

The Effect of Customary Law on The Distribution of Heritage to Indigenous Peoples in Indonesia

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ABSTRACT

This study discusses the influence of customary law on the distribution of inheritance within indigenous communities in Indonesia, as well as how customary law is recognized within the national legal system. Indigenous communities possess diverse inheritance systems, such as patrilineal (Batak, Nias), matrilineal (Minangkabau), and bilateral (Javanese, Sundanese) systems, which often differ from the provisions of positive law, such as the Civil Code and the Compilation of Islamic Law. This study employs normative legal research methods with a statutory approach to analyze the regulations governing customary inheritance. The findings indicate that although the state has acknowledged the existence of customary law through Article 18B Paragraph (2) of the 1945 Constitution, Law No. 5 of 1960, and Law No. 6 of 2014, challenges remain in its implementation particularly regarding conflicts with national law and the potential for gender discrimination in certain customary systems. The study concludes by emphasizing the need for harmonization between customary and national law to create a more equitable inheritance system that aligns with the principles of human rights protection.

Keywords: Customary, Inheritance, Discrimination, Law

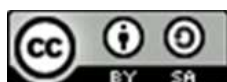
INTRODUCTION

Inheritance is a fundamental aspect of community life, especially for indigenous communities that have their own legal systems regarding the distribution of inheritance. As part of the social and economic structure, the inheritance system in indigenous societies not only serves as a mechanism for wealth transfer from one generation to the next but also functions as a means to preserve culture and ancestral values¹. Indigenous communities in various regions of Indonesia have their own rules and traditions in distributing inheritance, which often differ from the provisions of national law. In practice, this inheritance system continues to be implemented by indigenous communities as part of their identity and the continuity of the values they uphold².

Customary law in Indonesia has long regulated the distribution of inheritance based on local norms that have developed within each tribe and community. For instance, in the Minangkabau society, which adheres to a matrilineal system, inheritance especially

¹ Chandra, F. (2023). Antropologi Hukum Dalam Masyarakat. *Adagium: Jurnal Ilmiah Hukum*, 1(1), 1-11.

² Njatrijani, R. (2018). Kearifan lokal dalam perspektif budaya Kota Semarang. *Gema keadilan*, 5(1), 16-31.



communal land is passed down to daughters through the maternal line³. Conversely, in the Batak community, which applies a patrilineal system, inheritance is largely given to male descendants through the paternal line⁴. Meanwhile, communities such as the Javanese and Sundanese use a bilateral system, where inheritance rights between males and females are relatively balanced⁵. This diversity in systems indicates that customary law plays a strong role in the social life of Indonesian society, particularly in matters of inheritance. However, when customary legal systems are confronted with national law, differences in interpretation often arise, potentially leading to legal disputes⁶.

The dualism of inheritance law systems in Indonesia namely, between customary law and positive law (the Indonesian Civil Code and Islamic law) creates complexities in its implementation. The Civil Code, as the foundation of national law, regulates inheritance based on the principles of individualism and universal justice⁷, while Islamic law has its own rules grounded in Sharia principles⁸. On the other hand, customary law continues to exist in various communities as socially binding rules, even though it is not always formally recognized within the national legal system⁹. This dualism often leads to legal uncertainty, especially when inheritance disputes within indigenous communities are brought to court, which tends to use a positive law approach.

Indigenous communities in Indonesia have diverse inheritance systems, which have developed based on traditions, cultural values, and social structures embraced by each tribe. These differences reflect the ways indigenous peoples maintain social and economic balance within their communities. Some tribes in Indonesia apply a patrilineal system, where inheritance is given to males through the paternal lineage. For example, the Batak and Nias communities prioritize males in the inheritance process, as men are regarded as the successors of the clan and responsible for the continuity of the family¹⁰. In this system, daughters generally do not receive inheritance, except under specific circumstances, such as the absence of male heirs. In contrast, the matrilineal system practiced in the Minangkabau society positions women as the main recipients of inheritance, especially with regard to communal land. Assets are inherited from mothers to daughters, based on the belief that women are the guardians of family and community assets¹¹.

This system contrasts with the inheritance concepts in Islamic law and national civil law, which tend to grant a larger portion to male heirs. Nevertheless, the Minangkabau matrilineal system remains intact because it is accompanied by a male leadership principle known as the "mamak kepala waris," where the mother's brother

³ bin Haron, M. S., & Hanifuddin, I. (2018). Harta dalam konsepsi adat Minangkabau. *JURIS (Jurnal Ilmiah Syariah)*, 11(1), 1-13.

⁴ Fauzi, M. Y. (2017). Legislasi Hukum Kewarisan di Indonesia. *Ijtima'iyya: Jurnal Pengembangan Masyarakat Islam*, 9(2), 53-76.

⁵ Poespasari, E. D., & SH, M. (2016). Perkembangan hukum waris adat di Indonesia.

⁶ Sitanggang, A., May, B., Tobing, D. U. A. L., Tobing, D. L., Ginting, L. M. B., Ritonga, N. S., & Hadiningrum, S. (2024). Dinamika Hukum Islam Dan Hukum Positif Dalam Sistem Hukum Nasional Indonesia. *Jurnal Review Pendidikan dan Pengajaran*, 7(4), 19305-19310.

⁷ WATI, A. N. (2021). Kajian Hukum Mengenai Ahli Waris Pengganti Dalam Hukum Waris Islam Dan Hukum Kewarisan Perdata. *JURNAL JURISTIC*, 1(1), 1-9.

⁸ Assaad, A. S., Bahri, S., Husniati, H., Ekawati, E., Arsyad, N. I., Risman, R., ... & Khair, U. (2024). Hukum Keluarga Islam.

⁹ Manse, M. (2024). The plural legacies of legal pluralism: local practices and contestations of customary law in late colonial Indonesia. *Legal Pluralism and Critical Social Analysis*, 56(3), 328-348.

¹⁰ Angkat, M. G. H., & Rosmalinda, R. (2024). Pengaruh Hukum Adat Toba Atas Status Perkawinan Suku Batak Toba. *Journal Sains Student Research*, 2(5), 299-312.

¹¹ Rahmat, I. (2019). Pengelolaan Harta Pusaka Tinggi Dalam Masyarakat Adat Minangkabau (Studi di Kecamatan Batipuh Kabupaten Tanah Datar). *Bakaba: Jurnal Sejarah, Kebudayaan dan Kependidikan*, 8(1), 15-24.

plays a role in managing the inheritance for the benefit of the extended family. Meanwhile, some tribes such as the Javanese and Sundanese apply a bilateral system, where inheritance is distributed relatively equally between males and females. In this system, sons and daughters have the same or nearly the same rights to their parents' property, although in practice, sons may receive slightly more due to economic responsibilities¹². The bilateral system reflects a balance in inheritance distribution and is more flexible in adapting to social developments, making it more aligned with justice principles in national law.

The diversity of inheritance systems in indigenous communities often leads to conflict when intersecting with national law. In several cases, inheritance disputes arise when family members who refer to customary law face rules stipulated in the Civil Code or Islamic law. For instance, in legal cases brought to court, judges tend to refer to positive law as the basis for decisions, resulting in dissatisfaction for parties adhering to customary law¹³. Therefore, a more inclusive legal approach is needed to accommodate customary inheritance practices without erasing the cultural values passed down through generations in indigenous communities in Indonesia.

The state plays an important role in recognizing and accommodating customary law within the national legal system. The Indonesian Constitution explicitly acknowledges the existence of customary law through Article 18B paragraph (2) of the 1945 Constitution, which states: "The State recognizes and respects traditional community units along with their customary rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia." This provision indicates that customary law has a place in the national legal system, as long as it does not conflict with generally applicable norms. However, in practice, challenges remain in integrating customary law with the national legal system, especially in inheritance dispute cases involving indigenous communities¹⁴.

One form of the state's recognition of customary law in inheritance is through Law Number 5 of 1960 concerning the Basic Agrarian Principles (UUPA), which acknowledges indigenous peoples' communal rights over land, including land obtained through customary inheritance systems. In some indigenous communities, communal land is inherited collectively by clan or tribal members, not as individual ownership. Recognizing communal rights is crucial for ensuring the economic sustainability of indigenous peoples and preventing land appropriation by external parties¹⁵. However, the implementation of the UUPA still faces challenges, particularly in conflicts between customary law and the national agrarian system, which is more oriented toward individual ownership. Additionally, Law Number 6 of 2014 on Villages also provides space for customary institutions to resolve disputes, including inheritance disputes. This law recognizes the existence of traditional villages that have the right to regulate and manage their community lives based on applicable customary law. In the context of inheritance, traditional villages have the authority to mediate and resolve inheritance conflicts according to the customary norms of the local community. This provides flexibility for

¹² Sihombing, P., & Andika, D. (2017). Pembagian waris adat masyarakat suku Bugis di kecamatan Enok, kabupaten Indragiri Hilir, provinsi Riau. *Premise Law Journal*, 1, 164987.

¹³ Manse, M. (2024). The plural legacies of legal pluralism: local practices and contestations of customary law in late colonial Indonesia. *Legal Pluralism and Critical Social Analysis*, 56(3), 328-348.

¹⁴ Widyastuti, L., & Anam, S. (2024). Kedudukan Konstitusi Adat Dalam Sistem Hukum Indonesia. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 13(1).

¹⁵ Santoso, U., & SH, M. (2017). *Hukum Agraria: Kajian Komprehensif*. Prenada Media.

indigenous peoples to maintain their traditional inheritance systems without having to rely on national civil law, which may not align with local values¹⁶.

One of the main issues in the implementation of customary law related to inheritance is the lack of a uniform national regulation that accommodates the diversity of inheritance systems in various indigenous communities. Indonesia has over 300 ethnic groups with differing inheritance systems, such as patrilineal, matrilineal, and bilateral. However, national laws like the Civil Code and Islamic law are often the main references in resolving inheritance disputes, while customary law is often treated merely as a social norm without equivalent legal authority. As a result, indigenous communities often lose their rights in inheritance disputes when cases are brought to formal courts that prioritize national law¹⁷. Additionally, the potential for gender discrimination in customary inheritance systems also becomes a serious issue. Some indigenous communities, especially those applying patrilineal systems such as the Batak and Nias, prioritize males in inheritance due to the belief that men are responsible for family and clan continuity. Conversely, women often only receive symbolic inheritance or inherit only in the absence of male heirs. This practice contradicts the principle of gender equality guaranteed in national law and international conventions ratified by Indonesia, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)¹⁸.

This study aims to analyze how customary law regulates inheritance distribution within indigenous communities in Indonesia. Each indigenous community has different inheritance rules, influenced by social structures, kinship systems, and cultural values. A deeper understanding of inheritance mechanisms in customary law can provide a more comprehensive picture of the uniqueness and diversity of customary legal systems still practiced in various regions. In addition, this study also seeks to examine the extent to which customary law is recognized and accommodated in the national legal system. Although customary law is acknowledged in Article 18B paragraph (2) of the 1945 Constitution, as well as in several regulations such as Law Number 5 of 1960 on Basic Agrarian Principles and Law Number 6 of 2014 on Villages, its implementation in the context of inheritance still faces challenges. This study will explore how national regulations treat customary law in the aspect of inheritance, as well as the extent of legal protection for indigenous communities in maintaining their inheritance systems. Another objective is to evaluate the legal implications of the dualism of inheritance law systems in Indonesia between customary law and national law (the Civil Code and Islamic law). Differences in inheritance principles among these legal systems often lead to conflicts in the resolution of inheritance disputes, especially when cases are brought into the formal legal domain. This evaluation is expected to provide insights into the challenges and potential solutions in aligning customary law with the national legal system in order to achieve justice for indigenous communities in Indonesia.

METHODS

This research employs a normative legal study using a statutory approach to analyze how customary law regulates the distribution of inheritance within indigenous communities in Indonesia, and to what extent customary law is accommodated within

¹⁶ Zainuddin, Z. (2019). Sertifikasi tanah wakaf dalam perspektif hukum progresif Satjipto Rahardjo (Doctoral dissertation, IAIN Palangka Raya).

¹⁷ Manse, M. (2024). The plural legacies of legal pluralism: local practices and contestations of customary law in late colonial Indonesia. *Legal Pluralism and Critical Social Analysis*, 56(3), 328-348.

¹⁸ Permana, S., & Martapura, W. K. P. A. (2018). Kesetaraan gender dalam ijtihad hukum waris di Indonesia. *Asy-Syari'ah*, 20(2), 117-32.

the national legal system. Normative legal studies focus on the examination of prevailing legislation and legal documents, without conducting empirical field research.

The approach used in this study is the statutory approach, which aims to examine various regulations related to inheritance in both customary and national law. Several regulations that serve as the main objects of this study include Article 18B paragraph (2) of the 1945 Constitution, Law Number 5 of 1960 on Basic Agrarian Principles, and Law Number 6 of 2014 on Villages. In addition, this research also utilizes a conceptual approach to understand the principles of customary inheritance law and how these concepts interact with the national legal system, including the Civil Code and Islamic law.

The data sources in this study consist of primary and secondary data. Primary data includes prevailing legislation and court decisions related to inheritance disputes within indigenous communities. Secondary data is obtained from academic literature, legal journals, reference books, and previous research that discusses customary law and national law in the context of inheritance.

The data collection technique is conducted through library research by reviewing legal documents and relevant academic literature. This study also analyzes court decisions involving inheritance conflicts in indigenous communities to understand how the national legal system accommodates or overrides customary law in dispute resolution.

The data analysis techniques used are descriptive-qualitative analysis and comparative analysis. Descriptive-qualitative analysis is used to interpret the contents of legal provisions and to understand how customary law regulates inheritance in various indigenous communities. Meanwhile, comparative analysis is used to identify differences and similarities between customary law and national law in the context of inheritance, as well as their legal implications for indigenous communities in Indonesia.

RESULTS AND DISCUSSION

To provide a more comprehensive overview of the differences in principles and practices of inheritance according to the three legal systems in force in Indonesia, the following table presents a comparison between Customary Law, Civil Law (Indonesian Civil Code), and Islamic Law (Compilation of Islamic Law – KHI) based on several key aspects of inheritance.

Table 1. Comparison of Inheritance Systems in Indigenous Communities in Indonesia

Ethnic Group	Kinship System	Inheritance Principle	Primary Heirs	Customary Legal Basis
Batak	Patrilineal	Inheritance is given to male descendants from the father's line	Eldest son and male relatives	Dalihan Na Tolu Customary Law
Minangkabau	Matrilineal	Inheritance is passed down through the mother's line	Daughters within the family	Minangkabau Customary Law (Alam Takambang Customary Law)
Java	Bilateral	Inheritance is relatively balanced between males and females	All children, with a larger portion for sons	Kejawen Customary Law
Sunda	Bilateral	Inheritance is almost equally divided between males and females	All children with equal distribution	Sundanese Customary Law

Nias	Patrilineal	Inheritance is only given to male children	Eldest son	Famauli Customary Law
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Source: processed from various Indonesian customary law and anthropology literatures

This table illustrates the variations in inheritance systems based on kinship structures among five major ethnic groups in Indonesia. The Batak and Nias communities adhere to a patrilineal system, in which inheritance is passed down only to male descendants through the father's line, with the eldest son serving as the primary heir. In contrast, the Minangkabau people follow a matrilineal system, meaning inheritance is passed through the mother's line and given to the women in the family. Differing from both, the Javanese and Sundanese apply a bilateral system, where inheritance is distributed more equally between sons and daughters, although in Javanese society, sons often receive a larger portion. These principles are based on each ethnic group's customary law, such as *Dalihan Na Tolu* for the Batak, *Alam Takambang* for the Minangkabau, as well as the more flexible *Kejawen* and Sundanese customary laws in inheritance distribution.

Table 2. Comparison of Court Decisions in Customary Inheritance Disputes

No.	Case	Ethnic Group & Inheritance System	Disputed Issue	Court Decision	Judge's Consideration Basis
1	Supreme Court Decision No. 264 K/Pdt/2000	Batak (Patrilineal)	A daughter sued for inheritance rights over customary land that is only inherited by males	The lawsuit was rejected, and the inheritance remained with the son	Batak customary law is still recognized and does not contradict national law
2	Supreme Court Decision No. 179 K/AG/2013	Minangkabau (Matrilineal)	A male relative sued a female niece over high heirloom land	The judge ruled in favor of the female niece	Minangkabau customary law, which follows a matrilineal system, is recognized by national law
3	Bandung District Court Decision No. 23/Pdt.G/2018	Java (Bilateral)	A daughter received less inheritance than her male siblings and sued for a fairer distribution	The court ruled that the division must refer to civil law for greater fairness	Inheritance rights in customary law must not contradict the principle of equality in national law
4	Medan High Court Decision No. 45/PDT/2015/PT MDN	Nias (Patrilineal)	A widow demanded a share of her late husband's inheritance	The court granted the widow the right to receive an	Considerations of justice and protection for women in national law

				inheritance share	
5	Supreme Court Decision No. 355 K/Pdt/2017	Sunda (Bilateral)	A male sibling sued because he felt he received a smaller share than his female sibling	The court upheld an equal division according to Sundanese customary law	The bilateral principle in Sundanese customary law aligns with national law

Source: Processed from Supreme Court and District Court rulings published in the Supreme Court Decision Directory of the Republic of Indonesia.

This table illustrates how the customary inheritance system in various ethnic groups in Indonesia is tested in the legal realm, with results reflecting the balance between customary law and national law. In the Batak and Nias communities, which follow a patrilineal system, inheritance is predominantly given to men, as seen in the Supreme Court ruling that rejected a woman's claim over Batak customary land, and the Medan High Court's decision to still grant inheritance to a widow based on national legal justice. In contrast, in the matrilineal Minangkabau system, women are more recognized as the primary heirs, as reflected in the ruling that favored a female niece in a high ancestral land dispute. Meanwhile, the Javanese and Sundanese communities, which follow a bilateral system, are more flexible in inheritance distribution. However, the case in Bandung shows that civil law remains the main reference if there is an imbalance in distribution, as seen in the court decision prioritizing the principle of equality. In the Sundanese case, the bilateral principle in customary law is recognized in alignment with national law, thus the court upheld a fair distribution for all heirs.

Table 3. Comparison of Legal Regulations Related to Inheritance

Aspect	Customary Law	Civil Law (Indonesian Civil Code)	Islamic Law (Compilation of Islamic Law - KHI)
Inheritance System	Varies (patrilineal, matrilineal, bilateral) depending on the ethnic group	Bilateral (relatively equal distribution for males and females)	Males receive a larger share than females (2:1 in most cases)
Heirs	Depends on local customs (e.g., Batak only males inherit, Minangkabau only females inherit)	All legitimate children and heirs based on blood relations and marriage	Children, parents, spouses, and specific relatives according to faraidh rules
Women's Inheritance Rights	Not always recognized (some customs only grant inheritance to males)	Recognized, women receive the same or nearly the same share as men	Recognized, but typically half the share of men in most cases
Role of Customary Institutions/Courts	Customary institutions play a role in resolving inheritance disputes	Resolved through general courts based on the Civil Code	Resolved through the Religious Court

Documentation & Evidence	Not always written, more oral or based on customary traditions	Can be in the form of a will, official documents, and other legal records	Based on wills, faraidh law, and fatwas from religious scholars
Inheritance Disputes	Resolved within the customary community or taken to court if national law is involved	Resolved in civil court	Resolved in the Religious Court according to Islamic law
Position of Wills	Rarely used, more dependent on hereditary customary rules	Can be made through a notarial deed and legally recognized	Maximum 1/3 of total inheritance without heirs' approval

Source: Compilation from the Civil Code (KUH Perdata)

This table shows that the inheritance system in Indonesia is influenced by three main legal frameworks: customary law, civil law, and Islamic law, each with different principles and mechanisms. Customary law is diverse, depending on the ethnic kinship system, such as patrilineal in Batak and matrilineal in Minangkabau, while civil law applies a bilateral system with a relatively balanced division between men and women. In Islamic law, men generally receive twice the share compared to women. In addition, inheritance recipients in customary law depend on local traditions, while civil law recognizes all legitimate children, and Islamic law follows the faraidh rules. Women's inheritance rights are not always recognized in some customs, but under civil law, they receive almost the same share as men, while in Islamic law, women generally receive half the share of men. The resolution of inheritance disputes also differs, with customary law being resolved within the customary community, civil law through the general court, and Islamic law through the Religious Court. Meanwhile, wills in customary law are rarely used, civil law recognizes them through notarial deeds, and Islamic law limits a will to a maximum of 1/3 of the total estate if there is no agreement from other heirs.

Diversity of Inheritance Systems in Indigenous Communities

The diversity of inheritance systems in indigenous communities in Indonesia reflects the social and cultural values upheld by each community. Some indigenous groups, such as the Batak and Nias communities, apply a patrilineal system where inheritance is passed down to male descendants through the paternal line. This system is based on the principle that men are responsible for continuing the lineage and maintaining the welfare of the extended family. Conversely, the Minangkabau community follows a matrilineal system, where inheritance is passed down through the maternal line. Ancestral property, such as customary land, is inherited by women and managed by the men of the family for the collective interest. This system aims to maintain the economic continuity of the family and community across generations. Meanwhile, the Javanese and Sundanese communities generally adhere to a bilateral system, which divides inheritance relatively equally between men and women. This system is more flexible and provides equal opportunities for descendants to receive a share of the inheritance, although in practice, it is often still influenced by local social norms. The diversity of these inheritance systems poses a challenge when facing the more uniform national law.

Recognition of Customary Law within the National Legal System

The recognition of customary law has been regulated in various laws, such as Article 18B paragraph (2) of the 1945 Constitution, which states that the state recognizes

and respects customary law as long as it is in accordance with national legal principles. Additionally, Law No. 5 of 1960 on Basic Agrarian Principles acknowledges the customary land rights of indigenous communities, relating to inherited land ownership. Law No. 6 of 2014 on Villages grants customary institutions authority in dispute resolution, including inheritance divisions. Although there is recognition within the national legal system, its implementation remains limited. In many cases, customary law does not receive due place in the national judiciary system, especially in inheritance cases brought before the court. Judges often use the Civil Code or Islamic law as the basis for their considerations, which do not always align with local customary law principles.

Conflict between Customary Law and National Law in Inheritance Cases

The dualism of inheritance law systems often leads to conflict between customary law and national law. In some cases, inheritance disputes from indigenous communities are brought to court, where civil or Islamic law is used as the basis for resolution. This results in a misalignment with the customary law applied within certain communities. For example, in several court rulings, daughters from patrilineal indigenous communities often file claims to obtain more equitable inheritance rights in accordance with national law. However, court rulings may vary depending on the judge handling the case. This highlights the legal uncertainty faced by indigenous communities, particularly in maintaining their traditional inheritance systems. Moreover, the role of customary institutions in inheritance dispute resolution is still limited because their decisions often do not have binding legal authority in national courts. In many cases, settlement through customary institutions is more accepted by the local community than through formal judicial pathways.

Issues in Implementing Customary Law in Inheritance

One of the main issues in implementing customary law in inheritance is the lack of a uniform national regulation to accommodate the various customary inheritance systems. Although customary law is recognized in legislation, there is no clear mechanism to ensure that customary rules are respected within the national legal system. Another problem is the potential gender discrimination in some customary legal systems that prioritize men as the primary heirs. This often contradicts the gender equality principles recognized in national law and international conventions ratified by Indonesia, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). As a result, legal challenges arise from individuals or groups who feel disadvantaged by inheritance rules that do not grant equal rights to women. Furthermore, the lack of written documentation regarding inheritance rules in some indigenous communities is also a significant challenge. Many customary rules are passed down orally and are not well documented, which often leads to varying interpretations when inheritance disputes arise. Misunderstandings of customary rules can lead to internal conflicts within the indigenous community itself.

Legal and Social Implications of Inheritance System Dualism

The existence of dualism in inheritance law systems in Indonesia has significant legal and social impacts. Legally, the uncertainty in resolving inheritance disputes causes indigenous communities difficulty in asserting their rights. In many cases, customary law is often viewed as a social norm without binding legal authority, making it difficult to use as a basis for court rulings. Socially, the customary inheritance system that still prioritizes men can lead to gender injustice and perpetuate social inequalities within society. Women in indigenous communities that follow patrilineal systems often do not receive inheritance rights equal to those of men, which can impact their economic welfare. On the other hand, the government plays a crucial role in creating policies that are more inclusive of customary law in the context of inheritance. Efforts to harmonize customary

law with national law need to be made so that indigenous communities can maintain their traditions without conflicting with national legal principles that uphold justice and equality. By understanding the various challenges and implications of customary inheritance systems in Indonesia, this research aims to contribute to the formulation of more just and inclusive policies for indigenous communities in managing their inheritance.

Alignment of Customary Law and National Law in Inheritance

Customary law in Indonesia has long been part of the national legal system, but its application in inheritance cases often experiences uncertainty. Article 18B paragraph (2) of the 1945 Constitution explicitly recognizes the existence of customary law as long as it does not conflict with national law. However, in practice, customary law is often considered subordinate to positive law, such as the Civil Code (KUH Perdata) and Islamic law. This misalignment is evident in various inheritance cases, especially when indigenous communities bring inheritance disputes to court. Judges often prefer to apply national law rather than consider the customary legal norms of the local community. This creates a dilemma, as customary law governing inheritance has become an integral part of indigenous life and is passed down through generations. Therefore, a more harmonious approach between customary law and national law is needed to avoid normative clashes in inheritance resolution.

Challenges in Implementing Customary Law Related to Inheritance

Implementing customary law in the inheritance system faces several key challenges. One of them is the lack of a uniform national regulation to accommodate the various indigenous inheritance systems. Although customary law is recognized in several laws, such as the Agrarian Law and the Village Law, there is no specific regulation governing how customary law can be effectively applied in inheritance disputes in court. Additionally, the lack of written documentation on inheritance rules in some indigenous communities is a major obstacle. Many customary rules are passed down orally, leading to differences in interpretation between generations. When inheritance disputes occur, it is difficult for indigenous communities to prove their customary rules in the national legal system, which is more document-based and relies on written records and jurisprudence. Another challenge is the limited authority of customary institutions in resolving inheritance disputes. Although some indigenous communities resolve inheritance disputes through customary deliberations, their decisions do not always have binding legal authority if one of the parties takes the case to formal court. This weakens the role of customary institutions in their function as mediators in inheritance disputes.

Social and Gender Impacts in Customary Inheritance

One major issue in the customary inheritance system is the potential for gender discrimination in the distribution of inheritance. In some patrilineal customary inheritance systems, women have fewer or no inheritance rights. This contradicts the gender equality principles recognized in national law and various international conventions ratified by Indonesia, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). However, in some communities, social changes are beginning to accommodate women's rights in the inheritance system. The Minangkabau community, which follows a matrilineal system, grants women primary rights to inheritance, especially in ancestral land ownership. Meanwhile, the Javanese and Sundanese communities, which have a bilateral system, tend to be more flexible in dividing inheritance between men and women. Efforts to address gender imbalances in customary inheritance must consider the cultural values upheld in each community. An approach that imposes change without regard for local wisdom could lead to resistance

from indigenous communities. Therefore, it is important to find solutions that respect local traditions while remaining aligned with gender justice principles.

Alternative Resolution of Inheritance Disputes Based on Local Wisdom

In facing the various challenges of customary inheritance, dispute resolution through customary mediation may be a more effective alternative compared to litigation in formal courts. Customary mediation allows indigenous communities to resolve inheritance conflicts while considering the values and norms long upheld by their communities. Customary leaders and institutions play an essential role in this mediation process. They act not only as intermediaries but also as guardians of social harmony within the community. A restorative justice approach, which focuses on resolving conflicts in a fair manner and restoring social relationships, may be a more suitable solution for indigenous communities than the conventional judicial system. However, for customary mediation to be effective, there needs to be government support in the form of regulations that recognize the decisions of customary institutions in inheritance disputes. This would give stronger legitimacy to customary mediation outcomes, making indigenous communities more confident in resolving inheritance disputes outside of formal court proceedings.

CONCLUSIONS

This study emphasizes that the inheritance systems among indigenous communities in Indonesia are highly diverse, depending on each ethnic group's social and cultural structure. Patrilineal systems (e.g., Batak, Nias), matrilineal systems (e.g., Minangkabau), and bilateral systems (e.g., Javanese, Sundanese) exhibit significant differences in inheritance distribution. This diversity reflects the richness of customary law, but it also poses challenges when it intersects with national law. The state has acknowledged the existence of customary law, as stated in Article 18B Paragraph (2) of the 1945 Constitution, Law No. 5 of 1960 on Basic Agrarian Principles, and Law No. 6 of 2014 on Villages. However, in practice, there are still challenges in the implementation of customary law, especially when conflicts arise between customary rules and positive law (Civil Code & Compilation of Islamic Law). The main issues in applying customary inheritance laws include the absence of standardized national regulations, the potential for gender discrimination in some customary systems, and legal conflicts that arise when indigenous inheritance disputes are brought to court. Furthermore, the lack of written documentation on customary inheritance rules often leads to varied interpretations in dispute resolution. Given the dualism of inheritance law systems in Indonesia, a more inclusive approach is needed to harmonize customary law with national law. The state must develop policies that balance the interests of indigenous communities without neglecting the principles of justice and human rights protection, particularly in the context of inheritance.

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