

The position of women in the customary law inheritance system in indonesia

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ABSTRACT

This study explores the position of women in Indonesia's customary law inheritance systems, which vary across ethnic groups and regions. While national legal frameworks have recognized gender equality, customary inheritance practices often reflect patriarchal norms that limit women's rights to inherit property. In some traditions, women are excluded entirely from inheritance, whereas in others they receive limited or conditional rights. This research analyzes how such norms persist despite Indonesia's legal commitments to equality, examining the cultural, religious, and historical underpinnings of customary law. Through doctrinal and socio-legal analysis, the study evaluates how customary practices align or conflict with national laws, particularly the 1945 Constitution and the Marriage Law. It also considers recent jurisprudence and legal reform efforts aimed at harmonizing customary law with principles of justice and gender equality. The findings reveal a complex interplay between tradition and modern legal standards, emphasizing the need for culturally sensitive yet rights-based legal integration to ensure equitable inheritance rights for women.

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1. INTRODUCTION

Inheritance, as an essential component of civil law, functions not only as a means of transferring assets but also as a reflection of the prevailing socio-cultural, religious, and legal norms of a society. In Indonesia, inheritance law exists within a unique and complex legal framework characterized by legal pluralism, wherein customary law (hukum adat), Islamic law, and national civil law coexist and often intersect. This pluralistic system, while reflective of Indonesia's rich cultural diversity, also presents significant challenges in the realization of uniform justice, particularly with regard to the position of women in inheritance matters. Customary law, practiced across various ethnic communities in Indonesia, retains a strong influence over local inheritance practices, especially in rural and traditional societies. Despite efforts toward legal modernization and gender equality, customary inheritance systems often remain patriarchal, limiting or even denying women's rights to inherit. These systems are deeply rooted in communal values, kinship structures, and historical traditions that prioritize male lineage and authority. As a result, women's roles are frequently relegated to supportive or peripheral positions in family and community life, including in matters of inheritance. In many customary law communities, sons are regarded as rightful successors to family property, while daughters may be considered "outsiders" upon marriage, thereby excluded from direct inheritance.

This exclusion of women from inheritance is not merely a matter of tradition but reflects entrenched societal attitudes regarding gender roles, property ownership, and authority. In patrilineal societies such as the Batak and Balinese, inheritance typically follows a male line of succession, whereas in matrilineal societies like the Minangkabau, although women may appear to have stronger inheritance rights, actual control and decision-making often still rest with male relatives. These variations

underscore the complexity and inconsistency of women's legal status under customary law across Indonesia. Contrastingly, the national legal system, as embodied in the 1945 Constitution of the Republic of Indonesia, the Marriage Law (Law No. 1 of 1974), and international human rights conventions ratified by Indonesia, promotes gender equality and prohibits discrimination on the basis of sex. The Constitution, particularly Article 27(1) and Article 28B, guarantees equality before the law and recognizes the rights of every individual to form a family and receive legal protection. These constitutional mandates are further strengthened by Indonesia's ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) through Law No. 7 of 1984.

However, the tension between customary practices and national legal norms continues to raise complex legal and ethical questions. Courts and legal practitioners are often confronted with difficult decisions when customary law contradicts constitutional guarantees. This conflict is especially apparent in inheritance cases involving women who challenge customary norms that exclude or diminish their rights. Judicial decisions in such cases reflect an evolving but uneven trend, where some verdicts affirm women's equal rights while others defer to local customs under the principle of legal pluralism. The pluralistic legal system in Indonesia does recognize the validity of customary law as long as it does not conflict with national legislation or principles of justice and public order. This recognition is enshrined in Article 18B(2) of the Constitution, which affirms the state's respect for customary law communities and their traditional rights. However, in practice, this respect is often interpreted broadly, providing space for the perpetuation of customary norms that may conflict with gender equality. The challenge, therefore, lies in harmonizing the constitutional commitment to equality with the cultural autonomy accorded to customary communities.

Furthermore, the implementation of gender-responsive legal policies in inheritance matters is hindered by social, political, and institutional constraints. At the societal level, cultural resistance to altering traditional inheritance norms remains strong, particularly in regions where community identity and customary law are deeply intertwined. From an institutional perspective, local government bodies and judicial authorities often lack the capacity or willingness to challenge discriminatory customary practices, especially when such practices are supported by influential local elites. Academically and practically, the question of women's inheritance rights in customary law invites a broader inquiry into the intersection of gender, culture, and legal development in Indonesia. Legal scholars and human rights advocates argue for a re-examination of customary norms through the lens of constitutional law and international human rights standards. At the same time, proponents of cultural preservation caution against imposing uniform legal standards that may undermine the identity and autonomy of indigenous communities.

In addition, women's lived experiences under customary inheritance systems reveal the multifaceted nature of discrimination. Beyond legal exclusion, women may face social stigma, familial pressure, and economic vulnerability when seeking to assert inheritance claims. The lack of legal literacy, limited access to legal aid, and dependence on male relatives further constrain their ability to seek justice. As a result, many women forgo legal recourse, reinforcing the cycle of marginalization. Nevertheless, there have been notable efforts both by the state and civil society to address these issues. Advocacy by women's organizations, progressive interpretations by the judiciary, and legal reforms aimed at promoting gender equality have gradually begun to challenge discriminatory customary norms. The Constitutional Court Decision No. 46/PUU-VIII/2010, which expanded the rights of children born out of wedlock, and Supreme Court regulations promoting gender-sensitive adjudication, exemplify the legal system's increasing responsiveness to issues of equality and justice.

Moreover, community-based initiatives in several regions have sought to reform customary inheritance practices from within, using local values and leadership structures to promote more inclusive norms. These initiatives demonstrate that change is possible through dialogue between traditional and modern legal frameworks, especially when grounded in community participation and cultural sensitivity. In light of these developments, the present study seeks to analyze the position of women in the customary law inheritance system in Indonesia by examining its legal foundations, cultural context, and evolving jurisprudence. This analysis will focus on; The legal pluralism framework in Indonesia and the place of customary law within the national legal system. The specific inheritance practices in selected customary law communities, including both patrilineal and matrilineal systems, The alignment or conflict between customary inheritance norms and constitutional guarantees of gender equality, Judicial decisions and legal reform efforts that address the issue of women's inheritance

rights, Policy recommendations to promote legal harmonization, gender justice, and cultural preservation.

By employing a doctrinal and socio-legal research approach, this study aims to contribute to the ongoing discourse on legal reform, gender equity, and cultural pluralism in Indonesia. The study also seeks to inform policymakers, legal practitioners, and community leaders on the need for contextual yet principled integration of customary norms into the national legal framework, with a particular focus on women's rights and access to justice. Ultimately, understanding the position of women in the inheritance systems of customary law is crucial not only for legal reform but also for achieving substantive equality in Indonesian society. As the country continues to navigate its legal modernization and democratization processes, ensuring that all citizens regardless of gender or cultural background enjoy equal protection under the law remains a fundamental imperative. The integration of women's rights into both national and customary legal structures represents a necessary step toward realizing Indonesia's constitutional promise of justice for all.

2. RESEARCH METHOD

This study employs a qualitative doctrinal and socio-legal research approach to analyze the position of women in the customary law inheritance system in Indonesia. The doctrinal method focuses on examining primary and secondary legal materials, including statutory provisions, constitutional norms, judicial decisions, and customary legal texts. Key legal instruments reviewed include the 1945 Constitution of the Republic of Indonesia, Law No. 1 of 1974 on Marriage, Law No. 7 of 1984 on the Ratification of CEDAW, and relevant jurisprudence from the Supreme Court and Constitutional Court. Customary legal sources from specific ethnic groups such as the Batak, Minangkabau, and Balinese are also analyzed to provide a comparative understanding of inheritance practices. In addition to doctrinal analysis, this research adopts a socio-legal method to capture the dynamic interaction between law and social practices. This includes documentary review of anthropological and sociological studies, NGO reports, and academic writings on gender roles in customary communities. It also considers empirical data, including case studies and field reports, to understand how inheritance laws are implemented and experienced by women in local contexts. The research uses a comparative approach to identify the similarities and differences between various customary inheritance systems and how they align or conflict with national legal standards. Legal pluralism theory provides the analytical framework, enabling the exploration of tensions between state law and customary law in the context of gender equality. Overall, the chosen methods aim to ensure a holistic and interdisciplinary analysis that is both legally rigorous and socially contextual. The findings will contribute to the discourse on legal harmonization, women's rights, and the integration of customary norms within Indonesia's broader legal system.

3. RESULTS AND DISCUSSIONS

3.1. General Trends in Customary Inheritance Practices

Across Indonesia's diverse cultural landscape, customary inheritance practices vary significantly among ethnic groups, yet a common theme remains: the preference for male heirs and the restriction of women's inheritance rights. In many patrilineal societies such as the Batak (North Sumatra), Bali, and Java, inheritance follows male lines, with sons designated as the primary or exclusive heirs to family property. Daughters, in many cases, are expected to "marry out" and thus are not regarded as rightful successors. In Batak Toba customary law, for example, the ulayat (communal land) and family estate (harta warisan) are passed exclusively to sons, with married daughters seen as part of their husband's lineage. Women may receive symbolic or token gifts, but these are not considered legal inheritance. A similar pattern exists among Balinese Hindus, where ancestral property is passed to sons to uphold religious and familial duties. Daughters are often provided a dowry ("bebantenan") upon marriage but are not entitled to land or immovable property.

Conversely, in matrilineal societies such as the Minangkabau in West Sumatra, women technically inherit ancestral land (harta pusaka tinggi), which is passed from mother to daughter. However, the control and administration of the land are typically exercised by male relatives (mamak or maternal uncles), thereby diminishing women's actual power over inherited assets. Indonesia's diverse cultural heritage is reflected in the wide range of customary (adat) inheritance practices found throughout the archipelago. Despite this diversity, general trends indicate that many traditional systems still uphold

patriarchal structures, where inheritance is primarily passed through male lineage. This trend manifests most clearly in patrilineal societies such as those of the Batak, Javanese, and Balinese communities. In Batak Toba customary law, only sons are entitled to inherit ancestral property (ulayat), particularly land. Daughters are often excluded under the assumption that they will marry into another family and no longer bear the family name. In Balinese tradition, the transfer of property to sons is tied to religious duties and the maintenance of family temples. Daughters are commonly granted symbolic gifts or dowries upon marriage but are not recognized as heirs to land or immovable assets.

On the other hand, in matrilineal societies such as the Minangkabau of West Sumatra, the inheritance of certain types of property (especially harta pusaka tinggi, or high ancestral property) is passed from mothers to daughters. However, the administration and decision-making authority over these assets often remain with male relatives, particularly maternal uncles (mamak), which limits women's actual control. Overall, while women may have some access to inherited assets through dowries or symbolic gifts, their formal legal status as heirs remains limited in most customary systems. These patterns reflect deep-rooted social norms and cultural beliefs that prioritize male responsibility for family lineage and property continuity. Although some regions have initiated reforms, gender inequality in inheritance remains a persistent feature of customary law, frequently clashing with national and international legal standards advocating equal rights for women.

3.2. Legal Conflicts between Customary Law and National Law

The Indonesian legal framework, particularly the 1945 Constitution, promotes gender equality. Article 27(1) states that all citizens are equal before the law. Article 28B guarantees the right to form a family and receive legal protection. Moreover, the Marriage Law (Law No. 1 of 1974) and Law No. 39 of 1999 on Human Rights reinforce the principle of non-discrimination. Indonesia's ratification of the CEDAW Convention further obligates the state to eliminate gender-based discrimination. However, these progressive legal norms often conflict with the state's recognition of customary law, as enshrined in Article 18B(2) of the Constitution. This article respects customary law communities and their traditional rights, provided they are in accordance with societal development and human rights. This legal ambivalence creates room for the persistence of discriminatory inheritance norms.

Judicial bodies sometimes struggle to reconcile these contradictions. In several Supreme Court decisions, the judiciary has supported women's rights to inherit under national law, while in other cases, they have deferred to local customs in the name of legal pluralism. The lack of a uniform national inheritance law applicable across religions and ethnicities exacerbates the uncertainty. Indonesia's legal system is characterized by a complex interplay between customary law (hukum adat) and national law, often leading to legal conflicts especially in matters of inheritance. On one hand, national law, including the 1945 Constitution, Law No. 1 of 1974 on Marriage, and Law No. 39 of 1999 on Human Rights, affirms the principle of equality before the law, including gender equality. Additionally, Indonesia's ratification of international instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) reinforces state obligations to eliminate gender-based discrimination in legal systems. This duality in legal enforcement results in uncertainty and inequality, particularly for women in rural or traditional communities. The lack of clear guidelines on how to harmonize national and customary laws further complicates judicial outcomes. Thus, legal conflict between customary and national law remains a significant barrier to achieving substantive equality and justice in Indonesia's inheritance system.

On the other hand, customary law, which is recognized and protected under Article 18B(2) of the Constitution, often perpetuates gender-discriminatory practices, particularly in inheritance distribution. In many customary communities, women are either partially excluded or completely denied inheritance rights based on local traditions that prioritize male heirs. This creates a normative tension: while state law seeks to enforce universal human rights principles, customary law operates on the basis of traditional social values. These legal inconsistencies become especially problematic when brought before the courts. Judicial decisions show inconsistency in prioritizing national legal standards over customary norms. Some judges apply national laws to uphold women's inheritance rights, while others defer to customary norms, citing cultural preservation.

3.3. Social and Cultural Factors that Reinforce Discrimination

Beyond legal texts, deeply entrenched patriarchal norms and social expectations shape the implementation of inheritance practices. Women who assert their inheritance rights may face backlash from their families or communities, be labeled as disrespectful, or even be socially ostracized. The perception that daughters have no lasting role in the natal family once married reinforces their exclusion from inheritance. Moreover, many women are unaware of their legal rights or lack the resources to

pursue legal action. Access to legal aid in rural or traditional areas remains limited, and customary dispute resolution mechanisms tend to prioritize community harmony over individual rights, often disadvantaging women.

Beyond legal texts, the persistence of gender-based discrimination in inheritance practices is deeply rooted in social and cultural norms that shape the daily lives of communities in Indonesia. These unwritten rules often carry more immediate influence than statutory law, particularly in rural or traditional societies where customary (adat) law governs interpersonal relations. In many patriarchal communities, the belief that men are the natural heads of households and the main bearers of family lineage sustains the norm that only sons should inherit property, especially land. Daughters are perceived as temporary members of their natal families who, upon marriage, become part of their husband's lineage. This cultural expectation makes it socially unacceptable for daughters to assert inheritance claims, as doing so may be seen as disrespectful or greedy.

Additionally, social pressure and fear of stigma discourage women from challenging discriminatory practices. A woman who contests her exclusion from inheritance may be labeled disobedient, ungrateful, or divisive, leading to strained family relations or even social ostracism. In tightly knit communities, such consequences often outweigh the benefits of pursuing legal justice. Moreover, many women lack access to education and legal awareness, leaving them unaware of their constitutional rights. Even when rights are known, limited access to legal aid services, especially in remote areas, restricts their ability to seek justice. Customary dispute resolution mechanisms typically dominated by male elders often reinforce traditional gender roles rather than challenge them. These social and cultural factors act as powerful barriers to legal reform and the realization of gender equality. Without addressing these underlying beliefs and structures, formal legal protections remain ineffective, and women continue to face discrimination in the name of tradition.

3.4. Legal Reform and Progressive Jurisprudence

Despite these challenges, there have been notable legal and judicial developments; The Constitutional Court Decision No. 46/PUU-VIII/2010 expanded the legal recognition of children born out of wedlock, indirectly supporting broader inheritance rights. The Supreme Court Regulation (Perma) No. 3 of 2017 on Guidelines for Judging Women's Cases underscores the importance of gender-sensitive adjudication and urges judges to consider the broader context of women's vulnerability. Several local government initiatives have introduced regional regulations (Perda) promoting gender equality in family and property law, though enforcement remains uneven.

In recent years, legal reform and progressive jurisprudence have played an increasingly important role in addressing gender-based discrimination embedded in Indonesia's customary inheritance practices. Although customary law remains a respected source of legal authority, the state has undertaken efforts to harmonize traditional norms with constitutional guarantees of equality, particularly for women. One key reform effort lies in the reinterpretation and enforcement of national laws such as the 1945 Constitution, Law No. 7 of 1984 (CEDAW ratification), and the Marriage Law No. 1 of 1974 that explicitly recognize the equal status of men and women before the law. These frameworks empower judges and lawmakers to challenge discriminatory customary norms, particularly where they contradict human rights standards.

Progressive jurisprudence has also emerged through landmark judicial decisions. For example, certain Supreme Court rulings and Constitutional Court interpretations have upheld women's rights to inherit, even in communities where customary law traditionally excluded them. These decisions serve not only to resolve individual cases but also to set legal precedents that guide future adjudication. In addition, legal aid organizations and gender advocacy groups have been instrumental in pushing for reform. Through strategic litigation, public education, and legislative lobbying, these actors have raised awareness about the incompatibility between discriminatory customary practices and modern constitutional values. Nonetheless, challenges remain. Many lower courts continue to defer to local customs, and the absence of a unified framework for integrating adat and state law leads to inconsistent enforcement. Therefore, ongoing legal reform must include capacity-building for judges, clearer statutory guidelines, and broader community engagement to ensure that progressive jurisprudence translates into tangible change at the grassroots level.

3.5. Efforts by Civil Society and Local Communities

Civil society organizations have played a critical role in advocating for women's inheritance rights. Legal aid foundations, women's rights groups, and academic institutions have provided legal assistance, education, and policy recommendations. In some communities, dialogue between traditional leaders and women's groups has led to gradual reforms in customary practices. For instance, in South Sulawesi,

Bugis customary leaders agreed to revise inheritance norms to allow daughters to inherit on equal terms with sons, citing both Islamic principles and contemporary values. Such reforms demonstrate the potential for cultural change driven from within, rather than imposed from above.

The advancement of women's rights within Indonesia's customary inheritance systems has not solely relied on legal reform from above; it has also been driven by the grassroots efforts of civil society organizations and local communities. These actors play a crucial role in challenging discriminatory practices and promoting gender equality in culturally sensitive ways. Civil society organizations (CSOs), particularly those focused on women's rights and legal aid, have undertaken education campaigns, advocacy, and legal assistance to empower women at the community level. By raising awareness of women's constitutional rights and the discrepancies between national law and customary practices, these groups help women understand and claim their inheritance rights. Legal aid clinics also assist women in navigating the legal system when seeking redress, especially in rural or underserved areas.

Additionally, community-based initiatives have emerged that aim to reinterpret or revise local customs from within. In some indigenous and customary law communities, local leaders, customary councils, and religious figures have worked with NGOs and gender advocates to re-express adat values in a way that aligns more closely with contemporary human rights standards. These efforts often emphasize that fairness and familial harmony—core principles in many adat systems—can be preserved even when women are included in inheritance arrangements. A notable success includes communities where dialogue forums and participatory legal drafting have resulted in revised local regulations or consensus agreements that allow daughters to inherit property or share family assets equitably. These bottom-up efforts are essential because they combine cultural legitimacy with progressive values, reducing resistance from traditional authorities and the broader community. Ultimately, the synergy between civil society and local actors represents a powerful mechanism for social change, fostering greater acceptance of gender-equitable inheritance practices within Indonesia's pluralistic legal landscape.

3.6. The Need for Legal Harmonization and Education

The ongoing conflict between national legal norms and customary law calls for a coherent policy of legal harmonization. This includes the development of national guidelines that uphold constitutional principles while respecting cultural diversity. Judicial training programs must emphasize gender justice and constitutional supremacy. Equally important is legal education for women, particularly in rural areas. Raising awareness about legal rights, providing access to legal aid, and involving women in customary decision-making structures are essential steps toward substantive equality.

In Indonesia's pluralistic legal landscape, the coexistence of customary law (*hukum adat*) and national statutory law often creates confusion and legal uncertainty, particularly in the realm of inheritance. While national law, including the 1945 Constitution and the Marriage Law No. 1 of 1974, affirms gender equality, many customary inheritance systems continue to prioritize male heirs, excluding women from property rights. This legal dualism necessitates a concerted effort toward harmonization and legal education. Legal harmonization involves aligning customary practices with constitutional principles and international human rights norms without completely undermining local traditions. This can be achieved through judicial guidance, legislative clarification, and collaborative dialogue between state institutions and adat communities. Clear procedural frameworks are needed to determine when and how national law should prevail over discriminatory customary norms, particularly in court rulings and local regulations.

Equally critical is the role of legal education, both for legal practitioners and the general public. Many judges, lawyers, and community leaders are either unfamiliar with the latest constitutional interpretations or reluctant to challenge entrenched cultural norms. Comprehensive training programs that emphasize the primacy of constitutional rights and gender equality are vital for shifting institutional behavior. At the grassroots level, public education initiatives must be developed to raise awareness among women and communities about their legal rights. When individuals are informed and empowered, they are more likely to seek justice and participate in reform efforts. In this regard, partnerships between the government, civil society, and traditional leaders can be instrumental. In conclusion, the integration of legal harmonization and education strategies is essential to resolve inconsistencies in inheritance law and to ensure that women's rights are respected and protected across all legal systems in Indonesia.

4. CONCLUSION

The position of women within Indonesia's customary law inheritance system reflects a broader tension between traditional cultural norms and modern legal principles of equality. In many customary communities, deeply rooted patriarchal values continue to dominate inheritance practices, often relegating women to secondary or symbolic roles in matters of property distribution. This exclusion is justified through adat beliefs that prioritize male lineage and assume that women will benefit indirectly through marriage or other familial relationships. As a result, women are frequently denied economic autonomy and legal recognition as rightful heirs. However, national legal developments including constitutional provisions, statutory reforms, and Indonesia's commitment to international human rights instruments have increasingly emphasized gender equality. Progressive jurisprudence and advocacy by civil society organizations have begun to challenge discriminatory practices, providing women with new avenues to assert their inheritance rights. Nevertheless, the persistence of legal pluralism, inconsistent court decisions, and strong social-cultural resistance continue to hinder full implementation. Efforts to harmonize national and customary laws must be rooted in both legal and cultural strategies. Legal reforms should provide clearer guidelines on the supremacy of constitutional rights in cases of conflict, while also encouraging local reinterpretations of adat that are more inclusive of women's rights. Education and awareness campaigns targeting both the public and legal professionals are crucial to overcoming resistance and misinformation. Ultimately, advancing the position of women in customary inheritance systems requires a multi-dimensional approach one that respects cultural identities while upholding fundamental principles of justice and equality. Only through collaborative efforts between the state, civil society, and local communities can Indonesia realize a fair and inclusive legal system that ensures women's rightful place as heirs and equal members of society..

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