

## Legislative Legal Politics of Inheritance Law in Indonesia

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### Abstract

*This article is the result of research on the legal politics of inheritance law legislation in Indonesia. This study employs normative research methods, focusing on literature review and legal documents to understand the principles and regulations in force. Through the approach of case analysis, legislative analysis, and an examination of legal politics in Indonesia, the research delves into the relevant aspects. Data analysis was used to identify and understand legal norms related to inheritance distribution within the systems of customary law, Islamic law, and civil law in Indonesia. The research findings indicate that there are still many cases of inheritance disputes in Indonesia due to the ongoing discrepancies between Islamic law and customary law, civil law and Islamic law, as well as customary law and Islamic law, which leads to conflict. This can be observed through the increasing number of cases submitted regarding inheritance disputes, whether in religious courts, district courts, or handled through customary law mechanisms in Indonesia each year. However, civil law can be considered an alternative in addressing inheritance law issues in Indonesia. This is evident in the civil inheritance distribution system, which is considered fair, without discrimination between men and women.*

**Keywords:** *Legal politics, legislative, inheritance, law, Indonesia.*

### Introduction

Inheritance law has evolved over time, shifting towards a more flexible and supportive legal framework that accommodates family autonomy and decision-making (Zubair et al., 2022). Indonesia is one of the Asian countries characterized by its diverse ethnic groups, languages, religions, and customary laws, which serve as binding legal sources for its society (Zaelani et al., 2023). This diversity influences the legal systems in place, one of which is inheritance law. Indonesia has a variety of inheritance legal systems, namely: (i) customary inheritance law, (ii) Islamic inheritance law, and (iii) civil inheritance law (Wulandari, 2018). These systems have led to several legal opinions regarding the reform of inheritance law, specifically through the examination of inheritance-related verses using various legal approaches (Muzainah & Mansyuroh, 2022).

The main laws serving as the legal foundation for inheritance in Indonesia are Law No. 5 of 1960 and Law No. 12 of 2011 (Hill, 1995). Each of the existing inheritance legal systems has distinct characteristics. Customary inheritance law follows the local indigenous community's norms concerning inheritance. Islamic inheritance law adheres to principles of inheritance derived from the Qur'an (the holy book of Islam) and the Hadith (sayings and actions of Prophet Muhammad peace be upon him). Civil inheritance law follows the Civil Code, issued by the government, with inheritance and property division rules outlined from Articles 830 to 1130. These three inheritance legal systems are all applied by different segments of the Indonesian population (González-González et al., 2023).

The presence of diverse legal systems creates legal uncertainty and has the potential to trigger conflicts within families. Hence, there is a need to harmonize these different inheritance legal systems to provide clear national legal references (Harnides & Khairuddin, 2023). A lack of understanding of inheritance law can lead heirs to develop incorrect perceptions, which may cause family disputes and the misuse of inherited property. This issue arises due to discrepancies between the inheritance law practiced in a particular region and the inheritance law governed by the Civil Code (Pengadilan Agama Negara, 2024). For example, in customary inheritance law, the division of inherited property may be delayed or not carried out because the inheritance may not be fixed. Meanwhile, under Islamic inheritance law, the property must be fairly divided

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according to family relationships and levels of dependency. Additionally, situations can arise where an heir dies before the benefactor, necessitating legal action, such as lawsuits or demands from other legal entities (Hagino, 2016). This could lead to family conflicts if the heirs do not fully understand the applicable laws.

The increasing number of inheritance disputes brought to court highlights the need for clear and just legal regulations. As of May 2024, the Supreme Court's directory recorded rulings on 4,494 inheritance cases, 24,848 Islamic inheritance cases, and 50,081 civil cases, many of which involve inheritance divisions (Barlinti, 2013). These figures show the high volume of disputes requiring legal resolution and emphasize the importance of a comprehensive understanding of the various inheritance provisions and practices in Indonesia.

Several statistical data points illustrate the prevalence of inheritance cases that are resolved through legal channels in Indonesia. These figures depict how often inheritance disputes are brought to court and how the legal system handles them. In 2020, 30,000 cases were submitted to religious courts across Indonesia, many of which involved inheritance divisions according to Islamic law. In 2021, this number increased to 35,000 cases (Trisnanda & Adjie, 2024). Aside from submissions to religious courts, district courts also received reports concerning inheritance disputes, particularly those involving civil inheritance law and non-Muslim families or families using civil law. In 2020, 10,000 civil inheritance cases were recorded, and by 2021, this number rose to 11,500 cases (Pengadilan Agama Negara, 2024). Additionally, inheritance cases are sometimes resolved through customary mediation, though the exact number of such cases remains unclear. However, reports from various regions indicate that thousands of cases have been resolved through customary mediation.

This study aims to analyze the legal norms governing inheritance division in Indonesia. The focus of the research is on the three main legal systems: customary law, Islamic law, and civil law. The analysis includes a comprehensive understanding of the fundamental principles, rules, and procedures of inheritance division in these three legal systems. Furthermore, the differences and similarities in inheritance laws under customary law, Islamic law, and civil law will be identified and analyzed to understand their implications for inheritance practices in Indonesia. This research also aims to provide normative recommendations for improving Indonesia's inheritance legal system to ensure justice and legal certainty for society. These recommendations include efforts to clarify laws and regulations related to inheritance, harmonize customary, Islamic, and civil inheritance laws, and offer insights for enhancing the role of judicial institutions in resolving and reducing inheritance conflicts fairly and efficiently in the future.

### *Research Method*

The research method used in this study is normative legal research, focusing on the review of literature and legal documents to understand the principles and regulations governing the distribution of inheritance in Indonesia. The approaches employed include analytical, legislative, conceptual, philosophical, and comparative approaches (Dimiyati & Wardiono, 2004). This allows for a description of legal phenomena related to inheritance distribution and an analysis of how legal politics influence inheritance law legislation.

Previous studies have used a normative juridical approach to resolve inheritance disputes concerning the status of adopted children based on Batak Toba customary law (Sinaga et al., 2022). Another study examined inheritance law reform in Somalia as part of a broader reform of family law in a predominantly Muslim country (Syafi'i, 2021). Other research has explored the implementation of Islamic inheritance law in Indonesia through the Compilation of Islamic Law, highlighting efforts by Indonesian scholars to formulate inheritance laws relevant to the local context (Syaikhu et al., 2023). Overall, these studies contribute to a deeper understanding of inheritance law across various cultural and religious landscapes, emphasizing the need for inclusivity, reform, and effective dispute resolution mechanisms.

The data sources in this study consist of primary and secondary data: (i) Primary data includes court rulings related to inheritance disputes, accessed through the Supreme Court's decision directory. (ii) Secondary data consists of legal literature, books, journal articles, and legal documents, such as legislation relevant to inheritance law.

The data analysis method used is normative juridical analysis, which includes case analysis, legislative analysis, and legal political analysis. The data analysis aims to identify and understand legal norms related to inheritance distribution within the systems of customary law, Islamic law, and civil law in Indonesia. A literature review of court rulings on inheritance disputes is conducted to understand how legal norms are applied in practice, thereby identifying issues and gaps in the application of inheritance law. Additionally, the legal political analysis seeks to understand the influence of legal politics on the formation and implementation of inheritance law in Indonesia, comparing legal systems in other countries, and examining the political, social, and cultural factors that play a role in the legislative process and the application of the law.

## Results and Discussion

Several studies have examined inheritance laws in various countries, including the research conducted by Agarwal and Naik in India, which analyzed the use of courts by women to claim their shared inheritance (Agarwal & Naik, 2024). The study used four main online data sources to gather 505 cases from over 2,900 cases related to women as co-plaintiffs, with rulings issued by the High Court between 2005-2020. Based on the Hindu Succession Amendment Act of 2005 (HSAA 2005), Hindu women gained legal equality in inheritance rights concerning all types of property, including agricultural land and joint family property (JFP), which they now directly inherit by descent. However, the research findings showed that in 77% of cases filed by women, the rulings granted them inheritance from their parents, with 52% of these positive rulings allowing them to receive property through other rights. Thus, the legal pathway has a significant impact, though its implementation remains limited (Agarwal & Naik, 2024).

Next, a study conducted by Gatterer et al. (2024) in Austria, titled *The Legacy of Partible Inheritance on Farmland Fragmentation: Evidence from Austria*, assessed partible inheritance as one of the key driving factors in the fragmentation of farmland ownership and usage. The researchers combined plot-level data on land use and ownership with historical information on inheritance traditions from Eastern Austria, where partible and non-partible inheritance coexist. The data was analyzed using multiple regression and refined matching techniques, demonstrating that farmland is more fragmented in areas where partible inheritance is practiced (Gatterer et al., 2024).

Another study conducted by Zouaoui and Rezeg (2021) in the Arab world, titled *Islamic Inheritance Calculation System Based on Arabic Ontology (AraFamOnto)*, developed an inheritance calculation system based on family ontology to process information about family relationships, heirs, and inheritance calculations according to Islamic law. The goal of this method is to reduce the time required to search for family data and to facilitate accurate Islamic inheritance calculations (Zouaoui & Rezeg, 2021).

Finally, a study by Jaime González-González et al. (2023) in Europe, titled *Automatic Explanation of the Classification of Spanish Legal Judgments in Jurisdiction-Dependent Law Categories with Tree Estimators*, explored an automatic legal text classification system to address knowledge extraction from legal rulings and detect other aspects using Natural Language Processing (NLP) and Machine Learning (ML). The research findings showed that experimental results on annotated data in jurisdiction-based legal categories indicated that the system achieved competitive performance, with accuracy rates significantly above average (González-González et al., 2023). This type of system is used to streamline the categorization process of various legal cases

### *Comparison of Inheritance Laws in Indonesia*

There are three systems of inheritance law in Indonesia: Islamic inheritance law, civil inheritance law, and customary inheritance law. Islamic inheritance law and civil inheritance law have fundamental differences. Islamic law assigns specific shares to each heir, which cannot be altered, while civil law provides more freedom for individuals to decide how to divide their inheritance through grants and wills (Hasan, 2023). Additionally, civil law recognizes illegitimate children as heirs, whereas Islamic law has stricter regulations on this matter. In the comparison between civil law and customary law, there are differences in terms of flexibility and adaptability. Civil law tends to be more rigid and formal, while customary law is more flexible,

allowing for adjustments based on social circumstances. Nevertheless, both systems recognize the importance of protecting the rights of heirs to ensure justice in the inheritance distribution process (Ideham, 2022). Finally, when comparing customary law and Islamic law, customary law is more adaptable to the social conditions of the community, whereas Islamic law has fixed regulations that are binding based on Sharia (Krisnawati & Kusumasari, 2022).

### *Customary Inheritance Law*

The adat law in Indonesia is a legal system derived from the values and norms that prevail within indigenous communities. The fundamental principle of adat law in inheritance generally encompasses the concepts of family ties and the collective interests of the extended family. Adat law often does not recognize individual inheritance but rather prioritizes the welfare of all family members (Sinaga et al., 2022). For example, in the Batak community, which follows a patrilineal inheritance system, the eldest son is given priority as the primary heir to the estate. In contrast, the Minangkabau community adheres to a matrilineal system where daughters play a crucial role in inheriting family assets. In the Bugis community in Siattinge, Bone District, South Sulawesi, asset transfer generally occurs before the heir's death, through bequests or gifts, and any unallocated assets are distributed after the heir's death, with equal shares for both male and female heirs (Tarmizi, 2020).

Next, the inheritance system among Muslim Chinese in Banjarmasin illustrates a blend of Islamic law and Chinese customary law. Islamic inheritance law provides equitable distribution between males and females, but Chinese customary law exclusively favors male heirs. The integration of Islamic inheritance law and local Banjar customary law is due to the perception that religion should not impede inheritance rights. Most Muslim Chinese prefer to use customary law for inheritance distribution, following one of three conditions: traditional family consultations, unallocated inheritance, or distribution according to Islamic inheritance law (Muzainah & Mansyuroh, 2022).

In Bali, specifically in Denpasar, Balinese customary law dictates that daughters inherit their parents' estate. This is based on the publication of the Dewa Desa Utama Pakraman Decision Number 01/KEP/PSM-3/MDP BALI/X/2010 regarding the results of the III MUDP Bali Assembly. According to this decision, women have the right to inherit from their parents or the decedent. Initially, Balinese customary law, influenced by Hindu teachings, favored male descendants (purusa) (Jalaludin & Khasanah, 2021). However, recent changes reflect a shift in customary practices (Assaad et al., 2022).

A case study conducted on the Dayak Ngaju community explores the use of adat law as a solution for inheritance issues. The research shows that there is a competition of norms, encounters, and conflicts among various legal systems. Adat law is deeply ingrained in the legal consciousness of the Dayak people and is not an isolated system. If not managed properly, it can disrupt the long-established social cohesion within the community. According to research by Hasan (2023) in Pontianak, there is a disjunction between the theory and application of Islamic inheritance law within the Pontianak community and the decisions of religious courts. However, in practice, religious court decisions are binding. The research indicates that from a socio-legal perspective, traditional adat practices play a significant role in shaping judges' views and approaches in legal construction, especially concerning Islamic inheritance rulings (Hasan, 2023).

### *Case Study on the Application of Customary Law in Inheritance Disputes*

The application of customary law in inheritance disputes can be observed through various cases resolved in both customary courts and general courts, which recognize customary law as part of the Indonesian legal system. For example, in inheritance disputes within the Dayak community in Kalimantan, the division of ulayat land (customary land) is conducted by the local customary chief, considering the interests of all clan members. Disputes arise when an heir demands a larger share according to civil law, but resolutions still adhere to customary law, which emphasizes fairness and balance. Another case in Toraja demonstrates that customary law can adapt to social changes, such as in inheritance disputes that account for women's rights in light of increasing gender equality awareness. These examples illustrate that customary law remains relevant and respected in certain communities, despite challenges in integrating it into the more formal

national legal system. This also highlights the flexibility and dynamism of customary law in adapting to social changes and modern values.

### *Islamic Inheritance Law*

Islamic inheritance law, also known as faraid, is governed by the Quran and provides detailed guidelines for the distribution of a Muslim's estate (Syarifuddin, 2015). Faraid specifies fixed shares for each heir based on their relationship to the deceased. For example, a son generally receives twice the share of a daughter, while parents, spouses, and other relatives have designated rights based on their relationships. The primary goal of faraid is to ensure a fair and equitable distribution of the estate according to Islamic principles. These principles not only cover the division of assets but also encompass social and moral responsibilities to ensure the welfare of the surviving family members (Syafi'i, 2021).

The Indonesian Religious Courts play a crucial role in resolving inheritance disputes based on Islamic law. They are authorized to handle matters related to Islamic law, such as inheritance, wills, gifts, and endowments. In inheritance disputes, the Religious Courts are responsible for enforcing faraid and ensuring that the distribution of the estate complies with Islamic provisions. The court process involves examining evidence, witnesses, and arguments from the parties involved. The decisions of the Religious Courts aim to provide justice and legal certainty for all parties and reduce the potential for prolonged family conflicts.

### *Civil Inheritance Law*

Indonesian civil law, as outlined in the Civil Code, sets the basic principles for inheritance distribution. One of the key principles is individualism, which emphasizes individual inheritance rights for heirs. The Civil Code divides inheritance based on blood relations, starting with direct descendants (children), followed by parents, siblings, and so forth. This principle includes the rights of legitimate and illegitimate children to receive a share of the inheritance, as well as the rights of the surviving spouse to a portion of the deceased's estate (Subekti, 1995). In civil law, inheritance is described as a collective concept involving both heirs and the inheritance itself. The Civil Code does not distinguish between male and female children; their shares are equal.

In Mexico, research suggests a need for debate on the concepts of federalism, decentralization, centralization, and sovereignty in the context of comparing Mexican civil law and family law. Currently, family and private law experts generally reject federalism issues in Mexico. Mexico has a highly centralized federal system, but deeper analysis shows that state and sub-national jurisdictions have played an essential role in shaping family law and influencing state-federal relations (Silveira, 2016).

### *Case Study on the Application of Islamic Law in Inheritance Disputes*

The application of civil law in inheritance disputes is evident through various cases resolved in general courts. For instance, in cases involving disputes between legitimate and illegitimate children, the court must determine the share of the illegitimate child according to the Civil Code. In a case decided by the Supreme Court, an illegitimate child claimed a share of the inheritance from their father. The court ruled that the illegitimate child was entitled to an inheritance share, but it was less than that of a legitimate child (The Republic of Indonesia's Ministry of Religion, 2019).

Another case involves disputes between the surviving spouse and children from a previous marriage. In such cases, the court ensures that the rights of the surviving spouse are protected while also ensuring that children from previous marriages receive a fair share of the inheritance. The court generally refers to the Civil Code and existing jurisprudence to reach a fair and balanced decision (Mahkamah Agung Republik Indonesia, 2024).

## **Conclusion**

Indonesia is a diverse Asian country with a rich tapestry of ethnic groups, languages, religions, and customary laws that serve as binding sources of law for its people. This diversity significantly influences the legal framework in Indonesia, including inheritance law. The clash of understanding between customary law, Islamic law, and civil law often leads to family conflicts. This is reflected in statistical data showing an increasing number of inheritance disputes over the years, whether filed in religious courts, general courts, or mediated through customary law practices. Civil law serves as a middle ground in determining inheritance rules. Fundamentally, civil law emphasizes individual inheritance rights for heirs. The Civil Code prescribes the distribution of inheritance based on blood relations, starting with direct descendants (children), followed by parents, siblings, and so on. Under Indonesian civil law, there is no distinction between male and female children; their shares are equal.

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