

## IMPLEMENTATION OF THE INHERITANCE OF INDONESIAN CITIZENS OF CHINESE DESCENT IN PALU CITY, CENTRAL SULAWESI PROVINCE

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### ABSTRAK

*Pelaksanaan pewarisan masyarakat keturunan Tionghoa di Kota Palu lebih mengutamakan hukum adat Tionghoa dalam pembagian warisannya karena pembagian warisan menurut The Civil Code bertentangan dengan hukum adat masyarakat keturunan Tionghoa. Bagian warisan anak laki-laki dengan anak perempuan sama dan bertentangan dengan ajaran Confusius. Adapun penyelesaian sengketa waris ditempuh dengan dua cara yakni melalui mediasi dan melalui litigasi (pengadilan). Dalam realitasnya penyelesaian sengketa waris lebih mengutamakan mediasi musyawarah kekeluargaan daripada menggunakan litigasi karena penggunaan litigasi merupakan aib bagi warga Tionghoa oleh karena itu konsep hukum waris bagi masyarakat Tionghoa dan cara-cara penyelesaian sengketa warisnya dapat menginspirasi model penegakan hukum yang equal dan humanis di masa yang datang.*

**Kata Kunci :** Warga Negara, Warisan, Tionghoa

### ABSTRACT

*The implementation of the inheritance of the Chinese-descended community in Palu City prioritizes Chinese customary law in the distribution of their inheritance because the distribution of inheritance according to the Civil Code is contrary to Chinese customary law. The share of inheritance for sons and daughters is the same, contrary to the teachings of Confucius. The settlement of inheritance disputes is pursued in two ways, namely through non-litigation (mediation) and litigation (court). In reality, the settlement of inheritance disputes prioritizes non-litigation or family deliberations rather than using litigation or courts because the use of litigation is a disgrace for Chinese citizens so that the application of inheritance law for the Chinese community and ways of resolving inheritance disputes can inspire an equal and humane law enforcement model in the future.*

*Keywords: Citizen, Inheritance, Chinese*

## 1. INTRODUCTION

Inheritance law is something tough and difficult to get rid of. Even so, it should be remembered that everyone will deal with inheritance, both as heirs and as heirs. Therefore, in Indonesia, there are 3 (three) systems of inheritance laws that apply to Indonesian citizens, as the researcher described earlier. The three inheritance legal systems differ in their application, as stated in the provisions of Article 163 Indische Staatsregeling (IS) which divides the population into 3 (three) groups, namely European, Bumiputera and Eastern Foreign groups. Therefore. For Muslims, the inheritance law system is based on Islamic law, for ethnic Chinese, the Western (European) civil inheritance law system applies, namely what is regulated in the Civil Code (hereinafter referred to as the Civil Code) which is based on the provisions of Article 131 IS juncto Staatsblaad 1917 Number 129 Juncto Staatsblaad 1924: 557, juncto Staatsblaad 1917 Number 12 concerning submission to European law (Supomo, 2009).

Since the enactment of the Civil Code/BW, especially inheritance law, it has created various difficulties for the Chinese community who are spread across big cities in Indonesia, including in Palu City. This is related to the kinship system, cultural values and beliefs of the Chinese group which is different from the European group. The kinship system according to the Civil Code adheres to a bilateral/parental system. In such kinship, boys and girls have the same position as the heirs of their parents. In contrast, the kinship system of the Chinese group is patrilineal, in such a kinship, sons have a very important position compared to daughters, because sons are the heirs of the lineage so that sons are the absolute heirs of their parents. Boys have a high position and have a very important meaning, so without sons they feel incomplete, because apart from being related to the patrilineal kinship system, the Chinese ethnic group adheres to the belief in worship of ancestral spirits and this worship can only be carried out by boy. If a family does not have sons, then according to Chinese customary law that family can adopt a child from another family as their own to continue the lineage and look after the spirits of the family's ancestors. Such beliefs are not found in European society. As a result, many ethnic Chinese in Indonesia heed the enactment of the Civil Code in inheritance distribution, including the ethnic Chinese in Palu City, Central Sulawesi Province.

Several things prove that Chinese descendants in the city of Palu prefer to submit to their own customary law, evidenced by the cases of "law smuggling" in the distribution of inheritance by testament, where the heir made a mock sale and purchase with his sons. . This happens because Chinese (Chinese) customary law only gives inheritance rights to sons,

whereas the Civil Code provides equal rights for men and women. Those who benefit the most from the enactment of the Civil Code for ethnic Chinese are Chinese women. If the Civil Code is applied to them, Chinese women get a higher position than their position according to Chinese customary law. According to the Civil Code, all sons and daughters born to Chinese ethnic marriages will receive the same amount of inheritance. If the father dies, then half of the father's property from the joint property becomes the right of the children (heirs), while the other half becomes the wife's share, the portion determined for the children also depends on the number of children.

## 2. LITERATURE REVIEW

In this study, several legal theories were used which became an analytical tool for research problems regarding the inheritance distribution of the Chinese community in Palu City. Some of the theoretical foundations that become the theoretical framework are, first, the theory of legal pluralism. This theory analyzes the existence of legal pluralism which is the basis for inheritance distribution in Indonesia. In Hooker's view that the concept of pluralism shows the condition that more than one legal system or institution exists and applies simultaneously in various activities and human relations in a place (the term legal pluralism refers to the situation in which two or more laws interact) (Hooker, 1977). This theory assumes that the more pluralistic a society is, the more pluralism inheritance will inevitably occur. Some of the assumptions in this theory are: (a) legal pluralism explains the relationship between various legal systems that work in society (b) legal pluralism maps out various existing laws in a social field. (c) explaining relations, adaptation, and competition between legal systems (d) legal pluralism shows citizens' choices to use certain laws when in conflict (Hukumonline.com). From the assumption of this theory, the division of inheritance in Indonesia for Chinese citizens is different from inheritance according to western (European) civil law and foreign Eastern communities in Indonesia (Chinese). Second, the theory of law and development. This theory was explained by Mochtar Kusumaatmadja (1973) who adopted Rescoe Pound's theory of 'law as a tool of social engineering'.

The theory is perfected and adapted to the conditions of Indonesian society. Mochtar Kusumaatmadja changed the notion of law as a tool to law as an instrument to build society (Kusumaatmadja, 2011). The main ideas underlying this concept are that order and regularity in development and renewal efforts are indeed desired. Even law in the sense of norms is expected to be able to direct human activities in the direction desired by development and renewal itself. There are 2 (two) basic assumptions in this theory, namely: First, there is an assumption that law cannot play a role and even impede changes in society. Second, in reality in Indonesian society there has been a change in the nature of people's thinking towards modern law (Salman and Damian, 2002). In this regard, the inheritance law of the Chinese community based on customary law is a real reality that must be accommodated in the current era of development. Therefore,

the legal norms of the Chinese community in terms of inheritance must be adapted to the conditions or needs of the society they face. Third, the theory of justice. The basic assumption of this theory is that justice can only be understood if it is positioned as a condition that is to be realized by law. This theory in legal theory notes has been discussed since Socrates to Francois Geny, still maintaining justice as the crown of law (Huijber, 1995). The word "justice" in English is "justice" which comes from the Latin "iustitia". The word "justice" has three different meanings namely; (1) attributively means a quality that is just or fair (synonym for justness), (2) as an action means an act of carrying out the law or an action that determines rights and rewards or punishments (synonym for judicature), and (3) people, namely public officials who has the right to determine the requirements before a case is brought to court (synonyms for judge, jurist, magistrate) (Rahman, 2021). While the word "adil" in Indonesian Arabic "al 'adl" (Rodhe University Dictionary, 2016).

Several words that have the same meaning as the word "fair" in the Qur'an are used repeatedly. The word "al 'adl" in the Qur'an in various forms is repeated 35 times. The word "al qisth" is repeated 24 times. The word "al wajnu" is repeated 5 times, and the word "al washth" 5 times (nurjaeni, 2016). To know what is fair and what is unjust is seen as not a great policy, especially if justice is associated with the rule of positive law: how an action must be carried out and distributed to uphold justice, and how to promote justice. But of course this is not the case if you want to play the role of upholding justice (Darmodiharjo and Shidarta, 1995). In the context of inheritance distribution, it is an injustice if the normative concept of justice is distributed evenly or generally applies (*lex generalis*). The fair distribution of inheritance is the distribution of inheritance that is applied to the parties according to the law which is understood and accepted as a rule that directs them to act according to what they believe in (*das Sollen*). Philosophical debates about the concept of justice are also found in various views, both according to Aristotle, John Rawls, Hume, Bentham and Mill. For Ariestoles, justice must be understood in terms of equality. But Aristotle made an important distinction between numerical equality and proportional equality. Numerical similarity equates every human being as a unit. This is what is now commonly understood about equality and what is meant is that all citizens are equal before the law (equality before the law).

For John Rawls, he initiated the concept of social justice theory as the difference principle and the principle of fair equality of opportunity. The essence of the difference principle, is that social and economic differences must be arranged so as to provide the greatest benefit to those who are most disadvantaged. The term socio-economic difference in the principle of difference leads to inequality in one's prospects to get the basic elements of welfare, income, and authority. Meanwhile, the principle of fair equality of opportunity shows those who have the least opportunity to achieve prospects for prosperity, opinion and authority. It is they who must be given special protection and this theory becomes a bridge for justice as a concept of utilitarian theory as proposed by Hume and Bentham. In this regard, the application of inheritance distribution in

terms of the theory of justice must accommodate the social conditions of the (Chinese) community as a unit that must comply with customary law as a form of justice in the law of inheritance distribution. It is from this context that, according to John Rawls, a program of upholding justice with a populist dimension is needed which must pay attention to two principles of justice, namely (a) giving equal rights and opportunities to the broadest basic freedoms of equal freedom for everyone and (b) being able to rearrange socio-economic disparities that occur so as to provide reciprocal benefits for everyone, both those from fortunate and disadvantaged groups (Rawls, 2006).

In addition, there are other philosophers, such as al-Kindi and Al-Farabi, who put forward a different concept of justice. For Al Kindi, justice is the center of all existing virtues, such as wisdom, courage, fortitude, and others (Rawls, 2006). Not because it is the only one of the good things, but because most importantly, it is an instrument of balance and harmony when the other good things are in action. Even though justice is synonymous with the direct product of ratios, in the end it gets inspiration from God who instills reason in humans. In line with these two methodologies, the goal of rational justice is to reach heights in this world and the hereafter. Meanwhile, the philosopher Al-Farabi comes up with a philosophy that focuses his theories on the political order. He agreed with Plato's and Aristotle's opinion that no political order can survive unless it is built on the basis of the qualities of excellence and perfection and justice.

In the transformation of thought, from the theory of the ancient Greek ideal political order to the Islamic political order. Al-Farabi puts forward the "main city" as the smallest unit to achieve human perfection. He explains how the aggregate of the main cities which include one nation forms the main nation, where the main nation is subject to obedience to the priest, namely the supreme ruler who has the characteristics of a just priest (Rawls, 2006). Likewise according to him that justice is the highest goodness that humans seek to cultivate and instill in themselves and is the foundation upon which the political order is established. The main city is led by a priest who is endowed with the most superior qualities, namely reason, making it possible to carry out his essential function as a leader (Rawls, 2006). That is why according to Al-Farabi that to achieve a quality and perfection can only be realized in a main city and humans who understand justice in the context of the main city their souls achieve divine justice in the hereafter. In the context of applying inheritance distribution, a concept of justice is needed, especially social justice where the law is applied fairly in accordance with the object it regulates, namely a society that has citizen pluralism which of course achieves that the arrangement of inheritance distribution for Chinese society is based on the theory of social justice (utilitarianism).

In inheritance disputes, an appropriate solution is needed which usually uses methods outside the court (non-litigation). According to Widya and Yani that every community can choose various ways to obtain agreement in the process of resolving disputes and conflicts which of course have consequences for both the disputing parties and society in the broadest sense. Because of this, it is very necessary to have a dispute settlement mechanism that is most appropriate for

them. In Article 1 number 10 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it is explained that alternative dispute resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlements outside the court by way of consultation, negotiation, mediation, conciliation, or expert judgment. In connection with the resolution of inheritance disputes, Chinese citizens are used as a reference in resolving inheritance disputes.

Legal issues related to regulatory pluralism were inherited from the Dutch East Indies Government which had divided the Dutch East Indies citizen groups into three, namely, the European Nation Group, the Foreign East Group and the Indigenous Group. From the regulation of the three groups of society until now, it has given rise to the pluralism of the legal system, including the different systems of inheritance law. The second legal issue is how is the value of justice for citizens who divide inheritance based on different legal norms and this condition will give rise to potential conflicts in society, especially those who enter into marriages (inter-ethnic marriages) which also have different inheritance law arrangements. Even though legal issues are not yet apparent in this study, law as a guideline for behavior needs to prepare arrangements for potential conflicts of inter-ethnic marriages with different legal norms for inheritance distribution (futuristic legal norms).

In this study, an aspect that also received a lot of attention was the problem of how to resolve inheritance disputes. For the Chinese community, the method of resolving inheritance disputes among them mostly uses family deliberations or through mediation (non-litigation). Tioghoa residents in Palu City prefer deliberation within the family rather than settlement through court (litigation). Therefore, the legal norms for resolving inheritance disputes are fully subject to Confucius' teachings, which requires that all Chinese citizens in resolving inheritance disputes not go through family conflicts. Even though there was a conflict of legal norms, their commitment to using the legal norms of inheritance based on Chinese customary law (*lex specialis*) and the legal norms of the Civil Code (*lex generalis*) were set aside. The two legal norms contained inheritance laws which were historically enforced based on population groups during the Dutch East Indies administration. Until now, the arrangement for classifying inheritance law is still valid based on the concordance principle as the transitional rules of the 1945 Constitution. In addition, the implementation of Chinese inheritance law in Palu City has a variant regulatory model, which in the end can be carried out through the Chinese customary route and can be through the customary law route. . The application of inheritance law and the method of settlement for Chinese citizens deviate from the Civil Code and also the division according to the will of the heir. The application of division, the process of inheritance and methods of resolving disputes can use other methods with the principle of not destroying the kinship and causing family conflict. They are in the settlement of inheritance disputes according to the will of the heir (parents), because they consider that the parents' message is a message that must be carried out by the heirs in terms of dividing the family inheritance.

### 3. METHODS

This study uses empirical legal research, which is a legal research method that aims to see law in a real sense and examine how law works in society. The data obtained from the field study is basically qualitative data which is analyzed descriptively. Qualitatively described logically and systematically, then analyzed to obtain answers to research problems.

### 4. FINDINGS AND DISCUSSION

#### 4.1. Findings

Research findings in terms of inheritance distribution are that the influence of inheritance distribution is still strong based on the Dutch East Indies Government Arrangements, namely based on the provisions of Article 163 Indische Staatsregeling (IS) which divides the population into 3 (three) groups, namely European, Bumiputera and Foreign East groups. Because of this class division, it results in differences in the regulation of inheritance law, if for Muslims the inheritance law system is based on Islamic law, then for the Chinese ethnicity what applies is the western (European) civil inheritance law system, namely as stipulated in the Book of Laws Civil Code (hereinafter referred to as the Civil Code). These provisions apply to Chinese citizens based on the provisions of Article 131 IS juncto Staatsblaad 1917 Number 129 Juncto Staatsblaad 1924: 557, juncto Staatsblaad 1917 Number 12 concerning submission to European law (Supomo, 2009). The results of this study also show that the distribution of inheritance to the Chinese community in Palu, Central Sulawesi, does not apply this arrangement consistently because they consider it contrary to the customs of the Chinese community which have been passed down by their ancestors since ancient times. Data on the results of the inheritance distribution of the Chinese community in Palu City as the result of an interview with Mr. Wijaya Chandra alias Ko Awi as Chair of the Indonesian Chinese Community Social Association (PSMTI) in Central Sulawesi as shown in Figure 1 below:



Gambar 1  
Hukum Pewarisan Masyarakat Tionghoa di Palu<sup>17</sup>

Based on Figure 1, this has become a normative reference for dividing the inheritance of the Chinese Community as it was passed on to their ancestors. This arrangement is an absolute inheritance law norm which is the obligation of every Chinese citizen in Palu.

The second finding relates to the application of the concept of inheritance law practiced by the Chinese community in Palu City as a manifestation of the implementation of the inheritance concept which deviates from the original Chinese concept of inheritance system, but also provides space to follow the concept of customary inheritance and inheritance according to the Chinese as shown in Figure 2 below:



Gambar 2  
Pelaksanaan Pewarisan Masyarakat Tionghoa di Kota palu

Based on Figure 2, it can also be seen that in the implementation of inheritance distribution, the Chinese community in Pula City showed a variant of inheritance distribution. When compared with the concept of inheriting Chinese customs which was passed down by their ancestors, it appears that there is a concept that deviates slightly from the original concept. This can be seen from Figure 2 which shows the existence of the concept of inheritance distribution which also recognizes inheritance before the heir dies, the concept of inheritance after death. In addition, there is the concept of inheritance based on the will of the heir. The three concepts of inheritance are somewhat different from their original concepts, such as the concept of inheritance of Chinese customs passed down from their ancestors.

## 4.2. Discussion

### 4.2.1. Inheritance Arrangements According to Chinese Customary Law



In accordance with the purpose of writing that the implementation of the inheritance of the Tinghoa citizen community in Palu City does not comply with the Civil Code as applicable provisions, but the implementation of inheritance distribution based on the Tinghoa custom as peacocks have adhered to their previous ancestors. The results of the research also show that the concept of inheritance distribution for Chinese citizens is very different from the concept of inheritance distribution according to the Civil Code and customary law of the Kaili people in Palu City.

The concept of inheritance sharing as positive law in Indonesia uses the concept regulated in the Civil Code. The Civil Code/Burgerlijk Wetboek Code (hereinafter abbreviated as the Civil Code/BW) in the second book of chapters XII to XVII, which begins with Article 830 and ends with Article 1130, is still the main source of law for people of Chinese descent in resolving the problem of assets that have been abandoned by one or more people who have died, even though this provision is no longer valid as a basis for inheritance distribution based on the division of population groups during the Dutch East Indies Government era as stipulated in article 131 IS which in this provision positions non-Muslim citizens as well as non-Muslims custom so that it is subject to KHUPerdata.

Based on some of these descriptions, it is also necessary to note that in terms of inheritance, the theoretical concept contains three main elements of the existence of an inheritance, namely, first, a person who leaves an inheritance (erflater), who at death leaves wealth, Second, one or several heirs (erfenam). ), who is entitled to receive the wealth left behind and third, the inheritance (nalatenschap), namely the form of the wealth left behind and once transferred to the heirs (Wirjono Prodjodikoro). Based on this, the law of inheritance cannot be separated from the familial nature of each ethnicity and the Chinese ethnicity also has family characteristics that are different from other ethnicities. That is why in practice the implementation of inheritance law, the Chinese community does not use the Civil Code as a provision in Article 131 IS which should be subject to the Civil Code. The non-submission of Chinese citizens to the Civil Code because the concept of arrangement and division of inheritance is contrary to the customary law of the Chinese community. This can be seen from several articles in the Civil Code which divide the classification of inheritance arrangements into four groups of heirs as shown in Table 1 below:

Table 1  
Classification of heirs according to the Civil Code

Class	Article	Heir Qualifications
1	852	Determining that children or all of their descendants be born from other marriages, even if they inherit from both parents, grandparents or all of their next blood relatives in a straight line upwards, with no differences between men and women and no differences based on birth. formerly. They inherit head by head, if with the deceased they are related in the first degree and each has rights because of himself; they pass on stake by stake, if all of them or only some of them as substitutes. So, those who are included in this group are husband or wife, and descendants who have died (if any).
2	854-857	Determines that if class I no longer exists, then those who have the right to inherit are class II, namely the father, mother, and their siblings or descendants. As for the distribution, father and mother get 1/3 share if there is one sibling,

		1/4 share if there is more than one sibling, the sibling's share is after the inheritance minus the parents' share.
3	850 jo 853	Determine if class I and group II do not exist, then the right to inherit is class III. Included in group III are families in a straight line upwards after father and mother, namely grandmothers, grandfathers or other ancestors in a straight line upwards. In Article 850 in conjunction with Article 853 The Civil Code, the inheritance must be divided into 2 (two) equal amounts (kloving), namely 1/2 for the father's pancer and 1/2 for the mother's pancer.
4	858 ayat 3	Determine if there are no brothers and sisters and no blood relatives in one of the upward lines, half of the inheritance goes to all blood relatives in the ascending line who are still alive, while the other half shares to the siblings in the other line . Blood relatives in the same deviant line and in the same degree get a share head by head (Article 858 paragraph 3 The Civil Code)

Based on Table 1, there are four groups of heirs as regulated in The Civil Code and at the same time the distribution of each heir. The arrangements regarding heirs according to The Civil Code are very much different from the arrangements for inheritance law or heirs and their parts according to the customary law of the Chinese community. The main principle that forms the basis of inheritance distribution is that Chinese society places male heirs with the highest position (Patrilineal) as heirs compared to female heirs (daughters, wives) of heirs. Therefore, in terms of inheritance arrangements for the Chinese community, it is based on the cultural values of their ancestors (Confucius). The status, acquisition/mastery of inheritance and distribution of inheritance according to Chinese customary law are shown in Table 2 below:

Tabel 2  
 Status and Description of Acquisition/Control of Heirs According to Chinese Customary Law

Status	Description Acquisition/control of heirs
Son	The gain of sons and daughters is one to a half (1:1/2)
Daughter	Determine the gain of daughters is half (1/2),
Widow	The gain of a widow (parent left behind) is equated with the acquisition of a daughter is half (1/2),
The Eldest Son	Determines that the eldest son is given the power to process or manage family inheritance

Based on Table 2 it appears that the classification of heirs and their distribution is very different from The Civil Code. In fact, according to the customary law of the Chinese community, the heir can inherit before he dies (Figure 2). It can be seen that the distribution of inherited assets of the Chinese descent community in Palu City prioritizes men over women. This is because the people of Chinese descent adhere to the Individual Parental inheritance system, namely a kinship system drawn from the father's line, where the position of men is more prominent than the position of daughters in the family. This is due to the presence of Gene and FAM factors. The inheritance factor of Chinese society which chooses sons as the successor to the throne and heir has been in effect since the Qing Chao dynasty in Eastern China in the period 1644 - 1911. The status of a son, especially if he is the eldest child, he will get the same responsibility to take care of his family,

both extended family and main family. Historically, during the dynastic era, people's lives were not far from power struggles. Therefore, when the heir (father) died, the son who was appointed as the main heir was the son.

Furthermore, in the nuclear family, the father and son play an important and powerful role. All nuclear families after his father died, were led by the eldest son. The reason sons are more special is because sons are the successors to the clan for the next generation therefore having sons is a matter of pride for the Chinese community, the reason for the greater share of inheritance is because sons have responsibilities support in his family because he has children and a wife. Meanwhile, daughters already have husbands who will be responsible for their families (Chandra Wijaya, key informant, 18 July 2022).

The arrangement is different from KHUPerdata, namely the distribution of inheritance can be done when the heir is still alive. All inheritance will be distributed to all heirs without waiting for the heir to die first. Basically the gift of certain goods is the gift of goods given by the heir to certain people or to his legal heirs, which are then considered as part of the heir's inheritance even though the inheritance has been made/given before the heir died. As for one of the purposes of this gift is to avoid the occurrence of disputes that might occur between the heirs.

The process of dividing the inheritance, especially in the provision of certain items is carried out by the heir, then the goods that have been given to the heirs will be directly controlled by the heirs concerned so that the ownership rights to the items given have been transferred to the heirs. As for the process of inheritance after the heir dies, the inheritance of an heir will be distributed to his heirs after a certain time has passed. That particular time is generally after the funeral ceremony is held. After the burial of the corpse is complete, the distribution of inheritance from an heir will be carried out as soon as possible. The distribution of inheritance is carried out by keeping in mind the principle of harmony among the heirs. In terms of dividing the inheritance, the heirs do not merely take into account the heir's assets mathematically, but most importantly the heirs will receive an appropriate share of the inheritance. In its implementation, the inheritance is also taken into account the inheritance that has been given to the heirs when the heir is still alive so that it is possible that one of the heirs will receive an adequate portion of the inheritance, so that when the heir dies the heir concerned will not receive part of the inheritance. Conversely, if what the heir gets when the heir is still alive is relatively small, it is possible that the heir will receive another part of the inheritance. The process of inheritance after the heir dies can also occur with certain messages. Such messages are categorized as a process of inheritance after death, because such implementation only occurs after the testator dies, even if the message was made or stated before the heir dies (Figure 2). The messages conveyed by the heir can be categorized into two groups, namely written messages and oral messages. The written message is usually in the form of a letter written by the heir which contains messages from the heir addressed to the heir about what he wants for his inheritance after he dies. For verbal messages, it is conveyed by the heir to his heirs according to his wishes, namely regarding what will happen to his inheritance after he dies. These oral messages have the same power as written messages in the form of a will. The verbal

message referred to refers to the mystical belief of the Chinese people that the message of the person who has died must be carried out and if it is not carried out it will cause anger for the person who has died.

In terms of child status, the customary law of the Chinese community recognizes three child statuses, namely, the first is a legitimate child, namely a child who is born and raised during the marriage of his parents. The two children born out of wedlock whose status is equated with legitimate children and the three adopted children whose rights are transferred from the authority of the family of parents, legal guardians, or other persons responsible for the care, education and upbringing of the child, to the family environment of his adoptive parents based on a court decision or decision (Wijaya Chandra alias Ko Awi. Chair of the Indonesian Chinese Community Social Association (PSMTI) of Central Sulawesi. Interview, 18 July 2022).

Taking into account some of the descriptions of research findings in this section, it shows that the application of the concept of inheritance in the Chinese community in Palu City, which does not comply with the provisions of Article 131 IS as the legal basis for inheritance distribution among the Chinese community, is not in accordance with The Civil Code. The legal argument for this finding is that according to the theoretical basis used, basically the application of inheritance law that is not in accordance with the values of the community will become a problem in legal practice, especially related to a certain sense of justice in society (Aristotle, Jhon Rawls, Hume, Al-Kindi and Al Farabi) and legal benefits for the Chinese community. It can even be stated that there has been an imposition of legal norms on one of the ethnic groups in Indonesia, namely the Chinese ethnicity. The coercion of submission when viewed from the politics of law, that is the legal politics of the past (colonial legal politics) which actually cannot be enforced because it has passed its period and needs to be reformed. The law must go in the right direction to achieve justice, benefit and legal certainty (Gustav Radbruck). What was done by the Chinese community by enforcing the distribution of inheritance based on their customs was the right effort and was in line with the 1945 Constitution of the Republic of Indonesia for citizens of Chinese descent. Their rights, including the right to share inheritance are in accordance with the basic law and are not a violation of law. The application of the intended inheritance distribution has reflected the right direction not to deviate from the basic law which should be a means of developing law in the future as the concept of "a social engineering tool" to build legal norms that lead society to arrive at legal principles that place all people equally in front of society. law (equality before the law). Law is enacted based on an order of pluralistic values and as a legal reality whose existence must be recognized in society.

#### **4.2.2. Inheritance Dispute Resolution**

One of the legal issues and the findings of this research is how to resolve inheritance disputes in the Chinese customary law community. The findings of the research results in Palu City, there was one case that led to an inheritance dispute

because one of the families of Chinese descent in Palu City where the eldest child controlled most of the heir's assets because he felt he had managed and developed the assets of the heir. This then gave rise to inheritance disputes. Paying attention to these legal issues and if it is returned to its basic norms (Chinese customary law) that the eldest child is given the right to manage the family's inheritance (Table 2). Therefore, from a legal point of view, is this case an inheritance dispute or not? Because, if it refers to the theory of inheritance disputes or also called inheritance claims, an inheritance dispute occurs if there is no distribution of inheritance from the inheritance or there are heirs who control the inheritance that has not been divided which is not in accordance with the regulations or applicable legal norms. According to applicable law, inheritance disputes must be resolved through a court decision that has executorial legal force.

The results of the study showed that if there were inheritance disputes in the Chinese community, they were resolved through mediation or through family meetings (Wijaya Chandra alias Ko Awi. Chairperson of the Indonesian Chinese Community Social Association (PSMTI) in Central Sulawesi. Interview 18 July 2022). The use of mediation through family deliberations is emphasized because people of Chinese descent in Palu City prioritize settlement through mediation of family deliberations because of the strong teachings of Confucius. The method for resolving inheritance disputes from the Chinese community in Palu City is as shown in Figure 3 below:



Gambar 3  
Sengketa Waris Warga Tionghoa Di Kota Palu

Based on Figure 3, it shows how strong the commitment of Chinese citizens to the teachings of Confucius is. The teachings of Confucius teach that the parties concerned with inheritance disputes do not take the path of litigation. They adhere to the principle that litigation or settlement of inheritance disputes must be avoided through the courts, even an heir may not be involved in a conflict related to inheritance. Disputes based on these teachings must be resolved with friendship or brotherhood. The concept of inheritance dispute resolution is based on an alternative dispute resolution concept or often known as Alternative Dispute Resolution (ADR). The method of resolution through mediation rather than litigation is better and able to reduce conflicts and potential conflicts. This method is a method that is in accordance with legal and humane objectives so that these methods in law enforcement are currently trending and have been carried out both in civil law (ADR), criminal law (diversion and restorative justice) and in administrative law. state (fries Ermessen/discretionary power). In addition, these methods are in line with legal and development theories which direct society to a balanced condition (equilibrium). The creation of these conditions will be directed at fulfilling the sense of justice in society. That is why the settlement of inheritance disputes through mediation can actually provide balanced justice for all disputing parties and the result is a win-win solution for all parties.

## 5. CONCLUSION

The implementation of the inheritance of the people of Chinese descent in Palu City prioritizes Chinese customary law in the distribution of their inheritance because the distribution of inheritance according to The Civil Code is contrary to Chinese customary law. The share of inheritance for sons and daughters is the same, contrary to the teachings of Confucius. The settlement of inheritance disputes is pursued in two ways, namely through non-litigation (mediation) and litigation (court). In reality, the settlement of inheritance disputes prioritizes non-litigation or family deliberation rather than using litigation or courts because the use of litigation is a disgrace for Chinese citizens so that the application of inheritance law for Chinese society and ways of resolving inheritance disputes can inspire an equal and humane law enforcement model in the future. come.

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