



The Dynamics of the Relationship between Islamic Law and Customary Law in Inheritance Disputes in Indonesia

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Keywords: Customary law; Indonesia; Inheritance; Islamic law; Legal policy.	This study aims to analyse the dynamics of the political relationship between Islamic law and customary law in inheritance disputes in Indonesia. This study employs a critical qualitative approach using legal-political discourse analysis based on social theory as its main framework. It focuses on a critical reading of legal texts, legislation, religious fatwas, court decisions, customary documents, and public discourse in the mass media and academia related to inheritance disputes. The findings reveal that the struggle and negotiation between Islamic law and customary law in inheritance disputes in Indonesia are not merely conflicts between religious norms and local traditions, but rather a sharp reflection of how the state regulates, negotiates, and even instrumentalises law for the sake of political identity and formal stability. When the state chooses to affirm one legal system while reducing another, what is sacrificed is not only legal diversity itself but also substantive justice for the most vulnerable – women, customary communities, and those living under overlapping legal authorities that are not equal. This is where the urgency lies for the emergence of a new legal paradigm that not only recognises plurality but also nurtures it as a collective force towards inclusive social justice.
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Introduction

The dynamics of the relationship between Islamic law and customary law in inheritance cases are significantly influenced by Indonesia's political conditions, which fluctuate and are often ambiguous in their treatment of religion and local culture. Throughout history, the Indonesian government has consciously or unconsciously contributed to tensions between these legal systems.¹ During the colonial period, for example, Dutch legal policies that sought to codify customary law as part of a divide-and-rule strategy indirectly sharpened the boundaries between customary law and Islamic law. This pattern continued even after Indonesia gained independence, with the government, through various inheritance laws, often caught in a tug-of-war between protecting local cultural values and accommodating the demands of the majority religion.

Such conditions present a dilemma for communities that must choose between adhering to customary law with all its traditional richness or turning to Islamic law with its normative superiority believed to be divine revelation.² These choices are not merely individual or family preferences but reflect broader political debates regarding the definition of national identity, religious identity, and the construction of social legitimacy in communal life. Such struggles have been intense and have even become one of the factors triggering socio-political polarisation at the local and national levels. Law enforcement often gives rise to unavoidable dualism in legal decisions in many inheritance disputes.

For example, in the same dispute, a religious court applied Islamic law, which differs substantially from a district court's decision that used customary law as the basis for its consideration. This dualism is not merely a technical legal issue, but also reflects a much deeper political tug-of-war between two value systems with different bases of legitimacy and social support. At the practical level, such legal conflicts create significant legal confusion and uncertainty for the community. The impact is felt by individuals directly involved in the dispute and the wider community, who think that their cultural rights are threatened or marginalised.

On the other hand, the penetration of Islamic law into various aspects of Indonesian social life over the past few decades has grown increasingly intense, aligning with the rising religious sentiments in various political dynamics.³ Consequently, debates about Islamic inheritance law are no longer confined to theological aspects but involve elements of identity politics and power relations among social groups. Thus, Islamic law has evolved into a political instrument often used to assert the majority's dominance over the minority, or conversely, as a symbol of resistance against such dominance. This dynamic demonstrates that inheritance law is not merely a matter of asset distribution but a larger political arena concerning who has the right to determine the national identity narrative and the legitimacy of social practices within society.

As a consequence of all this, conflicts between Islamic law and customary law in inheritance disputes are not merely internal issues within specific communities but have explicitly and implicitly become a national political agenda involving various socio-political actors, ranging from religious scholars, traditional leaders, human rights

¹ Lita Tyesta Addy Listya Wardhani, Muhammad Dzikirullah H Noho, and Aga Natalis, "The Adoption of Various Legal Systems in Indonesia: An Effort to Initiate the Prismatic Mixed Legal Systems," *Cogent Social Sciences* 8, no. 1 (2022): 2104710, <https://doi.org/10.1080/23311886.2022.2104710>.

² Abdullahi Ahmed An-Na'im, "Islam, Islamic Law and the Dilemma of Cultural Legitimacy for Universal Human Rights 1," in *Asian Perspectives on Human Rights* (Routledge, 2021), 31-54, <https://doi.org/10.4324/9780429033674-5>.

³ Arina Rohmatul Hidayah et al., "Shifting from Religious Populism to Authoritarian Populism: Two Decades of Identity Politics Dynamics in Indonesia," *Social Sciences* 14, no. 1 (2025): 45, <https://doi.org/10.3390/socsci14010045>.

activists, and national politicians. Multiple cases that have come to public attention demonstrate the intensity of the political struggle behind these inheritance disputes. This has triggered various forms of direct and indirect intervention in the judicial process and formulating public policy related to inheritance. As a result, inheritance disputes have become a significant political issue actively debated and contested in the national public sphere.

To comprehensively understand the dynamics of the political relationship between Islamic law and customary law in inheritance disputes in Indonesia, several previous studies have examined this issue from various perspectives. These studies provide a basis for understanding and offer a critical perspective on this phenomenon. A study conducted by Daniel S. Lev critically examines how religious courts in Indonesia, as institutions of Islamic law, carry out their role amid the political dominance of the state, which is often ambiguous in applying religious and customary law.⁴ Lev concludes that the Islamic law's existence in Indonesia's context of inheritance is greatly influenced by the post-state's political dynamics, where Islamic law is sometimes accommodated or marginalised according to the political preferences of the ruling regime.

Franz and Keebet von Benda-Beckmann reveal that the interaction between customary law and Islam in inheritance cases never occurs in a vacuum but is always influenced by the state's political power.⁵ Salim highlights how the increasing Islamisation of law in family law, particularly inheritance, creates new tensions between the secular state, customary law, and religion.⁶ Meanwhile, Lukito asserts that legal pluralism in inheritance disputes in Indonesia is a reality that is difficult to avoid due to the socio-political dynamics of the nation.⁷ Several previous studies have also shown how implementing Islamic law in a local context, including inheritance, is often political and used as a social engineering tool by local elites.⁸ This study aims to identify the role of locaregionalitics in applying Islamic law.

The essence of this study is that Islamic inheritance law has become a political instrument for local elites to strengthen their authority in society. Based on a review of previous studies, this study aims to identify and analyse the political factors that influence the relationship between the two legal systems and their implications for society. This study examines how inheritance law conflicts between customary law and Islam are not merely issues of legal norms but also reflect identity politics, power struggles, and ongoing negotiations between local traditions and religion. The essence of this study is to demonstrate that inheritance disputes are a complex arena where political, legal, and social identity interactions intertwine to form a dynamic legal reality.

⁴ Daniel S. Lev, *Islamic Courts In Indonesia: A Study in The Political Bases of Legal Institutions* (London and New York: University of California Press, Berkeley, Los Angeles, 1972).

⁵ Franz Benda-Beckmann and Keebet von Benda-Beckmann, "Changing One Is Changing All: Dynamics in the Adat-Islam-State Triangle," *The Journal of Legal Pluralism and Unofficial Law* 38, no. 53-54 (2006): 239-70, <https://doi.org/10.1080/07329113.2006.10756604>.

⁶ Arskal Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia* (University of Hawaii Press, 2008).

⁷ Ratno Lukito, *Legal Pluralism in Indonesia: Bridging the Unbridgeable* (Routledge, 2012), <https://doi.org/10.4324/9780203113134>.

⁸ Kathryn Robinson, "Islamic Cosmopolitics, Human Rights and Anti-Violence Strategies in Indonesia," in *Anthropology and the New Cosmopolitanism* (Routledge, 2020), 111-33, <https://doi.org/10.4324/9781003084617-8>; Suud Sarim Karimullah, "Pursuing Legal Harmony: Indonesianization of Islamic Law Concept and Its Impact on National Law," *Mazahib* 21, no. 2 (December 27, 2022): 213-44, <https://doi.org/10.21093/mj.v21i2.4800>; Putra Halomoan Hsb, Fatahuddin Aziz Siregar, and Suud Sarim Karimullah, "Inheritance in the Mandailing Community: Value Changes from a Legal Culture Perspective," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 25, no. 1 (2025): 83-108, <https://doi.org/10.19109/nurani.v25i1.24870>.

Methods

This study uses a critical qualitative approach with legal-political discourse analysis based on social theory as its main framework, without relying on interviews or field case studies. This method focuses on the critical reading of legal texts, legislation, religious fatwas, court decisions, customary documents, and public discourse in the mass media and academia related to inheritance disputes. Norman Fairclough's Critical Discourse Analysis (CDA) approach is the primary tool to deconstruct how legal language is produced, reproduced, and politicised in the public sphere.⁹ Within the CDA framework, the law is not a neutral and objective normative system but a social construction bound by power relations, ideology, and political interests. By examining textual dimensions (the structure of legal language), discursive practices (how legal texts are produced and disseminated), as well as social practices (how law internalises social structures), this study can unravel how conflicts between Islamic law and customary law in the heritage are not merely caused by differences in norms, but are the result of symbolic struggles and narrative hegemony between religious and cultural authorities that are facilitated or restricted by the state.

The theoretical framework of this study is rooted in the intersection of Antonio Gramsci's theory of hegemony,¹⁰ the concept of legal pluralism, and the postcolonial approach. Hegemony theory is used to understand how Islamic law or customary law is utilised as an ideological instrument to maintain dominance or mobilise resistance in the realm of heritage, particularly when social actors—whether religious scholars, customary elites, or state apparatuses—attempt to renegotiate the meaning of justice, legitimacy, and legal authority. Meanwhile, legal pluralism theory allows for the interpretation that the legal system in Indonesia has never been singular or linear, but rather an arena of interaction, competition, and even conflict between various overlapping legal systems. Here, customary law and Islamic law compete to be recognised as the dominant norm representing collective identity. The postcolonial approach complements this reading by showing that the unequal relationship between customary law and Islamic law is often the result of colonial constructions that continue in contemporary national legal discourse, where customary law is reduced to local folklore that must be regulated. In contrast, Islamic law is given a place as state-legitimised public morality. By integrating these three theories, this study seeks to unravel the layers of power hidden behind inheritance disputes, showing that legal practices mirror the dynamics of identity politics, the distribution of social authority, and ideological constructions of justice in a pluralistic society such as Indonesia.

Result and Discussion

The Conflict and Negotiation Between Islamic Law and Customary Law in the Settlement of Inheritance Disputes

Choosing a particular legal system in inheritance disputes is often normative, political, and strategic. However, these conflicts do not always end with a single winner. In the broader social reality, there is often a negotiation, compromise, and adaptation process between Islamic and customary law. This process is not the result of mere

⁹ Norman Fairclough, "Critical Discourse Analysis," in *The Routledge Handbook of Discourse Analysis* (Routledge, 2023), 11–22, <https://doi.org/10.4324/9781003035244-3>; Norman Fairclough, "Critical Discourse Analysis and Critical Policy Studies," *Critical Policy Studies* 7, no. 2 (2013): 177–97, <https://doi.org/10.1080/19460171.2013.798239>.

¹⁰ Nadia Urbinati, "From the Periphery of Modernity: Antonio Gramsci's Theory of Subordination and Hegemony," *Political Theory* 26, no. 3 (1998): 370–91, <https://doi.org/10.1177/0090591798026003005>; Thomas R Bates, "Gramsci and the Theory of Hegemony," *Journal of the History of Ideas* 36, no. 2 (1975): 351–66, <https://doi.org/10.2307/2708933>.

willingness or consensus, but also a form of cultural strategy to mitigate conflict and maintain social harmony. One common form of compromise is to divide the inheritance according to customary law while still giving symbolic recognition to Islamic principles, such as through gifts before death or by incorporating elements of sharia into customary practices. This compromise reflects that in a pluralistic society, the law does not operate in a rigid and isolated manner, but is always subject to negotiation influenced by social, cultural, and even economic factors.

Negotiation between these two legal systems also takes place in formal institutions.¹¹ In religious courts, which officially administer Islamic inheritance law, judges are often confronted with the reality that the parties to a case bring social logic and customary expectations into the courtroom. Although decisions are based on the compilation of Islamic law, many judges consider the customary background in giving non-legal considerations, or even encourage mediation that opens space for customary compromise. Similarly, in areas where customary courts still function informally, many families settle inheritance internally through customary deliberation before resorting to formal legal channels. This demonstrates that the legal structure in Indonesia operates in a fluid and complex legal pluralism, where formal and informal legal authorities intersect and negotiate legitimacy.

In many cases, Islamic law has a more dominant position because it is supported by state structures, legalisation in the form of the Compilation of Islamic Law (KHI), and religious authorities with broad access to public spaces and educational institutions.¹² Meanwhile, despite its strong cultural legitimacy, customary law is often marginalized by legal modernisation and nationalisation narratives. In public discourse, customary law is usually a symbol of static tradition. It is sometimes even considered an obstacle to progress or contrary to the principle of gender equality.¹³ However, in many communities, customary law is a form of resistance against the unification of state law that ignores local diversity.¹⁴ Therefore, in these conflicts and negotiations, there is always a dimension of power relations, where the choice of legal system is not merely a spiritual or cultural issue, but is also closely related to access to resources, social influence, and political power.

In communities with strong cultural identities, such as in eastern Indonesia, customary law is a social norm and part of the local government structure.¹⁵ In traditional communities in Sumba, Flores, or Papua, knowledge of kinship lines, status within the community, and conventional inheritance rules greatly determine a person's legitimacy in accessing property, land, and other social rights. When Islamic law arrived through conversion or transnational missionary activities, a new complex dynamic emerged between communal-based customary norms and Islamic law, which brought individualised inheritance rights. In this context, the struggle is between two legal systems and vastly different worldviews regarding family, ownership, and justice.

¹¹ Clemens Buchen, "Institutional Resilience: How the Formal Legal System Sustains Informal Cooperation," *Journal of Institutional Economics* 20 (2024): e1, <https://doi.org/10.1017/S1744137422000418>.

¹² Karimullah, "Pursuing Legal Harmony: Indonesianization of Islamic Law Concept and Its Impact on National Law."

¹³ Ihyani Malik et al., "Gender Analysis in the Islamic Law-Based Ecofeminism Movement for Ecosystem Protection," *El-Mashlahah* 15, no. 1 (2025): 101-24, <https://doi.org/10.23971/el-mashlahah.v15i1.9040>.

¹⁴ Kamaruddin Kamaruddin et al., "Justice, Mediation, and Kalosara Custom of the Tolaki Community in Southeast Sulawesi from the Perspective of Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (2023): 1077-96, <https://doi.org/10.22373/sjhk.v7i2.13183>.

¹⁵ Muhammad Shuhufi and Arip Purkon, "Harmonization of Islamic Law and Local Culture: A Study of Indonesian Sundanese Ethnic Culture," *Jurnal Ilmiah Al-Syir'ah* 21, no. 1 (2023): 138-53, <https://doi.org/10.30984/jis.v21i1.1870>.

However, many local communities do not perceive Islamic and customary laws as ontologically contradictory.

In everyday practice, they create a middle ground by transforming Islamic law to align with traditional social structures.¹⁶ In some areas, Islamic inheritance verses are reinterpreted within the local social context, leading to shifts in the meaning of principles such as justice, male primacy, or the rights of adopted children. This process shows that legal negotiation occurs not only at the institutional or procedural level, but also at the epistemological level, namely, how people reinterpret the law in the context of their complex and diverse lives. Here, the law is not just a set of rules, but also a life narrative constantly being reinterpreted.

Conflicts and negotiations between Islamic law and customary law in inheritance disputes cannot be separated from national political dynamics.¹⁷ The state, in this case the central and regional governments, often plays an ambivalent role – on the one hand promoting legal harmonisation through the codification and institutionalisation of Islamic law, but on the other hand raising issues of culture and local wisdom as part of a national identity project. This politics directly impacts how the two legal systems are positioned formally and informally. In many regions, the state is quicker to respond to religious aspirations than cultural aspirations, resulting in unequal recognition and protection of customary inheritance practices.¹⁸ This inequality increases the potential for conflict, especially when indigenous communities feel that their legal system is being ignored or considered illegal in the resolution of disputes.

Globalisation and modernisation also influence the configuration of these conflicts and negotiations. Younger generations who have received a modern education often have different perspectives from their parents on inheritance justice. Many choose Islamic law because it is considered more individualistic or more aligned with universal values. On the other hand, older generations still uphold customary principles because they are seen as better preserving family harmony and social continuity. These differences create intergenerational tension within families, complicating inheritance resolution. At this point, legal negotiation becomes part of a broader generational identity negotiation, where law is not just about property but also about who we are and our values as a family and community.

Conflicts and negotiations between Islamic law and customary law in resolving inheritance disputes in Indonesia are never black and white. They reflect the tension between communal and individual values, spirituality and cultural identity, legalism and social relations. In a diverse society with strong cultural identities, law exists not as a single entity but as a dynamic space where various value systems interact, compete, and compromise. Inheritance resolution becomes a symbolic battleground between the past and present, moral and cultural authority, and modernity and tradition. In such conditions, what is needed is not merely normative harmonisation of the law, but an honest acknowledgement of the social complexities underlying legal choices, as well as serious efforts to create a space for dialogue that is equal and mutually respectful between the various value systems that exist in Indonesian society.

¹⁶ Sumiyati Beddu et al., "From Doctrine to Action: Islamic Law's Journey towards Social Change," *Jurnal Wawasan Yuridika* 8, no. 1 (2024): 1–24, <https://doi.org/10.25072/jwy.v8i1.4177>.

¹⁷ Arbanur Rasyid, Rayendriani Fahmei Lubis, and Idris Saleh, "Contestation of Customary Law and Islamic Law in Inheritance Distribution: A Sociology of Islamic Law Perspective," *Al-Ahkam* 34, no. 2 (2024): 419–48, <https://doi.org/10.21580/ahkam.2024.34.2.20843>.

¹⁸ Nur Insani et al., "Islamic Law and Local Wisdom: Exploring Legal Scientific Potential in Integrating Local Cultural Values," *Kanun Jurnal Ilmu Hukum* 26, no. 1 (2024): 101–24, <https://doi.org/10.24815/kanun.v26i1.32930>.

The Influence of Political Law on the Recognition and Implementation of Islamic Law and Customary Law by the State in Inheritance Cases

The Indonesian state has never fully resolved the dilemma between the desire to enforce a standardised national legal system and the need to recognise the diversity of laws within society.¹⁹ In practice, the state has often taken a pragmatic stance – tolerating customary law as long as it does not explicitly contradict national law, and promoting Islamic law as long as it does not cause significant socio-political tensions. This is reflected in the state's ambivalent attitude towards the existence of customary law in the context of inheritance: on the one hand, the state mentions in the constitution that customary law is recognised as long as it is by the principles of justice and public order, but on the other hand, it does not provide strong institutional mechanisms to enforce customary law in formal practice. Meanwhile, Islamic law is actively developed and strengthened through religious courts and formal religious education curricula, accommodated in many of the state's positive legal products.

The state's legal policy is also evident in its preference for resolving inheritance disputes through religious courts that apply Islamic inheritance law for Muslim residents and district courts for those who are not subject to Islamic law. However, in reality, many Muslim communities prefer to settle inheritance through customary mechanisms because they consider aspects of social harmony, kinship equality, and moral legitimacy within the community.²⁰ When the state imposes a formalistic approach through religious courts, which only recognise Islamic inheritance law as the sole valid law for Muslims, the state indirectly disregards the legal pluralism that has become a social reality in various communities. The implications of this approach are the emergence of tensions between formal norms and social practices, as well as the potential delegitimisation of customary law as a source of legal authority that has long been a reference for society.

The codification of Islamic law in the KHI is a clear example of state intervention in redefining Islamic law within the framework of legal nationalism. The KHI, which was drafted by the Ministry of Religious Affairs in 1991, is not the result of a consensus among Islamic scholars or the Islamic community as a whole, but rather a state project to standardise Islamic legal practices within limits deemed appropriate to national interests. In the context of inheritance, the KHI adopts an individualistic and patriarchal Islamic inheritance system without considering the variations in Islamic inheritance practices that have been adapted to local contexts.²¹ When the KHI became the sole legal reference in religious courts, the state indirectly removed customary law, which often has a more egalitarian inheritance system, or at least one that is more contextual to the community's social structure.

The influence of state legal policy is also evident in the imbalance of access to justice.²² In customary communities far from the centre of power, state law – including state-codified Islamic law – is often present in symbolic form without adequate infrastructure. Customary communities seeking justice through formal legal channels

¹⁹ Aga Natalis, Adventi Ferawati Sembiring, and Emy Handayani, "From Rejection to Recognition: Human Rights, Morality, and the Future of Marijuana Policy in Indonesia," *International Journal of Drug Policy* 140 (2025): 104817, <https://doi.org/10.1016/j.drugpo.2025.104817>.

²⁰ Akhmad Jalaludin, "From Patrilineal to Bilateral: A New Balance of Islamic Inheritance Law in Indonesia's Religious Court," *Al-Hukama': The Indonesian Journal of Islamic Family Law* 14, no. 2 (2024): 201–31, <https://doi.org/10.15642/alhukama.2024.14.2.201-231>.

²¹ Sonia Berber and Samira Blanc, "Intimate Jurisprudence: Islamic Family Law Between Global Human Rights and French Republican Values," *Indonesian Journal of Islamic Law* 7, no. 2 (2024): 64–82, <https://doi.org/10.35719/2ke75t93>.

²² Suud Sarim Karimullah, "Comparison of the Concept of Justice in Islamic Law and Western Law," *UNISKA LAW REVIEW* 4, no. 2 (2023): 145–73, <https://doi.org/10.32503/ulr.v4i2.4379>.

usually face high costs, complex legal processes, and a language foreign to their experience. In such conditions, customary law becomes the only relevant reference, but because it lacks formal recognition, customary decisions often lack enforceability or legal legitimacy within the state system. This creates a situation where communities must choose between social and legal legitimacy, neither of which can be exercised simultaneously without the risk of conflict or marginalisation.

The political influence of law also shows that Islamic law in the context of inheritance is often used as an ideological tool by the state to build national morality. In many policy narratives, the promotion of Islamic law is usually wrapped in discourse on strengthening the family, building a religious society, or maintaining social order. However, behind this moral discourse lies the state's agenda to control the private sphere through religious legal mechanisms that the state has tamed. In this context, codified Islamic law is no longer entirely the property of the community but has become an instrument of the state to disseminate a form of morality that aligns with dominant interests.²³ Meanwhile, customary law, often more flexible and based on social negotiation, is viewed as a relic of the past that needs to be regulated or adapted to modern law.²⁴

The decisions of the Supreme Court and the Constitutional Court also reflect how state legal politics shapes preferences for one legal system over another.²⁵ In several rulings, the Supreme Court has insisted on using Islamic law principles in the distribution of inheritance for Muslims, even though customary law is still widely practised in the communities concerned. The Constitutional Court itself, in cases involving customary communities, tends to be cautious in declaring the validity of customary law due to conflicts with provisions in the positive legal system that prioritise legal certainty and national legal unification.²⁶ The tension between the need to protect legal diversity and the drive to build a uniform national legal system remains an enduring dilemma in Indonesia's legal landscape.²⁷

The political implications of the influence of politics on law in inheritance cases are significant for the concept of justice. Justice in the context of inheritance law is not only about material distribution but also includes the symbolic legitimacy of the values held by the community. When the state recognises only one legal system or gives excessive preference to a particular system, it indirectly creates a form of structural injustice. Communities subject to a legal system they do not culturally recognise will experience tension between their legal obligations and their collective beliefs.²⁸ In the long term, this can undermine social order, erode trust in the national legal system, and foster resistance to the state as an institution that guarantees justice.²⁹

²³ Suud Sarim Karimullah, "From Tradition to Mainstream: Understanding the Integration of Islamic Law in Various Global Settings," *Justicia Islamica* 20, no. 2 (2023): 214–40, <https://doi.org/10.21154/justicia.v20i2.6478>.

²⁴ Charles Manga Fombad, "Reconciling Customary Law and Modern Governance: The Developmental Role of African Traditional Systems," *Edinburgh Law Review* 29, no. 2 (2025): 234–56, <https://doi.org/10.3366/elr.2025.0957>.

²⁵ Jennifer Bowie and Elisha Carol Savchak, "State Court Influence on US Supreme Court Opinions," *Journal of Law and Courts* 10, no. 1 (2022): 139–65, <https://doi.org/10.1086/714758>.

²⁶ Jean Leclair, "Parameters of Action in a Context of Legal Pluralism," in *Applied Legal Pluralism* (Routledge, 2022), 64–160, <https://doi.org/10.4324/9781003288114-3>.

²⁷ Muhajir Muhajir et al., "Agus Moh Najib's Thoughts on the Interconnection of Islamic Law and National Law," *Jurnal Ilmiah Al-Syir'ah* 21, no. 1 (2023): 86–103, <https://doi.org/10.30984/jis.v21i1.2321>.

²⁸ Katinka Wijsman and Marta Berbés-Blázquez, "What Do We Mean by Justice in Sustainability Pathways? Commitments, Dilemmas, and Translations from Theory to Practice in Nature-Based Solutions," *Environmental Science & Policy* 136 (2022): 377–86, <https://doi.org/10.1016/j.envsci.2022.06.018>.

²⁹ Rizal Al Hamid, Arif Sugitanata, and Suud Sarim Karimullah, "Sinkronisasi Pendekatan Sosiologis Dengan Penemuan Hukum Islam Sui Generis Kum Empiris," *Bertuah Jurnal Syariah Dan Ekonomi Islam* 4, no. 1 (2023): 48–60, <https://doi.org/https://doi.org/10.56633/jsie.v4i1.553>.

The formulation of inclusive and reflective legal policies that reflect the pluralistic reality of Indonesian society is urgently needed. The state must stop treating Islamic law and customary law as two opposing poles that can be regulated based on short-term political preferences. Instead, the state must develop a legal system that respects the diversity of legal sources by providing a formal space for customary law to exist and establish alongside Islamic law. This is not merely a matter of symbolic recognition, but of building legal infrastructure that enables indigenous communities equal access to justice. This effort requires political courage and legal reform that transcends the paradigm of legal unification towards a paradigm of true legal hybridisation and coexistence.

Within this framework, the implementation of inheritance law in Indonesia must be seen as a complex arena of legal politics. The state cannot continue to play in the middle ground with ambivalent policies. The state needs to take an affirmative stance towards legal pluralism, not as a weakness, but as a distinctive strength of the Indonesian nation. Recognizing customary law and Islamic law as equal within the national legal system will pave the way for resolving inheritance disputes that are not only legally valid but also socially just. Justice in the context of inheritance is not merely about the distribution of assets, but about recognising the values that form the foundation of a community's future. Therefore, legal policy favoring genuine pluralism is the path to justice that is not merely legal, but also dignified.

The Impact of the Dynamics of the Relationship between Islamic Law and Customary Law on Women's Rights and Social Justice in Inheritance Disputes

The impact of the dynamics of the relationship between Islamic law and customary law in the context of inheritance disputes in Indonesia is not only related to issues of legality and procedures for the distribution of assets, but also touches on the deepest layers of social justice, especially when viewed from the perspective of the protection of women's rights and vulnerable groups. When two legal systems with different epistemological and ideological foundations meet—and often clash—in the social practices of a diverse society, it is not those with strong social positions and access to power who are most affected, but those who have historically and structurally been in subordinate positions. Women, in many social systems in Indonesia, are the group most vulnerable to legal exclusion, both by the patriarchal Islamic legal system and by customary law, which often places women as guardians of tradition but not as holders of authority in the distribution of resources.³⁰

In the Islamic legal system, inheritance is regulated in detail in the Qur'an, with predetermined divisions, such as the principle that men receive twice as much as women in the same status. In classical theological narratives, these provisions are based on the assumption that men are the primary breadwinners and are responsible for maintaining the family. However, when these provisions are applied mechanistically in contemporary social contexts that have changed significantly, especially where women also become breadwinners or even heads of households, the result is not justice but the reproduction of structural inequality. Through the Compilation of Islamic Law (KHI), the state has officially adopted these Islamic inheritance principles without providing sufficient space for progressive reinterpretation that considers changes in gender relations in modern society. In this context, the state, through codified Islamic legal

³⁰ Suud Sarim Karimullah et al., "The Concept of Nāfaqah in Islamic Law and Women's Right to Financial Support," *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law* 5, no. 2 (2024): 222–42, <https://doi.org/10.24042/el-izdiwaj.v5i2.23534>.

instruments, indirectly reinforces male dominance in access to inheritance and narrows the space for negotiation for women to obtain substantive justice.³¹

In many customary legal systems, the position of women in inheritance varies wildly, depending on the kinship structure adopted. In Minangkabau society, for example, women hold a high position in the matrilineal system, where valuable ancestral property is inherited from the mother to the daughter. However, in patrilineal societies such as Batak or Bali, women are often excluded from inheritance rights to land or family property, because women will marry out and take assets to another family.³² In both models, although customary law may appear to provide protection or even privileges to women, customary law still bases inheritance rights on socially determined gender roles rather than on equal rights as individuals.³³ In this case, both Islamic law and customary law have the potential to construct women's roles within a framework of power relations that restrict rather than liberate them.³⁴

This dynamic becomes even more complex when the state acts as regulator and mediator in conflicts between Islamic law and customary law. The state, which should protect citizens' rights without discrimination, instead reinforces one legal system by giving formal legitimacy to Islamic law, while limiting customary law to the symbolic or communitarian sphere. In many inheritance disputes, religious courts with jurisdiction over Muslims do not accommodate customary practices that may be more favourable to women's interests, as the formal legal system only recognises one normative reference.³⁵ On the other hand, when customary law provides greater space for women, such decisions often lack enforceability within the national legal system, leaving women again in a vulnerable position where they must choose between the community's social legitimacy or the state's legal legitimacy.³⁶ This tension places women as subjects caught between two legal authorities, each unable to protect their rights fully.

The conflict between tradition, religion, and modernity in the context of inheritance justice also reflects how legal discourse in Indonesia has yet to break free from the normative patriarchal framework that wraps itself in moral and spiritual authority. The narrative that Islamic inheritance is God's will, which cannot be challenged, is often used to close the space for criticism of the inequalities suffered by women. Similarly, customary traditions that marginalise women are usually justified as 'local wisdom' that cannot be changed because it would disrupt the social order. In this context, modernity, which should offer a path to transformation, is often defeated by the forces of conservatism facilitated by state legal politics. Efforts to fight for gender equality in the context of inheritance are frequently accused of being a form of westernisation or secularism, and are considered contrary to eastern values. This shows that women's struggle for inheritance justice in Indonesia is a technical legal issue and part of a larger ideological battle between conservative and progressive societal narratives.

³¹ Nur Insani et al., "Empowering Muslim Women: Bridging Islamic Law and Human Rights with Islamic Economics," *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 1 (2024): 88–117, <https://doi.org/10.18860/j-fsh.v16i1.26159>.

³² Ita Musarrofa et al., "Sociological-Normative Analysis of The Provision of Joint Property in The Cyber Era," *Indonesian Journal of Interdisciplinary Islamic Studies (IJIIIS)*, 2022, 44–64, <https://doi.org/10.20885/ijis.vol.5.iss2.art3>.

³³ Moh Rosil Fathony et al., "Resistance to Gender Equality: Criticism of Physical Violence from the PKDRT Law Perspective," *Indonesian Journal of Islamic Law* 7, no. 1 (2024): 105–24, <https://doi.org/10.35719/1xjdkk59>.

³⁴ Suud Sarim Karimullah and Siti Rutbatul Aliyah, "Feminist Criticism of Traditional Understanding of Women's Roles in Islam," *An-Nisa': Journal of Gender Studies* 16, no. 2 (2023): 195–214, <https://doi.org/10.35719/annisa.v16i2.177>.

³⁵ Brooke Thompson, "Navigating Dual Legal Systems: Islamic Inheritance Law in Australia's Secular Legal Framework," *The University of Queensland Law Journal* 41, no. 1 (2022): 89–126, <https://doi.org/10.3316/informit.438521310998055>.

³⁶ Halimah Basri et al., "Inheritance Rights of Women in Makassar Society: A Study of Living Qur'an and Its Implications for Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (2022): 537–55, <https://doi.org/10.22373/sjhk.v6i2.13882>.

In social practice, this tension impacts relationships between family members and communities. Many women choose not to claim their inheritance rights even though they have a strong legal basis, fearing they will be seen as disloyal, divisive, or violating customs.³⁷ This social stigma is an effective cultural mechanism in maintaining the status quo, while also silencing women's potential resistance to structural injustice. In many cases, fear of stigma is far stronger than trust in the formal legal system. As a result, many women voluntarily relinquish their rights under social pressure, which, from a social justice perspective, constitutes a form of hidden coercion. This demonstrates that legal protection alone is insufficient without fundamental social change to the patriarchal power structures within families and communities.

The impact of these political-legal relations is also very evident in the context of other vulnerable groups, such as girls born out of wedlock, adopted children, or unmarried women. In formal Islamic law, for example, children born out of wedlock do not inherit from their biological fathers because they are not considered to have a legitimate blood relationship.³⁸ Similarly, adopted children do not receive inheritance rights except through a limited mandatory will. In customary societies, provisions regarding adopted children and illegitimate children also vary greatly, but often lead to social exclusion that directly impacts the economic rights and social status of these children. Through its legal policies, the state prefers not to intervene seriously in this matter, as it is considered to fall within the sensitive realm of morality. However, the state's position as a protector of human rights should demand active involvement in ensuring that every individual, regardless of birth status, receives equal legal protection, including in inheritance matters.³⁹

The state's inability to guarantee equality in the inheritance system demonstrates that legal policy in Indonesia has not been able to escape the trap of unequal power relations. The state tends to play it safe by giving more space to conservative groups with political power and a majority voice, rather than encouraging bold and progressive legal transformation. As a result, women and vulnerable groups continue to be marginalised, not only in legal terms, but also in social and symbolic dimensions. They not only lose material rights, but also lose recognition as full subjects of law.

This form of systemic social injustice can only be changed if the state is willing to undertake legal reforms based on substantive equality, not formal equality. Such reforms are certainly not easy, as they require political courage to challenge conservative authorities that have long been the state's partners in maintaining social stability.

However, if social justice becomes the main orientation in law-making, then the state cannot continue to use tradition or religion as a justification for institutionalised discrimination. Inheritance means opening up new spaces for a more contextual and gender-equitable interpretation of Islamic law and formally recognising customary practices favouring women.⁴⁰ The state also needs to establish legal mechanisms enabling women to claim their rights without clashing with community values, such as equality-based mediation, community complaint mechanisms, or revising regulations limiting women's access to legal information.

³⁷ Bijan Bidabad, "Man and Woman Resolution in Islamic Law," Available at SSRN 4842029, 2024, <https://doi.org/10.2139/ssrn.4842029>.

³⁸ Anas Maulana et al., "Inheritance Rights of Nasabiyah Children Born Out of Wedlock According to Islamic Family Law," *El-Ussrah: Jurnal Hukum Keluarga* 7, no. 2 (2024): 444–61, <https://doi.org/10.22373/ujhk.v7i2.25072>.

³⁹ Zumiyati Sanu Ibrahim et al., "Islamic Law and Human Rights: Convergence or Conflict?," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 24, no. 2 (2024): 431–48, <https://doi.org/10.19109/nurani.v24i2.19595>.

⁴⁰ Suud Sarim Karimullah et al., "Rethinking Gender In Islamic Law," *Musāwa Jurnal Studi Gender Dan Islam* 23, no. 1 (2024): 99–113, <https://doi.org/10.14421/musawa.2024.223.99-113>.

The dynamics of the political-legal relationship between Islamic law and customary law in inheritance disputes cannot be separated from the larger project of building a just and equitable society in Indonesia. Conflicts between tradition, religion, and modernity in the inheritance law system reflect broader tensions in contemporary Indonesian society – between the desire to preserve collective identity and morality, and the need to realise justice based on human rights. In this case, women are both the battleground and the most significant agents of change. When the state fails to guarantee women's inheritance rights fairly, it has failed in one of its constitutional duties to protect all citizens without discrimination. Thus, the struggle over inheritance is not merely a struggle over property, but also a battle over the meaning of social justice in a plural, complex, and ever-changing society.

Conclusion

The dynamics of the relationship between Islamic law and customary law in inheritance disputes in Indonesia are the most stark illustration of the struggle for national identity in this country: where the state, religion, and local traditions negotiate their respective spheres of authority in a highly personal and symbolically charged domain, namely the question of who is entitled to inherit and how justice is distributed among generations. The state, under the pretext of maintaining order and national legal unity, often deepens the divide of injustice by codifying Islamic law as the sole norm for Muslims, while reducing customary law to a cultural ornament with no real influence in the formal system. As a result, not only does inequality in access to inheritance rights flourish – especially for women and vulnerable communities – but there is also a delegitimisation of local values that could otherwise serve as a source of innovation for social justice.

Inheritance disputes then become a battleground for legitimacy between the centre and the periphery, between religious dogma and community wisdom, between legal formalities and social realities that often run at odds with one another. However, this complexity is not a reason to surrender to the unequal status quo. It is precisely amid this tension that Indonesia is compelled to reimagine its future: that legal justice is not merely about standardising procedures or deferring interpretation to a single authority, but about creating a genuine space for dialogue among all the value systems that coexist within society. Political and intellectual courage is needed to challenge the hegemony of rigid interpretations of Islamic law while acknowledging customary law as a living and relevant source of authority. True inheritance law reform must begin with recognising pluralism as social capital, not an obstacle, and with creating mechanisms that allow communities – including women and marginalised groups – to negotiate their rights without being constrained by dogma or restrictive formal procedures.

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