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Inheriting Inequity: A Comparative Legal Dissection of Gender Discrimination in Indonesian Inheritance Law

Article	Abstract
<p>Author Wahyuni Retno Wulandari¹, Nadzriah Ahmad^{2*}, Yulia Fitriliani¹, Rini Purwaningsih¹</p> <p>¹ Faculty of Law, Universitas Trisakti Jakarta, Indonesia ² Faculty of Law, UiTM, Selangor, Malaysia</p> <p>Corresponding Author: *Wahyuni Retno Wulandari, Email: wahyuni.r@trisakti.ac.id</p> <p>Data: Received: Jan 10, 2025; Accepted: Jun 28, 2025 Published: Jun 30, 2025</p> <p>DOI: 10.24090/volksgeist.v8i1.12994</p>	<p>As Indonesia's inheritance law adopts Islamic law, civil law, and customary law in its legal system, it is suspected that some serious issues emerge in its implementation. One of them is gender inequality issue in its inheritance law. While the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has been ratified by the country, discriminatory practices persist as a result of patriarchal interpretations of the law and dominant patrilineal customs. This study aims to analyze gender inequality in inheritance distribution by examining how legal systems in Indonesia align with or diverge from the international human rights norms, particularly CEDAW. Using a normative legal research method and comparative approach, this study looked into the legal structure, substance, and culture of inheritance legal systems in predominantly Muslim countries such as Egypt, Tunisia, Morocco, Pakistan, Thailand, Malaysia, Singapore, Brunei Darussalam, and Indonesia, based on Lawrence Friedman's legal system theory. The results showed that Indonesia's civil law had a tendency to conform to the international gender equality norms. However, the Islamic and customary inheritance practices in the country were still strongly influenced by patriarchal values. In comparison, some of the other countries studied in this research demonstrated greater flexibility in aligning their Islamic inheritance laws with the gender justice principles. These findings underscored the urgent need for Indonesia to develop context-sensitive legal reform strategies that include progressive <i>ijtihad</i>, transformation of patriarchal customs, and synchronization of the national inheritance law with the international human rights standards.</p> <p>Keywords: <i>Gender inequality; Indonesian inheritance law; comparative legal system.</i></p>

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INTRODUCTION

Inheritance law is essential about how we divide a deceased person's belongings among those left behind, whether that is done through a will or according to laws that apply when no will exists. In Indonesia, this process is influenced by a diverse mix legal system, reflecting the country's

rich cultural tapestry. Three major frameworks shape inheritance: civil law, which traces its roots to Dutch colonial influences; Islamic law, deeply embedded in the religious traditions of the community; and customary law, which reflects local social and cultural practices. Together, these systems coexist within Indonesia's unique pluralistic legal landscape, influencing how inheritance is interpreted and applied.

Unfortunately, despite Indonesia's ratifying the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) back in 1984¹, gender inequality continues to be a significant issue within inheritance practices. While civil law often aligns with international standards that advocate for gender equality, Islamic and customary inheritance laws often reinforce patriarchal views. For example, under traditional interpretation of Islamic law, female heirs typically receive only half the share of their male counterparts when it comes to inheritance, a practice rooted in specific interpretations of the Qur'an.² On the other hand, many customary systems—especially those based on patrilineal traditions—either completely exclude women from inheritance rights or treat them merely as symbolic holders of property.³ Even in matrilineal communities like the Minangkabau, where women are formally recognized as inheritors of land, the real power to manage and control those assets often rests with male relatives.⁴ This situation illustrates how inheritance law in Indonesia are shaped by a complex interplay of religious beliefs and cultural traditions, creating conflicts between local practices, Islamic law, and international gender equality standards.

International guidelines, particularly those under CEDAW and other global conventions, stress the importance of gender equality in all aspects of life, including inheritance. Yet, women are still among the most vulnerable groups in many legal systems, Indonesia included. This study emphasizes the urgent need to address the gaps between Indonesia's inheritance practices and international standards, aiming to explore ways to harmonize domestic laws with these global norms to better protect women's inheritance rights.

Previous research has delved into the issue of gender inequality in inheritance law through various context-driven and localized lenses. For example, Sita Hidayah (2024) investigates how women in Aceh navigate a complex legal landscape made up of Adat customary law), Sharia (Islamic law), and state civil law. Her anthropological approach emphasizes the importance of public reasoning within a multicultural community, steering clear of viewing the state as the only source of justice.⁵ In a similar vein, Toktas and O'Neil (2015) explore the interaction between secular civil

¹ U N General Assembly, "Convention on the Elimination of All Forms of Discrimination against Women," Retrieved April 20 (1979): 2006; Hariyanto Hariyanto, Ahmad Rezy Meidina, and Mabarroh Azizah, "Decentralization and the Fulfillments of Children's Rights: Challenges and Opportunities for Local Government in Indonesia," *Lex Scientia Law Review* 8, no. 2 (November 30, 2024): 677–706, <https://doi.org/10.15294/lsr.v8i2.14373>; Muhammad Abduh, "Analisis Hukum Terhadap Tradisi Penundaan Pembagian Harta Warisan Kepada Ahli Warisnya (Studi Kasus Di Kelurahan Purbaratu Kecamatan Purbaratu Kota Tasikmalaya)," *Khuluqiyya: Jurnal Kajian Hukum Dan Studi Islam*, July 25, 2021, <https://doi.org/10.56593/khuluqiyya.v3i2.65>.

² R I Departemen Agama, "Al-Qur'an Dan Terjemahan," Jakarta: PT Syaamil Cipta Media § (2005).

³ Sulistyowati Irianto, "Competition and Interaction between State Law and Customary Law in the Court Room: A Study of Inheritance Cases in Indonesia," *The Journal of Legal Pluralism and Unofficial Law* 36, no. 49 (January 2004): 91–112, <https://doi.org/10.1080/07329113.2004.10756574>.

⁴ Azhari Akmal Tarigan, "Implementation of Inheritance Law in Minangkabau Muslim Society," *Journal of Islamic Law*, 2014; Hariyanto Hariyanto, Mabarroh Azizah, and Nurhidayatulloh Nurhidayatulloh, "Does the Government's Regulations in Land Ownership Empower the Protection of Human Rights?," *Journal of Human Rights, Culture and Legal System* 4, no. 2 (May 2024): 391–421, <https://doi.org/10.53955/JHCLS.V4I2.222>.

⁵ Sita Hidayah, "From Unity in Diversity to Culture Wars? Aceh Women's Mastery over Adat, Islam, and the State Inheritance Laws," *Women's Studies International Forum* 103 (March 2024): 102881, <https://doi.org/10.1016/j.wsif.2024.102881>.

law and Islamic law among conservative Muslim women in Turkey. Their findings highlight how legal pluralism is still very much influenced by patriarchal interpretations.⁶ Meanwhile, Salih Yasun (2018) sheds light on the economic marginalization of women in eastern Turkey, demonstrating that simply having legal guarantees for gender equality is not enough without empowering women through education.⁷

However, unlike these studies that focus on specific sociocultural or economic factors within particular jurisdictions, this article seeks to make a broader contribution through a comprehensive comparative analysis of inheritance laws across multiple regions. It looks specifically at Indonesia's inheritance legal system—characterized by the interaction of Islamic, civil, and customary laws—and contrast it with inheritance frameworks from other Muslim-majority countries like Tunisia, Morocco, and Malaysia. This study leverages several theoretical perspectives, including Lawrence Friedman's Legal System Theory—which examines legal structures, substance, and culture—Abdullahi An-Na'im's Islamic legal reform theory that advocates for gender justice within Sharia in line with international human rights standards, and Michael Walzer's Complex Equality Theory, which asserts that justice must be context-specific. By integrating these frameworks, the article not only illuminates the ingrained patriarchal norms within Indonesia's plural legal system but also puts forth strategic proposals for legal reform. These reforms aim to promote *ijtihad* (independent reasoning), transform restrictive patrilineal customs, and align national inheritance law with international human rights standards, particularly those outlined in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). This comprehensive, transnational approach represents the key innovation and scholarly contribution of this research.

The disparities in inheritance practices arise from patriarchal interpretations of Islamic law, compounded by bilateral systems and customary laws—whether patrilineal or matrilineal—that limit women's equal access to inheritance. Indonesia's inheritance laws struggle to fully align with the gender equality principles promoted by CEDAW and other international norms, highlighting a serious gap in the implementation of gender justice.

Despite Indonesia's ratification of international conventions aimed at protecting women's rights, such as CEDAW, its inheritance law—shaped by civil, Islamic, and customary frameworks—still reflect outdated patriarchal norms. These norms contribute to systemic gender inequalities, leading to a pressing need for legal harmonization to promote and ensure women's equal rights to inheritance. This study takes a closer look at gender inequality in Indonesian inheritance law, particularly focusing on the profound influences of Islamic doctrine and customary practices across both patrilineal and matrilineal societies. By employing a comparative method, the research seeks to deepen our understanding on the gender disparities in Indonesia's inheritance law and to

⁶ Sule Toktas and Mary Lou O'Neil, "Competing Frameworks of Islamic Law and Secular Civil Law in Turkey: A Case Study on Women's Property and Inheritance Practices," *Women's Studies International Forum* 48 (January 2015): 29–38, <https://doi.org/10.1016/j.wsif.2014.10.011>.

⁷ Salih Yasun, "Does Education Enable Underprivileged Women to Achieve Real Equality in Property Rights? A Case Study of Inheritance Rights of Women in Turkey," *Women's Studies International Forum* 69 (July 2018): 100–114, <https://doi.org/10.1016/j.wsif.2018.05.013>; Endad Musaddad et al., "Guaranteeing the Rights of Children and Women Post-Divorce: A Comparative Study Between Indonesia and Malaysia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, April 18, 2025, 1–14, <https://doi.org/10.24090/volksgeist.v8i1.12214>. "type": "article-journal", "volume": "69", "uris": ["http://www.mendeley.com/documents/?uuid=a5e4f318-9b72-4ce6-ac6f-4c48e4668a29"], {"id": "ITEM-2", "itemData": {"DOI": "10.24090/volksgeist.v8i1.12214", "ISSN": "2615-5648", "abstract": "The enforcement of court decisions regarding custody (hadanah

analyze the disconnect between domestic practices and the international standards set by CEDAW regarding gender equality. Ultimately, this study aims to identify critical differences in practice and to recommend legal reforms that would encourage a more equitable distribution of inheritance.

RESEARCH METHODS

This study uses a comparative approach to analyze and compare laws with those from other countries, drawing on insights from previous research. Central to our analysis is Lawrence Friedman's Legal System Theory, which helps us examine the structure, substance, and legal culture of the various systems we are studying. To enrich our analysis, we incorporate several complementary theoretical frameworks. Legal feminism theory is particularly valuable in highlighting the gender injustices embedded within the inheritance law system. Legal pluralism theory provides insight into how Indonesia's multiple legal systems—civil law, Islamic law, and customary law—coexist and interact with one another. Additionally, we draw from Michael Walzer's complex theory of justice, which allows us to explore the different ways justice is understood and applied across various legal domains.⁸ To better contextualize Islamic law within Indonesia's culturally diverse and socially rich environment, we also reference Abdullahi An-Na'im's reform framework for Sharia law. This framework aims to uphold religious principles while promoting gender justice and aligning with international human rights norms, particularly those outlined in CEDAW.⁹ Together, these theoretical approaches provide a solid foundation for analyzing and proposing more inclusive and gender-equitable legal reforms within Indonesia's diverse legal system.

In terms of methodology, the study employs a normative legal research process. This involves a close examination of legal documents and norms, allowing us to analyze the relevant legal rules and how they are applied or interpreted in the context of Indonesia's inheritance system. Our primary sources include laws, regulations, and a range of legal literature. This thorough examination is crucial for understanding the theories and concepts surrounding legal issues, enabling us to highlight similarities and differences in addressing gender disparities in inheritance law within Indonesia as compared to international standards, particularly those set forth by CEDAW.

ANALYSIS AND DISCUSSION

This study introduces a fresh interdisciplinary approach to understanding inheritance law in Indonesia. By integrating theories such as Feminist Legal Theory, Legal Pluralism, Michael Walzer's Complex Justice, and An-Na'im's Theory, we aim to illuminate the contradictions between Indonesian inheritance law and international standards. Our analysis provides a comparative lens with other countries while exploring local practices that perpetuate gender inequality. Beyond merely identifying these issues, the study also proposes practical solutions for legal reform, all aimed at achieving gender equality in inheritance law.

⁸ Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (Basic books, 2008).

⁹ Abdullahi Ahmed An-Na'im, *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* (University of Pennsylvania Press, 2010); Ahmad Rezy Meidina, "Anak Di Luar Kawin Dalam Hukum Kewarisan Islam: Sebuah Ragam Perspektif Dan Analisa," *El-Aqwal: Journal of Sharia and Comparative Law*, August 1, 2022, 1–14, <https://doi.org/10.24090/el-aqwal.v1i1.6778>.

A Brief History of Inheritance Law in Indonesia

1. **The Pre-Colonial Era:** Before colonial times, inheritance law in Indonesia Was governed by customary law, which varied significantly across regions, shaped by local kinship structures and cultural traditions. For instance, in areas with a patrilineal system, such as Bali and Batak, inheritance was typically passed down through the male line. In contrast, in the matrilineal Minangkabau community, women played a crucial role in inheritance, often holding significant rights to land and property.¹⁰
2. **Colonial Impact:** The arrival of Dutch colonizers marked a significant shift in the legal landscape of Indonesia. During the colonial era, the Dutch introduced a Western legal framework through the *Wetboek van Koophandel* (Commercial Code) and *Burgerlijk Wetboek* (Civil Code). Interestingly, the colonial government maintained the applicability of the customary legal system under a policy known as “*receptio in complexu*”, which allowed indigenous customs to remain in effect as long as they did not conflict with colonial laws.¹¹ Additionally, Islamic law was accommodated, especially in areas related to marriage and inheritance, providing a limited space for religious courts to function.
3. **The Influence of Islamic Law:** Islamic has been a central element to the Indonesian legal landscape since the 7th century, significantly shaping the inheritance system. The introduction of the Compilation of Islamic Law (KHI) in 1991 marked a pivotal moment, as it sought to blend Islamic inheritance principles with local customs.¹² However, the rules set forth by Islamic law generally favor men over women in inheritance matters, aligning with traditional interpretations of the Qur'an.
4. **The Post-Colonial Era:** After gaining independence, Indonesia aimed to harmonize its diverse inheritance laws, integrating Islamic law and customary traditions with modern legal frameworks. The KHI has become a crucial reference for resolving inheritance disputes among Muslims, while customary law remains active in various regions.¹³ However, legal reform efforts often face the challenges in reconciling modern principles advocating for gender equality with

¹⁰ Theodor Waitz, *Introduction to Anthropology*, vol. 1 (Anthropological Society, 1863); Ratno Lukito, *Legal Pluralism in Indonesia: Bridging the Unbridgeable* (Routledge, 2012); Riris Ardhanariswari et al., “Local Government Efforts in Realizing Gender Responsive Regional Policies in Banyumas District,” *Jambe Law Journal* 4, no. 1 (October 31, 2021): 1–19, <https://doi.org/10.22437/jlj.4.1.1-19>; Apik Anitasari Intan Saputri, “Reaktualisasi Hukum Islam Munawir Sjadzali Dan Kontekstualisasi Doktrin Islam Pribumi Abdurrahman Wahid,” *Khuluqiyya: Jurnal Kajian Hukum Dan Studi Islam*, January 2, 2021, 24–50, <https://doi.org/10.56593/khuluqiyya.v3i1.54>.

¹¹ Maarten Manse, “Colonial Law and Indigenous Peoples: The Legacy of Dutch Legal Practices in Indonesia,” *Journal of Legal History* 35, no. 2 (2019): 223–34; Peter Burns, *The Leiden Legacy: Concepts of Law in Indonesia* (KITLV Press Leiden, 2004); Adriaan Bedner, “Colonial Legacies: State Law and Traditional Law in Indonesia,” *The Journal of Legal Pluralism and Unofficial Law* 50, no. 2 (2018): 207–226; Muta Ali Arauf, “The Existence of Women in the Traditional Rituals of the Jatilawang Bonokeling Community in Banyumas Regency,” *International Journal of Social Science and Religion (IJSSR)*, August 18, 2023, 347–66, <https://doi.org/10.53639/ijssr.v4i3.187>.

¹² Michael Barry Hooker, *Indonesian Syariah: Defining a National School of Islamic Law* (Institute of Southeast Asian Studies, 2008); Abdullahi Ahmed An-Naim, *Islam and the Secular State: Negotiating the Future of Sharia* (Harvard University Press, 2008); MB Hooker, “Sharia Law and the National Law of Indonesia,” *Oxford Journal of Law and Religion* 7, no. 2 (2019): 287–305; Arskal Salim, *Contemporary Islamic Law in Indonesia: Sharia and Legal Pluralism* (Edinburgh University Press, 2015).

¹³ Daniel S Lev, *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions*, vol. 12 (Univ of California Press, 1972); Irianto, “Competition and Interaction between State Law and Customary Law in the Court Room: A Study of Inheritance Cases in Indonesia”; Mark E Cammack and R Michael Feener, “The Islamic Legal System in Indonesia,” *Pac. Rim L. & Pol’y J.* 21 (2012): 13.

longstanding traditional and religious norms that reinforce patriarchal values.

- 5. The Role of Islam Nusantara:** The concept of Islam Nusantara plays a significant role in shaping inheritance law in Indonesia. This term refers to a form of Islam that has been integrated with local customs, leading to a more contextual and relevant approach to legal implementation.¹⁴ For example, Islam Nusantara recognizes mandatory wills for adopted children, allows for certain rights of apostate heirs in the decisions of Religious Court Judges, and adapts practices that, while not traditionally recognized in classical Islamic law, find acceptance within the Indonesian context.¹⁵

Implementation of International Norms and Standards in Indonesian Inheritance Law

Since ratifying CEDAW, Indonesia has made efforts to implement laws aimed at safeguarding women's rights.¹⁶ Article 2 of CEDAW calls on all signatory states to develop plans and draft regulations that promote gender equality and justice, explicitly prohibiting all forms of discrimination, including in inheritance matters. The CEDAW committee acknowledges the deep-rooted patriarchal attitudes and stereotypes that continue to influence Indonesia, culture, posing significant barriers to gender equality. One particular concern is the situation in communities like Toba-Batak, where cultural norms dictate that daughters withdraw from their father's family upon marriage, effectively preventing them from inheriting during intestate succession.¹⁷

In practice, however, the implementation of laws at promoting gender equality often remains hampered by patriarchal interpretations that favor male heirs. This reality contradicts CEDAW's principles of non-discriminatory inheritance, which call for the elimination of all forms of discrimination, including those based on sex.¹⁸ Unfortunately, in Indonesia, the application of CEDAW is still limited due to conflicting legal interpretations and discriminatory rulings. For example, the Compilation of Islamic Law contains specific provisions, such as Article 176, which clearly states that female heirs receive only half of what male heirs receive. This rule strictly followed in religious court practices, leaving little room for interpretation that could address these disparities and align with CEDAW's non-discriminatory mandate. This is in direct conflict with CEDAW's Article 16, which emphasizes the need for equality between men and women in all matters involving family and inheritance. Despite Indonesia's commitment to CEDAW, its legal framework continues to uphold rules that discriminate against women in matters of inheritance. Moreover, even though Indonesia has ratified CEDAW, there is currently no specific legislation or judicial mechanism designed to harmonize religious or customary inheritance laws with international human rights standards. The lack of meaningful legal reform or reinterpretation

¹⁴ Burhan, *Indonesian Islam: An Exploration of Nusantara Islam and Its Social Dimension* (Jakarta: LIPI Press, 2017).

¹⁵ Riza Pachrudin, "Analysis of the Islamic Law against Article 209 of the Compilation of Islamic Law (KHI) on Wasiat Wajibah of Adopted Children" (2016), https://www.academia.edu/88839517/Analysis_of_the_Islamic_Law_against_Article_209_of_the_Compilation_of_Islamic_Law_KHI_on_Wasiat_Wajibah_of_Adopted_Children.

¹⁶ United Nation, "CEDAW/C/IDN/CO/8: Concluding Observations on the Eighth Periodic Report of Indonesia" (2021), <https://www.ohchr.org/en/documents/concluding-observations/cedawcidnco8-concluding-observations-eighth-periodic-report>; Ahmad Rezy Meidina, "Legal System of Polygamy and Divorce in Muslim Countries: Comparative Studies among Turkey, Pakistan, and Indonesia," *Matan : Journal of Islam and Muslim Society* 5, no. 1 (May 24, 2023): 15, <https://doi.org/10.20884/1.matan.2023.5.1.8301>.

¹⁷ Max Gluckman, "Adat Law in Indonesia," *J. Comp. Legis. & Int'l L.* 3d Ser. 31 (1949): 60.

¹⁸ Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics* (Routledge, 2018).

efforts signifies a systemic failure to align domestic inheritance practices with the gender equality standards mandated by international law.

Indonesia's legal pluralism—comprising religious, customary, and civil law systems—further complicates the situation.¹⁹ Rather than fostering legal flexibility and promoting gender equality, these overlapping legal frameworks often reinforce existing inequalities in inheritance practices, obstructing the implementation of international human rights standards, including those outlined in CEDAW.

The Impact of CEDAW in Indonesia: Bridging Implementation and Reality

Although Indonesia ratified CEDAW in 1984, the practical implementation of its principles—especially in terms of inheritance law—has been far from sufficient. Article 16 of CEDAW mandates that states ensure equality between men and women in all matters related to marriage and family relations, including property ownership and inheritance rights.²⁰ However, gender inequality in Indonesia's inheritance system persists due to two primary, deeply entrenched factors: strong patrilineal customs and traditional interpretations of Islamic inheritance law. In practice, Islamic inheritance law in Indonesia continues to reflect provisions that significantly favor men, allowing them to receive larger shares or even exclude women from receiving inheritance entirely.²¹ While there have been attempts to reform inheritance practices through the Compilation of Islamic Law—an effort to adapt religious law to local contexts—the entrenched gender bias remains prevalent. Additionally, it is notable that customary law often reinforces gender inequality even more than Islamic law does, perpetuating discriminatory practices that limit women's rights to inherit.

1. The Reality of Gender Implementation in Inheritance Law in Indonesia: A Sociological Perspective

In examining inheritance law through a sociological lens, it becomes clear that gender inequality in Indonesia arises from two key influences: the deeply embedded patriarchal traditions within customary law and the patriarchal interpretations of Islamic inheritance rules as outlined in the Qur'an.

First, let us consider customary law, which reflects longstanding patrilineal norms in many indigenous communities, including the Bugis, Javanese, and Batak.

- a. **Bugis Community:** In the Bugis community, where adherence to Sharia law is official, customary law often takes precedence in practice. This means that male heirs typically receive a larger share of the family inheritance than female heirs.²² Studies have shown that Bugis women may receive only a small portion or, in some cases, nothing at all. This situation is a direct result of the strong patriarchal tradition that sees men as heads of the family and the primary guardians of property.

¹⁹ Burns, *The Leiden Legacy: Concepts of Law in Indonesia*.

²⁰ United Nations General Assembly resolution 34/180, "Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979" (n.d.), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>.

²¹ Irma Suryani, "Gender Equality in Islamic Inheritance: Indonesian Perspectives," *Journal of Islamic Law Studies*, 2018.

²² Abdillah Mustari, "Perempuan Dalam Struktur Sosial Dan Kultur Hukum Bugis Makassar," *Al-'Adl* 9, no. 1 (2016): 127–46.

- b. **Javanese Society:** The Javanese kinship structure is generally bilateral, yet the social framework remains patriarchal. Men are viewed as the main authority figures and dominate leadership roles. Although Islamic inheritance laws theoretically grant women the right to inherit, social customs often push women to the sidelines during the distribution of family assets. Cultural norms that position women primarily as caregivers of the household further restrict their access to property.
- c. **Batak Society:** The Batak community adheres to a patrilineal system where men hold complete control over inheritance. Daughters are often excluded from inheritance rights altogether. In Batak customs, land and property are seen as belonging to the male lineage, and married women are considered part of husband's family, which effectively denies them claims to their family's inheritance. Research by Sakban Lubis shows that in areas with Muslim Batak communities—such as Sibolga, Angkola, and Mandailing Natal—inheritance is typically distributed according to customary law rather than Islamic principles known as *faraidh*.²³ When inheritance is handled according to custom, women frequently miss out on their rightful shares.²⁴

These communities often limit or deny inheritance rights to women based solely on tradition and lineage.²⁵

While some perceive Islamic inheritance law as patriarchal, these interpretations stem from classical views within the *Ahlu Sunnah Waljama'ah* tradition, so they resemble customary laws that are rooted purely in cultural practices. Importantly, both play a significant role in influencing how inheritance is allocated, often marginalizing women's access to family property.

Islamic inheritance law does indeed prescribe different shares for men and women based on classical interpretations of the Qur'an. For example, in Surah An-Nisa (4:11), it states, "Allah commands you concerning your children: for the male, what is equal to the share of two females." This verse forms the foundation for the common 2:1 inheritance ratio seen across Sunni schools of thought, like Hanafi, Maliki, Shafi'i, and Hanbali. Notably, this distinction is not intended to be discriminatory; it reflects a broader framework of financial responsibilities where men are obliged to provide for their families. In classical Islamic jurisprudence:

- a. Men bear the responsibilities for the financial upkeep of their families, covering needs like housing, food, clothing, and maintenance (known as *nafaqah*).
- b. Conversely, women's full control over their wealth and are not required to contribute it to household expenses.

²³ Sakban Lubis, "Pembagian Harta Waris Pada Masyarakat Muslim Mandailing Natal (Kajian Sosiologis Hukum Islam Di Mandailing Natal)" (Universitas Islam Negeri Sumatera Utara, 2020).

²⁴ Ahmad, "Patriarchy and Law: Gender Inequality in Indonesian Inheritance Law", *Journal of Southeast Asian Studies*, 45, no. 2 (2021): 345–67. "mendeley": {"formattedCitation": "Ahmad, 'Patriarchy and Law: Gender Inequality in Indonesian Inheritance Law', *Journal of Southeast Asian Studies*, 45, no. 2 (2021)"}</p></div>
<div data-bbox="100 845 897 918" data-label="Footnote">
<p>²⁵ Nur Faizah et al., "The Role of Indonesian Women Ulama Congress (KUPI) in the Search for Gender Equality-Based Islamic Law," <i>Al-Adalah</i> 21, no. 2 (December 25, 2024): 323, https://doi.org/10.24042/adalah.v21i2.23698. participant observation, and in-depth interviews with KUPI figures. The analysis combined a critical perspective on societal patriarchal structures and a hermeneutic approach to interpreting religious texts. The results of the study indicate that there are three strategic approaches that KUPI can fight for in fighting for gender equality, namely: (1</p>
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From this perspective, the 2:1 ratio can be viewed as fair, as it mirrors the financial burdens placed on men²⁶ while ensuring that women retain autonomy over their inheritance.²⁷

That said, contemporary scholars like Hazairin and Abdullahi An-Na'im advocate for contextualizing these traditional interpretations. They argue that Islamic law should adapt to reflect the changing social and economic roles of women, particularly as many women today bear significant financial responsibilities in households. Hazairin emphasizes that Indonesia's unique cultural landscape allows for bilateral inheritance systems, suggesting that Islamic principles can be interpreted in a more gender-equitable light.

This distinction is crucial: while Islamic law as per classical *fiqh* may dictate unequal shares, it does not inherently exclude women from inheritance altogether. In contrast, some customary laws outright deny women any inheritance rights, representing a more severe form of gender discrimination that is cultural rather than theological.

In summary, both Islamic interpretations and customary norms contribute to gender inequality in inheritance, yet the underlying causes and potential solutions differ. Where Islamic law is concerned, reinterpretation and contextualization—as advocated by scholars like Hazairin and An-Na'im—can promote a more equitable framework. For customary law, achieving meaningful change will require deeper sociocultural reforms and legal interventions to challenge entrenched patrilineal traditions. Understanding these sources of discrimination allows for a more targeted approach to reform, better aligning with Indonesia's commitments under CEDAW.

2. Gender Equality and Legal Pluralism in Indonesia

Inheritance law in Indonesia operates within a complex and pluralistic legal framework, which significantly impacts gender equality in how inheritance is distributed. According to Sally Engle's Theory of Legal Pluralism, the coexistence of multiple legal systems²⁸—namely customary, Islamic (Sharia), and civil law—results in intricate and sometimes conflicting applications of inheritance rules, particularly concerning women's rights.²⁹ While western-influenced inheritance law emphasize gender equality, the practical application of customary and Islamic laws often perpetuates gender biases against women, undermining their rights to inherit equally.

The interaction between customary law and Sharia law creates a landscape where women frequently faces unfair inheritance provisions.³⁰ In many cases, customary law tends to prioritize men as the primary recipients of inheritance, while Sharia law, though it acknowledges women's

²⁶ Solikul Hadi, "Bias Gender Dalam Konstruksi Hukum Islam Di Indonesia," *Palastren: Jurnal Studi Gender* 7, no. 1 (2016): 25–46.

²⁷ Kurniati Nashirun, "Konsep Keadilan Dan Kesetaraan Gender Tentang Pembagian Harta Waris Dalam Perspektif Hukum Islam," *Madani Legal Review* 6, no. 1 (2022): 65–78.

²⁸ John Griffiths, "What Is Legal Pluralism?," *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (January 1986): 1–55, <https://doi.org/10.1080/07329113.1986.10756387>; Okti Nur Hidayah, Musyafangah, and Ahmad Rezy Meidina, "Analysis of the Rights and Obligations of Husband and Wife in the Compilation of Islamic Law: A Review from the Perspective of Gender Equality," *Legitima : Jurnal Hukum Keluarga Islam* 6, no. 1 (December 30, 2023): 1–15, <https://doi.org/10.33367/legitima.v6i1.4148>.

²⁹ Sally Engle Merry, *Legal Pluralism and Human Rights: Challenges of Tradition and Modernity* (Oxford: Oxford University Press, 2012).

³⁰ Retnowulandari Wahyuni, "Gender Perspective in Customary and Islamic Inheritance Law," in *Proceedings of the First Lekantara Annual Conference on Public Administration, Literature, Social Sciences, Humanities, and Education, LePALISSHE 2021, August 3, 2021, Malang, Indonesia, 2022*.

right to inherit, often allocates them a smaller share than men. This complex legal environment means that both customary institutions and religious courts heavily influence how inheritance is administered. Efforts have been made to integrate gender equality principles into the legal framework through national regulations like the Compilation of Islamic Law (KHI). However, numerous cases reveal that customary law and Sharia frequently dominate inheritance practices, often to the disadvantage of women.³¹ For example, in the Minangkabau region, where the majority of the community identifies as Muslim, collective customary law prevails in inheritance matters. This system allows only heirs to collective benefit, preventing individuals from receiving their rightful shares based on Islamic law, even though it is available.

Challenges in Achieving Gender Equality

The phenomenon of legal pluralism in Indonesia, which encompasses Islamic law, customary law, and state law, presents distinct challenges to achieving gender equality. In many regions, customary law continues to prioritize men in matters of inheritance, while Islamic law tends to confer lower inheritance rights to women. Sulistyowati Irianto observes that in many parts of Indonesia, customary law often exhibits a more patriarchal structure than Islamic law.³²

Moreover, the interpretation of religious laws significantly shapes societal views on gender roles within inheritance practices. Ann Mayer, in her exploration of human rights and Islamic law, notes that despite the diverse interpretations of Islamic law, ensuring fair treatment for women hinges on the willingness to reform the existing systems.³³

Inheritance Law Reform: Opportunities and Challenges

Reforming inheritance law in Indonesia requires a cross-cultural approach that respects local customs and religious beliefs while aligning with international human rights standards. Abdullahi An-Na'im emphasizes that effective legal reform must acknowledge the legitimacy of local cultures to gain acceptance in society.³⁴ Therefore, any changes to inheritance law must be sensitive to existing legal pluralism while prioritizing gender equality as recognized internationally.

Successful reform also depends on the active participation of religious leaders, traditional figures, and law enforcement to ensure that legal changes are not just documented but effectively implemented at the grassroots level. This process should incorporate *musyawarah mufakat*, a deeply rooted Indonesian cultural practice where consensus is sought to address community needs and concerns.³⁵

It is also important to clarify that while both Islamic inheritance law and customary law in Indonesia are often perceived as reinforcing gender inequality, the roots of this discrimination differ considerably. In Islamic inheritance law, the rationale for giving men a larger share stems from interpretations of the Qur'an (Surah An-Nisa:11), which support the idea that men bear the

³¹ Ahmad, "Legal Pluralism and Women's Rights in Southeast Asia," *Asian Journal of Comparative Law* 13, no. 1 (2020): 65–89.

³² Sulistyowati Irianto, "Customary Law vs State Law: Inheritance Cases in Indonesia," *Indonesian Journal of Law and Society*, 2013.

³³ Ann Mayer, *Gender and the Politics of Rights: Islamic Law and Human Rights* (Westview Press, 2007).

³⁴ An-Na'im, *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus*.

³⁵ Burns, *The Leiden Legacy: Concepts of Law in Indonesia*.

financial responsibility for their families. This arrangement is based more on principles of social responsibility than on mere assertion of power.

Conversely, gender discrimination in customary inheritance systems—especially in patrilineal societies like those of the Batak and Balinese—arises from sociocultural factors that place men as custodians of land, guardians of lineage, and bearers of the family name. Within this framework, women are often seen as having “left” their natal families upon marriage, disqualifying them from inheritance rights. This form of discrimination is sociological, rooted in cultural norms rather than theological mandates.

Recognizing these distinctions is vital for crafting effective legal reform strategies. To reinterpret Islamic inheritance norms, engagement with religious scholars and the application of progressive *ijtihad* methods is necessary. Meanwhile, transforming customary law requires deep cultural reconstruction and the empowerment of indigenous communities to challenge and change entrenched norms.

Comparison of International Islamic Inheritance Laws

1. Egypt: Inheritance Law System and Reform

In Egypt, inheritance law is shaped largely by Islamic Sharia. Following the principles outlined in the Qur'an, particularly Surah An-Nisa (4:11), men typically receive twice the inheritance share of women. This legal structure has faced significant criticism over the years for its inequality. In response, the Egyptian government has introduced various reforms aimed at improving inheritance distribution, especially for women who are heads of households.

During President Anwar Sadat's rule, Egypt initiated the “Infitah” policy, which signified a shift toward economic openness and brought about changes in several legal frameworks, including family law. However, Sharia-based inheritance law still largely stand firm. Despite persistent calls from academics and women's rights advocates for a comprehensive overhaul of this system, significant legal reforms focused specifically on inheritance have been slow to materialize, primarily due to resistance from religious scholars and authorities.³⁶ Although there have been amendments recognizing women's right to inherit property equally with men, many traditional provisions of Islamic law remain entrenched.³⁷

2. Pakistan: Challenges between Sharia and Custom

Pakistan's inheritance law mirrors that of Egypt in its foundation in Islamic Sharia, prescribing that men receive twice the share of women. However, the situation is further complicated by the influence of customary law, particularly in rural areas. In certain tribal communities, such as Balochistan and Khyber Pakhtunkhwa, women often find themselves entirely excluded from inheritance, despite even their legal entitlement under Sharia. Here, customary norms frequently overshadow women's rights.³⁸

³⁶ Valentine M. Moghadam, “Gender and National Development in Egypt,” *Social Research* 60, no. 3 (2018): 523–49; Dawoud S. El Alami, *Islamic Family Law in Egypt, Dalam Islamic Family Law, Ed. Carroll V. Findlay Dan Eugene Cotran* (London: Routledge, 2021).

³⁷ Fathi Mahmoud, *Gender Equality in Egyptian Inheritance Law: An Ongoing Challenge* (Cairo: Cairo University Press, 2020).

³⁸ Jamal J Nasir, *The Status of Women under Islamic Law and Modern Islamic Legislation* (Brill, 2009).

The legal framework in Pakistan is a complex blend of Sharia law, and customary law. The government has attempted to implement protective reforms, such as the Muslim Family Laws Ordinance (1961), which aims to uphold women's rights. However, the effectiveness of these laws is significantly influenced by local jurisdictions and courts, which sometimes still adhere strictly to customary practices, limiting women's rights to inheritance.³⁹

3. North African Countries: Morocco and Tunisia

In North Africa, countries like Morocco and Tunisia also base their inheritance laws on Islamic Sharia, but they exhibit notable differences in their legal approaches. Tunisia stands out as one of the most progressive Muslim countries regarding family law reform. The Code of Personal Status, enacted in 1956 under President Habib Bourguiba, prohibited polygamy and significantly enhanced women's rights in family matters. Despite this progress, the principles of Sharia still dictate that men inherit twice what women do.⁴⁰

In 2018, Tunisian President Beji Caid Essebsi proposed a groundbreaking law aimed at ensuring equal inheritance between men and women. This proposal sparked intense debate between conservative clerics and modernist advocates. While the law has not yet been fully enacted, Tunisia continues to be viewed as a beacon of progressive reform within the Islamic world.⁴¹

In Morocco, although the *Mudawana* (Family Code) of 2004 brought about important reforms that expanded women's rights, inheritance laws remain tightly linked to Sharia principles. Nevertheless, there is ongoing dialogue among human rights activists regarding the potential for further reforms to enhance women's inheritance rights.

4. ASEAN Countries

- a. **Thailand** stands out as an ASEAN nation that embraces the principle of equality in inheritance distribution. According to the Civil and Commercial Code, inheritance rights are granted equally to both men and women, regardless of religion or cultural background. This approach marks a significant advancement in promoting non-discriminatory inheritance practices, aligning with international norms such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).⁴² However, the situation in Southern Thailand is unique due to its predominantly Muslim population, leading to variations in legal practices compared to the rest of the country. While most of Thailand operates under civil law, the Muslim-majority provinces—such as Pattani, Narathiwat, Yala, and parts of Songkhla—follow Sharia law for issues related to marriage, divorce, and inheritance. The Muslim Marriage Act of 1946 grants special recognition to Muslims in these areas, allowing them to adhere to Sharia law in personal and family matters. In the context of inheritance, Sharia principles dictate that men receive double

³⁹ Gregory C Kozlowski, "Farzana Shaikh. Community and Consensus in Islam: Muslim Representation in Colonial India, 1860–1947.(South Asian Studies, Number 42.) New York: Cambridge University Press. 1989. Pp. Xiv, 257" (Oxford University Press, 1991).

⁴⁰ Mounira Charrad, *States and Women's Rights: The Making of Postcolonial Tunisia, Algeria, and Morocco* (Univ of California Press, 2001).

⁴¹ Eric Gobe, "The Reform of Family Law in Tunisia: The Re-Establishment of Gender Equality?," *Journal of North African Studies* 25, no. 3 (2020): 341–60.

⁴² General Recommendation No. 21: Equality in Marriage and Family Relations," *New York (NY): United Nations Committee on the Elimination of Discrimination against Women*, 1994.

the inheritance share compared to women, as stated in Surah An-Nisa (4:11). This means that sons inherit twice as much as daughters from their parents. While women do possess the right to inherit, their shares are considerably smaller, and in cases of a spouse's death, the husband typically receives a greater portion than the surviving wife.⁴³ Thus, Southern Thailand operates under a different legal framework from the rest of the country, allowing the application of Sharia law in family matters, including inheritance. Local Islamic courts, known as Sharia Commissions, are empowered to handle family and inheritance disputes involving Muslims, Operating under the Islamic Family Code. Although these courts function under the overall authority of the national legal system, they maintain jurisdiction Over Muslim family matters, which can sometimes lead to tensions between Sharia law practices and Thailand's civil law.⁴⁴

In addition to Sharia law, customary law also influences inheritance practices within some Muslim communities in Southern Thailand. As seen in other countries with pluralistic legal systems, like Indonesia or Malaysia, local customs can significantly impact how inheritance is divided. There are instances where traditional customs favor men or extended families, further limiting women's rights to inherit beyond those established by Sharia. However, despite these local customs, Sharia law remains the foundation for resolving inheritance disputes in Sharia courts, even when discrepancies arise between Sharia law and local cultural norms.⁴⁵

Challenges and Legal Reforms in Thailand

Inheritance law in Southern Thailand illustrates the legal complexities that arise from the intersection of Sharia law and the national civil law system. While Sharia provides a meaningful framework for Muslims in these provinces to adhere to their religious beliefs, customary norms and local influences also shape inheritance distribution practices. The future of inheritance law reform in Southern Thailand presents its share of challenges, especially amidst critiques from the national legal framework and human rights organizations. The issues are compounded by varying interpretations of Sharia among local clerics and courts. The coexistence of these differing views can complicate inheritance rights and create conflicts between the teachings of Sharia and the more secular national laws. Moreover, human rights groups continue to pressure for reforms that address provisions perceived as discriminatory against women. Yet, achieving significant legal reform is complicated due to the region's legal autonomy and cultural nuances, making changes to inheritance law a sensitive and intricate topic.⁴⁶

- b. Inheritance Law in Malaysia, Brunei and Singapore.** The inheritance law in Malaysia, Brunei, and Singapore reveal the unique legal frameworks these countries have established, particularly regarding their Muslim communities and the application of Sharia law. Although their legal systems and colonial histories differ, they share common

⁴³ Gregory C Kozlowski, "Islamic Law in the Modern World," *Update on L. Related Educ.* 16 (1992): 8.

⁴⁴ Ahmad Ibrahim, "The Legal Status of Muslims in Thailand," *Journal of Southeast Asian Law* 8, no. 2 (2016): 103–21.

⁴⁵ MB Hooker, "Legal Pluralism in Southeast Asia: The Interaction of Law and Custom in Thailand and Malaysia," *Asian Journal of Comparative Law* 12, no. 1 (2018): 65–78.

⁴⁶ Farid Omar, "Islamic Law and Gender Equality in Southern Thailand: Challenges and Opportunities," *International Journal of Islamic and Middle Eastern Law* 10, no. 2 (2020): 145–60.

commonalities in how Sharia law governs inheritance, while also integrating customary law and secular legal principles.

Malaysia operates under a dualistic legal system that distinguishes between Sharia law and civil law. For Muslims, inheritance is governed by Sharia principles, specifically the Faraid system, which stems from the Qur'an, notably in Surah An-Nisa: 11, where men inherit twice as much as women. The underlying rules of Faraid are consistent with those in other Muslim-majority countries: sons receive double the portion of daughters, husbands inherit more than wives, and so forth. Inheritance disputes for Muslims are adjudicated by the Sharia Court, which also oversees matters of marriage and divorce. Interestingly, the application of Faraid is sometimes flexible, particularly when a *Hibah* (a gift) is involved. This allows individuals to allocate portions of their property to specific beneficiaries during their lifetime, often aiming to enhance the rights of women or children. For non-Muslims, the Distribution Act 1958 applies, which facilitates a more equitable approach to inheritance distribution, allowing for wills and more balanced property division. This civil inheritance law reflects a legacy of British colonial influence and enables a more adaptable property distribution system.⁴⁷

In Brunei Darussalam, the inheritance system is robustly grounded in Islamic law, especially following the full implementation of *Hudud* in 2014. As an Islamic Sultanate, Brunei applies Sharia law comprehensively, including throughout its inheritance practices.⁴⁸ Similar to Muslim countries, Faraid governs inheritance distribution, stipulating that men receive twice the shares of women. However, Brunei adds a layer of flexibility through mechanisms like *Hibah* and *Wasiat* (wills). These allow individuals to allocate up to one-third of their property to beneficiaries not included in the Faraid guidelines. This approach can also benefit adopted children, who may not traditionally qualify for inheritance under Faraid. Although the influence of Sharia law is dominant, some customary practices still exist, particularly in rural areas; however, these are gradually diminishing with the strengthening of Sharia law under Sultan Hassanal Bolkiah.⁴⁹

Singapore adopts a different approach to inheritance law, marked by its secular and pluralistic legal system. The Administration of Muslim Law Act (AMLA)⁵⁰ governs matters related to Sharia law for Muslims, while the Inheritance (Family Provision) Act applies to non-Muslims. In Singapore, Sharia Courts have jurisdiction over inheritance cases involving Muslims, where the distribution typically follows Sharia principles, with males' heirs receiving double the share of female heirs as per the Quran. What sets Singapore apart from Malaysia and Brunei is that its emphasis on flexibility through wills. Muslims in Singapore have the opportunity to create wills that can designate up to one-third of their property outside the Faraid stipulations. This provision enables individuals

⁴⁷ Heinrich Scholler, "The Malaysian Legal System" (JSTOR, 1988); M B Hooker, "Introduction: Islamic Law in South-East Asia.," *Australian Journal of Asian Law* 4, no. 3 (2002): 213–31.

⁴⁸ Abdurrahman Raden Aji Haqqi, "Islamic Law in Brunei Darussalam: Past, Present and Future," *GIC Proceeding* 1 (2023): 110–16.

⁴⁹ Nathan Brown, *Islamic Law in Brunei: Tradition and Modernity in Southeast Asia* (California: University of California Press, 2020).

⁵⁰ Ahmad Ibrahim, "Islamic Law in Singapore: Faraid and AMLA," *Journal of Southeast Asian Legal Studies* 6, no. 1 (2019): 88–105.

to ensure that female relatives or others who might miss out under Faraid rules still receive a fair share of inheritance. For Non-Muslims, inheritance law also structured to allow flexibility, permitting distribution according to the wishes of the testator through a will. If a will is not present, the Intestate Succession Act provides for an equal distribution of inheritance between men and women.⁵¹

From the comparison of these countries, it is clear that the approach to inheritance distribution in Muslim-majority countries is shaped by a variety of factors including Sharia law, customary traditions, and the political and social contexts unique to each country. Egypt and Pakistan face significant challenges in reforming inheritance laws primarily due to the strong influence of conservative clerics and entrenched customary practices. In contrast, Tunisia and Morocco have made strides in family law reform, though inheritance laws remain a contentious issue. Moving to Thailand, which generally follows a civil law system, men and women enjoy equal inheritance rights regardless of gender or religion,⁵² apart from the regions in Southern Thailand where Sharia law and local customs are still practiced. In Malaysia, Brunei, and Singapore, we see examples of legal pluralism, where multiple legal frameworks exist side by side. In these three countries, Sharia serves as the primary basis for inheritance law for Muslims. However, local customs, state policies, and secular legal systems significantly influence how these laws are implemented. In Malaysia, Sharia law governs inheritance for Muslims but is also influenced by customary laws and civil law, allowing for some flexibility. Brunei has a strong Sharia framework, particularly after the implementation of the Sharia Act in 2014, and the influence of customary law is gradually waning. On the other hand, Singapore stands out for its flexibility, allowing Muslims to utilize wills that can distribute up to one-third of their assets outside the traditional Faraid framework, accommodating modern needs and preferences.

Analyzing these legal structures through the lens of Lawrence Friedman's theories⁵³ reveals that the legal frameworks are shaped by specific institutions and enforcement agencies. In Egypt, inheritance law is predominantly enforced through religious courts that adhere to Sharia principles. Despite the government's efforts to modernize the system—most notably during Anwar Sadat's era—reforms related to inheritance distribution often encounter pushback from religious authorities. Pakistan has a mixed legal system that incorporates Sharia, customary law, and elements of secular law. In rural areas, customary norms still hold significant sway over inheritance practices, even with an established Sharia court system that operates under the national court framework. These local customs often dictate the outcomes of inheritance disputes. In North Africa, Tunisia's legal structure is more progressive than its regional counterparts, particularly due to the Code of Personal Status, which enhances women's rights; still, inheritance distribution remains bound by Sharia principles. Conversely, Morocco's *Mudawana* (Family Code) reflects some reforms for women's rights, yet the inheritance laws still largely adhere to Sharia norms. Finally, in Southern Thailand, the legal framework recognizes Sharia law for Muslim residents, while the civil law applies throughout most of the country. Local Sharia courts oversee inheritance and family matters for Muslims but operate under the supervision of the secular national courts. In Malaysia, the system is dualistic,

⁵¹ Kevin Tan, *The Singapore Legal System* (NUS Press, 1999).

⁵² Siam Legal International, "Civil and Commercial Code of Thailand, Section 1622" (n.d.).

⁵³ Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1987).

clearly separating Sharia law from civil law, with Sharia courts handling Muslim inheritance cases. In Brunei, the Sharia legal system is robust, especially following 2014 reform, and in Singapore, the Administration of Muslim Law Act (AMLA) designates jurisdiction over Muslim inheritance matters to Sharia Courts, while secular courts manage non-Muslim cases.

Legal Substance Analysis in Various Countries

In Egypt, inheritance law is still largely dominated by Sharia principles, particularly those outlined in Surah An-Nisa (4:11), which states that men receive double the share of women. Despite various efforts aimed at increasing gender equality, the laws surrounding inheritance remain quite conservative, especially concerning women's inheritance rights. Pakistan follows a similar legal framework based on Sharia law, but here, customary practices significantly influences inheritance distribution, particularly in some regions. Efforts to reform inheritance laws, such as through the Muslim Family Laws Ordinance 1961, aimed to promote more equitable outcomes. However, the effectiveness of these reforms has often been limited due to persistent influence of traditional customs.⁵⁴ In Tunisia, the legal landscape is more progressive in many family law aspects, including the prohibition of polygamy; yet, when it comes to inheritance, the law still adheres to Sharia, which tends to favor men over women. Tunisia has made strides toward gender equality by proposing reforms in 2018 that aim for full equality in inheritance rights, reflecting its commitment to aligning its laws with international norms. In Southern Thailand, the inheritance for Muslims also follows Sharia principles, with men typically receiving twice the share allotted to women. Although the substance of these laws is consistent with many Muslim-majority countries, local customs can sometimes worsen gender inequalities. Malaysia has a structured approach to inheritance law through Faraid, which delineates the distribution of inheritance based on Qur'anic teachings. However, flexibility is present through mechanisms like *hibah* (gifts) or wills, allowing for more equitable outcomes. Brunei employs a similar system, following the principles of Faraid while also allowing for some flexibility in will distribution through *wajibah* (legal wills).⁵⁵ Singapore stands out for its significant flexibility, permitting Muslims to allocate up to one-third of their estate outside the traditional Faraid guidelines. This provision helps ensure that family members who might be disadvantaged under Faraid still receive adequate support. According to Friedman, legal structure encompasses a society's attitudes, beliefs, and values towards the law. This culture heavily influences how laws are interpreted, applied, and received by society. In Egypt, the legal structure is deeply rooted in Sharia and characterized by religious conservatism. Even with recent reforms aimed at modernization, religious clerics and authorities continue to hold significant sway in enforcing Sharia provisions, particularly in inheritance matters. In Pakistan, the legal culture reflects a strong influence of customary norms, especially in rural areas like Balochistan and Khyber Pakhtunkhwa. While Sharia acknowledges women's inheritance rights, these customary practices often deny women any share of inheritance, perpetuating gender inequality. Tunisia's legal culture tends to be more modern and progressive compared to other Muslim countries. Former President Bourguiba championed a legal culture that sought greater equality through family

⁵⁴ Badriah Khaleel, "Critical Discourse Analysis of Pakistani Inheritance Law and Justice System for Women," *Pakistan Social Sciences Review* 7, no. III (September 30, 2023), [https://doi.org/10.35484/pssr.2023\(7-III\)08](https://doi.org/10.35484/pssr.2023(7-III)08).

⁵⁵ Opik Roziqin and Ah. Fathonih, "The Evolution of Marriage and Inheritance Law in Brunei Darussalam: A Comparative and Historical Study," *Indonesian Journal of Advanced Research* 3, no. 11 (November 25, 2024): 1675–88, <https://doi.org/10.55927/ijar.v3i11.12117>.

law reforms, although inheritance laws still follow Sharia principles. In Southern Thailand, the legal culture blends with local customs. While Sharia serves as the foundation for inheritance law, indigenous customs often discriminate against women, complicating their rights. Malaysia's legal framework is influenced by both Faraid and Sharia,⁵⁶ but also offers flexibility through gifts and wills, providing Muslims with some options for inheritance distribution. In Brunei, the legal culture is predominantly theocratic, with full adherence to Sharia law. In contrast, Singapore features a secular and pluralistic legal culture that respects Sharia provisions for Muslims while facilitating a more flexible legal environment overall.⁵⁷

From the perspective of Friedman's theory, a comparison of inheritance laws across these countries highlights several key points:

1. **Legal Structure Variability:** The degree of legal pluralism varies significantly by country. For instance, in Pakistan and Southern Thailand, legal pluralism creates a complex interplay between Sharia law and customary law. In contrast, nations like Tunisia and Malaysia have undertaken reforms that allow for greater flexibility in the application of Sharia.
2. **Conservative Legal Substance:** Many countries with Sharia-based legal systems maintain a conservative approach it comes to inheritance distribution. However, there are signs of progress in Tunisia and Malaysia, where flexibility through gifts or limited legal reforms is being introduced.
3. **Influence of Legal Culture:** Legal culture is heavily impacted by religious and customary norms. In countries such as Pakistan and Southern Thailand, patriarchal customs dominate, exacerbating gender inequality. In contrast, Tunisia exhibits a more progressive legal culture that encourages gender equality, although it faces resistance from certain religious factions.

When comparing Indonesia to countries like Pakistan and Thailand, we find that Indonesia's legal structure shares similarities, especially in its pluralistic inheritance laws, often referred to as a mixed legal system. In this context, the role of civil courts, religious courts, and customary institutions play a crucial part in determining inheritance cases. There has been notable progress in decision-making, particularly for heirs from different religious backgrounds, who can utilize institutions like the *Wajibah Will*. However, it is important to note that, normatively speaking, the KHI primarily caters to biological children and adoptive parents. To ensure justice is applied uniformly, it is essential to enhance coordination among these different legal systems. Indonesia's legal framework should integrate better to address conflicts between these systems, especially concerning inheritance and gender rights.

The legal culture in Indonesia significantly influences inheritance practices. For instance, patriarchal norms present within the interpretations of both Islamic law and customary law result in unequal treatment of men and women regarding inheritance rights. This disparity is particularly evident in the Bugis, Batak, and Javanese regions. Lawrence Friedman emphasizes that legal

⁵⁶ Lorinza Hartomo Razy, "Islamic Inheritance Law in The Modern Era: Contemporary Aspects and Applications," *AN NUR: Jurnal Studi Islam* 15, no. 2 (2023): 287–99, <https://doi.org/https://doi.org/10.37252/annur.v15i2.568>.

⁵⁷ Hyder Gulam, "THE APPLICATION OF SHARIAH (ISLAMIC LAW) IN SOME DIFFERENT COUNTRIES AND ITS IMPLICATIONS," *Jurnal Syariah* 24, no. 2 (July 13, 2017): 321–40, <https://doi.org/10.22452/js.vol24no2.7>.

culture reform is needed to shift societal attitudes towards gender and inheritance. We must promote more egalitarian interpretations that align with international standards, such as those set by CEDAW. This analysis highlights that traditional and religious beliefs—especially in areas with strong patriarchal systems—must be addressed for legal reform to be effective. In terms of legal substance, inheritance law in Indonesia is pluralistic, often based on Sharia, customary law, or national law. This complexity can lead to inconsistencies, highlighting the need for clearer and more integrated legal guidelines to ensure gender equality. Reviewing the KHI and reforming local interpretations of Sharia law may help create a more equitable distribution of inheritance rights for women. Aligning national inheritance laws with international conventions like CEDAW could alleviate discriminatory practices. This would require reinterpreting both Islamic laws, as proposed by An-Na'im, and customary law, ensuring that such reforms respect local cultural contexts. Michael Walzer's concept of "complex justice"⁵⁸ is particularly relevant here, supporting the idea that the principles of justice cannot be applied uniformly across different societal contexts. Each area of life—be it economics, politics, and culture—has unique principles of justice that must be considered when addressing issues like inheritance rights and social roles. Understanding the specific context of Indonesia, where customary, religious, and modern laws often overlap, is crucial for applying just practices.

This study introduces a novel interdisciplinary approach to understanding inheritance law in Indonesia, blending frameworks like Feminist Legal Theory, Legal Pluralism, Michael Walzer's Complex Justice, and An-Na'im's Theory. It underscores the contradictions between Indonesian inheritance laws and international standards, provides comparative analysis with other countries, and investigates local practices that perpetuate gender inequality. The research aims not only to identify these issues but also to suggest practical reforms for advancing gender equality in inheritance law.

CONCLUSION

In conclusion, this study reveals that gender inequality in Indonesian inheritance law is perpetuated by the coexistence of multiple legal systems—Islamic law, customary law, and civil law—within a mixed legal framework. This situation often reinforces patriarchal interpretations and discriminatory norms. While Islamic inheritance law does grant women a share, albeit an unequal one, many customary systems still completely deny women's inheritance rights. Through a comparative analysis with countries like Egypt, Tunisia, Morocco, Pakistan, Thailand, Malaysia, and Brunei Darussalam, this research highlights Indonesia's relative shortcomings in progressing toward gender equality in inheritance laws. Utilizing Lawrence Friedman's legal system theory, the study finds that the interaction of legal structure, substance, and culture in Indonesia helps maintain gender bias. The application of Feminist Legal Theory and Legal Pluralism further reveals how overlapping legal jurisdictions entrench inequality. Additionally, the insights from Abdullahi An-Na'im and Michael Walzer suggest that justice within Islamic law can be contextual and pluralistic. Thus, it is recommended that legal reform in Indonesia embrace contextual *ijtihad* to reinterpret Islamic inheritance provisions, challenge patriarchal customs, and foster a participatory approach that involves religious scholars, customary leaders, and legal institutions, all while aligning national laws with international human rights standards.

⁵⁸ Walzer, *Spheres of Justice: A Defense of Pluralism and Equality*.

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