



***Kepurusa as a Women’s Inheritance System in Bali:
Dynamics of Customary, National, and Islamic Law***

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Abstract

The legal system currently in force is inseparable from its long historical development. It is deeply-rooted in the spirit and identity of the nation, as well as in both Islamic law and customary law, for therein lies the true identity of Indonesian law. In Balinese customary law communities, inheritance distribution is based on a patrilineal system. Inheritance is granted to male descendants within the family, and a distinguishing feature in Balinese customary law is the principle of *sentana rajeg* (a daughter granted patrilineal heir status). This refers to a condition in which, when an heir has only daughters, a daughter may enter into a marriage in which the husband is incorporated into her family. This incorporation subsequently creates *predana* status. This study employs a normative juridical research method, analyzed through the theory of Islamic law. Data collection was conducted through library research. In the case being studied, inheritance of land was instead granted to a person who was neither part of the family bond nor held *predana* status. Although traditionally adhering to the *Kepurusa* system, developments in law and jurisprudence (e.g., Supreme Court Decision Number 1331 K/Pdt/2010) indicate that the concepts of Islamic inheritance law and Balinese customary law are alternative yet aligned, which is in accordance with the principle of justice. Another finding is the adjustment made to accommodate inheritance rights for daughters under certain criteria (e.g., not marrying outside the family, caring for parents, or based on family/customary agreements) in order to achieve the values of justice and equality.

Keywords: *Kepurusa*, Women’s Inheritance System, Bali, Law

Abstrak

Sistem hukum yang berlaku saat ini tidak dapat dipisahkan dari perkembangan sejarahnya yang panjang. Sistem tersebut berakar kuat pada semangat dan jati diri bangsa, serta pada hukum Islam dan hukum adat, karena di sanalah identitas sejati hukum Indonesia berada. Dalam masyarakat hukum adat Bali, pembagian warisan didasarkan pada sistem patrilineal. Warisan diberikan kepada keturunan laki-laki dalam keluarga, dan salah satu ciri khas hukum adat Bali adalah adanya prinsip sentana rajeg (anak perempuan yang diberikan status sebagai ahli waris patrilineal). Hal ini merujuk pada kondisi ketika seorang pewaris hanya memiliki anak perempuan, sehingga salah satu anak perempuan dapat melangsungkan perkawinan dengan suami yang kemudian masuk ke dalam keluarga pihak perempuan. Proses masuknya suami ke dalam keluarga tersebut selanjutnya melahirkan status predana. Penelitian ini menggunakan metode penelitian yuridis normatif yang dianalisis melalui teori hukum Islam. Pengumpulan data dilakukan melalui studi kepustakaan. Dalam kasus yang dikaji, warisan tanah justru diberikan kepada seseorang yang bukan bagian dari ikatan keluarga maupun tidak memiliki status predana. Meskipun secara tradisional menganut sistem kepurusa, perkembangan hukum dan yurisprudensi (misalnya Putusan Mahkamah Agung Nomor 1331 K/Pdt/2010) menunjukkan bahwa konsep hukum waris Islam dan hukum adat Bali merupakan alternatif yang sejalan, yang sesuai dengan prinsip keadilan. Temuan lainnya adalah adanya penyesuaian untuk mengakomodasi hak waris perempuan dengan kriteria tertentu (misalnya tidak menikah keluar keluarga, merawat orang tua, atau berdasarkan kesepakatan keluarga/adat) guna mewujudkan nilai keadilan dan kesetaraan.

Kata Kunci: *Kepurusa, Sistem Waris Perempuan, Bali, Hukum*

Introduction

The human life cycle can be categorized into three major stages, birth, marriage, and death, which have long been the focus of attention from scholars from various perspectives.¹ These stages are the main life milestones, which are influenced by cultural norms, religious values and existing legal systems, whether national law, customary law or Islamic law.² In this case, inheritance is an important

¹ Nur Avita, Ahmad Rusyaid Idris, and Frina Oktalita, "Integration Of Tradition And Sharia: Dowry and Dui Menre in the Marriage of the Bugis Community in Bone Regency," *El-Mashlahah* 12, no. 2 (2022).

² Misran Ramli et al., "Unveiling Illegal Marriages in Aceh: Examining the Role of Unofficial Qadi," *El-Mashlahah* 14, no. 2 (2024), p. 409–30; Siti Musawwamah et al., "Resistance to Child Marriage Prevention in Indonesia and Malaysia," *AHKAM : Jurnal Ilmu Syariah* 23, no. 1 (2023).

issue in the existing framework, as it is a central issue and has also received a lot of attention in both state legal regulations and in the scholarly literature.³

In Balinese customary law communities, the distribution of inheritance is based on the patrilineal system which prioritizes male lineage, where the right to inheritance is usually given to male descendants.⁴ This pattern has created a perception that men and women are not on an equal footing in inheritance law, which is often considered not in accordance with contemporary justice.⁵ As a result, women are sometimes considered to be disadvantaged compared to men. Another related issue concerns situations in which daughters inherit property in the absence of sons; in such cases, their collective share is limited to two-thirds of the estate, with the remainder distributed among other heirs.⁶

The more prominent position of men has affected the status of women in many aspects of Balinese society, including inheritance.⁷ This is known as *Kepurusa* or *Saking Purusa*, whereby a family without male descendants may still retain and continue the inheritance even if they have only daughters, with the daughter's status subsequently affirmed as *Purusa*.⁸

Customary law was conceptualized by Christiaan Snouck Hurgronje as *adat-recht* to distinguish between mere customs or social practices and those that carry legal significance. Customary law itself is a set of unwritten rules, norms, and practices that live within indigenous communities. This law is concerned with the interests of the community derived from tradition and the collective awareness of society handed down from generation to generation. Customary law also governs several aspects related to indigenous communities including inheritance. However, systems of inheritance distribution differ from region to region because of the collective nature of each community.

³ Khairuddin Hasballah, Dhaiful Mubarrak, and Saddam Rasanjani, "Disparity in Judge Decisions in Resolving Rad Inheritance Disputes: Case Study at the Sharia Court in Banda Aceh City," *El-Usrah* 6, no. 2 (2023), p. 251.

⁴ Sovia Santika and Yusnita Eva, "Kewarisan Dalam Sistem Kekerabatan Matrilineal, Patrilineal Dan Bilateral," *Al-Mashlahah : Jurnal Hukum Islam Dan Pranata Sosial Islam* 11 (02) (2023), p. 197.

⁵ Ilyas Ilyas et al., "The Legal Construction of Daughter as Ashabah in Aceh from An Islamic Law Perspective," *El-Usrah: Jurnal Hukum Keluarga* 8, no. 2 (2025), p. 1059-1079.

⁶ Bahruddin Umar Yakub et al., "Living Qur'an, Gender, and Sibaliparriq, in Mandar, Indonesia: Cultural Construction in the Perspective of Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (2023), p. 1219.

⁷ Ali Abubakar et al., "The Postponement of the Implementation of Inheritance Distribution in The Seunuddon Community, North Aceh In The Lens Of 'Urf Theory and Legal Pluralism," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (2023), p. 411.

⁸ I Gusti Ayu Jatiana Manik Wedanti et al., "Aspects of Gender Equality and Justice in Nyentana Marriage in the Balinese Customary Law Society," *International Journal of Multicultural and Multireligious Understanding* 10, no. 8 (2023): I Wayan Bhayu Eka Pratama, "Perkawinan Nyentana Di Bali: Urgensi, Tata Cara, Dan Prospeknya Di Era Modern," *Jurnal Hukum Lex Generalis* 2, no. 6 (2021). p. 455.

Inheritance has been widely studied in the literature, whether from the perspective of national law, customary law, or Islamic law.⁹ Ulfiani Rahman studied about inheritance distribution for men and women in Mandar through field research in Polewali Mandar Regency, West Sulawesi Province.¹⁰ The study found that the Mandar people in West Sulawesi believe that there should be no difference in the inheritance share of men and women, that is, both get an equal share.¹¹ There are two patterns for the distribution of inheritance in the Mandar region, namely the pattern of distribution according to customs and the pattern of distribution according to Islamic law, which have been practiced over generations. A unique feature of this system is that the parental house becomes the property of the youngest child, regardless of whether the youngest child is a son or a daughter.¹²

Another study by Tarmizi et al.¹³ examined inheritance practices in Bone Regency, analyzing how inheritance disputes are resolved through *musyawarah* (deliberation) so that conflicts regarding women's inheritance rights can be viewed from the perspective of *maqāṣid al-syarī'ah* (objectives of Islamic law).¹⁴ Their findings reveal that such disputes are resolved by involving the authority of local institutions and may proceed through either litigation or non-litigation mechanisms. The main causes of inheritance disputes include the greed of heirs, limited understanding of inheritance law, lack of documentation regarding property transfers, unfair distribution, and delays in inheritance division. Therefore, it is expected that relevant authorities, including the government and other involved institutions, play an active role in guiding and educating the community to ensure effective inheritance distribution and prevent conflicts.

Women have been facing various challenges in obtaining inheritance rights under customary law, which may vary depending on the community or ethnic

⁹ Mursyid Djawas et al., "The Construction of Islamic Inheritance Law: A Comparative Study of the Islamic Jurisprudence and the Compilation of Islamic Law," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 2 (2022), p. 207–19; Iskandar A. Gani et al., "The Constitutional Court's Protection and Fulfilment of the Citizens' Rights: Constitutional and Islamic Law Perspectives," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 1 (2024), p. 317.

¹⁰ Ulfiani Rahman et al., "Men and Women in The Distribution of Inheritance in Mandar, West Sulawesi, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (2022): 156–75.

¹¹ Hotnidah Nasution and Ahmad Rifqi Muchtar, "Negotiating Islamic Law: The Practice of Inheritance Distribution in Polygamous Marriages in Indonesian Islamic Courts," *Al-Manahij: Jurnal Kajian Hukum Islam*, June 12, 2024, p. 125–44.

¹² Mursyid Djawas and Riska Fajrina, "Efektifitas Lembaga Perlindungan Anak Terlantar: Studi Pada Pantu Asuhan Suci Hati Di Meulaboh, Kabupaten Aceh Barat," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 3, no. 2 (2019), p. 295.

¹³ Tarmizi Tarmizi et al., "Inheritance Distribution and Conflict Resolution in Bone Regency: Upholding Women's Rights and Islamic Law Objectives," *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 2 (2024). p. 255-277.

¹⁴ Bahrun Abubakar et al., "Parenting Education in Islamic Families within the Framework of Family Resilience in Aceh, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (2023), p. 1121.

group.¹⁵ Indonesia's patriarchal society often contributes to injustice in women's inheritance rights, which leads to dependence on men. Thus, efforts have been made to address these issues, including the implementation of legal measures and the role of Indonesian courts in providing gender justice in inheritance cases. Many women have been seeking legal protection from state institutions to defend their rights, and some have succeeded in obtaining inheritance rights through court decisions upheld by the Supreme Court, by taking into account sociological values and empirical evidence.¹⁶

In Islamic inheritance law, there are three bases upon which a person may receive a share of inheritance: kinship, marriage, and family relations.¹⁷ First, the death of the decedent must be established; without certainty of death, the estate cannot be distributed to the heirs. Second, the heir must be alive; it must be clear that the heir survives the decedent, since the heir assumes control over the estate left behind. The transfer of wealth occurs through the process of inheritance, and therefore the heir must be living at the time of the decedent's death. Third, the status of the relationship must be known. For an heir to inherit, there must be a clear relationship between the parties, such as parent-child, husband-wife, or sibling relationships, whether full siblings, half-siblings through the father, or half-siblings through the mother.¹⁸

In addition, it is necessary to consider whether there are impediments to inheritance. Islamic inheritance law recognizes three impediments. First, slavery: a slave does not receive inheritance because all property belongs to the master, although slavery no longer exists today. Second, homicide: the Hanafi scholars classify killing into two types, namely direct killing (*mubāsharah*) and indirect killing (*tasabbub*). Direct killing is further divided into intentional killing, quasi-intentional killing, and unintentional killing. Indirect killing, for example, occurs when a person digs a hole in their garden and someone falls into it and dies; the death is caused indirectly. According to the Hanafi scholars, direct killing constitutes a barrier to inheritance, whereas indirect killing does not. Third, difference of religion: this occurs when the religion of the decedent differs from that of the heir.

¹⁵ Roslina Roslina et al., "Reinterpreting Islamic Inheritance: Supreme Court Jurisprudence and Gender Justice in Indonesia," *Jurnal Ilmiah Peuradeun* 13, no. 3 (2025), p. 2339–64; Y Fitriyati et al., "Reconsidering Inheritance Equality: Gender Justice in Religious Court Decisions through the Lens of Maqashid Al-Shariah," *Nurani* 25, no. 1 (2025), p. 122–40.

¹⁶ Muslim Zainuddin et al., "Protection of Women and Children in the Perspective of Legal Pluralism: A Study in Aceh and West Nusa Tenggara," *Samarah* 8, no. 3 (2024), p. 1948–73.

¹⁷ Abdurrohman Kasdi and Khoiril Anwar, "Inheritance Distribution of Adopted Children in The Perspective of Customary Law and Islamic Law Compilation: Case Study of the Application of Inheritance Law in Kudus," *Al-Ahkam* 29, no. 2 (2019), p. 141-158.

¹⁸ Ikhwanuddin Harahap, Fatahuddin Aziz Siregar, and Erie Hariyanto, "Understanding The Rise of Childfree Marriage: Avoiding Toxic Family, Being Happy and Well Without Children Despite Contradiction With Maqashid Al-Sharia," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 1 (2025), p. 303–29.

A distinguishing feature of Balinese customary law communities is the principle of *sentana rajeg* (a daughter granted patrilineal heir status).¹⁹ This refers to a condition in which, when a decedent has only daughters, a daughter may enter into a marriage in which her husband is incorporated into her family. This incorporation then creates *predana* status. However, in the case being studied, the inheritance of land was instead granted to a person who was neither part of the family bond nor held *predana* status.

This feature relates to the issue of inheritance distribution practiced by the local community. The people have their own way of resolving inheritance division among family members, in which the shares of men and women are unequal.²⁰ The unequal distribution of inheritance between men and women in this village is rooted in traditions passed down from generation to generation. The community prefers to apply traditional law practiced by their ancestors.²¹

In Indonesia, the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*) is used as a guideline for resolving Islamic inheritance matters.²² Article 176 of the KHI stipulates that the inheritance share between males and females is in a two-to-one ratio, as stated in the Qur'an Surah al-Nisā verses 11 and 176. This, however, raises issues because it conflicts with Islamic inheritance law and the KHI. Accordingly, this study aims to examine this issue by addressing two main questions: the inheritance distribution system practiced in Balinese society and the factors influencing community awareness at the village level in the application of inheritance law.²³

The study intends to describe how perspectives from customary and national law, through the lens of Islamic legal theory, can be used to analyze and justify Supreme Court Decision No. 29 K/PDT/2004 to support the principle of the *Kepurusa* (male lineage) inheritance in the context of inheritance disputes in Bali. Moreover, changes and developments in Balinese customary law could be the cause

¹⁹ Nurlaelah Abbas et al., "Theological Impact of Marriage for Religious Minority Families in Bali and Makassar," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 9, no. 1 (2025).

²⁰ Fahmi Fatwa Rosyadi Satria Hamdani et al., "Traditional Law vs. Islamic Law; An Analysis of Muslim Community Awareness in Inheritance Issues," *Al-Ahkam* 32, no. 1 (2022), p. 109–30.

²¹ Raja Ritonga et al., "Portion of Married Daughters in Inheritance Share among Angkola Batak Community," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 19, no. 1 (2024), p. 78–103; Akramov Akmaljon Anvarjon ugli et al., "Legal Issues of Digital Asset Inheritance from an Islamic Law Perspective," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 25, no. 2 (2025), p. 191–212.

²² Nadhilah Filzah, "Perlindungan Dan Kemanfaatan Hukum Terhadap Putusan Itsbat Nikah Di Mahkamah Syar'iyah Bireun (Analisis Putusan Perkara No. 82/Pdt.P/2019/Ms-Br)," *El-Usrah* 4, no. 1 (2021).

²³ Azni Azni et al., "The Timing Analysis of Inheritance Distributions in the Compilation of Islamic Law," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 23, no. 2 (2023), p. 258–73; Siti Faridah Maimanah Maimanah, M. Fahmi al-Amruzy, Arni Arni, "Delay in the Division of Inheritance: A Theoretical Review within Legal System Framework in Indonesia," *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 1 (2024).

of the difficulties encountered in the practice of the *Kepurusa* inheritance principle in the context of modernization and globalization, as well as the role and position of customary law and Islamic law in the national legal system of Indonesia, which have been affected by an intellectual tension between legalism/positivism and the historical school (living law).

Perspective of Customary Law Studies

The presence of tradition in a community is an indication of the community's cultural capacity to sustain ideal values against the strong currents of change.²⁴ The flexibility of such traditions even in the face of global pressures demonstrates the resilience of local culture. The study of customary law can be approached from three main foundations, namely philosophical, juridical and sociological. The three perspectives provide a comprehensive basis for understanding the existence and application of customary law as a living law system in Indonesian society.

Philosophically, customary law is based on noble values and the life philosophy of communities developed and maintained from generation to generation. Customary law reflects the norms and morals that regulate social life, and this foundation is closely related to the values contained in Pancasila as the philosophical basis of the Indonesian state. Values such as deliberation and consensus (*musyawarah mufakat*), mutual cooperation (*gotong royong*), justice, and kinship are basic principles that are common to both customary law and Pancasila. Thus, Pancasila may be seen as a crystallization of the customary legal values living within Indonesian society.²⁵

Customary law is an integral part of Indonesian national culture. Where there is society, there is law (including customary law). This is a legal reality recognized worldwide, as expressed by Cicero approximately 2,000 years ago in his famous maxim, *Ubi societas ibi ius* (where there is society, there is law). Human beings cannot live in society without clear normative boundaries. A clear yet flexible legal norm is needed to regulate human life. The customary legal system continuously grows, develops, and is maintained by Indonesia's indigenous communities because it arises from real social needs, ways of life, and worldviews, all of which form the culture of the society in which customary law applied.²⁶

From a juridical perspective, customary law holds a strong position within Indonesia's national legal system. This is affirmed in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that "The State recognizes and respects indigenous customary law communities along with their traditional rights, as long as they remain alive and are in accordance with societal

²⁴ M. Tahir Maloko et al., "Sompa Tanah in Makassar Bugis Customary Marriages: Legal, Religious, and Cultural Perspectives," *Jurnal Ilmiah Peuradeun* 12, no. 3 (2024). p. 1219.

²⁵ Ida Bagus Alit Yoga Maheswara, *Aspek Legalitas Hukum Pidana Dengan Hukum Adat*, *Jurnal Komunikasi Hukum*, vol. 7, 2021, p. 1015.

²⁶ Maheswara.

development and the principles of the Unitary State of the Republic of Indonesia.”²⁷ This provides juridical legitimacy for customary law as one of the sources of national law, insofar as it does not conflict with statutory law. Also, Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power states that the judge is obliged to explore, follow, and understand the values of law that live in the community.²⁸

These constitutional and juridical provisions indicate that customary law has historical and cultural value, and is legally recognized as part of the national legal system. This recognition means that customary law functions as a source of living law, as its validity is based on social acceptance and is in accordance with the principles of social justice. The practice of customary law is used by judges as a reference in the administration of justice, especially in judging cases that are not explicitly regulated by statutory law.

Sociologically, customary law is a reflection of the social values, morals, and customs that are embedded in Indonesian society. This law is continuously growing and developing naturally and spontaneously from the social relations that are still taking place. The legitimacy of this law rests not on formal legislative enactment as in the case of written law, but on the collective consciousness of society that regard it as a set of rules that are just and proper to be followed. Therefore, customary law is referred to as the living law, i.e., law that truly lives because it is practiced and maintained by the community itself.²⁹

Customary law demonstrates that law does not always have to originate from the state. It may be derived from social practices which are performed daily and socially approved. Communities follow customary law not because it is sanctioned by the state, but because they believe in it and feel that they are part of it. This compliance is voluntary and is part of the social consciousness that is formed through common experience, thus giving customary law a real social force.

In the national legal system, the existence of customary law indicates that the validity of law does not depend only on whether it is written or unwritten. Many written laws are legally enacted by the state but do not actually function in society because they do not align with prevailing social values. On the other hand, customary law, although unwritten, can work well because in line with the worldview and the needs of the community.

This indicates that the effectiveness and legitimacy of law much depends on the acceptance of the norm that is considered just and proper by society.³⁰ Thus, the sociological basis of customary law confirms that it is the result of a dynamic social

²⁷ “The 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), Article 18B paragraph (2)”

²⁸ “Law on Judicial Power, Law Number 48 of 2009, State Gazette of 2009 No. 157, Supplement to the State Gazette No. 5076, (hereinafter referred to as the Judicial Power Law (UUKK)), Article 5 paragraph (1)”

²⁹ Serlika Aprita and Yonani Hasyim, *Hukum Adat*, 1st Ed., (Jakarta: Mitra Wacana Media, 2023).

³⁰ Hasyim.

process. It develops, adjusts to social change, and is rooted in the cultural values handed down from generation to generation. Customary law is not merely a guide for behavior, but also a means of maintaining social equilibrium in changing times. The existence of customary law is a proof that law can exist without being written down as long as it is based on the consciousness and needs of society.

From the three perspectives, the Supreme Court Decision of the Republic of Indonesia Number 29 K/Pdt/2004 shows a harmonious relationship between customary law and national law. Philosophically, the decision confirms the value of justice and balance in Balinese customary society through the application of the principle of *Kepurusa* as the basis of inheritance. Juridically, the Supreme Court applies customary law as a legitimate source of law which is recognized in the national legal system in line with Article 18B paragraph (2) of the 1945 Constitution. Sociologically, the decision shows respect for the social structure of Balinese society that follows the patrilineal kinship system and allocates customary responsibilities along the male line of descent. Therefore, this decision is an example of the synergy of living customary values with the national legal system in upholding substantive justice in accordance with the identity of Indonesian law.

Analysis of Changes and Developments in Customary Law

Balinese society is known to have very strong customs and traditions embedded within its social order. Major ceremonies such as *Nyepi*, *Galungan*, *Ngaben*, and many other customary rituals continue to be regularly practiced by Balinese indigenous communities. Likewise, kinship and inheritance customs in Balinese customary society strongly adhere to a patrilineal system. This patrilineal system grants authority to sons as the primary actors in maintaining customary ceremonies, preserving spiritual inheritance, continuing the family lineage, and receiving inheritance distribution.³¹

The inheritance distribution system in Balinese customary society bears similarities to the family system found in the *Manawa Dharmasastra*. In that text, it is stated that daughters in a family have no inheritance rights over family property. However, a different provision applies when a family has no sons. In the absence of male children, a daughter may become an heir on one condition: she must enter into a *ceburin* marriage.³² *Ceburin* marriage, or *sentana rajeg*, is a form of marriage in which the woman incorporates the man into her family lineage, so that the woman in such a marriage assumes the status of *purusa* (male lineage holder).³³

³¹ Sevina Ayu Wulandari and Fahriza Dhya Kusuma, "Analisis Penerapan Sistem Hukum Waris Patrilineal Dalam Masyarakat Adat Bali," *Indonesian Journal of Social Sciences and Humanities* 3, no. 2 (2023), p. 84.

³² Siti Dian Natasya Solin et al., "Batak Customary Marriage: A Study of the Prohibition of Same-Clan Marriage and Its Relevance in the Contemporary Era," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 1 (2024), p. 62.

³³ Wayan Jordi, Kahar Lahae, and Sri Susyanti, "Kedudukan Anak Perempuan Sebagai Anak Tunggal Dalam Sistem Pewarisan Pada Masyarakat Adat Bali (The Position Of Daughter As The

However, as times have changed and modernization has affected many aspects of social life, Indonesian society has become increasingly aware of the importance of equality between men and women. Customary law is a constantly changing phenomenon which develops as the communities to which it applies grow and change. This has caused the inheritance distribution system in Bali to gradually begin recognizing inheritance rights for women. In judicial practice, the Supreme Court has developed jurisprudence affirming that Balinese Hindu daughters may also obtain inheritance rights under certain criteria, namely by remaining in the parental home and caring for their parents (thereby performing the *purusa* function), remaining unmarried or continuing to reside in the original family home, or through family agreement or customary judicial processes.

In Supreme Court Decision No. 1331 K/Pdt/2010, it was stated that Balinese women may become heirs based on considerations of justice and equality. This was intended to harmonize customary law and national law. In addition, many customary villages in Bali now recognize daughters' inheritance rights through new *awig-awig*, although the proportion may differ from that of sons.³⁴ Therefore, it can be concluded that customary law is a legal system open to changes in social values within society as well as developments in national law.

Balinese customary law, however, does not only regulate inheritance, but also governs the entirety of life within Balinese customary communities. These regulations are known as *awig-awig*. Like other customary laws across Indonesia, *awig-awig* consists of hereditary rules aimed at maintaining peace, harmony, and social order among community members. The formulation of *awig-awig* takes into account the aspects of *parhyangan* (religious life), *pawongan* (social relations), and *palemahan* (territorial/environmental order), which in Balinese customary society are known as the three sources of well-being.³⁵

Although Balinese customary society has now been influenced by globalization and modernization, *awig-awig* continues to function effectively as a guide for community life. This is because *awig-awig* is always adapted to social changes and developments through the process of *nguwuh-nguwuhin* so that Balinese customary law remains relevant to aspects of life such as technology, socio-economic conditions and tourism. For example, in some Balinese customary communities, *awig-awig* provides that women are entitled to inherit, although in smaller proportions than men. In addition, in some regions of Bali, the role of *pecalang* is now assigned not only to men but also to women.

Only Children In The Inheritance System In Balinese Society),” *Jurnal Ilmiah Advokasi* 10, no. 1 (2022), p. 53.

³⁴ “Kejaksanaan Republik Indonesia, ‘Pembagian Hak Antar Ahli Waris,’ September 31, 2025, retrieved on October 24, 2025 from <https://Halojpn.Kejaksanaan.Go.Id/Publik/d/>

³⁵ I Wayan Gde Wiryanan, Ketut Sukawati Lanang P. Perbawa, and I Wayan Wiasta, “Hukum Adat Bali Di Tengah Modernisasi Pembangunan Dan Arus Budaya Global,” *Jurnal Bakti Saraswati* 4, no. 2 (2015).

On a larger scale, globalization has introduced popular culture via the media and increased tourism that can alter social perspectives, especially among the younger generation, about traditional values. Balinese traditions and customary law are often adapted to make them more attractive to tourists, sometimes to the detriment of their original meaning. This commercialization encourages changes in the implementation of customary practices. To preserve the authenticity of customary law in the face of global influences, balanced preservation strategies such as cultural education and strengthening of local identity are needed so that customary law still has a place and is appreciated by contemporary Balinese society.³⁶

The formal recognition through the Village Law strengthens the position of customary law in the national legal system, but at the same time also presents difficulties in harmonizing the flexible principles of customary law with the bureaucratic nature of state law. The entry of foreign investment, the development of infrastructure and the development of information technology require the existence of customary law that is relevant. At the same time, the exposure to global culture through the media and the internet also has an influence on the perception of customary law in the community, so wise policies are needed so that a balance between modernization, cultural preservation and environmental sustainability in Bali can be achieved. Therefore, adjustments and preservation strategies are needed so that customary law can remain relevant and functional in the life of modern Balinese society.

The Role and Position of Customary Law in Indonesia's National Legal System and Islamic Law

The legal system in force today is inseparable from the long history of Dutch colonialism which, by shaping the law, did not serve the needs of the people but rather to regulate colonial interests. The Dutch East Indies government had practiced a dualistic and discriminatory legal system by dividing society into Europeans, Foreign Orientals, and Indigenous peoples, with each community subject to different legal systems. It is clear that European law was placed in a higher position, while indigenous customary law was only recognized as long as it did not conflict with the interests of the colonial government.³⁷

Such a system resulted in a rigid and elitist legal structure that was disconnected from the social realities of the people, and turned law into an instrument of power rather than an instrument of justice. This Western European legal mindset, formalistic and prioritizing legal certainty over social justice, has in the end continued to influence Indonesia's post-independence legal system, often prioritizing legal-formal aspects rather than the living values of its own society.

³⁶ Dewa Gede Edi Praditha and I Wayan Eka Artajaya, *Hukum Adat Bali: Denyut Nadi Bali Dalam Gempuran Globalisasi* (Medan: Media Penerbit Indonesia, 2024).

³⁷ Hasyim, *Hukum Adat*.

In essence, however, Indonesia's legal system should be rooted in the spirit and identity of the nation. In the view of customary law scholars such as Soepomo and Ter Haar, true Indonesian law is the law that lives within society (*the living law*). Customary law does not originate from formal institutions, but grows from customs, deliberation, and the people's sense of justice. Therefore, the national legal system that is to be developed should not ignore customary law, because therein lies the true identity of Indonesian law.

This awareness began to develop after Indonesia's independence. The nation's founders realized that building a national legal system could not be done merely by imitating foreign legal systems. National law had to be grounded in Indonesian identity and culture. This was affirmed in the People's Consultative Assembly (MPRS) Decree No. II/MPRS/1960 on the Broad Outlines of the Universal Planned National Development Pattern, which states that national development, including legal development, must be based on the nation's identity and national culture.³⁸ This MPRS Decree became an important milestone in the direction of national legal development. It reflected a legal-political awareness that Indonesia's legal system must be derived from the social and customary values living within society, rather than solely from colonial legal inheritance. This means that customary law should not be neglected, but rather should serve as a primary source in the formation of national law so that the law developed is truly relevant to the lives of the people.

The role of customary law in the development of Indonesia's national legal system is functional.³⁹ Customary law is positioned as a primary source from which materials necessary for developing national law are drawn. It does not suddenly replace the entire legal system; rather, it is incorporated to enrich and develop national law.⁴⁰ The Seminar on Customary Law and National Legal Development held by the National Law Development Agency (BPHN) on 15–17 January 1975 explained that the mechanism for this is to incorporate concepts and principles of customary law into new legal institutions or even into legal institutions derived from foreign law.⁴¹ This is intended to ensure that the resulting national law becomes more relevant in practice.

Indonesia's national law, which is oriented toward Western legal traditions, is rigid and detached from social realities in society.⁴² Such a legal system often fails to solve actual problems in practice and raises the question for whom the law is truly

³⁸ "People's Consultative Assembly (MPRS) Decree No. II/MPRS/1960 on the Broad Outlines of the Universal Planned National Development Pattern"

³⁹ Dedy Sumardi, Ratno Lukito, and Moch Nur Ichwan, "Legal Pluralism within the Space of Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia," *Samarah*, 2021.

⁴⁰ Soerjono Soekanto, *Hukum Adat Indonesia* (Jakarta: Rajawali Pers, 2008).

⁴¹ Ministry of Law and Human Rights of the Republic of Indonesia, *Badan Pembinaan Hukum Nasional Departemen, Seminar Hukum Adat Dan Pembinaan Hukum Nasional* (Jakarta: Binacipta, 1975).

⁴² Soetandyo Wignjosoebroto, *Hukum: Paradigma, Metode, Dan Dinamika Masalahnya* (Jakarta: Elsam Lembaga Studi Dan Advokasi Masyarakat, 2002).

made. This is where customary law and Islamic law play an important role. The essence of customary law and Islamic law as living law emphasizes their closeness and relevance to real conditions in society.⁴³ For this reason, the implementation of customary law should not remain only theoretical, but must also be applied in practice; customary law should not be abandoned altogether, but should operate alongside Islamic law in shaping legal regulation.⁴⁴

To prevent the application of law from becoming rigid, the role of judges is fundamental.⁴⁵ Judges should not merely apply regulations mechanically. One of the greatest contributions of customary law and Islamic law in this regard is the mandate for judges to explore, follow, and understand the legal values living within society. This process of “exploring” makes law enforcement dynamic and attentive to social context. Ultimately, the justice realized by law is substantive justice—justice that truly lives within society—rather than merely formal legal rules.⁴⁶

In the case at hand, the customary dispute originated from a lawsuit filed by the Plaintiffs, namely Plaintiffs I (Putu Nik Suyasa, I Ketut Jiwa, I Ketut Jono, Wayan Suparta), Plaintiffs II (I Wayan Sadia, I Nyoman Sudartha, I Made Jaya, I Nyoman Wirawan, I Ketut Sudana), and Plaintiffs III (I Gede Suartana, I Kadek Suryawan, I Nyoman Sudarma Putra), against Defendant I (Made Redeg) and Defendant II (Chandra Sudiarta).

The Plaintiffs argued that during their lifetime, I Ketut Grundit (deceased) and his wife Ni Suri alias Ni Luh Suri (deceased), who were the uncles/aunts and grandparents of the Plaintiffs, left inheritance in the form of disputed land. The disputed land, as revealed in the legal reasoning at the cassation level, was purchased by Ni Luh Suri in 1949 after the death of her husband, I Ketut Grundit. The Plaintiffs argued that since I Ketut Grundit (deceased) and Ni Suri (deceased) had only one daughter, Ni Made Sudanti, who had married out, they had no male descendants. Hence, under Balinese customary law, the Plaintiffs, who were related to I Ketut Grundit and Ni Suri through the male lineage (*purusa*), should be the lawful heirs and thus entitled to the disputed land.

The dispute arose after the death of Ni Suri (deceased), when the disputed land came under the control of Defendant I, who claimed the land as his own on the grounds that he had cared for and lived with Ni Suri during her lifetime. Defendant I also registered the land certificate under his own name and the names of his children.⁴⁷ However, the Plaintiffs argued that Defendant I had no hereditary

⁴³ B. Ter Haar, *Adat Law in Indonesia, Terjemahan E.A. Hoebel Dan A.A. Schiller* (New York: Institute of Pacific Relations, 1948).

⁴⁴ Illy Yanti et al., “Negotiating Sharī‘ah and Customary Law: Legal Pluralism in Familial Relationships among the Suku Anak Dalam in Jambi,” *Journal of Islamic Law* 6, no. 2 (2025). p. 176.

⁴⁵ Article 5 paragraph (1), Law Number 48 of 2009 on Judicial Power.

⁴⁶ Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia* (Yogyakarta: Genta Publishing, 2009).

⁴⁷ Mursyid Djawas et al., “The Legal Position of Children of Incest (A Study of Madhhab Scholars and Compilation of Islamic Law),” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (2022), p. 139; Wardana Said et al., “Marriage Traditions and Family Resilience in Bugis Bone

relationship with I Ketut Grundit (deceased) and Ni Suri (deceased). On that basis, Defendant I's control over the disputed land was considered without legal basis and constituted an unlawful act.

Furthermore, Defendant I (Made Redeg) was alleged to have transferred the disputed land to Defendant II (Chandra Sudiarta) through a lease agreement. This act was evidenced by Lease Deed No. 1 dated October 2, 1986, executed before Notary I Putu Chandra, S.H. The Plaintiffs argued that since Defendant I had no legal rights over the disputed land, his act of leasing the land to Defendant II was invalid and null and void by law.

In the court of first instance the Plaintiffs' claim was partially granted. The court declared the Plaintiffs to be the lawful *kepurusa* heirs of I Grundit and Ni Suri, and that the disputed land was part of Ni Suri's estate to which the Plaintiffs were entitled as heirs, and declared the land certificate in Defendant I's name invalid. However, at the appellate level, the Denpasar District Court's decision was overturned. The court rejected the Plaintiffs' claim in its entirety and, in the counterclaim, granted Defendant I's claim and declared Defendant I entitled to inherit the disputed land.

At the final cassation stage, regarding the position of Defendant I, the Supreme Court held that it had been proven that Defendant I and his children had no family relationship with Ni Luh Suri. The Court reasoned that the fact Defendant I and Ni Luh Suri had once lived in the same house could not serve as a legal basis for Defendant I to inherit Ni Luh Suri's disputed land. The Supreme Court found the legal reasoning and judgment of the Denpasar District Court to be correct and proper, and therefore adopted that reasoning and judgment as its own. Consequently, the decision of the Denpasar High Court could no longer be upheld and had to be annulled.⁴⁸ This reflects the understanding that, in essence, land in society is not merely an economic asset but also a symbol of social and historical status; land ownership signifies authority and influence.

In accordance with the final cassation ruling, the rules of inheritance distribution apply according to community custom and are also consistent with Islamic inheritance principles, under which Defendant I had no marital or blood relationship that would entitle him to inherit. Therefore, his claim as an heir was extinguished because the legal requirements were not fulfilled. As recognized in Islamic legal doctrine (*fiqh*), the inheritance distribution practiced in Balinese society in this case does not contradict the substance of Islamic law, so long as it does not conflict with the Qur'an and Hadith.

Conclusion

The Supreme Court Decision (MA) No. 29 K/PDT/2004 is a concrete proof of the recognition of women's inheritance rights. The Supreme Court Decision No.

Society: A Study of Islamic Law and Islamic Education," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 3 (2024).

⁴⁸ Decision of the Denpasar District Court No.188/Pdt.G/2002/PN.Dps.

29 K/PDT/2004 also strengthens the position of Balinese customary law as a legitimate and dynamic source of law in the national legal system of Indonesia without any contradiction with the principles of Islamic law. Philosophically, the Decision upholds the values of balance and kinship in Balinese customary society which is based on the patrilineal (Kepurusa) system. Juridically, the decision is in line with Article 18B paragraph (2) of the 1945 Constitution and Article 5 paragraph (1) of the Judicial Power Law which require judges to explore and understand the legal values that live within society (living law). Sociologically, the Supreme Court has respected the social structure and legal consciousness of Balinese society, which places customary responsibilities along the male line of descent. From the perspectives of national, customary, and Islamic law, the application of the inheritance distribution as decided is dynamic and open to social change in the context of modernization and globalization. Although still adhering to the principle of Kepurusa, law and jurisprudence development (e.g., Supreme Court Decision No. 1331 K/Pdt/2010) shows some adjustments to accommodate inheritance rights to daughters who have not married out, care for their parents, or based on family and custom agreements in the pursuit of justice and equality. The main challenge, however, is to maintain the authenticity and relevance of customary law from the influences of commercialization and global culture while continuing to harmonize it with the principles of national law.

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