



TRADITION AND JUSTICE: GENDER EQUALITY IN THE DISTRIBUTION OF INHERITANCE IN INDONESIA

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Abstract: *This article examines how customary tradition shapes inheritance distribution in Indonesia's plural legal order and assesses its implications for gender equality, with particular attention to patrilineal communities. It uses normative legal research through statutory, conceptual, case, and comparative approaches. Primary legal materials include the 1945 Constitution, the Civil Code, the Compilation of Islamic Law, relevant legislation, and Supreme Court jurisprudence; secondary materials comprise scholarship on customary inheritance, legal pluralism, and feminist jurisprudence. The analysis shows that Indonesian inheritance law does not operate through a single uniform regime. Civil, Islamic, and customary rules differ in their legal foundations, categories of heirs, and distributive principles. Patrilineal customs may privilege male descendants, but Supreme Court jurisprudence, including Decision No. 179 K/Sip/1961, recognizes daughters as heirs and limits the exclusionary effect of customary norms. Justice should therefore not be reduced to identical shares. It requires recognition of women as legal heirs, protection against total exclusion, a defensible basis for different shares, and attention to the social context of the customary community. Harmonization is needed through constitutional safeguards and consistent judicial interpretation rather than the elimination of living customary law.*

Keywords: *Customary inheritance law; gender equality; legal pluralism; patrilineal kinship; substantive justice.*

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Introduction

Indonesia has a plural inheritance law system in which customary law, Islamic law, and the Civil Code operate alongside one another. This plurality reflects the country's social and cultural diversity, but it also creates uncertainty when different legal traditions define heirs, distributive shares, and justice in different ways, particularly in relation to women's inheritance rights (Kurnia & Santosa, 2023).

Tradition and custom are related but not identical concepts. Tradition refers to beliefs, practices, and values transmitted across generations, while customary law consists of norms that are observed, accepted, and enforced within a particular community. In inheritance matters, customary rules coexist with Islamic inheritance law under the

Compilation of Islamic Law (KHI) and civil inheritance law under the Civil Code (Burgerlijk Wetboek). Each system rests on a different legal foundation and reflects a distinct understanding of family relations and property succession (Hutagalung & Gloriawati, 2022; Rismawati, 2017).

Civil inheritance law is principally regulated in Book II of the Civil Code, including Articles 830–1130. Islamic inheritance law is set out in Book II of the KHI, Articles 171–214, which was disseminated through Presidential Instruction No. 1 of 1991. Customary inheritance law is not codified in a single national statute; its continued existence is constitutionally recognized through Article 18B(2) and Article 28I(3) of the 1945 Constitution, subject to the development of society and the principles of the Republic of Indonesia. Article 5 of Law No. 5 of 1960 also recognizes customary law in the agrarian field, although it does not itself constitute a comprehensive regulation of customary inheritance.

The issue has become more prominent as claims for gender equality increasingly confront customary rules that privilege a particular line of descent. Patrilineal and matrilineal systems may assign different legal and social positions to sons and daughters, whereas bilateral systems generally trace kinship through both parental lines. This article examines the regulation of inheritance within Indonesia's plural legal order and evaluates how tradition and justice may be reconciled in patrilineal customary inheritance (Rahmatillah, 2024).

Respect for living customary law does not require the uncritical acceptance of every inherited practice. A customary settlement may remain legitimate when it is reached through genuine deliberation, recognizes the legal status of all heirs, and does not exclude women merely because of their sex. Accordingly, the relevant question is not only whether shares are numerically equal, but whether the distribution protects each heir from arbitrary exclusion and provides a defensible basis for any difference in treatment.

Previous studies have discussed the tension between Islamic inheritance rules and gender equality, proportional justice under the Civil Code, and the use of *maslahah* to develop gender-responsive inheritance arrangements. These studies clarify the normative foundations of each system, but they often examine Islamic, civil, or customary inheritance separately. As a result, the interaction between legal pluralism, customary kinship, judicial development, and women's status as heirs has not been addressed consistently (Ahyani et al., 2023; Haniru, 2014; Santoso, 2024).

Research on women's inheritance rights in patrilineal communities and on the plurality of Indonesian inheritance law also demonstrates that customary law is neither uniform nor static. Nevertheless, further analysis is required to distinguish respect for tradition from the preservation of discriminatory exclusion. This article addresses that gap by comparing the principal inheritance regimes and examining how Supreme Court

jurisprudence has modified the operation of patrilineal customary law (Rachelninta & Sulastri, 2025; Rahmatillah, 2024).

Balinese customary law illustrates the capacity of a patrilineal system to adapt without abandoning its internal structure. A daughter may acquire the status of *sentana rajeg*, generally through a *nyeburin* or *kaceburin* marriage, so that she continues the family line and may inherit family property. In that arrangement, the husband enters the wife's family line rather than being described as assuming the legal status of a wife. The example shows that customary status can be reconstructed to prevent the absence of a male descendant from extinguishing a daughter's relationship with her family's estate (Warsita et al., 2020).

The article contributes to the literature by separating three issues that are frequently conflated: the legal source governing an inheritance dispute, the customary kinship structure of the community, and the standard of justice used to assess the distribution. This distinction permits a more precise analysis of when customary rules should be respected and when constitutional equality and judicial protection require their adjustment.

Unlike studies that treat legal pluralism only as a conflict among legal sources, this research focuses on the position of women within patrilineal customary inheritance and uses feminist legal analysis to test whether proportionality is being used to justify a reasonable allocation or to conceal total exclusion. The analysis does not assume that every unequal share is discriminatory; it examines the legal and social reasons given for the distinction and its effect on women's status as heirs.

This study addresses two questions: (1) how is inheritance regulated within Indonesia's plural legal system, particularly in patrilineal customary communities; and (2) how can tradition and justice be applied without denying women's status and rights as heirs?

Method

This study uses normative legal research with statutory, conceptual, case, and comparative approaches. Primary legal materials include the 1945 Constitution, the Civil Code, the KHI, legislation governing Religious Courts and customary communities, and relevant Supreme Court jurisprudence. Secondary legal materials consist of peer-reviewed journal articles, books, and legal scholarship on inheritance, legal pluralism, customary law, and gender. The materials were collected through a structured literature review and analyzed qualitatively by identifying the governing norms, comparing the distributive principles of the three inheritance regimes, and evaluating their consistency with substantive justice and gender equality (Disemadi, 2022; Tan, 2021).

Analytical Framework

The analytical framework draws on feminist jurisprudence and Carol Gilligan's ethics of care. Gilligan's work is not treated as a complete theory of inheritance law, but as a relational perspective that directs attention to dependency, family responsibility, voice, and the practical consequences of legal rules. Feminist legal analysis is used to identify rules that appear neutral but reproduce structural disadvantage, particularly when women are denied recognition as heirs. The framework therefore distinguishes formal equality, identical numerical treatment, from substantive equality, which requires equal legal status and protection against exclusion while permitting contextual differences that can be legally justified (Gilligan, 1982; Pattiruhu, 2020).

The assessment is limited to normative and doctrinal materials. It does not claim that a single pattern represents every customary community in Indonesia. References to patrilineal, matrilineal, and bilateral systems are analytical classifications; their practical application remains dependent on the living law, property category, family agreement, and forum in which a dispute is resolved.

Discussion

The analysis confirms that inheritance in Indonesia is governed through legal pluralism rather than a single national inheritance code. The Civil Code, the KHI, and customary law differ in their legal sources, categories of heirs, property concepts, and methods of dispute resolution. These differences shape the position of women and explain why the same family relationship may produce different outcomes under different legal regimes (Santika & Eva, 2023).

Inheritance Regulation within Indonesia's Plural Legal System

The existence of several inheritance regimes does not arise from regional autonomy alone. It reflects the historical coexistence of civil law, Islamic family law, and living customary law. The applicable regime must therefore be identified by examining the legal status of the deceased, the religion of the parties, the continued operation of customary law, the type of property, any agreement among the heirs, and the jurisdiction of the court hearing the dispute.

Legal pluralism also means that social practice and formal adjudication may not always use the same rules. Families may distribute an estate through customary deliberation, while a dispute brought before a court is resolved under the jurisdiction and substantive law applicable to that forum. A valid analysis must distinguish a consensual family settlement from a judicial determination of inheritance rights.

Under the Civil Code, inheritance opens upon the death of the deceased pursuant to Article 830. The estate includes transmissible rights and obligations, and succession may occur by operation of law or by will. The system is individual and bilateral in orientation: kinship is traced through both parental lines, and heirs receive individual rights in the estate (Civil Code, arts. 830–1130; Santoso, 2024).

Articles 832 and subsequent provisions classify heirs into groups. The surviving spouse and descendants occupy the first group and exclude more remote groups when they are present. Within the same legal position, sons and daughters are not differentiated on the basis of sex. Civil inheritance law therefore provides formal equality among children, although the actual distribution may be affected by marital property, debts, gifts, and testamentary dispositions.

Testamentary freedom is limited by the legitime portie under Article 913 of the Civil Code. This reserved portion protects certain lineal heirs from complete disinheritance. The mechanism is relevant to gender equality because it prevents a testator from eliminating the minimum rights of a protected heir solely through a will (Klenten et al., 2024).

Islamic inheritance law in Indonesia is administered through the KHI and the jurisdiction of the Religious Courts for Muslim parties. Its institutional basis is more specific than a

general reference to Article 29 of the 1945 Constitution. Presidential Instruction No. 1 of 1991 disseminated the KHI, while the Religious Courts Act, as amended by Law No. 3 of 2006, places inheritance among the matters within the competence of Religious Courts for Muslims. Customary law, by contrast, derives its authority from living community norms and constitutional recognition, not from a single inheritance statute.

Book II of the KHI regulates inheritance in Articles 171–214. It defines the deceased, heirs, estate, obligations to be discharged before distribution, fixed shares, wills, mandatory bequests, and gifts. Article 183 also permits heirs to agree on a distribution after each heir understands the share to which they are entitled. This provision creates room for consensual settlement without erasing the normative starting point of Islamic inheritance law (Presidential Instruction No. 1 of 1991; Compilation of Islamic Law, arts. 171–214).

Islamic inheritance is based on blood relationship, marriage, and other legally recognized grounds. The estate is calculated after funeral expenses, debts, and valid testamentary obligations have been settled. The distributive structure is therefore not reducible to a single ratio; the applicable share depends on the combination of heirs who survive the deceased.

The ratio of two shares for a son to one share for a daughter applies specifically to children under Article 176 of the KHI when sons and daughters inherit together. It should not be presented as the formula for every inheritance case. Islamic legal scholarship generally explains the difference by reference to the financial obligations assigned to men, while gender-responsive scholarship questions whether that rationale is sufficient in every contemporary family context. The legal issue is therefore one of proportionality, responsibility, and the possibility of a consensual settlement, rather than a simple opposition between equality and inequality.

For purposes of distribution, the estate must be distinguished from jointly owned marital property and from assets that do not belong to the deceased. This preliminary identification is essential because a formally correct calculation may still be unjust if it includes property owned by another person or ignores obligations that must be settled before the heirs receive their shares.

Customary Kinship Systems and Gendered Inheritance

Customary inheritance law is organized through the kinship and property systems of each community. The common classifications are patrilineal, matrilineal, and bilateral or parental kinship, but these categories do not produce identical results in every region. Customary inheritance may also be individual, collective, or majorat, depending on whether property is divided among heirs, retained collectively, or transferred as an undivided unit to a principal successor (Kurnia & Santosa, 2023).

Patrilineal communities trace descent primarily through the male line, while matrilineal communities trace descent through the female line. Communities identified in the literature as patrilineal include several Batak and Balinese groups, whereas Minangkabau society is the best-known matrilineal example. These classifications describe the organization of descent and customary property; they should not be used to assume that every member of a named ethnic group follows an identical inheritance practice (Judiasih et al., 2021; Kurnia & Santosa, 2023; Pattiruhu, 2020; Ramadhani et al., 2019).

A patrilineal system may prioritize sons because they continue the clan, perform customary obligations, or retain ancestral property within the lineage. A matrilineal system may place ancestral property in the female line for similar reasons of lineage continuity. Neither arrangement is automatically gender-equal merely because it follows an internally coherent tradition. The decisive question is whether the rule recognizes the legal personality and material interests of those who are not positioned as the principal successor.

Bilateral systems trace kinship through both parents and generally place sons and daughters in comparable positions. Their practical operation may still vary through family deliberation, local property categories, and the needs of particular heirs. The bilateral model is therefore relatively inclusive, but it is not a uniform written code applicable to every bilateral community (Kasra, 2016; Santika & Eva, 2023).

Gilligan's ethics of care supports an inquiry into relationships and responsibilities, but it does not justify a predetermined larger share for men. In inheritance disputes, relational justice requires attention to caregiving, economic dependence, customary obligations, and the voice of family members who may be marginalized. Feminist jurisprudence adds a structural question: whether the stated responsibility of male heirs is supported by actual obligations or is being used to deny women an independent legal claim.

The three inheritance regimes consequently reflect different orientations. The Civil Code emphasizes individual succession, classified heirs, and testamentary limits. The KHI provides prescribed shares, defined pre-distribution obligations, and room for agreement after the heirs understand their entitlements. Customary law is contextual and community-based, often relying on deliberation and distinctions among ancestral, acquired, collective, and individual property (Haniru, 2014; Masrur & Rahayu, 2023; Pongoliu, 2019).

This comparison shows that legal certainty and substantive justice cannot be achieved by declaring one regime superior in every case. The relevant task is to identify the applicable legal framework accurately, protect heirs from total exclusion, and ensure that any customary or consensual distribution is based on informed participation rather than coercion. Constitutional equality operates as a limit on the application of living law,

while living law remains relevant to the social meaning and management of customary property (Cahyani & Amelda, 2022; Nugroho et al., 2021; Muhammad & Ahmad, 2024).

Balinese sentana rajeg arrangements demonstrate internal adaptation within customary law. More broadly, Supreme Court jurisprudence has treated the exclusion of daughters in patrilineal communities as inconsistent with living principles of humanity and equality. These developments do not abolish customary law; they modify its application by recognizing daughters as heirs and by distinguishing customary priority from complete legal exclusion.

Accordingly, the first research question cannot be answered by assigning every Indonesian estate mechanically to one of three legal systems. Regulation operates through a combination of formal legal sources, jurisdiction, community membership, property classification, and agreement. Patrilineal custom remains legally relevant, but its application is subject to constitutional values and judicial developments that recognize women as heirs.

Tradition, Justice, and Women's Rights in Patrilineal Inheritance

Justice in inheritance law includes legal certainty, equal recognition, and a defensible distribution of rights and obligations. It does not always require identical shares, but it does require a rational connection between any difference in treatment and the legal or social responsibility relied upon to justify it. A distribution becomes difficult to defend when proportionality is invoked only after women have been denied status as heirs.

Tradition consists of practices, values, and normative expectations transmitted within a community. Its legal significance depends on whether the practice remains observed as living law and whether its application is compatible with constitutional rights and national legal principles. Tradition is therefore neither legally irrelevant nor immune from evaluation (Yuliyani, 2023; Gilligan, 1982).



Figure 1. Comparison of inheritance regimes under the Civil Code, the Compilation of Islamic Law, and customary law

Source: Authors' compilation. The 2:1 ratio shown in the figure applies specifically to sons and daughters inheriting together under Article 176 of the KHI, not to every configuration of heirs.

Figure 1 summarizes the principal differences among the three regimes. The comparison is necessarily simplified. Civil and Islamic inheritance are governed by written norms, while customary inheritance may vary by community and property category. The figure should therefore be read as an analytical overview rather than a rule for determining the law applicable to a particular estate.

The governing law cannot be determined solely by the heirs' preference. In a litigated case, relevant factors include the deceased's religion, the jurisdiction of the court, membership in a customary law community, the continued observance of that community's law, and the nature of the property. Outside litigation, heirs may reach a consensual arrangement, but the validity and fairness of that agreement depend on informed consent and the protection of each heir's legal position.

The relationship between custom and Islamic law also varies by community. Minangkabau practice distinguishes ancestral property governed by matrilineal custom from individually acquired property that may be distributed according to Islamic law.

Acehnese and Bugis practices likewise show that custom, deliberation, and Islamic norms may interact rather than operate as mutually exclusive systems. These examples confirm that the object of inheritance must be identified before the applicable rule is selected.

For Muslim parties, inheritance disputes fall within the jurisdiction of the Religious Courts and are generally resolved through Islamic inheritance law and the KHI. Custom may nevertheless influence the classification of customary property or a settlement agreed upon by the heirs. Residence in a customary area alone does not displace the legal framework applicable to Muslim inheritance disputes.

For non-Muslim parties, the Civil Code may govern a civil inheritance dispute unless a living customary law is shown to apply to the deceased and the relevant property. Membership in a customary community and the actual continued observance of its inheritance rules are more significant than residence alone. A court must therefore establish the factual and normative basis of the claimed custom rather than assume its application.

The applicable framework is thus determined through an interaction of personal status, forum, living customary law, property classification, and agreement. This approach is more accurate than treating religion or residence as a single decisive factor in every case (Constitution of the Republic of Indonesia of 1945, arts. 18B(2) and 28I(3); Law No. 3 of 2006; Presidential Instruction No. 1 of 1991).

Table 1 provides a practical summary of the legal framework generally relevant to common inheritance situations. It does not replace a case-specific examination of jurisdiction, property status, and living customary law.

No.	Status of the Deceased	Relationship to a Customary Community	Law Relevant to Adjudication	Generally in	Editorial Note
1	Muslim	Not bound by a living customary inheritance rule	Islamic inheritance law and the KHI	inheritance	Inheritance disputes between Muslim parties fall within the Religious Court's jurisdiction.
2	Muslim	Member of a customary community	Islamic inheritance law and the KHI; custom may affect customary property	inheritance	Custom does not automatically displace the Religious Court's jurisdiction.

			or a consensual settlement	
3	Non-Muslim	Not bound by a living customary inheritance rule	Civil Code	Civil inheritance disputes are generally heard by the District Court.
4	Non-Muslim	Member of a community that continues to observe customary inheritance law	Living customary law, subject to proof and constitutional limits	The court must establish that the asserted custom remains alive and applies to the deceased and the property.
5	Non-Muslim	Resident in a customary area but not a member of the customary community	Civil Code	Residence alone is insufficient to establish the applicability of customary law.
6	Muslim	Resident in a customary area but not bound by its inheritance law	Islamic inheritance law and the KHI	Residence alone does not alter the applicable personal law or court jurisdiction.

Table 1. General framework for determining the applicable inheritance law in Indonesia

Source: Authors' compilation based on the Civil Code, the KHI, the Religious Courts Act, and constitutional recognition of customary law.

The table distinguishes the rules ordinarily applied in adjudication from customary or consensual arrangements outside court. The distinction matters because family agreement may influence distribution, but it does not automatically alter the court's jurisdiction or permit an heir to be excluded without informed consent.

The contrast between law in books and living law should not be overstated. The Civil Code and the KHI are applied through social institutions, while customary law may also be identified and enforced by courts. The principal difference lies in the form and source of the norm: codified rules provide greater textual certainty, whereas customary law requires proof that the norm remains alive and applicable in the relevant community.

Tradition and justice may operate together when the heirs recognize the customary basis of the distribution, understand their legal entitlements, and participate without coercion. Consent cannot validate a settlement obtained through misinformation or social pressure, and customary law cannot be used to erase women's status as descendants and heirs. Proportionality must therefore be assessed through both process and outcome.

Supreme Court Decision No. 179 K/Sip/1961 concerned inheritance in the patrilineal Karo community. The Court held that, on grounds of humanity, general justice, and equality between women and men, a daughter must be regarded as an heir and is entitled to a share of her parents' estate. The decision did not prescribe a uniform numerical share for every Karo inheritance; its central legal significance was the rejection of total exclusion based on sex (Supreme Court of the Republic of Indonesia, 1961).

The decision clarifies the distinction between priority and exclusion. A customary rule may assign particular responsibilities to a principal male successor or preserve specified ancestral property within the clan. Those considerations do not necessarily justify transferring the entire estate to men while denying daughters any legal interest. The legitimacy of a larger or different share must be assessed separately from the recognition of heirship.

From a feminist legal perspective, the Court's reasoning corrects a structural disadvantage rather than imposing abstract numerical equality. The daughter's voice and legal identity are recognized even within a patrilineal framework. Gilligan's relational approach further supports attention to actual caregiving and dependency, but such considerations should be established in the case rather than inferred automatically from gender roles.

The jurisprudence demonstrates that customary law can develop through judicial interpretation. The Court did not reject the existence of Karo customary law; it interpreted living law in light of broader principles of justice and equality. This approach preserves legal pluralism while preventing custom from operating as an absolute barrier to women's inheritance rights.

The classification of property remains important. Ancestral or clan property may carry obligations and restrictions that differ from individually acquired or marital property. A

careful distribution should therefore identify the property category, the customary obligations attached to it, and the heirs' legal status before determining shares. Treating every asset as ancestral property risks extending a lineage-based rule beyond its proper scope.

Conclusion

Indonesia's inheritance pluralism creates different legal pathways rather than a single uniform rule. Civil inheritance law, Islamic inheritance law, and customary law differ in their sources, concepts of property, categories of heirs, and distributive principles. Patrilineal custom may remain applicable as living law, but it cannot be treated as authority for the automatic exclusion of daughters. Supreme Court Decision No. 179 K/Sip/1961 confirms that women must be recognized as heirs and entitled to a share, even where the community follows a strong patrilineal tradition. Tradition and gender justice can be reconciled by distinguishing the recognition of heirship from the calculation of shares. Substantive justice does not always require identical distribution, but any difference must have a clear legal and factual basis, must not deprive women of legal status, and must be reached through a fair process. Judges and legal practitioners should identify the applicable legal regime, classify the property accurately, examine whether the asserted custom remains alive, and test family agreements for informed consent. At the policy level, harmonization should focus on constitutional safeguards and consistent judicial standards rather than the elimination of customary diversity.

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