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WOMEN'S INHERITANCE RIGHTS AMID LEGAL PLURALISM IN INDONESIA: A COMPARATIVE ANALYSIS OF ISLAMIC, CUSTOMARY, AND POSITIVE LAW

Hasna Mardanus*

Alauddin State Islamic University of Makassar, Indonesia
email: hasnamardanus0301@gmail.com

Kurniati

Alauddin State Islamic University of Makassar, Indonesia
email: kurniati@uin-alauddin.ac.id.

Zulhas'ari Mustafa

Alauddin State Islamic University of Makassar, Indonesia
email: zulhasari.mustafa@uin-alauddin.ac.id.

Abstract

This study examines the regulation and implementation of women's inheritance rights in Indonesia within the framework of legal pluralism. As a country with a pluralistic legal system, Indonesia recognizes three inheritance law systems that coexist and develop within society, namely Islamic inheritance law, customary inheritance law, and civil inheritance law (Burgerlijk Wetboek/Civil Code), each of which has different characteristics in regulating the position of women as heirs. This research aims to analyze the regulation of women's rights within these three legal systems, examine their implementation in social realities, and explore the impact of legal pluralism on the fulfillment and protection of women's rights in the inheritance system. This research is a library research employing a normative legal approach. The data were obtained through document studies of primary and secondary legal materials, including legislation, the Qur'an, the Compilation of Islamic Law, the Civil Code, books, and relevant scientific journals. The collected data were then analyzed qualitatively using descriptive and comparative approaches. The findings indicate that both Islamic law and civil law fundamentally recognize and protect women's rights as heirs, although they are based on different concepts of justice. Meanwhile, under customary law, the position of women is strongly influenced by the kinship system adopted by the community. In practice, the implementation of women's inheritance rights still faces various obstacles, such as patriarchal culture, patrilineal kinship systems, and the low level of legal awareness within society. Legal pluralism also creates legal uncertainty and the potential for injustice due to differences in regulations among the existing legal systems. Therefore, legal harmonization and the strengthening of a gender justice perspective are necessary to ensure that the protection of women's rights in the inheritance system can be realized more fairly and optimally.

Keywords: *Legal pluralism; women's rights; inheritance.*

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Abstrak

Penelitian ini membahas pengaturan dan penerapan hak perempuan dalam sistem kewarisan di Indonesia dalam perspektif pluralisme hukum. Indonesia sebagai negara dengan sistem hukum pluralistik memiliki tiga sistem kewarisan yang hidup dan berkembang, yaitu hukum Islam, hukum adat, dan hukum perdata (KUHPerdata), yang masing-masing memiliki karakteristik berbeda dalam mengatur kedudukan perempuan sebagai ahli waris. Penelitian ini bertujuan untuk menganalisis pengaturan hak perempuan dalam ketiga sistem hukum tersebut, mengkaji penerapannya dalam realitas masyarakat, serta menelaah dampak pluralisme hukum terhadap pemenuhan dan perlindungan hak perempuan dalam sistem kewarisan. Penelitian ini merupakan penelitian kepustakaan (library research) dengan menggunakan pendekatan hukum normatif. Data diperoleh melalui studi dokumen terhadap bahan hukum primer dan sekunder, seperti peraturan perundang-undangan, Al-Qur'an, Kompilasi Hukum Islam, KUHPerdata, buku, dan jurnal ilmiah yang relevan. Data yang terkumpul kemudian dianalisis secara kualitatif dengan pendekatan deskriptif dan komparatif. Hasil penelitian menunjukkan bahwa hukum Islam dan hukum perdata pada dasarnya telah memberikan pengakuan dan perlindungan terhadap hak perempuan sebagai ahli waris, meskipun dengan konsep keadilan yang berbeda. Sementara itu, dalam hukum adat, kedudukan perempuan sangat dipengaruhi oleh sistem kekerabatan yang dianut masyarakat. Dalam praktiknya, penerapan hak waris perempuan masih menghadapi berbagai hambatan, seperti budaya patriarki, pola kekerabatan patrilineal, serta rendahnya kesadaran hukum masyarakat. Pluralisme hukum juga menimbulkan ketidakpastian hukum dan potensi ketidakadilan akibat adanya perbedaan pengaturan dalam masing-masing sistem hukum. Oleh karena itu, diperlukan harmonisasi hukum dan penguatan perspektif keadilan gender agar perlindungan hak perempuan dalam sistem kewarisan dapat terwujud secara lebih adil dan optimal.

Kata Kunci: Pluralisme hukum; hak perempuan; kewarisan.

INTRODUCTION

Indonesia is recognized as a country with a pluralistic legal system, characterized by the coexistence of more than one legal order within society. This legal pluralism is a consequence of the diversity of religious backgrounds, cultures, customs, and the long historical development of law in Indonesia. In practice, the existence of these various legal systems enables individuals and communities to apply legal norms that are consistent with the values they uphold in their daily lives (Sudirman, 2026). In the context of inheritance law, such pluralism is reflected in the existence of three legal systems that continue to operate and develop, namely Islamic inheritance law, customary inheritance law (*hukum adat*), and civil inheritance law as regulated under the *Burgerlijk Wetboek* (BW) or the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*/KUHPerdata)(Soekanto Soerjono, 2014).

Inheritance law is a part of family law, which falls within the scope of civil law. Considering that every human being will inevitably experience death, the existence of inheritance law is of great importance in life. One of the legal consequences of death is the necessity to regulate the continuation of the rights and obligations of the deceased, particularly concerning the management and transfer of the deceased's estate (Rahmatillah et al., 2024). Each of these legal systems has distinct characteristics in regulating the distribution of inheritance, including the position and rights of women as heirs. These differences not only give rise to debates in both academic discourse and legal practice but also have implications for the level of substantive justice experienced

by women within the diverse social and cultural life of Indonesian society (Lollyta Julius et al., 2025).

One of the main characteristics of Islamic law lies in its very broad scope, as nearly all aspects of human life are governed by legal provisions within the Sharia. Therefore, Islamic teachings derived from the Qur'an as the primary source and Hadith as the secondary source contain various universal humanitarian values that can be applied in social life (Kurniati, 2013). In Islamic inheritance law, the provisions regarding the distribution of inheritance have been systematically regulated in the Qur'an. Women are recognized as legal subjects who have the right to inherit, although in certain circumstances the share they receive may be smaller than that of men. This difference is based on the consideration that men bear greater economic responsibility within the family structure (Amir, 2012, p. 24).

On the other hand, customary law (*hukum adat*) across various regions of Indonesia exhibits a considerable degree of diversity. One of its primary characteristics is its flexible and pluralistic nature, which is strongly influenced by the kinship system adopted by a particular community (Soekanto, 2012). In patrilineal systems, such as those found in Batak society, women generally do not serve as primary heirs. Conversely, in matrilineal systems, such as that of the Minangkabau community, women hold a significant position in the control and ownership of ancestral property. In addition, there are bilateral kinship systems that provide a more balanced position for both men and women in matters of inheritance (Nugroho Sigit Sucipto, 2016). Meanwhile, inheritance law under the Indonesian Civil Code (KUHPerdata), which is derived from the Western legal tradition, places men and women in an equal position as heirs (Subekti, 2003). The diversity of regulations found within Islamic, customary, and civil inheritance law frequently gives rise to legal issues and conflicts in the distribution of inheritance within society (Marzuki, 2017).

These differences in regulation indicate that the position of women within the inheritance system in Indonesia remains a complex issue. This condition shows that legal pluralism in Indonesian inheritance law not only reflects the diversity of legal systems but also presents challenges in realizing justice and the protection of women's rights (Adelina, 2018). In addition to being influenced by differences in legal systems, issues concerning women's inheritance rights are also closely related to social, economic, and cultural dynamics within society. In practice, the distribution of inheritance is not always carried out solely based on normative legal provisions, but is also influenced by family traditions, power structures within the family, and societal views regarding the position of men and women (Hasnidar & Haniru, 2025).

Therefore, research on women's rights within the pluralism of inheritance law in Indonesia is important to analyze and compare the regulation of women's rights under Islamic law, customary law, and positive law. This study focuses on how legal pluralism influences the realization of justice in the fulfillment and protection of women's rights within the inheritance system, both in terms of legal regulation and its practical implementation in society.

LITERATUR REVIEW

Studies on inheritance law have been widely conducted by legal scholars using various approaches and perspectives. Attention to inheritance issues is not only focused on the distribution of estates but also on the position and protection of heirs' rights within the different legal systems applicable in Indonesia. Various previous studies have made important contributions to understanding the relationship between Islamic inheritance law, customary law, and positive law, while also highlighting regulatory differences that have implications for the fulfillment of women's inheritance rights.

The research conducted by Hazairin highlights the relationship between Islamic inheritance law and kinship systems in Indonesia. Hazairin views Islamic inheritance law as having a bilateral character that provides space for justice for both men and women within the family system. This study places greater emphasis on the harmonization between Islamic law and customary law in the context of Indonesian society (Saoki, 2015). In addition, Hilman Hadikusuma's research on customary inheritance law explains that inheritance distribution patterns are strongly influenced by the community's kinship system. His study finds that the position of women in customary inheritance is highly dependent on the local culture prevailing in a particular region. This research provides an overview of the diversity of customary law but does not specifically compare the protection of women's rights with other legal systems (Marzuki, 2017).

More recent studies have extended this line of inquiry. Suharsono et al. (2024) analyzed girls' inheritance rights through Werner Menski's triangular concept of legal pluralism, focusing on how the interaction between customary and national law tends to disadvantage women, without extensively comparing this position to the detailed provisions of Islamic inheritance law. Lollyta Julius et al. (2025) offered a normative overview of women's inheritance rights across Islamic, customary, and civil law, but concentrated on describing each system's regulatory position rather than critically examining how their coexistence generates inconsistency in dispute resolution. Meanwhile, studies such as Djamud et al. (2024), which compared only Islamic and civil inheritance law, and Ginting et al. (2025), which focused narrowly on evidentiary mechanisms across the three systems, leave the practical implementation gap and the judiciary's role in reconciling these systems largely unexplored.

Building on these studies, the present research distinguishes itself in two respects. First, rather than examining any two systems in isolation, it compares Islamic, customary, and civil inheritance law simultaneously and draws attention to the sociological factors—particularly kinship structure and patriarchal culture—that recur across all three systems and continue to shape the practical realization of women's inheritance rights. Second, it foregrounds the practical and judicial dimension of legal pluralism—namely, how the legal uncertainty produced by overlapping systems affects the resolution of inheritance disputes, and how judges navigate the tension between normative legal provisions and prevailing customary values in interpreting gender justice—an aspect that has not been the central focus of prior comparative studies.

METHODS

This research is a library research, namely a study conducted by examining various literary sources such as books, classical texts, scientific journals, and other written works relevant to the topic under investigation. Library research is used to obtain a strong theoretical and conceptual foundation for understanding the problem being studied. This study also employs a normative legal approach, which focuses on examining applicable legal norms using legal materials as the primary source. These legal materials consist of primary and secondary legal sources (Marzuki, 2017). Thus, the data used in this research are derived from legislation, legal doctrines, and various academic references related to the issue of women's rights within the inheritance system.

Data collection in this study is conducted through document analysis, namely by identifying, collecting, and reviewing various library materials relevant to the object of study. Furthermore, the data obtained are analyzed using a qualitative method, namely by systematically organizing, describing, and interpreting the data in a structured and logical manner. The analysis is carried out based on an Islamic legal perspective and is supported by a comparative approach to examine differences in regulation within customary law and positive law. Through this analytical process, it is expected that a comprehensive and in-depth understanding of the issues under study can be achieved, as well as an argumentative response to the issue of women's rights in the inheritance system in Indonesia (Moleong, 2018).

RESULT AND DISCUSSION

Comparison of the Regulation of Women's Rights in the Inheritance System under Islamic Law, Customary Law, and State Law in Indonesia

Legal pluralism in inheritance law in Indonesia is a reality shaped by the historical development of the national legal system as well as the social diversity of Indonesian society. In inheritance practice, Indonesian society recognizes three legal systems that operate simultaneously, namely Islamic inheritance law, customary inheritance law, and Western civil inheritance law (KUHPerdata/BW). These three systems not only differ in normative aspects but also have distinct philosophical, sociological, and historical foundations, particularly in their perspectives on the position and rights of women in the distribution of inheritance (Suharsono et al., 2024). Consequently, the coexistence of these overlapping legal systems not only reflects legal diversity but also generates normative conflicts that may affect the legal certainty of women's rights in the field of civil law.

Islamic law normatively regulates women's inheritance shares based on the principle of proportional justice, while customary law demonstrates diversity in which, under patrilineal systems, women tend to have a limited position, whereas in matrilineal systems they occupy a more dominant role. On the other hand, state law seeks to accommodate both systems, although in practice it often gives rise to dynamics and conflicts (Syarifuddin, 2012).

The issue of women's inheritance rights is influenced not only by differences in applicable legal systems but is also closely related to social and cultural factors within society. In reality, the distribution of inheritance does not always fully follow applicable legal provisions, as it is often shaped by family customs, power relations within the family environment, and societal perceptions of women's position. In several regions, patriarchal culture continues to position men as the primary heirs and as those deemed responsible for maintaining the continuity of the family, leading women to often choose not to claim their inheritance rights in order to preserve familial relationships. This situation indicates that the existence of legal rules does not necessarily guarantee the actual realization of women's rights in inheritance practices (Silitonga, 2026).

According to Hazairin, the inheritance law system in Indonesia is strongly influenced by kinship patterns that develop within society, whether patrilineal, matrilineal, or bilateral. He argues that the bilateral system more closely reflects the principle of justice because it places both men and women in relatively equal positions within family relations and the distribution of inheritance. Hazairin's view subsequently became one of the foundational ideas in efforts to provide fairer protection of women's rights in inheritance law in Indonesia (Syahroni et al., 2025).

1. Women's Rights in Islamic Inheritance Law

In the early period, Indonesia did not yet have comprehensive national legal provisions regulating inheritance matters for Muslims. In practice, Muslim communities applied inheritance law in various forms, which were often influenced by local interpretations or customary norms prevailing in each region. This condition frequently created difficulties, particularly for parties seeking to claim inheritance rights based on sharia provisions but living within communities that prioritize customary law. As an effort to achieve uniformity and legal certainty in inheritance matters for Muslims, the government subsequently issued Presidential Instruction No. 1 of 1991 concerning the dissemination of the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*) (Ramadani et al., 2026). This compilation was formulated as the main guideline in the fields of marriage, inheritance, and endowments based on Islamic legal principles, with the expectation that it would serve as a more systematic and uniform reference in the practice of religious courts in Indonesia.

In Islamic law, the regulation of women's inheritance rights has been systematically established in the Qur'an, particularly in Surah Al-Nisa' verse 11:

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ

Translation:

"Allah instructs you concerning the distribution of inheritance among your children: the share of a male shall be equal to that of two females."

The verse demonstrates that Islam has clearly regulated the distribution of inheritance while simultaneously recognizing women's rights as heirs. In contrast to the

pre-Islamic Arab (*Jāhiliyyah*) tradition, which did not grant inheritance rights to women, Islam recognizes women as legal subjects who possess both legal standing and economic rights within the family. One of the fundamental principles of Islamic inheritance law is proportional justice (*al-'adl al-tawāzunī*), namely the distribution of an estate based on a balance between rights and responsibilities rather than mere numerical equality. This principle indicates that justice is not always synonymous with equal distribution, but rather with a distribution that is adjusted to the circumstances and obligations of each heir. Within this framework, the difference in shares between men and women should be understood as part of the socio-economic structure of Islam, in which men bear the obligation to provide financial support for the family, whereas women are not burdened with such responsibilities. Thus, the inheritance system reflects the allocation of roles and responsibilities within family life (Ikhwanudin, 2023).

Under Islamic inheritance law, women are recognized as heirs entitled to fixed shares according to their position within the family. A daughter, for example, may receive one-half of the estate if she is the sole daughter, and two-thirds if there is more than one daughter and no son. A wife is entitled to one-quarter of the estate if the deceased leaves no children and one-eighth if children are present. Likewise, a mother may receive one-third or one-sixth of the estate depending on the existence and status of other heirs, while sisters are also entitled to specific shares in accordance with the applicable inheritance structure. These detailed provisions demonstrate that Islamic inheritance law provides legal certainty and clear protection for women's inheritance rights (Wulandari et al., 2025).

The Hanafi school regards the 2:1 inheritance ratio as a fixed rule, as it is closely associated with the financial maintenance (*naḥqah*) obligations borne by men. According to this view, the greater economic burden placed upon men constitutes the rational basis for the larger inheritance share allocated to them in the Qur'an. Likewise, the Maliki school upholds a similar principle by emphasizing the concept of proportional justice, namely the distribution of rights in accordance with the magnitude of the responsibilities assumed by each party. Such an approach plays an important role within the framework of classical Islamic law, as it connects prevailing social conditions with established normative provisions. Consequently, this rule is understood not merely as a mathematical formula for the distribution of property, but also as a regulatory mechanism aimed at promoting social equilibrium and ensuring the continuity and welfare of family life within society (Suharsono et al., 2024).

2. Women's Rights in Customary Inheritance Law

Customary inheritance law in Indonesia forms part of the legal system that lives and develops within society (*living law*), and it is strongly influenced by the kinship structure adopted by each customary community. In this context, the position and rights of women in the distribution of inheritance are not uniform but depend on whether the community follows a patrilineal, matrilineal, or bilateral kinship system (Soekanto, 2012). These differences in kinship systems give rise to variations in the determination of heirs, the types of inheritable property, and the mechanisms for its distribution.

Consequently, customary inheritance law reflects the social and cultural values of local communities, as well as their perceptions regarding family relationships and the respective positions of men and women within the family.

In general, individuals who are subject to inheritance law are determined by factors related to their identity, such as ancestry, religion or belief, ethnicity, and the legal system they choose to follow. In this regard, customary inheritance law may be applied to any individual who elects to adhere to it, provided that its application does not conflict with prevailing statutory regulations and does not violate norms of propriety, morality, or public order within society. This condition demonstrates that customary law continues to occupy an important position as a living law and remains recognized within Indonesia's national legal system. Furthermore, the existence of customary inheritance law reflects the state's respect for cultural diversity and the local values that continue to develop within society.

In addition to being based on kinship systems, customary inheritance practices are also determined by the various inheritance models that have developed within different customary communities. These models include individual, collective, and majorat inheritance systems, each of which possesses distinct characteristics that reflect the values and social structures of the respective communities. The diversity of these customary inheritance systems is fundamentally directed toward supporting the development of a national inheritance system in line with the objectives of legal development in Indonesia (Hukum et al., 2010). In this context, customary law is viewed not merely as a cultural heritage but also as a source of law that possesses value and relevance for the formation of national law. Consequently, customary inheritance law continues to be maintained and respected, provided that it remains consistent with the principles of justice, legal certainty, and the evolving needs of modern Indonesian society.

In communities that adhere to a patrilineal kinship system, the male lineage is given greater priority than the female lineage. As a consequence, sons are regarded as more important than daughters because they serve as the successors to the father's lineage. Conversely, daughters tend to be viewed as individuals who, upon marriage, will continue and strengthen the lineage of their husband's family. Within Batak society, which is characterized by a patrilineal system, the absence of a son is often interpreted as the discontinuation of the family lineage and, in some cases, is considered equivalent to having no descendants at all. Therefore, the pluralism of customary inheritance law in Indonesia not only reflects the cultural diversity and social structures of its communities but also illustrates the ongoing dynamics surrounding the fulfillment of women's rights as heirs.

3. Women's Rights in Civil Inheritance Law (Burgerlijk Wetboek)

The provisions governing inheritance are regulated in Book II of the Indonesian Civil Code (KUHPerdata), which concerns property. An inheritance event arises as a consequence of a person's death, which may involve family members such as a father, mother, or child. In this context, the subjects of inheritance law consist of the deceased

person as the testator or decedent and the surviving parties as heirs or beneficiaries under a will. Thus, death constitutes the primary basis for the commencement of the inheritance process. Furthermore, the Civil Code regulates various mechanisms for the distribution of inherited property, all of which possess legally binding force (Al-As'ari et al., 2025).

Within this inheritance system, women occupy a position equal to that of men as heirs. As individuals entitled to inherit, women have the right to receive a share of the deceased's estate without any distinction based on gender. This principle is explicitly affirmed in Article 852 of the Indonesian Civil Code (KUHPerdata), which states:

"Children or descendants, even if born from different marriages, shall inherit from their parents, grandparents, and other blood relatives in the direct ascending line, without distinction as to sex or order of birth. They shall inherit in equal shares per capita when they are all related to the deceased in the first degree and inherit in their own right; they shall inherit per stirpes when some of them inherit by representation."

These provisions reflect the principle of gender equality in inheritance matters, whereby women and men hold the same status as heirs and are entitled to receive a share of their parents' estate without discrimination based on sex. This principle affirms that inheritance rights are no longer differentiated solely on the basis of biological differences; rather, every individual is recognized as an equal legal subject before the law (SIP Law Firm, 2024).

The recognition of women's rights within the inheritance system of the *Burgerlijk Wetboek* (BW) is not limited to their position as daughters but also extends to various other roles within the family structure. Women as wives, for example, are entitled to inherit from their husbands in accordance with the categories of heirs established under the Civil Code. Likewise, women as mothers, sisters, and other female relatives are recognized as heirs, provided that they satisfy the requirements of blood relationship or legal relationship with the deceased. This demonstrates that the BW consistently provides legal protection for women across different kinship positions within the family.

Implementation of Women's Inheritance Rights in Social Reality

In Indonesia, the inheritance law system has not yet been fully integrated or uniform. This condition has given rise to legal pluralism in inheritance matters, allowing individuals and communities to choose the legal system that will govern inheritance disputes, whether Islamic inheritance law, customary inheritance law, or Western civil inheritance law (*Burgerlijk Wetboek* / BW), due to the absence of comprehensive legal unification. The implementation of women's inheritance rights in Indonesian society reveals a gap between prevailing legal norms and actual social practices. Normatively, women are recognized as legal subjects entitled to inherit under Islamic law, civil law (KUHPerdata), and several customary legal systems (Sulistiani & Nurrachmi, 2021).

Women's inheritance rights under Islamic law have been explicitly regulated in the Qur'an. These provisions constitute the legal foundation that determines both the

status of women and the inheritance shares to which they are entitled within the Islamic inheritance system. As stated in the translation of Surah Al-Nisā' verse 7:

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ
نَصِيبًا مَّفْرُوضًا

Translation:

“For men there is a share of what is left by parents and close relatives, and for women there is a share of what is left by parents and close relatives, whether it be little or much – a prescribed share.”

This verse explains that both men and women are entitled to inherit from their parents and relatives. Prior to the advent of Islam, inheritance was generally granted only to adult men, while women and children were excluded from receiving any share. Through this verse, Allah affirms that all eligible family members are entitled to a portion of the inheritance, regardless of whether the estate left behind is large or small.

Furthermore, under the Compilation of Islamic Law (KHI), women are explicitly recognized as legitimate heirs with prescribed inheritance shares. Similarly, under the Indonesian Civil Code (KUHPerdara), women enjoy the same legal status as men in matters of inheritance, without any distinction based on gender. Nevertheless, in practice, the implementation of these rights is often influenced by cultural factors, kinship patterns, and the social constructs that exist and continue to develop within society.

Customary law recognizes three principal kinship systems: patrilineal (descent through the father's line), matrilineal (descent through the mother's line), and parental or bilateral (descent through both paternal and maternal lines). In addition, there are several variations and combinations of these systems, such as alternating patrilineal systems and double unilateral systems. Among these kinship patterns, the patrilineal system generally excludes widows and daughters from the category of heirs. Regions in Indonesia that traditionally adhere to this system include Batak, Ambon, Nias, Bali, Papua, Gayo, and Minahasa communities. Consequently, the kinship pattern adopted by a particular society significantly influences its inheritance system, including the determination of women's inheritance rights.

Moreover, family deliberation (*musyawarah*) often plays a decisive role in the distribution of inheritance. In many situations, women tend to yield voluntarily or are encouraged to relinquish their inheritance rights in order to preserve family harmony. This condition demonstrates the existence of social pressures that indirectly limit women's ability to exercise their rights as heirs (Wijaya & Andaryuni, 2025).

As access to education increases and legal awareness continues to grow within society, there has been a shift in perspectives regarding the position of women in inheritance matters. Women are no longer viewed merely as passive parties; rather, they are increasingly gaining a more comprehensive understanding of the rights attached to their status as heirs. This growing awareness has encouraged them to take a more active

role in asserting their inheritance rights, including pursuing legal remedies when disputes over the distribution of inheritance arise (Sukarti et al., 2023). In this context, judicial institutions play a highly crucial role. These institutions function not only as mechanisms for resolving disputes but also as instruments for ensuring legal protection for women and guaranteeing that the principle of justice is effectively implemented in inheritance practices. In every process of law enforcement, justice remains the primary objective that must be achieved. The enforcement of substantive justice is particularly important because every legal dispute fundamentally involves the violation or infringement of an individual's rights (Sukmana et al., 2022). Accordingly, the judiciary serves as an important forum for correcting persistent inequalities and strengthening the position of women within the inheritance system.

Nevertheless, various challenges and dynamics continue to arise in Indonesian judicial practice when resolving inheritance disputes involving women. Judges are often confronted with a dilemma between applying normative legal provisions and respecting customary values that remain deeply embedded in and upheld by society. In such circumstances, judges frequently engage in legal interpretation and legal finding by taking into account considerations of justice, reasonableness, and the social conditions of the parties involved in the dispute. This demonstrates that law is not viewed merely as a body of written rules but also as an instrument that must be capable of adapting to existing social dynamics. Therefore, judicial decisions play a significant role in fostering more equitable legal practices, particularly in ensuring the fulfillment of women's inheritance rights (Judiasih & Fakhriah, 2018).

Furthermore, the direction of national legal development in Indonesia indicates an increasingly strong commitment to promoting the principle of gender equality across various sectors, including inheritance law. This trend can be observed in the growing number of court decisions that provide protection for women's rights and reject discriminatory practices that are inconsistent with the principles of justice. Such efforts reflect the state's commitment to upholding human rights principles and guaranteeing equality before the law for all citizens.

The Impact of Legal Pluralism on the Justice of Women's Rights in the Inheritance System

Legal pluralism within Indonesia's inheritance system has a direct impact on the fulfillment and protection of women's rights. The coexistence of multiple legal systems—namely Islamic law, customary law, and civil law—results in differing regulations concerning the position of women as heirs. Consequently, the protection of women's rights is not uniform and is highly dependent upon the legal system applied in practice (Fajri et al., 2024). From a theoretical perspective, legal pluralism not only reflects a multicultural reality but also creates a complex arena of normative contestation. The overlapping relationship among customary law, Islamic law as embodied in the Compilation of Islamic Law (KHI), and Western civil law (*Burgerlijk Wetboek* / BW) creates a situation in which women's civil rights are placed in a vulnerable position. When the state is unable to harmonize these legal systems while

taking gender justice into account, legal pluralism may instead serve as a justification for restricting women's rights, since the boundaries between the application of different legal systems often remain ambiguous and insufficiently defined in practice.

This lack of clarity regarding the boundaries between legal systems ultimately gives rise to the phenomenon of *forum shopping*, a situation in which the choice of applicable law is determined not by an accurate understanding of legal principles but rather by the influence of those who possess greater power within the family. As a result, women frequently find themselves in a disadvantaged position, and their rights are often neglected or overlooked (Sudirman, 2026).

Differences in inheritance regulations across legal systems create a condition that legal sociologists describe as structural ambiguity, namely a situation in which there is no definitive rule establishing which legal system should take precedence. As a result, institutions and local communities often rely on customary norms or particular interpretations to justify the weaker position of women in the distribution of inheritance. In this context, the state appears to be inconsistent. On the one hand, it has adopted international standards concerning the elimination of discrimination against women; on the other hand, it continues to tolerate customary practices and religious interpretations that restrict women's rights within the family sphere, without providing stronger legal protections that promote justice and gender equality.

Islam regards all human beings as possessing equal dignity and intrinsic human worth. Every individual is also afforded equal opportunities to demonstrate generosity, fulfill responsibilities, and enjoy rights and obligations in accordance with their respective nature (*fitrah*) (Rimbawan et al., 2024). In both Islamic law and civil law, women are explicitly recognized as heirs entitled to specific shares of an estate, as stipulated in the Qur'an and the Indonesian Civil Code (KUHPerdata). Nevertheless, under certain customary legal systems, particularly those based on patrilineal kinship structures, women are often excluded from inheritance or receive only limited portions of the estate. These differences in legal regulation demonstrate that legal pluralism has the potential to generate injustice in the fulfillment of women's rights as heirs.

Legal pluralism also gives rise to legal uncertainty in inheritance practices. In reality, the choice of applicable law (*choice of law*) is often utilized by certain parties to apply the legal system that is most advantageous to their interests, even when doing so may reduce the inheritance rights of women. This situation is further reinforced by the persistence of patriarchal cultural values within society. Such values indirectly shape societal perceptions regarding the distribution of inheritance, frequently placing women in a less advantageous position than men (Stoyanova, 2024).

This condition of legal uncertainty also has the potential to produce inconsistencies in the resolution of inheritance disputes, whether within the family setting or through judicial proceedings. The use of different legal systems as the basis for resolving inheritance cases may result in divergent outcomes for disputes that are substantively similar. Consequently, legal certainty and the realization of justice for the parties

involved—particularly women as heirs—become difficult to achieve in an optimal manner.

Therefore, measures are needed to strengthen legal certainty through the harmonization of the various legal systems in force, accompanied by the incorporation of a gender justice perspective in every stage of their implementation. In this way, legal pluralism should not be viewed merely as a source of legal diversity and difference, but also as an instrument for achieving more substantive and balanced justice for women within the inheritance system.

CONCLUSION

Based on the findings of this study, it can be concluded that the regulation of women's rights within Indonesia's inheritance system is significantly influenced by legal pluralism, which encompasses Islamic law, customary law, and state law (the Indonesian Civil Code (*KUHPerdata*)). These three legal systems possess distinct characteristics and underlying rationales in determining the position of women as heirs. Under Islamic law, women are explicitly recognized as heirs entitled to specific shares based on the principle of proportional justice. Under civil law, women enjoy a legal status equal to that of men, without discrimination based on gender. In contrast, under customary law, the position of women is largely determined by the kinship system adopted by the respective customary community.

The implementation of women's inheritance rights in social reality demonstrates that a gap continues to exist between normative legal provisions and actual social practices. Patriarchal cultural values, kinship structures, and family deliberation practices frequently influence women's ability to obtain their inheritance rights to the fullest extent. In communities that adhere to patrilineal kinship systems, women are often placed in a less favorable position than men with respect to inheritance distribution.

Furthermore, legal pluralism has important implications for the fulfillment and protection of women's inheritance rights. Differences among legal systems may give rise to legal uncertainty and inconsistencies in the resolution of inheritance disputes. Nevertheless, legal pluralism also creates opportunities for judges and judicial institutions to engage in legal interpretation and legal development that are more responsive to the principles of justice and gender equality. In this regard, the judiciary plays a crucial role as an instrument of legal protection for women seeking to assert their inheritance rights.

The central finding of this study indicates that the primary challenge in ensuring women's inheritance rights lies not only in the substance of legal norms but also in the social, cultural, and practical factors that shape the implementation of law within society. Therefore, the protection of women's rights in the inheritance system requires greater harmonization among existing legal systems, together with the strengthening of a gender-justice perspective, in order to achieve legal certainty and more substantive justice for women as heirs.

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