah beradaptasi dengan budaya waris urban yang memberi bagian yang sama antara laki-laki dan perempuan dan memberi posisi yang kuat kepada istri. Temuan penting lainnya adalah bahwa hanya sedikit masyarakat migran Besemah yang masih mempertahankan nilai-nilai dan budaya lama daerah asal mereka.

Kata kunci: Besemah, harta turun temurun, hukum adat, migrasi, perempuan

Abstract: This article is a result of field research about the culture of inheritance of migrating Besemah people in Jakarta. The research questions raised in this article are do migrating Besemah people adopt their customary law of inheritance or do they adapt to the regime prevailed in the Jakarta?. This article found that Besemah people living in Jakarta have been adapting to the urban way of inheritance which gives similar share between men and women and gives a strong position to wife. Another important finding is that only a small number of migrating Besemahers still maintain the old value and customs of their region of origin.

Keywords: Besemah, ancestral property, customary law, migration, women

ملخص: كانت هذه المقالة نتيجة البحث الميدانية الواقعية حول تقاليد التوريث في وسط مجتمع باسلمة بجاكرتا، والمشكلة في هذا البحث هل كان مجتمع مهاجرة باسمة يستمدون أحكام التوريث من عاداتهم الخاصة ام مشتقة من أحكام التوريث المعمولة في جاكرتا؟ اظهرت هذه المقالة ان هؤلاء يستمدون من أحكام التوريث المحلي الذي يمنح التسوية بين الذكور والإناث. والنتيجة الأخرى تثبت بان القليل من شعب باسماة مصرين على القيم والعادات القديمة.

الكلمات المفتاحية: باسمة، المال المتوارث، الحكم التقليدي، المهاجرة، النساء

Introduction

Migration is a global phenomenon in developing countries and Indonesia is of no exception. In the New Order period which lasts for thirty-two years, Indonesia experienced a centralized system of governance, which Jakarta and surrounding regions in Java as the center of development and the rests as agricultural regions. The impact of the New Order's policy is high rate of urbanization to Java. It goes with this flow that Besemah people migrate to Jakarta. In addition to condition of the receiving region, which is accepting the coming migrants, the reason for migration can be analyzed also from the perspective of the sending region. From history, it is known that when many Besemah men were incapable to pay customary bride price for their marriage, some Besemah men migrated to the other region that did not practice the bride price. Nowadays the motives for migration is not escaping from the bride price payment as the old tradition no longer exists. But many Besemah's men still go migrating to cities, like Jakarta. In addition, migration is not limited to men, but also include women.

The practice of inheritance of the migrants from the other Indonesian ethnic groups have been researched by a number of researchers, such as Edward M. Bruner (1961), who's work entitled *Urbanization and Ethnic Identity in North Sumatera*. He found that migrant Batak people maintained their traditional custom in the city of Medan (Bruner, 1961: 508). Hildred Geertz (1963) who wrote *Indonesian Cultures and Communities* found that new migrants and the second generation of migrants are mainly bicultural, meaning that they retain the culture of their villages while participating in the super culture of city (Geertz, 1963: 17). and Irianto (2012 a) who informs that daughters and widows of migrant Toba Batak have a chance to get access to property inheritance by strategies: first, making an official testament intervivos; secondly, selling the unmovable properties and converting them to jewelry or cash and give it to daughters; thirdly, sending daughters to higher education (Irianto, 2012 a: 110).

So far studies of the customs of Indonesian ethnic groups found out that the migrants keep practicing the tradition of their region of origin as regulated by their customary laws (Bruner: 1972; Irianto: 2012). But they might bring their old tradition while practicing the new tradition of the city, or in Geertz's word, bicultural (Hildred Geertz, 1963: 17).

So far no studies have been found on the culture Besemah's migrants, let alone their legal culture.

In contrast, A. Suryaman Mustari Pide viewed that the migration of customary communities changes the existence of customary law. Migrant people started to leave customary values of their home villages or at least they are quiet loose in terms of cultural attachment to their customary community as well as in terms of compliance to their old customary law as they adapt to the new culture in new place. Their detachment will get looser and even lost in a family of inter-regional marriage (Pide, 2014: 167).

Data for this research paper result from a qualitative research conducted in Jakarta in 2015 and 2016. Primary data are based on in depth interviews and observation with Besemah's community in their enclaves in Jakarta. While secondary data are from literature review on books and articles. The findings of this field research are the followings:

Besemah's Customary Law

What I mean by custom in this article is a practice of a society practiced by generations on inter-generational distribution of wealth. In the view of Sir Paul Vinogradoff custom is a tacit consent among the society that can be felt in their daily lives (Vinogradoff, 1925: 22). In Black's law dictionary, custom is defined as "a practice that by its common adoption and long, unvarying habit has come to have the force of law" (Garner, 2009: 442). Customary law (*adat* law) is the customs that have attributes of law, at least attribute of obligation and that of sanction (Pospisil, 2000: 125-127). Customary law in Black's Law Dictionary is defined as "law consisting of customs that have been socially accepted as legal requirements or obligatory rules of conduct; practices, and beliefs that are so vital and intrinsic part of social system that are treated as if laws" (Garner: 443). Thus, customs are the habits of a society in facing their social life. If every member of a society has the same opinion on how it should be in leading a social life, then it is custom. Similarly, if it is found uniformity of patterns of behaviors in a society of a place in settling concrete cases it can be said that the uniformity is the prevailing custom in that place (Vinogradoff: 27). In line with this view, Indonesian Supreme Court's decision no. 7 K/ Sip/1953 decided that although there are practices of inheritance of

Besemah's society that do not give higher share to the oldest son, the practices do not show that the Besemah's customary law that rules the oldest son receives more share of inheritance than the other sons has changed. An investigation is needed to determine that a customary law has changed.

Besemah's people have a codified customary law, called *Undang-undang Simbur Cahaya* (UUSC). UUSC was codified in 1854 under the command of Collonel de Brauw, the Dutch Resident in Palembang. The primary source of this codified UUSC is an emblem encribed with rules made by the Sultan of Palembang and interviews with people on the customs in legendary Simbur Cahaya Karta Ampat Bicara Lima (the springkle of light of four chiefs of Atung Bungsu's descendants and one chief of the local native people who already settled earlier in the Besemah land), codes of Ratu Sinuhun and Cinde Balang (Sukarti: 140-141). However, the contents of the Dutch-codified UUSC are not ancestral customs, but pseudo customs as some of its contents are the policies of the Dutch colonial government in governing people in the Besemah land in particular and South Sumatera in general. According to Wilken, during the codification of the Besemah customary rules, all rules related to bride price payment were intentionally omitted. Thus it is hardly found in the UUSC any rules about laws of marriage and inheritance if related to the bride price payment (Wilken, 1921: 118). The Dutch colonial government's policies are the abolition of social institution of bride price, tax payment prevailed throughout Palembang including the Sultanate's free of tax regions, the change of judicial administration system from village tribunals and marga tribunals in previous system to the chief of division, and reducing function of UUSC from the sole reference of law for Palembang people to the second class reference after the Dutch law book (Sukarti: 143-153). From the many versions of UUSC written on paper, viz. the versions of 1854, 1862, 1873, 1875, 1894/1897, 1913, 1922 and 1933/1938 it seems that there are gradual changes of UUSC from the legal reference of the people of the upper reaches regions (where the Besemah land is located) to the unofficial reference till—not a legal reference anymore—at the peak of the Dutch power. At the peak of the Dutch power in South Sumatera penal contents of the UUSC were gradually revoked from the UUSC because since then all natives had

to obey the Dutch criminal law (*Wetboek van Strafrecht*). On the other hand, the competence of Rapat Marga (Marga's Trial Court) reduced in 1913 as its judges were able to try only light breaches of customs (Sukarti: 151-153).

Regulation on inheritance distribution is written in the version 1894/1897 (Sukarti: 147). However, UUSC did not say about shares of heirs of inherited property, it only said about the administration of people's inheritance by a village religious leader. UUSC version 1894 says in chapter *Aturan Kaum* (village's religious leader) article 16: "marga's chief and marga's religious chief should take care of orphans in his marga and hold the orphan's inherited property as to reach the age of fourteen years." Article 52 of law and adjudication: If a husband dies, his wealth is divided into two: one part is for the deceased's children and the deceased's siblings (*sanak*) and another part for his wife (if the property is joint property). If the deceased has debt should (the living heirs) first pay all of the deceased's debt, the rest can be divided (for inheritance)." Article 53: "if the deceased's inheritance is not enough for paying his debt, and it is clear that his wife is also responsible for the debt, the wife should pay a half of the inherited debt. But it is prohibited for small children from joining the responsibility for paying the debt of their father if the small children do not receive inheritance" (Berg, 1894: 47; KITLV Or. 91: 39)

In UUSC version 1894/1897 wife is one of the heirs of his husband. She has a share in her husband's joint property when the property is earned together during their wedlock. Article 54 of the UUSC version 1894/1897 says: if a wife dies then a half of her joint property (with her husband) is for her children and if the deceased does not have a child then the inheritance is for the deceased's siblings" (Berg, 1894: 47). These articles show that UUSC was not in line with Besemah's tradition.

Therefore, Indonesia's supreme court is right in deciding that UUSC could not be referred to in settling the real case of inheritance dispute in Palembang. In its decision no. 107K/Sip/1955, judges considered that since many of the contents of the UUSC contradict the living customary law in Palembang the UUSC could not be implemented in settling inheritance disputes in di Palembang.

Gersen's version of the Besemah's law entitled *Oendang-oendang of*

Verzameling van Voorschriften in de Lematang-Oeloe en Ilir en de Pasemah Landen (Collection of Law in the Upper Lematang and the Land of Pasemah) might contain the customs that match the customs of Besemah people. In this collection, it is said that: a) Property of a died wife is for her husband if her bride-price has been paid by the husband; b) when the husband is married by *ambil anak* (virilocally) then the property of a died wife is for her children and her siblings; c) children are inherited by his parents; d) the oldest son receives twice as much as the rest of his siblings; and when there is no son the oldest daughter receives more than the rest of her siblings; e) Inheritor may abrogate all or part of inheritance rights of their children, but this is considered negative in their children's perspective. If this happens, the other children who receive inheritance are obliged to reduce their rights of inheritance to help the abrogated child's economy; and f) by the absence of female's descendants in the line down all female's heirs in the line up inherit the property, and by the absence of all these, relatives in the side line inherit the property, by taking into account the lives of people mentioned earlier in previous paragraphs on inheritance division, with the perspective as of female's relatives (Gersen, 1873: 145-147).

Gersen's collection of the Upper Lematang and Besemah's law may be a manual for Besemah's customary law because only in this version that Besemah land is mentioned. Gersen's version of Besemah's customary law seems to be the customs of Besemah in the past because indeed the two kinds of marriages, viz. bride price and virilocal marriage, were the prevalent models of marriage (Marsden, 1811: 225). After the Dutch colonial government in Palembang prohibited the practice of the two marriages as well as current implementation of Islamic marriages, the first two articles do not prevail anymore.

However, Gersen's version of law does not mention the objects of inheritance, which consist of ancestral property and joint property. Ancestral property is high heritage (*pusako tinggi*) in the West Sumatera. The ancestral property usually takes the forms of fish ponds, fruit gardens, bushes, coffee gardens, rice fields, and old house, and heirlooms.

As the Besemah's society adopts patrilineal kinship then a father's ancestral property is transferred to a son, the chosen son is the oldest son. In the situation that a father has only a son then he is the heir of

the ancestral property inspite of the fact that he is not the oldest child. If the children's sex is the same, then the ancestral property is inherited to the oldest child. The Besemah's inheritance customs is different from Batak's inheritance customs although they are equally from Sumatera and share patrilinealism. Besemah's customs is majorat patrilinealism and changing patrilinealism (Soekanto, 2016: 260), meaning can be changed to the oldest daughter if there is no son. Batak's people adopt a system of tight patlinealism, in which only the sons as the heirs (Irianto, 2012 b).

The heir of the ancestral property is morally responsible for the well being of his father's lineage (*jurai*). In the past there is a sort of unwritten condition that the heir of the ancestral property should live in his village after marriage because later he will take care of the ancestral property as well as become the leader of his father's lineage replacing the position of the father if the father has died or too old. But now, with the phenomenon of migration to cities, many recipients of the ancestral property do not live in the fathers' villages. However, some of them keep enjoying the produce of their ancestral property without taking care of his father's lineage because they are also in need of the produce to support their life. Those who live prosperously do not enjoy the produce of their ancestral property because they do not ask for its produce.

Other than to the oldest son, parents also inherit their joint properties to the rest of their children on the condition that, for receiving unmovable property, the other sons and daughters should live in the parents' village after marriage. An oral customary contract is made by the bride and groom in front of families heard by public stating that they will take a patrilocal or matrilocal or free marriage. This contract determines which side should give the bride and groom a land for their living after marriage. If the content of the customary contract state that they take a *belaki* (patrilocal) system then the groom will be given pieces of land by the groom's father, and the bride is given gold jewellery by the bride's parents (Bickmore, 1868: 507). Jewellery also symbolizes social status of the girls who get married. The more gold jewellery they bring into the marriage the higher is their social status. As for when the customary contract is *ambik anak* (virilocal) then the groom is not given anythings other than his clothes by his parents. He

finds a living from working on the lands belong to his father-in-law. But in future, one of his children should go back to the father's village of origin and live there to take over the position of his father, who live outside the village, in inheritance and thus he/she would receive a land. Perhaps the term of *ambil anak* (meaning taking a child) comes from the prerequisite of a child going back to the father's village of origin. *Ambil anak* means that although the father lives virilocally, one of his children is taken to continue the father's lineage in the father's village of origin.

There are philosophical and social reasons behind the Besemah's customary law of inheritance. The first reason is that unmovable inherited properties are expected to keep intact and be transferred from one generation to the next generation because the properties function to unite paternal lineage. According to Simbolon, the existence of gender limitation to access land is a method to keep the land remains in the limited patrilineage region (Irianto, 2012 b: 15). It rarely occurred in the Besemah communities that a house and land are sold for inheritance but the children receive the objects of inheritance intact. At present, however, since the generation migrate to the cities and grow old there, some heirs start to sell the "unreachable" inherited lands, the inherited lands that are located very far from their homes and idle. Then the money is distributed to all of the heirs equally.

In addition, another moral reason is that when a son/daughter *tunak*, meaning that he/she stays there after marriage, then he/she is relied on by his new family for place to live. In this situation, it is impossible that parents let their offspring live without land as a life provision in spite of the fact that he/she is not the oldest child.

Migration

Migration is a common habit of South Sumateran people. Zulyani Hidayah wrote that ethnic group of Besemah consists of sub-ethnic group of Gumay, sub-ethnic group of Semidang, and sub-ethnic group of Pasemah (Besemah). According to folklore the three groups came from the same place who migrated to the upstream of Lematang River and Valley of Mount Dempo periodically. Gumay migrated at the first period, followed by Semidang, and then Besemah (Hidayah, 1996: 213).

Thus migration for the three groups has been common since a long time. Minako Sakai writes that for the Gumay people migration for a better life is a not a new phenomenon. They even consider migration as a proper choice. In the past their ancestors travelled through rivers to find a better settlement that made Gumay people spread throughout South Sumatera. Now, personal migrations still continue that result in a half of surveyed households have at least one son or daughter who migrate for works or following their couples to outside Gumay land (Sakai, 2017: 342-343).

Like their neighbors in Gumay, Besemah people have been familiar also with migration for a better life. In the ages when sumbay prevailed people of Besemah started to migrate individually to surrounding regions, from Pagar Alam as the region of origin to Manna, Rejang (Bengkulu), to Lintang, Mulak, and to Gumay, Kisam, and Saling at Tebing Tinggi, even to Semende and further to Lampung at the southern edge of Sumatra. In the new settlements they keep identifying themselves as Besemah (Barendregt, 2005: 91).

Located in the hinterland, rivers were the main route that connected Besemah to outer world before streets were built. These rivers enabled cultural contacts between the people of Besemah and societies of outer world. Bickmore's travel report told that in order to reach the Besemah land from Palembang one could go through Lematang River by boat. From the Lematang River to the hinterland can be reached by bamboo raft (Bickmore, 507, 518). The excavation of Bumiayu site at a bank of the Lematang River, some 90 kms from Palembang, shows the importance of river for the civilization of Besemah. The excavation of this site results in the many remains of temple and people's houses, showing that the area was a bustle and hustle at the age of Sriwijaya, even the second busiest place after Palembang (Munandar, 2007: 11-13). Bumi Ayu was the commodity storage place in the 9th to the 15th centuries. Commodities to and from Palembang was carried through the Lematang River and stopped at Bumi Ayu. In Bumi Ayu there was an exchange of Sriwijaya's exported and imported commodities (Munandar, 138-141).

After the streets and roads were opened, the process of migration to the outer places easier and made many Besemah people migrate even to Java. The first migration from the Besemah land to Java occurred at

the end of colonial age. Those who migrated are the sons and daughters of *pasirah*, who were known to be close to the circles of the colonial government and received education given by the Dutch to the native officials. After independence, many young people went to educational centers in Java to pursue education. After finishing their education, some of them returned to their home town, the other stayed in Java. Most of dwellers of Indonesian cities of 1960 are the second generation of migrants. The first generation adopts a bicultural behaviors, that is while participating in a metropolitan superculture, they keep practicing the culture of their place of origin in certain field of life (Geertz, 1963: 16-17). The upper class urban are those who do practice this superculture, as for the lower class urban would tend to the culture of their region of origin. They participate minimally in the cities' super culture and are loyal to the cultural identity of their region of origin in their life in the cities. Whereas the middle class, some of them are new comers to the city, the rest are the offspring of the comers who have lived in the city for long time, those who were close to the Dutch government in the colonial period (Geertz, 17-19).

The process of migration in Besemah today is just similar to that in the past, just individual migration, starting with relatives or friends who have migrated earlier, then during his holiday in his home village tells information on his new place, then when he comes back to the new place a relative or friend follows or comes later. Above all, there is a common will of the parents in Besemah that their children have to be better than their parents. The traditional job of majority of Besemah people in their home villages are considered not the best choice. That is just the last choice when there is no other better job. Minako Sakai found that young people who have finished their high school tend to avoid the traditional job of farming and look for jobs outside their home villages. Big cities in South Sumatera and Jakarta and Bekasi in Java are popular places of their destination for migration (Sakai: 344). This view is not because the farming land in their home villages is not enough or the soil is not fertile, but the job as farmer is tiring physical job, working under the sun or exposed to rain during rains, and often skin becomes itching after being exposed to smooth thorn of paddy during working on rice fields or exposed to poisonous hairy caterpillars in coffee gardens. Therefore, young people attempt to avoid

the traditional farm works. In addition, the prices of paddy and coffee commodities as the popular commodities are not comparable to the current living costs, let alone if one wants to keep his pace with the development of technology in cities.¹ The development in the cities must also influence people in the village as an impact of information technology such as tv, gadget, and internet. Almost every young man and woman in Besemah villages have hand phones and many of them have access to social media. Almost all household have tv through which they see the world outside their villages.

Nowadays the migrants from Besemah inhabit all strata in the cities' social structure, with the largest percentage in the lower class, followed by the middle class, and the upper class.

Actually the main factor for migration from the sending regions is the economic imbalance between the capital and the other regions in which the capital is developed while the regions are relatively stagnant and left behind. The Indonesian New Order's policy of development dictated that Java as the center, while the other regions were periphery. This condition also distracted the young people from living in their home villages, that result in only a small number of young people remain living in the home village. This results in the lack of manpower for the process of agriculture.

Among the migrants, however, there are migrants who come back to their home villages, because of either failure in the cities or after retirement and want to enjoy living in the home villages. That is not a bad choice because the mission of the current Indonesian government is to prioritize villages development, although now this policy is still at the stage of developing infrastructure and micro economy.

But for the Besemah people who migrated to Jakarta for the purpose of pursuing higher and quality education Java is still dazzling, because in Java a number of quality universities exist. The Besemah people who are quite well to do, such as coffee grocers or rice grocers, send their children to Palembang, Jakarta or Yogyakarta for pursuing a higher education. If at the post colonial time, only the family of marga chief who could enjoy higher education, now people with lower to middle class of economy are also energetic to send their children to educational institutions in big cities, by entrusting their children to families who have migrated earlier in the city.

The Indonesian New Order's policy of education, as a result of centralism policy, makes rural people go away from their region's resources and potentials. Many of the Besemah people who pursued higher education in big cities do not return to their home region after graduation. They work in the big cities in Indonesia. Or when they work in their home region, they do not work on agriculture sector anymore, but work in offices.

In the post reforms era, Lahat District, where half of the Besemah people live, open many coal and gas minings. But the industry that does not take side to the local society or the skills of the local society that do not match the needs of the coal and gas mining industry make the Besemah migrants do not return to their home villages for working in such a sector.

Attitudes of the Besemah People towards Their Customary Law of Inheritance

Attitudes towards the Transfer of Ancestral Property

The informants cannot deny their destiny whether they are or they are not the heirs of the ancestral properties. Considering the fact that the ancestral properties are located far away in home villages, they are not possible to occupy the ancestral properties. Thus the ancestral properties are occupied and enjoyed by the sibling who lives in the home villages. Sometimes the name of the heir of the property is attached to the property, such as Ramlan's rice field but the one who occupies and enjoys it is his sibling in his home village. Whether or not the heir enjoys the produce of the rice field depends on agreement between the heir and the farmer who works on it, whether only one sack of rice, 1/3 or half.

The attitudes of the Besemah migrants to the ancestral property are varied, ranging from lumping it to assertiveness. Social economic condition of the migrants is the main factor that influences his attitude. When they are successful in the city, they tend to lump the produce of the ancestral properties. But those who live just over the line of poverty or live modestly are assertive that the ancestral properties mean economic capital for their living and the future of their sons. The ancestral property will be transferred to the oldest sons or the only son if the heir feels of uncertainty of the future of their children, may be if

the son is not successful enough in the future he wants to work on the ancestral property for living. Syafrul, for example, who receives and enjoys the ancestral properties maintains that his ancestral property is for his only son. As the only son he is inherited with ancestral properties in the forms of rice field, two pieces of bush, and a landed house. He migrated to Jakarta to pursue his university education. When he was a sophomore, he was starting working as an employee. That's why for years he did not need the produce of his ancestral property to support his living. However, he received a modest produce of his ancestral property when harvest from his elder sister. But when he was laid off during global economic crises of 1998 and needed to send his elder daughter to a university he was forced to put his ancestral rice field on pawn to his niece, that is redeemed by his second daughter few years later after the second daughter who worked as a nurse in Saudi Arabia returned home. Afterwards the contract between Syafrul and his sister was changed from giving "modest share" to "half". The reducing number of rice fields in Indonesia has increased the price of rice. This makes the heir of the rice fields wants to earn more money from his own ancestral rice fields. The economic advantage of the ancestral properties helps the heir support his family's subsistence in Jakarta.

There are well to do men, however, who perceive that the ancestral properties are ancestral privilege, thus have to be upheld. Philosophically speaking, with the ancestral properties lies a trust of the father that the the heir of the property takes care of the father's lineage. But in fact this trust is rarely met by the heir of the property because of their economic hardship in Jakarta as well as the fact that some of them do not understand the philosophy behind the transfer of the ancestral property. The burden for being the heir of the ancestral property makes those who migrate do not agree to make his joint property ancestral, that they perceive unjust both to them and to the other siblings. They will transfer all of his joint property to all of his children. Thus there is a change in perceiving inherited property in Besemah's community in Jakarta. Traditionally the ancestral property must be kept intact to unite the paternal lineage, thus the heirs are morally and financially responsible for his paternal lineage. But in the Besemah's migrant the ancestral property belongs to the oldest son without a moral and financial responsibility.

Attitude towards Wife and Daughter as Heirs

Although Besemah's living law dictates that a wife and daughters are not husband's heirs, especially when the property is ancestral, and the joint property according to some people at least some still practice that wives are not heirs when their marriage was contracted under the *berlaki* system, the Besemah's people in Jakarta have changed their attitude towards wives and girls. The main reason for this trend is that they do not practice *berlaki* marriage any more. Above all, in migrating life, the joint property is needed to support their life and to anticipate when the wives are too old that need healthcare that requires the joint property be not transferred yet to children when the widow is still alive. The wife leaves the decision about the portion of inheritance to their sons and daughters.

On daughter's portion of inheritance, some informants are in favor of distributing equally between sons and daughters. Some others, however, distributes their wealth in accordance with their children's needs. They put their children's educational fee as part of gift to their children, that is equal to property inheritance. Some quite well to do parents help providing down payment for their sons and daughters buy a house (when their sons/daughters have not had a house to live and plan to buy a house) or a car (when their sons/daughters have had a house and plan to buy a car). This provision of downpayment depends on the purchasing power of their sons and daughters.

Attitude towards the Time of Inheritance Distribution

According to the Besemah's prevailing tradition, properties are transferred to sons and daughters during the parents' life. There are a number of justification for this tradition, among them are that parents are responsible for fulfilling their children's needs until their sons and daughters lead a married life. After their sons and daughters are married, some times parents cannot resist seeing their sons and daughters have not been economically established. Therefore, parents still give properties to their married sons and daughters. There is a change of behavior, however, in the time of property distribution of migrating Besemahers, in the Besemah land parents usually give unmovable properties, even their only house, to their sons and daughters during their life. This occurs when the oldest son marries. In the past and still occur in current situation a week

after marriage a new couple were asked to stay at a small house (*dangau*) in the rice field for around a year for their freedom. After a year they return to village and settle in a *beruge* (a room in front part) of the man's parents' main house, by which he is entitled to take care of his lineage (Barendregt, 2004: 111-112). Then parents build a smaller house beside the old house that have been given to their sons. This is usually given to the first son for the purpose of giving opportunity to their married son to live on their own autonomy. But sometimes this is because of an intrigue of their daughter-in-law who want to live in a separate house from that of her parents-in-law. In the Besemah land this tradition is not a problem because of the availability of land for the parents to build a new house, the materials of which have usually prepared by the parents under their raised house. In Jakarta, the migrant Besemahers give their property to their sons and daughters in equal portions after all of the parents die, meaning that the distribution of the inherited property is given to the sons and daughters themselves by family discussion and deliberation. Likewise, in Jakarta the Besemah parents do not give their occupied house to their first son because of the scarcity of land. The price of houses always increases significantly year by year. Moreover, one of the requirements of many banks for housing loan is that the debtors still have quite long time before their retirement. Most parents only have one house, the house that they are occupying. MS and WB said "*khumah gi sikuk nilah, dik tau nak ngenjukkanye nga anak luk jeme di dusun* (I only have this house, therefore this house cannot be given to sons like in our home village).

Considering their migrant situation, the migrant Besemahers tend to transfer their unmovable properties after the parents' death. Then all heirs hold a deliberation before dividing the inheritance to all rightful heirs. This is what Islam calls as inheritance. Inherited property is the legacy of a dead person, after the late's debts and wills are paid, given to the late's heirs as the effect of the death of an inheritor.

The Migrant Besemahers' Choice of Law in Intergenerational Transfer of Property

Since the New Order's period, Jakarta has been a metropolitan city as well as the center of national governance that became the center of

development for more than thirty years. One of the many impacts of the centralized development has been the extensive as well as intensive socio-cultural, economic, and technological development in Jakarta. It is in Jakarta that Indonesians feel easy to buy brand new products of technology, whether transportation technology or communication technology that enables social interaction. Theoretically social interaction can be done face to face or through the means of media. The role of media in changing knowledge, attitude, and behavior has long been known considering the contribution of media in giving information and raising awareness to information recipients.

The interaction of migrant Besemah with those outside Besemah in Jakarta, as well as education and living in the real condition of Jakarta awakens their behavior not to continue to apply their customary law of inheritance, especially the joint property. Their choice of law for inter-generational inheritance is the national law, instead of Islamic law. They do not recognize that Indonesian national law of inheritance for Muslims is Book II of *Kompilasi Hukum Islam*, which is Islamic law in Indonesian context.

However, some of the informants said that they will inherit their wealth equally among their male and female heirs (1:1). WK, who has two daughters and three sons, said that he will give his wealth equally, following the parent's heart which shares their same love to each of their children. In the same trend, WJ who has five sons has bequeathed his property equally, viz. with the formula 1:1. Their choice of the formula 1:1 may be influenced by social interaction with the other ethnic groups in Jakarta. WK and his wife, for example, although come from Besemah, have been involved in social interaction with the culture of the people of other ethnic groups in Jakarta. Meanwhile WJ, in spite of the fact that he has been socially interacted with the other ethnic groups in Jakarta, he is also married with a woman from the other ethnic group.

Conclusion

Inheritance objects in Besemah's tradition consist of ancestral properties (*budal*) and joint properties. The ancestral properties are transferred to the first son or the only son. Only in the condition that there is no son the ancestral properties may be transferred to the first

daughter. According to the norms, the heir of ancestral properties must be in financially and morally responsible for his father's children and his father's lineage. A wife in a patrilocal situation is not an heir, but when she lives matrilocally she is given a plot of land for subsistence and living. The patrilocal wife may enjoy her husband's properties and when her husband dies she takes care of her husband's legacy to be transferred to her late husband's children so long as she is not remarried.

The attitude of Besemah's migrants towards the ancestral properties are varied. Some of the migrants do not care about the ancestral properties if they are quiet well to do in Jakarta. But the other Besemah's migrants who are not well enough to do still take advantage of the ancestral properties and will transfer the ancestral properties to their first sons or the only son or the first daughter. On the contrary most of the informants who receive the ancestral properties do not run their duties towards their brothers and sisters nor their fathers' lineages.

Quite similar with that in the Besemah land, a wife takes care of her husband's inheritance for the continuity of living of herself and her husband's children until the children marry. A Wife does not receive certain portions of the husband's inheritance but she enjoys it and manages it and will pass the inheritance on to the husband' children after she passes away.

Regarding daughters, the joint properties are divided equally (in quite the same value) to all the children regardless of sex, depending on the children's personal needs. Among this category of inheritance is sending all sons and daughters to higher education.

May be because of migration condition, their attitude towards the time of division of inheritance is different from that prevalent in the Besemah land. The Besemah migrants tend to transfer properties to their children after all the parents die. This is to anticipate the healthcare cost in their old ages that may need to be hospitalized until their death

The law chosen by the migrant Besemahers in Jakarta for settling intergenerational transfer of property is the Indonesian National Law, which is the Indonesian Compilation of Islamic Law. What they mean in fact is bilateral system of inheritance. Most of them choose the living law in Jakarta, meaning the equal portion of inheritance between man and woman.[]

Endnotes

1. When Indonesia underwent a monetary crisis in 1997 as a result of the increase of American dollar, the price of coffee beans also underwent a significant increase. At that time the price of coffee beans was IDR 16,000/kg at the farmer's market. At that time the prices of the other commodities were affordable by the Besemahers, thereby the increase of the price of coffee beans brought about the increase of purchasing power of the Besemah's society. One decade later, the price of coffee beans almost remains the same, around IDR 18,000-19,000/kg in farmer's markets. Meanwhile the increase of the other commodities is felt very expensive. An informant said, "kalu mbaini dapat se-ton kopi dapat Rp. 20 juta, anye angkenye saje ye hibat, duit mbaini ampe benae (now if one harvests one tonnage of coffee beans he can make IDR twenty million, but now money is just great in number, its price is reducing)".

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