

The Existence of Customary and Religious Inheritance Law within the National Civil Law System: A Comparative Study and Codification Prospects

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ABSTRACT: Indonesia's inheritance law is characterized by persistent legal pluralism, operating across three normative systems: customary law (*hukum waris adat*), Islamic law (*faraidh*) partly codified in the Compilation of Islamic Law (KHI), and Western civil law codified in Book II of the Civil Code (KUHPperdata). This plurality causes legal uncertainty, gender disparity, and jurisdictional overlaps between religious and general courts. This article examines the interaction of customary and religious inheritance law within the national civil system and evaluates prospects for codification. Using a normative-juridical method with statutory, conceptual, and comparative approaches, it analyzes primary legal materials (legislation and jurisprudence) alongside secondary literature from Sinta- and Scopus-indexed journals. Findings show that while constitutionally accommodated, the three systems remain structurally unresolved, generating persistent uncertainty in mixed-heir and interfaith cases. Comparative analysis indicates that harmonization, rather than rigid unification, provides a realistic reform pathway. Codifying a National Inheritance Law requires a principle-based, optional choice of law framework that preserves customary and religious values while guaranteeing constitutional equality, particularly gender equality. The article concludes that while full codification is sociologically difficult short-term, a harmonized framework anchored in constitutional supremacy is feasible and urgently needed.

Keywords: *Customary Inheritance Law, Islamic Inheritance Law, Legal Pluralism, Codification, National Civil Law*

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I. INTRODUCTION

Indonesia is a nation whose legal architecture reflects an enduring compromise between colonial legal transplantation, indigenous customary order, and religious normativity. Nowhere is this compromise more visible than in the field of inheritance law. Unlike most modern nation-states that operate under a single, codified law of succession, Indonesia continues to recognize three coexisting bodies of inheritance law: *hukum waris adat* (customary inheritance law), *hukum waris Islam* (Islamic inheritance law, largely codified in the Compilation of Islamic Law), and *hukum waris perdata barat* (Western civil inheritance law inherited from the Dutch Burgerlijk Wetboek, codified as Book II of the Civil Code). Each of these systems carries distinct philosophical foundations, distribution principles, and procedural venues, yet all three operate concurrently within a single sovereign legal order (Komari, 2016).

This plurality is neither accidental nor incidental. It is the product of a deliberate colonial policy of legal differentiation, later inherited and only partially reformed by the post-independence Indonesian state. Article 131 of the *Indische Staatsregeling* divided the population into European, Foreign Oriental, and Native (Bumiputera) groups, each subject to a different civil law regime. Although this formal racial classification was abolished after independence, its substantive legacy persists: indigenous Indonesians largely continue to apply customary or Islamic inheritance norms, while descendants of the European and some Foreign Oriental groups, together with certain modernized urban populations, apply the Civil Code. The result is a fragmented inheritance regime in which the law applicable to a given estate depends not on a single national statute but on the religion, ethnicity, domicile, and even the forum chosen by the parties in dispute (Haniru, 2014).

The practical consequences of this fragmentation are considerable. Field-based studies across ethnic communities, including the Tolaki of Southeast Sulawesi, demonstrate that customary inheritance practices persist robustly, often absorbing or resisting the influence of Islamic and national law to varying degrees (Panginan & Basoeky, 2025). Meanwhile, for the Muslim majority, the jurisdiction of the Religious Courts (*Peradilan Agama*) over inheritance disputes, formalized by Law No. 7 of 1989 as amended by Law No. 3 of 2006, has increased the practical dominance of Islamic inheritance law among devout Muslim families, even as customary practices continue to shape actual distribution outside the courtroom. This dual-track reality, in which formal law is applied in litigation while customary law is applied in daily practice, produces chronic uncertainty over which norms ultimately govern an estate, particularly in cases involving interfaith marriage, urban migration, or mixed heirs from different customary backgrounds (Assaad et al., 2022).

At the constitutional level, Indonesia formally accommodates this plurality. Article 18B(2) of the 1945 Constitution recognizes and respects customary law communities and their traditional rights, "as long as these remain alive and are in accordance with the

development of society and the principles of the Unitary State of the Republic of Indonesia," a formula that implicitly subordinates customary norms to national law and to constitutional principles of equality before the law under Articles 27(1) and 28D(1). Recent scholarship argues that this conditional recognition has not been consistently enforced, particularly where customary inheritance rules discriminate against women, describing the resulting gap as a failure of constitutional enforcement rather than a legitimate exercise of legal pluralism (Jinoto, 2025). Parallel studies on Balinese Hindu women's inheritance rights document a slow and still incomplete paradigm shift away from patrilineal exclusivity toward more equitable distribution (Yusa, 2023).

Beyond doctrinal complexity, socio-legal literature situates Indonesia's inheritance pluralism within the broader global discourse on legal pluralism theory. Indonesia's arrangement is best understood as a state-sanctioned, conditional pluralism, in which customary and religious norms are permitted only insofar as they operate within, and do not contradict, an overarching national legal order (Bedner, 2019). Historical-institutional analysis further shows that this arrangement has deep roots in colonial administration of customary law, particularly in the contested inheritance disputes of colonial West Sumatra, where Islamic and *adat* matrilineal norms competed for authority under Dutch adjudication (Benda-Beckmann & Benda-Beckmann, 2012). Contemporary scholarship cautions that Indonesian legal scholarship itself has struggled to move beyond descriptive doctrinal exposition toward genuinely comparative, theory-driven engagement with legal transplantation, a limitation that has arguably slowed meaningful codification reform (Bedner, 2013).

Despite decades of academic and legislative discourse, Indonesia has never codified a single, unified National Inheritance Law. Attempts to include harmonized inheritance provisions within successive drafts of the Civil Code Bill and the proposed Family Law Bill have repeatedly stalled, reflecting the difficulty of finding common ground between legal systems rooted in different cultural and religious values, a difficulty in which political compromise has often become the default mechanism for avoiding resolution rather than achieving it. Existing comparative and integrative studies remain limited: much of the literature examines customary, Islamic, or civil inheritance law in isolation, or within a single regional case study, leaving a research gap in integrated comparative analysis that simultaneously accounts for gender equity, cultural legitimacy, and legal certainty (Alhaq et al., 2025). Sociological reviews confirm that this pluralism continues to generate persistent uncertainty among ordinary Muslim citizens navigating inheritance distribution in practice, even where formal legal provisions appear settled on paper (Idary et al., 2024).

This article addresses that gap by asking two interrelated questions. First, how do customary and religious inheritance law exist within Indonesia's national civil law system, and what are the principal points of convergence and conflict among the three coexisting systems? Second, drawing on comparative experience from other plural legal jurisdictions, what are the realistic prospects and appropriate models for codifying a

harmonized national inheritance law that reconciles customary and religious values with constitutional guarantees of legal certainty and equality? In answering these questions, this article contributes a synthesis-oriented analysis that moves beyond descriptive mapping of legal pluralism toward a normative assessment of codification strategy, positioning harmonization, rather than rigid unification, as the more sociologically and politically viable pathway for Indonesian inheritance law reform.

II. METHOD

This study adopts a normative-juridical (doctrinal) legal research design, combined with statutory, conceptual, and comparative approaches, consistent with established methodology in Indonesian legal scholarship for analyzing the internal coherence and prospective reform of positive law (Bedner, 2013). The doctrinal approach is appropriate because the central problem of this research, namely how three inheritance law regimes coexist and might be harmonized, is fundamentally a question of legal-system coherence rather than empirical social behavior, although secondary empirical findings from prior field-based studies are incorporated to contextualize the doctrinal analysis.

Data sources are drawn from both primary and secondary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Book II of the Civil Code (KUHPerdata), the Compilation of Islamic Law (Kompilasi Hukum Islam) promulgated through Presidential Instruction No. 1 of 1991, Law No. 7 of 1989 on Religious Courts as amended by Law No. 3 of 2006, and relevant Supreme Court and Religious Court jurisprudence concerning inheritance disputes. Secondary legal materials consist of peer-reviewed journal articles indexed in Sinta (Science and Technology Index) and Scopus, published between 2012 and 2026, together with authoritative treatises on customary law, Islamic inheritance law, and comparative civil law.

Data were collected through documentary or literature study, involving systematic searches of Sinta- and Scopus-indexed databases using keyword combinations such as "*hukum waris adat*," "Islamic inheritance law Indonesia," "legal pluralism inheritance," and "codification national inheritance law." Sources were selected based on relevance to the two research questions, methodological credibility, and recency, with priority given to nationally accredited (Sinta 2-4) and internationally indexed (Scopus) journals in order to ensure academic reliability and to allow triangulation between Indonesian language doctrinal literature and internationally peer-reviewed comparative scholarship.

Data analysis employed qualitative descriptive techniques combined with legal interpretation methods, namely grammatical, systematic, and teleological interpretation, to examine the internal logic of and points of tension among the three inheritance regimes. A comparative law technique was additionally applied, juxtaposing Indonesia's plural inheritance framework against jurisdictions that have undertaken partial harmonization of customary, religious, and civil family law, including comparative Egyptian Indonesian experiences in reconciling classical *fiqh* with codified civil provisions (Fauzi, 2024) and comparative frameworks for compulsory bequests as a harmonizing legal instrument (Bustomi & Setyawan, 2025). This comparative lens is used not to

recommend wholesale legal transplantation, but to identify structural mechanisms, such as optional choice of law clauses, constitutionally bounded customary recognition, and judicially guided harmonization, that may inform a realistic Indonesian codification model. Findings are presented in narrative analytical form, organized around the two research questions, consistent with the interpretive nature of normative legal research rather than through statistical or quantitative synthesis.

III. RESULT AND DISCUSSION

The analysis below is organized into three focused points that directly answer the two research questions guiding this study: the structural existence of the three inheritance regimes, the points of convergence, conflict, and constitutional boundary they generate in practice, and the comparative prospects for their harmonized codification.

The Structural Existence and Interaction of Customary, Islamic, and Civil Inheritance Law

The first research question asks how customary and religious inheritance law exist within Indonesia's national civil law system. The analysis shows that their existence is best described as parallel legitimacy rather than hierarchical subordination in everyday practice, even though a formal hierarchy is implied by the Constitution. Structurally, the Civil Code governs inheritance for those subject to Western civil law by historical classification or private choice; the Compilation of Islamic Law, applied through the Religious Courts, governs Muslim inheritance disputes brought to litigation; and customary law continues to govern the distribution of most estates that never reach a courtroom at all, functioning as the *de facto* "living law" for the majority of Indonesian families (Haniru, 2014).

This structural coexistence is not static; it is characterized by constant negotiation and mutual influence. Empirical studies of the Sasak community in Lombok illustrate how deeply entrenched patrilineal customary norms, which privilege sons in the transmission of land, interact with Islamic inheritance obligations, producing hybrid local practices in which formal *faraidh* shares are adjusted, supplemented, or reinterpreted through customary mechanisms such as *hibah* (inter vivos gifts) to preserve family land within a patrilineal line while nominally satisfying religious obligation (Yusmita et al., 2025). Similar dynamics are visible more broadly: rather than a single system displacing another, Indonesian inheritance practice is characterized by continuous negotiation between local custom and national law, in which customary actors selectively adopt formal legal categories when they offer practical advantages, such as certainty in land registration or protection in litigation, while retaining customary distribution logic in matters left to family consensus (Haq, 2025).

This dynamic interaction, however, produces structural ambiguity regarding legal authority. Because the Constitution conditions customary law's validity on non-contradiction with national law, but does not specify a clear adjudicative mechanism for

resolving contradictions before they reach a court, tension between Islamic law and customary law in contemporary legal pluralism remains a persistent and largely unresolved feature of the Indonesian legal system, generating what has been described as continuing constraint on legal certainty for citizens attempting to plan or contest inheritance distribution (Anggraeni, 2023). In practice, this means that the "existence" of customary and religious inheritance law within the national system is less a matter of formal subordination and more a matter of functional coexistence under conditions of chronic normative ambiguity: national law supplies the ultimate adjudicative framework and procedural venue, while customary and Islamic norms continue to substantively shape outcomes both inside and outside the courtroom, particularly in rural and semi-rural communities where formal litigation remains the exception rather than the rule (Panginan & Basoeky, 2025).

Points of Convergence, Conflict, and Constitutional Boundaries in Plural Inheritance Practice

The second part of the first research question concerns the specific points of convergence and conflict among the three systems. Convergence is most visible where all three systems recognize functionally similar categories, even if the underlying philosophy differs: all three, for instance, recognize the deceased's debts and funeral expenses as prior claims on the estate before distribution to heirs, and all three recognize some form of testamentary instrument, whether will (testament) under the Civil Code, *wasiat* under Islamic law, or *wasiat/hibah wasiat* under customary practice. These structural parallels create practical bridges that religious and customary communities use to navigate formal legal requirements without wholly abandoning local values.

Conflict, by contrast, is most acute in three specific areas: the treatment of daughters and widows, the position of non-Muslim or interfaith heirs, and the choice of forum in mixed-heir estates. On gender, Islamic inheritance law's fixed 2:1 son to daughter share ratio, together with many customary systems' historical exclusion of daughters from land inheritance under strict patrilineal *adat*, stands in tension with the constitutional equality guarantees articulated in Article 27(1) and 28D(1) of the 1945 Constitution. This tension is not merely theoretical: analysis of the constitutional structure shows that Article 18B(2)'s conditional recognition of customary rights is, by its own text, contingent on non-contradiction with national law, a condition that gender-discriminatory inheritance norms demonstrably fail to satisfy, making their continued application a matter of inconsistent constitutional enforcement rather than legitimate pluralism (Jinoto, 2025). Comparable findings from Balinese Hindu customary inheritance confirm that women's exclusion from ancestral property, historically justified by their expected transfer of allegiance to a husband's family upon marriage, is gradually being contested and reconstructed, though full parity remains incomplete (Yusa, 2023).

The gender dimension is compounded by the state's uneven capacity to enforce its own reform commitments. Broader socio legal analysis of Indonesian family law shows that

the state is often unable to fully resolve the conflict between its constitutional and international obligations to eliminate discrimination and the substantive provisions of both civil and Islamic family statutes, which continue to embed unequal treatment of women in matters closely linked to inheritance, such as marital property and household authority (Alfitri, 2020). Reform-oriented Islamic legal scholarship has responded by proposing reinterpreted frameworks, such as gender-parity readings of classical inheritance verses, that seek to reconcile textual fidelity with contemporary equality norms without abandoning the religious legitimacy on which Islamic inheritance law depends for its authority among Indonesian Muslims (Huda & Hidayati, 2023).

On forum and jurisdiction, conflict arises because Indonesian civil procedure does not provide a single, mandatory choice-of-law rule for inheritance; heirs of mixed religious or ethnic background may, in practice, seek the forum, whether Religious Court or District Court, whose applicable law produces a more favorable distribution, a phenomenon that generates forum-shopping incentives and inconsistent outcomes across otherwise similar estates. This is precisely the structural weakness identified in assessments of national inheritance law: the absence of an integrated national statute means that legal certainty depends heavily on which forum a dispute happens to reach, undermining the predictability that codified succession law is meant to provide (Assaad et al., 2022). Comparative-normative analysis across the three regimes similarly concludes that, absent harmonization, plurality of this kind exacerbates legal uncertainty and gender inequality simultaneously, because the same structural gap that allows forum-shopping also allows discriminatory customary or religious norms to persist unchallenged in whichever forum applies them (Alhaq et al., 2025).

Comparative Perspectives and the Prospect of Harmonized National Codification

The second research question asks what a realistic codification model might look like, informed by comparative experience. Indonesia is not alone in confronting the challenge of reconciling religious, customary, and civil family law within a single sovereign order. The Indonesian experience of legislating the 1974 Marriage Law offers an instructive domestic precedent: that reform succeeded not by abolishing religious family law but by creating a unifying procedural and registration framework within which religiously and customarily grounded substantive rules continued to operate, a model of "legislating social change" through structural rather than substantive unification (Cammack, Young, & Heaton, 1996). This precedent suggests that a National Inheritance Law need not eliminate customary or Islamic substantive norms outright; it could instead establish a unified procedural framework, covering matters such as estate registration, dispute forum allocation, and minimum constitutional floors (particularly on gender equality), while permitting substantive distribution rules to vary according to the parties' religion, customary community, or explicit choice of law.

Comparative experience from Aceh's implementation of Islamic law alongside customary and state law offers a further model of managed pluralism: rather than full unification,

Acehnese legal harmonization has proceeded through explicit statutory recognition of customary and Islamic institutions operating within, and subordinate to, an overarching state legal framework, illustrating that harmonization of state, customary, and Islamic law is achievable through carefully bounded institutional design rather than wholesale codification (Djawas et al., 2024). This regional experience is instructive precisely because it demonstrates that harmonization can be implemented incrementally and institutionally, rather than requiring a single comprehensive statute enacted all at once, a lesson directly relevant to the stalled national codification debate.

International comparative practice reinforces this direction. Reform experiences in Egypt and other Muslim-majority jurisdictions show that instruments such as compulsory bequests (*wasiat wajibah*) have functioned as an effective intermediate harmonizing device, allowing states to correct perceived inequities in classical inheritance distribution, particularly regarding grandchildren of a predeceased parent or, by extension, non heir dependents, without formally amending the underlying religious inheritance shares themselves (Bustomi & Setyawan, 2025). Comparative family-law scholarship examining *'urf* (customary practice) as an accepted source for contextualizing *fiqh* in both Egypt and Indonesia similarly indicates that customary accommodation within an Islamic legal framework is neither novel nor illegitimate, but a recognized and centuries-old mechanism of legal development, providing doctrinal legitimacy for a harmonization strategy that formally incorporates customary adjustment mechanisms into codified Islamic inheritance provisions (Fauzi, 2024).

Taken together, these comparative findings support a specific codification model for Indonesia: rather than pursuing a single, substantively uniform National Inheritance Law, which comparative and historical evidence suggests would be both politically unattainable and culturally illegitimate, a more realistic reform pathway is a framework statute that (1) establishes constitutionally mandated procedural and gender-equality floors applicable to all three regimes; (2) codifies clear, mandatory choice-of-law and forum-allocation rules to eliminate forum-shopping and jurisdictional overlap; (3) formally incorporates customary adjustment instruments, analogous to *wasiat wajibah*, as recognized bridging mechanisms between religious, customary, and civil distribution logics; and (4) preserves substantive distributive autonomy for customary and religious communities where such autonomy does not violate the equality floor. This model directly answers the second research question by demonstrating that codification is not a binary choice between full unification and continued fragmentation, but a spectrum of harmonization strategies, several of which have already been tested, with varying success, in Indonesia's own regional experience and in comparable Muslim-majority jurisdictions abroad. Persistent sociological uncertainty documented among ordinary citizens navigating inheritance today underscores the urgency of adopting at least the procedural and equality-floor components of this model in the near term, even if full substantive harmonization remains a longer-term legislative project (Idary et al., 2024).

IV. CONCLUSION

This article set out to examine how customary and religious inheritance law exist within Indonesia's national civil law system and to assess the prospects for their codification into a unified national framework. The findings demonstrate, first, that the three inheritance regimes, customary, Islamic, and Western civil, coexist not through clear hierarchical subordination but through a condition of functional, often ambiguous, parallel legitimacy: national law supplies the ultimate procedural and adjudicative framework, while customary and religious norms continue to substantively govern actual distribution both inside and outside the courtroom. Second, the principal points of conflict generated by this arrangement cluster around gender inequality in distribution shares, the constitutionally uncertain status of discriminatory customary norms under Article 18B(2), and jurisdictional overlap that enables forum-shopping between Religious and General Courts in mixed-heir estates. These conflicts are not merely doctrinal curiosities; they translate directly into legal uncertainty and unequal outcomes for Indonesian families navigating inheritance in practice.

Regarding the prospect of codification, this study concludes that a rigid, fully unified National Inheritance Law is neither politically attainable in the current legislative climate nor culturally desirable, given the deep legitimacy that customary and religious inheritance norms retain among Indonesian communities. Comparative evidence from Indonesia's own 1974 Marriage Law reform, from Aceh's harmonization of state, customary, and Islamic law, and from international Muslim majority jurisdictions' use of compulsory bequests as a bridging mechanism, converges on a more realistic alternative: a harmonization based framework statute that establishes mandatory procedural rules, clear choice of law and forum allocation provisions, and a constitutional gender-equality floor, while preserving substantive distributive autonomy for customary and religious communities within those bounds. Such a framework would resolve the most damaging sources of legal uncertainty, forum shopping and unenforced constitutional equality guarantees, without requiring Indonesia to abandon the legal pluralism that has long defined its approach to family law.

Future research should empirically test the specific design of choice of law and gender equality floor provisions proposed here, particularly their reception among customary and religious community leaders, and should examine ongoing legislative drafting processes for the Civil Code Bill and Family Law Bill to assess whether harmonization principles identified in this study are being operationalized in practice. Ultimately, the existence of customary and religious inheritance law within Indonesia's national legal system is not a problem to be eliminated through forced uniformity, but a structural feature to be managed through carefully bounded, constitutionally anchored harmonization.

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