

CHAPTER I

INTRODUCTION

A. Background of the Study

Every person has rights and obligations toward each other as legal subjects in certain matters. Even, those rights and obligations still recognized after someone dies. Certain rights and obligations will impose those who are still alive.¹ This is the base of inheritance law's emergence as a branch in civil law.

Example given, inheritance deals with process of transferring rights and obligations from a family or community member who has died (decedent) to other member(s) who are still alive. Person who will receive legacy when another person dies is called heir, while female heir is called heiress. There are factors that lead to inheritance: the decedent, the heirs, and the legacy.² The three factors have to be fulfilled to make inheritance occur.

In accordance with inheritance law, there are variety of legal system,³ which can be implemented in Indonesia. They are civil law, customary law, and Islamic law. Likewise, in the appearance of the disputes in inheritance matters, there are many means to settle the disputes. This is what we call as legal pluralism, where a person becomes subject of more than one legal system⁴.

¹ J. G. Klassen and J. E. Eggen, 1979, *Hukum Waris*, Jakarta: Fakultas Hukum Universitas Indonesia, p. 1.

² Tamakiran S, 2000, *Asas Asas Hukum Waris Menurut Tiga Sistem Hukum*, Bandung: CV Pionir Jaya, p. 1.

³ *Ibid.*, pp. 2-3.

⁴ Sulistyowati Irianto, 2005, *Perempuan di Antara Berbagai Pilihan Hukum*, Jakarta: Yayasan Obor Indonesia, p. 158.

The variety of inheritance law could be implemented to Chinese-Indonesian people;⁵ namely, the Chinese customary law based on family kinship system that is under the Confucian patriarchal family system and the Indonesian Civil Code.⁶ Patriarchal system in that community engenders various rules that form rights and obligations of men and women, including in the inheritance.

Confucianism provides an idea for a proper family life. Therefore, the hierarchy of generation, age, and gender defines an individual's status, role, privileges, duties, and liabilities within the family order. Position in the family is important, for example: people of the elder generation are superior to those of the younger; and men are superior to women. Throughout their whole lives, Chinese women have been expected to conform to the "Three Obediences" (*san-tsong*): obedience to their fathers before getting married, obedience to their husbands after getting married, and obedience to their sons after their husbands die.⁷

In traditional Chinese culture, a surname is considered highly important. It is only passed through the male lines. Only male children are counted as descent family members and have the rights to the family's property. Once a daughter marries and becomes a member of the new husband's family, she is expected to take the husband's surname and have her name prefixed by the husband's name.

⁵ Mely Tan, 2008, *Etnis Tionghoa di Indonesia –Kumpulan Tulisan*, Jakarta: Yayasan Obor Indonesia, p. 15.

⁶ *Ibid.*, p. 13.

⁷ Retrieved from: Hsiang-Ming Kung, *China – Regulations of Family Relationships, Tradition – Persistence and Transition*, <http://www.globaldialoguefoundation.org/files/fam.2009-mar.china.pdf>, last accessed 18th July 2016, 1:10 PM.

Therefore, having daughters is considered as a bad investment, particularly in poor families.⁸

The daughters do not inherit like sons, although they can be residual heiress if they do not have any brothers.⁹ Patricia Ebrey stated in her book:

...because daughters did not normally inherit family property, large dowries also marked a shift toward the transmission of property through both daughters and sons rather than exclusively through sons. When the families of brides devoted substantial resources, including land, to supplementing whatever they got from the groom's family by way of betrothal gifts, they were transferring property permanently to another patriline because the woman's dowry would eventually pass to her children, members of her husband's patriline.¹⁰

Instead of getting legacy as inheritance when their parents die, women only get 'legacy' when they marry in a different form, namely a 'gift'. Gift is symbol of transferring legacy to women. Giving gift is believed as transferring legacy to another patrilineal line.¹¹

Additionally, inheritance law of Indonesian Civil Code applied to Chinese-Indonesian people as well. These circumstances have been emerging since the Dutch colonial era in Indonesia. This regulation was applied to the Chinese ethnic by *Staatsblad*¹² No. 129 of 1917 that had applied since 1st May 1919 for areas of Java and Madura.¹³ After Indonesia proclaimed its independence, the Constitution

⁸ *Ibid.*

⁹ Patricia Buckley Ebrey, 2003, *Women and the Family in Chinese History*, London: Routledge, p. 79.

¹⁰ *Ibid.*, p. 4.

¹¹ *Ibid.*

¹² *Staatsblad* is shortened from *Het Staatsblad van Indonesie* which means *Lembaran Negara Republik Indonesia* (Government Gazette of the Republic of Indonesia). It is source of regulation issued by the government.

¹³ Michael Charles Pryles (ed.), 2006, *Dispute Resolution in Asia*, the Netherlands: Kluwer Law International, pp. 166-167.

provided that the regulation remains valid by Article II of the Transitional Regulations of the Indonesian 1945 Constitution.

Even though Chinese-Indonesian family in Indonesia uses Indonesian Civil Code in dealing with civil matters, some documents have demonstrated that they still use their customary law. Semarang High Court's Verdict No. 63/Pdt/2014/PT.SMG stated that:

Bahwa, karena tanggungjawabnya kepada anak-anaknya maka kedua anak perempuan telah mendapatkan haknya pada saat mereka menikah dan untuk keempat anak laki lakinya, HIOE HOY JAN telah membuat wasiat... [Considering that, due to his responsibility to his children, hence the two daughters had gotten their rights when they married and for the four sons, HIOE HOY JAN (the decedent) had made testament...]

In this case, the family chose the Chinese customary law to distribute the legacy for their children by not giving any legacy to the daughters. Instead of giving any legacy, the decedent gave marriage gift when the daughters married to fulfill their rights as children.

Chinese-Indonesia women have choices in dealing with situations where daughters' rights are considered inferior to their brothers or other parties. Those choices are expressed through their inheritance strategies. Women may choose to claim their rights through customary or district court institution. Despite the reality, women's access to both institutions is limited. On the other hand, women may also choose to lump the unfair situation.

The inheritance strategies taken by Chinese women may be different from one to another. The reason is every woman has different experiences because of their diverse identities. Many factors influence the creation of women's identity,

such as economic, religion, education, and cultural factor.¹⁴ Those experiences indirectly will lead them to make decisions and choose strategies.

This research focuses on daughters from Chinese-Indonesian family in Semarang who were dealing with inheritance matters. They have to choose their strategy – either disobey or obey the Chinese custom. The choice is provided widely because the change of values and norms in Indonesian communities, especially the raise of the issue of equality before the law and the equal rights between a man and a woman. However, the Chinese tradition that has been being doctrine in the daughters' lives, will likely affect their choice as well. Therefore, in order to examine the implementation and women strategy on legacy distribution, the writer proposes a thesis entitled “The Implementation of Indonesian Legal System and Women Strategy on Legacy Distribution: Study of The Chinese-Indonesian Women in Semarang”.

B. Research Questions

1. How is the legal system undertaken and implemented on legacy distribution to the Chinese-Indonesian women?
2. What legal and non-legal strategies do the heiress take regarding the implementation?

C. Objective of the Study

1. To find out the legal system undertook and implemented on legacy distribution to the Chinese-Indonesian women.

¹⁴ Edi Hayat and Miftahus Surur (eds.), 2005, *Perempuan Multikultural Negosiasi dan Representasi*, Jakarta: Desantara, p. viii.

2. To find out the legal and non-legal strategies taken by the heiresses if they were not satisfied with the implementation.

D. Significance of the Study

1. Theoretical Significance

The result of this research will improve the knowledge of the readers who would like to know more about law studies in the field of inheritance law. This research also can be used for further research's reference.

2. Practical Significance

This research has practical significance for:

a. Government

This study is supposed to give a reference for the government in formulating regulation that can both accommodate legal pluralism and protect the rights of women.

b. Society

This research will provide information about legacy distribution for Chinese-Indonesian women, so the readers will have a better understanding of Chinese-Indonesian women's lives in patriarchal system, especially the inheritance distribution given to them.

c. Chinese-Indonesian Women

This study about Chinese-Indonesian daughters will provide knowledge, which is supposed to rise of the awareness of their communities and them about women's rights and gender equity.

E. Research Methodology

1. Approaching Method

According to the research questions, the research is using qualitative approach. This method generates words to analyze the data rather than numbers. Qualitative approach explores the experience of the Chinese-Indonesian women dealing with inheritance matters in her family, especially in legacy distribution and their strategies. The writer uses this approach because every events experienced by the respondents have certain meaning and cannot be revealed by merely number as in quantitative research.

2. Research Specification

The research is under the light of socio-legal approach. Socio-legal study arises when the social situation is linked with the law.¹⁵ The focus in socio-legal research is individual or community behavior in terms of law. Law is regarded as dependent variable, while other factors influencing law used as independent variable.¹⁶

3. Data Collecting Method

a. Fieldwork

Fieldwork is used to acquire primary data via firsthand information. This method conducted by in-depth interview with the respondents. The interview is undertaken through open-ended questions. By using open-ended questions, the author let the respondents represent themselves and

¹⁵ Peter Mahmud Marzuki, 2014, *Penelitian Hukum*, Jakarta: Kencana, p. 47.

¹⁶ *Ibid.*, p. 128.

express their best understanding and experience. Data from the Chinese-Indonesian women in Semarang is obtained from the respondents who meet the criteria's degree. The data give idea about inheritance in those women's lives and their inheritance strategy.

This research uses purposive sampling¹⁷ technique. In purposive sampling the writer decides who can be the respondents based on a variety of criteria. There are some limitations in measuring the criteria of Chinese-Indonesia women. Below is the criteria to choose the respondents:

- 1) The respondents were born from Chinese-Indonesian parents who lived in Semarang.
- 2) The respondents come from a family who were not from a mixed marriage with other ethnic groups.
- 3) The respondents are daughters of Chinese-Indonesian family.
- 4) The respondents come from households with both daughter and son.
- 5) The respondents were/are in inheritance situation from their parents.

b. Literature Study

Literature study is used to acquire secondary data from various literatures. Secondary data can be categorized in:

¹⁷ In the purposive sampling, the decision to include someone as a participant is taken by the researcher. This is based upon variety of criteria, such as knowledge of the research issue, or capacity and willingness to participate in the research. Victor Jupp (ed), *The Sage Dictionary of Social Research Method*, London, Sage Publications, 2006, pp. 244-245.

1) Primary Source

Primary source consists of Indonesian Civil Code on Book II about Property, especially on inheritance law.

2) Secondary Sources

Secondary sources are used to analyze and give better understanding of primary sources. The source of Chinese customary law is taken by secondary sources, such as reference books and law journal, as customary law is not usually codified.

3) Tertiary Source

Tertiary sources give information about the primary and secondary sources, such as glossary, bibliography, and dictionary.

4. Data Presentation

The result of this research is presented through description. The researcher retell the explanation from the data acquired.¹⁸

F. Report Outline

The report consists of four chapters. The first chapter is an introduction with five sub-chapters. It provides the background of the study that describes the background of the chosen topic. The second sub-chapter is problem formulation that formulates the objects of the research. Next sub-chapters are objective and significance of the study; and the last sub-chapter is research methodology that

¹⁸ John Creswell, 2003, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*, USA: Sage Publications, p. 15.

describes about the methods that is used in the research. This whole chapter is the base of further research on the topic that is stated in the problem formulation.

The second chapter is literature review that is gathered from literature study. It explains about Chinese ethnic, Indonesian legal system, inheritance law, inheritance strategy, and women's rights. The analyzing of the data is done based on this literature review.

The third chapter is the main part of the report, as it answers the problems formulated. This chapter tells about distribution of legacy in Chinese-Indonesian women's inheritance lives in Semarang as well as their inheritance strategy.

The last chapter consists of conclusion and recommendation. The conclusion is the summarizing of the report, while the recommendation is advisory for further research on this topic.

