

Interaction and Negotiation between Islamic Law and Customary Law in the Distribution of Inheritance for Women (Study in Sukarame Village, Pakpak Bharat)

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Abstract: *The distribution of inheritance for women in customary communities continues to exhibit tension between Islamic legal norms and customary law practices within societies that adhere to a patrilineal kinship system. However, studies specifically examining the interaction of these two legal systems within a local context, particularly among the Pakpak community, remain limited. Therefore, this research aims to analyze the interaction between Islamic law and customary law regarding the distribution of inheritance for women in Sukarame Village, Kerajaan District, Pakpak Bharat Regency. This study employs a qualitative method with an empirical-juridical approach and a case study design. Data were collected through in-depth interviews with customary leaders, religious figures, and community members, supplemented by field observations. The research findings indicate that inheritance distribution practices remain dominated by Pakpak customary law, which is rooted in a patrilineal system where men serve as the primary beneficiaries of the inheritance. Women generally do not receive a formal share, but rather only receive voluntary gifts. Nevertheless, the influence of Islamic law has begun to emerge in several families, although its application is not yet entirely consistent with the principles of faraid. This research concludes that the interaction between Islamic law and customary law is unbalanced, characterized by the dominance of customary law in practice. The scientific contribution of this study lies in reinforcing the study of legal pluralism by demonstrating the gap between Islamic legal norms and customary practices at the local level. Practically, this research emphasizes the importance of enhancing the community's understanding of Islamic inheritance law to strengthen the protection of women's rights.*

Keywords: *Islamic law, Customary Law, Legal Pluralism, Inheritance Distribution, Women's Rights.*

Abstrak: *Pembagian warisan bagi perempuan dalam masyarakat adat masih menunjukkan adanya ketegangan antara norma hukum Islam dan praktik hukum adat di tengah masyarakat yang menganut sistem kekerabatan patrilineal. Namun, kajian yang secara spesifik mengkaji interaksi kedua sistem hukum tersebut dalam konteks lokal, khususnya pada masyarakat Pakpak, masih terbatas. Oleh karena itu, penelitian ini bertujuan untuk menganalisis interaksi antara hukum Islam dan hukum adat dalam pembagian warisan bagi perempuan di Desa Sukarame, Kecamatan Kerajaan, Kabupaten Pakpak Bharat. Penelitian ini menggunakan metode kualitatif dengan jenis yuridis-empiris dan pendekatan studi kasus. Data diperoleh melalui wawancara mendalam dengan tokoh adat, tokoh agama, dan masyarakat, serta didukung oleh observasi lapangan. Hasil penelitian menunjukkan bahwa praktik pembagian warisan masih didominasi oleh hukum adat Pakpak yang berlandaskan sistem patrilineal, di mana laki-laki menjadi penerima utama warisan. Perempuan pada umumnya tidak memperoleh*

bagian secara formal, melainkan hanya menerima pemberian sukarela. Meskipun demikian, pengaruh hukum Islam mulai terlihat dalam beberapa keluarga, meskipun penerapannya belum sepenuhnya konsisten dengan prinsip faraid. Penelitian ini menyimpulkan bahwa interaksi antara hukum Islam dan hukum adat bersifat tidak seimbang, dengan dominasi hukum adat dalam praktiknya. Kontribusi ilmiah penelitian ini terletak pada penguatan kajian pluralisme hukum dengan menunjukkan adanya kesenjangan antara norma hukum Islam dan praktik adat di tingkat lokal. Secara praktis, penelitian ini menekankan pentingnya peningkatan pemahaman masyarakat terhadap hukum waris Islam guna memperkuat perlindungan hak perempuan.

Kata Kunci: *Hukum Islam, Hukum Adat, Pluralisme Hukum, Pembagian Warisan, Hak Perempuan.*

Introduction

Indonesia as a state governed by the rule of law, is the product of a complex historical and social process in which community life is regulated by prevailing legal systems. In the context of a pluralistic society, Indonesia consists of various ethnic, religious, and cultural groups, each with its own value systems and rules, including customary laws that coexist with state laws. This condition illustrates the presence of legal pluralism within the practical life of society.¹

On the other, within Islamic law, inheritance distribution is detailed through the concept of *faraid*, which grants proportional rights to men and women based on the provisions of the Qur'an and Hadith. Studies on Islamic inheritance law have been widely discussed in academic literature, particularly concerning the principles of gender equity in the distribution of estates.² Furthermore, research on legal pluralism indicates that in many Muslim societies, Islamic law frequently interacts with customary law in inheritance practices.³

The central focus of the debate surrounding inheritance pluralism inevitably converges on the status, position, and rights of daughters, especially in societies adopting a patrilineal kinship system. In North Sumatra Province, various ethnic groups, including the Batak sub-ethnicities and the Pakpak tribe, maintain a patrilineal kinship system that traces descent exclusively through the male or paternal line. In this patrilineal ideological construct, the inheritance system is designed to ensure that ancestral estates particularly immovable assets such as ancestral land, farming fields, and traditional houses can only be passed down from the deceased to their sons in a patrilineal manner. The juridical and sociological implication of this system is the categorical exclusion or omission of wives and daughters as primary heirs to immovable property when a husband or father passes away. The cultural assumption legitimizing this exclusion is the doctrine of exogamy, wherein daughters are expected to eventually marry, leave their original clan (*marga*),

¹ Sally Engle Merry, Legal Pluralism, *Law & Society Review*, Vol. 22, No. 5, (1988).

² Hilman Hadikusuma, *Hukum Waris Adat*, (Bandung: Citra Aditya Bakti, 2003).

³ Soepomo, *Hukum Adat*, (Jakarta: Pradnya Paramita, 2007).

and be integrated into their husband's clan.⁴ Consequently, granting immovable asset ownership to daughters is perceived as automatically transferring ancestral wealth from one clan to another, which is viewed as a threat to the clan's integrity and continuity.

Historically and formally, the state has conducted legal interventions to deconstruct the gender bias inherent in this patrilineal customary law. The most monumental intervention materialized through the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 179/K/SIP/1961, dated November 1, 1961. This ruling was seen as a revolutionary leap that shattered conservative traditions by stipulating that daughters possess inheritance rights and an equal standing with sons before the law a decision that theoretically altered the inheritance landscape in Batak lands and other patrilineal territories.

However, the sociological and anthropological reality at the village and grassroots community levels presents a starkly different picture. Various previous socio-legal studies, including research on inheritance in Namuseng Village as well as among the Toba and Karo Batak communities, found massive cultural resistance. The Supreme Court ruling is frequently disobeyed, ignored, or even quietly opposed by indigenous communities who prefer to staunchly maintain their local rules to preserve the hierarchical structure of kinship and communal harmony.⁵ This fact demonstrates a wide gap between the written law (*law in books*) and the law that is truly lived and practiced within the community (*living law*).

The dynamics and legal constellations become increasingly complex and intriguing when the variable of Islam embraced by the absolute majority of the Pakpak ethnic community in certain areas begins to evolutionarily influence, infiltrate, and alter the landscape of the community's legal consciousness. Islamic legal doctrine guarantees the inheritance rights of daughters (half the share of sons in equal degree) based on definitive and indisputable textual evidence (*nash qath'i*).⁶ Within the discourse of Islamic legal philosophy, guaranteeing property rights for women positions the protection of wealth (*hifz al-māl*) and the preservation of family welfare and cohesion (*hifz an-nasl*) as integral pillars of *maqāsid asy-syarī'ah* (the noble objectives of Islamic law).⁷

⁴ Wendi Arismunandar Sagala, Jamaluddin, and Manfarisyah, Kedudukan Anak Perempuan Menurut Hukum Waris Adat Suku Pakpak (Studi Penelitian di Kecamatan Sitellu Tali Urang Jehe Kabupaten Pakpak Bharat Provinsi Sumatera Utara), *Jurnal Ilmiah Mahasiswa Fakultas Hukum Universitas Malikussaleh*, Vol 4, No. 2, (2021).

⁵ Siregar, Debora, Gracia Patunia Butarbutar, Jelita Teresia Br L. Tobing, Angelia Selina, and Lasenna Siallagan. "Hak Waris Anak Perempuan Menurut Hukum Adat Batak Toba Di Perawang: Studi Kasus Keputusan MA No. 179 K SIP 1961". *Jurnal Adat dan Budaya Indonesia* 7, no. 1 (March 30, 2025): 66–71.

⁶ Sarpika Datumula, Islamic and Customary Inheritance Law: Addressing Differences and Similarities in the Distribution of Property", *Journal of Nafaqah*, vol. 2, no. 1, (2025): 10–16.

⁷ Fadhil Fadani, and Alfarisi, "Pena laran Aturan Hukum Perlindungan I dentitas Agama Pada Anak Dalam Konsep Hadhanah Di Malaysia", *As-Syar I: Jurnal Bimbingan & Konseling Keluarga*, vol. 6, no. 2, (2024): 662-73.

Sukarame Village, geographically located in Kerajaan Subdistrict, Pakpak Bharat Regency, North Sumatra Province, presents a highly representative, unique, and rich sociological laboratory to examine the phenomenon of collision and negotiation between these legal systems. Based on local demographic data, Sukarame Village is divided into at least four administrative hamlets (*dusun*), including Pettal, Pongkolan, and Sukaramai. This rural area is inhabited and dominated by ancient Pakpak clans with immense influence; the Tinendung and Manik clans are recorded as having the largest populations holding customary political hegemony, followed by a constellation of other respected clans such as Berutu, Solin, Tumangger, Cibro, and Padang.

The strong grip of custom and obedience to ancestral heritage in Sukarame Village is empirically and archaeologically evident through the preservation of local wisdom, cultural heritage objects, and communal heirlooms. The most tangible manifestation of this is the existence of the *Mejan* ancient, anthropomorphic stone statues from the prehistoric era. These statues not only symbolize the mystical and historical greatness of the clan but also serve as territorial markers validating the ownership of a specific clan's customary land (*tanah ulayat*), such as the *Mejan* belonging to the Tinendung Pasaribu clan in Sukarame Village and the Manik clan's *Mejan* in the surrounding areas.⁸

The strong cultural roots and the sanctity of territorial symbols like the *Mejan* have direct and profound implications for the strict application of customary legal norms in community life, which specifically manifests in the restriction of land inheritance for women. If a piece of clan land is inherited by a daughter who later marries a man from a different clan, the land is considered to have exited the jurisdiction of her original clan's *Mejan* an act viewed as a cosmological violation and an economic weakening of the clan. However, as a communal society that is currently also very devout and steadfast in practicing Islam, the residents of Sukarame Village are collectively faced with a severe theological, sociological, and psychological dilemma when the time comes to divide the estate of their deceased parents.⁹

Studies on the interaction between Islamic inheritance law and customary law within the framework of legal pluralism in Indonesia have been widely conducted by previous researchers. In his study, Hilman states that legal pluralism in Indonesia presents highly complex dynamics, particularly in the resolution of inheritance cases, which often involve tensions and conflicts among state law, Islamic law, and customary law. These tensions become especially evident when communal local values confront national legal

⁸ Muhammad Rizky, dan Syaddan Dintara Lubis, "The Praktek Hibah Sebagai Pengganti Warisan Study Didesa Pematang Panjang Kecamatan Lima Puluh Pesisir Kabupaten Batu Bara: Practice Of Grant As A Replacement Of Heritage Study In Pematang Panjang Village, Fifty Coastal District, Batu Bara District", *Jurnal Hukum Lex Generalis*, vol. 5, no. 6, (Oktober 2024).

⁹ Zuria Ulfi Simanjuntak, "Tinjauan Hukum Islam Terhadap Tradisi Kerjanjahat (Kenduri Kematian) Pada Masyarakat Muslim Suku Pakpak Sidikalang, Dairi", *Al-Mashlahah Jurnal Hukum Islam dan Pranata Sosial*, vol. 10, no. 02, (2022): 623–648.

standards that increasingly emphasize human rights and gender equality within society.¹⁰ In facing this legal conflict, judicial institutions have recently begun taking more progressive steps. This includes setting aside purely kinship-based customary inheritance distributions if deemed unfair to marginalized groups, and prioritizing synchronization with both Islamic law and state civil law provisions to achieve resolutions that protect all parties.¹¹ Nevertheless, at the implementation level at the grassroots, these normative changes from the state often encounter obstacles as they clash with deeply rooted traditional social structures.

The greatest challenge to realizing gender-equitable inheritance generally centers on communities that still adhere to patrilineal kinship systems, where lineage and property rights are traced exclusively through the male side. Inheritance practices in certain indigenous communities, such as the Toba Batak community in North Sumatra, show that sons are the primary anchors of family inheritance.¹² In such structures, daughters are often excluded from ownership rights over immovable assets, such as ancestral land or houses, based on the assumption of exogamy. Although this dogma appears rigid, national legal interventions over time and increased literacy on equality within the community are slowly beginning to break down this patrilineal exclusivity. Some families are gradually adapting by granting partial inheritance rights to daughters through grant mechanisms (*hibah*) or other alternative forms of distribution.¹³

Similar dynamics of legal resistance and compromise are also specifically reflected in the life of the indigenous Pakpak community in Sukarame Village. Culturally, local inheritance practices are still heavily dominated by customary law, which mandates ownership of immovable property exclusively to sons particularly the youngest son (*boru ni tua*), who culturally bears the absolute obligation to care for the parents until their death. Through this hierarchical family structure, daughters do not receive a formal share of the ancestral estate, but merely receive voluntary allocations or gifts of affection from their brothers. The strong tradition of excluding women from land inheritance in the village is inseparable from the community's cosmological worldview, which seeks to preserve territorial integrity and the economic cohesion of the clan, symbolized by the safeguarding of prehistoric ancestral statues known as *mejan*.

Even though the grip of custom is formidable regarding the inheritance of immovable assets, spaces for legal negotiation are beginning to emerge alongside the strengthening of theological affiliation and the understanding of Islamic teachings in the community. As an example of adaptation, in several Pakpak families, as well as

¹⁰ Hilman Syahrial Haq, "Legal Pluralism and Inheritance Rights: Resolving Conflicts Between Local Customs and National Law in Indonesia", *Kosmik Hukum*, vol. 25, no. 1, (2025).

¹¹ RR Dewi Anggraeni, (2023), "Islamic Law and Customary Law in Contemporary Legal Pluralism in Indonesia: Tension and Constraints", *Ahkam: Jurnal Ilmu Syariah*, Vol. 23, No. 1, (2023).

¹² Aisyah, and Novia Alexia, "Keberadaan Hukum Waris Adat Dalam Pembagian Warisan Pada Masyarakat Adat Batak Toba Sumatera Utara" *Mizan: Jurnal Ilmu Hukum*, Vol. 11, No. 1, (2022).

¹³ Abd Rohman, "Batak Toba Customary Inheritance Law from a Gender Justice Perspective", *Jurnal Mengkaji Indonesia*, 4, no. 1 (2025): 53–76.

communal entities in other regions like the Sambori community,¹⁴ conflicts between customary law and Islamic inheritance law are mitigated through deliberation (*musyawarah*). This deliberation gives rise to a pragmatic, acculturative approach: ancestral and customary lands continue to be distributed to sons to preserve the traditional order, while other types of inheritance such as cash, vehicles, and jewelry are distributed among all heirs, including daughters, in proportions that attempt to approximate Islamic stipulations or the principles of *faraid*. In this internal negotiation process, the dual roles of traditional leaders (who master ancestral traditions) and religious leaders (who understand Islamic law) become crucial in finding common ground, ensuring the distribution neither harms historical values nor disrespects religious justice.

While the aforementioned literature has discussed the pluralism of inheritance law and its impact on the position of women, previous studies have generally focused on broader communal societies, such as the Sambori or the Batak tribes in general. The interaction between Islamic and customary law is highly dependent on the locality and specific social institutions of each ethnic group. Therefore, research on how Islamic inheritance law and Pakpak custom are negotiated especially considering the Pakpak tribe's tradition of granting special immovable property inheritance privileges to the youngest son (*boru ni tua*) remains largely unexplored. This research is conducted to fill this literature void (*research gap*) by directly capturing the local dynamics in Sukarame Village, Pakpak Bharat Regency.

Based on this gap, this study focuses on the interaction between Islamic law and customary law regarding the distribution of inheritance for women in Sukarame Village, Kerajaan Subdistrict, Pakpak Bharat Regency. Furthermore, it examines the forms of sociological interaction mechanisms and legal negotiations conducted and rationalized by the community as conflict resolution mediums to bridge these two outwardly contradictory legal systems. This research is essential to provide an empirical overview of the living law dynamics within indigenous communities, particularly concerning the position of women in the inheritance system.¹⁵ Additionally, this study is expected to provide an academic contribution to the discourse on legal pluralism and gender within inheritance law.

Method

The methodology section outlines the structured and comprehensive procedures used to collect, verify, and analyze field data. This level of descriptive detail allows readers and other researchers to evaluate the appropriateness of the methodological framework, as well as the reliability and validity of the results presented in this

¹⁴ Jariyah, et al. (2025). *Jurnal Al-Ahwal Al-Syakhsiyyah*, Ainun Jariyah, Jainuddin, Syarif Hidayatullah, *Interaksi Hukum Islam Dan Hukum Adat Dalam Pembagian Warisan: studi kasus masyarakat sambori, kabupaten bima, Al-Ahwal Al-Syakhsiyyah: Jurnal Hukum Keluarga dan Peradilan Islam*, Vol. 6, No. 2 (2025): 165-177.

¹⁵ A. Qodri Azizy, *Eklektisisme Hukum Nasional*, (Yogyakarta: Gama Media, 2002).

manuscript. This study employs a qualitative research design with a juridical-empirical approach (field research), enriched by the analytical framework of a socio-legal approach.¹⁶ The juridical-empirical approach was specifically selected because this research refuses to rely solely on a doctrinal analysis of texts or positive legal norms (such as the articles in the Compilation of Islamic Law, Supreme Court Jurisprudence, or Quranic texts related to *faraid*). Furthermore, this study is designed to empirically investigate how these abstract legal norms actually operate, are responded to, received, negotiated, and implemented within the dynamic practices of everyday life (functioning as a living law) by the customary law community at the grassroots level.¹⁷

This research was conducted in Sukarame Village, Kerajaan Subdistrict, Pakpak Bharat Regency. The selection of this location was based on the consideration that the community in the area still strongly adheres to the Pakpak customary law system, which is founded on a patrilineal kinship system. Furthermore, this location was chosen due to an interesting phenomenon of interaction to be studied, namely the convergence of local customary law values with Islamic law, particularly in the practices and procedures of inheritance distribution.

To obtain comprehensive data, this study involved 12 informants selected using purposive sampling techniques. These informants were chosen based on their diverse backgrounds and social roles to provide varied perspectives in understanding the phenomenon of legal interactions within society. The group of informants consisted of three traditional leaders, two religious figures, three community members serving as heirs (both male and female), two village officials, and two families with direct experience in inheritance distribution.

This diversity of profiles is crucial, considering each party has a specific role. Traditional leaders are central figures in decision-making based on Pakpak customary law, while religious leaders possess deep capabilities and understanding of Islamic law, specifically the concept of *faraid* in inheritance distribution. On the other hand, village officials, the general public, and the families of the heirs are actors who directly experience or witness these inheritance practices, whether resolved through customary law channels or influenced by Islamic legal provisions.

To support the analysis requirements, this research collected two types of data: primary and secondary data. Primary data was gathered directly from firsthand sources in the field through in-depth interviews with the informants, direct observation of the community's social conditions, and the collection of documentation related to inheritance practices in the village. Meanwhile, to supplement the field findings, the researcher also utilized secondary data collected through a literature review. This secondary data was

¹⁶ Johny Ibrahim Joedi Effendi, *Metode Penelitian Hukum*, (Depok: Prenada Media Group, 2018), p. 157.

¹⁷ Muhaimin, *Metode Penelitian Hukum*, (Mataram: Mataram University Press, 2020), p. 54.

obtained by exploring various literature, ranging from books, scientific journals, and articles, to legal documents related to Islamic inheritance law and Pakpak customary law.

The collected data was then analyzed using a descriptive qualitative method, applying the interactive analysis model by Miles and Huberman. This analytical process proceeds through three interconnected main stages. The first stage is data reduction, where all information obtained from the field is strictly selected, focused, and simplified to align with the main focus of the research, namely the practice of inheritance distribution and the position of women within it. After being reduced, the second stage is data display. At this stage, the data is systematically arranged in the form of a thematic narrative to clearly illustrate the interaction patterns between Islamic law and customary law in the reality of inheritance. The final stage is conclusion drawing and verification, where the researcher formulates initial conclusions based on the patterns found in the field.¹⁸ These conclusions will be continuously verified and tested for accuracy throughout the research process until a truly valid and credible final conclusion is reached.

Discussion

A. Inheritance from the Perspective of Islamic and Customary Law

Discussions regarding inheritance law require a deep understanding of the societal entities that implement it, as well as its underlying juridical foundation. The Pakpak tribe is one of the ethnic groups originating from the North Sumatra region, Indonesia. This tribe is divided into five subgroups known as Pakpak Silima, namely Pakpak Klasen, Pakpak Simsin, Pakpak Boang, Pakpak Pegagan, and Pakpak Keppas. The population of the Pakpak tribe is spread across various areas in North Sumatra and parts of Aceh. The majority of the Pakpak indigenous community living in Pakpak Bharat Regency rely on farming for their livelihood, as this region possesses vast and fertile land. The agricultural system they practice is generally still traditional. Some of them even still apply a shifting cultivation system, which involves clearing land by cutting and burning forests, then planting it with seasonal crops such as rice and perennial crops such as durian. After the harvest season, they usually move to another location. In addition to farming, some of the community also work as traders, which in the Pakpak language is called "*berkedde*". Other professions currently pursued by many Pakpak people include working as civil servants, as well as members of the Indonesian National Armed Forces (TNI) and the Indonesian National Police (Polri). In daily life, particularly in the Kerajaan District, the language used is the Pakpak language.

1. The Essence and Legal Basis of Islamic Inheritance

In Islamic doctrine, inheritance (*al-mirath*) or the science of *fara'id* is defined as the transfer of property rights from a deceased person to living heirs.¹⁹ Normatively, this system rests on two main sources. First, the Qur'an Surah An-Nisa verse 7 serves

¹⁸ Muhaemin, *Metode Penelitian Hukum*, (Mataram: Mataram University Press, 2020), p. 59.

¹⁹ Maman Abd Djalaal, *Hukum Mawaris*, (Bandung: Pustaka Setia, 2006), p. 39.

as a pillar of justice affirming that both men and women have rights to the estate left by their parents or relatives:

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

Meaning: “For men there is a share of what the parents and close relatives leave, and for women there is a share of what the parents and close relatives leave, be it little or much an obligatory share.”

This verse serves as an important foundation affirming that in Islamic teachings, both men and women have equal rights in receiving an inheritance. This also reflects Islam's recognition of women's position as legal subjects who possess full ownership and justice rights, as guaranteed by Sharia.

Second, the Hadiths of the Prophet Muhammad SAW which serve as the legal basis for inheritance in Islam include those narrated by Bukhari and Muslim, which mean: “The Prophet Muhammad SAW said: Give the prescribed shares of inheritance to those who are entitled to receive it, and whatever remains should be given to the closest male relative”.²⁰

Meanwhile, a narration from Hudzail ibn Syurahbil states, meaning: “The Prophet Muhammad SAW decided the share of a daughter is a half, the share of a son's daughter is a sixth to complete the two-thirds, and the remainder is for the sister.” (H.R. Al-Bukhari).²¹ Al-Qurtubī stated that since the provisions regarding inheritance have been explicitly explained, it is important to know that the science of *faraid* is one of the most noble and profound branches of knowledge, even becoming one of the most valuable intellectual legacies of the Prophet's companions who possessed broad knowledge. Nevertheless, many people actually ignore and pay little attention to this knowledge. All forms of work by scholars, both from earlier generations and the present, which discuss the science of *faraid*, basically aim to explain the content of the Qur'anic verses related to inheritance law. They elaborate on the *syar'i* (Islamic legal) laws underlying the distribution of inheritance to every entitled party, and emphasize the importance of conducting such distribution fairly and transparently, without reducing or concealing the share of anyone entitled to receive it.²²

The inheritance system in Indonesia is also regulated in detail within the Compilation of Islamic Law (KHI). Article 171 letter b of the Compilation of Islamic Law (KHI) states that “An inheritor (decedent) is a person who upon their death, or who is declared dead based on the decision of an Islamic religious court, leaves behind

²⁰ Syaikh Shafiyyurrahman Al-Mubarakfuri, *Syariah Bulughul Maram*, (Banten: Raja Publishing, 2017), p. 738.

²¹ Imam Al-Bukhari, *Shahih Bukhari Jilid 4*, (Bandung: Syirkah al-Mar'arif, n.d.), p. 167.

²² Samhuji Yahya, *Hukum Waris dalam Syari'at Islam* (Bandung: Diponegoro, 1998), p. 20.

heirs and an inheritance”.²³ Thus, the status of a decedent can be attributed to someone if it has been confirmed that they have passed away, and have left behind a legitimate inheritance and heirs.

a. Heirs (*Warits*)

An heir is explained in Article 171 letter c of the Compilation of Islamic Law as a person who, at the time of the decedent's death, has a blood relationship or a marital relationship with the decedent, is of the Islamic faith, and is not legally hindered from becoming an heir.²⁴ As for the general groups of heirs, the division includes:

1) Based on blood relationship (*nasab*)

Heirs in this group consist of two categories: males, such as the father, son, brother, uncle (from the father's side), and grandfather. Meanwhile, females include the aunt (father's sister), daughter, sister, and grandmother (from either the father's or mother's side).

2) Based on marital relationship

This group includes the legal spouse of the decedent, namely the widow (wife left by her husband) or widower (husband left by his wife). If all heirs from these various groups are present simultaneously, then those who still obtain a share of the inheritance are only specific parties, namely the children, father, mother, and spouse (widow or widower), in accordance with the provisions established by Sharia.

b. Inheritance Estate (*Mawarits*)

The Compilation of Islamic Law distinguishes between inheritance laws. Article 171 point d explains that inheritance is the property left by the decedent, both in the form of goods that were their property as well as their rights. As explained in Article 171 point e of the Compilation of Islamic Law, the estate (*tirkah*) is the innate property plus a portion of the joint property after being used for the decedent's needs during their illness until death, funeral management costs, debt payments, and gifts for relatives.²⁵

2. The Legal Construction of Customary Inheritance and Its Distribution System

Customary inheritance is an inheritance system applicable within indigenous communities, whose rules do not solely stem from state law or a specific religion, but from customary norms that have lived and developed from generation to generation. In this context, inheritance is not merely understood as the process of transferring property from the decedent to the heirs, but also contains strong social and cultural dimensions, such as the preservation of lineage, the inheritance of customary land

²³ *Kompilasi Hukum Islam (KHI)*, Pasal 171 butir b, p. 81.

²⁴ *Kompilasi Hukum Islam (KHI)*, Pasal 171 butir c, p. 81.

²⁵ *Kompilasi Hukum Islam (KHI)*, Pasal 171 butir e, p. 81.

rights (*ulayat*), up to social responsibilities within the family or indigenous community. Each indigenous community has a distinct pattern of inheritance, depending on the kinship system adhered to, whether patrilineal, matrilineal, or bilateral. Therefore, customary inheritance is plural and contextual in nature, and often differs from the inheritance system in Islamic law as well as national civil law.²⁶

Unlike Islamic law, which is universal-transcendental in nature, customary inheritance law possesses characteristics that are more plural and contextual because it originates from customary norms living within society (*living law*). Legal experts such as Soepomo²⁷ and Ter Haar²⁸ emphasize that customary inheritance does not merely regulate the transfer of material or property, but also encompasses the dimension of preserving lineage values and fulfilling social responsibilities within its community. In its practice in Indonesia, there are three main systems of customary inheritance distribution: the individual system where property is divided individually similar to principles in Islam or the Civil Code; the collective system which establishes property as undivided joint ownership as seen with *ulayat* land in Minangkabau; and the majorat system which grants full control of the property to the eldest child, be it male in Batak custom or female in certain traditions.

3. The Principle of Justice in Inheritance

The essence of inheritance law is the achievement of justice. In Islam, justice does not always mean "equal" quantitatively, but rather proportional justice based on a balance between rights and responsibilities.²⁹ The difference in shares between men and women is influenced by the burden of providing livelihood (*nafkah*) borne by men within the Islamic family structure.³⁰ Thus, justice in Islamic inheritance is viewed as equality in existence and social function, where each individual receives their right according to the closeness of kinship and the burden of obligations they bear under Sharia.³¹

B. The Inheritance Distribution System According to Customary Law in the Community of Sukarame Village, Kerajaan District, Pakpak Bharat Regency

The inheritance distribution system applicable in Sukarame Village is still dominated by the provisions of Pakpak customary law. In an interview conducted with Mr. Makmur Barasa as the local Customary Chief (*Ketua Adat*), he explained that inheritance, especially immovable property such as land and houses, is generally given to

²⁶ Zuhraeni, *Serba Serbi Hukum Adat*, (Bandar Lampung: Permata Printing, 2013), p. 3.

²⁷ Soepomo, *Bab-Bab Tentang Hukum Adat*, (Jakarta: Pradnya Pranita, 1977), p. 20.

²⁸ B. Ter HAAR, *Asas-Asas Dan Susunan Hukum Adat*, (Jakarta: Pradnya Paramita, 1991), p. 231.

²⁹ Ahmad Zahari, *Tiga Versi Hukum Kewarisan Islam: Syafi'i, Hazairin dan KHH*, (Pontianak: Romeo Grafika, 2003), p. 25.

³⁰ M. Nasikhul Umam Al-Mabruri, "Keadilan pembagian harta warisan perspektif hukum islam dan burgerlijk wetboek," *Al-Mazahib* 5 (2017), p. 121–22.

³¹ Moh. Muhibbin dan Abdul Wahid, *Hukum Kewarisan Islam Sebagai Pembaharuan Hukum Positif di Indonesia*, (Jakarta: Sinar Grafika, 2009), p. 29.

sons, particularly the youngest son. In the Pakpak community, the youngest child, referred to as *boru ni tua*, is considered to have the primary responsibility of caring for the parents until the end of their lives, and is thus deemed the most eligible to receive the main share of the family inheritance. The other sons can still obtain a share, although their portion is smaller and adjusted through family deliberation (*musyawarah*). Meanwhile, daughters traditionally do not have rights to immovable property. Nevertheless, they are still respected and given other forms of gifts upon marriage, which can be in the form of money, gold, or other goods as an expression of affection from their parents or brothers.

Mrs. Nurlia Naibaho, a local resident, explained that she had directly experienced the inheritance distribution system in her family using the customary law method. She comes from a family of seven siblings, consisting of three males and four females. In the practice of that distribution, the four daughters did not receive any share of the inheritance at all. All the property was inherited only by the sons; even the grandsons also received a share. This decision was felt to be quite disappointing by Mrs. Nurlia Naibaho because she perceived a lack of justice in the inheritance distribution process conducted based on the prevailing customary law.

In practice, there are still many people in Sukarame Village who prioritize customary law in the distribution of inheritance, because Pakpak customary rules have clearly regulated who is entitled to receive a share. This tendency is stronger in extended families that still firmly hold onto customary values. However, for families with a religious education background or those who tend to be more religious, the use of Islamic inheritance law is also beginning to be applied, especially if all heirs agree to it. Thus, the choice between customary law and Islamic law in the distribution of inheritance heavily depends on each individual family.

Based on the interviews conducted by the author, the community's knowledge regarding Islamic inheritance law itself is still limited. Most only know that in Islam, all children are entitled to an inheritance, where a son receives twice the share of a daughter. However, a more detailed understanding, such as who exactly is included as an heir or how the inheritance is calculated, has not been comprehensively mastered by the community. Therefore, many families still rely on customary traditions as the main basis for the distribution of inheritance.

In general, the Pakpak customary system remains the main reference in the distribution of inheritance in Sukarame Village. However, as time progresses, changes have begun to appear in some families, particularly when there are no sons, or when the women in the family have higher education and understand their rights according to Islamic law. In such situations, several families have started giving a share of the inheritance to daughters, albeit in limited amounts. This indicates a shift in perspective within the community, which seeks to balance respect for custom with the desire to apply the values of justice offered by Islamic law.

The Pakpak indigenous community is a customary community that possesses its own customary legal system and norms. Various customary provisions apply in the social life of the community, including in matters of inheritance and the resolution of inheritance disputes, which are accompanied by customary sanctions. Mrs. Nurlia Naibaho, as a local resident, also mentioned that if a customary dispute occurs in the area, its resolution can be carried out through customary mechanisms by submitting a report to the local customary leaders so that it can be followed up in accordance with Pakpak customary provisions.

C. The Role of Customary and Religious Leaders in the Distribution of Inheritance

In Sukarame Village, the roles of customary leaders (*tokoh adat*) and religious leaders (*tokoh agama*) are highly significant in the inheritance distribution process, especially when families experience confusion or conflicting views between customary law and Islamic law. In such situations, families typically seek the advice of customary leaders, as they are the authorities on inheritance rules according to Pakpak customs. Customary leaders generally advise that the inheritance particularly ancestral land be distributed in accordance with the customary rules that have been passed down through generations.

However, in some families, the perspectives of religious leaders are also taken into consideration, particularly when certain family members wish for the inheritance to be distributed according to the principles of Islamic law. Religious leaders, such as an *ustadz*, typically explain the Islamic inheritance system, including the differing proportions allocated to men and women. In many instances, both customary and religious leaders attend family deliberations to offer their insights and help find common ground between customary values and religious teachings.

The presence of these two figures often determines the direction of the final decision, as both are highly respected, authoritative figures who possess a deep understanding of the rules within their respective contexts. Although the final decision ultimately rests in the hands of the family, the guidance provided by customary and religious leaders has a profound influence on shaping the final outcome of the inheritance distribution.

D. The Application of Islamic and Customary Law in the Distribution of Female Inheritance

In Sukarame Village, Kerajaan Subdistrict, Pakpak Bharat Regency, there has been an inheritance case demonstrating the interaction between Islamic law and customary law in the distribution of inheritance, specifically regarding women. This approach emerged as a form of consensus aimed at maintaining family harmony, respecting religious values, and simultaneously preserving deeply rooted customs in the society. In one instance, the distribution of customary land was exclusively given to male children in accordance with Pakpak customary law. However, other assets such as cash,

jewelry, and houses were distributed among all children, including females, using an approach that closely aligns with the principles of Islamic inheritance law. This practice reflects a collective awareness within the community to balance customary norms with the principles of justice in Islam.

The considerations in determining the inheritance system used are inseparable from various internal family factors. First, the family's level of attachment to customs greatly influences the process. In families that still strongly uphold Pakpak customary values, inheritance distribution tends to follow customary patterns, where male children especially those who live with and care for the parents are considered the most entitled. Second, the level of religious understanding is also an important factor. If a family member possesses knowledge of Islamic inheritance law, they typically advocate for the distribution to be carried out according to *Sharia* (Islamic law), initiating the proposal that women also have rights, albeit smaller than men's. Third, the quality of relationships among family members affects flexibility in decision-making. If family relations are harmonious, the inheritance distribution can be agreed upon fairly, even if it does not absolutely adhere to a single legal system. Lastly, the role of elders in the family significantly determines the direction of the decision. If the elder is more inclined toward custom, the decision tends to follow tradition. However, if the elder is open to Islamic law, the inheritance distribution can be directed more in accordance with *Sharia* principles.

E. Analysis of Community Perspectives on Inheritance Distribution Law

The view expressed by one of the community leaders, Mr. Tolui, reflects a wise and inclusive approach to addressing the distribution of inheritance amidst the diverse legal systems currently in effect. According to him, the inheritance distribution process requires consideration from various perspectives, namely customary law, religion, and the current social conditions of the community. From a customary perspective, preserving ancestral values particularly regarding the conservation of inherited land and the harmony of relationships among descendants is still considered important. On the other hand, Islamic teachings also provide clear guidelines for the distribution of inheritance, including the recognition of women's rights, even though the portion they receive is smaller compared to men.³² This, according to him, is a form of justice based on the respective responsibilities of each party within the family structure.

In addition to the views of senior community leaders, a new trend has emerged among the younger generation, indicating a shift in perspective regarding the inheritance system. The younger generation is considered more open to Islamic law, although they do not entirely abandon customary values. This is influenced by broader access to religious education, external information, and a more rational mindset in understanding

³² Dewi Noviarni, *Kewarisan Dalam Hukum Islam Di Indonesia*, 'Ainul Haq: Jurnal Hukum Keluarga Islam, Vol. 1, No. 1, (2021).

the concept of justice. For some of them, Islamic law is considered fairer because it guarantees women's rights, even if their portion is not equal to that of men.

Nevertheless, some of the younger generation living in rural villages or within extended family environments tend to continue upholding customary law. They view custom as a part of their cultural identity that must be respected. There is a fear of being labeled unfilial or of violating ancestral norms if they demand inheritance rights outside of customary provisions.

Even so, in general, there is a visible increase in critical awareness, especially among young women. While women in the past tended to be passive or accept decisions unquestioningly, many are now beginning to question the reasons why they are denied inheritance rights. The courage to discuss, consult religious leaders, and voice their opinions serves as an indication that legal awareness and a sense of justice within the community particularly among the younger generation are beginning to grow and develop.

In addition to normative considerations, Mr. Makmur Barasa also highlighted social aspects that have undergone significant changes. He acknowledged that today, women no longer play a passive role in the domestic sphere. Many women share the economic responsibility, care for their aging parents, and even serve as the breadwinners of the family. Therefore, the concept of justice in the distribution of inheritance must also consider the tangible contributions of each child, without being fixated on gender differences.

Nurlia Bako emphasized the importance of family deliberation as the best way to achieve a sense of justice that is acceptable to all parties. Open discussions among family members can produce agreements that respect customary values while also accommodating religious teachings and contemporary social dynamics. For example, customary land can be inherited according to tradition, while other assets are divided based on Islamic legal principles, or all assets can be divided equally if deemed the most fair. The most important thing, according to her, is that no party feels disadvantaged and family harmony is maintained.

Furthermore, she also expressed her hope that the community, especially in rural areas, will become more open minded in considering justice for all children, including women. Today, women are no longer confined to domestic roles but are also actively engaged in their careers and in caring for the family. Thus, she does not propose abandoning custom, but rather hopes for adjustments that allow customary law to run parallel with religious teachings and modern principles of justice. According to her, if custom is rigidly maintained and denies women their rights, it has the potential to cause dissatisfaction and conflict within the family. Therefore, deliberations involving all family members, alongside customary and religious leaders, serve as the ideal solution so that the distribution of inheritance is not only legally valid by custom but also morally just.

The community's understanding of inheritance distribution for women still relatively follows the customary law of the Pakpak tribe. Inheritance is passed down from generation to generation to sons, especially the youngest son (*si anak boru ni tua*). The Pakpak community considers the youngest son responsible for caring for his parents until the end of their lives, and as such, he receives the primary share of immovable assets, such as the house or ancestral land. Additionally, only a small portion of the community has a general understanding of Islamic inheritance law.

A pure patrilineal system that exclusively prioritizes male heirs is slowly beginning to clash with modern social realities. The role of women, who now share the family's economic burdens and care for aging parents, demands a shift in the indicators of justice. Justice in inheritance is no longer measured solely by the gender of the descendants; rather, it is shifting toward the principles of contribution and proportional benefit. This demonstrates that law does not operate in a vacuum, but rather evolves in tandem with the economic and social developments of its society.

There is a distinct dualism between the older generation in rural communities and the younger generation in urban populations. The younger generation has begun to employ Islamic law and human rights rationalities as tools of liberation (particularly for women) from the rigidities of customary (*adat*).³³ However, the magnitude of socio-cultural sanctions such as the fear of being perceived as violating ancestral norms prevents the community from entirely abandoning these customs. This indicates that customary law is not being discarded, but is instead undergoing a process of reinterpretation and synchronization to remain relevant without losing the essence of its cultural identity.

The tension between the three legal pillars customary law focusing on males, Islamic law offering conditional proportionality, and modernity demanding equality is ultimately resolved through the mechanism of deliberation for consensus (*musyawarah mufakat*). This pragmatic resolution strategy, such as separating the classification of assets (where ancestral land is divided according to custom, while acquired assets are divided based on Islamic law or distributed equally), demonstrates a high level of legal maturity within the community. The community places family harmony as the supreme law, prioritizing it over the rigidity of religious legal texts and pure customary rules.

Conclusion

Based on the research findings, it can be concluded that the inheritance distribution system in Sukarame Village, Kerajaan District, Pakpak Bharat Regency, remains dominated by the patrilineal Pakpak customary law. In practice, primary inheritance assets, such as land and houses, are predominantly given to sons specifically the youngest son as the successor of the lineage. Conversely, daughters generally do not

³³ Aulil Amri, Arifin Abdullah, Nur Muhajirah Siagian, Faisal Yahya, and Nurul Fithria. "Redefining Inheritance Justice: The Practice of Patah Titi and The Role of Substitute Heirs in Islamic Law in Sabang City, Aceh". *QONUN: Jurnal Hukum Islam dan Perundang-undangan*, vol. 10, no. 1, (2026): 1-30.

receive a primary share and are only given assets in the form of grants (*hibah*) or gifts upon marriage. Nevertheless, the research findings also reveal shifting dynamics through the practice of compromise between customary law and Islamic law. In several cases, families have begun to consider the provisions of Islamic inheritance law (*faraid*) when distributing assets other than land, primarily through the mechanism of family deliberation. This indicates that customary law no longer operates in isolation; rather, it has begun to interact with the values of Islamic law and the evolving considerations of social justice within the community. Thus, this research demonstrates that: (1) the practice of inheritance distribution remains dominated by Pakpak customary law; (2) the position of women remains unequal within the inheritance system; and (3) the interaction between customary law and Islamic law takes the form of dominance-adaptation rather than full integration. Academically, this research contributes to the study of Islamic family law and customary law, particularly from the perspective of legal pluralism. Furthermore, this research enriches the discourse on gender issues within the inheritance system by demonstrating that the implementation of women's inheritance rights remains heavily influenced by local social and cultural structures. Practically, this research emphasizes the need to improve the community's understanding of Islamic inheritance law to foster a more just and inclusive distribution of inheritance.

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