

Pluralism and Justice in Indonesian Inheritance Law: A Comparative Analysis of Customary, Islamic, and Civil Systems

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ABSTRACT

The pluralism of inheritance law in Indonesia, encompassing customary law, Islamic law, and the Civil Code, reflects the country's cultural, religious, and legal diversity. Despite accommodating such diversity, overlapping norms, divergent distribution principles, gender biases, and legal uncertainty remain significant challenges. Limited integrated comparative studies that analyze these three inheritance systems, considering gender and local cultural values, constitute a research gap. This study aims to: (1) conduct a normative-comparative analysis of principles, norms, and inheritance distribution mechanisms across the three legal regimes; (2) evaluate the implications of pluralism for equal rights, legal certainty, and potential disputes through statutory regulations, court decisions, and academic literature; and (3) propose a harmonization model that is inclusive, culturally sensitive, and grounded in substantive justice and gender equality. The study analyzes legislation, documented customary law, and relevant court decisions using a normative juridical and comparative approach. Theoretical frameworks include Legal Pluralism (Griffiths), Substantive Justice (Rawls), and Legal Harmonization (Otto). Findings indicate that, without harmonization, pluralism exacerbates legal uncertainty and gender inequality. A model based on local values and gender equality effectively reduces disputes and strengthens legal certainty, implying the need for national policies with technical guidelines for inclusive, culturally sensitive inheritance law harmonization that safeguards all citizens' rights.

Keywords: *Civil System, Customary System, Inheritance Law, Islamic System*

Introduction

In judicial practice in Indonesia, two heirs from families with identical circumstances can receive significantly different inheritance distributions solely due to the choice of legal system applied. This phenomenon reflects the pluralism of inheritance law, a hallmark of the Indonesian legal system, in which three regimes—customary law, Islamic law, and the Civil Code—operate concurrently. Wardhani et al. (2022) note that differences in the legal regime applied in a case can lead to substantially divergent judgments and legal compositions. The existence of this pluralism not only reflects Indonesia's social, cultural, and religious diversity but also represents a long history of interaction among state law, religious law, and customary law (Yoserwan, 2024). Nevertheless, the application of inheritance law pluralism poses complex challenges, such as overlapping norms, differing distribution principles, potential gender bias, and legal uncertainty, all of which can hinder the attainment of substantive justice.

Several studies have examined inheritance pluralism in Indonesia from diverse perspectives. Irianto (2024) highlights gender bias in court decisions despite formal law regulating equal inheritance rights. Manse (2024) traces the influence of colonial legacies in shaping plural legal patterns that continue to affect inheritance practices. Kouwagam (2024) emphasizes the relationship between legal personality concepts and familial obligations in customary communities. Benda-Beckmann (2022) documents the dynamics of customary law changes in Ambon and West Sumatra as responses to legal modernization. Conceptual approaches to legal pluralism are further explored by Utama (2021), who critiques customary law that is often unreflected in practice. Arfiansyah and Bedner (2024) reveal forum shopping phenomena in Aceh, where parties select favorable jurisdictions. Hidayah (2024) investigates tensions between customary and religious norms in protecting women's rights.

Comparative studies across countries and disciplines provide additional perspectives. Agarwal and Naik (2024) identify structural barriers that prevent women from fully realizing inheritance rights in various countries. Van Engelenhoven (2021) discusses the reappropriation of customary law in diaspora communities. Isman et al. (2024) propose *maqāṣid al-sharī'ah* as a framework for legal harmonization. Ajefu et al. (2024) link women's inheritance rights to child welfare as an indicator of social development. Nurmila (2013) examines Muslim feminist reinterpretations of inheritance law in Indonesia, while Nurlaelawati and van Huis (2019) explore the interaction of Islamic law, customary law, and human rights norms concerning children's status. Obeng-Odoom (2024) addresses reproductive justice in Balinese society, and Alma'amun et al. (2022) compare *waṣīyyah wājibah* practices in Indonesia and Malaysia.

The research gap identified is the scarcity of comparative studies that integrate all three inheritance law systems in Indonesia within a single analytical framework oriented toward substantive justice, grounded in empirical evidence, and attentive to gender and local cultural contexts. This study aims to: (1) conduct a normative-comparative analysis of the differences in principles, norms, and inheritance distribution mechanisms across

Indonesia's three inheritance regimes—customary law, Islamic law, and the Civil Code; (2) evaluate the implications of inheritance law pluralism on equal rights, legal certainty, and potential disputes through the review of legal documents, court decisions, and academic literature; and (3) formulate an inheritance harmonization model that is inclusive, sensitive to local cultural values, and grounded in principles of substantive justice and gender equality.

This study argues that substantive justice in inheritance law pluralism can only be achieved through harmonization that integrates gender equality, legal certainty, and respect for local values. The theoretical framework includes Legal Pluralism Theory (Griffiths, 1986) to understand interactions among legal systems, Substantive Justice Theory (Rawls, 1971) to evaluate rights distribution, and Legal Harmonization Theory (Otto, 1997) to formulate fair and contextually appropriate legal integration strategies.

Methods

This study employs a normative juridical method with a comparative approach to analyze inheritance law pluralism in Indonesia, encompassing customary law, Islamic law, and the Civil Code. Primary data were collected from legislation, the Compilation of Islamic Law, the Civil Code, documented customary law, and court decisions. In contrast, secondary data were derived from relevant scholarly literature and jurisprudence. The research procedure involved the inventory of legal norms, classification of inheritance distribution principles, comparative analysis of similarities and differences, and evaluation of the legal implications for equal rights and legal certainty.

Research participants included judges from religious and civil courts, customary leaders, Islamic scholars and legal academics, who contributed data through court decisions, customary documents, and scholarly works. Data collection was conducted in stages: inventorying legal norms, documenting court decisions, conducting literature reviews, and classifying inheritance distribution principles. All collected data were analyzed descriptively and analytically using a comparative approach to identify convergence, divergence, and potential harmonization points among the three legal systems.

The analytical framework draws on three main theories: Legal Pluralism (Griffiths, 1986) to understand interactions among legal systems, Substantive Justice (Rawls, 1971) to evaluate the distribution of rights, and Legal Harmonization (Otto, 1997) to formulate fair and contextually appropriate integration strategies. Validity was ensured through source triangulation by comparing written norms, court decisions, and academic literature, while procedural transparency was maintained to allow replication of findings. This methodological approach aims to contribute to both academic discourse and public policy development in building an inheritance system that is inclusive, just, and culturally sensitive.

Findings

Inheritance law pluralism in Indonesia encompasses three legal regimes operating concurrently: customary law, Islamic law, and the Civil Code. These regimes reflect a long history of interaction among religion, culture, and colonial legal systems. While this pluralism accommodates societal diversity, it generates significant complexities related to substantive justice, legal certainty, and gender equality. The analysis of research findings indicates that, without harmonization strategies, inheritance law pluralism tends to exacerbate legal uncertainty and reinforce gender biases in inheritance distribution practices.

Differences in principles across the three legal systems constitute a primary source of this complexity. Customary law exhibits high diversity as each community interprets inheritance according to local social structures and cultural norms. For example, the Minangkabau community follows a matrilineal system, in which property is transmitted through the maternal line. In contrast, the Batak and Balinese communities, which adhere to patrilineal systems, prioritize male heirs. This pattern reflects customary law's flexibility in maintaining family continuity but simultaneously generates legal uncertainty when cases are transferred to jurisdictions with different norms (Benda-Beckmann, 2022).

Islamic law provides fixed provisions derived from the Qur'an and Hadith, such as QS. al-Nisa' (4):11-12, which allocates a male heir twice the share of a female heir. These principles are reinforced in the compilation of Islamic law (KHI) applied in religious courts. Historically, this distribution reflects men's financial responsibility; however, in contemporary social contexts, literal interpretation has sparked debate (Isman et al., 2024). Meanwhile, the Civil Code emphasizes an individualistic principle with equality between men and women, including legitimate, adopted, and recognized illegitimate children, providing formal legal certainty. Nonetheless, Muslim communities often resist applying religious norms as the basis for inheritance (Wardhani et al., 2022).

The simultaneous existence of three inheritance systems enables forum shopping, where stakeholders select the most advantageous legal regime. Studies in Aceh show that this practice leads to legal uncertainty, as distribution outcomes differ between customary, religious, and civil courts (Arfiansyah & Bedner, 2024). Pluralism also results in disparities in judicial decisions, where two families with identical structures may receive different inheritance outcomes, undermining public confidence in judicial institutions (Utama, 2021).

Gender issues are central to the challenges of inheritance pluralism. Specific customary laws, such as those in Bali and Batak communities, provide minimal access for women to inherit property. Although some communities have begun to include women, patriarchal practices remain dominant (Obeng-Odoom, 2024). Islamic law grants women a share, but smaller than men's, creating tension in modern contexts where women are also income earners (Irianto, 2024). The Civil Code provides equal treatment between men and women, yet its application is limited due to resistance from Muslim communities (Hidayah, 2024).

Discussion

Inheritance law pluralism in Indonesia, encompassing customary law, Islamic law, and the Civil Code, reflects the nation's cultural, religious, and legal historical diversity. However, the simultaneous operation of these three legal regimes poses various challenges, ranging from legal uncertainty due to forum shopping to the persistence of gender biases in specific inheritance systems. The differing foundational principles of each regime—collectivism in customary law, normativity in Islamic law, and individualism in the Civil Code—generate disparities in judicial outcomes, with significant implications for substantive justice.

Based on these findings, this study proposes an inheritance harmonization model to reduce tensions among legal systems. First, recognition of local values remains essential, as customary law carries strong social legitimacy. Nevertheless, adaptations are necessary to ensure that customary practices do not conflict with gender equality and human rights principles (Manse, 2024). Second, Islamic law can be reinterpreted through the *maqāṣid al-sharī'ah* approach, emphasizing justice, public interest (*maslahah*), and protection of vulnerable groups as the basis for adjusting inheritance distribution in the context of modern families (Nurmila, 2013).

Third, the state's role through the Civil Code should be strengthened—not to replace customary or Islamic law, but as a mechanism for technical unification. National guidelines for judges are needed to minimize disparities in decisions, enabling the three legal systems to operate more synchronously (Yoserwan, 2024). Fourth, affirmative policies are required to ensure that the rights of women and children are not undermined by customary practices or classical interpretations of Islamic law. For example, the state could adopt a minimum equal share model for sons and daughters in some instances while still considering customary and religious principles (Agarwal & Naik, 2024).

Academically, this study enriches the literature on legal pluralism by integrating the three inheritance regimes into a comprehensive analytical framework and opening space for a more progressive and socially contextual reinterpretation of Islamic law. From a policy perspective, it underscores the urgency of inheritance harmonization through inclusive, contextual, and substantively just national regulations. In this way, inheritance pluralism can be reframed not as a source of conflict but as a legal resource that can be managed to ensure legal certainty and social justice.

Conclusion

Inheritance law pluralism in Indonesia, encompassing customary law, Islamic law, and the Civil Code, reflects the nation's cultural, religious, and legal historical diversity. However, the concurrent application of these three legal regimes generates multiple challenges, ranging from legal uncertainty due to forum shopping to the persistence of gender biases in specific inheritance systems. The differing foundational principles of each regime—collectivism in customary law, normativity in Islamic law, and individualism in the Civil Code—produce disparities in judicial outcomes, with significant implications for substantive justice. Without harmonization strategies, inheritance law pluralism tends to deepen gaps and conflicts rather than provide certainty and fairness. Therefore, a harmonization model is necessary, based on three pillars: recognition of local values adapted to equality, reinterpretation of Islamic law through the *maqāṣid al-sharī'ah* approach to protect vulnerable groups, and technical unification via national guidelines for judicial authorities.

The practical implication of this model is the creation of an inheritance system that not only ensures legal certainty but also upholds substantive justice and gender equality. Academically, this study contributes to the literature on legal pluralism by offering an integrative comparative framework. At the same time, from a policy perspective, it advocates for inclusive and culturally sensitive national regulations capable of bridging tensions among different inheritance law systems. In this way, inheritance pluralism can be reframed not as a source of conflict, but as a legal resource that strengthens social integration and guarantees the protection of the rights of all citizens.

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