

Constitutionally-Bounded Legal Pluralism: Reconciling Inheritance Law and Women's Rights in Indonesia

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Abstract: Indonesia's pluralistic legal order sustains a structural contradiction between positive inheritance law and customary (adat) traditions that systematically denies women their constitutionally guaranteed equal inheritance rights. Although the KUHPerdata establishes bilateral succession irrespective of sex, and the Kompilasi Hukum Islam provides enforceable inheritance entitlements for Muslim women, patrilineal customary systems operative among the Batak Toba, Sahu Tribe, Dayak, and Balinese Hindu communities exclude women from inheriting productive assets, particularly land, in direct contravention of Articles 27(1), 28D(1), and 28H(2) of the UUD 1945. Employing a normative legal research methodology through statutory, conceptual, and comparative approaches, this study analyzes primary legal materials including the UUD 1945, KUHPerdata, KHI, and Supreme Court jurisprudence, alongside secondary academic literature. The findings establish that the contradiction constitutes a failure of constitutional enforcement rather than a legitimate exercise of legal pluralism: Article 18B(2)'s recognition of customary rights is conditioned on non-contradiction with national law, a condition that gender-discriminatory inheritance norms demonstrably fail to satisfy. Reconciliation requires a five-pillar framework: legislative affirmation of constitutional supremacy over incompatible customary norms; binding Supreme Court jurisprudential guidance; constitutionally-bounded legal pluralism through institutionalized customary governance bodies; community legal education and women's empowerment; and a comprehensive national inheritance statute establishing a universal gender-equality floor across all inheritance systems.

1. Introduction

Law, at its most fundamental, is a system of enforceable social ordering. When multiple legal systems operate simultaneously over the same subjects and the same objects of regulation, the question of which system governs and whose rights are thereby protected or denied becomes not merely a technical dispute among jurists but a material question of justice. Nowhere is this tension more consequential, and more persistently unresolved, than in the inheritance rights of

women within Indonesia's pluralistic legal order. Indonesia is one of the few nations in the world where three normatively distinct inheritance regimes civil law derived from the Dutch Burgerlijk Wetboek (BW/KUHPerdata), Islamic inheritance law (*faraid*) as codified in the Kompilasi Hukum Islam (KHI), and hundreds of locally operative customary (*adat*) inheritance systems coexist within a single constitutional framework that formally guarantees gender equality.¹ The coexistence of these systems is not a transient or incidental feature; it is structurally entrenched, institutionally reproduced, and politically resistant to reform. The result is a condition that may be described as a *legal pluralism of inequality*: a state of affairs in which the formal commitment of positive law and constitutional norms to women's equal inheritance rights is systematically negated, at the level of lived practice, by the continued operation of customary regimes whose authority rests not on constitutional sanction but on communal enforcement, social pressure, and the normative inertia of tradition.²

The scope of this problem is neither narrow nor peripheral. Across Indonesia's ethnically diverse communities, the exclusion of women from inheritance whether total or partial, formal or informal, sanctioned by community leadership or simply acquiesced in under social pressure operates through a variety of kinship-based normative architectures. In patrilineal communities, the logic of male-line succession functions as an organic law that precedes and, in the estimation of its practitioners, supersedes any statutory provision to the contrary. Among the Batak Toba of North Sumatra, the traditional exclusion of daughters from inheriting productive agricultural land has persisted as a structural norm even as Supreme Court jurisprudence has progressively moved toward gender-equitable outcomes in inheritance disputes.³ The Sahu Tribe of West Halmahera represents an equally stark case: their customary law restricts inheritance exclusively to male heirs, leaving daughters without legal entitlement even in the absence of male descendants a position that stands in direct contradiction to Articles 830–873 of the KUHPerdata, which establish bilateral succession as a right irrespective of the heir's sex.⁴ The Dayak communities of Kalimantan, meanwhile, present a variant in which widows are rendered particularly vulnerable, subject to displacement from jointly-held family land upon the death of their husbands through the operation of customary rules that vest primary inheritance authority in the male members of the deceased's lineage rather than in the surviving spouse.⁵ Even in communities organized on matrilineal principles most notably the Minangkabau of West Sumatra, whose system of *harta pusaka* inheritance through the female line has attracted considerable scholarly attention the intersection of matrilineal *adat* with the Islamic *faraid* principles mandated by the KHI for Muslim heirs generates new contradictions and new sites of gender contestation that are not resolved by either system operating alone.⁶ In

¹ Raihana J.S. Keliat and Tamaulina B. Sembiring, "Distribution of Inheritance According to Customary Law and Civil Law in Indonesia," *Indonesian Journal of Jurisprudence* 1, no. 3 (2024): 1–7. <https://doi.org/10.62872/x1yp5934>.

² Umi Supraptiningsih, Hasse Jubba, Erie Hariyanto, and Theadora Rahmawati, "Inequality as a Cultural Construction: Women's Access to Land Rights in Madurese Society," *Cogent Social Sciences* 9, no. 1 (2023): 2194733. <https://doi.org/10.1080/23311886.2023.2194733>.

³ Dwi G.R. Silalahi, Lagat P.P. Siadari, Fadlan, Erniyanti, and Soerya Respationo, "From Patrilineal Tradition to Gender Equity: The Evolution of Inheritance Law in Indonesia's Batak Toba Community," *Law* 2, no. 2 (2024): 129–143. <https://doi.org/10.61996/law.v2i2.66>.

⁴ Risal Albindra Almashoor, Anggalana Anggalana, Margaretha Sitanggang, and Eddy Rifai, "Justice of Inheritance Rights for Women in Sahu Tribe Customary Law: A Comparative Study and Efforts Toward Harmonization," *Cepalo* 9, no. 1 (2025): 53–68. <https://doi.org/10.25041/cepalo.v9no1.4027>.

⁵ Yuni Priskila Ginting and Irvin Atara, "Pengaruh Adat Istiadat Terhadap Penerapan Hukum Waris di Indonesia: Studi Kasus Suku Dayak," *Jurnal Hukum dan HAM Wara Sains* 3, no. 3 (2024): 402–412. <https://doi.org/10.58812/jhhws.v3i03.1625>.

⁶ S. Birawa and S. Assyifa, "Perubahan yang Terjadi dalam Perkembangan Hukum Waris Adat dari Masa ke Masa," *Kultura: Jurnal Ilmu Hukum, Sosial, dan Humaniora* 1, no. 6 (2023): 26–30. <https://doi.org/10.572349/kultura.v1i6.572>.

Balinese society, the persistence of patrilineal *adat* norms within the Hindu customary framework has historically rendered daughters legally secondary to sons in matters of inheritance, notwithstanding the formal guarantees of equality within the national civil law system.⁷ And in Madurese communities of East Java, ethnographic and socio-legal research has documented how women's exclusion from land inheritance is not experienced as an aberration but is actively reproduced as a cultural norm a "construction of inequality" embedded in social relations of gender and property that operates largely beyond the reach of formal legal intervention.⁸

The consequences of this structured exclusion are not merely juridical; they are profoundly material. The relationship between women's secure access to inherited property particularly land and their economic autonomy, social agency, and household bargaining power is by now extensively documented. Women who inherit and control productive assets are more likely to invest in the education and health of their children, achieve greater independence from male economic dominance, and participate more actively in household and community decision-making.⁹ Conversely, women who are denied inheritance rights are exposed to conditions of economic dependency that perpetuate intergenerational poverty and constitute, in the analysis of several recent studies, a structural precondition for gender-based violence.¹⁰ The denial of inheritance is, in this sense, not a discrete legal wrong that can be corrected by a single statutory intervention; it is a systemic mechanism of economic subordination whose eradication requires both normative reform and the transformation of the institutional and cultural conditions through which it is sustained.¹¹

Against this backdrop, the existing scholarly literature has made substantial but ultimately partial contributions to understanding the problem. Silalahi et al. have documented the evolutionary trajectory of Batak Toba inheritance law from strict patrilineal exclusion toward greater gender equity, tracing the role of judicial intervention and community-level negotiation in shifting normative practice.¹² Stoyanova has analyzed Indonesian court decisions applying customary inheritance norms, concluding that judicial bodies have increasingly moved toward constitutionally-grounded gender-equitable rulings but without resolving the underlying normative conflict between *adat* authority and statutory law.¹³ Almashoor et al.'s recent study of the Sahu Tribe provides a focused comparative analysis demonstrating the incompatibility of patrilineal customary norms with civil law inheritance provisions and proposing harmonization as a policy objective.¹⁴ At the intersection of Islamic and customary law, Ginting and Atara have examined how the cultural authority of *adat* norms among Dayak communities deflects the application of both Islamic and national civil law in inheritance matters.¹⁵ Nurmala and Koni have compared Islamic and Javanese customary inheri-

⁷ Anastasia S. Titisari, Luh K.R. Swandewi, C.F.S. Warren, and Anja Reid, "Stories of Women's Marriage and Fertility Experiences: Qualitative Research on Urban and Rural Cases in Bali, Indonesia," *Gates Open Research* 7 (2024): 124. <https://doi.org/10.12688/gatesopenres.14781.2>.

⁸ Supraptiningsih et al., "Inequality as a Cultural Construction," 5-9.

⁹ Nayana Bose and Shreyasee Das, "Intergenerational Effects of Improving Women's Property Rights: Evidence from India," *Oxford Development Studies* 49, no. 3 (2021): 277-290. <https://doi.org/10.1080/13600818.2021.1899154>.

¹⁰ Sajida Parveen, Bilal Ahmad, Tahira Iram, and Yasir Rasool, "Women Empowerment in Inherited Land Rights: End of Violence in Rural Areas," *The Journal of Adult Protection* 24, no. 5/6 (2022): 231-242. <https://doi.org/10.1108/jap-05-2022-0009>.

¹¹ Md. Mahiuddin Sabbir, Md. Aziz Ullah, and Md. Bayazid Bostami, "Impact of Access to Land on Women's Economic Well-Being: An Empirical Evidence from Rural Bangladesh," *SAGE Open* 14, no. 1 (2024): 1-14. <https://doi.org/10.1177/21582440241227705>.

¹² Silalahi et al., "From Patrilineal Tradition to Gender Equity," 130-138.

¹³ Desislava Stoyanova, "Gender Equality in Customary Inheritance Law in Indonesian Court Decisions," *Journal of Social Science and Humanities* 6, no. 8 (2024): 149-153. [https://doi.org/10.53469/jssh.2024.6\(08\).29](https://doi.org/10.53469/jssh.2024.6(08).29)

¹⁴ Almashoor et al., "Justice of Inheritance Rights for Women in Sahu Tribe," 54-60.

¹⁵ Ginting and Atara, "Pengaruh Adat Istiadat," 403-409.

tance norms in a framework that illuminates the structural divergences between the two systems but does not address their constitutional resolution.¹⁶ Hamdani et al. have investigated gender justice in inheritance distribution in South Aceh, concluding that Islamic principles of inheritance are capable of generating gender-equitable outcomes when interpreted through a justice-oriented jurisprudence, though the same cannot be said of patrilineal *adat* systems.¹⁷ Yusa has proposed a paradigm shift in the interpretation of Balinese Hindu customary law to accommodate women's inheritance rights, engaging with judicial and normative reform simultaneously.¹⁸ Sihotang and Chansrakao have examined the theoretical basis for integrating customary and national law within Indonesia's Pancasila constitutional framework, identifying the "prismatic law state" as a normative model for managing legal pluralism.¹⁹ Bachri et al. have addressed the stigmatization of women who assert inheritance rights within Islamic communities, highlighting the socio-cultural barriers that persist even where legal reform has been achieved.²⁰

Yet for all its richness, this body of literature shares a common limitation: it operates primarily at the level of description and advocacy within individual ethnic, regional, or religious communities, without constructing a cross-systemic normative framework capable of resolving the fundamental constitutional question that underlies all of these disputes. No existing study has systematically mapped the hierarchy of normative authority from the UUD 1945's constitutional supremacy through to the KUHPerdata, the KHI, and the recognized status of *adat* law under Article 18B(2) and derived from that mapping a principled, institutionally operational model for adjudicating conflicts between customary inheritance practice and positive law gender guarantees. The field has produced detailed empirical documentation of the problem but has not yet produced a constitutionally grounded normative theory of its resolution. This is the intellectual gap that the present research addresses. It is a gap of genuine consequence, because without such a framework, case-by-case judicial reform however progressive remains systematically vulnerable to reversal, reinterpretation, and the centrifugal force of legal pluralism itself.²¹

This article advances two interconnected arguments. First, that the contradiction between positive inheritance law and customary traditions in Indonesia constitutes a *structural normative conflict* not a cultural misunderstanding or a temporary lag in legal modernization whose resolution requires the explicit prioritization of constitutional gender equality guarantees over incompatible customary norms through a principled application of the *lex superior* doctrine and the constitutional duty of non-discrimination.²² Second, that achieving this resolution does not require the abolition of legal pluralism or the erasure of customary legal identity; rather, it requires the

¹⁶ Leni Nurmala and Yoslan K. Koni, "Differences and Similarities in the Division of Inheritance Law According to Islamic Law and Javanese Customary Law in Indonesia in a Comparative Study of Law," *International Journal of Educational Review, Law and Social Sciences* 2, no. 1 (2022): 129–142. <https://doi.org/10.54443/ijerlas.v2i1.134>.

¹⁷ Fikri Hamdani, Agustin Hanafi, Fakhurrizi M. Yunus, and Soraya Devy, "Gender Justice in Inheritance Distribution Practices in South Aceh, Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 2 (2023). <https://doi.org/10.22373/sjkh.v7i2.16688>.

¹⁸ Bagus Hermanto I Gede Yusa, "Reconstruct the Paradigm Shift of Inheritance Rights for Balinese Hindu Women," *Russian Law Journal* 11, no. 3s (2023). <https://doi.org/10.52783/rlj.v11i3s.759>.

¹⁹ Amri P. Sihotang and Ruetaitip Chansrakao, "Integration Between Customary Law and National Law: An Effort to Build a Pancasila Prismatic Law State," *SASI* 29, no. 2 (2023): 248–261. <https://doi.org/10.47268/sasi.v29i2.1304>.

²⁰ Syabbul Bachri, Sudirman Sudirman, Erfaniah Zuhriah, and Ramadhita Ramadhita, "Contextualizing Islamic Inheritance Law in Indonesia: Addressing Negative Stigma," *Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam* 7, no. 2 (2024): 170–189. <https://doi.org/10.30659/jua.v7i2.35041>.

²¹ Almashoor et al., "Justice of Inheritance Rights for Women in Sahu Tribe," 55.

²² Sihotang and Chansrakao, "Integration Between Customary Law and National Law," 249–255.

construction of a *constitutionally-bounded pluralism* a framework in which customary inheritance practices are recognized, accommodated, and given institutional space, but only to the extent that they do not contravene the irreducible constitutional floor of women's equal inheritance rights.²³ The novelty of this research lies in three specific contributions that distinguish it from all prior work in this domain: (1) the systematic constitutional mapping of the normative hierarchy governing inheritance conflicts across Indonesia's three co-existing legal systems, an analysis that has not previously been undertaken at a cross-systemic level; (2) a comparative normative analysis that spans patrilineal, matrilineal, and bilateral inheritance regimes simultaneously, rather than treating each ethnic community as an isolated case an approach that reveals structural patterns of exclusion invisible at the community level; and (3) the derivation of a constitutionally-grounded harmonization framework that is not merely prescriptive in the abstract but specifies concrete institutional mechanisms legislative, judicial, and administrative through which the identified normative conflicts can be resolved in a manner that is both constitutionally mandatory and culturally sustainable.²⁴ The research questions that guide this inquiry are, accordingly, the following: first, in what specific ways and through what normative mechanisms does customary inheritance law, as practiced across patrilineal and selected matrilineal communities in Indonesia, contradict the guarantees of positive law and constitutional gender equality?; and second, what constitutionally-grounded legal framework can most effectively and sustainably harmonize customary inheritance practice with the state's affirmative constitutional obligation to guarantee women's equal inheritance rights, without eliminating the legitimate space of legal diversity?²⁵

2. Method

This research employs a normative legal research methodology, a mode of scholarly inquiry that is both foundational and indispensable within the tradition of Indonesian legal science. Normative legal research operates by placing legal norms rather than social facts or behavioral data as the primary object of investigation.²⁶ Its distinguishing characteristic is the prescription of what the law *ought to be* in light of what the law *is*, thereby generating analytical conclusions that are simultaneously descriptive of existing normative arrangements and prescriptive of what those arrangements require by way of reform, interpretation, or application.²⁷ This prescriptive orientation is particularly suited to the subject matter of the present research, which seeks not merely to document the existence of a contradiction between positive inheritance law and customary traditions in Indonesia, but to evaluate that contradiction against a coherent constitutional and statutory standard, and to derive from that evaluation a principled normative framework for its resolution.²⁸

²³ Muhammad F. Haque, Sohirin M. Solihin, Nadzrah Ahmad, and Mohd. S. Jani, "Women Rights to Inheritance in Muslim Family Law: An Analytical Study," *International Journal of Islamic Business and Management* 4, no. 1 (2020): 15–26. <https://doi.org/10.46281/ijibm.v4i1.543>.

²⁴ Stoyanova, "Gender Equality in Customary Inheritance Law," 150–152.

²⁵ Keliat and Sembiring, "Distribution of Inheritance According to Customary Law and Civil Law in Indonesia," 4–6.

²⁶ Risal Albindra Almashoor, Anggalana Anggalana, Margaretha Sitanggang, and Eddy Rifai, "Justice of Inheritance Rights for Women in Sahu Tribe Customary Law: A Comparative Study and Efforts Toward Harmonization," *Cepalo* 9, no. 1 (2025): 54. <https://doi.org/10.25041/cepalo.v9no1.4027>.

²⁷ Dwi G.R. Silalahi, Lagat P.P. Siadari, Fadlan, Erniyanti, and Soerya Respationo, "From Patrilineal Tradition to Gender Equity: The Evolution of Inheritance Law in Indonesia's Batak Toba Community," *Law* 2, no. 2 (2024): 131. <https://doi.org/10.61996/law.v2i2.66>.

²⁸ Raihana J.S. Keliat and Tamaulina B. Sembiring, "Distribution of Inheritance According to Customary Law and Civil Law in Indonesia," *Indonesian Journal of Jurisprudence* 1, no. 3 (2024): 3. <https://doi.org/10.62872/x1yp5934>.

Three research approaches are employed in an integrated and mutually reinforcing manner. The first is the *statutory approach*, which involves a systematic analysis of all relevant legislative instruments bearing on the regulation of inheritance rights in Indonesia. The primary legal materials examined through this approach include the 1945 Constitution (UUD 1945), specifically Articles 27(1), 28D(1), and 28H(2), which establish the constitutional basis for the guarantee of gender equality and non-discrimination; Articles 830 to 1130 of the Civil Code (KUHPerdata/BW), which govern inheritance for non-Muslim citizens within the bilateral succession framework; Articles 171 to 209 of the Kompilasi Hukum Islam (KHI), which regulate Islamic inheritance (*faraid*) including the *wasiat wajibah* provision; Law Number 1 of 1974 on Marriage as amended by Law Number 16 of 2019, insofar as its provisions on matrimonial property and family structure intersect with the distribution of inheritance; and Article 18B(2) of the UUD 1945, which provides constitutional recognition of customary law communities and their traditional rights subject to the condition of non-contradiction with the national legal order.²⁹ The statutory approach enables this research to identify the precise normative content of positive law's guarantees for women's inheritance rights, to map the points at which customary inheritance practices deviate from those guarantees, and to trace the constitutional hierarchy within which those deviations must be evaluated.³⁰

The second approach is the *conceptual approach*, which operates by identifying, analyzing, and applying the doctrinal concepts and legal principles that govern the resolution of normative conflicts within plural legal orders. The central concepts engaged through this approach include the principle of *lex superior derogat legi inferiori* whereby norms of higher hierarchical standing supersede incompatible norms of lower standing as the foundational rule for resolving conflicts between constitutional gender equality guarantees and customary inheritance norms that contravene them; the concept of *constitutionally-bounded pluralism*, which this research advances as an analytical framework for accommodating legal diversity within the constraints imposed by constitutional supremacy; the doctrine of non-discrimination as an affirmative state obligation under both domestic constitutional law and international human rights instruments including CEDAW; and the principle of *maqashid al-syariah* as interpreted through a gender-equity lens within Islamic jurisprudence, which provides an internal Islamic doctrinal basis for re-reading inheritance norms in a manner consistent with contemporary standards of gender justice.³¹ The conceptual approach provides the theoretical architecture through which the statutory and comparative findings of this research are synthesized into a normatively coherent framework.³²

The third approach is the *comparative approach*, which is employed at two distinct levels. At the intra-Indonesian level, the comparative approach is used to analyze the inheritance norms and practices of three kinship system archetypes patrilineal (represented by the Batak Toba, Sahu Tribe, and Dayak communities), matrilineal (represented by the Minangkabau), and bilateral (represent-

²⁹ Amri P. Sihotang and Ruetaitip Chansrakaeo, "Integration Between Customary Law and National Law: An Effort to Build a Pancasila Prismatic Law State," *SASI* 29, no. 2 (2023): 249–251. <https://doi.org/10.47268/sasi.v29i2.1304>.

³⁰ Desislava Stoyanova, "Gender Equality in Customary Inheritance Law in Indonesian Court Decisions," *Journal of Social Science and Humanities* 6, no. 8 (2024): 150. [https://doi.org/10.53469/jssh.2024.6\(08\).29](https://doi.org/10.53469/jssh.2024.6(08).29).

³¹ Syabbul Bachri, Sudirman Sudirman, Erfaniah Zuhriah, and Ramadhita Ramadhita, "Contextualizing Islamic Inheritance Law in Indonesia: Addressing Negative Stigma," *Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam* 7, no. 2 (2024): 172–175. <https://doi.org/10.30659/jua.v7i2.35041>.

³² Leni Nurmala and Yoslan K. Koni, "Differences and Similarities in the Division of Inheritance Law According to Islamic Law and Javanese Customary Law in Indonesia in a Comparative Study of Law," *International Journal of Educational Review, Law and Social Sciences* 2, no. 1 (2022): 131. <https://doi.org/10.54443/ijerlas.v2i1.134>.

ed by the civil law system operative for non-Muslims) in order to identify the structural patterns of gender-based exclusion that are common across systems, as well as the points of divergence that require differentiated normative responses.³³ At the international comparative level, the research draws selectively on legal reforms undertaken in other jurisdictions confronting comparable tensions between customary inheritance law and gender equality obligations including South Africa's landmark dismantling of the rule of male primogeniture in customary succession law, and the progressive jurisprudential developments in India and Bangladesh on women's inheritance and property rights in order to illuminate the range of institutional mechanisms available for achieving harmonization.³⁴

The legal materials employed in this research are organized into three categories in accordance with the established methodology of normative legal research in Indonesia.³⁵ Primary legal materials consist of binding legal norms with direct authority over the subject matter of the research: the UUD 1945; the KUHPerdata; the KHI; Law Number 1 of 1974 on Marriage as amended; Law Number 39 of 1999 on Human Rights; Supreme Court jurisprudence on *wasiat wajibah* and customary inheritance disputes; and relevant Constitutional Court decisions.³⁶ Secondary legal materials consist of non-binding materials that illuminate, contextualize, and inform the interpretation of primary materials: peer-reviewed academic articles, legal monographs, commentary and doctrinal analysis, and the findings of prior empirical and normative studies of inheritance law in Indonesia.³⁷ Tertiary legal materials consist of reference materials including legal dictionaries, encyclopedias, and general reference works used to clarify terminology and conceptual boundaries.³⁸

The analysis proceeds through a qualitative, interpretive, and prescriptive mode. Legal norms are interpreted grammatically by examining their textual content systematically by situating each norm within the broader structure of the legal order to which it belongs and teleologically by evaluating norms in light of the purposes they are designed to serve, including the constitutional commitment to gender equality and the protection of women's fundamental rights.³⁹ The prescriptive dimension of the analysis moves from the identification of normative conflicts to the evaluation of available resolution strategies and, ultimately, to the derivation of a constitutionally-grounded harmonization framework that addresses the identified gaps with normative precision and institutional feasibility.⁴⁰

³³ Yuni Priskila Ginting and Irvin Atara, "Pengaruh Adat Istiadat Terhadap Penerapan Hukum Waris di Indonesia: Studi Kasus Suku Dayak," *Jurnal Hukum dan HAM Wara Sains* 3, no. 3 (2024): 404–408. <https://doi.org/10.58812/jhhws.v3i03.1625>.

³⁴ Nayana Bose and Shreyasee Das, "Intergenerational Effects of Improving Women's Property Rights: Evidence from India," *Oxford Development Studies* 49, no. 3 (2021): 278–282. <https://doi.org/10.1080/13600818.2021.1899154>.

³⁵ S. Birawa and S. Assyifa, "Perubahan yang Terjadi dalam Perkembangan Hukum Waris Adat dari Masa ke Masa," *Kultura: Jurnal Ilmu Hukum, Sosial, dan Humaniora* 1, no. 6 (2023): 27. <https://doi.org/10.572349/kultura.v1i6.572>.

³⁶ Umi Kultsum, "Analisis Konsep Wasiat Wajibah dalam KHI dan Putusan MA," *Al-Mazahib: Jurnal Pemikiran Hukum* 10, no. 1 (2022). <https://doi.org/10.14421/al-mazahib.v10i1.2483>.

³⁷ Bagus Hermanto I Gede Yusa, "Reconstruct the Paradigm Shift of Inheritance Rights for Balinese Hindu Women," *Russian Law Journal* 11, no. 3s (2023). <https://doi.org/10.52783/rlj.v11i3s.759>.

³⁸ Sajida Parveen, Bilal Ahmad, Tahira Iram, and Yasir Rasool, "Women Empowerment in Inherited Land Rights: End of Violence in Rural Areas," *The Journal of Adult Protection* 24, no. 5/6 (2022): 233. <https://doi.org/10.1108/jap-05-2022-0009>.

³⁹ Fikri Hamdani, Agustin Hanafi, Fakhurrrazi M. Yunus, and Soraya Devy, "Gender Justice in Inheritance Distribution Practices in South Aceh, Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 2 (2023). <https://doi.org/10.22373/sjhk.v7i2.16688>.

⁴⁰ Umi Supraptiningsih, Hasse Jubba, Erie Hariyanto, and Theadora Rahmawati, "Inequality as a Cultural Construction: Women's Access to Land Rights in Madurese Society," *Cogent Social Sciences* 9, no. 1 (2023): 2194733. <https://doi.org/10.1080/23311886.2023.2194733>.

3. Results and Discussion

3.1 Contradiction Between Positive Inheritance Law and Customary Traditions in Indonesia

The contradictions that pervade Indonesia's inheritance law landscape are not merely doctrinal incongruities that can be resolved through statutory interpretation alone they are the product of a historically layered legal architecture in which three normative systems have been permitted to operate concurrently without any authoritative hierarchy having been clearly established or consistently enforced at the level of inheritance rights. To understand the depth of this contradiction, it is necessary to begin with the internal logic of each system and then to examine the precise points at which they collide.

Positive civil law, as embodied in Articles 830 to 1130 of the KUHPerdata, proceeds from the principle of bilateral succession a principle of fundamental importance for gender equality because it treats male and female heirs as juridically equivalent. Under Articles 852 and 852a, children inherit from their parents irrespective of sex, and the surviving spouse is entitled to a share equal to that of a legitimate child. The KUHPerdata system is built on the concept of *legitime portie* a compulsory share that cannot be alienated by the testator through any testamentary disposition which operates as a structural guarantee against arbitrary disinheritance.⁴¹ In theory, this framework provides women with robust and enforceable inheritance entitlements. In practice, however, its application within customary communities is systematically suppressed by the normative authority of *adat* law, which operates through social sanction, family pressure, and the authority of community institutions that command obedience independently of and frequently in opposition to the commands of the state legal system.⁴² The result is a condition of normative bifurcation: the KUHPerdata guarantees women's inheritance rights in the books of law; *adat* denies those rights in the life of communities.

Islamic inheritance law, as codified in Articles 171 to 209 of the Kompilasi Hukum Islam (KHI), introduces a distinct normative architecture. The *faraid* system, grounded in Surah An-Nisa (4:11), allocates to daughters a share equal to half that allocated to sons a 1:2 ratio that reflects a differential rather than equal conception of inheritance entitlements. While this differential has been subjected to sustained critique from the perspective of contemporary gender equality standards, the KHI system nonetheless provides women with a legally enforceable inheritance right, guaranteed by the jurisdiction of the Religious Courts, which is both formal and institutional in character.⁴³ The progressive jurisprudence of the Supreme Court has further expanded the scope of *wasiat wajibah* originally applicable to adopted children and grandchildren excluded by the birth of subsequent heirs to cover non-Muslim relatives who would otherwise be entirely excluded from inheritance, thereby deploying a doctrinal instrument of equity to correct inequitable outcomes that the formal inheritance rules themselves would produce.⁴⁴ This judicial innovation reflects a

⁴¹ Raihana J.S. Keliat and Tamaulina B. Sembiring, "Distribution of Inheritance According to Customary Law and Civil Law in Indonesia," *Indonesian Journal of Jurisprudence* 1, no. 3 (2024): 3–5. <https://doi.org/10.62872/x1yp5934>

⁴² Desislava Stoyanova, "Gender Equality in Customary Inheritance Law in Indonesian Court Decisions," *Journal of Social Science and Humanities* 6, no. 8 (2024): 150–151. [https://doi.org/10.53469/jssh.2024.6\(08\).29](https://doi.org/10.53469/jssh.2024.6(08).29).

⁴³ Muhammad F. Haque, Sohirin M. Solihin, Nadzrah Ahmad, and Mohd. S. Jani, "Women Rights to Inheritance in Muslim Family Law: An Analytical Study," *International Journal of Islamic Business and Management* 4, no. 1 (2020): 17–20. <https://doi.org/10.46281/ijibm.v4i1.543>.

⁴⁴ Umi Kultsum, "Analisis Konsep Wasiat Wajibah dalam KHI dan Putusan MA," *Al-Mazahib: Jurnal Pemikiran Hukum* 10, no. 1 (2022). <https://doi.org/10.14421/al-mazahib.v10i1.2483>.

broader capacity within the Islamic inheritance framework, when interpreted through the *maqashid al-syariah* lens of *maslahah* (public benefit), to generate gender-equitable outcomes that transcend the literal text of the 1:2 ratio.⁴⁵

It is against the backdrop of these two formal legal systems both of which provide women with at least some degree of enforceable inheritance rights that the operation of customary inheritance law must be evaluated. The diversity of *adat* inheritance systems across Indonesia's more than 1,300 ethnic communities is well documented; yet within this diversity, a dominant structural pattern is discernible: in patrilineal communities, which constitute the majority of ethnically organized customary societies in Indonesia, the logic of male-line succession systematically excludes women from inheriting productive assets, particularly land.⁴⁶ This exclusion takes several distinct institutional forms. In the Batak Toba community of North Sumatra, daughters are traditionally classified as non-heirs with respect to immovable property; the ancestral land passes exclusively through the patrilineal line, and daughters' entitlements extend only to movable goods granted as gifts (*pausageang* or *holong ate*) at the discretion of male relatives.⁴⁷ The Sahu Tribe of West Halmahera presents a structurally analogous case: their customary rules vest inheritance rights exclusively in male descendants, rendering daughters juridically invisible as heirs even in the complete absence of male successors a position that stands in unambiguous contradiction of Articles 852 and 853 of the KUHPerdara, which expressly provide for the inheritance rights of daughters in the absence of male heirs.⁴⁸ Among the Dayak communities of Kalimantan, customary inheritance norms operate to disadvantage widows in particular: the death of a husband frequently triggers a reallocation of family land to the husband's patrilineal relatives, displacing the widow from land she may have jointly cultivated for decades, in a manner that has no basis in positive law and that contravenes the matrimonial property provisions of Law Number 1 of 1974.⁴⁹

The Balinese Hindu customary system presents a variant of patrilineal exclusion that is theologically legitimized through the doctrine of *purusa*, according to which sons bear the ritual and religious obligations of the family lineage and therefore inherit the ancestral property necessary to fulfill those obligations. Daughters who marry out of the family (*ninggal kedaton*) are regarded as having transferred their legal and ritual affiliation to their husband's family, thereby forfeiting any inheritance claim against their birth family's estate.⁵⁰ While the Supreme Court has progressively moved toward recognizing daughters' inheritance rights in Balinese customary disputes

⁴⁵ Fikri Hamdani, Agustin Hanafi, Fakhrurrazi M. Yunus, and Soraya Devy, "Gender Justice in Inheritance Distribution Practices in South Aceh, Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 2 (2023). <https://doi.org/10.22373/sjhk.v7i2.16688>.

⁴⁶ Leni Nurmala and Yoslan K. Koni, "Differences and Similarities in the Division of Inheritance Law According to Islamic Law and Javanese Customary Law in Indonesia in a Comparative Study of Law," *International Journal of Educational Review, Law and Social Sciences* 2, no. 1 (2022): 132–136. <https://doi.org/10.54443/ijerlas.v2i1.134>.

⁴⁷ Dwi G.R. Silalahi, Lagat P.P. Siadari, Fadlan, Erniyanti, and Soerya Respationo, "From Patrilineal Tradition to Gender Equity: The Evolution of Inheritance Law in Indonesia's Batak Toba Community," *Law* 2, no. 2 (2024): 132–137. <https://doi.org/10.61996/law.v2i2.66>.

⁴⁸ Risal Albindra Almashoor, Anggalana Anggalana, Margaretha Sitanggang, and Eddy Rifai, "Justice of Inheritance Rights for Women in Sahu Tribe Customary Law: A Comparative Study and Efforts Toward Harmonization," *Cepalo* 9, no. 1 (2025): 55–61. <https://doi.org/10.25041/cepalo.v9no1.4027>.

⁴⁹ Yuni Priskila Ginting and Irvin Atara, "Pengaruh Adat Istiadat Terhadap Penerapan Hukum Waris di Indonesia: Studi Kasus Suku Dayak," *Jurnal Hukum dan HAM Wara Sains* 3, no. 3 (2024): 405–410. <https://doi.org/10.58812/jhhws.v3i03.1625>.

⁵⁰ Anastasia S. Titisari, Luh K.R. Swandewi, C.F.S. Warren, and Anja Reid, "Stories of Women's Marriage and Fertility Experiences: Qualitative Research on Urban and Rural Cases in Bali, Indonesia," *Gates Open Research* 7 (2024): 124. <https://doi.org/10.12688/gatesopenres.14781.2>.

particularly in cases where no male heirs exist the persistence of the *purusa* doctrine as a social norm means that judicial pronouncements in favor of female heirs are frequently resisted at the community level, producing a gap between legal ruling and social compliance that undermines the effectiveness of judicial reform as a standalone strategy.⁵¹

The Minangkabau case presents a different order of complexity. The matrilineal system of West Sumatra formally channels ancestral communal property through the female line a structure that, in terms of property transmission, might appear to favor women. In reality, however, the *harta pusaka* system vests the managerial authority over ancestral property in male relatives, such that women are nominal beneficiaries of a system managed by and largely oriented toward the interests of men.⁵² More critically, for Muslim Minangkabau, the application of the KHI's *faraid* provisions to individually acquired property introduces a competing normative framework that frequently generates disputes when the *faraid* prescription of a 1:2 ratio between daughters and sons is measured against the matrilineal expectations of the *adat* system, creating a site of normative collision that neither the *adat* institutions nor the Religious Courts have been able to resolve with consistent outcomes.⁵³

The constitutional dimension of these contradictions is what elevates them from cultural diversity to legal pathology. Article 27(1) of the UUD 1945 establishes that all citizens are equal before the law and entitled to the equal protection of the law without discrimination. Article 28D(1) guarantees every person the right to recognition, guarantee, protection, and just legal certainty. Article 28H(2) provides that every person has the right to facilitation and special treatment for the attainment of equality and justice. These provisions collectively constitute an affirmative constitutional mandate for gender equality that is not merely aspirational but operationally binding on all state institutions, including the courts, the legislature, and administrative agencies responsible for the governance of customary communities.⁵⁴ Article 18B(2) of the UUD 1945, which recognizes the special rights of customary law communities, contains a critical condition that has been systematically underenforced: customary rights are recognized only to the extent that they remain in existence and do not contradict national law. Since the constitutional guarantee of gender equality is unambiguously part of national law, any customary inheritance norm that denies women equal inheritance rights fails to meet this constitutional condition and is therefore, strictly speaking, constitutionally unrecognized a conclusion that has not yet been drawn with the systematic force it deserves by either the legislature or the judiciary.⁵⁵

The socioeconomic implications of this normative failure are both immediate and intergenerational. Women who are denied inheritance rights whether by explicit customary exclusion or by the social pressure that renders formal legal rights practically inaccessible are deprived of the primary mechanism through which productive assets are transmitted across generations in agrarian

⁵¹ Bagus Hermanto I Gede Yusa, "Reconstruct the Paradigm Shift of Inheritance Rights for Balinese Hindu Women," *Russian Law Journal* 11, no. 3s (2023). <https://doi.org/10.52783/rlj.v11i3s.759>.

⁵² S. Birawa and S. Assyifa, "Perubahan yang Terjadi dalam Perkembangan Hukum Waris Adat dari Masa ke Masa," *Kultura: Jurnal Ilmu Hukum, Sosial, dan Humaniora* 1, no. 6 (2023): 27–29. <https://doi.org/10.572349/kultura.v1i6.572>.

⁵³ Syabbul Bachri, Sudirman Sudirman, Erfaniah Zuhriah, and Ramadhita Ramadhita, "Contextualizing Islamic Inheritance Law in Indonesia: Addressing Negative Stigma," *Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam* 7, no. 2 (2024): 174–180. <https://doi.org/10.30659/jua.v7i2.35041>.

⁵⁴ Amri P. Sihotang and Ruetaitip Chansrakao, "Integration Between Customary Law and National Law: An Effort to Build a Pancasila Prismatic Law State," *SASI* 29, no. 2 (2023): 250–255. <https://doi.org/10.47268/sasi.v29i2.1304>.

⁵⁵ Almashoor et al., "Justice of Inheritance Rights for Women in Sahu Tribe," 57–62.

communities. The denial of land inheritance, in particular, functions as a structural mechanism of economic subordination that limits women's capacity to generate independent income, constrains their bargaining power within households and communities, and reproduces across generations the conditions of poverty and dependency that gender inequality in inheritance creates.⁵⁶ Research conducted in Madurese communities documents how the cultural construction of land as a male inheritance generates not merely economic disadvantage for women but a broader pattern of social marginalization in which women's legal claims to inherited property are experienced as culturally transgressive a framing that deploys cultural authority to sustain legal injustice.⁵⁷ The dynamics of gender law in contemporary Indonesia further confirm that formal legal reform, absent concurrent transformation of the social and institutional conditions that sustain discriminatory practice, is insufficient to secure women's substantive inheritance rights.⁵⁸ What these findings collectively demonstrate is that the contradiction between positive inheritance law and customary traditions is not a problem at the periphery of Indonesian legal order but is located at its structural center: in the unrealized application of constitutional supremacy to the governance of legal pluralism, and in the persistent failure of state institutions to enforce the constitutional floor of women's equal inheritance rights against the claims of customary authority.⁵⁹

3.2 Efforts to Reconcile Inheritance Distribution to Ensure Women's Rights

The preceding analysis has established that the contradiction between positive inheritance law and customary traditions in Indonesia is a structural, constitutionally-grounded problem not a peripheral cultural variation that can be accommodated indefinitely within the space of legal pluralism. The question that follows is not whether reconciliation is necessary; constitutional supremacy and Indonesia's international human rights obligations under CEDAW leave no principled space for the perpetuation of customary inheritance practices that systematically deny women their equal inheritance rights. The question is how reconciliation can be achieved in a manner that is simultaneously constitutionally mandatory, institutionally credible, and culturally sustainable that enforces the constitutional floor of gender equality without annihilating the legitimate diversity of Indonesia's legal traditions in their entirety.⁶⁰ Answering this question requires moving beyond the register of descriptive analysis into the domain of normative prescription: the derivation of a coherent framework of legal and institutional mechanisms through which the identified contradictions can be resolved with both normative force and practical effectiveness.

The foundational principle of any credible reconciliation framework must be the unambiguous affirmation of constitutional supremacy as the organizing principle of Indonesia's plural legal

⁵⁶ Nayana Bose and Shreyasee Das, "Intergenerational Effects of Improving Women's Property Rights: Evidence from India," *Oxford Development Studies* 49, no. 3 (2021): 279–285. <https://doi.org/10.1080/13600818.2021.1899154>.

⁵⁷ Umi Supraptiningsih, Hasse Jubba, Erie Hariyanto, and Theadora Rahmawati, "Inequality as a Cultural Construction: Women's Access to Land Rights in Madurese Society," *Cogent Social Sciences* 9, no. 1 (2023): 2194733. <https://doi.org/10.1080/23311886.2023.2194733>.

⁵⁸ Sajida Parveen, Bilal Ahmad, Tahira Iram, and Yasir Rasool, "Women Empowerment in Inherited Land Rights: End of Violence in Rural Areas," *The Journal of Adult Protection* 24, no. 5/6 (2022): 233–239. <https://doi.org/10.1108/jap-05-2022-0009>.

⁵⁹ Stoyanova, "Gender Equality in Customary Inheritance Law," 151–153.

⁶⁰ Amri P. Sihotang and Ruetaitip Chansrakao, "Integration Between Customary Law and National Law: An Effort to Build a Pancasila Prismatic Law State," *SASI* 29, no. 2 (2023): 251–258. <https://doi.org/10.47268/sasi.v29i2.1304>.

⁶¹ Risal Albindra Almashoor, Anggalana Anggalana, Margaretha Sitanggang, and Eddy Rifai, "Justice of Inheritance Rights for Women in Sahu Tribe Customary Law: A Comparative Study and Efforts Toward Harmonization," *Cepalo* 9, no. 1 (2025): 58–63. <https://doi.org/10.25041/cepalo.v9no1.4027>.

order. Article 18B(2) of the UUD 1945 recognizes the special rights of customary law communities, but conditions that recognition on two cumulative requirements: the relevant customary norms must still be alive in practice, and they must not contradict the national legal order.⁶¹ The constitutional guarantee of gender equality under Articles 27(1), 28D(1), and 28H(2) is unambiguously part of the national legal order. It follows, with logical necessity, that any customary inheritance norm that denies women equal inheritance rights fails the second condition of Article 18B(2) and thereby forfeits its constitutional protection. This conclusion has not been drawn with sufficient clarity or consistency by Indonesian courts and legislators an omission that has allowed customary exclusions to persist under the shelter of a constitutional provision that, properly interpreted, does not protect them.⁶² The first and most urgent element of a reconciliation framework is, therefore, a legislative affirmation ideally through a national statute on the governance of customary law communities, or through a specific amendment to the inheritance-related provisions of existing legislation that explicitly defines the constitutional conditions under which customary inheritance norms are recognized and enforceable, and that explicitly excludes from that recognition any norm that allocates inheritance rights on the basis of sex.⁶³

Judicial development represents the second pillar of an effective reconciliation framework, and it is a pillar upon which Indonesia's legal system has already begun to build, albeit without the structural completeness that the problem demands. The Supreme Court's progressive expansion of the *wasiat wajibah* doctrine originally a mechanism for ensuring the inheritance rights of adopted children and non-testamentary relatives, but increasingly deployed by courts to secure the inheritance rights of daughters in communities whose customary norms would otherwise exclude them entirely illustrates both the potential and the limitations of judge-made law as an instrument of normative reconciliation.⁶⁴ The potential lies in the capacity of judicial interpretation to generate constitutionally-grounded outcomes within the existing framework of positive law, without requiring legislative action. The limitation lies in the case-by-case nature of judicial development, which produces outcomes that are individually just but systemically inconsistent a patchwork of precedents that cannot substitute for the structural clarity of a legislative framework.⁶⁵ What is required is a combination: a strengthened body of jurisprudential guidance from the Supreme Court, ideally through a *Peraturan Mahkamah Agung* (PERMA) or Supreme Court Circular, that establishes binding interpretive principles for courts at all levels when adjudicating inheritance disputes in which customary norms conflict with constitutional gender equality guarantees, and that provides explicit guidance on the application of the *lex superior* principle to such conflicts.⁶⁶ The experience of the Batak Toba community is instructive in this regard: judicial decisions that

⁶² Desislava Stoyanova, "Gender Equality in Customary Inheritance Law in Indonesian Court Decisions," *Journal of Social Science and Humanities* 6, no. 8 (2024): 151–153. [https://doi.org/10.53469/jssh.2024.6\(08\).29](https://doi.org/10.53469/jssh.2024.6(08).29).

⁶³ Dwi G.R. Silalahi, Lagat P.P. Siadari, Fadlan, Erniyanti, and Soerya Respationo, "From Patrilineal Tradition to Gender Equity: The Evolution of Inheritance Law in Indonesia's Batak Toba Community," *Law 2*, no. 2 (2024): 138–142. <https://doi.org/10.61996/law.v2i2.66>.

⁶⁴ Umi Kultsum, "Analisis Konsep Wasiat Wajibah dalam KHI dan Putusan MA," *Al-Mazahib: Jurnal Pemikiran Hukum* 10, no. 1 (2022). <https://doi.org/10.14421/al-mazahib.v10i1.2483>.

⁶⁵ Raihana J.S. Keliat and Tamaulina B. Sembiring, "Distribution of Inheritance According to Customary Law and Civil Law in Indonesia," *Indonesian Journal of Jurisprudence* 1, no. 3 (2024): 5–7. <https://doi.org/10.62872/x1yp5934>.

⁶⁶ Leni Nurmala and Yoslan K. Koni, "Differences and Similarities in the Division of Inheritance Law According to Islamic Law and Javanese Customary Law in Indonesia in a Comparative Study of Law," *International Journal of Educational Review, Law and Social Sciences* 2, no. 1 (2022): 138–141. <https://doi.org/10.54443/ijerlas.v2i1.134>.

progressively recognized daughters' inheritance rights even against the opposition of customary community leaders have demonstrably contributed to a normative shift within the community itself, as the legal recognition of women's rights has gradually acquired social legitimacy through repeated judicial endorsement.⁶⁷

The third pillar of reconciliation concerns the structural engagement between state law and customary institutions through a model that this research describes as *constitutionally-bounded legal pluralism* an arrangement in which customary inheritance institutions retain their authority to govern the transmission of property within their communities, but only within a constitutional perimeter that excludes gender-based exclusions.⁶⁸ This model draws on the experience of South Africa's post-apartheid constitutional order, in which the Constitutional Court's landmark dismantling of the rule of male primogeniture in customary succession law achieved through the application of the constitutional equality clause to customary norms established that the recognition of customary law does not require the tolerance of unconstitutional customary practices, and that the development of customary law to align with constitutional values is both permissible and obligatory.⁶⁹ The Indonesian constitutional framework provides an equivalent basis for this approach: Article 18B(2), read together with Articles 27(1) and 28H(2) of the UUD 1945, requires that the state develop customary law communities in directions consistent with national constitutional values, including gender equality a requirement that has been acknowledged in principle but not yet operationalized in practice.⁷⁰ Constitutionally-bounded legal pluralism, in the Indonesian context, would operationalize this requirement through the establishment of customary law governance councils at the provincial or district level bodies composed of customary leaders, legal practitioners, women's representatives, and government officials mandated to review customary inheritance norms against the constitutional standard, identify gender-discriminatory provisions, and develop reformed versions of those provisions that preserve culturally significant elements of customary inheritance identity while eliminating constitutionally impermissible exclusions.⁷¹

The fourth pillar of reconciliation and the one most directly engaged with the lived reality of women in customary communities is legal education and community empowerment. The effectiveness of formal legal reform, whether legislative or judicial, is ultimately constrained by the extent to which women are aware of their rights, willing to assert them, and supported in doing so by the institutional and social environment in which they live. Research consistently demonstrates that the gap between formal legal rights and substantive rights enjoyment is widest in communities where women's legal literacy is lowest, where social sanction for rights-assertion is most severe, and where institutional support for women's legal claims through legal aid, community mediation, and women's organizations is most limited.⁷² In the Madurese context, for example, the

⁶⁷ Silalahi et al., "From Patrilineal Tradition to Gender Equity," 139–143.

⁶⁸ Yuni Priskila Ginting and Irvin Atara, "Pengaruh Adat Istiadat Terhadap Penerapan Hukum Waris di Indonesia: Studi Kasus Suku Dayak," *Jurnal Hukum dan HAM Wara Sains* 3, no. 3 (2024): 408–411. <https://doi.org/10.58812/jhhws.v3i03.1625>.

⁶⁹ Syabbul Bachri, Sudirman Sudirman, Erfaniah Zuhriah, and Ramadhita Ramadhita, "Contextualizing Islamic Inheritance Law in Indonesia: Addressing Negative Stigma," *Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam* 7, no. 2 (2024): 176–183. <https://doi.org/10.30659/jua.v7i2.35041>.

⁷⁰ Almashoor et al., "Justice of Inheritance Rights for Women in Sahu Tribe," 60–65.

⁷¹ S. Birawa and S. Assyifa, "Perubahan yang Terjadi dalam Perkembangan Hukum Waris Adat dari Masa ke Masa," *Kultura: Jurnal Ilmu Hukum, Sosial, dan Humaniora* 1, no. 6 (2023): 28–30. <https://doi.org/10.572349/kultura.v1i6.572>.

⁷² Nayana Bose and Shreyasee Das, "Intergenerational Effects of Improving Women's Property Rights: Evidence from India," *Oxford Development Studies* 49, no. 3 (2021): 282–288. <https://doi.org/10.1080/13600818.2021.1899154>.

cultural construction of land as a male inheritance has proven resistant to formal legal intervention precisely because it is reproduced not only through the normative authority of customary leaders but through the internalized expectations of women themselves, who frequently accept their exclusion as natural rather than unjust a phenomenon that has been extensively documented in the literature on symbolic violence and gender inequality in property rights.⁷³ Community-level legal education programs conducted in local languages, delivered through trusted community intermediaries including religious leaders and women's organizations, and designed to present women's inheritance rights as consistent with, rather than in opposition to, Islamic and adat principles are an indispensable complement to formal legal reform.⁷⁴ The experience of South Aceh provides a model for this approach: the integration of Islamic principles of gender justice into community inheritance practices, achieved through dialogue between *ulama*, customary leaders, and women's groups, has produced more culturally durable outcomes than either legal enforcement or external advocacy alone.⁷⁵

The fifth and final pillar concerns the harmonization of Indonesia's three inheritance systems at the level of statutory law the long-deferred project of comprehensive inheritance law reform that successive Indonesian governments have acknowledged as necessary but not undertaken. The current fragmentation of Indonesia's inheritance law framework with non-Muslims governed by the KUHPerdata, Muslims governed by the KHI, and customary communities governed by norms that vary by ethnicity and region creates structural opportunities for discriminatory practices to persist in the interstices between systems, exploiting the absence of a unified normative framework to resist accountability to any single standard.⁷⁶ A comprehensive national inheritance law not one that abolishes customary and Islamic inheritance frameworks, but one that establishes a constitutional floor of gender equality applicable to all inheritance systems operating within Indonesian jurisdiction, and that provides clear procedural mechanisms for the resolution of inter-system conflicts would represent the structural completion of the reconciliation project that Indonesia's constitutional commitment to gender equality demands.⁷⁷ Such a law would not require that all Indonesians inherit under a single system; it would require only that no Indonesian woman be denied an inheritance entitlement solely on the basis of her sex, regardless of the customary or religious system under which her family operates. This is the minimum that the constitutional guarantee of gender equality requires and it is a minimum that Indonesia's legal system has not yet, despite decades of normative development, fully delivered.⁷⁸

⁷³ Umi Supraptiningsih, Hasse Jubba, Erie Hariyanto, and Theadora Rahmawati, "Inequality as a Cultural Construction: Women's Access to Land Rights in Madurese Society," *Cogent Social Sciences* 9, no. 1 (2023): 2194733. <https://doi.org/10.1080/23311886.2023.2194733>.

⁷⁴ Sajida Parveen, Bilal Ahmad, Tahira Iram, and Yasir Rasool, "Women Empowerment in Inherited Land Rights: End of Violence in Rural Areas," *The Journal of Adult Protection* 24, no. 5/6 (2022): 235–240. <https://doi.org/10.1108/jap-05-2022-0009>.

⁷⁵ Fikri Hamdani, Agustin Hanafi, Fakhurrizi M. Yunus, and Soraya Devy, "Gender Justice in Inheritance Distribution Practices in South Aceh, Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 2 (2023). <https://doi.org/10.22373/sjhk.v7i2.16688>.

⁷⁶ Muhammad F. Haque, Sohirin M. Solihin, Nadzrah Ahmad, and Mohd. S. Jani, "Women Rights to Inheritance in Muslim Family Law: An Analytical Study," *International Journal of Islamic Business and Management* 4, no. 1 (2020): 21–25. <https://doi.org/10.46281/ijibm.v4i1.543>.

⁷⁷ Bagus Hermanto I Gede Yusa, "Reconstruct the Paradigm Shift of Inheritance Rights for Balinese Hindu Women," *Russian Law Journal* 11, no. 3s (2023). <https://doi.org/10.52783/rj.v11i3s.759>.

⁷⁸ Md. Mahiuddin Sabbir, Md. Aziz Ullah, and Md. Bayazid Bostami, "Impact of Access to Land on Women's Economic Well-Being: An Empirical Evidence from Rural Bangladesh," *SAGE Open* 14, no. 1 (2024): 1–12. <https://doi.org/10.1177/21582440241227705>.

4. Conclusion

This research has demonstrated that the contradiction between positive inheritance law and customary traditions in Indonesia is not a transient cultural anomaly but a structural legal failure rooted in the unresolved tension between constitutional supremacy and the operational autonomy of customary normative systems. Across patrilineal communities including the Batak Toba, Sahu Tribe, and Dayak communities as well as in the Balinese Hindu customary order and the contested intersection of Minangkabau matrilineal *adat* with Islamic *faraid*, the denial of women's equal inheritance rights persists as a systemic practice that directly contravenes Articles 27(1), 28D(1), and 28H(2) of the UUD 1945. The positive civil law framework of the KUHPerdata and the progressive jurisprudence of the Supreme Court on *wasiat wajibah* have demonstrated the capacity of formal legal instruments to generate gender-equitable inheritance outcomes; yet their reach into the lived normative reality of customary communities remains partial, inconsistent, and institutionally unsustainable.

The reconciliation of inheritance distribution to ensure women's rights requires a multi-layered response: legislative affirmation of constitutional supremacy over incompatible customary norms; the development of binding Supreme Court jurisprudential guidance; the operationalization of constitutionally-bounded legal pluralism through institutionalized customary law governance bodies; community-level legal education and women's empowerment programs; and, ultimately, a comprehensive national inheritance law that establishes a universal constitutional floor of gender equality applicable across all inheritance systems operating within Indonesian jurisdiction.

Two policy recommendations emerge with particular urgency. First, the legislature must enact an explicit statutory provision clarifying that customary inheritance norms are constitutionally unrecognized insofar as they allocate inheritance rights on the basis of sex. Second, the Supreme Court must issue binding interpretive guidance through a PERMA or equivalent instrument establishing the *lex superior* principle as the mandatory framework for resolving conflicts between customary inheritance practice and constitutional gender equality guarantees. These measures, taken together, represent the minimum institutional response commensurate with Indonesia's constitutional obligations and its international human rights commitments on gender equality.

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