Distribution of Inheritance According to Customary Law and Civil Law in Indonesia

Raihana Jihan Sabhira Keliat¹, Tamaulina Br Sembiring².
¹Prodi Ilmu Hukum, Fakultas Sosial Sains (Fasosa) Universitas Pembangunan Pancabudi, Indonesia
²Prodi Ilmu Hukum, Fakultas Sosial Sains (Fasosa) Universitas Pembangunan Pancabudi, Indonesia

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Corresponding Author: 
Author Name*: Raihana Jihan Sabhira Keliat 
Email*: raihanajiann01@gmail.com tamaulina@dosen.pancabudi.ac.id

Abstrak: This research aims to analyze the distribution of inheritance according to customary law and civil law in Indonesia, considering that this process involves complex financial, emotional and social aspects. In Indonesia, each region has customs that complement its cultural diversity, and the interaction between customary law and civil law in the inheritance distribution process shows unique and often complex dynamics. In this context, civil law plays a vital role in creating a just and prosperous society. In contrast, customary law is deeply related to ways of life developed, shared and passed down from generation to generation. Through a qualitative approach, this research will use case studies from various regions in Indonesia to illustrate the application of inheritance law, and interviews with legal experts, traditional leaders and community members will provide in-depth insight into the interactions between civil and customary law. In addition, analysis of legal documents and jurisprudence will offer a more structured understanding of the basis of statutory law. It is hoped that this research will not only add to academic discourse but also offer practical insights and guidance that can improve legal practices and outcomes in Indonesia’s diverse cultural landscape, with the ultimate goal of making policy recommendations for policymakers to improve legal practices around heritage, respecting cultural practices while promoting justice and equality.

Keywords: Division of Inheritance, Customary Law, Civil Law, Legal Dynamics

INTRODUCTION

The inheritance law system in Indonesia is distinctively pluralistic, reflecting the country’s rich religious and cultural diversity. This pluralism of inheritance law is designed to meet the needs of various social groups with different backgrounds. These include Western Civil Inheritance Law (BW), Islamic Inheritance Law, and Customary Inheritance Law, each with unique rules and applications.¹

Western Civil Inheritance Law (BW) was adopted from inheritance laws in force in many Western countries and is applied to Indonesian citizens who are non-Muslim or to those who explicitly choose to submit to this system. In this system, there are two main methods for dividing inheritance: ab intestato, where inheritance is regulated according to blood or marriage relationship with the testator, and testamentary, where the heir can determine his heirs through a will.²

In the context of Islamic Inheritance Law, followed by most Muslims in Indonesia, inheritance distribution is strictly regulated by Islamic law. This law explicitly determines the proportion of assets each heir must receive based on kinship and gender. Islamic Sharia also limits an heir's will to no more than one-third of the total assets unless there is agreement from all relevant heirs.

Meanwhile, Customary Inheritance Law applies to indigenous communities in various regions in Indonesia, with very varied rules according to local customs. For example, in Javanese society, customary law not only permits the distribution of inheritance before the testator's death but also stipulates that inheritance must be distributed egalitarian after the testator's death, reflecting egalitarian values in that society.3

These differences in inheritance law systems show how Indonesia integrates various legal systems to create an inclusive and flexible framework. Each system is designed to respect and maintain the cultural values and traditions prevailing within each group, ensuring that all people have access to legal mechanisms that are fair and consistent with their beliefs and practices.

METODOLOGI

This research uses a normative legal research approach with doctrinal research methods. Doctrinal research involves researching and analyzing relevant legal literature, such as laws, regulations, court decisions, and legal books.

The distribution of inheritance is an important aspect of Indonesian society's life. Inheritance distribution can be based on civil law or customary law. This can create complexity and potential conflict, especially when there are differences between the two legal systems.4

This research analyses the division of inheritance in civil and customary law in Indonesia. It is expected to provide a deeper understanding of the complexity and dynamics of inheritance division in Indonesia and provide solutions to resolve potential conflicts that arise.

RESULTS AND DISCUSSION

Customary Law

Customary law in Indonesia plays an essential role in inheritance distribution, reflecting local communities' values and traditions. In this context, customary law is more than just a legal rule; it expresses a profound social and cultural order. Distribution of inheritance according to customary law is often carried out with a very personal approach, rooted in long-standing beliefs and customs in the community 5.

Differences in implementing customary law can be seen from one society to another in Indonesia, each with its characteristics. For example, in Javanese society, inheritance distribution tends to be egalitarian among children, but sons may receive a more significant proportion. Meanwhile, in Minangkabau society, which adheres to a matrilineal system, inheritance is divided among female family members, showing how societal structure influences inheritance rules.6

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Customary law generally prioritizes lineage and kinship in dividing inheritance. The main principles often arising in inheritance distribution include a transparent kinship system, where heirs are identified based on their blood relationship to the testator. This includes the decedent's children, grandchildren, siblings, and parents, all of whom have a right to a portion of the inheritance.

In addition, women's rights to receive inheritance according to customary law vary in different regions. In some communities, women may have equal or even greater rights than men, depending on the matriarchal or patriarchal structure of the society. On the other hand, heirlooms, assets passed down from generation to generation, are often considered sacred and may not be divided or sold, highlighting the importance of preserving family heritage for future generations.

The inheritance distribution process usually involves consensus deliberation between the heirs. This method reflects the democratic and collective values of indigenous communities, where decisions are made based on mutual agreement. Deliberation ensures that all voices are heard and that distribution is done in a fair manner, respecting the wishes of the heir and the welfare of the heirs.

Thus, customary law in Indonesia regulates the legal aspects of inheritance and maintains family ties and community unity. Through this practice, society can maintain social harmony and maintain cultural and social heritage throughout generations.

**Civil law**

Civil law in Indonesia, which is formal and systematic, includes regulations established by the government to regulate various aspects of community life, including inheritance distribution. In this context, civil law is designed to ensure justice and equality among heirs, reflecting modern values such as equal rights and fair treatment under the law.

Law Number 2 of 1997 concerning Marriage, for example, stipulates that inheritance distribution must be carried out fairly among the heirs' children without distinguishing gender, giving equal shares to male and female children. This shows legislative efforts to ensure equality and avoid gender-based discrimination in the distribution of inheritance.

However, Law Number 16 of 2011 concerning Agrarian Affairs may provide a different interpretation regarding inheritance distribution. According to this law, sons can obtain a more significant proportion of the inheritance, depending on certain conditions that may reflect traditional practices or economic considerations in agrarian asset management.

The distribution of inheritance under civil law is carried out through a clear and structured process, often involving the judicial system to ensure that all legal aspects are complied with. This includes verifying testaments, handling heirs' claims, and resolving conflicts that may arise during the division process.

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Individual interests are strengthened in civil law through the right to make a will, which allows individuals to determine how their assets will be distributed after death. This gives individuals the freedom to decide how their assets should be inherited without conflicting with the rules established by law.\(^\text{13}\)

Civil law also takes into account the interests of the state, ensuring that inheritance distribution occurs in accordance with state regulations and does not interfere with social or economic justice. As such, civil law plays an important role in creating a legal framework that facilitates the fair and equitable distribution of inheritance while upholding the broader legal principles that govern society.\(^\text{14}\)

**Interaction between Customary Law and Civil Law**

Interactions between customary law and civil law can occur in inheritance distribution. For example, if the heir has enormous assets and wants to divide them fairly between his children, customary law can be used as a reference. However, civil law can be used as a reference if the heir has small assets and wants to divide them fairly between his children.\(^\text{15}\)

In some cases, customary law and civil law may conflict. For example, if the heir has sons and daughters, customary law can distribute inheritance unfairly between them. Civil law pays attention to individual interests and the interests of the state, as well as the values of equality and justice.\(^\text{16}\) They are dividing inheritance unfairly between sons and daughters. While civil law pays attention to individual interests, the interests of the state, and the values of equality and justice, civil law can distribute inheritance fairly between sons and daughters.\(^\text{17}\)

Dividing inheritance unfairly between sons and daughters. While civil law pays attention to individual interests, the interests of the state, and the values of equality and justice, civil law can distribute inheritance fairly between sons and daughters. The interaction between customary law and civil law in the context of inheritance in Indonesia can occur in several aspects.\(^\text{18}\)

1. **The Influence of Customary Law on Civil Law**

   Customary law can influence civil law in several ways. For example, in Javanese society, customary law distributes inheritance fairly between the heir’s children, with sons receiving a larger share. Meanwhile, in Minangkabau society, customary law distributes inheritance fairly between the heir’s children, but sons receive a larger share if the heir has sons.\(^\text{19}\) Civil law can sometimes follow these customary law principles in the inheritance distribution process, especially if the heir has specific customs or traditions in the local community.

2. **Influence of Civil Law on Customary Law**

   On the other hand, civil law can also influence customary law in several ways. For example, Law Number 2 of 1997 concerning Marriage and Law Number 16 of 2011 concerning Agrarian


\(^{15}\) Antonsson et al.


Affairs in Indonesia pay attention to individual interests and state interests, as well as the values of equality and justice.\textsuperscript{20} Civil law may sometimes follow these principles in the inheritance distribution, especially if the testator has significant assets and wants to divide them equally between his children.\textsuperscript{21}

3. \textit{Interaction in Practice}

Interaction between customary law and civil law in inheritance distribution can occur. For example, if the heir has significant assets and wants to divide them fairly between his children, customary law can be used as a reference.\textsuperscript{22} However, civil law can be used as a reference if the heir has small assets and wants to divide them fairly between his children. In some cases, customary law and civil law can conflict; for example, if the heir has sons and daughters, customary law can unfairly distribute the inheritance between sons and daughters.\textsuperscript{23} While civil law pays attention to individual interests, the interests of the state, and the values of equality and justice, civil law can distribute inheritance fairly between sons and daughters.

4. \textit{Influence of Socio-Cultural Factor}

Socio-cultural factors can also influence the interaction between customary law and civil law in the distribution of inheritance.\textsuperscript{24} For example, in Javanese society, customary law distributes inheritance fairly between the heir's children, with sons receiving a larger share. Meanwhile, in Minangkabau society, customary law distributes inheritance fairly between the heir's children, but sons receive a larger share if the heir has sons.\textsuperscript{25} Civil law can sometimes follow these customary law principles in the inheritance distribution process, especially if the heir has specific customs or traditions in the local community.

CONCLUSIONS

Inheritance distribution in Indonesia, characterized by the interplay of customary and civil law, presents unique challenges requiring careful attention to legal and cultural dimensions. Increasing legal awareness among the populace is crucial in this context. It helps individuals understand their rights and obligations under the law, potentially reducing conflicts by ensuring all parties know the legal frameworks governing inheritance.

Traditional leaders play a vital role in this process, especially where customary law is prevalent. Deeply entrenched in their communities' cultural and social fabric, these leaders can mediate disputes and facilitate agreements that honour local customs while adhering to the broader legal structure. Their

\begin{itemize}
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\item \textsuperscript{24} Azemina Masovic, "Socio-Cultural Factors and Their Impact on the Performance of Multinational Companies,” \textit{Ecoforum} 7, no. 1 (2018): 0.
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involvement ensures that the distribution of inheritance respects both statutory and customary laws, thus helping to bridge the gap between modern legal systems and traditional practices. However, customary and civil law coexistence can sometimes lead to conflicts, mainly when the laws prescribe different outcomes. Considering the financial, emotional, social, and cultural implications, this necessitates a more nuanced approach to inheritance distribution. By integrating these aspects, the process can be more sensitive to the needs and expectations of all stakeholders involved.

When conflicts arise, achieving a fair and satisfactory resolution for all parties is essential. This often requires negotiation and compromise, guided by a thorough understanding of the intersecting legal and cultural issues. Traditional leaders, in collaboration with legal experts, can provide the necessary counsel and mediation to navigate these complex situations.

Ultimately, inheritance distribution should not just be about the division of assets but also about preserving familial and community harmony. By respecting both the legal rights of individuals and the community's cultural values, it is possible to distribute inheritance in a way that minimizes disputes and promotes equity. The goal is to ensure that inheritance distribution is legally sound, culturally respectful, and socially sensitive, thereby preventing conflict and fostering peace within families and communities.

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