

Islamic and Customary Inheritance Law: Addressing Differences and Similarities in the Distribution of Property

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ABSTRACT

This article examines the inheritance systems in Indonesia by comparing the normative structure of Islamic inheritance law with the flexible, community-based principles of customary (adat) inheritance practices. Using a qualitative, literature-based approach, the study analyzes the core principles, gender dynamics, and distribution mechanisms within both systems. Islamic inheritance law, as codified in the Qur'an and classical jurisprudence, follows fixed shares assigned to specific heirs, reflecting a theologically grounded notion of proportional justice. In contrast, customary inheritance systems such as the patrilineal Batak, matrilineal Minangkabau, and bilateral Javanese models are based on kinship norms, emotional ties, and deliberation, allowing for more context-sensitive arrangements. The discussion highlights key points of divergence and convergence between the two systems, particularly in terms of legal authority, gender roles, and adaptability. It also explores how Indonesian families navigate these plural frameworks, often blending formal rules with informal negotiations to achieve perceived fairness. The study concludes that legal pluralism, rather than posing a conflict, offers an opportunity for harmonization through contextual interpretation, inclusive dialogue, and the integration of religious and cultural values.

INTRODUCTION

Inheritance disputes are still a problem that often arises in society, especially in areas that apply dual legal systems, namely Islamic inheritance law and customary inheritance law (Hamdani et al., 2022). Differences in understanding of the basis and mechanism for the distribution of inheritance often trigger tensions between heirs, often leading to prolonged conflict (Prabangso et al., 2024). In some areas, people prefer to follow customary law, which is considered more in line with local values and family relationships (Habib Shulton Asnawi et al., 2024), while in other areas, Islamic law is more dominant because it is considered to provide clarity and religious legitimacy. (Nafisah et al., 2024). The existence of these two coexisting legal systems raises fundamental questions about fairness, legal validity and the extent to which the systems are socially acceptable. This phenomenon emphasizes the importance of an in depth

study to understand the social dynamics behind people's choices in addressing inheritance distribution, and to find an approach that can bridge the differences wisely.

Normatively, Islamic inheritance law is based on teachings sourced from the Qur'an, Prophetic Hadiths, and the *ijtihad* of scholars (Abdul Ghofur Anshori, 2022). This system regulates in detail who is entitled to receive inheritance and how much each heir's share is, with the main principle of justice based on revelation. On the other hand, customary law grows out of social norms that live in the community, formed through hereditary customs and local cultural values that are full of local wisdom (Miqat et al., 2021). The characteristics of customary law tend to be flexible and adapt to the social structure and kinship system of each region, such as patrilineal, matrilineal, or bilateral systems (Rumkel & La Ode, 2025). Both Islamic inheritance law and customary law have the power recognized by the community, and both in some contexts even gain legitimacy from the state through legislation or court decisions (Ilyas et al., 2023). This reality reflects legal pluralism in Indonesia, which requires cross-normative understanding to avoid overlap in the implementation of inheritance distribution.

A comparison between Islamic inheritance law and customary law shows that there are significant differences, both in terms of determining the heirs, the proportion of distribution, and the basic principles underlying it (Miftahuddin, 2024). Islamic inheritance law establishes standard rules based on a bilateral system, where both paternal and maternal relatives can be heirs with predetermined proportional shares (Gavriel & Ardianti, 2023). In contrast, customary law in different regions may adhere to patrilineal, matrilineal, or a combination of the two, which affects who is considered entitled to inherit and in what proportions (Makhrup, 2024). However, there are also common ground between the two systems, such as respect for the nuclear family and the common goal of maintaining social harmony and stability. These differences and similarities show that a deeper understanding of both legal systems is necessary, especially in inheritance practices that involve religious and cultural elements together. Without a full understanding, the potential for conflict not only threatens family relationships, but can also weaken trust in the prevailing legal system.

This research aims to identify and comprehensively analyze the differences and similarities between Islamic inheritance law and customary inheritance law in the context of inheritance distribution. By exploring the normative, cultural and practical aspects of the two systems, this research is expected to be able to present a complete picture of how both are applied in the community. In addition, this research seeks to provide a critical perspective on how the community responds to the existing legal dualism, especially when faced with a dilemma between religious values and local wisdom. Through an objective approach, this research also seeks to offer solutions or alternative harmonious approaches that can be used as references in inheritance practices, especially in a multicultural society like Indonesia, which is full of diverse legal and social identities.

METHODOLOGY

This research uses a qualitative method with a normative and sociological juridical approach to examine the position of women in Islamic family law, especially related to rights and obligations in marriage. The normative juridical approach is used to examine various provisions of Islamic law sourced from the Qur'an, hadith, and classical and contemporary *fiqh* literature, in order to understand the normative basis governing husband and wife relations. Meanwhile, the sociological approach is used to analyze how these norms are practiced in the real life of Muslim communities, as well as the extent to

which there is a gap between the legal text and social reality. The data in this study were obtained through literature and documentation studies, and supported by field findings in the form of in-depth interviews with several informants who have relevant experiences or views, such as married couples, religious leaders, and women activists. With this approach, the study is expected to provide a complete and contextualized picture of the dynamics of women's position in the institution of marriage from the perspective of Islamic law.

RESULTS AND DISCUSSION

The Fundamental Principles of Islamic Inheritance Law

Islamic inheritance law is a central part of Islamic family jurisprudence, grounded in divine revelation and formulated with detailed prescriptions. The Qur'an provides explicit and systematic guidance on the distribution of inheritance, particularly in Surah An-Nisa verses 11, 12, and 176, which serve as the normative foundation for Islamic inheritance regulations. These verses outline specific shares for heirs such as sons, daughters, spouses, parents, and siblings. The inheritance system is primarily composed of two categories of heirs: *dzawil furudh* (those entitled to fixed shares as stated in the Qur'an) and *ashabah* (residuary heirs who receive the remainder of the estate after the fixed shares have been distributed). This structure reflects not an arithmetical equality, but a proportional justice that considers each heir's social and financial responsibilities. For instance, the rule that a male child receives a portion equal to that of two female children is not based on gender superiority, but on the legal and economic obligations imposed on men in Islamic society, such as the duty to provide financial support.

In addition, Islamic inheritance law recognizes the concepts of *fardh* (obligatory shares), replacement heirs (such as grandchildren substituting for their deceased parents), and inheritance barriers (e.g., difference of religion, intentional homicide of the deceased, or slavery in historical contexts). Overall, the Islamic system of inheritance is characterized by textual rigidity and divine prescription, yet it is fundamentally guided by the principles of social justice, balance, and responsibility within the family structure.

Customary Inheritance Systems in Indonesia

Indonesia's customary inheritance systems reflect the rich cultural diversity and complex kinship structures across its many ethnic groups. Unlike Islamic inheritance law, which is derived from fixed scriptural injunctions, customary (*adat*) inheritance is rooted in long-standing communal traditions, unwritten norms, and family consensus. These systems are typically categorized into three main models based on lineage orientation: patrilineal, matrilineal, and bilateral. In patrilineal systems, such as those practiced by the Batak ethnic group in North Sumatra, inheritance flows through the male line. Sons particularly the eldest are considered the primary heirs of family property, while daughters often receive no formal share but may be supported through other familial arrangements. In contrast, matrilineal systems, most prominently found among the Minangkabau in West Sumatra, pass inheritance through the female line. In this model, ancestral property (*pusako*) is inherited by daughters, while male relatives, such as uncles, act as caretakers or administrators of the estate rather than as beneficiaries. The bilateral system, prevalent in Javanese society, recognizes both male and female offspring as heirs in relatively equal terms, regardless of lineage. This system tends to be more egalitarian and adaptable to individual family dynamics.

What distinguishes customary inheritance practices is their flexibility and sociocultural embeddedness. Rather than adhering to rigid formulas, adat inheritance is shaped by social roles, emotional closeness, community expectations, and perceived needs of each family member. Decisions regarding inheritance distribution are often made through family deliberation (*musyawarah*), allowing for negotiation and accommodation. This approach prioritizes family harmony, collective well-being, and intergenerational responsibility over formal legal entitlement. As a result, adat inheritance law often reflects a relational sense of justice, deeply intertwined with the values and survival strategies of the community.

Points of Convergence and Divergence between Islamic and Customary Inheritance Systems

A comparative analysis of Islamic and customary inheritance laws in Indonesia reveals both fundamental differences and occasional points of convergence, particularly in their sources of authority, mechanisms of distribution, and underlying notions of justice. While both systems aim to ensure fairness in the distribution of wealth after death, they operate under distinct legal, cultural, and epistemological frameworks. Islamic inheritance law is rooted in divine revelation specifically the Qur'an and Hadith and is characterized by a prescriptive and textual structure. It assigns fixed shares (*fardh*) to specific heirs and follows strict principles, including the rule that male heirs generally receive twice the share of female heirs, based on their assumed financial responsibilities in family life. In contrast, customary inheritance is based on oral traditions, collective consensus, and sociocultural values that vary between regions. It often involves negotiated or conditional inheritance, with the flexibility to consider a person's role in the family, emotional bonds, or caregiving contributions, rather than strict bloodline rules alone. These differences can be summarized as follows:

Table 1		
Comparative Overview of Islamic and Customary Inheritance Systems		
Aspect	Islamic Inheritance Law	Customary (Adat) Inheritance Law
Legal Source	Qur'an, Hadith, classical fiqh	Local tradition, oral custom, communal consensus
Distribution Method	Fixed shares (<i>fardh</i>) and residual shares (<i>ashabah</i>)	Flexible, deliberation-based, context-specific
Lineage Basis	Bilateral (through both parents)	Varies: patrilineal, matrilineal, or bilateral
Gender Roles	Male generally receives twice the share of female	Gender-based roles vary; in some cases women inherit more or less
Decision Process	Legalistic, handled by religious courts (<i>Pengadilan Agama</i>)	<i>Musyawarah</i> (family consensus), informal mediation
Adaptability	Textually fixed, limited scope for reinterpretation	High adaptability to sociocultural and economic changes

Justice Orientation	Normative justice (based on divine prescription)	Relational justice (based on family harmony and perceived fairness)
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While both systems are concerned with fairness, they conceptualize and implement it differently. Islamic law relies on universal norms, whereas customary law is highly contextual, aiming to sustain kinship harmony and maintain community values. In some cases, particularly in multicultural or transitional families, individuals may navigate between both systems or even combine aspects of each to meet practical and emotional needs.

Social Realities and Community Preferences in Navigating Inheritance

In practice, many Indonesian Muslim communities are situated between two normative systems Islamic inheritance law and local customary law and must often negotiate between the two when distributing inheritance. These negotiations reflect not only legal choices but also social and emotional considerations that influence family decision-making. In some families, Islamic law is followed strictly, especially in cases involving religiously observant heirs or when legal matters are brought before the Pengadilan Agama (Religious Court). However, in many rural or ethnically homogenous communities, customary norms still hold considerable influence, particularly in cases where the community prioritizes family harmony and social stability over textual compliance.

For example, families in matrilineal societies such as the Minangkabau may continue to favor female-centered inheritance of ancestral land (*harta pusaka tinggi*), despite the presence of male heirs under Islamic law. Conversely, in patrilineal communities such as the Batak, daughters may be excluded from inheritance entirely, with the understanding that they will benefit through marriage or social protection from their brothers. In bilateral systems like those of the Javanese, distribution may blend Islamic principles with informal family agreements, balancing between legal prescription and moral negotiation.

Such practices demonstrate that inheritance decisions are not merely legal acts, but are deeply intertwined with cultural identity, emotional bonds, economic roles, and gendered expectations. In many cases, heirs may agree to waive or redistribute their portions out of respect for family elders, caregiving siblings, or based on perceived fairness within the family context. This moral flexibility, though not codified, plays a crucial role in sustaining kinship cohesion. Ultimately, the social realities of inheritance in Indonesia reveal a pluralistic legal consciousness, where formal law coexists with lived cultural practice. This highlights the need for a more responsive legal framework that acknowledges both the authority of religious doctrine and the adaptive wisdom of local traditions.

Toward Harmonization: Legal Pluralism and Justice in Inheritance Law

The coexistence of Islamic and customary inheritance systems in Indonesia reflects the broader reality of legal pluralism, where multiple normative frameworks operate simultaneously within the same society. While each system is rooted in distinct epistemologies one grounded in divine revelation and the other in cultural tradition they are both driven by a shared concern for justice, balance, and the preservation of family order. The challenge lies not in choosing one over the other, but in exploring the potential for dialogue and harmonization between them. Efforts toward legal harmonization must

begin by acknowledging that Islamic law itself is not monolithic, but contains space for contextual interpretation (ijtihād) and adaptation through the framework of maqāṣid al-sharī‘ah the higher objectives of Islamic law, which include justice (‘adl), public interest (maṣlaḥah), and the preservation of human dignity (karāmah). These principles open a path for interpreting inheritance rules in ways that are not only faithful to the scriptural foundations but also responsive to local realities and gender equity.

On the other hand, customary law, with its inherently flexible and relational nature, offers mechanisms for balancing moral obligations and social expectations within the family. However, its non-codified status and variation across regions may lead to inconsistencies or reinforce traditional hierarchies that disadvantage certain groups, particularly women. Therefore, rather than framing the two systems in binary opposition, a more constructive approach would be to develop integrative legal solutions that respect religious doctrine while incorporating the adaptive strengths of adat law. This may include judicial discretion in inheritance cases, legal recognition of negotiated family settlements, or the inclusion of cultural context in the interpretation of religious norms. In this light, inheritance law in Indonesia should be viewed not as a static set of rules but as a dynamic space of negotiation between values religious, cultural, ethical, and familial. Through inclusive dialogue and thoughtful reform, the country has the opportunity to foster a legal culture that is both normatively grounded and socially just.

CONCLUSION

This study has explored the fundamental principles and practical dynamics of inheritance law in Indonesia by comparing Islamic and customary (adat) systems. Islamic inheritance law, with its fixed shares and scriptural foundations, reflects a normative and structured model centered on proportional justice and familial responsibility. In contrast, customary inheritance law demonstrates flexibility, emphasizing social roles, communal consensus, and emotional proximity among heirs. While these systems may appear contradictory, they each offer valuable insights into how justice is conceptualized and practiced within different normative traditions. The findings reveal that in everyday practice, many families navigate between these legal frameworks, blending formal rules with informal negotiations to achieve what they perceive as fairness. This reality underscores the importance of recognizing legal pluralism not as a challenge to coherence, but as a rich space for responsive and culturally grounded justice. Moving forward, the harmonization of Islamic and adat inheritance laws should be guided by a commitment to both normative integrity and social relevance. By embracing dialogue, contextual interpretation, and inclusive legal reasoning, Indonesia can move toward an inheritance system that honors religious values while responding to the lived experiences of its diverse society.

LITERATURE

- Abdul Ghofur Anshori. (2022). Sources and Legal Principles of Islamic Inheritance* Dynamics in Indonesia. *Journal Equity of Law and Governance*, 2(2), 157–165. <https://doi.org/10.55637/elg.2.2.5767.157-165>
- Gavriel, A., & Ardianti, R. (2023). Continuance Intention Pelaku Usaha Mikro dan Kecil Terhadap Penggunaan QRIS untuk Transaksi Pembayaran. *Journal of Practical Management Studies*, 1(1), 07–15. <https://doi.org/10.61106/jpms.v1i1.2>
- Habib Shulton Asnawi, M. Anwar Nawawi, Siti Mahmudah, Alamsyah Alamsyah, Ziba Mir Hosseini, & Faqihuddin Abdul Kodir. (2024). The Concept of Maṣlaḥah

- Family in Lampung Customary Law: A Study of Mak Dijuk Siang and Its Relevance to Indonesian Marriage Law. *Fikri : Jurnal Kajian Agama, Sosial Dan Budaya*, 9(1), 104–121. <https://doi.org/10.25217/jf.v9i1.4710>
- Hamdani, F. F. R. S., Pebrianti, S., Dzulhijjah, L., & Maricar, H. M. (2022). Traditional Law vs. Islamic Law; An Analysis of Muslim Community Awareness in Inheritance Issues. *Al-Ahkam*, 32(1), 109–130. <https://doi.org/10.21580/ahkam.2022.32.1.11000>
- Ilyas, I., A.Rani, F., Bahri, S., & Sufyan, S. (2023). The Accommodation of Customary Law to Islamic Law: Distribution of Inheritance in Aceh from a Pluralism Perspectives. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 7(2), 897. <https://doi.org/10.22373/sjkh.v7i2.15650>
- Makhrup, A. G. (2024). Dispute over Sasak Customary Inheritance Rights and the Evolution of Granting Inheritance Rights to Girls. *JILPR Journal Indonesia Law and Policy Review*, 5(2), 442–449. <https://doi.org/10.56371/jirpl.v5i2.225>
- Miftahuddin, A. H. (2024). Comparison of Customary Inheritance and the Compilation of Islamic Law: A Study of Inheritance Distribution in Indonesia. *VRISPRAAK : International Journal of Law*, 8(2), 1–19. <https://doi.org/10.59689/vris.v8i2.1158>
- Miqat, N., Nur, R., Fattah, V., Sulilawati, S., & Purnamasari, I. (2021). Local Wisdom of Customary Law Community to Realize Food Sovereignty in Central Sulawesi. *Jambura Law Review*, 3(2), 277–294. <https://doi.org/10.33756/jlr.v3i2.10167>
- Nafisah, D., Nasrudin, N., Meidina, A. R., & Zain, M. F. (2024). Comparative Analysis of Islamic Family Law and Normative Law: Examining the Causes of Divorce in Purwokerto, Indonesia. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 8(2), 847. <https://doi.org/10.22373/sjkh.v8i2.16825>
- Prabangso, A. A., Saskhia, F. D. A., Andri, G. Y., Ismayana, I., & Solihah, R. L. (2024). Resolving inheritance disputes due to Munasakhah through the concept of Tabayyun and Ta'awun. *Interdisciplinary Social Studies*, 3(4). <https://doi.org/10.55324/iss.v3i4.709>
- Putri, D., Warman, A. B., Nabilah, W., Putri, S. E., & Nofrianti, M. (2024). Reinterpretasi Relasi Suami Istri dalam Membangun Keharmonisan Rumah Tangga (Sebuah Pendekatan Kontekstual terhadap QS. an-Nisaa' (4): 34). *Islamika : Jurnal Ilmu-Ilmu Keislaman*, 24(2), 164–176. <https://doi.org/10.32939/islamika.v24i2.4499>
- Rumkel, N., & La Ode, M. T. (2025). JUSTICE OF INHERITANCE RIGHTS FOR WOMEN IN SAHU TRIBE CUSTOMARY LAW: A COMPARATIVE STUDY AND EFFORTS TOWARD HARMONIZATION. *Cepalo*, 9(1), 53–68. <https://doi.org/10.25041/cepalo.v9no1.4027>
- Siti Nurkholisoh. (2025). Mewujudkan Relasi Suami Istri Yang Berkeadilan Gender: Kritik Forum Kajian Kitab Kuning Terhadap 'Uqud Al-Lujjayn. *Millatuna: Jurnal Studi Islam*, 2(01), 245–258. <https://doi.org/10.33752/mjsi.v2i01.8591>