



ISLAMIC LAW AND CUSTOMARY LAW IN CONTEMPORARY LEGAL PLURALISM IN INDONESIA: TENSION AND CONSTRAINTS

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Abstrak: Pluralisme hukum menjadi isu yang menantang dalam penerapan hukum di suatu masyarakat. Indonesia sebagai negara plural yang memiliki perbedaan suku, adat, dan agama menghadapi pertentangan antar sistem hukum. Studi ini membahas pertentangan hukum Islam, hukum negara dan hukum adat dalam soal pembagian waris dalam sistem kekerabatan masyarakat Indonesia. Data dikumpulkan dari putusan-putusan pengadilan dan pendapat para sarjana hukum yang kemudian dianalisis dengan teori pluralisme hukum, teori *receptio in complexu* dan teori *receptio a contrario*. Studi ini menemukan bahwa terjadi konflik hukum antar hukum adat dalam sistem kekerabatan matrilineal, patrilineal, dan parental, khususnya dalam pembagian waris. Konflik hukum juga terjadi ketika dihadapkan pada hukum Islam yang menjadi afinitas masyarakat dalam beragama dan hukum negara yang menjadi hukum bagi semua warga negara. Berdasarkan sejumlah putusan pengadilan, pembagian waris akibat perbedaan sistem hukum, khususnya dalam sistem kekerabatan dalam hukum adat dikesampingkan dari hukum negara dan hukum Islam. Studi ini berimplikasi pada bergesernya sistem pembagian waris yang tidak lagi murni berdasarkan sistem kekerabatan masyarakat adat.

Kata kunci: pluralisme hukum; hukum Islam; hukum negara; pembagian waris

Abstract: Legal pluralism poses a challenging issue in the application of law in society. Indonesia, as a pluralistic country with diverse ethnicities, customs, and religions, faces conflicts between legal systems. This study addressed the conflicts between Islamic law, state law, and customary law regarding inheritance within the kinship system of Indonesian society. Data were collected from court decisions and legal scholars' opinions, which were then analyzed using the theories of legal pluralism, *receptio in complexu*, and *receptio a contrario*. The study found that legal conflicts arise among customary laws within the matrilineal, patrilineal, and parental kinship systems, particularly in inheritance matters. Legal conflicts occur when faced with Islamic law, which resonates with religious practices, and state law, which applies to all citizens. Based on several court decisions, the inheritance distribution resulting from differences in legal systems, especially within the customary kinship system, is disregarded in favor of state and Islamic law. This study implies a shift in the inheritance distribution system, which is no longer purely based on the kinship system of indigenous communities.

Keywords: legal pluralism; Islamic law; state law; inheritance distribution

Introduction

The legal system in Indonesia exhibits a pluralistic nature, as different sets of laws are applied within each community based on their ethnic or tribal backgrounds. This diversity complicates the implementation of law due to varying legal norms enforcement. For instance, indigenous customary law communities have different kinship systems compared to other indigenous communities. The parental, matrilineal, and patrilineal kinship systems have developed within Indonesian society (Muthmainnah & Santoso, 2019).

In indigenous communities that adhere to the parental kinship system, such as in Java, Kalimantan, and Aceh, the assets will be divided individually, where each person will receive their share, according to the number of family members. Inheritance assets within marriage become joint property that their descendants will inherit. In Minangkabau, with the matrilineal kinship system, they will become their mother's siblings before the children of a matrilineal family get married. In other words, they detach their relatives from their fathers (Muthmainnah & Santoso, 2019). Meanwhile, in the patrilineal system, the property generated from marriages in patrilineal communities will be inherited exclusively by male children through generations. This practice occurs in societies such as the South Tapanuli, Nias, Batak, and Timor tribes (Tahali, 2018).

The diversity of kinship systems poses challenges in inheritance law, resulting in inheritance events in Indonesia not being confined to a single legal system. This potentiality gives rise to legal conflicts and debates about which law is appropriate for resolving these inheritance events. If a marriage occurs between a patrilineal tribe (father's side) and a matrilineal tribe (mother's side), differences arise when distributing inheritance to their children. The distribution of inheritance to male children will naturally differ from that to female children due to the distinct patrilineal and matrilineal kinship systems.

In the patrilineal kinship system, male children tend to receive a greater or more primary inheritance share compared to female children. On the other hand, in the matrilineal kinship system, female children can have an equal or larger inheritance share than male children. These differences reflect distinct inheritance patterns based on the kinship system adopted by the respective community groups.

When a marriage occurs between a patrilineal tribe and a matrilineal tribe, these differences can become a source of conflict in inheritance distribution. Conflicts may arise among family members who hold differing views on which kinship system should be applied in inheritance matters. In such cases, the parties involved may need to find a middle ground or attempt to adopt a solution accommodating both kinship systems.

Furthermore, new challenges arise in implementing inheritance law in society, stemming from religious factors often leading to legal conflicts (Oba, 2002; Vikør, 2005). Several cases related to religious matters, such as inheritance, often serve as a primary reference and leading guide for the Muslim community in Indonesia (Butt, 2010; Islam, 2018). Although in practice, the implementation of Islamic law in Indonesia can also vary depending on the diverse interpretations that occur among the Muslim community (Hosen, 2005; Zuhdi, 2018).

Differences in interpretation within Islamic law will also result in legal practice and implementation variations. The variations in approaches to applying Islamic law are based on differences in understanding and interpretation of Islamic law (Hasan, 2023; Yilmaz, 2021; Zubair & Latif, 2022). In everyday life, it naturally leads to significant differences in the interpretation of Islamic law. The ethnic, cultural, and traditional diversity in Indonesia also contributes to variations in the application of Islamic law. In certain regions, the diversity of customs and local traditions also influences how Islamic law is implemented. In specific ethnic communities, traditional practices can influence how inheritance is distributed, although still based on the principles of Islamic law (M. Salim, 2017).

The discourse on the potential conflicts between customary law and Islamic law is a classical debate that originated during the colonial era. Legal pluralism in Indonesia has prompted many researchers to study the existence and relationship between customary law and Islamic law within the framework of the national legal system. In the research conducted by Ilyas et al. (2023), legal pluralism achieves harmony rather than creating conflicts or tensions between legal systems. Similarly, Babiker's (2018) study mentions that Sudan's traditional legal structure (customary law) is recognized as a valid legal mechanism for conflict resolution and transformation, mainly through customary

mediation. Likewise, Mutawali's (2021) study highlights the importance of harmony between Islamic law and customary law in Indonesia. In the Donggo community, customary law that is in line with Islamic principles (*'urf sahīh*) is upheld, while practices that contradict it (*'urf fāsid*) are abandoned.

Other studies also mention that the inheritance system practiced by the Minangkabau tribe shows an adaptation of Islamic inheritance law to accommodate the influence of customary law in resolving inheritance matters (Tono et al., 2019). Meanwhile, Amin and Ramadhan argue that customary law should be acknowledged, respected, or strengthened as part of the legal diversity in Indonesia, even though it may sometimes contradict Islamic law (Amin et al., 2019; Ramadhan, 2023).

Other researchers also mentioned that the potential conflicts between customary and Islamic law could vary depending on the geographical context and cultural diversity. Bowen (2012), an American anthropologist who studied Islam in various countries, including Indonesia, criticizes the idea that customary law must always be subordinate to Islamic law. He argues that the relationship between customary law and Islamic law mutually influences each other in different social contexts (Bowen, 2012; Das, 1984; El-Zein, 1977). Cribb and Siegel, American anthropologists, have also researched indigenous communities and customary law in Indonesia. Siegel extensively discusses the conflicts between customary law and Islamic law in Jakarta and their impact on society. His analysis portrays the nature of legal disputes, the factors influencing them, and their consequences for the local community (Cribb, 2008; Siegel, 1998).

This article discusses inheritance distribution within societies with different kinship systems, namely patrilineal, matrilineal, and parental. The study explores the conflicts between customary and Islamic law in inheritance cases in Indonesia's legal pluralism context.

Method

The type of research used in this study is doctrinal legal research, which falls under normative juridical research (Chui and McConville 2007; Hutchinson and Duncan 2012) because it is grounded in a set of legal norms, legislation (black letter law), and legal doctrines

related to the examined issue. This study employs the theory of legal pluralism to explain the legal conflicts arising from the plurality of kinship systems in inheritance distribution.

The primary data used in this research consists of several relevant court decisions regarding the examined legal issue. Some of the court decisions include Supreme Court Decision Number 179 K/Sip/1961 dated October 16, 1961, Decision Number 415 K/SIP/1970 dated June 16, 1971, Supreme Court Decision Number 1589 K/Sip/1974 dated February 9, 1978, Decision Number 4766 K/Pdt/1998 dated November 16, 1999, Decision Number 1048K/Pdt/2012 dated September 26, 2012, Supreme Court Decision Number 147 K/Pdt/2017 dated April 18, 2017, Supreme Court Decision Number 573 K/Pdt/2017 dated June 19, 2017, Supreme Court Decision Number 1130 K/Pdt/2017 dated July 10, 2017. Some of these decisions represent the jurisprudence of the Supreme Court in inheritance cases involving the concepts and practices of customary law in several regions in Indonesia.

The Conflict between Islamic Law and Customary Law

Pluralistic societies are often characterized by differences in ethnicity, race, and religion (Cross, 1971; Lockwood, 2018; Rex, 1959). These differences give rise to diverse legal rules (du Plessis, 1985; Morgan & Tuttle, 1994). For people who adhere to customs, the rules they follow are customary law. They obey and remain loyal to the customs passed down by their ancestors. For people who adhere to a religion, the rules they follow are religious laws. The situation where a society follows more than one legal system is often referred to as legal pluralism (Berman, 2009; Griffiths, 1986; Tamanaha, 2008).

The concept of legal pluralism criticizes the ideology of legal centralism, which regards the state's law as universally applicable to all individuals within the jurisdiction of that country (Gebeye, 2017; Shah, 2020). Thus, only one law is enforced in a country, which is the law of the state, ensuring legal certainty. In contrast to legal centralism, legal pluralism grants authority to societal entities to govern their lives with different rules due to the variations in Islamic and customary practices (Meerschaut, Gutwirth, and Eva, 2008; Salim, 2015).

Legal pluralism in a country can lead to numerous issues when the state enforces different laws for the same legal cases (Tamanaha 2011). The conflicts between enforced laws become a problem (Shah, 2005). This gives rise to legal uncertainty (Simon Thomas, 2012) regarding which law applies to a particular individual and how to determine which law applies to them.

In legal pluralism, legal conflicts occur due to differences in religion and customary practices (Oba, 2002; Vikør, 2005). In legal pluralism, Islam and customary law often face the important question of which law should be applied in cases involving Islamic and customary law. The debate arises from this issue is whether customary law is superior to Islamic law or vice versa. Several Dutch scholars have discussed this topic. In the theory of *receptio in complexu*, Van den Berg states that the Muslim community accepts Islamic law. This theory considers the law of a community to follow the religious law embraced by that community (Djanuardi et al., 2021; Ikhwan, 2022; Masâ, 2018).

In line with the theory of *receptio in complexu*, Hazairin, an expert in customary law from Indonesia, it proposed the theory of *receptio exit*. Sayuti Thalib further developed this theory into the idea of *receptio, a contrario*. The theory of *receptio a contrario* states that the applicable law is religious law, meaning customary law only applies if it does not contradict religious law (Mutawali, 2021; Rohmah and Alfatdi, 2022). According to the doctrine of *receptio a contrario*, the customary law applied in community life is the customary legal norm that aligns with the spirit of Islamic law. If the customary legal norm is not in line with the spirit and essence of Islamic law, then customary law is rejected (Junaidy, 2013; A. Rahman and Janur, 2022).

The conflicts between Islamic law and customary law in a country that practices legal pluralism will be significantly influenced by legal policies and the community's legal practices (Maria Kyed, 2009; Swenson, 2018). As state legal policies govern the party, the community may accept or reject the state's position. Community pressure is highly likely when legal conflicts arise in a country that practices legal pluralism (Shariff, 2008).

Therefore, the conflict between Islamic law and customary law in a country that practices legal pluralism is heavily influenced by

legal policies and the community's legal practices. The acceptance or rejection of the community towards the state's stance plays a crucial role. Community pressure can occur when legal conflicts arise in a country that practices legal pluralism. In this case, the community can pressure the government to change or clarify existing legal policies. It is important to note that the conflict between Islamic law and customary law in legal pluralism can vary from country to country—differences in legal policies and the community's legal practices can lead to different approaches to resolving such conflicts.

Social Development and Shifting Inheritance

Social change refers to the transformation that occurs within the social system of a society. Further, this term is often used by sociologists to describe large-scale transformations, such as industrialization and the shift from rural, feudal, or traditional agrarian societies to modern industrial societies, the emergence of capitalism, democratization, and globalization (Anleu, 2009:2). Various aspects of the relationship between law and social change also pose crucial challenges in understanding the role of law in modern society. These aspects include issues such as new modes or ways to change the law, the lag of legal development behind social change, and how law can be used as a tool to drive social change (Dror 1958: 1). In the context of inheritance law, for example, social change can influence the practices of inheritance law, such as changes in social values and societal perceptions regarding gender equality issues. This condition gives rise to aspirations for the legal system to keep pace with social and societal developments to ensure justice and equality.

Social development and the shifting of inheritance have led to changes in the perception of gender issues within societies. The perspective now places law as a product of compromise, often disadvantaging women. This situation is usually concealed within the law's neutrality, which reduces women's position as disputing parties. Women are increasingly seen as deserving equal treatment to men (Irianto 2016: 9). The current legal reforms that aim to promote justice and equality for women are rooted in Indonesia's status as a democratic rule-of-law country. Access to justice for women has become an essential issue within the discourse of the rule of law in Indonesia,

and it is a result of the women's movement's struggle in the country (Irianto, 2016: 6).

Shifting perspectives within indigenous communities regarding gender relations have also impacted how the law is perceived and implemented. In Brong Ahafo, the Western and Volta regions of Ghana, case studies show how economic changes and shifts in employment structures have affected men's and women's roles. The presence of the cocoa industry as a rural economic commodity has intensified the reliance on the labor of husband and wife. However, according to customary law, women are burdened with assisting their husbands in household economic affairs (Duncan 2010: 301).

In some Islamic countries, there have been shifts in practicing gender relations, leading to legal reforms in family law to provide more excellent protection and rights for women. For example, Tunisia is one Muslim country that has implemented significant reforms in family law to ensure fairer inheritance rights for women. In 2018, Tunisia passed a law prohibiting inheritance discrimination and granting equal rights to men and women in inheriting property (Moghadam, 2022).

Morocco has also adopted legal reforms that recognize women's inheritance rights. In 2018, Morocco enacted a law eliminating gender-based differences in inheritance distribution. The law affirmed the principle of equality in inheritance (Constantinidis et al., 2019).

Although not a country with Islamic law, Lebanon has a majority Muslim population. In 2020, the Lebanese Parliament passed a law providing women fairer inheritance rights. The law ensures that women have equal rights in inheritance distribution, ending previous discrimination in Lebanon (Khoury, 2020).

Indonesia has made substantial efforts to reform Islamic family law since the 1960s, ultimately leading to the enactment of Law Number 1 of 1974 (Wahib, 2014). For example, in some regions of Indonesia, there has been a tendency to apply inheritance laws that grant greater inheritance rights to men than women. However, with social changes, particularly in the way society perceives gender equality, there has been a shift in inheritance practices towards fairness and equal recognition of women's inheritance rights.

There is an increasing awareness of the importance of gender equality in Islamic countries. Women's movements and human rights organizations work with governments to promote equality in areas such as employment opportunities, reproductive health services, and protection against gender-based violence. In the context of legal pluralism in inheritance law, there are variations in the application of customary law regarding women's roles as heirs. Some customary laws recognize women as heirs, while others acknowledge only men. Furthermore, the proportion of the inheritance given to female and male children also varies, with some granting half and others granting one-third (Hendrako, 2015).

However, with the increasing awareness of the importance of gender equality, efforts are being made to change the discriminatory paradigm of inheritance law towards women. Women's organizations and movements and the government advocate for policy and legal changes that protect women's rights in inheritance. They strive for women to receive an equal share as men in inheritance distribution, regardless of the kinship system followed.

With these changes, it is hoped that there will be justice and gender equality in inheritance law in Islamic countries. This is also in line with the universal principles of equality and the protection of human rights (Khairunnisa, 2018). This transformation undoubtedly requires cooperation between the government, society, and legal institutions in changing perceptions and practices ingrained in society for years.

Previously, based on the fact of legal pluralism in inheritance law, there were customary laws that only recognized women as heirs. There were also customary laws that only recognized men as heirs. Similarly, the share given to female and male children varied in proportions, with some granting half and other regional customary laws granting one-third (Lev, 1972: 190).

The "old customary law" in societies with a patrilineal kinship system did not recognize women as heirs from their fathers or husbands. This portrait can be seen in several regions, such as Batak, Bali, Nusa Tenggara, and other areas. On the contrary, in societies that adhere to a matrilineal kinship system, such as in Minangkabau, men are not recognized as heirs. With the passage of time and social changes, the practice of inheritance law is experiencing a shift.

In the patrilineal system, when inter-ethnic marriages occur, the practice of inheritance law determines that daughters receive a share due to religious factors (Oba, 2002; Vikør, 2005). In addition to religious factors, cultural factors can cause shifts in applying inheritance law. For example, if a Batak community marries a Javanese community and assimilates into the Javanese inheritance system, the parental inheritance system will be used. Thus, the inheritance law for children from cross-ethnic marriages places sons and daughters as potential heirs. However, the inheritance of clan names (*marga*) can still only be passed down to sons.

Over time, matrilineal indigenous communities have also changed. In Minangkabau, the previous matrilineal kinship system, which followed the mother's lineage, has now shifted to the parental system. The parental system grants equal rights to both sons and daughters as heirs. They consider that the status of children in marriage is similar and therefore have equal rights. In resolving inheritance disputes, both matrilineal and patrilineal indigenous communities have shifted from customary law to settlement mechanisms involving civil law, Islamic law, and even agreements or negotiations.

The Conflict of State Law Superseding Customary Law

The tendency of Indonesia's legal products based on the jurisprudence of inheritance cases is the marginalization of customary law concepts and paradigms in inheritance matters. Customary law is no longer in line with the development of law in society and can no longer be upheld. This tendency is triggered by the increasing attention to gender equality issues in society, which leads to a change in the perception of how the law should recognize the principles of equality and justice for women.

As a result, several changes in the inheritance law system have occurred to reflect the values of gender equality and justice. For example, new policies and regulations have been introduced that provide better protection for women's inheritance rights, eliminate gender discrimination in the distribution of inherited property, and recognize women's active role in inheritance and property ownership. This reflects an evolution in the understanding and recognition of the law regarding the importance of gender equality and the protection of individual rights.

However, these changes are not always readily accepted by all parties. Some groups or individuals may still hold traditional views based on customary law, which may not align with the principles of equality and justice advocated in Islamic law or reformed law. Therefore, dialogue, education, and mutual understanding regarding protecting individual rights and gender equality remain crucial in achieving broader consensus in inheritance protection and family arrangements.

The Supreme Court Decision Number 179 K/Sip/1961, dated October 16, 1961, establishes the principle of equality between women and men in its legal considerations. This case involves an inheritance dispute between Lang Tewas et al. and Benih Ginting, who is a member of the Batak Tanah Karo tribe. The Batak Tanah Karo tribe is a traditional Batak community that firmly adheres to patrilineal kinship. In its legal considerations, the Supreme Court stated:

"The Supreme Court, guided by a sense of humanity, general justice, and the essence of equality between women and men, deems it as a living law throughout Indonesia, including Tanah Karo, that a female child should be recognized as an heir and entitled to receive a portion of her parent's inheritance."

Similar legal considerations can be found in the Supreme Court's decision regarding the dispute over inheritance under the Batak Mandailing customary law, which adheres to a patrilineal kinship system. Through Decision Number 415 K/SIP/1970, dated June 16, 1971, in the case of Usman et al. versus Marah Iman Nasution et al., the Supreme Court stated:

"The practice of *Pambeanan* (handing over without relinquishing ownership) should be considered an effort to soften the customary law in the pre-World War II era, where a female child had no inheritance rights. The customary law in the Tapanuli region has also evolved towards granting equal rights to female children, similar to male children, a development further reinforced by a consistent jurisprudence regarding inheritance law in that region."

Similar legal considerations can also be found in Supreme Court Decision Number 1589 K/SIP/1974, dated February 9, 1978, which states:

"In line with the jurisprudence regarding children in Tapanuli and Lombok, it is fair for female children to be recognized as heirs. Therefore, in this case, the plaintiff for cassation, as the only child, inherits the entire estate from their father."

Bali is also an area that adheres to a solid patrilineal kinship system. In Decision Number 4766 K/Pdt/1998, dated November 16, 1999, the Supreme Court once again presented legal considerations stating:

"Women in Bali have the right to inheritance from the deceased, even though the inheritance system in Bali itself adheres to the male-preference inheritance system."

The principle of equality between women and men in inheritance disputes is consistently applied by the Supreme Court, even though it is not aligned with the paradigm established in customary law. On September 26, 2012, the Supreme Court presented legal considerations in Decision Number 1048K/Pdt/2012, which stated:

"The above reasons for cassation are justified. The Judex Facti/ High Court of Kupang that annulled the decision of the District Court of Rote Ndao was incorrect in applying the law because the considerations of the High Court of Kupang were contrary to the applicable law, namely Article 17 of Law No. 39 of 1999 concerning Human Rights and the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 179 K/Sip/1961 dated November 11, 1961, which states that women's inheritance rights are equal to men's. This means that customary law not in line with the development of law in society, such as customary law that does not recognize women's rights equal to men's, can no longer be upheld."

Moreover, this decision was included in one of the essential landmark decisions of the Supreme Court in the Annual Report 2012. In addition to these decisions, the equalization of inheritance rights for women was once again determined by the Supreme Court in Decision Number 147 K/Pdt/2017, dated April 18, 2017. In this case, the Supreme Court ruled on an inheritance case related to Chinese customary law. In its considerations, the Supreme Court stated:

"In the context of gender equality, the rights of women and men are equal under the law. Therefore, it is fair and reasonable that the deceased's assets should be equally divided among the heirs without distinguishing between men and women, especially in the Chinese customary law, which is unwritten and must adapt to the changing times. It is unfair to position the eldest son as the sole recipient of the parental inheritance while the daughters only receive jewellery."

The Supreme Court has consistently maintained this stance. Supreme Court Decision Number 573 K/Pdt/2017, dated June 19, 2017, regarding inheritance division in Batak customary law, and

Supreme Court Decision Number 1130 K/Pdt/2017, dated July 10, 2017, regarding inheritance division in Manggarai customary law in East Nusa Tenggara, present the same legal considerations, namely the principle of equality between men and women in inheritance rights. The legal considerations that favor gender equality and justice, as stated in various decisions, were further reinforced by the Supreme Court with the enactment of Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Adjudicating Cases of Women Facing the Law on August 4, 2017.

Several decisions affirm that both male and female children have equal rights to inherit. These decisions can also be seen as necessary in protecting women's rights within the Indonesian legal system. In many cases, women often face discrimination in inheritance distribution, both in the context of customary law and religious law. These decisions explicitly recognize the rights of female children to receive an equal share with male children, thus strengthening the protection of women's rights regarding inheritance.

The existence of Supreme Court Regulation Number 3 of 2017 also provides clearer guidelines for adjudicating cases involving women facing the law. These guidelines help protect women's rights within the justice system, particularly in the context of inheritance division. Therefore, these steps gradually bring about positive changes in enhancing gender equality and justice in Indonesian law.

However, despite the changes and measures taken, there are still challenges in implementing and maintaining consistent application of the law that ensures gender equality and justice. Education, socialization, a broader understanding of society, and support from various institutions and stakeholders are needed to fulfil individual rights and gender equality within the Indonesian inheritance law system.

In the view of state law, customary law no longer in line with the development of law in society can no longer be upheld. However, this is different in the context of understanding Islamic law, where customary law can still be applied as long as it is not in conflict with Islamic law, as explained by the theory of *receptio a contrario* developed by Suyuti Thalib (Mutawali 2021; Rohmah and Alfatdi, 2022). Islamic law is independent and not influenced by modern ideas such as gender equality issues. However, in practice, there is an attitude

that accommodates customary law as a form of mitigation to avoid being considered contrary to Islamic law.

Nevertheless, it is important to emphasize that accommodating customary law in Islamic law should also be based on the principles of justice and gender equality underlying Islamic law. This aims to ensure that the interpretation and application of Islamic law do not result in discrimination or violations of individual rights, especially women's rights.

In this context, legal experts, scholars, and practitioners of Islamic law must continue dialoguing and collaborating with experts in customary law, community leaders, and women's groups to develop a holistic and comprehensive approach to address differences and conflicts between customary law and Islamic law (Amran Suadi & Candra, 2016). This can create harmony between customary values, religion, and human rights within Indonesia's inclusive and just legal system.

In facing these challenges, the role of state institutions, such as the Supreme Court and the legislative body, is also crucial in developing a legal framework that integrates customary law and Islamic law with the principles of gender equality. Through collaboration and synergy among various institutions and stakeholders, it is hoped that a legal system can be established that meets the needs and protects the rights of individuals while promoting justice and gender equality in Indonesia.

Islamic Law Supersedes Customary Law

The conflict between Islamic and customary law can be traced through several cases that depict concrete contradictions between the two legal systems. For instance, in matters of marriage and divorce, individual rights protection, harmony and integration, context and flexibility, inheritance, family arrangements, customs and ceremonies, and various other issues that frequently arise in the lives of Islamic communities.

Concrete conflicts between Islamic law and customary law become evident by understanding such cases more deeply. In some cases, differences exist between Islamic law and customary law, particularly in marriage and divorce. For example, the marriage regulations in the Baduy customary law differ from those stipulated in the Compilation

of Islamic Law (KHI). Some of these differences include that the Baduy community does not recognize polygamy and polyandry, there is no divorce, early marriages are allowed (without an age limit), and some do not register their marriages. On the other hand, the Compilation of Islamic Law has regulated and facilitated polygamy and polyandry, divorce, age limits for marriage, and marriage registration (Muslih, 2019). In Islamic law, a man can have multiple wives (polygamy) with certain restrictions. In contrast, in some customary law traditions, monogamy (having only one partner) may be the rule (Ismiranto, 2019). Moreover, divorce procedures can also differ between the two legal systems, including the requirements, reasons, and processes involved.

In inheritance cases, Islamic law has specific rules regarding the distribution of inheritance, which follow the provisions outlined in the Quran and the Sunnah of Prophet Muhammad (SAW). However, in some customary law traditions, the system of inheritance distribution can be different. This can lead to conflicts when customary law inheritance provisions contradict the principles of inheritance in Islamic law. Nevertheless, in some customary law traditions, the system of inheritance distribution can differ, taking into account unique cultural and traditional factors (Mustomi, 2017). Customary law systems often emerge from traditional practices and customs of specific communities. Social status, gender, family relationships, or specific roles and responsibilities within customary society can influence the division of inheritance in customary law.

The differences between Islamic inheritance law and customary law can lead to conflicts when the provisions of customary inheritance law contradict the principles of inheritance in Islamic law. In customary inheritance law, the estate cannot be divided. In contrast, in Islamic inheritance law, the estate must be divided according to the provisions outlined in the Quran and Hadiths (Haniru, 2014). Conflicts may arise when someone with inheritance rights according to customary law faces a division not in line with Islamic law, or vice versa. In some cases, individuals or families involved in such conflicts may need resolution or mediation to reconcile differences and reach an acceptable agreement for all parties involved (Fauzi, 2016). Therefore, legal pluralism in Indonesia is heavily influenced by Indonesian society's

diverse and pluralistic culture, resulting in the acculturation between Islamic culture and local cultures developed in the archipelago.

In cases like these, it is crucial to understand the differences between customary law and Islamic law and the cultural and traditional contexts in which customary law is applied. The government and the judicial system may be involved in resolving such conflicts by attempting to incorporate aspects of both legal systems or by providing decisions that consider principles of justice and agreements accepted by all parties involved.

Conflicts can also arise in family arrangements, such as child custody, guardianship, and the division of responsibilities between husband and wife. Islamic law has explicit provisions in these matters, while customary law may have different traditions in regulating family relationships (Dasor & Hermaditoyo, 2020). In Islamic law, child custody and guardianship are clearly defined. Custody of a child after a divorce or parents' death can be granted to a specific party based on the child's best interests. Child custody in Islam is granted to the mother when the child is young and then to the father when the child reaches a certain age (Dasor & Hermaditoyo, 2020; Kasim & Nurdin, 2020).

However, in customary law, roles and responsibilities within the family can be assigned to specific individuals based on the kinship system and traditional hierarchy. For example, in some customary societies, male ancestors dominate family leadership and make important decisions. This can affect the division of responsibilities within the family, where certain parties have greater rights and obligations compared to others (Maldonado, Colombi, and Pandya, 2016; Vinyeta, Whyte, and Lynn, 2016).

Conflicts can arise when customary laws governing family arrangements contradict the provisions of Islamic law. In such cases, conflict resolution efforts may involve mediation or incorporating aspects of both legal systems. The government and the judicial system can be crucial in reconciling differences and reaching fair agreements for all parties involved. It is important to remember that in resolving conflicts between customary law and Islamic law, principles of justice, equality, and the protection of individual rights must be upheld. Understanding the cultural differences and contexts in which customary law applies and

promoting dialogue and understanding among the parties involved can help achieve more harmonious and equitable resolutions in such cases.

These conflicts demonstrate differences in interpretation, practices, and priorities between Islamic and customary law. Such disparities can lead to conflicts and injustices in law implementation in societies with pluralistic legal systems. The argument that emerges is that Islamic law holds higher authority because it is based on religious principles that Muslims consider direct revelations from Allah. Conversely, customary law is seen as a cultural product that can change over time and does not hold the same authority. Therefore, some argue that Islamic law should precedence and override customary law (Cleveland & Bunton, 2016; Saeed, 2008).

A critical aspect of protecting individual rights is the protection of individual rights. Some argue that customary law, in some cases, can violate individual rights, particularly the rights of women, children, or minority groups. In this context, Islamic law prioritizes equality and justice in fulfilling individual rights (F. Rahman, 2021). Hence, there is an argument stating that Islamic law should be given priority in order to protect individual rights that may be neglected in customary law practices.

Customary law is often based on the traditions and customs of specific communities, which may not always consider principles of gender equality or the broad protection of individual rights. For example, in some customary law practices, women or female children may be given more minor inheritance rights compared to men, or they may not have equal access to family decisions or property ownership (Hakim, 2016).

On the other hand, Islamic law has principles that govern the protection of individual rights, including gender equality and the protection of children's rights. In Islam, women and children have guaranteed rights, including fair inheritance rights and protection against violence or exploitation. These principles are based on religious teachings that Muslims consider direct revelations from Allah (Hakim, 2016; Piri, 2013).

Therefore, an argument states that Islamic law should take precedence to protect the individual rights that may be neglected in customary law practices. This argument supports that Islamic law has

more inclusive and universal principles in safeguarding individual rights. In contrast, customary law is limited to specific cultural and traditional contexts that may not fully protect individual rights. However, the debate regarding the relative role of Islamic and customary law in protecting individual rights remains complex. It involves careful consideration of historical, social, cultural, and local contexts. When faced with conflicts or differences between these two legal systems, it is crucial to seek approaches that combine principles of justice, equality, and the protection of acceptable individual rights to all parties involved.

Conclusion

Legal pluralism in Indonesia is necessary due to the differences in ethnicity, customs, and religion. This non-monolithic legal system results in tension and conflicts. Conflicts arise from the differences between legal systems and within a single legal system. Even within customary law, conflicts occur, such as between different customary laws within matrilineal, patrilineal, and parental kinship systems, particularly in inheritance distribution. Legal conflicts also arise when confronted with Islamic law, which is the affinity of Muslim society, and state law, which applies to all citizens.

In the context of legal pluralism in Indonesia, the distribution of inheritance no longer relies on customary kinship systems, whether matrilineal, patrilineal, or parental. Several court decisions in certain regions have set aside customary law because it no longer accommodates the societal changes that have embraced ideas of gender equality as reflected in the national legal system. Additionally, customary laws regarding inheritance can be implemented as long as they comply with Islamic law, as per the theory of *receptio a contrario*, since the parties involved are followers of Islam.

References

Amin, S., Berenschot, W., Chaplin, C., Fauzanafi, M. Z., Hanani, R., Hearman, V., Jakimow, T., Febriany, V., van Klinken, G., & van der Muur, W. (2019). *Citizenship in Indonesia: Perjuangan atas Hak, Identitas, dan Partisipasi*. Yayasan Pustaka Obor Indonesia.

Amran Suadi, S. H., & Candra, M. (2016). *Politik hukum: Perspektif hukum perdata dan pidana islam serta ekonomi syariah*. Prenada Media.

Anleu, S. L. R. (2009). *Law and social change*. Sage.

Berman, P. S. (2009). The new legal pluralism. *Annual Review of Law and Social Science*, 5, 225–242.

Bowen, J. R. (2012). *A new anthropology of Islam*. Cambridge University Press.

Butt, S. (2010). Islam, the state and the Constitutional Court in Indonesia. *Pac. Rim L. & Pol'y J.*, 19, 279.

Chui, W. H., & McConville, M. (2007). *Research methods for law* (Vol. 104). Edinburgh University Press Edinburgh.

Cleveland, W. L., & Bunton, M. (2016). *A history of the modern Middle East*. Hachette UK.

Constantinidis, C., Lebègue, T., El Abboubi, M., & Salman, N. (2019). How families shape women's entrepreneurial success in Morocco: an intersectional study. *International Journal of Entrepreneurial Behavior & Research*, 25(8), 1786–1808.

Cribb, R. (2008). *Gangsters and Revolutionaries: The Jakarta People's Militia and the Indonesian Revolution, 1945-1949*. Equinox Publishing.

Cross, M. (1971). On conflict, race relations, and the theory of the plural society. *Race*, 12(4), 477–494.

Das, V. (1984). For a folk-theology and theological anthropology of Islam. *Contributions to Indian Sociology*, 18(2), 293–300.

Dasor, Y. W., & Hermaditoyo, S. (2020). Revitalisasi Peran Lembaga Adat Dalam Penanganan Konflik Sosial: Studi Di Manggarai Nusa Tenggara Timur Revitalization Of The Role Of Indigenous Agencies In Handling Social Conflicts: Study In Manggarai East Nusa Tenggara Yohanes Wendelinus Dasor Dan St. J. *Sosio Konsepsia*, 9, 213–228.

Djanuardi, H. K., Rachmainy, L., & Mulyanto, D. (2021). Settlement Of Customary Inheritance Dispute Cases According To Sharia (Islamic Law) In Indigenous Communities In Indonesia. *NVEO-NATURAL VOLATILES & ESSENTIAL OILS Journal| NVEO*, 807–818.

Dror, Y. (1958). Law and social change. *Tul. L. Rev.*, 33, 787.

du Plessis, L. M. (1985). Kroniek: Law, race and ethnicity in a plural society. *Journal for Juridical Science*, 10(1), 89–93.

Duncan, B. A. (2010). Cocoa, marriage, labour and land in Ghana: Some matrilineal and patrilineal perspectives. *Africa*, 80(2), 301–321.

El-Zein, A. H. (1977). Beyond ideology and theology: the search for the anthropology of Islam. *Annual Review of Anthropology*, 6(1), 227–254.

Fauzi, M. Y. (2016). Legislasi Hukum Kewarisan di Indonesia. *Ijtima'iyya: Jurnal Pengembangan Masyarakat Islam*, 9(2), 53–76.

Gebeye, B. A. (2017). Legal theory in Africa: between legal centralism and legal pluralism. *Queen Mary Law Journal*.

Griffiths, J. (1986). What is legal pluralism? *The Journal of Legal Pluralism and Unofficial Law*, 18(24), 1–55.

Hakim, M. L. (2016). Keadilan kewarisan Islam terhadap bagian waris 2: 1 antara laki-laki dengan perempuan perspektif filsafat hukum Islam. *Jurnal Ilmu Hukum*, 3(1), 2.

Haniru, R. (2014). Hukum Waris Di Indonesia Perspektif Hukum Islam Dan Hukum Adat. *Al-Hukama: The Indonesian Journal of Islamic Family Law*, 4(2), 456–474.

Hasan, M. (2023). Construction of Modern Islamic Inheritance Law based on Ijtihad of the Judges at the Religious Court of Pontianak, West Kalimantan. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 7(2), 650–668.

Hendrako, E. (2015). Hak waris anak perempuan terhadap harta peninggalan (studi kasus putusan ma ri no. 4766/pdt/1998). *Lex Privatum*, 3(1).

Hosen, N. (2005). Religion and the Indonesian constitution: a recent debate. *Journal of Southeast Asian Studies*, 36(3), 419.

Hutchinson, T., & Duncan, N. (2012). Defining and describing what we do: Doctrinal legal research. *Deakin L. Rev.*, 17, 83.

Ikhwan, I. (2022). The contribution of LWC Van Den Berg's thoughts in Dutch Colonial Legal Politics on the development of religious courts in Indonesia. *AJIS ACADEMIC JOURNAL OF ISLAMIC STUDIES*, 7(1).

Ilyas, I., Rani, F. A., 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), 897–919.

Irianto, S. (2016). *Pluralisme hukum waris dan keadilan perempuan*. Yayasan Pustaka Obor Indonesia.

Islam, M. H. (2018). Islamic Law in Indonesia. *Asy-Syari'ah: Jurnal Hukum Islam*, 4(1), 31–50.

Ismiranto, D. (2019). Asas Monogami dalam Sistem Hukum Perkawinan di Indonesia dan Tunisia. *Negara Dan Keadilan*, 8(1).

Junaidy, A. B. (2013). Competing for inheritance: the contestation between Islam, adat and modernity in inheritance distribution in Indonesia. *Journal of Indonesian Islam*, 7(3), 427–432.

Kasim, F. M., & Nurdin, A. (2020). Study of sociological law on conflict resolution through Adat in Aceh community according to Islamic law. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 4(2), 375–397.

Khairunnisa, A. A. (2018). Penerapan Prinsip-Prinsip Hak Asasi Manusia Dalam Pembentukan Produk Hukum Oleh Pemerintah Daerah. *Jurnal MP (Manajemen Pemerintahan)*, 65–78.

Khoury, C. (2020). Beyond Religious Marriages: Civil Marriage, Civil Family Laws, and the Enhancement of Women's Rights in Lebanon. *Kohl: A Journal for Body and Gender Research*, 77–89.

Lev, D. S. (1972). *Islamic courts in Indonesia: A study in the political bases of legal institutions* (Vol. 12). Univ of California Press.

Lockwood, D. (2018). Race, Conflict, and Plural Society 1. In *Race and racialism* (pp. 57–72). Routledge.

Maldonado, J. K., Colombi, B., & Pandya, R. (2016). *Climate change and Indigenous peoples in the United States*. Springer.

Maria Kyed, H. (2009). The politics of legal pluralism: state policies on legal pluralism and their local dynamics in Mozambique. *The Journal of Legal Pluralism and Unofficial Law*, 41(59), 87–120.

Masâ, M. (2018). The Application Of Islamic Law At The Colonial Age And It's Implication For The Indonesian Religious Justice System. *Journal of Islamicate Studies*, 1(2).

Meerschaut, K., Gutwirth, S., & Eva, B. (2008). Legal pluralism and Islam in the scales of the European Court of Human Rights: The limits of categorical balancing. In *Conflicts between fundamental rights* (pp. 431–465). Intersentia.

Moghadam, V. M. (2022). Institutions, feminist mobilizations, and political economy: Debating equal inheritance in Tunisia. *British Journal of Middle Eastern Studies*, 1–18.

Morgan, T. D., & Tuttle, R. W. (1994). Legal Representation in a Pluralist Society. *Geo. Wash. L. Rev.*, 63, 984.

Muslih, M. (2019). Perbandingan Prosedur Perkawinan Adat Baduy dengan Kompilasi Hukum Islam. *Kanun Jurnal Ilmu Hukum*, 21(3), 437–458.

Mustomi, O. (2017). Perubahan tatanan budaya hukum pada masyarakat adat Suku Baduy Provinsi Banten. *Jurnal Penelitian Hukum E-ISSN*, 2579, 8561.

Mutawali, M. (2021). The Dialectics of Customary Law and Islamic Law: An Experience from Dou Donggo Customs of Bima, Indonesia. *AHKAM: Jurnal Ilmu Syariah*, 21(1).

Muthmainnah, M., & Santoso, F. S. (2019). Akibat Hukum Harta Bersama Perkawinan Dalam Pewarisan Di Indonesia Analisis Komparatif Hukum Islam Dan Hukum Adat. *Ulumuddin : Jurnal Ilmu-Ilmu Keislaman*, 9(1), 81–96. <https://doi.org/10.47200/ulumuddin.v9i1.286>

Piri, M. T. (2013). Perlindungan Hukum Terhadap Tindakan Eksplorasi Anak (Kajian Undang-Undang Nomor 23 Tahun 2002). *Lex Administratum*, 1(2).

Rahman, A., & Janur, N. A. (2022). Comparative Study of the Concept of the Welfare State According to Liberal, Islamic and the 1945 Constitution. *Jurisprudentie: Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum*, 9(2), 196–209.

Rahman, F. (2021). Kerangka Hukum Perlindungan Data Pribadi Dalam Penerapan Sistem Pemerintahan Berbasis Elektronik Di Indonesia. *Jurnal Legislasi Indonesia*, 18(1), 81–102.

Ramadhan, S. S. (2023). *Sistem Penyelesaian Kasus Perusakan Tanaman Oleh Hewan Ternak Menurut Hukum Adat (Studi Kasus Di Kecamatan Jaya Kabupaten Aceh Jaya)*. UIN Ar-Raniry Fakultas Syariah dan Hukum.

Rex, J. (1959). The plural society in sociological theory. *The British Journal of Sociology*, 10(2), 114–124.

Rohmah, S., & Alfandi, A. R. (2022). From Living Law to National Law: Theoretical Reconstruction of Applying Islamic Law in Indonesia. *Peradaban Journal of Law and Society*, 1(1).

Saeed, A. (2008). Some reflections on the Contextualist approach to ethico-legal texts of the Quran. *Bulletin of the School of Oriental and African Studies*, 71(2), 221–237.

Salim, A. (2015). *Contemporary Islamic law in Indonesia: Sharia and legal pluralism*. Edinburgh University Press.

Salim, M. (2017). Bhinneka tunggal ika sebagai perwujudan ikatan adat-adat masyarakat adat nusantara. *Al Daulah: Jurnal Hukum Pidana Dan Ketatanegaraan*, 6(1), 65–74.

Shah, P. (2005). *Legal Pluralism in Conflict: coping with cultural diversity in law*. Psychology Press.

Shah, P. (2020). Introduction: From Legal Centralism to Official Lawlessness? In *The Challenge of Asylum to Legal Systems* (pp. 1–11). Routledge-Cavendish.

Shariff, F. (2008). Power Relations and Legal Pluralism: An Examination of 'Strategies of Struggles' Amongst the Santal Adivasi of India and Bangladesh. *The Journal of Legal Pluralism and Unofficial Law*, 40(57), 1–43.

Siegel, J. T. (1998). *A new criminal type in Jakarta: Counter-revolution today*. Duke University Press.

Simon Thomas, M. (2012). Legal pluralism and the continuing quest for legal certainty in Ecuador: A case study from the Andean Highlands. *Onati Socio-Legal Series*, 2(7).

Swenson, G. (2018). Legal pluralism in theory and practice. *International Studies Review*, 20(3), 438–462.

Tahali, A. (2018). Hukum Adat Di Nusantara Indonesia. *Jurnal Syariah Hukum Islam*, 1(2), 68–84.

Tamanaha, B. Z. (2008). Understanding legal pluralism: past to present, local to global. *Sydney Law Review*, 30(3), 375–411.

Tamanaha, B. Z. (2011). *The rule of law and legal pluralism in development*. *Hague J Rule Law* 3 (1): 1–17.

Tono, S., Syibly, M. R., Mu'allim, A., Nurozi, A., & Purwanto, M. R. (2019). The harmonious relationship between Minangkabau custom and Islam in the distribution of inheritance. *Al-Shajarah: Journal of the International Institute of Islamic Thought and Civilization (ISTAC)*, 39–55.

Vinyeta, K., Whyte, K., & Lynn, K. (2016). *Climate change through an intersectional lens: gendered vulnerability and resilience in indigenous communities in the United States*.

Wahib, A. B. (2014). Reformasi hukum keluarga di dunia Muslim. *Ittihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 14(1), 1–19.

Yilmaz, I. (2021). Muslims, Sacred Texts, and Laws in the Modern World. *Handbook of Contemporary Islam and Muslim Lives*, 19–37.

Zubair, A., & Latif, H. (2022). The Construction of Inheritance Law Reform in Indonesia: Questioning the Transfer of Properties through Wasiat Wājibah to Non-Muslim Heirs. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 6(1), 176–197.

Zuhdi, M. (2018). Challenging moderate Muslims: Indonesia's Muslim schools in the midst of religious conservatism. *Religions*, 9(10), 310.

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